

THIS PROHIBITION NOTICE SOLELY RELATES
TO THE CONDUCT OF MR. JUERG VON GEITZ.
NO FINDING AND/OR CRITICISM IS MADE IN
RESPECT OF ANY OTHER PARTY/PERSON



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Prohibition Notice
Section 43 of the Central Bank Reform Act 2010 (as amended)

TO: Juerg von Geitz

And

The Mortgage Department Limited

CC: The Governor, Central Bank of Ireland

DECISION OF: Sylvia Cronin, delegate of the Central Bank of Ireland appointed to perform certain functions of the Bank under Part 3, Chapter 4 of the Central Bank Reform Act 2010 (as amended)

DATE: 4 July 2019

Decision

In accordance with my appointed function under Part 3, Chapter 4 of the Central Bank Reform Act 2010 (as amended), I hereby notify Juerg von Geitz and The Mortgage Department Limited of my decision to issue a Prohibition Notice prohibiting Mr von Geitz from performing any controlled function (including pre-approval controlled functions) in relation to every regulated financial service provider for a period of 10 years from the date of first service of this Prohibition Notice on either Mr von Geitz or The Mortgage Department Limited under Section 43 of the Central Bank Reform Act 2010 (as amended) for the reasons given in this Prohibition Notice.



Definitions

The definitions below are used in this Prohibition Notice:

"1995 Act" means the Consumer Credit Act 1995 (as amended);

"2010 Act" means the Central Bank Reform Act 2010 (as amended);

"2012 Regulations" means the Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012;

"Central Bank" or **"Bank"** means the Central Bank of Ireland;

"Commission" means the Commission of the Central Bank;

"Company Address" means [REDACTED] that is, the 'Principal Place of Business' of the Firm as designated by both the application for regulatory approval submitted by Mr von Geitz in 2015 and the authorisation granted to Mr von Geitz by the Central Bank;

"Deputy Governor" means the Deputy Governor (Prudential Regulation) of the Central Bank who is the Head of Financial Regulation within the meaning of the 2010 Act;

"Firm" means The Mortgage Department Limited;

"Gmail Address" means [REDACTED] that is, the email address that Mr von Geitz confirmed as correct to the ONR Division of the Central Bank on 19 April 2019;

"Governor" means the Governor of the Central Bank;

"Guidance on the Standards" means the Guidance on Fitness and Probity Standards issued by the Central Bank under Section 50 of the 2010 Act;

"Investigator" means the person appointed by the Deputy Governor pursuant to Section 52(2) of the 2010 Act to investigate and report through the use of powers contained in Part 3, Chapter 3 of the 2010 Act, as supplemented by the 2012 Regulations on the fitness and probity of Mr von Geitz to perform controlled functions, in particular the controlled function of PCF-1 (Executive Director);

"Investigation" means the fitness and probity investigation into Mr von Geitz in accordance with Section 25 of the 2010 Act;

"Investigation Report" means the report prepared pursuant to Section 41 of the 2010 Act and the appendices thereto;

"IQ" means the Individual Questionnaire submitted to the Central Bank by Mr von Geitz on 30 June 2015 seeking his approval as Executive Director of the Firm;

"Pre-Approval Controlled Function" or **"PCF"** shall be construed in accordance with Section 22 of the 2010 Act;



“Prohibition Notice” means a notice under Section 43 of the 2010 Act forbidding a person from carrying out a controlled function;

“RDU” means the Regulatory Decisions Unit of the Central Bank;

“Regulation 13 Notice” means the Notice dated 14 May 2019 which was made under Regulation 13 of the 2012 Regulations;

“Standards” means the Fitness and Probity Standards (a Code issued under Section 50 of the 2010 Act).



1. Background

- 1.1 The background to this matter is set out in detail in the Investigation Report. Mr von Geitz was at the time of the commencement of the Investigation performing the controlled function of (PCF-1) Executive Director in the Firm. As detailed below, Mr von Geitz had the opportunity to make submissions on the Investigation Report but did not do so. Mr von Geitz had the opportunity to make submissions on the Regulation 13 Notice and these were confined to an email dated 28 May 2019.
- 1.2 On 17 November 2017, Mr von Geitz was notified that Derval McDonagh, who was appointed by the Deputy Governor to perform functions under Section 25 of the 2010 Act, had formed an opinion that:
- (a) there was reason to suspect Mr von Geitz's fitness and probity to perform controlled function, in particular the controlled function of Executive Director (PCF-1), in respect of the Firm on the grounds that there was reason to suspect that he had directly or indirectly provided information to the Central Bank in the IQ submitted by him that he knew or ought to have known was false or misleading; and
 - (b) in the circumstances, an investigation into his fitness and probity was warranted.
- 1.3 An Investigator was appointed by the Deputy Governor to investigate and report on the fitness and probity of Mr von Geitz under Part 3 of the 2010 Act (as supplemented by the 2012 Regulations).
- 1.4 In accordance with Section 41 of the 2010 Act, the Investigation Report, which recommended indefinite prohibition, was served on Mr von Geitz on 4 December 2018 and he was given until 1 January 2019 to provide submissions.
- 1.5 I note that the Investigation Report was sent to Mr von Geitz by email on 4 December 2018 and that a hard copy of the Investigation Report together with all accompanying documentation was sent by certified post to Mr von Geitz at the Company Address on 4 December 2018. On 5 December 2018, Mr von Geitz replied to the email to request an extension of time within which to make submissions. On foot of this request, the deadline for receipt of any submissions he wished to make was extended to 3 January 2019. On 11 January 2019, the time within which Mr von Geitz was required to make submissions was extended to 18 January 2019. However, Mr von Geitz did not make submissions during this period.
- 1.6 I was appointed by the Central Bank to perform its functions under Part 3, Chapter 4 of the 2010 Act in accordance with Section 52 of the 2010 Act, and the Investigation Report and the correspondence were provided to me for consideration.



