



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Fitness and Probity Investigations, Suspensions and Prohibitions

Guidance

April 2023

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Introduction

This document (the **Guidance**) provides individuals, regulated financial service providers and holding companies with an overview of how fitness and probity investigations, suspensions and prohibitions operate.

Legal Context

1. Fitness and probity investigations and related decisions are carried out under Part 3 of the Central Bank Reform Act 2010 (the **Act**) and the Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2023¹ (the **Regulations**).
2. The Act and the Regulations set out certain procedures to be followed when the powers or functions of the Central Bank of Ireland (the **Bank**), the Governor or the Deputy Governor (Financial Regulation) (the **Deputy Governor**)² are being exercised under Part 3 of the Act.

Status of the Guidance

3. The Guidance is not a definitive legal interpretation of the Act or the Regulations and, in case of doubt, you should refer to the relevant provisions of the Act or the Regulations or seek legal advice, if required.
4. The Guidance is not an exhaustive guide to the entire process, which is set out in the Act and the Regulations.
5. The Bank, the Governor or the Deputy Governor may depart from any procedure set out in the Guidance, where appropriate.
6. The Bank may amend the Guidance from time to time.

¹ S.I. No. 190 of 2023.

² Pursuant to section 23(2) of the Central Bank Act 1942, the title of Head of Financial Regulation, which appears in Part 3 of the Act, has been changed to Deputy Governor (Financial Regulation). See *Iris Oifigiúil*, 1 July 2022.

Structure of the Guidance

7. The Guidance addresses each of the key stages of the investigation process and the decisions that may flow from that process:
 - Preliminary Consideration
 - Investigation
 - Report
 - Decision.
8. Diagrams illustrating each key stage are included in **Appendix 1**.

Interpretation

9. The Bank, the Governor and the Deputy Governor each have functions under the Act. In broad terms, the Deputy Governor is empowered to carry out fitness and probity investigations and to make certain decisions during such investigations. The Bank and the Governor are empowered with certain decision making functions that may follow such investigations.
10. The Bank, the Governor and the Deputy Governor may appoint persons to perform their functions on their behalf subject to certain restrictions contained in the Act. A reference in the Guidance to the Bank, the Governor or the Deputy Governor includes their appointees.
11. Several appointments may be made in relation to a single investigation. For example, the Deputy Governor may appoint certain persons to carry out an investigation while appointing certain other persons to make particular decisions in relation to that investigation.
12. In the Guidance:
 - i. The term “person” shall be taken to mean a natural or a legal person
 - ii. The term “investigation” or “investigate” or any word which is a variant, derivative or is analogous to any of those words shall be taken as referring to an investigation under Chapter 3 of Part 3 of the Act

- iii. A term used in the Guidance which is also used in the Act or Regulations has the same meaning as in the Act or Regulations unless a contrary intention appears.

Previous Guidance and Regulations

13. The Guidance replaces the pre-existing Guidance on Investigations under Part 3 of the Central Bank Reform Act 2010 (2011). The Regulations replace the pre-existing Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012.³ The 2011 Guidance and the 2012 Regulations are available on the Bank's website.

³ S.I. No. 56 of 2012.

Preliminary Consideration

We may investigate a person if there is reason to suspect their fitness and probity to perform a controlled function role (CF).

14. The Deputy Governor may investigate the fitness and probity of a person to perform a particular CF in a regulated financial service provider or holding company (**relevant entity**) where, in the Deputy Governor’s opinion, there is reason to suspect the person’s fitness and probity and an investigation is warranted in the circumstances.⁴ A diagram illustrating the procedure preliminary to the commencement of an investigation is included in **Appendix 1** (*Figure 1*).
15. An investigation may be conducted in respect of:
 - A person performing a CF in a relevant entity
 - A person who a relevant entity proposes, or is considering, to appoint to carry out a CF (other than a PCF)⁵
 - A person who formerly performed a CF in a relevant entity within the shorter of:
 - The 6 years preceding the commencement of an investigation
 - The period since the date of commencement of Section 14 of the Central Bank (Individual Accountability Framework) Act 2023.⁶
16. Grounds upon which the Deputy Governor is entitled to form the relevant opinion and commence an investigation include where the Deputy Governor suspects that the person does not satisfy the Bank’s standards of fitness and probity. Further examples of such grounds are set out in **Appendix 2**.

⁴ The person who forms the relevant opinion will have no involvement in the subsequent investigation (if commenced) in any way that would affect the independence of the investigation.

⁵ PCFs or “pre-approval controlled functions” require pre-approval by the Bank under a separate process.

⁶ 19 April 2023.

17. Concerns may arise in respect of a person's fitness and probity to perform a CF in a number of different contexts. For example, the Deputy Governor may form a suspicion as a result of information obtained by the Bank in the course of its day-to-day supervisory activities.
18. Subject to paragraph 21 below, where the Deputy Governor proposes to commence an investigation into a person's fitness and probity to perform a CF, the Deputy Governor will give written notice of this to the person. The notice will inform the person that the Deputy Governor:
 - Proposes to commence an investigation on a specified date (no sooner than 14 days from the date of the notice)
 - Will, prior to deciding whether or not to commence an investigation, consider any submissions received from the person within 7 days from the date of the notice.
19. The 7 day period to make submissions referred to in the second bullet point of paragraph 18 will not be extended unless there are exceptional circumstances.
20. The notice referred to in paragraph 18 will be served on the person in accordance with paragraph 101.
21. In circumstances where the Deputy Governor is satisfied that it is necessary in the interests of the proper regulation of a relevant entity that the person not perform the relevant (or any) CF while the Deputy Governor is carrying out an investigation, the Deputy Governor may commence an investigation and issue a Suspension Notice⁷ without notice to the person and without having afforded the person an opportunity to make submissions as outlined in paragraph 18.

⁷ Suspension Notices are described in paragraphs 57 to 66.

Investigation

During an investigation, we gather information relevant to a person's (the **Subject**) fitness and probity to perform a CF.

Commencement of Investigation

22. Where the Deputy Governor decides to conduct an investigation in relation to a Subject's fitness and probity to perform a CF, the Deputy Governor will notify the Subject in writing by serving a **Notice of Investigation** on the Subject. The Deputy Governor will do this as soon as practicable after making the decision to conduct the investigation. A diagram illustrating the investigation procedure is included in **Appendix 1** (*Figure 2*).
23. The Notice of Investigation will include:
 - A statement of the reasons why the Deputy Governor holds the opinion that there is reason to suspect the Subject's fitness and probity to perform the relevant CF
 - A copy of such material on which that opinion is based as the Deputy Governor considers appropriate
 - A statement that any response to the contents of the Notice of Investigation will be taken into account if made within the period specified in the Notice. This period will be 7 days or such longer period as the Deputy Governor considers necessary to provide an opportunity to respond.
24. The Notice of Investigation will be served on the Subject in accordance with paragraph 101.

Conduct of Investigation

25. An investigation may involve the collection of documentary evidence as well as interviews with witnesses, who may include the Subject. The Deputy Governor may require individuals to appear before the Deputy Governor or to provide documentary material to the Deputy Governor, and may issue Evidentiary Notices for this purpose.⁸ The Deputy Governor will not give

⁸ Evidentiary Notices are described in paragraphs 28 to 33.

notice in advance of the questions that may be asked at interview as, given the nature of an investigation, it will not be possible to predict this with certainty.

