



STATUTORY INSTRUMENTS.

S.I. No. 56 of 2012



CENTRAL BANK REFORM ACT 2010 (PROCEDURES GOVERNING
THE CONDUCT OF INVESTIGATIONS) REGULATIONS 2012

(Prn. A12/0356)

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THE CONDUCT OF INVESTIGATIONS) REGULATIONS 2012

In exercise of the powers conferred on the Central Bank of Ireland (“the Bank”) by section 53(2) of the Central Bank Reform Act 2010, the Bank hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012.

Interpretation

2. (1) An expression used in these Regulations and also used in the Act has, unless the contrary intention appears, the same meaning in these Regulations as in the Act.

(2) In these Regulations, unless the context otherwise requires—

(a) “the Act” means the Central Bank Reform Act 2010;

(b) “Deputy Governor” means the Deputy Governor (Financial Regulation);

(c) “investigation” means an investigation conducted under Chapter 3 of Part 3 of the Act;

(d) “oral hearing” means a hearing held in the circumstances described in regulation 4;

(e) “subject”, with respect to a particular investigation, means the person whose fitness and probity is the subject of an investigation.

(3) In these Regulations, references to the masculine shall be taken as including references to the feminine.

(4) In these Regulations, references to the Bank, the Governor or the Deputy Governor shall be taken as including references to any person appointed by the Bank, the Governor or the Deputy Governor, as the case may be, to perform a function of those persons under Part 3 of the Act.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd March, 2012.*

Subject to provide list of relevant witnesses once Statement of Grounds received, etc.

3. (1) Where the Deputy Governor is carrying out an investigation into the fitness and probity of the subject, and the Deputy Governor forms the view, on the basis of the information in his possession, that it is possible that adverse conclusions may be drawn against the subject, the Deputy Governor shall furnish the subject and any regulated financial service provider concerned with a statement (in this regulation called a “statement of grounds”) setting out the Deputy Governor’s concerns as to the fitness and probity of the subject.

(2) The statement of grounds shall include the following material:

- (a) details of the present concerns of the Deputy Governor;
- (b) where the Deputy Governor has conducted interview(s) with any person, an account of the information provided by that person at such interviews; and
- (c) any other documentary material relevant to the concerns of the Deputy Governor.

(3) Where, following the receipt of a statement of grounds, the subject or regulated financial service provider believes that any person would be able to give evidence that relates to the matters set out in the statement of grounds, the subject or regulated financial service provider shall furnish a list of such persons to the Deputy Governor together with the particulars set out in paragraph (4).

(4) The particulars referred to in paragraph (3) are:

- (a) the name of the person;
- (b) the address of the person;
- (c) the contact details of the person including, where relevant, the telephone number and electronic mail address of the person; and
- (d) a description of the grounds upon which the subject or regulated financial service provider contends that the person would be able to give evidence that relates to a matter concerning the fitness and probity of the subject.

(5) Where the subject or regulated financial service provider furnishes a list of persons in accordance with paragraph (3), and the Deputy Governor decides to conduct one or more interviews with any such persons, the Deputy Governor shall provide the subject and any regulated financial service provider concerned with an account of the information provided by such persons at those interviews.

(6) Nothing in these Regulations shall be read as requiring the Deputy Governor in a particular case to conduct one or more interviews with any person contained in a list furnished to the Deputy Governor in accordance with paragraph (3).

Circumstances in which oral hearings may be convened

4. (1) The Deputy Governor may, at any time following the receipt of a statement of grounds by the subject or any regulated financial service provider concerned, hear oral evidence where he is satisfied that it is necessary to do so for the proper conduct of an investigation, and he may convene an oral hearing for the purposes of hearing such evidence.

(2) Without prejudice to the generality of paragraph (1), the Deputy Governor may be satisfied as to the necessity for an oral hearing in the following circumstances:

- (a) where there is an issue of fact in dispute which cannot fairly be resolved without an oral hearing;
- (b) where the credibility of the subject or a witness needs to be tested;
- (c) where, having regard to the potential effect of the investigation on the subject, the Deputy Governor considers an oral hearing to be required in the interests of fairness;
- (d) where allegations of a serious nature have been made against the subject;
- (e) where the subject or a witness has requested that the Deputy Governor convene an oral hearing; or
- (f) of the Deputy Governor's own motion.

(3) Any request for an oral hearing by the subject, regulated financial service provider or witness shall be submitted in writing to the Deputy Governor and shall contain the particulars set out in paragraph (4)

(4) The particulars referred to in paragraph (3) are:

- (a) a description of the grounds upon which the subject, regulated financial service provider or witness contends that an oral hearing is necessary for the proper conduct of an investigation; and
- (b) the name of any person which the subject, regulated financial service provider or witness wishes the Deputy Governor to require to appear at such an oral hearing.

(5) For the avoidance of doubt, nothing in these Regulations shall be taken as imposing an obligation on the Deputy Governor to convene an oral hearing in any particular case.

Notice of oral hearing

5. (1) The Deputy Governor shall give written notice of an oral hearing to the subject, any regulated financial service provider concerned and any relevant witnesses.

(2) Where the Deputy Governor requires any person to appear at an oral hearing, he shall serve an evidentiary notice on such person for the purpose of compelling that person to so appear.

Conduct of Proceedings at oral hearing

6. (1) The Deputy Governor may, at his sole discretion, direct the manner in which evidence shall be given at an oral hearing.

(2) For the purposes of paragraph (1), the Deputy Governor may issue directions.

