

Consultation Paper 153

Enhanced governance, performance and accountability in financial services

Response to Consultation Paper questions

Question	Relevance High Medium Low	Draft response
<p>1. What are your overall views and comments on the draft SEAR Regulations and related draft guidance?</p>	<p>Low-Medium</p>	<p>Overall, the IAIM welcomes the introduction of the Individual Accountability Framework and the effort to align with SMCR in the UK. However, we consider the proposed implementation timelines of 31 December 2023 for the Conduct standards and Fitness & Probity changes to be too ambitious and may not allow for appropriate time for firms to ensure high quality and consistent implementation of the guidelines. Furthermore, we believe that the application of Conduct standards and SEAR are fundamentally linked and so it would be welcomed if the implementation date for both was aligned. We ask that the Central Bank considers a 1 July 2024 implementation date for the full suite of measures to come into force.</p>
<p>2. Do you agree with our proposed approach to the Inherent Responsibilities?</p>	<p>Low-Medium</p>	<p>The IAIM seeks clarification on the PCF-52 (Head of Anti-Money Laundering and Counter-Terrorist Financing) and whether it should report to the Board as is the case for a PCF-12 (Head of Compliance), or is the expectation that the PCF-12 reports to the Board on AML matters also.</p> <p>The IAIM also asks that where reporting is required to be brought to the Board, this should be expanded to include a relevant Board committee where one exists.</p> <p>Regarding the PCF-14 (Chief Risk Officer) which is described as being responsible for managing risk, it is a first line responsibility and not that of a PCF-14 to manage risks.</p>

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	High Medium Low	
3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?	Low-Medium	The IAIM has no comment in response to this question
4. Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?	Low-Medium	The IAIM has no comment in response to this question
5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?	Low-Medium	This would appear to be moving director responsibility to be more closely aligned to executive responsibility. Roles of NEDs/INEDs do not extend to the executive responsibilities but they do extend to Prescribed Responsibilities under SEAR; which go beyond their typical responsibility and into executive territory. On that basis we would ask clarification on the differences between the expectations of Executive Directors, NEDs and INEDs.
6. Do you agree with our proposed approach to the Statements of Responsibilities?	Low-Medium	Appendix 3 of the Guidance includes a very helpful template 'Statement of Responsibilities'. In that regard, it would be beneficial if the Central Bank could give guidance on the use of wet signatures as opposed to the use of electronic signatures or electronic attestations. A move towards electronic signature / attestations would be very much welcomed to improve efficiencies in firms.
7. Do you agree with our proposed approach to the Management Responsibilities Map?	Low	The IAIM has no comment in response to this question
8. Do you agree with our proposed approach to submission of documents?	Low	The IAIM has no comment in response to this question
9. Do you agree with our proposed approach to outsourcing in the context of SEAR?	Low	The IAIM has no comment in response to this question
10. Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?	High	<p>Yes, the IAIM does agree with the Central Bank's overall approach on SEAR.</p> <p>One of the important differences under SEAR is the additional onus being firmly placed on the individual's responsibilities, in addition to the Firm as a whole. Each PCF/CF is expected to establish and manage a framework around their business/field of activities; bearing in mind the principle of proportionality and also considering that levels of authority of individual PCF holders may vary from entity to entity; or may not always be fully aligned to the PCF prescribed responsibilities as each firm applies differing corporate governance arrangements.</p>

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		<p>The clear implication for this however could be a possible reticence to take up PCF roles (especially when moving from one organisation to another), along with an increase in potential individual liability that will need to be covered from a firm's perspective, in order to retain the individuals of sufficient calibre to fill the roles required. This could also encourage slow and over-cautious decision-making as well as decision-making to reduce personal liability, rather than what is the best decision for the entity. Furthermore, can the Central Bank clarify if firms are expected to meet regulatory obligations even if they are not in scope of SEAR. Timing of required adoption by firms who are not yet in scope is not clear although it is noted that the consultation expects firms not in scope to adopt IAF requirements as standards of good practice.</p> <p>The implications for costs at an entity level are yet to be determined but could prove to be significant.</p>
<p>11. 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?</p>	<p>Medium</p>	<p>Yes, the IAIM finds that the guidance does outline the Duty of Responsibility for PCFs at in-scope firms, to take reasonable steps to ensure that the areas of the firm for which they are responsible are properly controlled.</p> <p>These steps include taking into consideration:</p> <ul style="list-style-type: none"> (a) The nature scale and complexity of the Firm (b) The functions of the PCF, and the level of knowledge and experience required for the role (c) The relative level of knowledge and experience of the individual, (d) The existence and implementation of: <ul style="list-style-type: none"> (i) appropriate and effective systems and controls (ii) effective oversight of any delegated responsibilities and effective safeguards against any inappropriate delegation, and (iii) appropriate and effective procedures for identifying and remedying issue (e) The extent to which issues are within the control or influence of the individual.

