



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Consultation Paper 153

Enhanced governance, performance and accountability in financial services

Regulation and Guidance under the Central Bank
(Individual Accountability Framework) Act 2023

March 2023

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Executive Summary

The Central Bank (Individual Accountability Framework) Act 2023 (the Act) was signed into law on 9 March 2023. This Consultation Paper sets out how the Central Bank of Ireland proposes to implement the new Individual Accountability Framework (IAF or the framework).

Objectives

At its core, financial regulation is about supporting positive outcomes and, ultimately, the economic well-being of the community as a whole.

Firms need to be effectively managed and organised, individuals need to be clear what they are responsible for, and both need to be accountable if they fall short of expected standards. It is essential to be clear on roles and responsibilities in firms, particularly large and complex institutions where things can and do go wrong through systems error and individual conduct.

In an increasingly technological and rapidly changing world, the need for effective governance underpinned by strong ethical culture and robust systems of delivery, which incorporate trust components, is essential.

Sound governance

Most firms in the regulated financial services sector aspire to high standards. The new framework will underpin sound governance across the financial sector. It will achieve this by setting out clearly the good practices expected of well-run firms and responsible role-holders.

It sets expectations for firms in relation to the clarity and coherence of their governance arrangements, and for individuals carrying out key roles as to the standards of conduct that they are expected to meet.

Proportionality, predictability, reasonable expectations

Our approach to implementation of the new framework is based on the principles of proportionality, predictability and reasonable expectations.

The framework seeks to align with the way that firms have chosen to structure themselves, while ensuring that such structures have appropriate levels of governance and clarity.

Proportionality also demands that the application of the framework to smaller, less complex, and/or less risky firms reflects that context.

The new framework provides for a range of standards that must be met by firms and individuals. We consider these to be the appropriate standards that should underpin the provision of financial services. We also believe they are the standards to which most firms and individuals already hold themselves.

Throughout, the concept of reasonable expectations is embedded. This includes, in particular, the principle that where reasonable steps have been taken to achieve an outcome, that will be sufficient to discharge the relevant obligation.

Our draft IAF Guidance seeks to provide helpful explanation as to how the question of reasonable steps should be considered in different circumstances.

Implementation

Our proposed approach to implementation seeks to balance the need to maintain momentum by introducing the framework while allowing appropriate time for in-scope firms to ensure a high quality and consistent implementation. Accordingly the following implementation timeline is proposed:

- Conduct Standards including accountability of senior individuals for running their parts of the business effectively to apply from 31 December 2023;

- Fitness & Probity Regime – Certification and inclusion of Holding Companies to apply from 31 December 2023.
- Regulations prescribing responsibilities of different roles and requirements on firms to clearly set out allocation of those responsibilities and decision making to apply to in-scope firms from 1 July 2024.

Supervision

The framework is also important in providing support for the further evolution of our supervisory approach.

Where firms and individuals are achieving the mature levels of governance and accountability set out in the legislation, that will facilitate an approach to supervision more focused on outcomes and the overall performance of the firm.

This is reflected in our approach to the supervision of aspects of the framework itself. We are proposing to limit the extent of mandatory periodic reporting under the framework to the Central Bank. We will require instead that firms take responsibility for relevant documentation and make it available to us on request.

Enforcement

The IAF will be underpinned by powers of enforcement, which we use in a targeted, proportionate way to support our supervisory strategies. It is important to stress, however, that the IAF is primarily aimed at supporting positive outcomes and preventing negative ones. As has been the case in other jurisdictions, we do not expect the main benefits of the new framework to be enforcement-driven.

Rather they will derive from the clarity and coherence of the expectations set out in the framework and their alignment with existing sound practices in well run firms.

The IAF is in keeping with our aim of ensuring that the financial sector can provide services that households, firms and individuals require, both in good times and in bad, and that it does so fairly.

Costs, benefits, and review

For any new regulation it is important that the costs and benefits are considered and that the benefits outweigh the costs. In Chapter 2 of this Consultation Paper we set out and weigh the costs and benefits associated with the new framework and our explanation as to why the benefits outweigh the costs. We note that how we implement the new framework, as described in this Consultation Paper, is important in ensuring that this outcome is achieved.

It is good practice that significant new frameworks, such as the IAF, are reviewed after implementation to ensure that they are working as they should. Accordingly we propose to carry out a review of the framework's operation three years after implementation.

Listening to your views

In line with our Strategy¹, we are an open and engaged regulator and wish to hear stakeholders' views on our proposals. Through consultation with stakeholders, we aim to ensure that the IAF is clear, effective and pragmatic, and to facilitate a smooth transition to its implementation.

Accordingly, we invite feedback on the consultation paper from interested stakeholders, including the public, regulated firms, staff, representative bodies, consultancies, and service providers. Stakeholders' views are sought on our proposed approach as set out in the Consultation Paper itself, and on the draft Regulations and the draft IAF Guidance, which are attached as Appendices.

When submitting a response via email, the Central Bank asks that respondents include the following subject heading in their email

¹ https://www.centralbank.ie/docs/default-source/publications/corporate-reports/strategic-plan/our-strategy/central-bank-of-ireland-our-strategy.pdf?sfvrsn=3a55921d_4

“Consultation Paper on the Individual Accountability Framework” and address their response to IAFconsultation@centralbank.ie.

The consultation will remain open for 3 months from 13 March 2023 to 13 June 2023.

It is the policy of the Central Bank to publish all responses to its consultations on our website. Accordingly, commercially confidential information should not be included in consultation responses. Information deemed potentially libellous or defamatory will not be published. The Central Bank will accept no liability in respect of any information provided, which is subsequently released, or in respect of any consequential damage suffered as a result.

