

STATUTORY INSTRUMENTS.

S.I. No. of 20[]

CENTRAL BANK REFORM ACT 2010 (SECTION 17A) (STANDARDS FOR
BUSINESS) REGULATIONS 20[]

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In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 17A(2) the Central Bank Reform Act 2010 (No. 23 of 2010) (the “Act”), the Bank, having consulted the Minister for Finance and such other persons as the Bank considers appropriate to consult in the circumstances in accordance with section 17A(5) of the Act, hereby makes the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and Commencement

1. (1) These Regulations may be cited as the Central Bank Reform Act 2010 (Section 17A) (Standards for Business) Regulations 20[].

(2) These Regulations shall come into operation on [day in numeral] [month in words] [year in numeral].]

Scope

2. (1) Subject to paragraph (2), these Regulations apply to a regulated financial service provider in the conduct of its affairs.

(2) Part 2 shall not apply to –

(a) any service or activity set out in the Schedule 1 of the MiFID Regulations 2017, but not including any service or activity of a person to whom the MiFID Regulations 2017 do not apply by virtue of Regulation 4(3) of that Regulation;

(b) activities carried on by a credit union, other than insurance intermediation activities;

(c) the activities of a Crowdfunding Service Provider, within the meaning of Regulation 2(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (Text with EEA relevance) (Crowdfunding Regulation)

Definitions

3. (1) In these Regulations, unless the context otherwise requires:-

“Act of 2010” means the Central Bank Reform Act 2010;

“Bank” means the Central Bank of Ireland;

“consumer” means, subject to paragraph (3), a customer that is -

(a) a natural person,

(b) a group of natural persons, including a partnership, club, charity, trust or other unincorporated body, or

(c) an incorporated body, that is not –

(i) an incorporated body that had an annual turnover in excess of €5 million in the previous financial year, or

(ii) an incorporated body that is a member of a group of companies having a combined turnover greater than €5 million,

and includes, where appropriate, a potential “consumer” within the above meaning;

“customer” means -

- (a) any person to whom a regulated financial services provider provides or offers financial services,
- (b) any person who requests the provision of financial services from the regulated financial services provider,
- (c) a relevant borrower in a case where a regulated financial services provider undertakes credit servicing in respect of the credit agreement concerned, or
- (d) a hirer in a case where a regulated financial services provider undertakes credit servicing in respect of the consumer-hire agreement or hire-purchase agreement concerned,

save for Regulation 4(1)(a) and Regulation 5 where ‘customer’ means only a consumer as defined.

“financial abuse” means any of the following:

- (a) the wrongful or unauthorised taking, withholding, appropriation, or use of a customer’s money, assets or property;
- (b) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a customer, to –
 - (i) obtain control, through deception, intimidation or undue influence, over the customer’s money, assets or property, or
 - (ii) wrongfully interfere with or deny the customer’s ownership, use, benefit or possession of the customer’s money, assets or property;

“financial services legislation” has the same meaning as in the Central Bank (Supervision and Enforcement) Act 2013;

“group” includes, unless otherwise specified, a company, its parent and its subsidiaries and any associated undertaking or related undertaking;

“high cost credit provider” and “high cost credit” have the meaning assigned to them in section 2(1) of the Consumer Credit Act 1995 (No. 24 of 1995);

“key information” means any information which is likely to influence a customer’s actions with regard to a financial service ;

“MiFID Regulations 2017” means the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017);

“person” means, unless otherwise specified, a natural person or a legal person;

"regulated activities" means the provision of financial services that are provided in this State by a regulated financial service provider and which are subject to the regulation of the Bank;

“unregulated activities” means the provision of services of a financial nature, which are not otherwise regulated activities, to consumers in the State.

(2) For the purposes of the definition of “customer” in paragraph (1), “relevant borrower”, “credit servicing”, “credit agreement”, “consumer-hire agreement”, “hire-purchase agreement” and “hirer” have the same meaning as in Part V of the Central Bank Act 1997 (No. 8 of 1997).

(3) Where a high cost credit provider is engaged in the activity of providing high cost credit, “consumer” means a consumer within the meaning of the Consumer Credit Act 1995.

Part 2

STANDARDS FOR BUSINESS

4. (1) A regulated financial service provider shall at all times:

- (a) secure its customers’ interests;
- (b) act with honesty and integrity;
- (c) act with due skill, care and diligence;
- (d) act in the best interests of customers and treat them fairly and professionally;
- (e) ensure that all information it provides to customers is presented in a way that seeks to effectively inform the customer;
- (f) control and manage its affairs and systems sustainably, responsibly and in a sound and prudent manner;

- (g) maintain adequate financial resources;
- (h) control and manage its affairs and systems to counter the risks to customers of financial abuse;
- (i) engage and cooperate with the Bank and comparable competent authorities in good faith and without delay.

