



Legal Update

Tribunal requires Review of F&P Regime

The Irish Financial Services Appeals Tribunal (“IFSAT”) has published its decision (the “Decision”) on an appeal brought to it regarding a determination of the Central Bank of Ireland (the “Central Bank”) under its fitness and probity (“F&P”) regime. The Decision is critical and found that “*the Central Bank’s decision-making process was flawed*”. It further found that the original determination of the Central Bank “*was, in law, “incorrect”*”. It has ordered the matter to be remitted to the Central Bank for reconsideration, as well as making several directions concerning future steps.

Background

In December 2022 the Central Bank issued a decision pursuant to its F&P regime in relation to the appointment of an individual as a director of a regulated Irish investment fund. Such a role is a “pre-approval control function” (“PCR”) and as such requires prior Central Bank approval. The Central Bank determined that the applicant was “unfit” to be appointed. The individual appealed this decision to IFSAT.

IFSAT

IFSAT is an independent tribunal originally established under the Central Bank and Financial Services Authority of Ireland Act 2003, amending the Central Bank Act 1942. Its purpose is to provide an effective and efficient means of determining appeals by aggrieved parties against certain decisions of the Central Bank. It is not directly affiliated with the Central Bank and consists of members nominated by the government and appointed by the President of Ireland.

Response and Next Steps

The Central Bank has issued a statement confirming that it will immediately conduct a reassessment of the relevant application in accordance with the findings of IFSAT.

Furthermore, it has announced that it will commission an independent review of the F&P approval process to ensure that it remains effective going forward. However, it is confirmed that in the interim all the Central Bank’s gatekeeping functions, including the F&P approval process, will continue to operate in accordance with agreed service standards currently in force.

How Clerkin Lynch Can Help

Clerkin Lynch’s Financial Services and Litigation teams are highly experienced, including in relation to acting on behalf of senior executives in the financial services industry. We advise individuals and firms on all aspects of their rights, including on F&P related matters, as well as ensuring policies and procedures are compliant.



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