

Inquiry Guidelines CP57
Enforcement 1 Division
Central Bank of Ireland

11 January 2012

By e-mail: ASPConsultationPaper@centralbank.ie

Re: Consultation Paper 57 - Inquiry Guidelines to be prescribed pursuant to section 33BD of the Central Bank Act 1942 (as amended)

Dear Sir/Madam

As the leading representative body for the banking and financial services in Ireland, the Irish Banking Federation represents over 70 member institutions, including licensed domestic and foreign banks and institutions operating in the financial marketplace here.

We welcome the opportunity to comment on the above consultation paper (hereafter 'the Guidelines') by the Central Bank of Ireland (hereafter 'the Central Bank') and see the Guidelines as an important enhancement to the procedures already in place around an Inquiry.

We do have a number of observations on the draft guidelines which are set out below for the Central Bank's consideration.

Introduction

The changes in the Inquiry system have been reasonably well signalled in the Central Bank (Supervision and Enforcement) Bill 2011 (the "Bill"). The proposed Guidelines are an expansion on the previous publications of October 2005 (Administrative Sanctions Guidelines and Outline of Administrative Sanctions Procedures) and we ask the Central Bank to ensure these Guidelines supersede both documents.

The additional content in the Guidelines highlight rules already in statute (Part IIIC of the CB & FSAI Act 2004) with some additional matters that will improve the procedure of an Inquiry. This is particularly the case in respect of the Case Management process, and the indicative procedural guides in Appendices 1-3(iii).

We would however have concerns that the publication of these Guidelines, which include measures that are mentioned in the Central Bank (Supervision and Enforcement) Bill 2011 (the Bill), could occur before the Bill has been enacted by the Oireachtas.

Confirmation that the two documents of 2005 (mentioned above) will be withdrawn when the new Guidelines are adopted should be included in the Guidelines.

With regards to the appointment of the Inquiry Panel: in the old Guidelines there was an indication that the people carrying out the Inquiry would be drawn from persons identified by the former Chief Executive of IFSRA or by others delegated by him (see "Introduction" at points 3 and 4). The Guidelines should make it clear that the Regulatory Decisions Unit (RDU) will be delegated the function of selecting the members of the Panel.

Other comments

- On page 5, section 3.1 states that an inquiry may be held if the Central Bank believes that there is a contravention and if no settlement has been agreed between the Central Bank and the institution. However the main section of the Inquiry Guidelines (Appendix 1, Section one - Referral) would seem to indicate that there does not need to be an attempt to reach a settlement first and that an Examination Letter being provided would be sufficient to set the Inquiry in train.

There is a specific reference later to a settlement being negotiated during the Inquiry procedure.

The opportunity to negotiate a settlement at any stage before or during the inquiry should be available and we would ask for this to be built into the Guidelines.

- In the appendix, section 3.1 states that the inquiry shall be conducted with as little formality and technicality as possible; however section 3.21 states that the Panel shall have the same powers with respect to the examination of witnesses that a judge of the High Court has.

The attribution of similar powers concerning witnesses as the High Court process will encourage financial service providers to ensure legal representation, which is at odds with the provision in the 2004 Act. These also state that proceedings should be conducted with little formality and technicality.

We are concerned that dealing with witnesses in the same way as the High Court could be detrimental to the process and the aim of having the inquiry conducted with as little formality and technicality as possible.

- The IBF welcomes 4.2 in relation to hearing representations from the parties regarding a sanction which gives regulated entities a right to make their own case/justify their actions.
- The IBF also welcomes 4.5 in relation to the prescription of timescales for parties to receive a decision or an update if a decision is not to be delivered within one month.
- We note that there is no timeline laid down for
 - a) a response to an Examination Letter sent by the Central Bank under Para. 1.2 of Appendix 1. We propose a minimum of 28 days be allowed.
 - b) for a response to a Case Management Questionnaire issued by the Central Bank under Para. 2.3 of Appendix 1. We propose a minimum of 28 days be allowed.
 - c) for Case Management Meetings under Para. 2.6 of Appendix 1. We propose 10 working days.
- Finally, on page 21, the Pre-Inquiry Procedures state the Panel can request the RDU to prepare an agreed Book of Documents at least 15 working days prior to the date assigned for the hearing. The RDU will deliver the indexed copies to the Panel and each of the parties at least 5 working days prior to the inquiry.

We believe that the timescale of five working days is extremely tight in allowing the parties to review, and possibly investigate, the evidence provided in preparation for the inquiry. We feel 20 working days to prepare the Book of Documents and ten working days to consider the Book of Documents would be more acceptable and ask the Central Bank to reconsider these timeframes.

Should you have any further questions on the details above please contact us.

Yours faithfully,

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