26. The Deputy Governor will take reasonable steps to keep the Subject informed as to the progress of an investigation.
27. At any stage during the course of the investigation, the Deputy Governor may change the scope of the investigation including by reducing or expanding it. For example, if the Deputy Governor identifies further concerns regarding a Subject's fitness and probity to perform a CF, the Deputy Governor may expand the scope of the investigation to include these further concerns.

Evidentiary Notices

28. In order to enable the Deputy Governor to properly carry out a fitness and probity investigation, the Act provides that the Deputy Governor may serve an **Evidentiary Notice** on the Subject or any other person whom the Deputy Governor believes on reasonable grounds may be able to give evidence in relation to the matter. An Evidentiary Notice may require the person to do one or more of the following things:
 - Appear before the Deputy Governor to give evidence about a matter
 - Provide evidence to the Deputy Governor
 - Produce a document for examination.
29. The Deputy Governor may serve an Evidentiary Notice on a person at any stage when an investigation is ongoing, i.e. from the point of commencement of the investigation up to the point of completion of the investigation. The Deputy Governor will issue an Evidentiary Notice at the point where it is proposed to call a person to give evidence or produce a document before an oral hearing.
30. Where a person is served with an Evidentiary Notice, that person is obliged to comply with the Notice. Failure to comply with an Evidentiary Notice may amount, amongst other potential repercussions, to a criminal offence, unless the person has a reasonable excuse or has been excused by the Deputy Governor. What amounts to a reasonable excuse will depend on

the circumstances of the case. It is not possible to exhaustively list the matters which may constitute a reasonable excuse, however such matters may include where the person:

- Does not have (and cannot reasonably obtain) the document or information
- Could not be compelled to produce the document in, or provide the information to, a court of law
- Is unable to attend on the date requested, but will be able to appear at a later date, e.g. due to illness.

31. Where a person feels that they have a reasonable excuse for refusing or failing to give evidence or provide information to the Deputy Governor, the person must provide a written statement setting out the details of the excuse to the Deputy Governor.
32. The Deputy Governor may certify a refusal or failure of a person to comply with an Evidentiary Notice to the High Court. The person is entitled to appear before the High Court and that Court may hear from any witnesses in relation to the failure or refusal. The High Court may make any order it thinks fit, including an order directing the person to comply with the Evidentiary Notice or answer particular questions.
33. A person who appears before the Deputy Governor in compliance with an Evidentiary Notice is entitled to be paid, by the Bank, such allowances and travelling or other expenses as the Deputy Governor may reasonably allow. However, the costs and expenses of the following persons will not be paid:
 - The Subject
 - A regulated, or formerly regulated, financial service provider
 - A holding company
 - Any person called to give evidence on behalf of the Subject or a regulated, or formerly regulated, financial service provider or holding company.

Statement of Grounds

34. Where the Deputy Governor is carrying out an investigation and forms the view, based on the information in his possession, that

adverse conclusions may be drawn against the Subject, the Deputy Governor will prepare a **Statement of Grounds**. The Deputy Governor will provide the Statement of Grounds to the Subject and any relevant entities concerned.

35. The Statement of Grounds will include:

- Details of the present concerns of the Deputy Governor as to the fitness and probity of the Subject
- Where the Deputy Governor has conducted interview(s) with any person, an account of the information provided by that person at such interview(s)
- Any other documentary material relevant to the concerns of the Deputy Governor.

36. The Subject or relevant entity may respond to the Statement of Grounds within 7 days from the date on which the Statement of Grounds is furnished or such longer period as the Deputy Governor considers reasonable in all the circumstances. The Deputy Governor will take into account any such response.

37. Should the Subject or relevant entity believe that any person would be able to give evidence on the matters set out in the Statement of Grounds, the Subject or relevant entity must provide a list of such persons to the Deputy Governor within 7 days from the date on which the Statement of Grounds is furnished or such longer period as the Deputy Governor considers reasonable in all the circumstances. The Subject or relevant entity must also provide the following particulars:

- The name of the person
- The address of the person
- The contact details of the person (including telephone number and email address, where relevant)
- A description of the grounds on which the Subject or relevant entity contends that the person would be able to give evidence relating to a matter concerning the fitness and probity of the Subject.

38. The Deputy Governor will decide whether or not to conduct an interview(s) with any such person. If the Deputy Governor decides to conduct an interview(s), the Deputy Governor will give the Subject and any relevant entity concerned an account of the information given to the Deputy Governor by the person.
39. For the avoidance of doubt, the Deputy Governor, during the course of an investigation, may issue an amended Statement of Grounds to reflect the up-to-date concerns of the Deputy Governor at a particular point in time.

Additional materials gathered after Statement of Grounds

40. The Deputy Governor can issue an Evidentiary Notice at any stage during an investigation but where the Deputy Governor issues such a Notice seeking additional documents or information in writing after a Statement of Grounds has been furnished, the following applies:
 - Where the Deputy Governor receives such additional materials in response to the Evidentiary Notice, the Deputy Governor will inform the Subject and any relevant entity concerned that the Evidentiary Notice issued and provide them with copies of the additional materials received (if relevant to the concerns of the Deputy Governor as set out in the Statement of Grounds)
 - The Deputy Governor will give the Subject and any relevant entity concerned an opportunity to make any submissions on such additional materials as the Deputy Governor thinks appropriate within such time as the Deputy Governor may decide.

Oral Hearing

41. After the Statement of Grounds has been received by the Subject or any relevant entity concerned, the Deputy Governor may hear oral evidence and hold an oral hearing to hear such evidence. An oral hearing may be held if the Deputy Governor is satisfied that it is necessary for the proper conduct of the investigation.
42. The Subject, a relevant entity or witness may request an oral hearing. The request must be in writing and must include the following particulars:

- A description of the grounds upon which the Subject, relevant entity or witness contends that an oral hearing is necessary for the proper conduct of an investigation
 - The name of any person which the Subject, relevant entity or witness wishes the Deputy Governor to require to appear at such an oral hearing.
43. The Deputy Governor will consider any written request to hold an oral hearing which may be received, however, there is no obligation on the Deputy Governor to hold such a hearing.
44. Some of the reasons why the Deputy Governor may reach the view that an oral hearing is necessary for the proper conduct of the investigation are:
- Where there is an issue of fact in dispute which cannot fairly be resolved without an oral hearing
 - Where the credibility of the Subject or a witness needs to be tested
 - 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
 - Where allegations of a serious nature have been made against the Subject
 - Where the Subject or a witness has requested that the Deputy Governor convene an oral hearing.
45. If the Deputy Governor decides to hold an oral hearing, the Deputy Governor will set a date or dates on which the hearing will take place and give written notice of the oral hearing to the Subject, any relevant entity and any relevant witness. The Subject may be required to give evidence on oath or by affirmation and may be cross-examined at such a hearing. In addition, the Deputy Governor may permit the Subject and/or relevant entity to:
- Attend to hear the evidence obtained by the Deputy Governor
 - Cross-examine such witnesses as are called

- Give evidence personally
 - Tender documentary evidence to the Deputy Governor relevant to the matter under investigation
 - Request the Deputy Governor to require the attendance of any other person whom the Subject believes could give relevant evidence
 - Provide oral submissions.
46. The Deputy Governor, when setting a date(s) for the oral hearing or at any time subsequently, may make such other directions as the Deputy Governor deems fit in the circumstances of the case.
47. The Subject may be legally represented at any oral hearing held during the investigation.
48. The Deputy Governor has the discretion to grant or refuse any application made to the Deputy Governor in the course of an oral hearing, taking due account of fair procedures. The Deputy Governor may also make such directions as the Deputy Governor deems appropriate to ensure the proper and efficient conduct of the oral hearing.
49. In general, oral hearings during an investigation will be held in private, unless the Deputy Governor directs otherwise. Where an oral hearing is to be held in private, the Deputy Governor may decide which persons are permitted to attend the oral hearing. A hearing may (at the request of the Subject or otherwise) be held publicly where the Deputy Governor is satisfied that it is desirable in the public interest that the hearing (or part of the hearing) should be held in public.
50. Where an oral hearing takes place in private, the Deputy Governor may give directions specifying who may be present during proceedings and preventing or restricting the publication of the whole or any part of the evidence given during the course of the hearing.
51. The proceedings at an oral hearing will be recorded by a stenographer (or by other similar means) and any party to the oral hearing before the Deputy Governor will be entitled to a

transcript of the proceedings upon payment of a reasonable fee to be determined by the Deputy Governor, where appropriate.

