



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Guidance on Fitness and Probity Standards

December 2023

# Version History

Title of Document	Guidance on Fitness and Probity Standards
<b>This Version</b>	December 2023 Deletion of Section 10 <sup>1</sup> , inclusion of Certification, requirements for Holding Companies, and update of Appendices
<b>Previous Version</b>	June 2018

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<sup>1</sup> The process to expedite an application for a role in the State, where a person is currently approved for a similar PCF role within the same sector/industry in another EEA/EU Member State, has not been operating in practice, therefore Section 10 of this guidance has been deleted

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# Part A

## The Application of the Fitness & Probity Regime



# 1. Background

- 1.1** Part 3 of the Central Bank Reform Act 2010 (the Act) provides that a person performing a controlled function (CF) must have a level of fitness and probity appropriate to the performance of that particular function.

The Central Bank of Ireland (the Central Bank) also has the power to prescribe a subset of CFs as functions for which the prior approval of the Central Bank is required before a person can be appointed (pre-approval controlled functions (PCFs)).

The Central Bank published Principal Regulations ([S.I. No 437 of 2011](#)) on 1 September 2011, prescribing particular functions as CFs and PCFs<sup>2</sup>. The Central Bank published Holding Companies Regulations on 29 December 2023, prescribing particular functions as CFs and PCFs for holding companies. The Central Bank has and may from time to time publish subsequent Amending Regulations<sup>3</sup> which add and/or amend the list of CFs and/or PCFs.

- 1.2** Part 3 of the Act applies to regulated financial service providers<sup>4</sup> and holding companies established in Ireland<sup>5</sup>.
- 1.3** Section 50 of the Act permits the Central Bank to issue a code setting out standards of fitness and probity for the purposes of Part 3 of the Act. The Central Bank published a code setting out fitness and probity standards (the F&P Standards) pursuant to Section 50 of the Act. Please refer to Section 3.2-3.4 herein for further information as to who the F&P Standards apply to.

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<sup>2</sup> For regulated financial service providers other than credit unions. For Fitness and Probity Standards for credit unions and related guidance please see separate Fitness and Probity Standards for Credit Unions and related guidance at [www.centralbank.ie](http://www.centralbank.ie).

<sup>3</sup> [www.centralbank.ie](http://www.centralbank.ie)

<sup>4</sup> Regulated financial service provider is defined in Section 2 of the Central Bank Act 1942

<sup>5</sup> Including a financial holding company within the meaning of point (20) of Article 4(1) of the Capital Requirements Regulation, a mixed financial holding company within the meaning of point (21) of Article 4(1) of the Capital Requirements Regulation, an insurance holding company within the meaning of Regulation 215(1) of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015), a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC, investment holding companies, as defined in point (23) of Article 4(1) of Regulation (EU) 2019/2033

- 1.4** The Central Bank also published the Minimum Competency Code (MCC) and the Minimum Competency Regulations (MCR). The MCC is issued as a set of standards pursuant to Section 50 of the Act. The MCR are issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013. Please refer to Section 19 herein for further information on the MCC.
- 1.5** In general, the F&P Standards require that persons must:
- (a) be competent and capable;
  - (b) act honestly, ethically and with integrity; and
  - (c) be financially sound.
- 1.6** The F&P Standards are available on the Central Bank's website at [www.centralbank.ie](http://www.centralbank.ie).
- 1.7** All proposed appointments to CFs which are prescribed as PCFs pursuant to relevant Regulations, require the prior written approval of the Central Bank. Details regarding this approval process are set out in Section 8 herein.
- 1.8** Section 21 of the Act provides that a regulated financial service provider / holding company shall not permit a person to perform a CF unless:
- i. the regulated financial service provider / holding company is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to Section 50 of the Act;
  - ii. a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider / holding company in accordance with Section 21, is in force in relation to the person; and
  - iii. the person has agreed in writing to comply with any such standard.
- 1.9** Failure to comply with Section 21 of the Act is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act 1942.



- 1.10** The Central Bank has a range of powers available to it to investigate, suspend or prohibit individuals from CFs in the financial services industry where concerns arise about their fitness and probity. Those powers are set out in Part 3, Chapters 3 & 4 of the Act.
- 1.11** The European Central Bank (the ECB) is exclusively competent for fitness and probity assessments of applicants to certain PCF roles<sup>6</sup>. Individual applications to these positions will be assessed by the ECB pursuant to the Union Law and the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU (the Joint ESMA and EBA Guidelines)<sup>7</sup>.
- 1.12** Following enactment of the Central Bank (Individual Accountability Framework) Bill 2022 and the Central Bank (Individual Accountability Framework) Act 2023 the Central Bank published regulations and guidance on key aspects of the implementation of the Individual Accountability Framework.<sup>8</sup>

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<sup>6</sup> For further detail regarding the ECB's responsibilities in this regard, please refer to the ECB authorisations webpage [https://www.bankingsupervision.europa.eu/banking/tasks/authorisation/html/index\\_en.html](https://www.bankingsupervision.europa.eu/banking/tasks/authorisation/html/index_en.html). Detail regarding the ECB's harmonised approach to fit and proper assessments is set out within the ECB's Guide to F&P Assessments.

<sup>7</sup> [EBA/GL/2021/06 2 July 2021](#)

<sup>8</sup> [www.centralbank.ie](http://www.centralbank.ie)

## 2. Purpose and effect of this guidance

- 2.1** The primary purpose of this guidance is to assist regulated financial service providers<sup>9</sup> and holding companies in complying with their obligations under Section 21 of the Act in relation to the F&P Standards, by setting out the steps which the Central Bank would expect a regulated financial service provider / a holding company to take in order to satisfy itself on reasonable grounds that persons performing CFs or PCFs are compliant with the F&P Standards. We have also included guidance, however, on other issues including, for example, approval by the Central Bank of appointments to PCFs.
- 2.2** It should be noted that where the Central Bank approves a proposed appointment to a PCF that, in itself, is not a certification of the person's compliance with the F&P Standards. The regulated financial service provider / holding company is obliged pursuant to Section 21 of the Act to satisfy itself on reasonable grounds, and certify that, that the person is compliant with the F&P Standards. Please refer to Section 12 herein for further information on the nature of the obligations imposed by Section 21 of the Act.
- 2.3** Nothing in this guidance may be construed so as to constrain the Central Bank from taking action, where it deems it to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.
- 2.4** This guidance is not intended to be comprehensive nor to replace or override any legislative provisions or binding code. It should be read in conjunction with Part 3 of the Act and any regulation, code or other legal instrument as the Central Bank may issue from time to time.
- 2.5** This guidance has been updated since its initial publication to reflect amendments made to the Regulations in the various S.I.s.
- 2.6** The Central Bank may update or amend this guidance from time to time, as appropriate.

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<sup>9</sup> Other than credit unions

## 3. Implementation of the Regime

### 3.1 The Regulations

Regulations prescribe CFs and PCFs pursuant to Section 20 and 22 of the Act. The Central Bank published and may from time to time publish subsequent Amending Regulations which add and/or amend the list of CFs and/or PCFs. Persons in situ in the relevant PCFs on the date that the Regulations, as applicable, come into force continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF.

A full list of PCFs is contained in Appendix 3, while a full list of CFs is contained in Appendix 4.

### 3.2 The F&P Standards

The F&P Standards had a phased application to PCFs and CFs.

### 3.3 The F&P Standards do not apply to the following:

- (i) a person whose function is solely concerned with acting in accordance with a written set of instructions in the form of a script providing for that person to give a prescribed reply or follow a prescribed course of action in the event of a particular matter being raised with respect to a range of routine matters arising in the course of providing, or in relation to the provision of, the financial service.

This exemption may typically include call centre staff acting in accordance with a specific script or routine.