(2) The systems referred to in paragraph (1)(f) include a regulated financial service provider's risk management systems, internal control mechanisms and governance arrangements.

(3) The standard of securing customers' interests in paragraph (1)(a) of this Regulation applies to a regulated financial service provider only in the conduct of its affairs with customers in the State who are consumers.

Part 3

SUPPORTING STANDARDS FOR BUSINESS

Securing customers' interests

5. Without prejudice to the generality of Regulation 4(1)(a), a regulated financial service provider shall secure its customers' interests, including by:

- (a) ensuring that its culture, strategy, business model, decision-making, systems, controls, policies, processes and procedures take into account its customers' interests;
- (b) acting in accordance with the reasonable expectations of its customers;
- (c) taking into account the interests of its customers when designing products and services, and the methods of delivery;
- (d) ensuring that its products and services are not designed to unfairly exploit the behaviours, habits, preferences or biases of customers leading to customer detriment;
- (e) resolving any complaints received from customers efficiently and in a timely manner;
- (f) resolving errors or mistakes affecting customers efficiently and in a timely manner, and disclosing errors or mistakes to customers affected in a timely manner;

- (g) ensuring errors or issues identified for one customer that may reasonably have affected other customers are resolved for all affected customers efficiently, fairly and in a timely manner;
- (h) clearly distinguishing for customers between the firm's regulated activities and its unregulated activities including by taking all appropriate steps to mitigate the risk that a customer will understand an activity to be, or to carry the protections of, a regulated activity where this is not the case;
- (i) delivering fair outcomes for customers.

Acting with honesty and integrity

6. Without prejudice to the generality of Regulation 4(1)(b), a regulated financial service provider shall act honestly and with integrity, including by:

- (a) operating without bias and preventing, or identifying and appropriately managing, conflicts of interest;
- (b) not exerting pressure or influence on a customer so as to limit his or her ability to make an informed choice in relation to any financial service;
- (c) not misusing or misappropriating any assets or information of the regulated financial service provider or its customers.

Acting with due skill, care and diligence

7. Without prejudice to the generality of Regulation 4(1)(c), a regulated financial service provider shall act with due skill, care and diligence, including by:

- (a) ensuring that persons who are responsible for managing the activities of the regulated financial service provider have appropriate knowledge of the activities and associated risks that apply in the conduct of its affairs;
- (b) complying with all financial services legislation applicable to the conduct of its affairs;
- (c) operating in compliance with standards of market conduct and trading venue rules to which the regulated financial service provider is subject by law and any market codes that apply to the affairs of the regulated financial service provider.

Acting in the best interests of customers and treating them fairly and professionally

8. Without prejudice to the generality of Regulation 4(1)(d) a regulated financial service provider shall act in the best interests of customers and treat them fairly and professionally, including by:

- (a) ensuring that customers are informed in a clear manner of relevant information of which they ought to be aware;
- (b) communicating relevant information to customers in a timely manner having regard to the urgency of any matter and the time required by the customer to consider that relevant information;
- (c) seeking from customers information relevant to the financial service requested;
- (d) assessing the needs and circumstances of customers, including their level of knowledge and experience of financial services, their financial circumstances and the range of options that the regulated financial service provider is able to make available to them;
- (e) ensuring that customers are not misled as to the advantages or disadvantages of any financial service;
- (f) ensuring that any advice or recommendation provided to customers is appropriate and tailored to meet their financial services needs and circumstances;
- (g) not acting in a manner that is unfair to customers;
- (h) without prejudice to the pursuit of its legitimate commercial aims, not unreasonably preventing access by a customer to financial services.

Informing effectively

9. Without prejudice to the generality of Regulation 4(1)(e), a regulated financial service provider shall inform its customers effectively, including by:

- (a) ensuring that the information is provided to a customer in such a way that the material features of the product or service in question can reasonably be understood by the customer;
- (b) ensuring that all information that it provides to a customer is clear, accurate, up to date, and written in plain language;
- (c) avoiding the unnecessary use of technical terms;
- (d) providing information to a customer on a timely basis;

- (e) bringing key information to the attention of the customer.

Controlling and managing its affairs

10. Without prejudice to the generality of Regulation 4(1)(f), a regulated financial service provider shall control and manage its affairs and systems sustainably, responsibly and in a sound and prudent manner, including by:

- (a) having and employing appropriate resources and implementing effective governance of policies and procedures, systems and control checks, including compliance checks, to ensure that the regulated financial service provider complies with its obligations under financial services legislation;
- (b) providing appropriate staff training on the legal and regulatory framework relevant to the performance of those functions, including any legal obligations or standards that are imposed by or under financial services legislation;
- (c) ensuring that if delegating tasks, that those tasks are assigned to an appropriate person with effective oversight within the regulated financial service provider;
- (d) managing its outsourced activities effectively to identify, monitor and manage its outsourcing risk;
- (e) arranging adequate protection for assets held by the regulated financial service provider on behalf of a customer.