- 1.7 I note that the hard copy of the Investigation Report sent on 4 December 2018 to the Company Address was returned to the Central Bank on 13 December 2018 marked 'uncollected'. On 14 December 2018, the Central Bank sent Mr von Geitz an email providing him with the opportunity of nominating a different address to which this documentation should be sent. Mr von Geitz responded by email the same day stating "*that's fine*".
- 1.8 On 18 December 2018, Mr von Geitz was given a further opportunity of having the documentation sent to a different address or the option of collecting the documentation from the Central Bank at his convenience. Mr von Geitz did not respond to this email.
- 1.9 I note that a hard copy of the Investigation Report and accompanying documentation was sent by post again to the Company Address on 21 December 2018 but was returned 'uncollected' to the Central Bank on 16 January 2019. On 20 January 2019, Mr von Geitz requested a hard copy of the Investigation Report by email. The Investigation Report, along with the accompanying documentation, was duly issued by post to Mr von Geitz on 21 January 2019 at the Company Address. This documentation was again returned 'uncollected' to the Central Bank on 19 February 2019.
- 1.10 On 7 February 2019, a further copy of the Investigation Report and accompanying documentation was hand delivered through the letter box of the Company Address. Mr von Geitz was contacted by email on the same day and given a further extension to 15 February 2019 within which to respond. Mr von Geitz contacted the Central Bank on 15 February 2019 stating that he had not received the documentation.
- 1.11 Having considered all of the materials provided to me, I am satisfied that service of the Investigation Report has in fact been effected in accordance with Section 41 of the 2010 Act having regard to the fact that Mr von Geitz responded to the email dated 4 December 2018 serving him with the Investigation Report. While Mr von Geitz denied that he received the hard copy of the Investigation Report and accompanying documentation hand delivered on 7 February 2019, I am satisfied that they were delivered to the Company Address. Further, on the basis of my review of the materials provided to me, it is quite clear that Mr von Geitz was given opportunities to make submissions on the Investigation Report but did not make any such submissions.
- 1.12 On 14 May 2019, Mr von Geitz and the Firm were notified by letter and by email that I was minded to issue a Prohibition Notice under Part 3, Chapter 4 of the 2010 Act prohibiting Mr von Geitz from performing any controlled function (including pre-approval controlled functions) in relation to every regulated financial service provider for a period of 10 years and inviting him to make submissions to the RDU by 5 pm on Tuesday 21 May 2019. No submissions were received from Mr von Geitz. A letter dated 27 May 2019 was subsequently sent from the RDU to Mr von Geitz and the Firm respectively, informing Mr von Geitz of my decision to permit an extension of time to make submissions in relation to the proposed issue of the Prohibition Notice although no extension was requested. This



letter invited Mr von Geitz to make submissions to the RDU by 5 pm on Tuesday 11 June 2019. On 28 May 2019, I received an email from Mr von Geitz in response to the Regulation 13 Notice and this email has been carefully considered and taken into account by me in the making of this Prohibition Notice. In his email, Mr von Geitz reiterated that he had answered all of the Central Bank's queries and questions truthfully and honestly both in his application and at the interview held on 20 September 2018 (the "Interview").

2. Background to the Investigation

- 2.1 On 15 October 2015, the Firm was authorised as a mortgage intermediary under the 1995 Act. As part of that application Mr von Geitz had submitted an IQ to the Central Bank on 30 June 2015 seeking his approval as Executive Director of the Firm. The approval of his appointment was confirmed on 22 October 2015.
- 2.2 I note from the Investigation Report that during the course of supervision, information suggesting that Mr von Geitz may have been untruthful when completing the IQ was identified by the Central Bank. The Central Bank decided to consider commencing an investigation into the fitness and probity of Mr von Geitz. A Notice of Intention to Commence an Investigation inviting submissions was served on Mr von Geitz by email on 2 June 2017 and a hard copy was sent on 26 June 2017. Mr von Geitz did not make submissions and a decision maker decided on 14 November 2017 that there were grounds to commence an investigation. A Notice to Commence an Investigation was served on Mr von Geitz on 17 November 2017.
- 2.3 On 7 February 2018, Mr von Geitz was sent an evidentiary notice which required him to attend a compulsory interview on 7 March 2018. Mr von Geitz did not attend this first scheduled interview and was served with a second evidentiary notice on 12 March 2018 to attend another compulsory interview on 27 March 2018. Mr von Geitz did not attend this second scheduled interview.
- 2.4 A Statement of Grounds was provided to Mr von Geitz on 26 April 2018 in accordance with the requirement of Regulation 3(1) of the 2012 Regulations setting out the concerns of the Investigator in relation to Mr von Geitz's fitness and probity. Mr von Geitz was offered the opportunity to furnish a list to the Central Bank of any persons that he believed would be able to give evidence in relation to the matters identified, as required by Regulation 3(3) of the 2012 Regulations. He was also asked to confirm whether he was requesting that an oral hearing be convened as part of the Investigation.
- 2.5 Mr von Geitz did not respond to the Statement of Grounds and on 5 June 2018, a third evidentiary notice was issued to Mr von Geitz, compelling him to attend an interview on 18 June 2018. Mr von Geitz did not attend this third scheduled interview.