Chapter 1: Introduction

Background and objectives

On 9 March 2023, the Central Bank (Individual Accountability Framework) Act 2023 (the Act) was enacted. This Act provides for the introduction of the Individual Accountability Framework (IAF or the framework), which is designed to improve governance, performance, and accountability in firms providing financial services to individuals and businesses.

It does this by establishing a framework of enhanced clarity as to who is responsible for what within firms.

The Act empowers the Central Bank to issue Regulations requiring that key tasks and responsibilities be assigned. And it clarifies the standards to be met by individuals having these responsibilities, with a particular focus on senior executives.

Poor governance, lack of consumer-focused cultures and weak structures of accountability within firms were among the issues we set out in our Report on the *Behaviour and Culture of the Irish Retail Banks*,² in which we proposed the IAF to address the serious issues we had identified in the financial sector.

The objective of the Act is to achieve better outcomes: for consumers and users of financial services and for the ongoing functioning of the economy. It does this based on supporting firms in being well run and having sustainable business models.

The framework is built on the twin pillars of proportionality and reasonable expectations. Our approach to implementation also embeds these features.

² <https://www.centralbank.ie/docs/default-source/publications/corporate-reports/behaviour-and-culture-of-the-irish-retail-banks.pdf?sfvrsn=2/>

The Irish financial system serves not only the Irish but also the European and global economies. The new framework, implemented in a high quality manner, should support the Irish financial system in further fulfilling this role while ensuring further protection for consumers and investors.

The Act gives responsibility for implementation of the framework to the Central Bank. We are required to introduce regulations and guidance to complete the overall framework. This Consultation Paper sets out and seeks stakeholders' views on these draft Regulations and the draft IAF Guidance.

Central Bank Approach

We have developed the draft Regulations and the draft IAF Guidance within the spirit and constraints of the legislation. In doing so, we have been guided both by our Strategy³ and by our regulatory philosophy.

These set out our overall approach to regulation, which we believe must be forward looking, connected, proportionate, predictable, transparent and agile.

We aim for a financial system which has the trust and confidence of those whom it serves. We are focused on creating the regulatory context in which customers' needs and those of the economy are served by effective competition amongst firms, and the potential benefits of innovation for society can be realised, while the risks are effectively managed.

Such a financial system will not only be positioned to support the interests of consumers and needs of the economy in Ireland, but also

³ https://www.centralbank.ie/docs/default-source/publications/corporate-reports/strategic-plan/our-strategy/central-bank-of-ireland-our-strategy.pdf?sfvrsn=3a55921d_4/

to continue to fulfil its potential in the European and wider international context.

The Central Bank Strategy

Our four strategic themes are (i) safeguarding; (ii) future-focused; (iii) transforming; and (iv) open and engaged.

Safeguarding reflects our steadfast commitment to strengthen the design, implementation and operation of our core policy and supervisory frameworks. We will continue to evolve these policy frameworks and approaches, strengthening our ability to maintain price stability and the resilience of the financial system, while ensuring the best interests of consumers are protected. This is to be done within an overall system that functions effectively to provide choice and availability of product and services to individuals and businesses.

By being **future-focused**, we place emphasis on the need to regulate for a rapidly evolving financial system. It is our aim that the opportunities presented by the current unprecedented period of change and innovation can be realised for citizens and the economy while the risks are managed. Enhanced responsibility for individuals as part of well-functioning collective enterprises will help realise the benefits of innovation in a time of rapid change and uncertainty.

Through **transforming**, we aim to be a more agile, resilient, diverse and intelligence-led organisation, evolving the way we regulate and supervise so that we continue to be a leading international regulator in a globally successful financial services jurisdiction.

The Individual Accountability Framework represents a further enhancement of our regulatory and supervisory approach. Where firms and individuals take and demonstrate enhanced responsibility for customer and client outcomes, we can focus more on outcomes-

based supervisory engagement, underpinned by clarity as to accountabilities.

Our commitment to being **open and engaged** underpins our approach to the implementation of the framework. Both in this consultation exercise, and on an ongoing basis, we want to hear from stakeholders on how the framework is working and how it might be improved.

Our regulatory approach

Our regulatory approach explains how we use our regulatory powers within the integrated legal mandate we have been given. We have recently described this in some detail in our *Response to the Department of Finance's Retail Banking Review*⁴ and in our *Discussion Paper on the Consumer Protection Code Review*⁵.

Through our approach, we seek to ensure a financial system that works effectively to support a sustainable, well performing economy and the economic wellbeing of citizens. We do this in three main ways: by securing financial stability; by ensuring that the financial system operates in the interests of consumers and investors, including through the orderly functioning of markets; and by requiring firms to address the risk that their services are used for money laundering or other criminal purposes.

A properly functioning financial services market requires good levels of fair competition. Accordingly, our approach takes account of the impact of our regulation on competition within the market.

⁴ https://www.centralbank.ie/docs/default-source/publications/correspondence/general-correspondence/central-bank-response-to-the-retail-banking-review-consultation.pdf?sfvrsn=d566941d_2/

⁵ <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/other-codes-of-conduct/consumer-protection-code-review/consumer-protection-code-review-discussion-paper.pdf/>

Other features of our approach include seeking to ensure that the benefits of our regulatory interventions clearly outweigh the costs; a commitment to proportionality; and clarity as to the objectives to be achieved.

We have incorporated all core elements of our regulatory approach in the development of the draft proposals being considered in this consultation paper.

Context

In developing our proposals, we have considered the legislative, regulatory and policy framework in which they will operate. We have considered the changing financial services landscape, and international developments in the area of individual accountability.