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		<p>The explicit list of both Prescribed and Inherent Responsibilities is also helpful to both in-scope firms and the relevant individuals within those firms.</p> <p>What is not clear is where the responsibilities of the individual end, and where the responsibilities of the Firm begin; in terms of the recording and documenting of the reasonable steps taken and further clarification in this regard would be welcome.</p>
<p>12. What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?</p>	<p>High</p>	<p>Generally, the guidance provided by the Central Bank is clear. However, we request further clarity on the extent to which the Common Conduct Standards and Additional Conduct Standards (“CCS” and “ACS”, respectively) are applied to third parties, such as outsourcing arrangements. We also seek further clarity on who the legal obligation is with regarding conduct standards and in particular CBI’s expectations on firms meeting its reporting obligations re CCS for intragroup v’s third party outsourcing.</p> <p>Under the existing Fitness & Probity regime, a person performing functions for a firm under a written outsourcing arrangement where that role is regulated (either by the Central Bank or by an authority in any jurisdiction with similar functions to the Central Bank) to provide financial services similar to those provided by the firm, is exempt. According to para. 4.16 of the Draft Guidance, such exemptions will not apply and, as a result, individuals from intra-group and third-party entities carrying out outsourced services for an Irish firm will be in scope of the IAF CCS and ACS.</p> <p>This may place a disproportionate burden on an Irish firm to ensure the obligations in respect of Conduct Standards, as set out in paras. 4.22 to 4.34 and throughout the Draft Guidance are applied to individuals not directly employed by the Irish firm. Practical and legal questions will arise from the obligation to, for example, train individuals; “to establish, maintain and give effect to policies on how the Common Conduct Standards are integrated into the culture and conduct of the affairs of the firm”; “report disciplinary action arising from breaches of the Conduct Standards to the Central Bank”; and “consider how failure to meet the Common Conduct Standards could be linked to matters such as performance review and promotion in order that such standards become meaningfully embedded in the culture of the firm”.</p>

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		<p>It is possible that a firm utilising intragroup and third-party outsourcing arrangements will have a cohort of CFs subject to the ACS and CCS employed by third party entities. Further, we note that the obligation placed on the firm is in addition to the recent Central Bank Cross-Industry Guidance on Outsourcing which already sets out robust measures to ensure effective oversight of outsourcing arrangements. In many circumstances, the proposed guidance will have an extra-territorial effect that may conflict with an Outsourced Service Provider’s domestic obligations.</p> <p>We ask that the Central Bank consider revising the Draft Guidance to extend the F&P exemptions to an IAF CF or, in the alternative, more clearly set out the extent to which the Central Bank expects firms to apply IAF obligations to individuals not directly employed by the firm. Further, we ask that the Central Bank revises Appendix 5 of its Draft Guidance to explicitly set out the specific IAF obligations a firm is expected to apply (i) to EEA/Non-EEA third parties (including intragroup), (ii) to the EEA/Non-EEA branches of Irish firms and (iii) the Irish branches of EEA/Non-EEA firms.</p> <p>Finally, we consider that the Company Secretary function does not have “significant influence” on the firm’s affairs as it typically provides administrative services to the Board, we ask the Central Bank to reconsider the Company Secretary amongst senior management roles of a firm.</p>
13. What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?	High	<p>The IAİM supports the approach in the guidance which underscores the importance of relevant, timely and accessible training. We would welcome the planned additional practical guidance on training for individuals subject to Conduct Standards and would welcome consultation on this guidance in due course.</p> <p>We would note that many firms have centralised Learning and Development teams who provide an important role in the holistic view of a firm’s training schedule. We would welcome the Central Bank’s view on this holistic role which may involve prioritising of training initiatives.</p>

