Prohibition Notices under the Fitness and Probity Regime

A public consultation issued by the Central Bank of Ireland, Republic of Ireland

Comments from ACCA to Central Bank of Ireland, Republic of Ireland

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Our forward-looking qualifications, continuous learning and insights are respected and valued by employers in every sector. They equip individuals with the business and finance expertise and ethical judgment to create, protect, and report the sustainable value delivered by organisations and economies.

Guided by our purpose and values, our vision is to develop the accountancy profession the world needs. Partnering with policymakers, standard setters, the donor community, educators, and other accountancy bodies, we are strengthening and building a profession that drives a sustainable future for all. Find out more at: www.accaglobal.com.

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GENERAL COMMENTS

ACCA welcomes the opportunity to provide feedback on this consultation *“Prohibition Notices under the Fitness and Probity Regime”*.

The Central Bank of Ireland (CB) has an important role to play in serving the public interest balancing the need to maintain monetary and financial stability with the importance of safeguarding the interests of consumers and the broader economy. Regulatory procedures to mitigate against inappropriate behaviour by a Subject are a key safeguard.

The draft Supplementary Guidance in this area is very welcomed, and we commend the Central Bank of Ireland for their work on this guidance. We find the guidance to be clear and relevant however, we would suggest the CB consider the following:

- inclusion of an additional relevant circumstance in Table 1 being the likelihood of the Subject repeating the conduct they have been sanctioned for and /or other conduct that might raise concerns about Fitness and Probity. It may also be helpful for the guidance to include a note, that several of the relevant circumstances may arise together in a case and how this will be considered when determining whether a prohibition is appropriate.
- setting out examples of mitigating circumstances to encourage consistency among decision makers and to improve transparency
- stipulating a minimum prohibition period during which the prohibited person cannot seek a termination of a Prohibition Agreement or cannot apply for a revocation/variation of the prohibition notice to the High Court
- the appropriateness of the process to vary or revoke a confirmed Prohibition Notice as currently the Subject must apply to the High Court and cost may be prohibitive

Consultation Questions

Question 1: Is the Supplemental Guidance helpful? What other information would be useful to include?

Response:

Yes, the guidance is useful and clear. The clarification that prohibition decisions will be taken by a Prohibition Decision Maker, drawn from the Regulatory Decisions Panel and separate from the investigation process, is helpful and makes the decision stage clearer. See response to question 2 which includes a suggestion for other information that may be useful to include.

Question 2: Do you have any observations on the circumstances relevant to prohibition as set out in Table 1 of the Supplemental Guidance?

Response:

The circumstances set out are clear and relevant. The Central Bank ('CB') may wish to include an additional relevant circumstance in Table 1, the likelihood of the Subject repeating the conduct they have been sanctioned for and /or other conduct that might raise concerns about fitness and probity. Table 1 provides a clear and balanced framework for assessing whether a prohibition may be appropriate. It may also be helpful for the guidance to include a note, that several of the relevant circumstances may arise together in a case and how this will be considered when determining whether a prohibition is appropriate. CB could also consider clearly setting out examples of mitigating circumstances to encourage consistency among decision makers and to improve transparency. You may wish to refer to Section F of the guidance ACCA has published relating to disciplinary action – Guidance to Disciplinary Sanctions.

Question 3: Do you have any observations on any other aspects of the Supplemental Guidance?

Response:

Where a prohibition is imposed for an indefinite period or for a specified period, the CB may wish to consider stipulating a minimum prohibition period during which the prohibited person cannot seek a termination of a Prohibition Agreement or cannot apply for a revocation/variation of the prohibition notice to the High Court.

The CB could also consider the appropriateness of the process to vary or revoke a confirmed Prohibition Notice as currently the Subject must apply to the High Court. The CB could consider whether this is a proportionate route in all cases. This is likely to be a costly option and may preclude some Subjects from pursuing an appeal.