We have noted the evidence of the effectiveness of related regimes introduced in other jurisdictions⁶ from the perspective of both the relevant regulator(s) and the firms to which such regimes apply. We have also been informed by the considerations and recommendations of European and international bodies such as the European Commission⁷ and the Financial Stability Board (FSB)⁸ which recommend identifying key responsibilities and clearly assigning them to the holders of various positions within a firm.

Our approach to the development and implementation of the IAF is founded in proportionality, predictability and reasonable

⁶ <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/report/evaluation-of-smcr-2020.pdf?la=en&hash=151E78315E5C50E70A6B8B08AE3D5E93563D0168>; <https://www.fca.org.uk/publications/multi-firm-reviews/senior-managers-and-certification-regime-banking-stocktake-report> and <https://www.apra.gov.au/sites/default/files/2020-12/BEAR%20information%20paper%20December%202020.pdf>

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0663>

⁸ Financial Stability Board (2018). 'Strengthening Governance Frameworks to Mitigate Misconduct Risks: A Toolkit for Firms and Supervisors'.

expectations. It is first and foremost about ensuring good quality governance.

The IAF is also designed to reflect a further advancement in the Central Bank's supervisory and regulatory approach; one that demonstrates an evolving approach to firm and individual responsibility and embedding of the framework.

It is important to ensure that the role of collective responsibility and decision-making remains central to firms. This aspect must not be negatively impacted as a result of an increased focus on individual responsibilities in the new framework.

The framework makes clear that a key responsibility of individuals remains to act appropriately in the collective decision-making of firms, in line with their role. In this way, the IAF is designed to reinforce the concept of collective responsibility as a core aspect of well-functioning firms.

Chapter 2: Cost Benefit Considerations

Benefits

The framework is designed to bring substantive benefits. It will:

- act as a driver of high quality governance and performance amongst all firms;
- support positive outcomes including helping firms to secure the interests of their customers while ensuring sustainable business models;
- enhance levels of trust and confidence in the financial system so that it fulfils its potential in supporting the Irish and European economy;
- advance the maturity of the regulatory system so that where levels of responsibility and accountability within firms are increased, supervision can focus more on performance and outcomes.

Costs

There will also be costs associated with the introduction of the new framework. Some of these will be inherent, others will depend on the manner in which the framework is implemented. Overall it is important that the benefits outweigh the costs. This requires both up-front consideration and ongoing review as the framework is implemented and experience gained.

Assessment

In terms of up-front assessment, the Department of Finance conducted a Regulatory Impact Assessment at the time of publication of the General Scheme⁹ which is summarised below:

The legislation will help in restoring public trust in the banking sector and the financial services sector more generally. It will deter wrongdoing in firms by ensuring personal accountability of those responsible for any such wrongdoing. Based on experience with similar legislation in other jurisdictions, the legislation will also benefit firms by creating useful and effective management and governance tools. The IAF is intended to bring many benefits, including that it will:

- Act as a driver for positive behaviours and recognition of responsibilities by individuals in order to mitigate the risk of misconduct by firms, delivering better outcomes for consumers and protecting markets.
- Introduce Conduct Standards that will set out the behaviour expected of individuals working in all regulated firms, seeking to provide a sense of shared values and empower individuals at all levels in the organisation to question and challenge issues that arise in their firms.
- Require firms in scope of the Senior Executive Accountability Regime (SEAR) to set out clearly where responsibility and decision-making lie.
- Build on the Central Bank's existing powers, and enhance the Central Bank's ability to hold senior and other individuals to account.

⁹ <https://www.gov.ie/en/publication/23bf3-regulatory-impact-assessment-revised-july-2022-central-bank-individual-accountability-framework-bill/>

- Bring efficiencies to the supervisory and enforcement work of the Central Bank due to greater transparency within regulated firms regarding who is responsible for what, and how responsibilities work together.
- Improve governance and culture across the financial sector.

There will be costs to firms in complying with the proposed legislation. Every regulated firm will have to comply with the certification requirements of the enhanced Fitness and Probity Regime and provide training to individuals on their obligations under the Conduct Standards.

Firms in sectors in scope of the SEAR will face additional costs in relation to the preparation and maintenance of a Management Responsibilities Map and Statements of Responsibilities. It is likely that, after the initial measures to comply with the legislation, the ongoing cost of compliance will be less as firms become more familiar with their obligations.

Given that the changes in the law seek to change culture and practice, proper implementation of the law should change behaviour and prevent poor behaviour arising which has in the past had negative financial impacts for customers and for firms. It is also likely that, for many firms, the measures required to comply with the legislation are already largely part of their due diligence and governance controls.

In our proposals to implement the framework as envisaged by the Act, we have sought to be fully aligned with the objectives of, and balance envisaged by, the legislation. Accordingly the analysis set out in the Department of Finance's Regulatory Impact Assessment applies to the majority of our proposed implementing measures.

There are nevertheless a number of areas in which we have made choices, particularly with respect to the SEAR, where some further assessment of the benefits and costs are required. These include:

- The firms in scope of the SEAR were determined based on a risk-based approach, amounting in total to approximately 150 firms. This approach is aligned with that of international counterparts who introduced their frameworks on a limited scope, before expanding that scope over time as experience developed. As set out we are conscious that for the firms within the scope of the SEAR, there will be an increased cost during the implementation phase due to the requirement to prepare Statements of Responsibilities and a Management Responsibilities Map. However, SEAR has been designed in a manner that is proportionate and flexible enough to accommodate the different business models and governance structures of firms and as such we expect it will not generate significant additional costs in the majority of firms which are well governed and organised. Additionally the ongoing cost of compliance will be less as firms become more familiar with their obligations.
- Non-Executive Directors, including Independent Non-Executive Directors (collectively INEDs/NEDs), form an integral component of the board of the firm and a fundamental safeguard within a firm's governance framework as reflected in the relevant Corporate Governance Requirements. Accordingly, it is proposed that all INEDs/NEDs at in-scope firms are included within the scope of the SEAR. The responsibilities for which INEDs/NEDs are accountable will be limited to their non-executive oversight responsibilities. As set out, having carefully considered the advantages and disadvantages of this approach, including the potential impact

on recruitment of INEDs/NEDs, we consider that it is consistent with their existing responsibilities under the corporate governance framework and should not impose increased obligations in that regard.