- (ii) a person performing a CF or a PCF on behalf of a regulated financial service provider / holding company authorised, licensed or registered by the competent authority of another EEA country, and which provides services in the State on a cross border or branch basis.
- (iii) a person performing a function in a separate legal entity in a group structure of companies (whether such an entity is a regulated financial service provider / holding company or otherwise) who may exercise a significant influence over a

person performing a CF or a PCF in a regulated financial service provider / holding company in an entity in that group which is authorised, licensed or registered by the Central Bank.

This exemption typically excludes from the F&P Standards, persons who have functional responsibility at group level and who may be able to exert a significant influence over the performance of CFs or PCFs in the Irish entity.

- (iv) persons performing functions with respect to a regulated financial service provider where that function is carried on by another person (the “other person”) and all of the following conditions are satisfied:
  - (a) there is in place a written agreement between the regulated financial service provider and the other person for the carrying on of that function by that other person on behalf of the regulated financial service provider; and
  - (b) the other person is a financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995) who is regulated for a similar business to that conducted by the regulated financial service provider concerned, either:
    - i. by the Bank; or
    - ii. by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
    - iii. by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

This exemption typically excludes persons performing CFs or PCFs who are performing that function under a written outsourcing agreement.

**3.4** It is important to note that where a CF or a PCF benefits from one of the exemptions to the application of the F&P Standards, s/he

will remain subject to Part 3 of the Act and any Code or Order issued thereunder, including the MCC (as applicable).

### 3.5 Identifying persons in PCFs and CFs

#### PCFs

Following the introduction of new PCFs, regulated financial service providers/holding companies are required to submit to the Central Bank the details of the persons who, as of the entry into force date of the Regulations, as applicable, were performing those particular PCFs.<sup>10</sup>

Persons in-situ as at these dates were allowed to continue in these roles without seeking approval from the Central Bank.

The Chief Executive Officer (CEO), partner or sole trader (as the case may be) must also confirm in writing to the Central Bank by respective dates, that the regulated financial service provider/holding company has performed the due diligence set out herein in respect of persons performing PCFs in the regulated financial service provider/holding company, that they are satisfied on reasonable grounds that those persons are compliant with the F&P Standards, and that they have obtained those person's written agreement to comply with the F&P Standards.

#### CFs

Under Section 21 of the 2010 Act, the Central Bank requires regulated financial service providers / holding companies to identify and maintain a record of persons who are performing CFs from the date of application of the F&P Standards to those persons<sup>11</sup>, together with a formal record of due diligence undertaken by the regulated financial service provider / holding company in respect of those persons, to satisfy itself that the person performing the relevant CF is fit and proper to perform that CF and certify same.

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<sup>10</sup> Specific guidance relating to the changes to the Regulations introduced by S.I. No 545 of 2015 is contained in the [Guidance for \(Re\)Insurance Undertakings on the Fitness and Probity Amendments 2015](#)

<sup>11</sup> See Section 1.5 of the F&P Standards

Regulated financial service providers / holding companies are not required to submit the list to the Central Bank unless requested to do so. The list of persons performing CFs must be made available to Central Bank staff on request. Details of regulated financial service providers and holding companies obligations under Section 21 of the Act, and the related certification process and the underlying requirements regarding record-keeping and submissions to the Central Bank are set out in greater detail in Sections 13 herein.

### **3.6 Exclusion of Certified Persons**

Certified persons within the meaning of Section 55 of the Investment Intermediaries Act 1995 are exempt from the pre-approval provisions of the Regulations and the scope of the F&P Standards. S.I. 394 of 2014 serves to explicitly clarify this exclusion.

S.I. 394 of 2014 also clarifies that regulated financial service providers cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons.

## 4. How do I know if a person is performing a CF or a PCF?

- 4.1** The meaning of CF and PCF are set out in the Regulations.
- 4.2** References in the Regulations to a title commonly used for a person who performs a function (e.g. Head of Finance, Head of Compliance etc.) shall be taken to refer to the functions commonly performed by a person of such title. If you are in doubt as to whether you or your employee is performing a CF or a PCF, please contact a member of the supervisory team within the Central Bank assigned to your regulated financial service provider / holding company for clarification.
- 4.3** In addition to the PCFs set out in the Regulations, Section 22(8) of the Act provides that the Central Bank may declare in writing to a regulated financial service provider that a function performed by, for or on behalf of the regulated financial service provider is a PCF if - (a) the person who performs the function is concerned in the management of the regulated financial service provider, (b) the function is not prescribed as a pre-approval controlled function in the Regulations, and (c) no other person in the regulated financial service provider performs a PCF.
- 4.4** The Regulations and Part 3 of the Act do not require all CF or PCFs to be in existence in a regulated financial service provider / holding company. For example, where a regulated financial service provider is not required to have a compliance committee, that regulated financial service provider will not be obliged to form a compliance committee because of anything stated in the Regulations.

## 5. Outsourcing

### 5.1 General

In this guidance, outsourcing means a written arrangement of any kind between a regulated financial service provider and a service provider who is a natural or legal person (whether regulated or unregulated) whereby the service provider performs a CF or PCF which would otherwise be performed by the regulated financial service provider itself.

It should be noted that not every provision of a function or service to a regulated financial service provider by a service provider will fall within the definition of outsourcing. Hiring a specialist consultant, for example, to provide one-off technical advice or one-off support for compliance, internal audit, accounting, risk management or actuarial functions does not normally constitute outsourcing. However, it may become outsourcing if the regulated financial service provider subsequently relies on that consultant to manage an internal function or service when it is installed or becomes fully operational.

### 5.2 Outsourcing to another regulated entity:

#### PCFs

The Regulations provide that in respect of a person who would otherwise require the Central Bank's prior written approval to his/her appointment as a PCF, the regulated financial service provider will not require to obtain such prior approval pursuant to Section 23 of the Act, where the following conditions are met:

- (1) There is in place a written agreement between the regulated financial service provider and a separate financial service provider for the carrying on of that PCF by that other person on behalf of the regulated financial service provider; and
- (2) That other financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995) is regulated for a similar business to that conducted by the regulated financial service provider concerned, either:



- i) by the Bank; or
- ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
- iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

It should be noted that a person benefitting from this exclusion from the requirement to obtain the Central Bank's prior written approval to appointment as a PCF is a CF and, as such, will remain subject to the provisions of Part 3 of the Act, and may be the subject of an investigation, suspension or prohibition notice.

#### CFs

Section 1.5 of the F&P Standards provides that the F&P Standards do not apply to a person performing a CF or a PCF under the following conditions:

- (1) There is in place a written agreement between the regulated financial service provider and a separate financial service provider for the carrying on of that function by that other person on behalf of the regulated financial service provider; and
- (2) That other financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995) is regulated for a similar business to that conducted by the regulated financial service provider concerned, either:
  - i) by the Bank; or
  - ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
  - iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

It should be noted that a CF or PCF benefitting from this exemption from the F&P Standards will remain subject to the

provisions of Part 3 of the Act, and may be the subject of an investigation, suspension or prohibition notice.

### 5.3 Outsourcing to an Unregulated Entity

#### PCFs

Where the PCF(s) is outsourced to an 'unregulated entity', the arrangement (e.g., the service level agreement or other contract) between the regulated financial service provider and the service provider must identify the individual or individual(s) who will perform the outsourced PCF(s) function.

In such cases, the regulated financial service provider is responsible for ensuring that it has obtained the Central Bank's prior written approval for the appointment of that individual to the PCF.

The requirements of Section 21 of the Act, including those in relation to certification, are also applicable to persons performing PCFs under an outsourcing arrangement who must be compliant with the F&P Standards and provide their written agreement to comply with the F&P Standards.

The arrangement must also identify the individual in the regulated financial service provider who is responsible for the performance of the PCF.