- 2.6 Mr von Geitz contacted the Investigator on 19 June 2018. I note from the Investigation Report that this was the first occasion on which Mr von Geitz contacted the Investigator in respect of the Investigation. On request, the Investigator provided a further copy of the Statement of Grounds to him on 10 July 2018. A fourth evidentiary notice was issued to Mr von Geitz on 4 July 2018, compelling him to attend for interview on 18 July 2018. Mr von Geitz responded on 9 July 2018 indicating that he was unable to attend for interview due to the fact that he was finalising his departure from a role in Switzerland. He requested that the interview be arranged for early September. A fifth evidentiary notice was issued to Mr von Geitz on 12 September 2018 compelling him to attend for interview on 20 September 2018, and Mr von Geitz attended for interview on that date. A transcript of the Interview, which was held on 20 September 2018, was contained in the papers provided to me.
- 2.7 As detailed further below, Mr von Geitz alluded to a number of documents at the Interview when defending some of the allegations being made in relation to his fitness and probity. On 3 October 2018, he was issued with a sixth evidentiary notice requiring him to produce certain documentation referred to at the Interview. Mr von Geitz responded on 23 October 2018 by email indicating that he was not in possession of almost all of the information sought and referred to his computer crashing in 2016 involving the loss of “*substantial data and information*”. He provided certain information in the email and apologised for any inconvenience caused.
- 2.8 A Notice of Conclusion of Information Gathering Stage of the Investigation was served on Mr von Geitz on 4 December 2018. Mr von Geitz was served with a copy of the Investigation Report and was advised that he had the right to make submissions to the Investigator in relation to any matter therein by 1 January 2019. Mr von Geitz sent an email response on 5 December 2018 which he subsequently requested be withdrawn and deleted in a follow-up email sent the same day. I do not consider that the first email is material to my consideration of this matter and have therefore disregarded the first email for the purpose of my considerations.
- 2.9 As detailed above and further particularised in the Investigation Report, Mr von Geitz was permitted a number of extensions to the deadline to provide submissions in relation to the Investigation Report but did not make any submissions.

3. Consideration of Statutory Requirements

3.1 Section 43(1) of the 2010 Act provides:

“Subject to subsection (4), if the Bank or Governor has reasonably formed the opinion that a person is not of such fitness and probity as is appropriate to perform a particular controlled function, a specified part of a controlled function or any controlled function, the



Bank or Governor, as the case may be, may issue a Notice in writing (in this Part called a "prohibition notice") forbidding the person -

- (a) to carry out the controlled function, the specified part of a controlled function or any controlled function, as the case requires, or*
- (b) to carry out the controlled function, the specified part of such a function or any controlled function, as the case requires, otherwise than in accordance with a specified condition or conditions, either for a specified period or indefinitely."*

3.2 **Section 43(2) of the 2010 Act** sets out a non-exhaustive list of broad categories which may constitute a lack of fitness and probity. These include Section 43(2)(b) where *"the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50"* (i.e. the Standards) and Section 43(2)(d) which refers to the person having 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.

3.3 **Section 43(3)(a)(i) of the 2010 Act** provides that:

"The Bank or the Governor shall not issue a Prohibition Notice in relation to a person unless all of the following requirements have been satisfied:

- (I) the Head of Financial Regulation has conducted an investigation into the person's fitness and probity in accordance with this Chapter;*
- (II) section 41 has been complied with in relation to that investigation and the report of it;*
- (III) the Bank or the Governor, as the case may be, has considered the report and any submissions made (within the period specified pursuant to section 41(4)) to the Head of Financial Regulation in relation to any matter in the report".*

3.4 **Section 43(3)(b) of the 2010 Act** provides that the Bank or the Governor shall not issue a prohibition notice in relation to a person unless the person and the regulated financial service provider 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.

3.5 **Section 43(3)(c) of the 2010 Act** provides that the Bank or the Governor shall not issue a prohibition notice in relation to a person unless satisfied that the issue of a prohibition notice is necessary in the circumstances.



3.6 **The Standards** as issued by the Central Bank require as follows:

"2. Fitness and Probity Standards

2.1 A person to whom this Code applies shall comply with these Standards at all times.

2.2 In order to comply with Section 2.1, a person is required to be:

- a) competent and capable;*
- b) honest, ethical and to act with integrity; and*
- c) financially sound.*

2.3 Any information provided by an individual pursuant to this Code to the Central Bank and/or a regulated financial service provider shall be candid and truthful and shall be full, fair and accurate in all respects and not misleading to the best of his or her knowledge.

[...]

4.1(i) a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree where the person has been untruthful or provided false or misleading information to the Central Bank or been uncooperative in any dealings with the Central Bank."

3.7 The **Guidance on the Standards** provides at paragraph 16.1 that, in determining the standard of probity, individuals must be *"honest, diligent and independent-minded and must act ethically and with integrity"*.

3.8 The **Guidance on the Standards** provides at paragraph 16.2 that:

"Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF".

3.9 **Section 43(4) of the 2010 Act** provides that when considering whether to issue a prohibition notice, the Bank (or the Governor, as the case may be,) shall have particular regard to the need to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system and the need to protect users of financial services.

3.10 **Section 43(12)(a) of the 2010 Act** provides that a prohibition notice should not continue for longer than is necessary to achieve the purposes stated therein.



4. Prohibition

4.1 In accordance with Section 43(3) of the 2010 Act I confirm that:

- (a) I am satisfied that the delegate of the Deputy Governor has conducted an Investigation into Mr von Geitz's fitness and probity in accordance with the 2010 Act;
- (b) I am satisfied that the provisions of Section 41 of the 2010 Act have been complied with; and
- (c) I have read and carefully considered the Investigation Report and all enclosures thereto.

4.2 *Such hearing as is necessary to do justice in the circumstances*

I am satisfied that Mr von Geitz has been afforded such hearing in relation to the proposed issue of the Prohibition Notice as is necessary to do justice in the circumstances and I confirm that I have considered the email dated 28 May 2019 sent to me from Mr von Geitz in response to the Regulation 13 Notice.