- As regards incoming third country branches, the need for coherence and fair competition underpins our proposal to apply SEAR to incoming third country branches. Taking into account nature, scale and complexity, a proportionate approach will apply to incoming branches whereby a reduced number of general Prescribed Responsibilities are applicable. All other elements of the SEAR including preparing Statements of Responsibilities and a Management Responsibilities Map will apply, and while this will generate some additional cost, we expect this to be limited due to the relatively small number and size of the majority of incoming third country branches.
- In respect of outgoing branches, if an issue arises in the branch of an Irish authorised firm, it is important that the Central Bank as responsible authority has clear line of sight of that issue, knows who is accountable, and is in a position to hold those responsible to account. On that basis it is proposed that SEAR will apply on a proportionate basis to outgoing branches as an integral part of the firm, with a requirement for a Statement of Responsibilities for the Branch Manager (and any other Pre-Approval Controlled Function (PCF) role holders within the branch) and that the branch should be reflected in the Irish firm's Management Responsibilities Map. We expect that such an approach will generate limited additional cost due to the small number of PCF role holders at outgoing branches.
- Following the introduction of a new Head of Material Business Line for credit institutions in October 2020, in order to ensure

that the list of PCF roles remains appropriate and is future proofed to capture any future changes to the nature, scale and complexity of the firms, as set out, we are consulting on the introduction of the Head of Material Business Line role for insurance undertakings and investment firms. As set out in the Guidance on the Fitness and Probity Standards, the Central Bank does not require a firm to create new PCF roles where one did not previously exist or where the size or complexity of a firm's business does not warrant it; this is for the firm to determine itself. Therefore the proposed introduction of a Head of Material Business line for additional sectors is measured and proportionate and should not alter the existing governance structures of a firm.

Risk of chilling effect

A key potential cost of the new framework would be that it has a deterring effect in relation to the recruitment and retention of high quality individuals to important roles in the financial system. Were this to happen, it could negatively affect the overall performance of the system and its support of consumers and the wider economy.

We consider the framework to be well designed and balanced and unlikely to produce such effects.

Nonetheless, it is important that in our regulatory implementation of the framework we do not create the conditions for such an effect to materialise.

Hence, in our approach to regulations and guidance we have centralised proportionality, predictability and reasonable expectations.

In our approach to supervision we will seek to minimise compliance costs.

And in our approach to enforcement we will deploy the principles of high-quality enforcement that seek to ensure that while enforcement functions as a necessary underpinning, it does so in a manner which is proportionate, targeted, and outcomes-focused.

In this way we will ensure that our implementation does not take the framework beyond the expectations embedded in, and costs envisaged by, the legislation.

Administrative costs

In the context of firms within the scope of the SEAR there will be an increased administrative burden during the implementation phase due to the requirement to prepare a firm's Statements of Responsibilities and Management Responsibilities Map.

For the broader population of firms there will be a requirement to notify and train individuals in respect of the Conduct Standards and to provide an annual confirmation in respect of the certification of Controlled Functions (CFs), which includes PCFs, to the Central Bank. It is likely that, after the initial measures to comply with the legislation, the ongoing cost of compliance will be less as firms become more familiar with their obligations.

However, the framework has been designed to align with existing sound practices at well-governed firms and as such should not generate significant additional costs in the majority of firms, which are well organised and run with a view to meeting the needs of key stakeholders – customers, shareholders, employees and wider society.

Three-year review

Best practice provides that new and significant regulatory frameworks should be reviewed after an initial period of operation.

Accordingly, it is our intention to prepare and publish a report on the operation of the new framework based on its first three years of operation.

We believe that three years is an appropriate period of time for the framework to bed down and for experiences of, and insights into, its operation to mature. In our review, we will consider the functioning of the framework, how the benefits and costs are being realised in practice, and whether any changes should be introduced.

Legal Basis

The IAF is given legal effect by the following:

- The Central Bank (Individual Accountability Framework) Act, 2023; and
- Regulations issued by the Central Bank:
 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Senior Executive Accountability Regime) Regulations 20XX (SEAR Regulations),
 - Central Bank Reform Act 2010 (Section 21(6)) Regulations 20XX (Certification Regulations), and
 - Central Bank Reform Act 2010 (Sections 20(1) and 22(2A) – Holding Companies) Regulations 20XX (Holding Companies Regulations) (all attached at Annex 1).

The primary and secondary legislation will be supported by the Central Bank Guidance on the Individual Accountability Framework (the IAF Guidance) (attached at Annex 2).

Chapter 3: The Framework

Overview of key aspects

Founded throughout on the key features of proportionality, predictability and reasonable expectations, the IAF comprises the following key elements:

- **Senior Executive Accountability Regime (SEAR)**. This requires in-scope firms to set out clearly and fully where responsibility and decision-making lie within the firm's senior management. This will provide valuable clarity as to who is responsible for what within the firm.

