



**CBI Consultation on Regulation and Guidance under the
Central Bank (Individual Accountability Framework (“IAF”)) Act
2023**

June 2023

Introduction

The Society of Actuaries in Ireland (“Society”) is the professional body representing the actuarial profession in Ireland. The Society welcomes the opportunity to engage with the Central Bank through this consultation process following the enactment of the Central Bank (Individual Accountability Framework) Act 2023. In responding, we have focussed our comments on topics likely to impact on Insurance entities, whilst recognising that the framework also applies to other financial institutions such as banks. The response has been prepared by a cross section of members of the Society and does not purport to reflect the views of the insurance industry.

Overview

We have collectively reviewed the draft regulations and guidelines and hold an overall positive view of the regulations. Given that the Society has a culture of promoting ethics, professionalism and accountability, we believe that successful implementation of the regulations will promote good governance, accountability and ethical behaviour within the financial sector. However, there are elements which could be refined to better reflect its practical application in terms of typical responsibilities, interaction with other legal and regulatory requirements and the timing of its implementation.

Our responses have been presented according to the questions asked by the CBI as part of the consultation and responses have been included only for the questions where we believe further refinement would be helpful.

Introductory points

- The Conduct Standards and changes to the F&P regime are currently proposed to apply from 31 December 2023 and the SEAR requirements from 1 July 2024. Given the overlap between the additional conduct standards (“ensure that the business of the RFSP (Regulated Financial Service Providers) for which the person is responsible is controlled effectively”) and SEAR, we believe the implementation date for these elements should be aligned. In addition, we believe that it would be more appropriate to apply the majority of industry wide requirements six months after the final guidance has been issued, with the SEAR requirements and additional conduct standards being implemented a further six months after this.
- The IAF provides for the Central Bank to set out standards to be met by businesses, not just individuals. The Central Bank noted in their consultation paper that these standards will be developed in conjunction with the separate review and consultation on the Consumer Protection Code (CPC). The CPC does not apply to undertakings selling outside the State, who are instead subject to the conduct of business rules of their host state. It will be important to ensure that cross-border firms do not now become subject to a double layer of regulation and will continue to remain out of scope of the CPC.

Responses to Specific Questions

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

Overall, the Society supports the aims of the IAF and the draft regulations and guidelines. We believe that the regulation is broadly positive and aligns with the Society's aim of promoting ethics, professionalism, and accountability in the financial sector.

We would like to seek further guidance on an aspect of the regulation below:

- The regulation states that Senior Executives currently holding PCF roles will be designated as "Senior Executive Functions" (SEFs). SEF role holders will now have a legal duty known as a 'duty of responsibility' to take reasonable steps to prevent their RFSP committing a "prescribed contravention" in the area of business that they are responsible for. Whilst the currently proposed guidelines are helpful in terms of describing the nature of reasonable steps, we believe the CBI should provide specific examples of 'reasonable steps' that might be put in place for common areas of responsibility.

Q2: Do you agree with our proposed approach to the Inherent Responsibilities (IRs)?

Out of the 32 inherent responsibilities, we would like to seek clarity on the numbered responsibilities below:

- **IR 27 (PCF 48: Head of Actuarial Function - HoAF)** – We consider that the wording of IR 27 should be refined to make clear that the Inherent Responsibilities of the HoAF (PCF-48) role are those set out in the Domestic Actuarial Regime / EIOPA Article 48. This may not incorporate the totality of "the firm's actuarial function" in many cases. Where a PCF 48 role holder has additional responsibilities beyond those specified in the Domestic Actuarial Regime, these can be addressed under Prescribed/Other Responsibilities (PR/OR) but the wording of IR 27 should make it clear that it is unchanged from the existing position. We would suggest the following definition – Overall responsibility for ensuring the requirements of the Domestic Actuarial Regime are implemented within the firm.
- **IR 12 (PCF 14 Chief Risk Officer)** - The SEAR guidance defines the Chief Risk Officer as having overall responsibility for managing the firm's risk function including risk controls, setting, and managing risk exposures and reporting directly to the Board on risk

management matters. We note that risk controls are typically the responsibility of the 1st line within a firm. Whilst the CRO will have oversight of the risk controls, they should not be responsible for them on a day-to-day basis in order to allow effective oversight. We suggest that the definition of IR 12 should be aligned with the definition of the CRO's role as set out in the existing Corporate Governance Requirements, i.e. The CRO is the person *"with distinct responsibility for the risk management function and for maintaining and monitoring the effectiveness of the insurance undertaking's risk management system"*.