(3) Without prejudice to the generality of paragraph (1), at an oral hearing—

(a) the Deputy Governor, or persons appointed by the Deputy Governor, may question the subject or witness;

(b) where the Deputy Governor directs, the subject shall, personally or through his legal representative, have a full right to cross-examine witnesses and call evidence in defence and reply.

(c) the Deputy Governor may invite oral submissions from the subject or any regulated financial service provider concerned.

(4) At an oral hearing, the Deputy Governor may, at his sole discretion, adjourn the entirety or part of the oral hearing for such time as he deems fit.

(5) Without prejudice to the generality of paragraph (4), the Deputy Governor may adjourn an oral hearing where the subject or any regulated financial service provider concerned seeks to call a particular witness in defence and reply without the subject or the regulated financial service provider, as the case may be, having previously included such witness on a list furnished to the Deputy Governor in accordance with regulation 4(3).

7. (1) Without prejudice to the generality of section 35(4) of the Act, the subject shall attend at an oral hearing in person and may be represented at such hearing by solicitor or by solicitor and counsel.

(2) Any legal costs incurred by any person attending an oral hearing shall be borne by that party alone and shall not be recoverable from the Bank under any circumstances.

8. (1) The evidence of persons appearing at an oral hearing shall be given on oath or by affirmation.

(2) For the purposes of paragraph (1), the Deputy Governor may administer such oath or affirmation, as appropriate.

9. (1) The Deputy Governor may receive evidence of witnesses given by means of live video link, a video recording, sound recording or any other mode of transmission (in this regulation referred to as “recorded evidence”).

(2) The Deputy Governor will only receive recorded evidence after considering written submissions by or on behalf of the subject or any regulated financial service provider concerned as to the appropriateness of such evidence.

10. (1) A verbatim note of the evidence and submissions made at an oral hearing may be taken by a person appointed by the Deputy Governor either by means of a stenographic note or by means of a sound recording or by a sound and vision recording.

(2) Any person appearing at an oral hearing before the Deputy Governor shall be entitled to a transcript or copy of the record referred to in paragraph (1), on payment of such reasonable charge for reproduction as the Deputy Governor may direct.

Provisions regarding conclusion of investigation, delivery of reports, etc

11. In circumstances where the Deputy Governor makes any finding as part of a report under section 41 of the Act, or where the Bank makes any finding preliminary to making a decision or arriving at an opinion under section 23 of the Act, including without prejudice to the generality of the foregoing a finding in relation to any of the matters referred to at section 25(3)(a) to (h) of the Act, any such findings may be made on the balance of probabilities.

12. (1) Subject to paragraph (2), the Deputy Governor, after carrying out the information gathering stage of an investigation, shall:

- (a) provide written notice to the subject and any regulated financial service provider concerned informing those persons of the conclusion of that stage of the investigation, and
- (b) within six months of issuing the written notice specified in subparagraph (a), serve a copy of a report prepared in accordance with section 41(1) of the Act.

(2) Notwithstanding any written notice referred to in paragraph (1)(a), where the Deputy Governor, before serving a copy of a report prepared in accordance with section 41(1) of the Act, requires any person, pursuant to an evidentiary notice, to provide additional material to the Deputy Governor, the following provisions shall apply:

- (a) the time period referred to in paragraph (1)(b) shall be deemed to have stopped from the date on which such evidentiary notice is served on that person;
- (b) where the person from whom additional material is required is a person other than the subject or any regulated financial service provider concerned, the Deputy Governor shall:
 - (i) inform the subject and any regulated financial service provider concerned that the person has been required to provide additional material to the Deputy Governor, and

- (ii) provide the subject and any regulated financial service provider concerned with copies of any such additional material provided to the Deputy Governor;
- (c) the Deputy Governor shall provide the subject and any regulated financial service provider concerned with an opportunity to make such submissions on that additional material as the Deputy Governor thinks appropriate within such time as the Deputy Governor may decide; and
- (d) the time period referred to in paragraph (1)(b) shall resume from the expiration of the period for submissions referred to in subparagraph (c).

13. (1) Where the Bank and the Governor receive a copy of a report prepared by the Deputy Governor pursuant to section 41(1) of the Act, together with any submissions made by the subject and any regulated financial service provider concerned pursuant to section 41(4) of the Act, the Bank or the Governor, as the case may be, shall inform the subject and any regulated financial service provider concerned as to—

- (a) whether the Bank or the Governor is minded to issue a prohibition notice under section 43 of the Act; and
- (b) if the Bank or the Governor is so minded, the entitlement of the subject and any regulated financial service provider concerned to make submissions to the Bank or the Governor, as the case may be, within 7 days (or such longer period as the Bank or Governor considers reasonable in all the circumstances), in relation to the proposed issue of the prohibition notice,

within three months of receipt of such report.

(2) Where the Bank or the Governor is minded to issue a prohibition notice, and the subject and any regulated financial service provider concerned have made submissions to the Bank or the Governor, as the case may be, in relation to the proposed issue of the prohibition notice, the subject and any regulated financial service provider concerned shall be informed of the decision of the Bank or the Governor as to whether to issue a prohibition notice within six weeks of the receipt of such submissions.

14. Where any document or notice is to be served by the Bank, the Governor or the Deputy Governor under or pursuant to Part 3 of the Act or these Regulations, such service may be effected—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,

- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address, or
- (d) electronically (by electronic mail to an email address, or by facsimile number, furnished by the person to, or otherwise known to, the Deputy Governor).



Signed for and on behalf of the CENTRAL BANK OF IRELAND
24 February 2012.

MATTHEW ELDERFIELD,
Deputy Governor.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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