A duty to take reasonable steps in carrying out those responsibilities - equivalent to what is expected in other areas of life such as driving a car or building a house - is provided for.

- **Conduct Standards** are set out in the legislation. These provide for Common Conduct Standards as the standards of behaviour expected of individuals carrying out CFs within firms. These apply to all regulated firms.

They are basic standards such as acting with honesty and integrity, with due skill, care and diligence, and in the best interest of customers.

Senior executives, which includes individuals performing PCF roles and other individuals who exercise significant influence on the conduct of a firm's affairs, will also have Additional Conduct Standards related to running the part of the business for which they are responsible. These apply to all regulated firms.

It is expected that an individual subject to the Conduct Standards shall take reasonable steps to achieve compliance with the standards. We have developed draft

guidance to help individuals understand how to meet these Conduct Standards.

- **Business Standards.** The legislation provides for the Central Bank to set out standards to be met by businesses, not just individuals. Currently such standards are set out in the Consumer Protection Code (the Code). They are being reviewed as part of the current review of the Code. We will update those standards as part of that review and so are not consulting here on that aspect.
- **Enhancements to the current Fitness & Probity (F&P) Regime.** The legislation provides for certain modifications of the existing F&P Regime. These include its interaction with the IAF, which is generally straightforward. It also clarifies firms' obligations to proactively certify that individuals carrying out CFs are fit and proper.
- **Amendments to the Administrative Sanctions Procedure (ASP).** Reflecting lessons learned over recent years of bringing administrative sanctions proceedings and the introduction of the IAF, amendments to the ASP are provided for in the Act. These introduce new provisions that will govern the investigation, settlement and Inquiry stages of the ASP. A key change will be the Central Bank's ability to take enforcement action under the ASP directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

Annex 1 (draft Regulations) and Annex 2 (draft IAF Guidance) contain the Central Bank's detailed draft guidance on the SEAR, Conduct Standards and enhancements to the current F&P regime such as certification and extension of the regime to holding companies.

Enhancements relating to the F&P investigative process will be the subject of separate guidance.

The Central Bank will issue updated F&P Investigations Regulations¹⁰ and F&P Investigations Guidance¹¹. It is not proposed to conduct a public consultation in respect of these changes as they are necessitated by the Act. The Central Bank expects to publish the updated F&P Investigations Regulations and guidance in March 2023.

The Central Bank intends to launch a separate public consultation on the changes to the ASP in mid-2023. This consultation package will include the revised ASP Outline¹², ASP Inquiry Guidelines¹³ and ASP Sanctions Guidance for consideration by all relevant stakeholders.

The Central Bank welcomes views on all aspects of the proposed IAF Guidance and Regulations set out in the Appendices.

¹⁰ S.I. No. 56/2012 - Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012

¹¹ Guidance on Investigations under Part 3 of the Central Bank Reform Act 2010

¹² Central Bank's Outline of the Administrative Sanctions Procedure

¹³ Central Bank's Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942

Senior Executive Accountability Regime (SEAR)

Scope

It is proposed that SEAR will initially apply to a defined range of regulated firms, namely:

- Credit institutions (excluding credit unions);
- Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles);
- Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are permitted to hold client assets; and
- Incoming third country branches¹⁴ of the above are also within scope.

Taking into account nature, scale and complexity, a proportionate approach applies to Low PRISM¹⁵ impact rated in-scope investment firms and incoming third country branches. In this regard, a reduced number of Prescribed Responsibilities are applicable to such firms. All other elements of the SEAR apply, including Statements of Responsibilities and the Management Responsibilities Map.

As set out above, key components of the IAF will apply to all regulated firms – the Conduct Standards, enhancements to the F&P Regime and strengthening the ASP. The SEAR Regulation will initially apply to a limited number of firms and the Central Bank will have power via Regulations to rollout the SEAR to other sectors in due course. While it is our intention to increase the scope of application of the SEAR over time, with lessons from the initial roll out to be incorporated as the scope is extended, our approach and decision making in this regard

¹⁴ Branches, authorised to operate in Ireland, of firms headquartered outside of the European Economic Area ('EEA')

¹⁵ <https://www.centralbank.ie/regulation/how-we-regulate/supervision/prism/>

will continue to be founded in proportionality and what is reasonable. In its Report on pre-legislative scrutiny of the General Scheme of the Bill, the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach noted the importance of the question of scope (and proposed exclusions) and its further extension.

In the meantime, there is much in the spirit of the SEAR that firms not initially falling within scope should consider as aligned with good quality governance and which will support firms and senior management in implementing an effective governance framework by identifying how the business and its risks are being managed, who is responsible for what, and any gaps which may arise.

Q1. What are your overall views and comments on the draft SEAR Regulations and related draft guidance?

Responsibilities

For consistency and coherence, the roles to which the SEAR applies at in-scope firms align with those PCFs to which the F&P Regime applies in those firms.

As is the case under the F&P Regime, firms will not be required to create new roles. Therefore, while bringing enhanced clarity, the SEAR should not be expected to alter the existing governance structures of well-run firms.

Responsibilities are at the core of the SEAR. The Central Bank has noted that the FSB recommends identifying key responsibilities and clearly assigning them to the holders of various positions within a firm.

In line with the above, there are two main types of responsibilities imposed under the framework:

- 1) **Inherent Responsibilities.** These are the responsibilities, which automatically go with any given PCF role at an in-scope firm. Our proposed description of such Inherent

Responsibilities is set out in the draft SEAR Regulation at Annex 1.

- 2) **Prescribed Responsibilities.** These comprise a list of responsibilities, which it is proposed that each in-scope firm must allocate among individuals in PCF roles. Some of these apply to all in-scope firms, and some apply to particular types of in-scope firms – e.g. credit institutions, insurance undertakings, etc. Our proposed list of Prescribed Responsibilities is set out in the draft SEAR Regulations at Annex 1.