52. At the conclusion of an oral hearing, the Subject (personally, or through his legal representative) may make submissions to the Deputy Governor. Other than where the Deputy Governor directs, such submissions must be made in writing to the Deputy Governor within a timeframe specified by the Deputy Governor.⁹
53. Any legal costs incurred by any person attending an oral hearing must be borne by that person. Such costs are not recoverable from the Bank.

Completion of Investigation

54. The Deputy Governor will prepare a draft report of the investigation when it is complete.

Discontinuance of Investigation

55. The Deputy Governor may discontinue an investigation at any point for any of the following reasons:
 - The Deputy Governor is no longer of the opinion that there is reason to suspect the Subject's fitness and probity to perform the relevant CF
 - The Deputy Governor is no longer of the opinion that any reason to suspect the Subject's fitness and probity to perform the relevant CF is sufficient to warrant an investigation
 - Reasons of resources
 - Policy reasons
 - Reasons of any other description stated in the notice described below in paragraph 56.
56. If the Deputy Governor discontinues an investigation, the Deputy Governor will provide the Subject with written notice stating that the investigation has been discontinued. The notice will include the reason(s) for discontinuance.

⁹ See paragraph 45 for oral submissions during an oral hearing.

Suspension Notice

57. Where a person is, or has been, the subject of an investigation, the Deputy Governor may issue a **Suspension Notice** in relation to the person. A diagram illustrating the Suspension Notice procedure is included in **Appendix 1** (*Figure 3*).
58. Suspension is a temporary, interim measure. A suspended person may not perform a CF, part of a CF or any CF in contravention of a Suspension Notice while the Notice is in effect. A relevant entity is obliged to comply with the terms of a Suspension Notice and may not permit a suspended person to perform the specified CF(s) or part thereof, or contravene any other term or condition of the Suspension Notice.
59. Before issuing a Suspension Notice, the Deputy Governor must be satisfied that it is necessary in the interests of the proper regulation of a relevant entity. The Suspension Notice will be in writing. The Deputy Governor will serve the Suspension Notice on the suspended person and any relevant entity for whom the person is, or is going to be, performing a CF. The Suspension Notice may be served in any of the manners set out in paragraph 101.
60. The Suspension Notice will require the suspended person and any relevant entity on whom a copy of the Suspension Notice is served to show cause, in writing, within 5 days of the service of the Notice, why the Notice should not be confirmed.
61. A Suspension Notice lasts for an initial period of 10 days unless sooner revoked by the Deputy Governor.
62. If, having considered any submissions made by the suspended person and/or any relevant entity on whom a copy of the Suspension Notice was served, as set out in paragraph 60, the Deputy Governor is still of the view that the Suspension Notice should remain in force, the Deputy Governor may confirm the Suspension Notice.¹⁰ Where confirmed, the Suspension Notice will remain in force for a period of a further 6 months, unless sooner revoked.

¹⁰ The person who decides whether to confirm a Suspension Notice will not be the same person as the person who decided to issue the Suspension Notice.

63. The decision of the Deputy Governor to confirm a suspension notice may be appealed to the Irish Financial Services Appeals Tribunal (**IFSAT**). Details in relation to IFSAT's procedures and the possible outcomes of appeals are available on its website.¹¹
64. The Deputy Governor may apply to the High Court to extend a Suspension Notice by up to 6 months at a time. The cumulative total period of extension that the High Court can grant is 24 months from the end of the initial 6 month period that applies to a confirmed Suspension Notice unless a Prohibition Notice has issued.¹² Where the Deputy Governor intends to apply to the High Court for such an extension, the suspended person and any relevant entity on whom the Suspension Notice was served will be notified of the application.
65. In addition to being suspended during an investigation, a person may be suspended after an investigation is complete or in any case where a Prohibition Notice has been issued in relation to the person.
66. Where, at any time in which a Suspension Notice is in effect, the Deputy Governor considers that the suspended person is performing the relevant CF(s) or part thereof, or a relevant entity is permitting the suspended person to perform the relevant CF(s) or part thereof, the Deputy Governor may apply to the High Court without notice to the suspended person or the relevant entity for an order directing the person or regulated entity to comply with the Suspension Notice.

¹¹ www.ifsat.ie

¹² Prohibition Notices are described in paragraphs 72 to 91.

Report

We prepare a draft report when an investigation is complete and provide it to the Subject before finalising it.

Draft Investigation Report

67. When the Deputy Governor has completed an investigation, the Deputy Governor will consider any relevant information that was gathered or received during the investigation, including any relevant submissions or statements made by the Subject, and prepare a draft report of the investigation as soon as practicable.
68. The Deputy Governor will send a copy of the draft report to the Subject and any relevant entity concerned as soon as practicable. The draft report will be served in any of the ways set out in paragraph 101.
69. The Deputy Governor will provide the Subject and any relevant entity concerned with an opportunity to make submissions in writing on the draft report within 7 days or such longer period as the Deputy Governor considers necessary.
70. A diagram illustrating the investigation report procedure is included in **Appendix 1** (*Figure 4*).

Final Investigation Report

71. The Deputy Governor will consider any submissions received within the period allowed and finalise **the Report** as soon as practicable, having made any revisions that, in the opinion of the Deputy Governor, are warranted. The Deputy Governor will then send the Report, and any submissions that were received in response to the draft report, to the Bank, the Governor, the Subject and any relevant entity concerned, as soon as practicable. The Report will be served in any of the ways set out in paragraph 101.

Decision

We may prohibit a person by a written notice (a **Prohibition Notice**) if they are not of appropriate fitness and probity.

Prohibition

72. The Bank¹³ will consider the Report and any submissions received by the Deputy Governor in response to the draft report as described in paragraph 69.¹⁴
73. Where the Bank reasonably forms the opinion that the Subject is not of such fitness and probity as is appropriate to perform a particular or any CF, or any part of a CF, a prohibition may be imposed on the Subject and a Prohibition Notice served on them. A diagram illustrating the Prohibition Notice procedure is included in **Appendix 1** (Figure 5).
74. Grounds upon which the Bank may form the opinion that the Subject is not of such fitness and probity as is appropriate to perform a particular CF include that the person does not satisfy the Bank’s standards of fitness and probity. Further examples of such grounds are set out in **Appendix 3**.
75. A prohibition may:
- Forbid the person from carrying out the CF or part of it, or forbid the person from carrying it out otherwise than in accordance with a specified condition or conditions
 - Forbid the person from carrying out the CF or part of it in relation to any relevant entity, a specified relevant entity or entities or a class or classes of relevant entities
 - Be imposed indefinitely or for a specified period.
76. Before the Bank may impose a prohibition, the Bank must:
- Be satisfied that the Subject and any relevant entities concerned have been informed of their entitlement to make

¹³ In this part of the Guidance, except in paragraph 91 (publication), a reference to “the Bank” includes a reference to “the Governor”.

