

Vast slew of public settlements now due

The Central Bank could ramp up enforcement cases before the end of the year

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Last Monday, KBC Bank Ireland was fined €1.4 million and reprimanded for breaches of the code of practice on lending to related parties 2010, and the code of practice on lending to related parties 2013 over a period of almost three-and-a-half years by the Central Bank.

This is the first enforcement action brought by the Central Bank against a credit institution for breaches of the code. The breaches were admitted by KBC.

The KBC group operates globally with ten million clients, 38,000 employees and 1,560 branches. Its Irish operations commenced in Ireland in February 1973, so it is surprising it didn't understand the rules better.

Last Thursday, there was another fine – this time €1.15 million on Capita Life and Pensions Services (Ireland) for conducting unauthorised business.

The breaches, which related to acting as an investment firm without Central Bank authorisation, occurred consecutively for a period of nine years and seven months.

Together with the other five settlement agreements listed on the Central Bank's website, this makes just seven settlement agreements for the year 2016 to date.

Is the Central Bank going to release a slew of publicity around enforcement settlements in the coming months?

The reason I ask is because this is quite a low number of public enforcement settlements compared to previous years.

The number of publicly announced settlement agreements since 2010 are as follows: 2015 – 9; 2014 – 11; 2013 – 16; 2012 – 16; 2011 – 10; 2010 – 8.

The years 2012 and 2013 saw the highest number of publicly stated settlements, up from a low base in 2010.

During that time, as director of enforcement at the Central Bank, I was part of a team who were stabilising the financial system, ramping up staff, implementing the new enforcement strategy, creating new enforcement procedures, creating an enhanced anti-money laundering supervisory unit, and carrying out the largest ever review of the fitness and probity of directors at systemically important financial institutions.

Based on the average of each of these years, nearly 50 per cent of all publicly announced settlements happen in the last quarter of a calendar year.

The Central Bank is still facing a number of challenges, and there are frequent reports about its manpower in the face of competition from industry and consulting firms.

Putting that to one side, it still seems that the number of publicly announced settlements is lower than what we might otherwise expect based on history.

However, the Central Bank does have a tradition of announcing a large number of settlements at the end of a calendar year.

For example, the number of settlements in quarter 4 vis-à-vis the full calendar year were: 2010 – 3/8 (38 per cent); 2011 – 4/10 (40 per cent); 2012 – 10/16 (60 per cent); 2013 – 9/16 (56 per cent); 2014 – 4/11 (36 per cent); 2015 – 6/9 (67 per cent).

In other words, based on the average of each of these years, nearly 50 per cent of all publicly announced settlements happen in the last quarter of a calendar year.

Should we expect to see at least another three public settlement agreements before the year's end?

If this is the case, then only nine public settlements would be reached in 2016, which would be one more than the lowest number since 2010. In that year, the new Central Bank was born in quarter 3 (I joined as director of enforcement and AML/CFT supervision on October 4, 2010) from which time enforcement cases were significantly ramped up. I, and many others, would be very surprised to see a grand tally of just nine publicly announced settlement agreements for 2016.

If this becomes the case, the message could appear to be that enforcement is no longer viewed as the important arm of, and the valuable deterrent it once was, at the Central Bank. Questions would have to be asked, and answers would have to be heard.

I suspect we will see a slew of cases over the next three months. How many is anyone's guess but, as a minimum, I think another four, and perhaps more, depending on the maturity of the enforcement case pipeline.

This means that if your firm is involved in an enforcement action now, and if the investigation is at an advanced stage, expect the Central Bank to be in contact (if not already) about reaching a settlement with you this year.

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