4.3 *Fitness and Probity of Mr von Geitz*

I am satisfied, in accordance with Section 43(1) of the 2010 Act, having carefully considered all aspects of this matter, including the email dated 28 May 2019 received from Mr von Geitz, that Mr von Geitz is not of such fitness and probity as is appropriate to carry out any controlled function for the reasons set out below.

Alleged Lack of Cooperation with the Central Bank

4.4 Despite Mr von Geitz making a statement in his email dated 28 May 2019 to the effect that he has been cooperative in all dealings with the Central Bank, I note that the Investigation Report alleges that Mr von Geitz has been uncooperative in his dealings with the Central Bank contrary to the requirements of the Fitness and Probity regime.

4.5 I have considered the statement in the Investigation Report that "*Mr von Geitz has not provided any credible explanation for his failure to engage with the fitness and probity investigation between 2 June 2017 and 19 June 2018*". I have also given careful consideration to the explanations proffered by Mr von Geitz in his Interview and in email correspondence.

4.6 I set out below my consideration of the various aspects of Mr von Geitz's interactions with the Central Bank and his alleged lack of cooperation.



4.7 Email Correspondence

I note from the Investigation Report that on 19 April 2017 Mr von Geitz confirmed to a separate division of the Central Bank that his correct email address was [REDACTED] (the "Gmail Address"). The Investigation Report sets out in extensive detail the various attempts on the part of the Investigator to contact Mr von Geitz via the Gmail Address as well as a prior email address provided by Mr von Geitz to the Central Bank. I note from the transcript of the Interview that Mr von Geitz has provided certain explanations as to why he did not reply to numerous emails sent to him by the Central Bank, as detailed in the Investigation Report. I note that in the course of the Interview, Mr von Geitz said that he only used the Gmail Address "*sporadically*". I have also given consideration to his explanations in respect of certain emails going into his spam folder and being deleted after thirty days and that he therefore did not receive various emails sent by the Central Bank. I note and agree with the conclusion of the Investigator that Mr von Geitz's assertion that all of this correspondence went into spam and was deleted in circumstances where he was not checking his Gmail Address is not credible in circumstances where he was sending emails from the Gmail Address, for example in April and October 2017, as detailed in the Investigation Report.

- 4.8 Having considered the above, I agree with the conclusion of the Investigator that Mr von Geitz was in fact using the Gmail Address during the time that the first three evidentiary notices were issued.

4.9 Telephone Calls

- 4.10 I note from the Investigation Report that as part of the Firm's application for authorisation dated 11 June 2015, Mr von Geitz provided a direct phone number for himself, which is set out in the Investigation Report. I further note the numerous attempts made by the Investigator to contact Mr von Geitz at the number he provided to the Central Bank. The Investigator details in the Investigation Report that she was unable to establish contact with Mr von Geitz on that telephone number on various occasions.

- 4.11 I note the conclusion in the Investigation Report that at all times between the application for authorisation of the Firm in 2015, through to the application for revocation in November 2017, and up to his Interview, Mr von Geitz confirmed that the telephone number provided has been his number for the purposes of contact with the Central Bank.

- 4.12 Notwithstanding this, Mr von Geitz has been uncontactable on the number he provided.

4.13 Postal Correspondence

- 4.14 As noted in the Definitions section of this Prohibition Notice, the Investigation Report states that the "*Principal Place of Business*" of the Firm is the Company Address. Despite



confirming this address to the Central Bank on various occasions, Mr von Geitz failed to acknowledge a significant amount of important correspondence served on this address. I note that the Investigation Report states that Mr von Geitz has not offered any explanation as to why post sent to the address provided by him in the IQ was not received by him. Mr von Geitz indicated that he was in Switzerland at certain times. However whilst in Switzerland he continued to use the Company Address for the purpose of correspondence with the Central Bank. I note the statement of the Investigator that Mr von Geitz did not update the Central Bank with any Swiss contact details.

4.15 Conclusion regarding cooperation

4.16 As set out above and further particularised in the Investigation Report, I am satisfied that Mr von Geitz failed to engage with the Central Bank between 2 June 2017 and 19 June 2018 and further failed to comply with three evidentiary notices issued to him.

4.17 I am of the view that the Investigator is correct in her conclusion that Mr von Geitz has failed to cooperate with the Central Bank during the course of the Investigation and that this lack of cooperation raises concerns in relation to his fitness and probity.

Alleged Provision of False and Misleading Information to the Central Bank

4.18 Despite Mr von Geitz's statement in his email dated 28 May 2019 to the effect that he answered all of the Central Bank's queries and questions truthfully and honestly both in his application and at the Interview, I note that the Investigation Report alleges that Mr von Geitz provided information to the Central Bank that he knew or ought to have known was false or misleading as part of his application for PCF approval as Executive Director of the Firm.

4.19 General

4.20 The Investigation Report alleges that in the course of supervision, the Central Bank identified certain information that appeared to suggest that Mr von Geitz had been untruthful in the IQ in numerous respects, as detailed below.

4.21 I note that Mr von Geitz stated in the course of his Interview that he elected to outsource to a third party the completion of the IQ to be submitted on his behalf. He indicated that he had been asked questions over the telephone about the application and indicated that [REDACTED] and that it was "unlikely" that he had read the form at the time and the answers that were put in it.

4.22 I am of the view that Mr von Geitz should have personally reviewed all information provided as part of his application. In any event, Mr von Geitz's confirmation that he did not ensure that the answers provided in response to multiple sections of his application



were full, fair and accurate demonstrates that he provided information to the Central Bank which he knew or ought to have known was false and misleading.