¹⁴ A person who was involved in the investigation will have no involvement in relation to the decision on whether or not to impose prohibition.

submissions on the draft report referred to in paragraphs 67 to 69

- Have considered the Report referred to in paragraph 71 and any submissions made in respect of the draft report
- Be satisfied that the Subject and any relevant entities concerned have had access to any material taken into account by the Bank for the purpose of ensuring that the proposed prohibition is consistent and proportionate, having regard to other prohibition decisions
- Be satisfied that the Subject and any relevant entities concerned have been afforded such a hearing in relation to the proposed issue of the Prohibition Notice as is necessary to do justice in the circumstances. In the ordinary course, this will include inviting and considering submissions in respect of the proposed issue of the Prohibition Notice, and will not address material which was subject to an oral hearing (as referred to in paragraphs 41 to 53) during the investigation
- Be satisfied that the imposition of the prohibition is necessary in the circumstances.

77. Where, following consideration of the Report and any submissions received in relation to the draft report as described in paragraph 69, the Bank is minded to issue a Prohibition Notice, the Bank will, within 3 months of having received the Report, send a letter to the Subject and any relevant entities concerned. This letter will invite submissions in relation to the issuing of the proposed Prohibition Notice. Any such submissions must be made within 7 days (or such longer period as the Bank considers reasonable in the circumstances) of receipt by the Subject and any relevant entity of the letter.

78. Where, having considered any submissions received in relation to the proposed Prohibition Notice, the Bank does not form the opinion that a prohibition should be imposed, the Subject and the relevant entities will be informed of this fact as soon as is reasonably practicable.

79. If, having considered any submissions received in relation to the proposed Prohibition Notice, the Bank does form the opinion

that a prohibition should be imposed, a Prohibition Notice can be served in any of the ways set out in paragraph 101 below.

Effect of Prohibition Notice

80. A prohibition is imposed by a notice in writing called a Prohibition Notice. A Prohibition Notice does not take effect until it is either agreed in writing (see paragraphs 82 to 84) or confirmed by the High Court (see paragraphs 85 to 89).
81. A person must not perform a CF where to do so would contravene a Prohibition Notice which has been served on them and which has taken effect. A relevant entity must not permit a prohibited person to perform a CF where to do so would contravene a Prohibition Notice which has been served on the relevant entity and which has taken effect.

Agreement to Comply with Prohibition Notice

82. Where a Prohibition Notice has issued, the Subject and any relevant entity in which the Subject is performing a relevant CF at that time may agree in writing with the Bank to comply with the Prohibition Notice for such period as may be agreed. Where such an agreement has been entered into, the Prohibition Notice takes effect and the Bank need not apply to the High Court for an order confirming the Prohibition Notice as described below (see paragraphs 85 to 89).
83. Where there has been a breach of an agreement by the Subject or a relevant entity, the Deputy Governor may apply to the High Court for an order directing such a person to comply with the agreed Prohibition Notice. Such an application can be made without notifying the Subject or relevant entity.
84. The Bank may terminate an agreement by giving written notice to the other parties. In those circumstances, the Prohibition Notice ceases to have effect. The Bank will only do this in circumstances where the Bank considers that there is no further need to continue the Prohibition Notice.

Confirmation of Prohibition Notice

85. As soon as practicable after the service of the Prohibition Notice on the Subject, the Bank must (unless the Prohibition Notice has

been agreed in writing as described above) apply to the High Court for an order confirming the Prohibition Notice. The application will be on notice to the Subject unless the Subject agrees otherwise.

86. A confirmation hearing may be held in private where the High Court is satisfied that the hearing should be held otherwise than in public; this may arise in cases of confidentiality or commercial sensitivity.
87. The High Court may hear evidence which was not adduced before the Bank if satisfied that it is just and equitable to do so and there are cogent reasons justifying the failure to adduce that evidence before the Bank.
88. Where the High Court confirms the Prohibition Notice, it takes effect and may be expressed to have effect indefinitely, for such period as the High Court thinks appropriate, or until further order of the High Court. A confirmed Prohibition Notice takes effect as an order of the High Court and may be enforced accordingly.

Application to Court to Vary or Revoke

89. A Subject or the Bank may apply to the High Court to vary or revoke a confirmed Prohibition Notice. If the Subject agrees, the Bank can make this application without the Subject having to attend the High Court. Such an application will only be granted by the High Court if there has been a change in circumstances such that the High Court would have taken a different decision in relation to the application for confirmation of the Prohibition Notice had those circumstances existed at the time.

Prohibition in Cases of Undisputed Facts

90. In exceptional circumstances, where there are undisputed facts that in the reasonable opinion of the Bank render an investigation unnecessary, and the Subject and any relevant entities have been afforded a reasonable opportunity to make submissions in relation to the matter, the Bank may proceed to

impose a prohibition, notwithstanding that no investigation has been undertaken by the Deputy Governor.¹⁵

Publication of Prohibition Notice

91. The Bank may publish a Prohibition Notice where the Governor is of the opinion that such publication is necessary to achieve the purposes of Part 3 of the Act. Such purposes include but are not limited to preventing potential serious damage to the financial system in the State; supporting the stability of that system; and protecting users of financial services. Before any decision is made on whether or not to publish a Prohibition Notice, the Subject and any relevant entity concerned will be invited to make submissions. A diagram illustrating the publication procedure is included in **Appendix 1** (*Figure 6*).

¹⁵ Where such circumstances apply, the first two bullet points of paragraph 76 will not apply.

Miscellaneous Provisions

Use of Information

92. The Bank may use any information and evidence gathered by the Deputy Governor in the course of a fitness and probity investigation, anything in submissions made to the Deputy Governor pursuant to paragraph 69, and anything in any document/evidence placed before the Court in the course of proceedings under Part 3 of the Act, for the purposes of any statutory function of the Bank, including its functions pursuant to Part IIIC of the Central Bank Act 1942.
93. The Bank may have regard to a document or information gathered or received otherwise than under Part 3 of the Act for any purpose under Part 3.

Absolute Privilege

94. Evidence given to the Deputy Governor during an investigation, and any report of an investigation prepared on the basis of such evidence (as described in paragraphs 67 to 70), is absolutely privileged. Absolute privilege is a defence to a defamation action.

Offences of Providing False/Misleading Information

95. A person should not provide information to the Deputy Governor or the Bank for the purposes of Part 3 of the Act that the person knows or ought to know is false or misleading.
96. A person who is carrying out, or proposes to carry out, a CF should not provide information or a document that the person knows or ought to know is false or misleading to a relevant entity with a view to that material being provided to the Deputy Governor or the Bank for the purposes of Part 3 of the Act.
97. A person must not give the Deputy Governor or Bank, for the purposes of Part 3 of the Act, a document whether in response to an Evidentiary Notice or otherwise, that the person knows or ought to know is false or misleading or is not what it purports to be.

98. A person (in this paragraph called the examinee) appearing before the Deputy Governor must not, in an answer to a question put by the Deputy Governor or by another person with the Deputy Governor's consent, make a statement which the examinee knows or ought to know is false or misleading in a material particular.
99. A breach of any of the matters set out in paragraphs 95 to 98 above, constitutes an offence and may expose persons on summary conviction to a fine not exceeding €5,000.00 and/or imprisonment for a term not exceeding 12 months, or on conviction on indictment to an unlimited fine and/or imprisonment not exceeding 5 years.