#### CFs

Where the CF(s) is outsourced to an 'unregulated entity', the unregulated entity performing the outsourced activities must be able to identify the individuals who will perform the CFs, and assess whether those persons are compliant with the F&P Standards. The entity must also obtain those persons' written agreement to comply with the F&P Standards.

The Central Bank expects that unregulated entities who propose themselves for the performance of outsourced activities on behalf of a regulated financial service provider would include compliance with the F&P Standards and Part 3 of the Act generally as a critical part of their Human Resources procedures.

Section 21 of the Act requires that a regulated financial service provider must satisfy itself on 'reasonable grounds', and certify, that persons performing CFs comply with the F&P Standards and those persons have agreed to comply with the F&P Standards.

Notwithstanding that a regulated financial service provider has entered into an outsourcing arrangement with an unregulated entity third party for the performance of a CF the regulated financial service provider remains responsible for compliance with its obligations under Section 21, including in relation to certification.

The outsourced service provider should provide written confirmation to the regulated financial service provider that those individuals performing CFs are compliant with the F&P Standards and have agreed in writing to comply with them. In addition to this written confirmation, the outsourced service provider should furnish the regulated financial service provider with sample documentation as to how compliance with the F&P Standards is adhered to.

In this subsection 'unregulated entity' means a person other than a financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995) who is regulated for a similar business to that conducted by the regulated financial service provider concerned, either:

- i) by the Bank; or
- ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
- iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

## 6. Provision of services on a branch basis

- 6.1** Section 20(4) of the Act provides that “*a controlled function remains a controlled function even if ...it is carried on at an office or location outside of the State*”.
- 6.2** The Regulations do not limit CFs to functions performed in the State.
- 6.3** Accordingly, a person performing a CF at a location outside of the State on behalf of a regulated financial service provider authorised, licensed or registered in the State / a holding company established in Ireland, will be subject to Part 3 of the Act.
- 6.4** Similarly, where a regulated financial service provider / holding company proposes to appoint a person to a PCF at a location outside of the State, it must obtain the Central Bank’s prior approval in writing.

## 7. Provision of services into the State by regulated financial service providers authorised, licensed or registered in another EEA member state<sup>12</sup>

- 7.1** The Regulations do not limit the definition of CF to the performance of functions in a regulated financial service provider authorised, licensed or registered by the Central Bank. Part 3 applies to the performance of CFs in the State irrespective of whether the CF is performed by a regulated financial service provider authorised, registered or licensed by the Central Bank or by another EEA competent authority.
- 7.2** The F&P Standards, however, do not apply to persons performing CFs on behalf of a regulated financial service provider authorised, licensed or registered by the competent authority of another EEA country, and which provides services in the State on a cross border or branch basis.
- 7.3** Accordingly, regulated financial service providers authorised, licensed or registered by the competent authority of another EEA country will not have compliance obligations under Section 21 of the Act.

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<sup>12</sup> In accordance with Section 18(1) of the Act holding company must be established in the State in order to be in scope of the 2010 Act so this section of the guidance is not relevant to holding companies

## Part B

# Pre-Approval Controlled Functions and the Related Process for Approval and Appointment



## 8. Approval process for PCFs

- 8.1** Before a regulated financial service provider / holding company can appoint a person to a PCF, the Central Bank must have approved the appointment in writing. Regulated financial service providers / holding companies in scope of the Joint ESMA and EBA Guidelines should notify the Central Bank no later than two weeks after the regulated financial service provider / holding company decides to propose an appointment to certain PCFs.
- 8.2** The Central Bank expects a regulated financial service provider / holding company to have completed the certification process as set out in Section 12 before proposing a person for appointment to a PCF. The Central Bank expects that, at a minimum, the regulated financial service provider / holding company undertakes the due diligence set out at Section 12 herein.
- 8.3** The approval process will require the submission of an individual questionnaire (IQ) which is available on the Central Bank's website.
- 8.4** Regulated financial service providers / holding companies will be provided with User Accounts, allowing them to log on to the online system. Individual accounts for PCF applicants can then be created by regulated financial service providers / holding companies, enabling applicants to complete their IQs online. The system includes:
- i) an online IQ form, to be completed by the proposed holder of the PCF (including pre-formatted curriculum vitae sections within the IQ form itself);
  - ii) ability to attach additional documentation to support an application where necessary;
  - iii) option/ability to export core data once completed online which can later be imported by the applicant for a subsequent application;
  - iv) an online declaration by the proposed holder of the PCF as to the accuracy and veracity of the information provided;
  - v) an online declaration by an appropriate officer from the proposing regulated financial service provider / holding company confirming that the regulated financial service provider / holding company is satisfied and has certified in

line with the requirements of Section 21 of the Act that the proposed holder of the PCF is fit and proper.

- 8.5** For the most part, the Central Bank expects that the approval process will be based on the IQ, reference checks, and in some cases requests for further information. Where the Central Bank considers it necessary, it may conduct an interview or interviews<sup>13</sup> with proposed holders of PCFs before deciding on whether or not to approve an application.
- 8.6** The online IQ enables the applicant to submit a single application where applying for more than one PCF in the same regulated financial service provider / holding company (e.g. chief risk officer and head of compliance).
- 8.7** Where a person wishes to apply for several PCFs in different regulated financial service providers / holding companies, however, s/he must submit an application for each entity.
- 8.8** The individual is responsible for all information given to the regulated financial service provider / holding company and/or the Central Bank.
- 8.9** Section 23(7) of the Act provides that a decision of the Central Bank to refuse to grant prior written approval for an appointment to a PCF may be appealed to the Irish Financial Services Appeals Tribunal (IFSAT) pursuant to Part VIIA of the Central Bank Act 1942.
- 8.10** Assessment of applications from individuals seeking appointment to certain PCFs fall within the exclusive competence of the ECB. There is a separate process established for the fitness and probity assessment in these instances. The ECB will make its fitness and probity assessment in accordance with Union Law.
- 8.11** As part of the IQ application process, Applicants seeking pre-approval to the roles of PCF-1 (Executive Director) in a Single Director Entity or PCF-10 (Sole Trader) within a regulated financial service provider and applicants applying for all PCF roles

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<sup>13</sup> [https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-interview-guide.pdf?sfvrsn=8d8d8f1d\\_4](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-interview-guide.pdf?sfvrsn=8d8d8f1d_4)



in the credit institution sector who are an Irish Resident, are required to undergo the National Vetting Bureau's e-Vetting process. It is required as part of the due diligence carried out by the Central Bank on the probity of applicants. Please refer to the [Fitness & Probity – Frequently Asked Questions](#) for further information.

## 9. Interviewing PCFs

- 9.1 A risk based approach is used when deciding whether PCFs are called for interview by the Central Bank. The Central Bank developed the Probability Risk and Impact System (PRISM) to assess both the impact and risk profile of a regulated financial service provider. The Central Bank will use the information on impact and risk stored on the PRISM system to inform its decisions as to who should be called for interview.
- 9.2 The 'impact' of regulated financial service providers refers to the impact of failure on the Irish financial system. Regulated financial service providers can be categorised as high, medium high, medium low and low impact. The measurement of impact is based on impact metrics.
- 9.3 Risk probability defines the risk or likelihood that a particular regulated financial service provider will fail.
- 9.4 The Central Bank anticipates interviewing applicants for the positions of Chair, CEO, Finance Director or Chief Risk Officer at any high impact regulated financial service provider / its holding company as a matter of routine. It is also likely that the Central Bank may wish to interview applicants for the position of Chair or CEO at any medium high impact regulated financial service provider as a matter of routine.
- 9.5 The Bank may decide, at its discretion, to call any PCF applicant for interview irrespective of the impact rating of the regulated financial service provider / holding company.
- 9.6 It is likely that the Central Bank will wish to interview a higher proportion of PCF applicants from a regulated financial service provider / its holding company which it assesses as being high or medium high risk probability than it would were a regulated financial service provider / its holding company to be assessed as medium low or low risk probability.
- 9.7 The Central Bank's Regulatory & Business Services Division will liaise with the supervisory division responsible for supervising the regulated financial service provider in coming to a decision as to who should be called to interview.