4.23 Section 1.7 of the IQ

- 4.24 Section 1.7 of the IQ required Mr von Geitz to indicate whether he had “*any current or previous (within the last 10 years) business interests, guarantees or/ shareholdings (where holdings are greater than 10%) in financial entities or other organisations, including the non-financial sector, charitable and/or not-for-profit organisations?*” The ten year period dated from 30 June 2005 to 30 June 2015 and I note the conclusion of the Investigator that Mr von Geitz should have disclosed any such interests during this period.

Yellowsun Limited

- 4.25 I note that in his Interview, Mr von Geitz stated that he did not include reference to this company in Section 1.7 of the IQ on the basis that his involvement with the company “*was over a decade previously*”. However, I note the conclusion of the Investigator that Mr von Geitz held the positions of both Director and Company Secretary up until the date of dissolution of the company on 25 November 2005 and that Mr von Geitz has not produced any evidence that he resigned from the said company in advance of that date.

O’Sullivan Brewing Company Limited

- 4.26 In his Interview, Mr von Geitz indicated that he did not include reference to his shareholding in this company in Section 1.7 of the IQ on the basis that he no longer had any shareholding in the company by the time it was dissolved. However, I note and agree with the conclusion of the Investigator that the B1 form for O’Sullivan Brewing Company Limited made up to 21 March 2005, but filed on 3 October 2005, indicates that Mr von Geitz did in fact hold shares in the company at that time. I note the statement in the Investigation Report that while Mr von Geitz indicated at interview that, by the time that company dissolved in February 2006, he no longer had any shareholding in it, he has not produced any documentation to support this position.

Murvon Limited

- 4.27 I note that the B1 form filed in respect of Murvon Limited and made up to 4 June 2009 indicates that Mr von Geitz was a shareholder of the said company at that time. I further note that in the course of the Interview, Mr von Geitz admitted and accepted that he should have included reference to this company in reply to Section 1.7 of the IQ. While Mr von Geitz explained that he had not done so as he had forgotten about it and there was no value attached to the said shares, I note and agree with the conclusion of the Investigator that Section 1.7 of the IQ makes no reference to the value or materiality of shares held.



Private Sky Limited

- 4.28 I note that the B1 form filed in respect of Private Sky Limited made up to 29 March 2007 and filed in the CRO on 24 July 2007 indicates that Mr von Geitz was a shareholder of the said company at that time. I note that Mr von Geitz admitted at Interview that he had also forgotten about his shareholding in this company.

Conclusions in respect of Section 1.7 of the IQ

- 4.29 I note in respect of Yellowsun Limited and O'Sullivan Brewing Company Limited that Mr von Geitz has provided explanations in respect of why he did not include details of these two companies in his response to Section 1.7 of the IQ. However, I am of the view that these explanations are not credible having regard to the materials provided to me and that Mr von Geitz should in fact have disclosed his shareholdings held in these two companies in his response to Section 1.7 of the IQ.
- 4.30 In respect of Murvon Limited and Private Sky Limited, I note that Mr von Geitz admitted in the course of his Interview that he should in fact have informed the Central Bank of these shareholdings in his reply to Section 1.7 of the IQ.
- 4.31 Taking all of the above into account, I am satisfied that failing to disclose shareholdings in respect of these four companies demonstrates that Mr von Geitz provided information to the Central Bank which he knew or ought to have known was false and misleading.
- 4.32 Section 2.4 of the IQ
- 4.33 Section 2.4 of the IQ required that "*where address has changed in the last 3 years, please provide addresses for the previous 3 years*". This section was left blank by Mr von Geitz.
- 4.34 The Investigation Report further details how Mr von Geitz failed to disclose previous address in Northern Ireland within the three year period preceding his completion of the IQ. I note that the Investigation Report states that while Mr von Geitz admitted that the response provided to Section 2.4 of the IQ was incorrect, he denies that it was misleading. I am of the view that the question put in the IQ was clear and unambiguous and that Mr von Geitz's decision to leave the section blank rather than including his Northern Ireland address demonstrates that he provided information to the Central Bank which he knew or ought to have known was false and misleading.
- 4.35 Section 5.6 of the IQ
- 4.36 Section 5.6 of the IQ required Mr von Geitz to indicate if he had "*ever, in any jurisdiction, been a director of a company that was struck off the Registrar of Companies by the Companies Registration Office (or equivalent elsewhere) otherwise than on a voluntary*



basis?" The Investigation Report notes that in his reply to this question, Mr von Geitz answered "*no*".

Yellowsun Limited

- 4.37 I note that in the Interview, Mr von Geitz indicated that he was no longer a director of this company at the time it was struck off. However, I have noted the conclusion of the Investigator that Mr von Geitz held the positions of both Director and Company Secretary of Yellowsun Limited on the date it was struck off on 20 November 2005.

Murvon Limited

- 4.38 I have noted the conclusion of the Investigator that Mr von Geitz was a director of Murvon Limited on the date it was struck off on in January 2012. I further note that in the Interview, Mr von Geitz accepted that he should have included reference to this company in his reply to Section 5.6 of the IQ.

Conclusions in respect of Section 5.6 of the IQ

- 4.39 I note the conclusion of the Investigator that Mr von Geitz misled the Central Bank by confirming that he had never been a director of a company that was involuntarily struck off the Register of Companies and that both Yellowsun Limited and Murvon Limited were both struck off. I have carefully considered Mr von Geitz's explanations in respect of why he did not answer Section 5.6 in the affirmative, together with the information set out in the Investigation Report and the materials provided to me. I am of the view that his decision to respond "*no*" to section 5.6 demonstrates that he provided information to the Central Bank which he knew or ought to have known was false and misleading.