Administrative Sanctions for Failure to Comply

100. Where a person fails to comply with a requirement under Part 3 of the Act, or a person in a CF role participates in such a failure by a relevant entity, the Bank may, if it considers it appropriate, commence administrative sanctions proceedings under Part IIIC of the Central Bank Act 1942.

Service of Documents

101. Where any document or notice is required to be served on a person under Part 3 of the Act, service may be effected by any of the following means:
- On an individual, by:
 - Delivering it to the person
 - Leaving it at the person's residential or business address last known to the Bank
 - Sending it by post in a prepaid letter to the person's residential or business address last known to the Bank
 - Sending it electronically (by email to an email address, or by facsimile to a fax number, furnished by the person to, or otherwise known to, the Deputy Governor).
 - On a body corporate, by:
 - Leaving it at the head office, a registered office or a principal office of the body corporate

- Sending it by prepaid post to the head office, a registered office or a principal office of the body corporate.
- Sending it electronically.
- On a partnership, by:
 - Delivering it to one of the partners
 - Leaving it at the head office or a principal office of the partnership
 - Sending it by prepaid post to the head office or a principal office of the partnership
 - Sending it electronically.

Standard of Proof

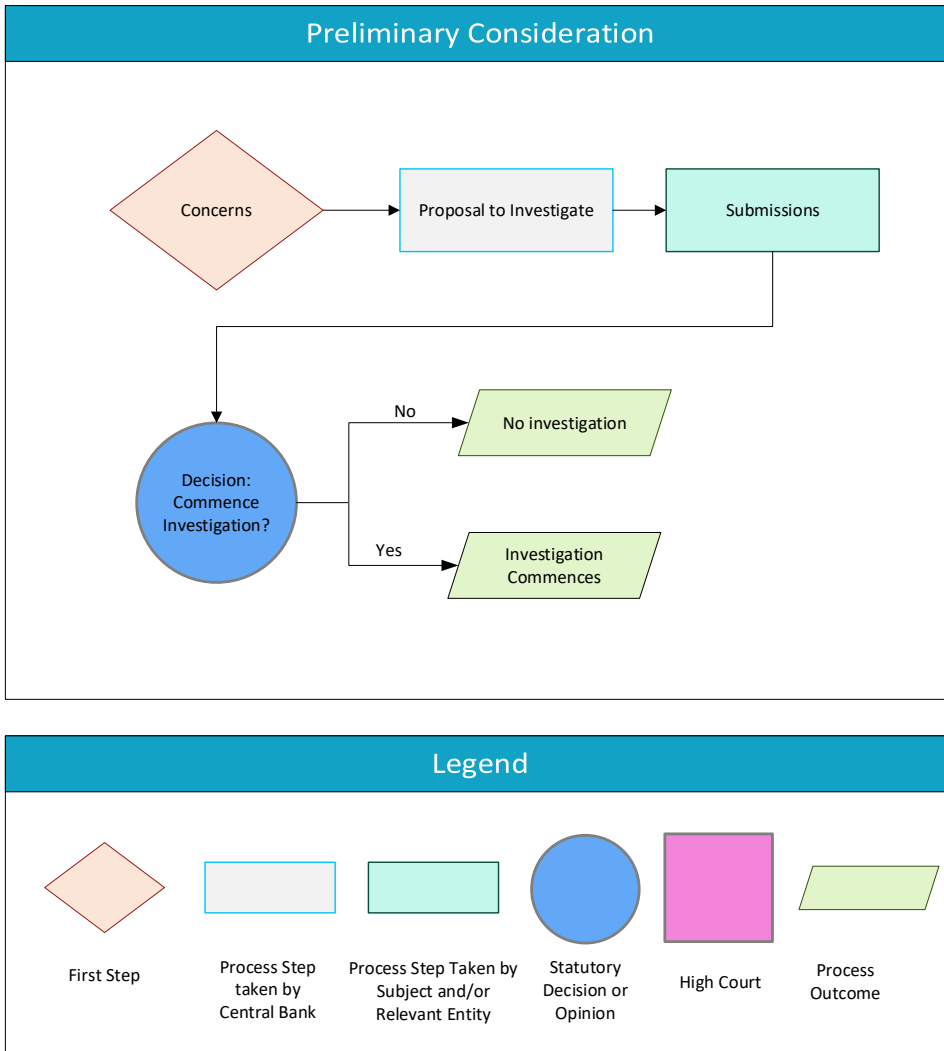
102. Where the Deputy Governor makes any finding(s) as part of a Report as referred to in paragraph 71, any such findings(s) will be made on the balance of probabilities.

103. Where the Bank or Governor makes any finding(s) of fact, in the context of considering whether or not to impose prohibition, for the purpose of forming an opinion that a person is not of such fitness and probity as is appropriate to perform a particular CF, a specified part of a CF, or any CF as referred to in paragraphs 73 and 74, any such finding(s) will be made on the balance of probabilities.

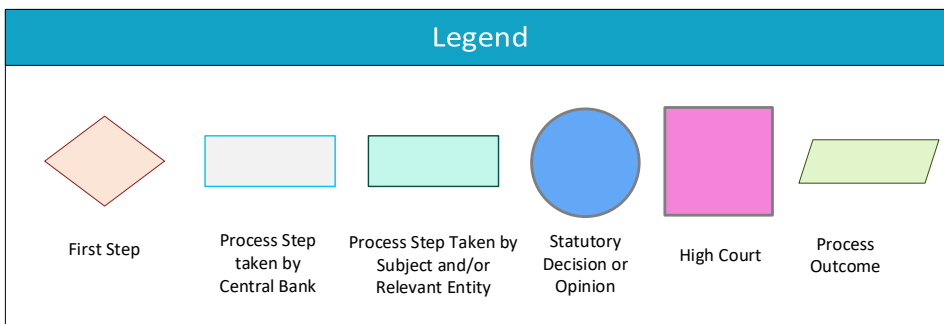
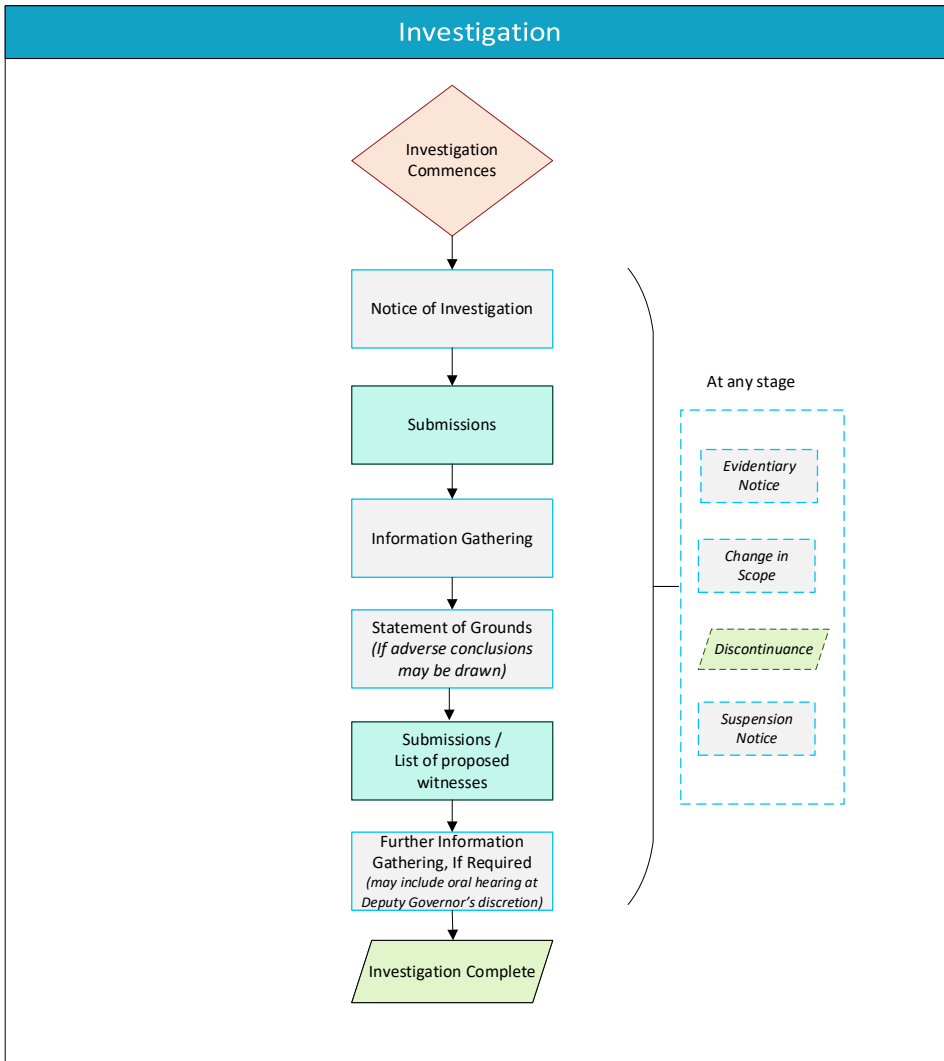
Appendix 1