In addition, there is a residual category of **Other Responsibilities** which are material activities or risks not captured by the list of Prescribed Responsibilities in the case of a given firm. These are identified by firms and are required to be allocated to individuals in a PCF role.

While firms must allocate all applicable Prescribed Responsibilities among PCFs at in-scope firms, the Central Bank does not intend to be overly prescriptive in terms of the allocation of Prescribed Responsibilities to specific PCF role holders. This approach gives firms the flexibility to allocate responsibilities in a manner that accommodates different business models and organisational structures.

Q2. Do you agree with our proposed approach to the Inherent Responsibilities?

Q3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?

Sharing of responsibilities/roles

While in principle Inherent and Prescribed Responsibilities are integral to the relevant PCF role and cannot be shared or split amongst different individuals, this does not apply in the case of job sharing.

The Central Bank recognises the importance of job sharing from a diversity and inclusion perspective and proposes a pragmatic approach to the allocation of responsibilities in this context.

We propose that while the default position is that each job sharing individual will have full accountability for the relevant responsibility, this will be discharged where s/he can demonstrate that s/he took reasonable steps to discharge the responsibility, including in relation to the manner in which activities and tasks were shared amongst the job sharers and in respect of their completion on that basis.

Q4. Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?

Non-Executive Directors

We have closely considered the advantages and disadvantages of bringing Non-Executive Directors including Independent Non-Executive Directors (collectively INEDs/NEDs) within the scope of SEAR.

It is important that individuals undertaking non-executive roles within a firm's leadership are not dissuaded from doing so by a perception of being required to meet unduly demanding standards. At the same time, these are essential roles in the effective governance of firms and there are important expectations that must be met by the individuals filling them.

It is important to recognise that INEDs/NEDs have existing responsibilities under the corporate governance framework,

including, for example in respect of governance, oversight and challenge.

We consider that responsibility is fully consistent with their existing responsibilities under the corporate governance framework and should not impose increased obligations in that regard.

We propose that INEDs/NEDs should fall within the scope of the framework. Indeed, if they were not, we believe that the signalling as to the importance of these roles could be misconstrued. More importantly, the standards to be met by these individuals in their role as INEDs/NEDs will relate purely to their non-executive oversight functions and will, of course, be limited to what should reasonably be expected of individuals in that context.

Q5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?

Statements of Responsibilities and Management Responsibilities Map

SEAR is intended to support senior management in implementing an effective governance framework by identifying how the business and its risks are being managed, and any gaps which may arise.

Firms will need to set out clearly the responsibilities of each individual in a PCF role in their Statement of Responsibilities. This will assist firms to develop a Management Responsibilities Map for the firm documenting key management and governance arrangements. A draft template for the Statement of Responsibilities is set out for consultation in the IAF Guidance at Appendix 3.

Q6. Do you agree with our proposed approach to the Statements of Responsibilities?

Q7. Do you agree with our proposed approach to the Management Responsibilities Map?

Submission of documents

To reflect the enhanced approach to supervision reflected in the IAF, it is proposed not to impose initial or regular/periodic reporting requirement on firms in respect of Statements of Responsibilities and the Management Responsibilities Map.

Instead firms will prepare these materials on implementation and keep them updated. This reflects their primary importance as tools to support the sound governance of firms. They should be available to the Central Bank on request.

For consistency within the F&P Regime, firms will be required to submit a Statement of Responsibilities with new PCF applications.

Q8. Do you agree with our proposed approach to submission of documents?

Outsourcing

In the context of SEAR, to ensure transparency and accountability, the Central Bank requires that where outsourcing arrangements are in place then there will be a PCF role holder in the regulated firm with responsibility for outsourcing arrangements. Moreover, where there is outsourcing of a PCF role, the role-holder should fall under the oversight of a PCF role holder within the entity. This will need to be reflected in the relevant Statement of Responsibilities and the Management Responsibilities Map. This will ensure that the overall responsibility and related individual accountability is retained within the regulated firm.

Q9. Do you agree with our proposed approach to outsourcing in the context of SEAR?

Duty of Responsibility / Reasonable Steps

The SEAR introduces a duty of responsibility for individuals performing PCFs at in-scope firms to take reasonable steps to ensure that the areas of the firm for which they are responsible conform to legislative and regulatory requirements.

To provide clarity about what is expected in this context, and given that reasonable steps also apply in respect of the Conduct Standards, we are proposing to provide guidance on the meaning of “reasonable steps”. This draft guidance is set out in Chapter 3 of Annex 2.

The guidance seeks to provide sufficient clarity while ensuring that there is the necessary flexibility to accommodate different governance structures, business models, and situations across firms.

The concept of reasonable steps should be already embedded in an individual’s day-to-day actions in managing their areas of responsibility. In assessing the steps that an individual took, the Central Bank will consider what steps an individual, in that position, could reasonably have been expected to take at that point in time. This will include taking account of whether the individual is a recent appointment to the role and their overall level of experience in the context.

Mindful that regulatory expectations evolve, this will depend on the overall circumstances and environment as they existed at the time rather than applying standards retrospectively.

Q10. Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?

Q11. Does the guidance assist you in understanding the Duty of Responsibility and the non-exhaustive list of factors to be considered with regard to reasonable steps?

Conduct Standards

The Common Conduct Standards will impose a single set of readily understood, basic obligations on individuals carrying out CFs within firms.

These apply to all regulated firms, it is not linked to whether the firm in which they perform the role is in scope of the SEAR.