4.40 Section 5.13 of the IQ

- 4.41 The Investigation Report states that Section 5.13 of the IQ required Mr von Geitz to answer yes/no to the following question: "*Have you been or are you being investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal or any similar body, whether publicly or privately, in any jurisdiction?*" The Investigation Report notes that in his reply to this question, Mr von Geitz answered "*no*".
- 4.42 I note that Mr von Geitz failed to disclose that he was subject to a High Court Order dated 14 May 2015 finding him to be in contempt of a previous order made. I note the view of the Investigator that Mr von Geitz misled the Central Bank by failing to disclose that he was the subject of the said High Court Order for contempt of court dated 14 May 2015.
- 4.43 I have considered Mr von Geitz's explanation, as set out in the course of his Interview, that he was precluded by a "*super injunction*" arising in litigation from providing details of the



High Court Order of Mr Justice Gilligan dated 14 May 2015 finding that Mr von Geitz was in contempt of a previous order made. When questioned at the Interview as to why he did not disclose the existence of a High Court Order which was a matter of public record, he indicated that he had obtained legal advice not to refer to the said Order. In the sixth evidentiary notice, Mr von Geitz was requested to provide evidence backing this up. However, no such evidence was provided.

Conclusions in respect of Section 5.13 of the IQ

4.44 I note that the only explanation advanced by Mr von Geitz as to why he did not disclose the fact that he was subject to a contempt of court order was that he was precluded from doing so by a “*super injunction*”. I am of the view that Mr von Geitz should have disclosed that he was found by a Court to have acted in contempt of court and that in failing to do so he provided information to the Central Bank which he knew or ought to have known was false and misleading in his response to Section 5.13 of the IQ.

4.45 Section 5.16 of the IQ

4.46 I note that Section 5.16 of the IQ required Mr von Geitz to answer yes/no to the following question: “*Have you ever defaulted upon any payments due, arising from a compromise or scheme of arrangements with your creditors or made an assignment for the benefit of your creditors.*” The Investigation Report notes that Mr von Geitz answered “no” in response to this question.

4.47 I note the conclusion of the Investigator that Mr von Geitz misled the Central Bank by failing to disclose that he had entered into an Individual Involuntary Arrangement (the “IVA”) on 6 January 2011 in respect of which he defaulted on 1 November 2012. When asked why he did not disclose the details of the IVA, Mr von Geitz stated that he was under the impression that his insolvency superseded the IVA.

4.48 I have also considered Mr von Geitz’s explanation that he had received advice that that there was a jurisdictional limit implied in the relevant question. He indicated that as the question didn’t state “*in any jurisdiction*”, he assumed that there was a jurisdictional limit and that he was therefore correct in not providing details of arrangements in Northern Ireland. I have also considered Mr von Geitz’s explanation that he considered that since Section 5.19 specified “*in any jurisdiction*” and Section 5.16 did not, it was implied that it was all specific to this jurisdiction.

Conclusions in respect of Section 5.16 of the IQ

4.49 Having considered all of the materials made available to me, I am satisfied that the Investigator is correct in asserting that the language of Section 5.16 is quite clear and that there is in no jurisdictional limit to the question. I am therefore satisfied that Mr von Geitz



provided information to the Central Bank which he knew or ought to have known was false and misleading in his response to Section 5.16.

4.50 Section 5.17 of the IQ

4.51 Section 5.17 required Mr von Geitz to indicate if he had *“Ever, in any jurisdiction, been subject to a judgment debt which is unsatisfied, either in whole or in part?”* In his reply to this question, Mr von Geitz answered *“no”*.

4.52 I note the conclusion of the Investigator that Mr von Geitz failed to disclose a number of unsatisfied judgments obtained against him.

4.53 At Interview Mr von Geitz indicated that the judgments were all *“property related debts”* and that he thought that the question was *“predicated within the last five years”*. He said that he had received legal advice to the effect that the requirement to disclose judgements only goes back five years. He said two of those judgments were outside the five year period and that he was not aware of the other judgment.

4.54 Mr von Geitz further argued that the judgments were *“technically speaking”* satisfied by the order of insolvency as the question states *“which is unsatisfied either in whole or in part”*.

Conclusions in respect of Section 5.17 of the IQ

4.55 I have considered Mr von Geitz’s arguments advanced in his Interview. However, having considered all of the materials available to me, I am satisfied that Mr von Geitz provided information to the Central Bank which he knew or ought to have known was false and misleading in his reply to this question. Mr von Geitz should have disclosed that judgements were entered against him as this disclosure was required by the IQ.

4.56 Section 5.18 of the IQ

4.57 Section 5.18 required Mr von Geitz to answer the following question: *“Were you ever, or are you currently, the subject of a bankruptcy petition in any jurisdiction?”* The Investigation Report further notes that in his reply to this question, Mr von Geitz answered *“no”*.

4.58 I note the conclusion of the Investigator that Mr von Geitz misled the Central Bank by failing to disclose that he had been declared bankrupt in Northern Ireland on 3 October 2012.

4.59 I have considered Mr von Geitz’s statements in the course of his Interview that he had received legal advice that supported his view that his answer to this question was correct as he was *“never subject to a petition in any jurisdiction, but I declared myself bankrupt. I’m*



not subject to a petition". He said that "subject to petition implies a creditor activated bankruptcy" and that his bankruptcy was "purely voluntarily and on his own accord".

4.60 I also note that in his email dated 23 October 2018 Mr von Geitz stated *"may I respectfully suggest tightening the language of the IQ? It did not make sense my former insolvency did not require declaration."*

4.61 I note the conclusion of the Investigator that despite being requested to do so in the sixth evidentiary notice, Mr von Geitz has not produced any evidence that he obtained legal advice at the time to the effect that *"subject to a petition"* was a creditor activated bankruptcy.