Process Diagrams

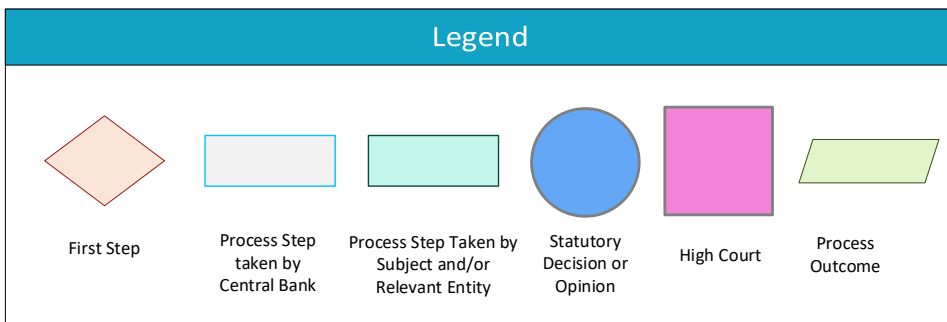
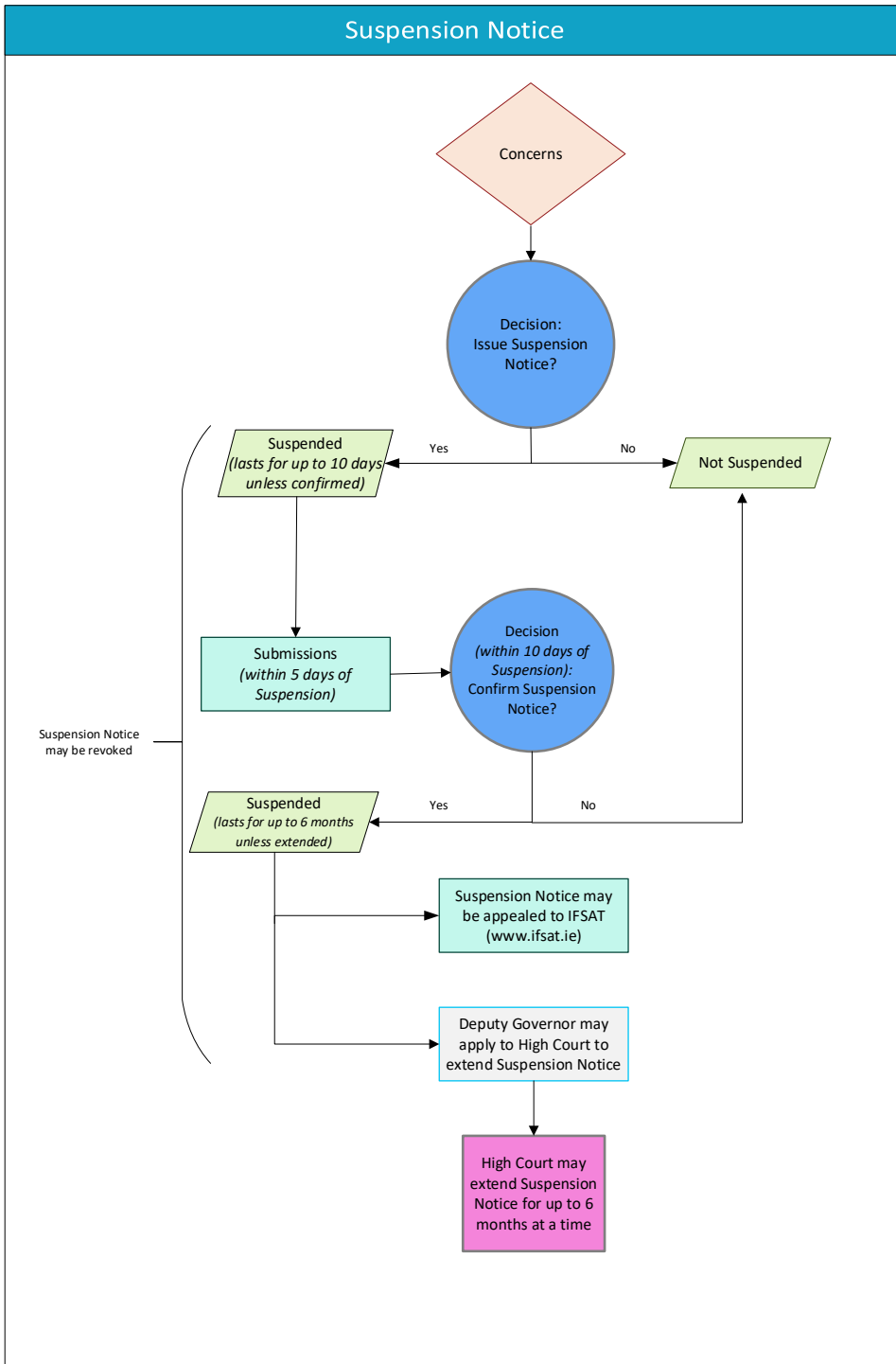
Preliminary Procedure (Figure 1)