Adequate Financial Resources

11. Without prejudice to the generality of Regulation 4(1)(g), a regulated financial service provider shall maintain adequate financial resources, including by:

- (a) complying with its obligations under financial services legislation;
- (b) establishing and implementing systems and controls, processes, policies and procedures for the purpose of ensuring that it maintains adequate financial resources.

Financial Abuse

12. Without prejudice to the generality of Regulation 4(1)(h), a regulated financial service provider shall control and manage its affairs and systems to counter the risks to customers of financial abuse, including by:

- (a) putting reasonable systems and controls in place in the context of the provision of its financial services, to mitigate the risk to its customers of financial abuse;
- (b) appropriately monitoring financial abuse trends relevant to its customers or the sector more generally;
- (c) carrying out ongoing monitoring in respect of potential vulnerabilities in the services and distribution channels, and ensuring appropriate escalation processes where there is increased risk to customers of financial abuse;
- (d) notifying customers through clear and timely communication of any digital frauds or deception connected to its affairs, or specifically relevant to the sector in which the regulated financial services provider is operating, and of which it is aware;
- (e) communicating the supports available to customers, and the actions that customers can take in the event of financial abuse, directly connected to the regulated financial service provider's affairs.

Disclosure and cooperation

13. Without prejudice to the generality of Regulation 4(1)(i), a regulated financial service provider shall engage and cooperate with the Bank and comparable competent authorities in good faith and without delay, including by:

- (a) disclosing to the Bank promptly, and in a manner appropriate to the circumstances, any matter relating to the regulated financial service provider of which the Bank would reasonably expect notice including information relevant to, or giving rise to a suspicion or expectation of any of the following:
 - (i) commission of an offence by the regulated financial service provider or a person performing a controlled function in relation to it;
 - (ii) commission of a prescribed contravention or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing a controlled function in relation to it;
 - (iii) concealment or deliberate destruction of evidence relating to a matter referred to in subparagraph (i) or (ii);
 - (iv) provision of false or misleading information to the Bank relating to a matter referred to in subparagraph (i) or (ii);

- (v) obstruction or impeding of an investigation relating to a matter referred to in subparagraph (i) or (ii);
 - (vi) commencement of legal proceedings by or against the regulated financial service provider arising from its obligations under financial services legislation;
 - (vii) commencement of legal proceedings against the regulated financial service provider which may impact on its ability to continue to trade;
 - (viii) anything that may otherwise interfere significantly with the operation of the regulated financial service provider or its compliance with its obligations under financial services legislation; and
 - (ix) a decision by the regulated financial service provider to cease to provide financial services of a particular description;
- (b) facilitating appropriate reporting to the management of the regulated financial service provider and to the Bank, including –
- (i) reporting of information relevant to, or giving rise to a suspicion of, the commission of a prescribed contravention or contravention of any other obligation or standard imposed on the regulated financial service provider by or under financial services legislation;
 - (ii) any matter otherwise adversely affecting the activities or interests of customers, the regulated financial service provider, its related undertakings, or the financial services system; and
 - (iii) any information of which the Bank would reasonably expect notice in respect of the affairs of the regulated financial service provider.
- (c) responding to requests and requirements under financial services legislation in an open and timely manner;
- (d) disclosing information or records when required to do so under financial services legislation;
- (e) ensuring that persons performing functions for the regulated financial service provider attend meetings and interviews when required to do so under financial services legislation;
- (f) not providing false, inaccurate or misleading information, records or explanations;

- (g) not destroying, hiding or putting beyond reach information or records that it is reasonable for the person to expect to be required to be disclosed under financial services legislation;
- (h) not engaging in evasive, misleading or obstructive conduct.

Systems and Controls.

14. A regulated financial service provider shall establish and implement systems and controls, processes, policies and procedures for the purpose of ensuring that it, and any agent acting on its behalf on the basis of an outsourcing arrangement, complies with these Regulations.

Saver

15. Without prejudice to the generality of section 27 of the Interpretation Act 2005 (No. 23 of 2005), the revocation of [any statutory Code or part of any statutory Code published by the Bank or any enactment or part of any enactment] by these Regulations—

(a) shall not affect [any legal proceedings], [or any] direction given by the Bank, any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any [provision of any statutory Code or part of any statutory Code [published by the Bank] or any enactment of part of any enactment] or any matter in existence at, or before, the time of the revocation, and

(b) shall not preclude the taking of any legal proceedings, or the issuing of any direction, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of [any statutory Code or part of any statutory Code [published by the Bank]] or any enactment or part of any enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

Signed for and on behalf of the CENTRAL BANK OF IRELAND

on [day in numerals] [month in words] [year in numerals]

Gabriel Makhlouf

Governor of the Central Bank of Ireland