**9.8** The interview panel is likely to comprise of members of the Central Bank's Regulatory Business Services and Supervisory Directorates supplemented, as appropriate, with representatives from the Enforcement Directorate.

## 10. Offers of appointment to a PCF

- 10.1** Section 23 of the Act requires that a regulated financial service provider / holding company shall not appoint a person to perform a pre-approval controlled function unless the Central Bank has approved in writing the appointment of the person to perform the function.
- 10.2** The Central Bank is satisfied that a regulated financial service provider / holding company can inform a person of an intention to offer the person a position which is a PCF if it is made clear that the actual offer is subject to receiving the Central Bank's prior approval in writing of the appointment of the person to perform the function. The statement of intention made by the regulated financial service provider / holding company should include the following paragraph:

*"This shall not be taken to be an offer for the purposes of Section 23 of the Central Bank Reform Act 2010 unless and until approval is granted by the Central Bank of Ireland."*

As a practical matter, the inclusion of a statement of intention could have the same operational implications as making an offer subject to obtaining satisfactory references or a medical report, for example.

# 11. Persons performing PCFs on a temporary basis

## 11.1 Regulation 11 of the Regulations provides that:

*“A person (the ‘temporary officer’) shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the regulated financial service provider appointing a person to perform such pre-approval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Bank in advance of the person in question assuming such responsibility as a temporary officer.”*

Regulation 10 of the Holding Companies Regulations provides that:

*“A person (the ‘temporary officer’) shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the holding company appointing a person to perform such preapproval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Bank in advance of the person in question assuming such responsibility as a temporary officer.”*

**11.2** If the function enables the person to exercise a significant influence on the conduct of the affairs of the regulated financial service provider / holding company, even for a relatively short period, it is likely that the Bank will require the firm to progress with the full PCF application process.


**11.3** Where a regulated financial service provider / holding company wishes to extend for a further period an appointment to exercise a PCF in a temporary capacity, the regulated financial service provider must obtain the agreement in writing of the Central Bank. The regulated financial service provider / holding company should contact a member of the supervisory team assigned to that regulated financial service provider / holding company for that purpose in the first instance.

**11.4** If the Central Bank agrees in writing that a person may perform a PCF in a temporary capacity pursuant to Regulation on Temporary Officer, the regulated financial service provider / holding company must be satisfied on reasonable grounds, and have certified, that the person complies with the F&P Standards, and has agreed to comply with the F&P Standards.

**11.5** The Central Bank expects that Regulation on Temporary Officer, will only be used in the most exceptional of circumstances, e.g., in the event of the death of an individual performing a PCF. The Central Bank does not envisage that Regulation on Temporary Officer, could be invoked for circumstances which can, in the normal course, be planned for, e.g., maternity cover, cover for career breaks, etc.

## Part C

# Controlled Functions (including Pre-Approval Controlled Functions), the Related Certification Process and the Underlying Due Diligence Requirements



# 12. Certification

## Section A: The Certification Process

**12.1** Section 21 of the Act provides that a regulated financial service provider / holding company shall not permit a person to perform a CF unless:

- i. the regulated financial service provider / holding company is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to Section 50 of the Act;
- ii. a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider / holding company in accordance with Section 21, is in force in relation to the person; and
- iii. the person has agreed in writing to comply with any such standard.

**12.2** Therefore, a regulated financial service provider / holding company cannot appoint an individual to a CF, or allow them to continue in such a role, if it is not satisfied that the individual meets the above standards (or indeed any of the relevant codes, as applicable). The same prohibition applies to the regulated financial service provider / holding company if the individual in the CF role has not agreed in writing to comply the above standards (or any of the codes that may be applicable to them).

**12.3** Accordingly, regulated financial service providers and holding companies are required to document the following in respect of each individual in a CF role as part of the certification process:

- a) Confirmation that the regulated financial service providers/holding company is satisfied that the individual meets any standards of fitness and probity applicable to the CF role(s);
- b) Confirmation that the individual has agreed to abide by those standards;
- c) Identification of the CF role(s) held;
- d) An outline of the aspects of the affairs of the regulated financial service provider/holding company in which the individual will be involved in performing the CF role(s);



- e) Details of the steps taken by the regulated financial service providers/ holding company in forming the view that the individual meets any standards of fitness and probity applicable to the CF role(s); and
- f) Whether the role is outsourced to an unregulated entity.

**12.4** Where a person performing a CF does not comply, or continue to comply, with the F&P Standards and therefore cannot be certified, the regulated financial service provider / holding company cannot permit that person to perform, or continue to perform, the CF.

## Section B: Identification of CFs

**12.5** Section 21 of the Act applies to all regulated financial service providers and holding companies subject to the F&P Regime. Accordingly, the certification requirements will apply to all regulated financial service providers and holding companies and are relevant to all individuals in CF roles within them, with the exception of those individuals in CF roles to whom the exemptions from the F&P Standards apply.

**12.6** Regulated financial service providers and holding companies are required to maintain a register of individuals in CF roles and the specific CF role performed by them as defined by CF1-CF11. The Central Bank has previously noted<sup>14</sup> that good practices identified include a requirement to review the job description when a vacancy arises to determine if the role is CF or PCF in nature, and guidelines setting out the key principles and rationale for the general interpretation of the CFs across the regulated financial service provider/holding company. The Central Bank encourages the use of such practices in respect of all CF or PCF roles performed within the regulated financial service provider/holding company or outsourced to an unregulated Outsourced Service Provider.

**12.7** As set out in Section 5 of this guidance, where a CF role is outsourced to an 'unregulated entity', the regulated financial service provider remains responsible for its obligations under

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<sup>14</sup> <https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/news/dear-ceo-letter---thematic-inspections-of-compliance-with-obligations-under-the-fitness-and-probity-regime.pdf>

Section 21 of the Act, including the certification process in respect of each individual in the CF role.

- 12.8** Regulated financial service providers and holding companies are required to maintain an accurate and up-to-date register of individuals in CF roles, which is reflective of the Certification process as outlined in this section.
- 12.9** Regulated financial service providers and holding companies are not required to submit the register to the Central Bank unless requested to do so. However, the list of individuals performing CF roles must be made available to the Central Bank on request. Details in respect of the information to be submitted to the Central Bank with regard to Section 21 of the Act are set out in Section F below.
- 12.10** In accordance with Regulation 261(3) of the Solvency II Regulations, an insurance holding company must notify the Central Bank when a new person is appointed to manage the holding company. In this regard the Central Bank requires this notification to be provided no later than 5 working days from the date of the appointment of an individual to a CF role.

## **Section C: Forming the view that the person meets the standards**

- 12.11** The regulated financial service provider / holding company must undertake appropriate due diligence to satisfy itself that each person performing a CF is fit and proper to perform that CF and to be in a position to certify same.
- 12.12** Guidance on the specific due diligence to be undertaken and on how regulated financial service providers / holding companies should determine the standard of fitness and probity to a particular CF is provided in Section I below.

## **Section D: Frequency of completion of the certification process**

- 12.13** Section 21 is a continuing obligation on regulated financial service providers and holding companies. It is not a one off obligation discharged once due diligence has been undertaken

upon commencement of the regime, or in relation to an initial appointment to a CF or a PCF. Accordingly, Regulated financial service providers / holding companies are required to carry out the certification process in respect of all CFs:

- prior to appointment (or in the case of a PCF, prior to the submission of an IQ to the Central Bank);
- on an annual basis; and/or
- in respect of any new CF(s) assumed, in advance of appointment to same.