These standards are straightforward and in line with what would be considered as good practice by individuals carrying out such functions.

The standards are:

- Acting with honesty and integrity;
- Acting with due, skill, care and diligence;
- Cooperating in good faith and without delay with regulators;
- Acting in the best interests of customers and treating them fairly and professionally; and
- Operating in compliance with standards of market conduct and trading venue rules.

For individuals carrying out PCF roles, a small number of Additional Conduct Standards are imposed relating to the individual's responsibilities as a senior executive.

These also apply to individuals in a CF1 role, i.e. those individuals who may exercise a significant influence on the conduct of the firm's affairs.¹⁶ This is designed to ensure completeness of the framework

¹⁶ The Schedule to SI 437 of 2011 describes CF-1 as "A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to **exercise a significant influence** on the conduct of the affairs of a regulated financial service provider (CF-1)".

and to ensure that it is not circumvented by the creation of shadow structures or responsibilities.

The legislation itself sets out a range of helpful detail as to what is required under the different Conduct Standards. As required by the Act, we propose to provide further guidance to help with clarity and understanding. This is set out at Chapters 4 to 6 of Annex 2.

Once again, the concept of reasonable steps is at the heart of the Conduct Standards. It is expected that an individual subject to the Conduct Standards shall take reasonable steps to achieve compliance with the standards.

The draft IAF Guidance sets out the Central Bank's expectations in relation to the Conduct Standards and some non-exhaustive examples of the steps it may be reasonable in the circumstances for an individual to take to ensure the Conduct Standards are met.

Q12. What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?

Training

A firm has a critical role to play in embedding the Conduct Standards in its culture in a meaningful way for all individuals, including via notifying and the provision of training (both on an initial and ongoing basis) to individuals performing CF (including PCF) roles to ensure that such individuals have appropriate knowledge of the standards and how they apply to an individual in the performance of their role.

For firms within the scope of SEAR, in addition to Board oversight, the individual in the relevant PCF role allocated the prescribed responsibility for embedding the Conduct Standards throughout the firm should oversee training in respect of the Conduct Standards.

Whilst the day-to-day running and management of the training programme can be delegated to the relevant department, the individual in the relevant PCF role should understand the approach and have sufficient awareness of training completion and effectiveness which can be achieved through periodic reporting and effectiveness reviews.

Q13. What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?

Enforcement

The objective of the framework is to drive a permanent uplift in governance standards. In our view, this is where firms taking real ownership of the framework will make a major difference. If firms embed the framework properly, it should ideally result in fewer serious issues in the sector over time – and, correspondingly, less need for enforcement actions.

Our approach to enforcement – both in relation to the IAF and more generally – is based on the key concepts of proportionality and targeted deployment with an outcomes focus.

Proportionality means that we seek to bring enforcement action only for those cases where such significant action is merited, considering all of the circumstances, including the seriousness of the suspected breach and the harm or potential harm involved.

Targeted deployment of enforcement tools means that, given the material costs and significant resources involved in bringing formal enforcement proceedings, we take a proportionate and risk-based approach in doing so and once we have considered whether our regulatory objectives could be achieved in other ways.

An outcomes focus means that it is never our aim to bring enforcement action as a matter of course. We are always focused on

the overall outcomes of our enforcement decisions and actions as part of our overall regulatory strategy.

With regard to the IAF, it is essential, as we have discussed above, that the new framework does not have a chilling effect on the recruitment of good quality individuals into the Irish financial system. Accordingly, an understanding of our approach to the enforcement of the new framework is important.

Our approach to enforcement of the new framework is consistent with the approach adopted in other jurisdictions, where similar frameworks have brought significant benefits in terms of improved governance within firms without material increases in enforcement activity.

Interaction with the Fitness and Probity (F&P) Regime

The introduction of IAF will not result in a substantive change to the F&P Regime. The F&P Regime and the IAF can be thought of as two aspects of one overall framework of sound governance – with the F&P Regime being about suitability of individuals and the IAF about their ongoing conduct.

For reasons of clarity, familiarity and convenience, they can continue to be considered separately. The operation of the F&P Regime, including the F&P gatekeeper function and the systems in place to support the F&P Regime, will remain substantially unchanged.

The F&P Standards require individuals in CF roles to ensure that they are sufficiently skilled and have the requisite integrity to be trusted in their roles. For example, a CF must be competent and capable to perform their role. The purpose of the Conduct Standards is different in that they govern the conduct of individuals in CF and PCF roles, imposing positive, legal obligations on individuals to act in a particular way.

While the F&P Standards are relevant to assessing individuals prior to their appointment (and on an ongoing basis while performing the controlled function), the Conduct Standards only apply once the individual is in the role.

Temporary appointments

In respect of the appointment of a Temporary Officer¹⁷ to a PCF role, the Central Bank expects that such temporary appointments will only be used in exceptional circumstances. During the temporary occupancy of a PCF role whereby an individual has been pre-approved¹⁸, while the SEAR and Duty of Responsibility (if applicable) and Conduct Standards will apply, the consideration of reasonable steps will reflect the particular circumstances of the individual.

Q14. Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?