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<p>14. Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?</p>	<p>Medium</p>	<p>The Draft Guidance proposes the Conduct Standards to apply to the temporary PCF role-holder, while the consideration of reasonable steps should reflect the circumstances of the individual. We consider this to be a proportionate measure, particularly with the application of s23 of the Central Bank Reform Act 2010, which requires the pre-approval of the temporary PCF role-holder, and the application more broadly of Fitness & Probity regime.</p> <p>We would note that the guidance indicates that temporary PCF appointments should only be made in exceptional circumstances, we believe there are many circumstances where a PCF holder may not be available for an extended period of time and a temporary appointment is required as a result, all of those circumstances may not be considered exceptional.</p> <p>On a practical level, we would suggest that additional functionality be made available on the ONR system / Portal to allow for the recording of temporary periods of long-term planned absence for PCF role-holders (e.g., maternity leave or parental leave), where their roles are covered during the period of leave by another individual who has been approved by the Central Bank. This should facilitate recording the effective start and end dates so that these periods of leave can be clearly recorded on the ONR system.</p> <p>Finally, we would welcome Central Bank confirmation that the temporary regime should not create a requirement for a de facto duplication of roles. We would not see this as proportionate or necessary. We would also be interested in receiving clarification that the reasonable steps of the PCF in a temporary position do not necessarily match those of the PCF they are replacing.</p>
<p>15. What are your views and comments on the draft Certification Regulations and related guidance?</p>	<p>High</p>	<p>IAIM considers that the proposed regulations follow what has become a standard practice across the Asset Management and Investment firm industries which blends the traditional assessment of candidates in relation to human resources recruitment requirements with the obligations to reflect the importance of a candidate assuming a PCF or CF position. As such the Certification Regulations is formalising existing practices which safeguard firms, individuals and the wider industry. Operationally, it is</p>

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	High	Medium	Low	
				<p>inevitable that entities will adopt different approaches to achieve the Regulations objectives, and this latitude is important.</p> <p>Further consideration could be given to challenges which arise for intra country appointment where police checks/convictions are often difficult or unduly time-consuming to obtain.</p>
16. Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?	High			<p>Yes, the IAIM does agree with the proposed Central Bank approach.</p> <p>However, Individuals proposed for PCF roles in Irish-registered holding companies will - almost exclusively - be directors of unregulated entities that own regulated firms. These directors will therefore - almost entirely - already be in scope under the existing PCF regime.</p> <p>It remains unclear what specific gap the Central Bank is attempting to address and close here, and further clarification would be welcome.</p>
17. Do you agree with our proposed approach to reporting of disciplinary actions?	High			<p>Under the Draft Guidance, a firm must notify the Central Bank of disciplinary action arising from a breach of the Conduct Standards “as soon as practicable and in any case, within five business days from when the disciplinary action has been concluded”.</p> <p>We note that other jurisdictions with similar regimes differentiate between the reporting requirements for different categories of individuals holding different levels of responsibility. We agree with the approach of reporting potential breaches by PCF role-holders, typically a firm’s Senior Management. In relation to reporting the disciplinary action as soon as practicable / within five business days of the conclusion of disciplinary action, we request that such actions are not reportable to the Central Bank until the final internal appeal process has concluded to the deadline by which the right to exercise an appeal has expired, whichever is the earlier. The basis for this request is that if the disciplinary action is subsequently revoked upon appeal, it could prejudice or damage the individual’s reputation with the Central Bank.</p>

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		<p>We note that the Draft Guidance states that disciplinary action is reportable only in the event that “that disciplinary action is relevant to compliance with the F&P Standards, including disciplinary action in respect of individuals in CF roles relating to breaches of the Common Conduct Standards and in respect of individuals in PCF/CF1 roles relating to breaches of the Additional Conduct Standards”. With that in mind, we ask that the Central Bank further clarifies the extent to which those standards apply e.g., in the event of non-financial misconduct such as harassment; discrimination; other forms of behavioural misconduct; and off-site incidents occurring in an individual’s personal life.</p> <p>Finally, a firm should put in place a framework to identify, monitor and action potential breaches. We would welcome confirmation that that this would be with reference to Outsourcing agreements, in accordance with the Central Bank’s Guidance on Outsourcing and where in-scope PCFs/CFs are carried out by individuals not directly employed by the firm.</p>
18. Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms?	N/A	The IAIM has no comment in response to this question