**12.14** In respect of individuals holding more than one CF role concurrently, the Central Bank envisages one single certification process that is reflective of all CF roles held, completed prior to appointment, on an annual basis and/or in respect of any new CF(s) assumed in advance of appointment to same.

**12.15** An entity which becomes a regulated financial service provider or holding company must certify individuals in CF roles within 5 days of becoming a regulated financial service provider /holding company or as otherwise agreed with the Central Bank. In this regard, it should be noted that the steps required to certify individuals in CF roles will be completed as part of the authorisation process.

## Section E: Confirmation of agreement to comply with the F&P Standards

**12.16** Section 21 of the Act provides that a regulated financial service provider / holding company shall not permit a person to perform a CF<sup>15</sup> unless the person has agreed to comply with the F&P Standards.

**12.17** Regulated financial service providers and holding companies must bring the F&P Standards to the attention of every person performing a CF on its behalf, and obtain a signed copy of the template agreement at **Appendix 2** for each such person.

**12.18** As part of the certification process, the regulated financial service provider / holding company is required to ask persons performing CFs to confirm that they are aware of the F&P

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<sup>15</sup> Please note a PCF is a subset of CF.

Standards and agree to continue to comply with those F&P Standards at least on an annual basis.

## Section F: Submission of data in relation to certification to the Central Bank

**12.19** It is not the Central Bank's expectation that regulated financial service providers and holding companies provide individual certificates to each CF, nor is it intended that an individual confirmation of the completion of the certification process in respect of each CF is submitted to the Central Bank. Further details regarding the retention and submission of data in relation to certification are set out below.

**12.20** As part of the Annual PCF Confirmation process regulated financial service provider and holding companies are required to:

- (i) submit confirmation of the completion of the certification process for each PCF role holder to the Central Bank on an annual basis via the Annual PCF Confirmation Return; and
- (ii) confirm the completion of the overall certification process in respect of all other CF role holders on an annual basis via the Annual Overall Certification Process Return.

**12.21** While it is expected that the majority of regulated financial service providers / holding companies should be in a position to confirm the completion of the overall certification process annually, the Central Bank notes that there may be circumstances whereby a regulated financial service provider / holding company cannot confirm same (for example, where an individual in a CF role has yet to complete the CPD hours but is scheduled to do so within a reasonable timeframe). In such circumstances, regulated financial service providers / holding companies should assess the materiality of situation, and where it is determined that it will not impact on the certification of the individual, regulated financial service providers / holding companies are required to record any such instance and the reason for same, as well as an appropriate timeframe within which it will be remedied, and to confirm that the overall certification process has otherwise been completed. Information regarding such instances must be made available to Central Bank on request. Where a circumstance is considered material,

regulated financial services providers or/ holding companies should adhere to Section 18 as appropriate.

## Section G: Retention of data in relation to certification

**12.22** Regulated financial service providers and holding companies are required to maintain all information collected in compliance with its obligations under Section 21 of the Act for the duration during which the person performs the CF role. This includes the documentation of, and records in relation to, the certification of each CF, and the due diligence and the agreements to comply with the F&P Standards.

**12.23** Regulated financial service providers and holding companies are required to maintain the information collected in compliance with Section 21 of the Act for a minimum of 6 years after that individual has ceased to perform the CF on behalf of the firm.

**12.24** The Central Bank may require to see any such records or due diligence either in the context of an investigation of a regulated financial service provider's / holding company's compliance with Section 21 of the Act, or an investigation in relation to an individual's fitness and probity to perform a CF role.

**12.25** Regulated financial service providers / holding companies should have regard to their obligations under General Data Protection Regulation<sup>16</sup> in holding the information referred to in this Section including ensuring that the information is held securely and in an appropriate manner.

## Section H: Responsibility for and compliance with the certification process

**12.26** Regulated financial service providers and holding companies should implement procedures to manage the regulated financial service provider's/holding company's compliance obligations with Section 21 of the Act.

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<sup>16</sup> REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

**12.27** In this regard, the Central Bank recognises that regulated financial service providers / holding companies may wish to incorporate the certification process within existing processes and, as such, the Central Bank has not prescribed a format for certification. For example, some regulated financial service providers / holding companies may wish to incorporate the certification process as part of their ongoing performance monitoring.

**12.28** The Central Bank will engage in periodic follow-up with regulated financial service providers / holding companies regarding the appropriateness of and compliance with the certification process, through ongoing supervisory engagement and/or thematic inspections.

**12.29** Further, there should be one individual within a regulated financial service provider / holding company with overall responsibility for certification. Accordingly, for those regulated financial service providers subject to the Senior Executive Accountability Regime (SEAR), an individual must be assigned PR 2 '*Responsibility for the firm's performance of its obligations under the Fitness and Probity Regime under Part 3 of the 2010 Act*'.<sup>17</sup> Whilst the day-to-day operation and management may be delegated to the relevant department(s), one individual must be assigned PR 2. For those regulated financial service providers / holding companies outside the scope of the SEAR, in line with the existing approach to due diligence for PCFs and the Annual PCF Confirmation, the Central Bank considers the CEO or equivalent to be responsible and accountable for certification.

## **Section I: Due diligence underlying the certification process: What standard of fitness and probity is appropriate to the particular CF?**

**12.30** In complying with Section 21 of the Act, the Central Bank expects regulated financial service providers and holding companies to consider the responsibilities of the specific function and to determine the specific competencies, and level of

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<sup>17</sup> Please refer to the Central Bank Guidance on the Individual Accountability Framework

probity that should be expected of a person performing that specific CF in the regulated financial service provider / holding company.

**12.31** All due diligence is applicable to the CF population to which the certification requirement applies. All due diligence must be performed prior to appointment and on an ongoing basis, with limited exceptions relevant prior to appointment only (e.g. reference checks, interview or application, or record of previous experience) or which are applicable only in certain circumstances. The majority of due diligence must be assessed by the regulated financial service provider / holding company itself in the case of PCFs and CF1-CF2. While this guidance sets out the Central Bank's expectations in relation to due diligence, it does not purport to address every possible check and, as such, firms should apply an approach consistent with the nature, scale and complexity of the firm and the roles therein.

**12.32** When considering compliance with Section 21 of the Act, the Central Bank will assess both the regulated financial service provider's / holding company's analysis of what specific competencies and level of probity are required for the performance of a relevant function or functions, and the steps that the regulated financial service provider / holding company has taken to satisfy itself and certify that the person performing the relevant CF is so competent, and has the requisite level of probity to be fit and proper to perform that CF.

**12.33** Matters such as scale, complexity, risk profile, organisation structure, target market and so on are unlikely to be the same within any two organisations. Different functions will entail different responsibilities and different levels of knowledge and expertise. For this reason, this guidance cannot point to conclusive knowledge or expertise that is required for a particular function. The regulated financial service provider / holding company, using its own unique knowledge of the CF, and taking into account all relevant matters (including those listed above) can make the assessment as to what makes a person fit and proper to perform, or continue to perform, the specific CF in that regulated financial service provider / holding company. This guidance sets out due diligence that the Central Bank expects would be undertaken by regulated financial service providers /

holding companies in particular cases when assessing compliance with the F&P Standards. In all cases, it is for the regulated financial service provider / holding company itself to assess the information and exercise judgment to determine whether a person is fit and proper to carry out a particular CF.

**12.34** Irrespective of the title of the function, the regulated financial service provider / holding company should consider the activities constituting the function in order to assess the type of CF, and the specific competencies and level of probity that should apply to that CF.

**12.35** Where a person performs more than one CF, and more than one set of specific competencies and level of probity applies in respect of the exercise of those multiple CFs, the higher standard is the relevant standard for the purposes of due diligence.

**12.36** If a regulated financial service provider / holding company has insufficient information available to enable it to conclude on reasonable grounds that the F&P Standards are being complied with, particularly if due to lack of co-operation by the person, the F&P Standards may not be met. The regulated financial service provider / holding company should bring this to the attention of the person and allow them an opportunity to provide the required information.