Conclusions in respect of Section 5.18 of the IQ

4.62 Having considered the materials provided to me, I note and agree with the Investigator's view that Mr von Geitz's position that Section 5.18 of the IQ pertains solely to creditor-activated bankruptcies *"cannot be accepted"* and that the relevant High Court Order makes clear that there was a bankruptcy petition, and that Mr von Geitz was the subject of the said petition. I am therefore satisfied that Mr von Geitz provided information to the Central Bank which he knew or ought to have known was false and misleading in response to Section 5.18 of the IQ.

4.63 Section 11.7 of the IQ

4.64 The Investigation Report states that at Section 11.7 of the IQ Mr von Geitz, by answering "yes", declared that:

"I am aware that it may be an offence and / or grounds for refusal of my application and / or grounds for revocation of an authorisation approval granted on foot of the within Application and / or grounds for the Central Bank of Ireland to commence an administrative sanctions procedure against both myself and / or the proposing entity for me to knowingly or recklessly

(a) provide false or misleading information and / or to make a false or misleading statement (which I acknowledge may include the withholding by me of relevant information) in this application for approval

(b) Fail to inform / or withhold from the Central Bank of Ireland details of any material change in circumstances / new information which is relevant and / or material to my status as an approved person..."

4.65 The Investigation Report notes that Mr von Geitz responded "yes" to both (a) and (b) above.



- 4.66 On the basis of the above, I am satisfied that the Investigator is correct in her conclusion that Mr von Geitz failed to “*truthfully and fully*” answer a number of questions in the IQ.

Conclusions in respect of Section 11.7 of the IQ

- 4.67 I am of the view that the information provided by Mr von Geitz to the Central Bank in his application did not allow the Bank to carry out a complete evaluation of his application. I am further of the view that the Investigator is correct in her conclusion that “*Mr von Geitz provided false and misleading information to the Central Bank with a view to obtaining approval through deception, appreciating that if the true information was provided*” approval would not likely be granted by the Central Bank.

5. Conclusion in respect of factual matters

- 5.1 Having considered all of the matters set out above and the materials provided to me, as detailed above, I am satisfied that Mr von Geitz failed to cooperate with the Central Bank during the course of the Investigation and further failed to comply with three evidentiary notices. I am further satisfied that Mr von Geitz provided information to the Central Bank which he knew or ought to have known was false and misleading when applying for approval as Executive Director (PCF1) of the Firm.
- 5.2 I have had regard to Section 43(2) of the 2010 Act, which sets out a non-exhaustive list of circumstances which may constitute a lack of fitness and probity. I note in particular that Section 43(2)(b) provides for where “*the person does not satisfy an applicable standard of fitness and probity in a code issued pursuant to section 50*” (i.e. the Standards). I note that paragraph 2.2 of the Standards provides that a person is required to be, *inter alia*, honest, ethical and to act with integrity. Paragraph 2.3 of the Standards further provides that information provided to the Bank is to be “*candid and truthful and shall be full, fair and accurate in all respects and not misleading to the best of his or her knowledge*”.
- 5.3 In this regard, I am satisfied that Mr von Geitz, in providing information to the Central Bank that was not “*candid and truthful [...] full, fair and accurate in all respects and not misleading to the best of [his] knowledge*”, and by virtue of his failure to cooperate with the Central Bank, represent a failure to act honestly, ethically and with integrity, in breach of the Standards.
- 5.4 I have had regard to Section 43(2)(d) of the 2010 Act, which refers to the person having “*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*”, and am satisfied that Mr von Geitz provided information to the Central Bank that he knew or ought to have known was false or misleading.



6. Necessity of Prohibition Notice

- 6.1 I am satisfied that it is necessary in the circumstances of this case to issue a Prohibition Notice for the reasons set out below.
- 6.2 I confirm that in coming to this decision I have had regard to the requirements of Section 43(4) of the 2010 Act and have given particular consideration to the need to prevent potential serious damage to the financial system in the State and ensure the continued stability of the system, and to the need to protect users of financial services.
- 6.3 I note the recommendation of the Investigator that a Prohibition Notice is necessary in the circumstances of this case having regard to the need to protect users of financial services.
- 6.4 I have given consideration to the reasons for the recommendation by the Investigator which include:
- Mr von Geitz's total lack of co-operation with the investigation;
 - the extent of the false and misleading information provided by Mr von Geitz; and
 - the conclusions set out in the Investigation Report in respect of findings of lack of fitness and probity and the impact which Mr von Geitz's conduct has had in undermining the Central Bank's gatekeeper function.
- 6.5 I agree with these reasons. I am satisfied that it is necessary to issue a Prohibition Notice in this case both to prevent serious damage to the financial system and for the protection of users of financial services. First, I concur with what is set out in the Investigation Report that the gatekeeper function is crucial to the integrity of the Fitness and Probity regime, the protection of the public interest, and to ensuring public trust and confidence in the financial system. Second, such action is necessary to protect users of financial services by maintaining standards. Third, such action is necessary to prevent serious damage to the financial system by maintaining trust and confidence. Fourth, such action is necessary to ensure that persons conducting controlled functions do so honestly. Fifth, it is key to the gatekeeper function of the Central Bank that it can rely on the information provided in the course of an application and expect good faith from those engaging with the Central Bank. I am satisfied that it is necessary to issue a Prohibition Notice in such circumstances, as users of financial services must have confidence that such behaviour will not be accepted and will result in appropriate action by the Central Bank.

7. Potential Mitigating Factors

- 7.1 I note that in the course of his Interview, Mr von Geitz stated that the Firm "*never had a single client and never traded*". However, I am of the view that this is not a material consideration and does not serve as a mitigating factor in my considerations. The two grounds dealt with in the Investigation Report relate to Mr von Geitz's alleged provision of false and misleading information to the Central Bank and his alleged lack of cooperation in



his dealings with the Central Bank contrary to the requirements of the Fitness and Probity regime. Therefore, I do not consider the fact that the Firm did not have any clients to be a mitigating factor but it rather is a neutral factor for the purposes of my considerations of the necessity of issuing a Prohibition Notice.