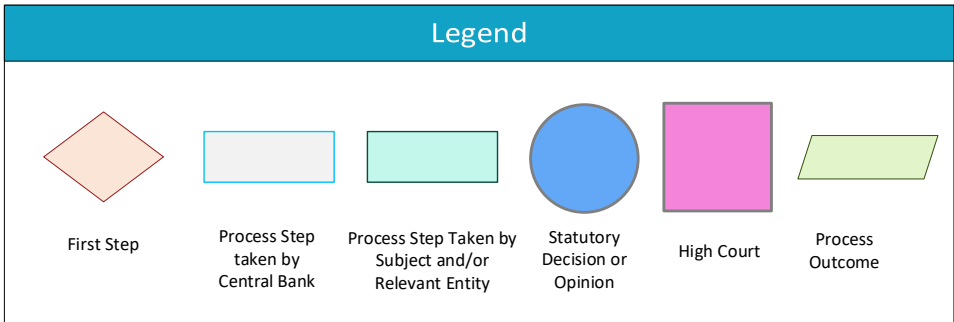
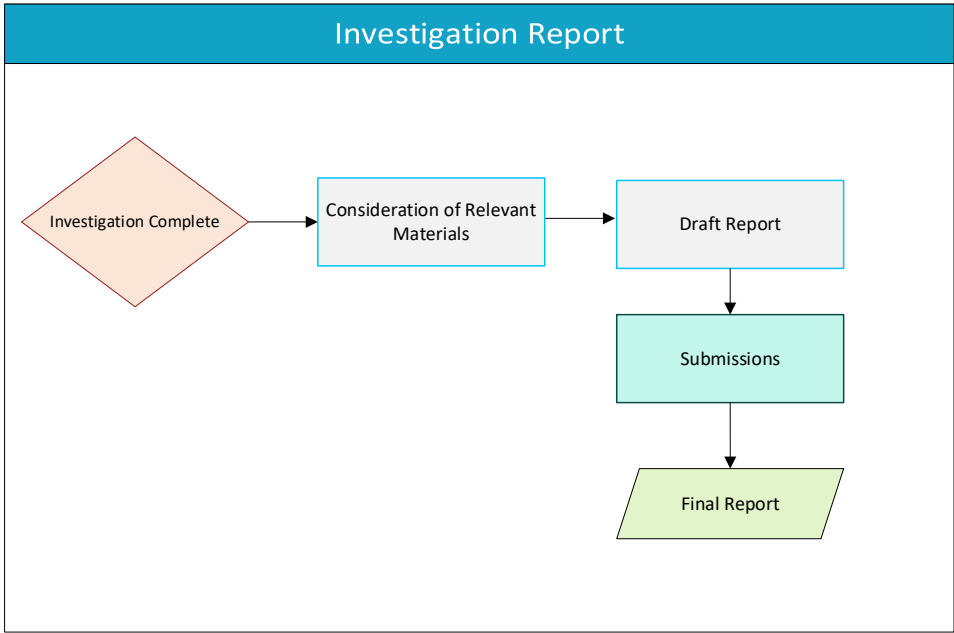
Investigation Procedure (Figure 2)



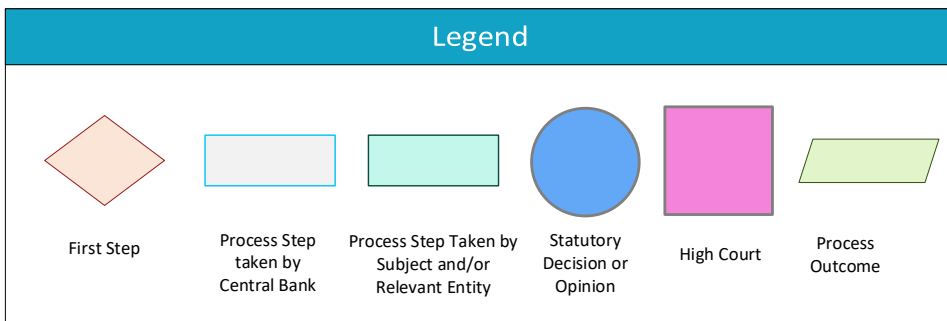
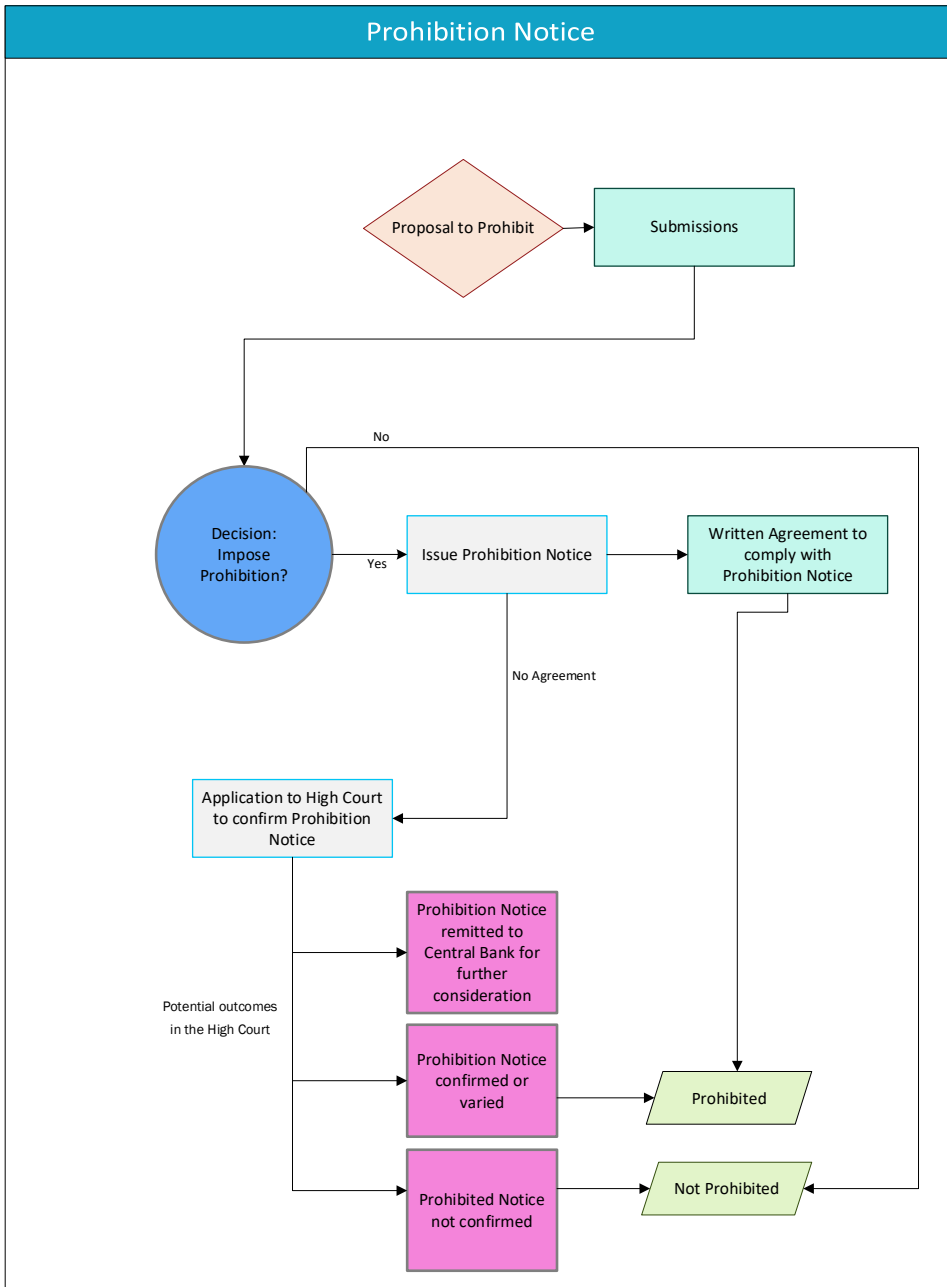
Suspension Notice Procedure (Figure 3)