## 13. Fitness - determining the standard of fitness that is appropriate to the particular CF

- 13.1** The regulated financial service provider / holding company should be well placed to determine the particular demands of a CF, i.e. what qualifications, experience, knowledge and other relevant factors will make a person fit for the performance of that function.
- 13.2** The requirements of the CF may also be dictated by the roles undertaken by persons in other CFs in the organisation. For example, where a regulated financial service provider employs both Head of Anti-Money Laundering and Counter Terrorist Financing Compliance and a Head of Compliance, while the compliance officer will be expected to have a general understanding of anti-money laundering legislation, he or she may not be required to have the in-depth knowledge required of a Head of Anti-Money Laundering and Counter Terrorist Financing Compliance.
- 13.3** It is recognised that an individual considered fit for a particular CF within a regulated financial service provider / holding company may not be considered fit for another CF with different responsibilities or for a similar CF within another institution, and conversely, an individual considered unfit for a particular CF in a particular regulated financial service provider / holding company may be considered fit in different circumstances, e.g. in a different CF.

## 14. Fitness - due diligence to be undertaken by a regulated financial service provider / holding company to assess a person's fitness to perform a CF(s)

**14.1** Section 3 of the F&P Standards relates to fitness and requires a person to be competent and capable. Section 3.1 provides that a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.

**14.2** The Central Bank expects regulated financial service providers / holding companies to undertake the following due diligence when assessing a person's fitness to perform, or continue to perform, a particular CF:

- i) Evidence of compliance with the MCC, where relevant: where a person is performing or proposes to perform a CF(s) the performance of which is subject to the MCC that person can be taken to have the appropriate qualifications or competence to conduct that CF where compliant with the MCC. The regulated financial service provider / holding company should satisfy itself that the person has the recognised qualification(s) by obtaining a copy of the certificate/transcript/records evidencing the qualification. The records to be retained in relation to grandfathered persons are set out in the MCC. The MCC also contains requirements concerning the monitoring of compliance with ongoing continuing professional development (CPD) requirements.
- ii) Evidence of professional qualification(s): where the CF requires a specific professional qualification, the regulated financial service provider / holding company should satisfy itself that the person has that specific qualification(s) (e.g., actuary, accountant, lawyer, etc.) by obtaining a copy of the certificate/transcript/record evidencing the qualification.

Where the person is required to be registered with a professional body, the regulated financial service provider / holding company should require and maintain a copy of the person's licence or certificate to practise (howsoever described) and where that licence/certificate is renewed on an annual (or more or less frequent) basis should require a copy of the most recent renewal.

The Central Bank expects regulated financial service providers / holding companies to obtain copies of qualifications only where the regulated financial service provider / holding company has determined that those qualifications are relevant to the exercise of the CF, e.g., where a job specification requires that a person has five years post-qualification experience as a lawyer, for example, the Central Bank expects the regulated financial service provider / holding company to obtain evidence of the professional legal qualification.

- iii) Evidence of CPD, where relevant: where maintenance of a qualification is dependent on completing continuing professional development (CPD), the regulated financial service provider / holding company should satisfy itself that the person is compliant with the particular CPD requirements.

Where an individual must maintain up-to-date CPD in order to renew his/her practising certificate, evidence of the renewal of that practising certification will be regarded as sufficient to evidence CPD for the purposes of these F&P Standards.

- iv) Record of interview and application<sup>18</sup>: where the regulated financial service provider / holding company uses the interview process to assess competence and capability (such as skills and experience) it should maintain written notes of the interview to evidence this. Similarly, where a written application was submitted for the particular CF this should be maintained on file.

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<sup>18</sup> [https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/news/dear-ceo-letter---thematic-inspections-of-compliance-with-obligations-under-the-fitness-and-probity-regime.pdf?sfvrsn=4737881d\\_4](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/news/dear-ceo-letter---thematic-inspections-of-compliance-with-obligations-under-the-fitness-and-probity-regime.pdf?sfvrsn=4737881d_4)

- v) **References:** The Central Bank expects regulated financial service providers / holding companies to make all reasonable efforts to obtain references from former employers or other relevant persons. The Central Bank expects regulated financial service provider / holding companies to maintain evidence of this correspondence.

Where the regulated financial service provider / holding company is unable to obtain a reference(s) for whatever reason, it must record the steps which it has taken to obtain the reference(s). The regulated financial service provider / holding company must also record how, in the absence of the reference, it has satisfied itself that the person is competent to perform the CF.

- vi) **Record of previous experience:** where a person demonstrates skills and experience gained through a previous role (for example, through the applicant's CV, or the institution's interview process), the regulated financial service provider / holding company should assess and document how the person's performance in that role equips that person with the expertise and experience necessary for the performance of the current function.
- vii) **Record of experience gained outside the State:** where some or all of the experience gained is outside of the State, the regulated financial service provider / holding company should consider the extent to which the person can demonstrate competency that relates specifically to the function within the State, i.e. does the person have a clear full understanding of the regulatory and legal environment appropriate to the relevant function? The regulated financial service provider / holding company should maintain a record of this consideration.
- viii) **Concurrent Responsibilities:**
  - (a) **Directorships:** in relation to persons performing CFs designated as PCF, CF1 or CF2 in the Regulations, the regulated financial service provider / holding company should require the person to confirm whether or not s/he has any directorships. Where the person

performing the CF or PCF has other directorships, the regulated financial service provider / holding company should seek confirmation from that person that the performance of his/her responsibilities in the other directorships will not adversely impact on his or her ability to perform the CF or the PCF from a timing perspective or otherwise, prior to appointment and as part of the certification process.

- (b)** Other: the regulated financial service provider / holding company should ensure that the person performing the CF does not have other employment which interferes with, or create conflicts in relation to, the exercise of the CF. The regulated financial service provider / holding company should require the person to self-certify in writing that the person is capable of conducting the relevant function, including that the person has adequate time to perform those functions having regard to those other potential concurrent responsibilities, prior to appointment and as part of the certification process.

## 15. Probity – determining the standard of probity

- 15.1** Individuals proposed for CFs or PCFs must be honest, diligent and independent-minded and must act ethically and with integrity.
- 15.2** 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 a lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF.
- 15.3** Probity may also include individuals ensuring that they act without conflicts of interest.

## 16. Probity - due diligence to be undertaken by a regulated financial service provider / holding company to assess a person's probity to perform a CF(s)

**16.1** Sections 4.1 and 5.2 of the F&P Standards relate to the assessment of probity. Much of an assessment of a person's character, in terms of their probity, can only be undertaken in the case of exceptions, i.e., it is only when evidence is available to suggest that a person might not comply with the standard of probity required of him/her that a regulated financial service / holding company provider must investigate thoroughly. Prior to there being any indication of a failure to meet the F&P Standards, there is a limit to the 'due diligence' that an employer, or a prospective employer, can reasonably carry out.

**16.2** In accordance with Section 21 of the Act, regulated financial service providers / holding companies are required to undertake the appropriate due diligence when assessing a person's probity, as follows:

- i) seek and obtain signed written confirmation from the person performing or proposing to perform a CF as to whether or not any of the circumstances set out in Section 4.1 and Section 5.2 inclusive of the F&P Standards, apply to that person.
- ii) in relation to Section 4.1(c) of the F&P Standards, refer to the Central Bank's website and those of other regulatory authorities (where available) to confirm for their own records that the person has not been the subject of sanction, or other regulatory action;
- iii) in relation to 4(1)(f) of the F&P Standards, should check the Companies Registration Office records for restrictions or disqualifications from acting as a Company Director;

- iv) in relation to Section 4.1(j) of the F&P Standards, seek confirmation from those performing CFs as to whether, to the best of their knowledge, the circumstances set out in Section 4.1(j) have arisen in relation to matters which may have occurred during the time in which that person held that position of responsibility or influence;
- v) in relation to Section 5.2(b) of the F&P Standards, check against publicly available sources whether a judgment debt has been registered against a person. Publicly available resources may include, for example, Experian All Ireland Gazette or Stubbs Gazette. Where the person has lived outside the State for more than six months in the previous five years, the regulated financial service provider / holding company should request that the person provide a check from a publicly available source in relation to judgment debts from that other jurisdiction(s).