- 7.2 I note that Mr von Geitz also said in the course of his Interview that [REDACTED]. However, I am of the view that this does not remove a requirement on the part of a person preparing an IQ to ensure that all of the information provided is correct, fulsome and truthful and complies with the requirements of that process and form. It is incumbent on those submitting an application to ensure that all information provided as part of an application is full, fair and accurate and not misleading.
- 7.3 The sixth evidentiary notice required Mr von Geitz to provide, *inter alia*, “copies of all legal advice upon which you wish to reply for the purposes of explaining responses provided in the Individual Questionnaire submitted to the Central Bank in June 2015”. However, in his reply dated 23 October 2018, Mr von Geitz said that he did not have copies of legal advice, if any, received at the time of the application: “From memory it was primarily verbal. Is such advice not privileged?” I note and agree with the conclusion of the Investigator that “While Mr von Geitz is certainly entitled to claim privilege over legal advice obtained, he cannot then rely in his defence on the terms of advices he is unwilling to produce”.
- 7.4 I note that in the course of his Interview, Mr von Geitz admitted that he knew “very little” about the Fitness and Probity regime and pre-approval controlled functions. I further note the view of the Investigator in this regard that the abovementioned statement and other statements made by Mr von Geitz in the course of the Interview in respect of the outsourcing of his application raised concerns in respect of the seriousness with which Mr von Geitz took his obligations in submitting the IQ and the Fitness and Probity regime generally. I am of the view that his conduct during the Investigation was uncooperative in nature and that he has not demonstrated any insight into the importance of the Fitness and Probity regime in his interactions with the Central Bank during the course of the Investigation.
- 7.5 Therefore, having considered each of the abovementioned factors, I am of the view that none represents a mitigating factor in my assessment of the necessity of issuing a Prohibition Notice.

8 Consideration of Section 43(12)(a) of the 2010 Act

- 8.1 In accordance with Section 43(12)(a) of the 2010 Act, I am cognisant of the requirement that a Prohibition Notice should not continue for longer than is necessary to achieve the purposes of Part 3 of the 2010 Act and of the requirement that the Prohibition Notice should be proportionate in all the circumstances.



8.2 For the following reasons, I am satisfied that the Prohibition Notice should apply to all controlled functions (to include pre-approval controlled functions) in every regulated financial service provider for a period of 10 years.

8.3 I have had regard to the recommendation of the Investigator that Mr von Geitz should be prohibited from carrying out any controlled function indefinitely. The Investigator states that this is justified and proportionate as a partial prohibition order or one imposing conditions would not provide appropriate or sufficient protection. I have given consideration to the reasons given by the Investigator for this recommendation, which include:

- that Mr von Geitz has been entirely uncooperative in his dealings with the Central Bank having failed to engage with this Investigation for a lengthy period of time;
- that Mr von Geitz has provided extensive false and misleading information to the Central Bank when applying for approval as Executive Director (PCF1) of the Firm despite having the fundamental requirement of truthfulness brought clearly to his attention;
- that Mr von Geitz falsely declared that he was compliant with the Standards, that the information provided to the Central Bank was true and that all relevant information had been declared;
- that Mr von Geitz provided false and misleading information to the Central Bank with a view to obtaining approval through deception, appreciating that if the true information was provided approval would not likely be achieved; and
- that Mr von Geitz did not at any stage self-report any of the information the subject of this Investigation to the Central Bank and the matters identified only came to the Central Bank's attention during the course of supervision of the Firm, and upon further probing under Investigation.

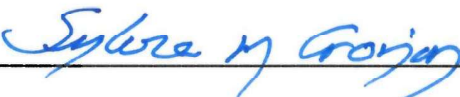
I agree with each of these reasons given in the Investigation Report. I am satisfied that Mr von Geitz provided false and misleading information in reply to numerous questions in the IQ and that he repeatedly failed to cooperate with the Investigation, including failing to cooperate with three evidentiary notices. However, it is my opinion that an indefinite prohibition is not proportionate and necessary having regard to Mr von Geitz's misconduct on one hand and Mr von Geitz's rights on the other.

8.4 In coming to the view that the Prohibition Notice should be for a period of 10 years rather than the indefinite period proposed by the Investigator, I have had regard to the need to protect consumers and uphold the standards of the financial system. I note and agree with



the view of the Investigator that the provision of false and misleading information undermines the extent to which the Central Bank can rely on information given to it in the course of regulation. The failures in this case are very serious. However, I am of the view that a period of 10 years is proportionate. The seriousness of Mr von Getiz's conduct must be marked by a significant prohibition period. However, since his actions are not at the most serious end as no customer money was taken, I do not believe that an indefinite prohibition period is warranted. In this regard, while I do not believe that the absence of detriment to customers is a mitigating factor in my assessment of the necessity of issuing a Prohibition Notice, I believe that it is appropriate that I take this into account in respect of the duration of the prohibition.

- 8.5 In considering why this Prohibition Notice should apply to all controlled functions (to include pre-approval controlled functions) in every financial service provider, I am of the view that it should apply to all controlled functions (to include pre-approval controlled functions) in every regulated financial service provider because the issues highlighted in the Investigation Report in respect of cooperation and honesty impact on all controlled functions (to include pre-approval controlled functions).
- 8.6 In accordance with Section 43(7) of the 2010 Act, the terms of this Prohibition Notice take effect on the date of service on Mr von Geitz or the Firm.

Signed: 

Sylvia Cronin
Central Bank of Ireland