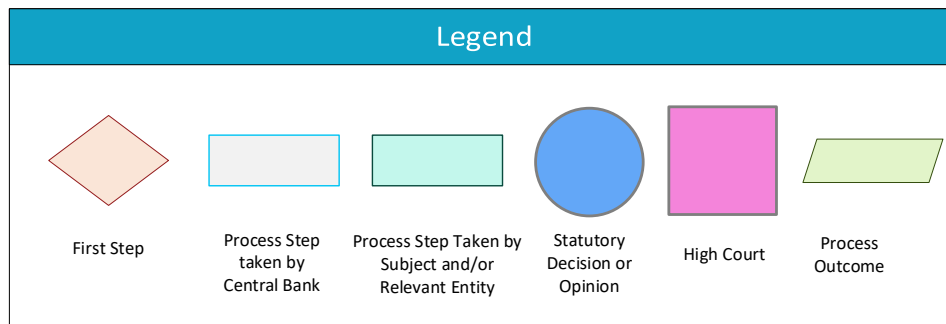
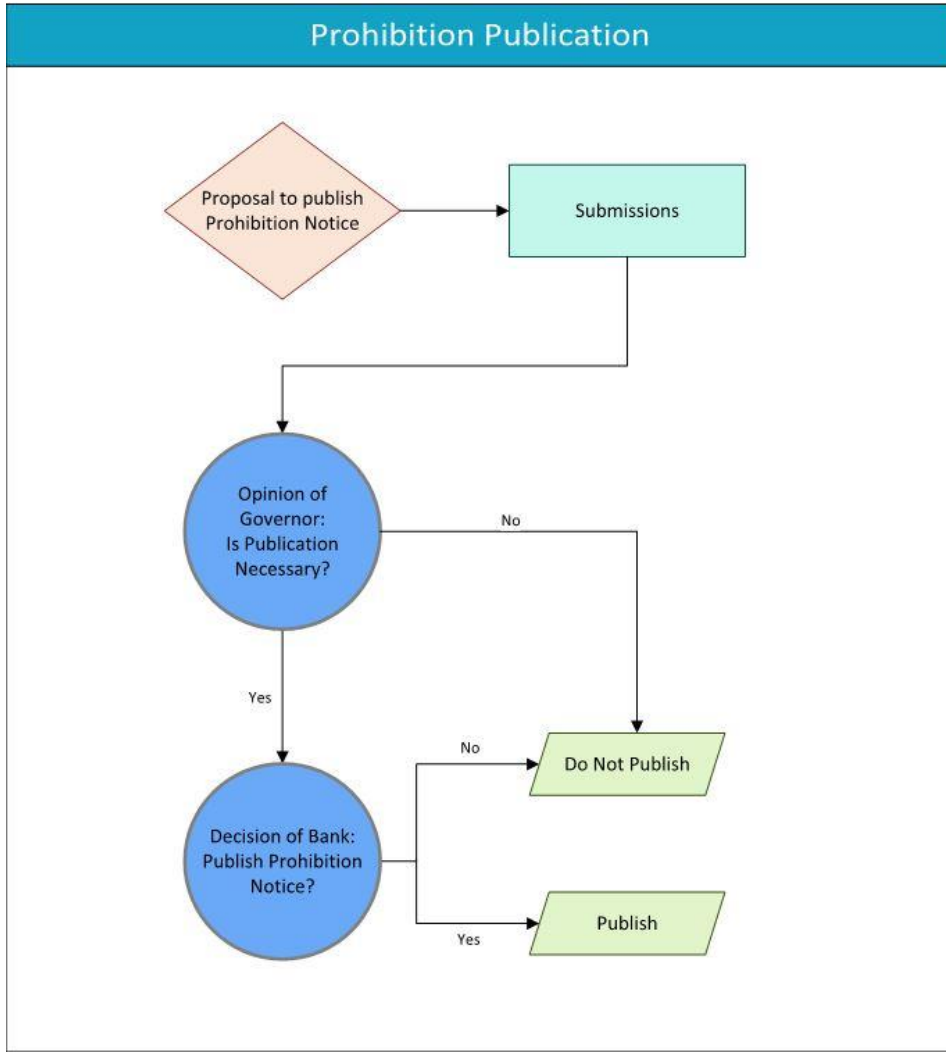
Investigation Report Procedure (Figure 4)



Prohibition Notice Procedure (Figure 5)



Publication Procedure (Figure 6)



Appendix 2

Grounds for Commencing Investigation

Grounds upon which the Deputy Governor may form the opinion necessary to commence an investigation (i.e. the opinion that there is reason to suspect the person’s fitness and probity and that an investigation is warranted) include, but are not limited to, those set out in **Section 25(3)(a)–(h)** of the Act:

“(a) the person does not have the experience, qualifications or skills necessary to perform properly and effectively the controlled function,

(b) the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50,

(c) the person has committed or participated in serious misconduct in relation to the affairs of a regulated financial service provider or holding company,

(ca) the person, being a person who has been appointed to perform a preapproval controlled function, has failed to make a disclosure to the Bank under section 38(2) of the Central Bank (Supervision and Enforcement) Act 2013 or has made such a disclosure knowing it to be false or misleading in a material respect,

(d) the person has directly or indirectly provided information to the Bank, the Governor or the Head of Financial Regulation (whether pursuant to this Part or otherwise) that the person knew or ought to have known was false or misleading,

(e) the person has directly or indirectly provided information that the person knew or ought to have known was false or misleading to another person in order for it to be provided to the Bank, the Governor or the Head of Financial Regulation,

(f) the person has caused or sought to cause information requested by the Head of Financial Regulation by evidentiary notice from a regulated financial service provider or holding company or a person who is carrying out a controlled function not to be provided by the due date,

(g) the person has failed to comply with an evidentiary notice,
or

(h) the person has been convicted of an offence (whether in the State or outside the State) of money laundering or terrorist financing or an offence involving fraud, dishonesty or breach of trust.”

Appendix 3

Grounds for Imposing Prohibition

Grounds upon which the Bank or the Governor may reasonably form the opinion necessary to impose prohibition (i.e. the opinion that a person is not of appropriate fitness and probity) include, but are not limited to, those set out in **Section 43(2)(a)–(h)** of the Act:

“(a) the person does not have the experience, qualifications or skills necessary to perform properly and effectively the controlled function, the specified part of a controlled function or any controlled function, as the case may be,

(b) the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50,

(c) the person has committed or participated in serious misconduct in relation to the affairs of a regulated financial service provider or holding company,

(ca) the person, being a person who has been appointed to perform a preapproval controlled function, has failed to make a disclosure to the Bank under section 38(2) of the Central Bank (Supervision and Enforcement) Act 2013 or has made such a disclosure knowing it to be false or misleading in a material respect,

(d) the person has directly or indirectly provided information to the Bank, the Governor or the Head of Financial Regulation (whether pursuant to this Part or otherwise) that the person knew or ought to have known was false or misleading,

(e) the person has directly or indirectly provided information that the person knew or ought to have known was false or misleading to another person in order for it to be provided to the Bank, the Governor or the Head of Financial Regulation,

(f) the person has caused or sought to cause information requested by the Head of Financial Regulation by evidentiary notice from a regulated financial service provider or holding company or a person who is carrying out a controlled function not to be provided by the due date,

(g) the person has failed to comply with an evidentiary notice or a suspension notice, or

(h) the person has been convicted of an offence (whether in the State or outside the State) of money laundering or terrorist financing or an offence involving fraud, dishonesty or breach of trust.”



T: +353 (0)1 224 5800
E: publications@centralbank.ie
www.centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

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