**16.3** Where it is confirmed that one or more of the circumstances set out in Section 4.1 or Section 5.2 apply:

- i) the person must be in a position to demonstrate that his or her ability to perform the CF (s) is not adversely affected to a material degree by that matter(s).
- ii) The regulated financial service provider / holding company should require from the person concerned to submit to the regulated financial service provider / holding company underlying documents relevant to the matter (for example, a final decision or report and/or key correspondence). The regulated financial service provider / holding company should inform the person concerned that failure to provide information requested by the regulated financial service provider / holding company and which is relevant to the matter may result in the regulated financial service provider / holding company being unable to satisfy itself, and therefore certify, that the person complies with, or continues to comply with, the F&P Standards.
- iii) The regulated financial service provider / holding company should make an assessment based on all of the information received as to whether the matter is material to the



performance of the CF. Where it is decided that it is not material, and the regulated financial service provider / holding company has satisfied itself that the person complies with, or continues to comply with, the F&P Standards, the matter rests here. The regulated financial service provider should document this assessment.

- iv) If it is considered that the matter is material, the regulated financial service provider / holding company should make all reasonable enquiries arising on foot of the information provided by the person, such as, where relevant, contacting third parties for further information, e.g., former employers, regulatory authorities, etc.
- v) A regulated financial service provider / holding company is not required to remove or suspend a person from acting in a CF solely on the basis that one or more of the matters listed in Section 4.1 or Section 5.2 of the F&P Standards may have occurred.
- vi) For example, in 4.1 (c) of the F&P Standards, the fact that a person has been the subject of disciplinary proceedings will not automatically mean that the person fails to meet the level of probity required for the (continued) performance of the CF. In assessing the impact of the proceedings on that person's probity, issues for consideration include the subject matter of the proceedings, the circumstances surrounding the disciplinary proceedings, the length of time passed since the proceedings, the explanation offered by the person and the relevance of the proceedings to the proposed role.
- vii) It is for the person who is subject to Sections 4.1 and 5.2 of the F&P Standards to demonstrate that his or her ability to perform, or continue to perform, the relevant function is not adversely affected to a material degree by any of the factors in Section 4.1, or Section 5.2.
- viii) The question of what is material to a particular CF, however, is a matter for the regulated financial service provider / holding company. Where a matter may be relevant (for example, where the disciplinary proceedings are in respect of a serious matter), the regulated financial service provider /

holding company may consider it in conjunction with other relevant matters in assessing whether the person is fit and proper to perform the current or proposed function including:

- a) the seriousness of, and surrounding circumstances of the particular set of facts;
  - b) the relevance of those to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by that person;
  - c) repetition and duration of the behaviour;
  - d) the passage of time since the matter under consideration; and
  - e) evidence of rehabilitation.
- ix) When assessing a person's fitness and probity, a regulated financial service provider / holding company need not make enquiries about a matter that is unlikely to be material. The regulated financial service provider / holding company should document why s/he considers that the issue is not likely to be material.
- x) A series of matters used to assess fitness and probity may be significant when taken together, even if each matter in isolation might not be significant. The cumulative effect of such matters might determine whether the regulated person or approved person is fit and proper to perform, or continue to perform, the CF.
- xi) Where the regulated financial service provider / holding company has made reasonable efforts to contact third parties and has received no response or a response which is insufficiently detailed to allow the regulated financial service provider / holding company to make a decision, the regulated financial service provider / holding company should revert to the person concerned in an effort to identify other possible avenues of inquiry.
- xii) If the regulated financial service provider / holding company is unable to obtain information which is sufficiently detailed to allow the regulated financial service provider / holding company to make a decision, the regulated financial service provider / holding company may therefore, be unable to satisfy

itself, and therefore certify, that the person complies with the F&P Standards.

**16.4** For illustration purposes, there is a table at Appendix 1 which set out examples of due diligence required.

## 17. Due diligence for criminal offences

- 17.1** Pursuant to Section 4.1(g) of the F&P Standards, a conviction for a criminal offence will not automatically mean that the person fails to meet the standard of probity. The regulated financial service provider / holding company must ensure that it is satisfied, and therefore can certify, that a person is fit and proper having regard to any conviction for an offence, “... *which could be relevant to that person’s ability to perform the relevant function*”.
- 17.2** Convictions which could be considered relevant in this regard include, but are not limited to, offences involving dishonesty, fraud, financial crime or offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking or any other financial service, insolvency, consumer credit, insurance, consumer protection, market manipulation, insider dealing or revenue law. The offences may be relevant whether the person was convicted in the State or in some other jurisdiction.
- 17.3** Convictions which may not be relevant in particular circumstances might be road traffic offences where a custodial sentence was not imposed, or minor public order offences.
- 17.4** In assessing the impact of a conviction on a person’s probity, issues for consideration include the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person, the relevance of the offence to the proposed role and any evidence of the individual’s rehabilitation.

## 18. Material changes or concerns regarding fitness and/or probity

- 18.1** In addition to the requirement for regulated financial service providers and holding companies to obtain confirmation that a CF has agreed to comply with the F&P Standards under Section 21 of the Act, the regulated financial service providers and holding companies should require individuals performing CF roles to notify the regulated financial service provider / holding company of any material changes in respect of initial due diligence carried out. Suggested wording in this regard is included in the agreement to comply with the F&P Standards at **Appendix 2**.
- 18.2** Further, the Central Bank expects that regulated financial service providers / holding companies carry out an audit of persons performing CFs and PCFs on an annual basis by asking persons in CFs and PCFs to confirm whether they are aware of any material developments in relation to their compliance with the F&P Standards of which the regulated financial service provider / holding company ought to be aware.
- 18.3** Where a regulated financial service provider / holding company becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF, the Central Bank expects the regulated financial service provider / holding company to investigate such concerns and take action as appropriate without delay.
- 18.4** The regulated financial service provider / holding company should notify the Central Bank of any action referred to in Section 21.3 without delay.
- 18.5** While there is no exhaustive list of the types of action that must be notified to the Central Bank these would include, for example, the issuing of a formal written warning, suspending/dismissing a person or reducing/recovering some of their remuneration as a result of issues relating to fitness and/or probity.

**18.6** Such action may necessitate the removal (where such an instance occurs mid-way through the certification cycle) or non-renewal of the person's status as certified (at the time of annual review).

## Part D

# Minimum Competency Code and Minimum Competency Regulations



## 19. Minimum Competency Code and Minimum Competency Regulations

- 19.1** The MCC sets out statutory minimum professional standards for staff of financial service providers when they are dealing with consumers in relation to certain retail financial products.
- 19.2** The MCC (imposing standards on persons) is issued as a set of standards pursuant to Section 50 of the Act. The MCR (imposing obligations on regulated firms) are issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013.
- 19.3** The MCC and the MCR are closely linked with the F&P Standards, in that the MCC specifies certain minimum competencies that persons falling within its scope must comply with when performing certain controlled functions. Accordingly, where a person is non-compliant with their obligations under the MCC and the MCR s/he is also likely to be non-compliant with the F&P Standards.



## Part E

# Administrative Sanctions under Part IIIC of the Central Bank Act 1942



## 20. Administrative Sanctions under Part IIIC of the Central Bank Act 1942

- 20.1** Breach of Section 21 of the Central Bank Reform Act 2010, may result in the imposition of sanctions on the regulated financial service provider / holding company pursuant to Part IIIC of the Central Bank Act 1942.
- 20.2** A decision by the Central Bank to impose sanctions under Part IIIC of the Central Bank Act 1942 for breach of Section 21 of the Act may be appealed to the IFSAT.