Enhancements to the Fitness and Probity regime

The IAF introduces a number of improvements to the F&P Regime to, amongst other things, strengthen the obligation on firms to proactively certify that individuals carrying out CF roles are fit and proper. Key aspects include:

- Firms and holding companies will need to certify annually the ongoing compliance with standards of fitness and probity¹⁹ of individuals carrying out CF roles;
- In line with our approach to supervising the new framework, we do not propose to require firms to submit details regarding such certification to us, though this

¹⁷ Under Regulation 11 of the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011, as amended

¹⁸ Under Section 23 of the Central Bank Reform Act 2010

¹⁹ Includes the Fitness & Probity Standards and the Fitness and Probity Standards for Credit Unions

information should be available to us on request. As part of the existing annual PCF return, firms will be required to confirm the completion of the certification process;

- We will require firms to inform us where formal disciplinary action has been taken against individuals in the firm in respect of breaches of the Conduct Standards;
- The scope is amended such that the F&P Regime is extended to apply to holding companies established in Ireland. This is to close an acknowledged gap in the current framework. In this regard, the Central Bank is proposing to prescribe CFs and PCFs for holding companies in the draft Holding Companies Regulations.

Further detail on the practical operation of the Certification requirements, and on the Central Bank's expectations in this regard, is provided in the Certification Regulations at Annex 1 and Chapter 7 of the IAF Guidance at Annex 2.

Q15. What are your views and comments on the draft Certification Regulations and related guidance?

Q16. Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?

Q17. Do you agree with our proposed approach to reporting of disciplinary actions?

New PCF Role – Head of Material Business Line

Section 22 of the Central Bank Reform Act 2010 enables the Central Bank to prescribe pre-approval controlled functions by regulation.

Following the introduction of a new PCF-50 Head of Material Business Line for credit institutions in October 2020, in order to ensure that the list of PCF roles is appropriate to capture the present and future changes to the nature, scale and complexity of the firms, the Central Bank deems it appropriate to introduce the Head of Material Business Line role also for insurance undertakings and investment firms as follows:

PCF-XX Head of Material Business Line for insurance undertakings:

The Head of Material Business Line for insurance, is an individual who has significant influence over the performance of a material line e.g. oversees the performance of that business line and the business line in question satisfies either of the following quantitative criteria:

- a) has gross total technical provisions (whether positive or negative) equal to or in excess of €10 billion; or
- b) accounts for 25 per cent or more of the insurance undertaking's gross earned premium, if that gross earned premium is above €1bn per annum.

PCF-XX Head of Material Business Line for investment firms:

The Head of Material Business Line for investment firms, is an individual who has significant influence over the performance of a material line e.g. oversees the performance of that business line and the business line in question 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.

The role of Head of Material Business Line would typically include responsibility for management of a material business line at a firm (including Balance Sheet and Profit & Loss management) which would be considered capable of having an impact on the firm due to the

commercial or strategic importance of that business line²⁰. It is anticipated that this role would usually be held by a senior individual with a direct reporting line to the Executive Officer (PCF-1).

Q18. Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms?

²⁰ Individuals who are already pre-approved as PCF-17 - Head of Retail Sales or PCF-18 - Head of Underwriting, will not be required to also seek pre-approval as a Head of Material Business Line. After an individual has been approved and is performing the role that individual remains in place until such time as they leave their role, even if there are fluctuations in the quantitative criteria post approval.

Chapter 4: Implementation

While the key components of the IAF have been communicated for some time, it is acknowledged that firms and holding companies will need time to prepare for and implement the various elements of the IAF, as applicable, in view of the Central Bank (Individual Accountability Framework) Act 2023 and the related draft Regulations as well as the contents of this Consultation Paper and its associated Feedback Statement, and the IAF Guidance.

It is critical that the initial and ongoing implementation of this framework is not approached as a compliance exercise but rather that it is internalised throughout firms' culture, approach and practices to ensure its successful and sustainable adoption.

Cognisant of the lessons learned from other jurisdictions' experience of the implementation of similar frameworks, clear benefits have been observed from firms' considered implementation in embracing the both the spirit of the framework and what it is seeking to achieve - for the firms themselves in terms of enhanced governance but also for consumers and users of financial services, as well as the broader financial system.

Our proposed approach to implementation seeks to balance the need to maintain momentum by introducing the framework while allowing appropriate time for in-scope firms to ensure its quality implementation.

In striking this balance, we reiterate our approach to the supervision of this framework as outlined earlier in this Consultation Paper i.e. that where firms and individuals are achieving the mature levels of governance and accountability as set out in the legislation, that will facilitate a more outcomes focused approach to supervision.

Accordingly, following the receipt and review of feedback to this Consultation Paper and the publication of the related Feedback Statement, the Central Bank intends to allow for a transitional period

for firms and holding companies to implement the relevant changes introduced by the IAF.

The following implementation timeline is proposed:

- Conduct Standards including accountability of senior individuals for running their parts of the business effectively to apply from 31 December 2023;
- Fitness & Probity Regime – Certification and inclusion of Holding Companies to apply from 31 December 2023.
- Regulations prescribing responsibilities of different roles and requirements on firms to clearly set out allocation of those responsibilities and decision making to apply to in-scope firms from 1 July 2024.

Questions

Q1. What are your views and comments on the draft SEAR Regulations and related draft guidance?

Q2. Do you agree with our proposed approach to the Inherent Responsibilities?

Q3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?

Q4. Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?

Q5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?

Q6. Do you agree with our proposed approach to the Statements of Responsibilities?

Q7. Do you agree with our proposed approach to the Management Responsibilities Map?

Q8. Do you agree with our proposed approach to submission of documents?

Q9. Do you agree with our proposed approach to outsourcing in the context of SEAR?

Q10. Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?

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Q17. Do you agree with our proposed approach to reporting of disciplinary actions?

Q18. Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms?

Annex 1 Draft Regulations

Annex 1 to the Consultation Paper 153 - Draft Regulations is located in a separate file.

Annex 2 Draft Guidance on the Individual Accountability Framework

Annex 2 to the Consultation Paper 153 - Draft Guidance on the Individual Accountability Framework is located in a separate file.

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