# Appendices



# APPENDIX 1

Examples of due diligence to be undertaken by regulated financial service providers / holding companies for assessing an individual's compliance with the F&P Standards:

Standard	Supporting documents obtained from a third party	Frequency	PCF	CF1-CF2	CF3-CF11
Competent and Capable	Provision of a copy of the relevant transcripts	Initial (and ongoing if applicable)	Y	Y	Y
	Professional Body Check	Initial (and ongoing if subject to renewal)	Y	Y	Y
	Employer's References	Initial	Y	Y	Y
	Minimum Competency Code and Minimum Competency Regulations 2017	Initial and ongoing	I/A	I/A	SC/Y
	Conflicts	Initial and ongoing	SC	SC	SC
Honest, ethical and with Integrity	Garda Check/Convictions	Initial and ongoing	SC	SC	SC
	Regulator Check	Initial and ongoing	Y	Y	SC
Financial Soundness	Judgements Search	Initial and ongoing	Y	Y	SC

Y = Checks undertaken by the regulated financial service provider or holding company

SC = Self Certify

I/A = If Applicable

## APPENDIX 2

Agreement of employee pursuant to section 21 of the Central Bank Reform Act 2010 (the Act)

Section 21 of the Act provides as follows:

- “(1) A regulated financial service provider shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider in accordance with this section, is in force in relation to the person.*
- (2) A holding company shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the holding company in accordance with this section, is in force in relation to the person.*
- (3) A certificate may be given for the purposes of subsection (1) or (2) only if—*
- (a) the regulated financial service provider or holding company giving the certificate is satisfied on reasonable grounds that the person concerned complies with any standard of fitness and probity in a code issued under section 50, and*
  - (b) the person has agreed in writing to comply with any such standard.”*

I confirm that I have read the code setting out Standards of Fitness and Probity and the Guidance issued by the Central Bank of Ireland pursuant to Section 50 of the Act (the “Standards”) and I confirm that I comply with those Standards.

I agree to comply with the Standards.

I agree to notify the regulated financial service provider / holding company, as applicable, without delay if for any reason I no longer comply with the Standards.

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Employee Signature

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Date

## APPENDIX 3

<b>Pre-Approval Controlled functions (PCFs) for Regulated Financial Service Providers other than Credit Unions</b>	
<b>General</b>	
PCF-1	Executive director
PCF-2A	Non-executive director
PCF-2B	Independent non-executive director
PCF-3	Chair of the board
PCF-4	Chair of the audit committee
PCF-5	Chair of the risk committee
PCF-6	Chair of the remuneration committee
PCF-7	Chair of the nomination committee
PCF-8	Chief executive
PCF-9	Member of partnership
PCF-10	Sole Trader
PCF-11	Head of Finance
PCF-12	Head of Compliance
PCF-13	Head of Internal Audit
PCF-14	Chief Risk Officer
PCF-16	Branch Manager of branches outside Ireland but only where the business arising from the branch amounts to 5% or more of, as applicable, the assets or revenues or gross written premiums of the regulated financial service provider
PCF-17	Head of Retail Sales
PCF-42	Chief Operating Officer
PCF-49	Chief Information Officer
PCF-52	Head of Anti-Money Laundering and Counter Terrorist Financing Compliance
<b>Insurance</b>	
PCF-18	Head of Underwriting
PCF-19	Head of Investment

PCF-43	Head of Claims
PCF-48	Head of Actuarial Function
PCF-54	Head of Material Business Line where such a material business line satisfies either of the following quantitative criteria: i. has gross total technical provisions (whether positive or negative) equal to or in excess of €10 billion; or ii. accounts for 25 per cent or more of the insurance undertaking's gross earned premium, if that gross earned premium is above €1 billion per annum
<b>Banking</b>	
PCF-21	Head of Treasury
PCF-22	Head of Credit
PCF-23	Head of Asset and Liability Management
PCF-50	Head of Material Business Line where such a material business line satisfies either of the following quantitative criteria: i. has gross total assets equal to or in excess of €10 billion; or ii. accounts for 10 per cent or more of the firm's gross revenue
PCF-51	Head of Market Risk in credit institutions which exceed either of the following metrics <sup>19</sup> : i. €500m of market risk (including Credit Valuation Adjustment ) Risk Weighted Assets; or ii. €100bn of notional derivatives traded
PCF-53	Head of Client Asset Oversight
<b>Stock Exchange</b>	
PCF-24	Head of Traded Markets
PCF-25	Head of International Primary Markets
PCF-26	Head of Regulation
PCF-27	Head of Operations
<b>Investment firms</b>	
PCF-28	Branch Managers within the State
PCF-29	Head of Trading

<sup>19</sup> As reported in quarterly COREP and FINREP regulatory reporting.

PCF-30	Chief Investment Officer
PCF-45	Head of Client Asset Oversight
PCF-55	Head of Material Business Line where such a material business line satisfies either of the following quantitative criteria: a. has gross total assets equal to or in excess of €5 billion; or b. accounts for 10 per cent or more of the investment firm's gross revenue
<b>Investment Intermediaries / Collective Investment Schemes</b>	
PCF-32	Branch Managers within the State
PCF-33	Head of Transfer Agency
PCF-34	Head of Accounting (Valuations)
PCF-35	Head of Trustee Services
PCF-36	Head of Custody Services
<b>UCITS Self-Managed Investment Company / Management Company</b>	
PCF-37	Head of Transfer Agency
PCF-38	Head of Accounting Valuations
PCF-39A	Designated Person with responsibility for Capital and Financial Management
PCF-39B	Designated Person with responsibility for Operational Risk Management
PCF-39C	Designated Person with responsibility for Fund Risk Management
PCF-39D	Designated Person with responsibility for Investment Management
PCF-39E	Designated Person with responsibility for Distribution
PCF-39F	Designated Person with responsibility for Regulatory Compliance
PCF-46	Head of Investor Money Oversight
<b>Payment Institutions / Electronic Money Institutions / Account Information Service Providers / Small Electronic Money Institutions</b>	
PCF-40	Branch Managers within the State



PCF-47	Head of Credit
<b>Financial Service Providers established outside Ireland</b>	
PCF-41	Manager of a branch in Ireland of a regulated financial service provider established in a country that is not an EEA country
<b>Pre-Approval Controlled Functions for Holding Companies</b>	
HCPCF-1	Chair of the board
HCPCF-2	Director

## APPENDIX 4

<b>Controlled Functions (CFs) for regulated financial service providers other than credit unions</b>	
CF-1	Ability to exercise a significant influence on the conduct of the affairs of a regulated financial service provider
CF-2	Ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations
CF-3	Giving of advice to a customer of the regulated financial service provider
CF-4	Arranging a financial service for a customer of the regulated financial service provider
CF-5	Assisting a customer in the making of a claim under a contract of insurance or reinsurance
CF-6	Determining the outcome of a claim arising under a contract of insurance or reinsurance
CF-7	Management or supervision of those persons undertaking CF-3 to CF-6 roles
CF-8	Adjudicating on any complaint communicated to a regulated financial service provider by a customer
CF-9	Insurance and reinsurance intermediaries who direct and manage the undertaking or are directly involved in insurance or reinsurance mediation
CF-10	Dealing in or having control over property of a customer of the regulated financial service provider
CF-11	Dealing in or with property on behalf of the regulated financial service provider
<b>Controlled Functions for holding companies</b>	
HCCF-1	Ability to exercise a significant influence on the conduct of the affairs of a holding company
HCCF-2	Ensuring, controlling or monitoring compliance by a holding company with its relevant obligations

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Eurosystem