- **IRs 10, 11, 12 and 13 (PCFs 11, 12, 13 and 14)** – The SEAR guidance states that the heads of finance, compliance, internal audit and CRO report directly to the board in respect of their Inherent Responsibilities. We believe that it would be useful to expand the wording for these reporting responsibilities to include "or via the relevant Board sub-committee". We note that in practice a significant part of the reporting from these roles will be to the Board Audit Committee or Board Risk Committee.
- **IR 19 (PCF 52 Head of Anti-money Laundering and Counter Terrorist Financing)** – The SEAR guidance suggests that this role manages the operation of the anti-money laundering and counter terrorist financing activities whereas, in practice (for insurers at least), this is more commonly an oversight role. We suggest that the definitions be re-worded to "Overall responsibility for ensuring a robust anti-money laundering / counter financing of terrorism framework is in place within the firm".
- **Head of Material Business Line** – The SEAR guidance currently includes potential PCF roles for Head of Material Business Lines for credit institutions and banks only. We believe that similar potential roles should be defined for insurance undertakings and investment firms, acknowledging that not all undertakings will choose to appoint an individual to this role given their operating structure. We also consider that it should be possible to have more than one person holding this PCF role to reflect that there may be more than one material business line.

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

Whilst we agree with the principle that certain prescribed responsibilities should be allocated to the PCF roles at all in-scope firms we would like to highlight the concerns below:

- **Prescribed Responsibility (PR) 4 and 6** – We consider that allocating responsibilities to individual Non-Executive Directors is inconsistent with their collective responsibility and the role of the Board as a whole – please see also our response to Q5. Whilst "tone from the top" is undeniably important in influencing the culture of a firm, culture is embedded most strongly through the day-to-day operations of the firm which is overseen by the executive team.

- **'culture' and 'embedded culture'** – The Prescribed Responsibilities refer to culture and embedded culture. We suggest defining the terms 'culture' and 'embedded culture' in the guidance.
- **Mapping of PRs to associated legislation** - For firms to more clearly understand the responsibilities associated with each PR, we believe it would be useful to have a mapping of the PRs back to the relevant legislation where appropriate, if only at a high level. This is particularly the case where they are linked to the new conduct standards rather than to existing regulatory requirements.
- **Data ownership** – We note that the list of Prescribed Responsibilities does not include responsibility for data. HoAFs place significant reliance on the quality of data, and in the non-life sector there is a body of opinion amongst our members that there may be value in seeking further clarity on wider organisational / other functional area responsibilities in this area. But, equally, we recognise that it would be difficult to assign a responsibility for data to a single individual. We are happy to explore this further with the CBI.
- **Alignment of PRs to responsibilities of existing PCF roles** - We believe it may be appropriate to reduce the list of PRs to align with the typical responsibilities of existing PCF roles. The Act states that SEAR applies to PCFs and firms are not required to create new roles. The SEAR regulations note that a firm shall ensure that a proposed allocation to a PCF holder of an allocated responsibility is consistent with the PCF holder's existing responsibilities. However, the list of PRs must be allocated to PCF role holders despite the fact that a number of them most commonly relate to roles which are not considered to be PCFs e.g., existing activity in relation to staff development (PR 14), diversity and inclusion (PR 29), training (PR 3) and staff behaviour (PR 2) typically sit with the HR function.
- **Over allocation of Prescribed Responsibilities** – The guidance requires that PRs are not over-allocated to individuals and that firms should be able to demonstrate that individuals with these allocated PRs have sufficient time and resources to carry out all responsibilities. We believe that it could become onerous to demonstrate this, particularly if one of the PRs is something that only arises infrequently e.g., PR 7 on preventing further harm to customers once an issue has been identified (especially given the requirement to act swiftly in that instance).
- **Other Responsibilities** – Given the diverse nature of financial services firms in Ireland, not all of the critical activities of every firm will be captured by the inherent and prescribed responsibilities. Whilst we agree that it is important that management responsibility maps should include "Other Responsibilities" that are critical to the operations of the firm, we do not agree that each of these should be allocated to a PCF. Leaving open the possibility of the management responsibility map including items that

are the responsibility of CF 1s would appear to better reflect the current operations of firms and avoid overburdening the CEO with responsibilities that in reality sit with other senior staff who do not hold PCF roles.

- **Retention of Statement of Responsibilities** – SEAR guidance requires retention period of 10 years for statements of responsibility after a PCF leaves the firm. We believe this to be unduly long given that action can be taken against an individual only for a period of up to six years after they leave a firm.
- **PRs 22 and 23** PR 22 and PR 23 appear to be redundant as they don't expand significantly on the inherent responsibilities of the PCF 52 and PCF 45 roles.
- **PR 33** – PR 33 relates to *“responsibility for ensuring that appropriate independent validation of the technical provisions is carried out”*. We understand that this is intended to refer to the annual validation of technical provisions (as per article 264 of the Solvency II Delegated Regulations), and suggest that the description could be amended to clarify this.

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

- Article 6(3)(e) of the draft SEAR regulations requires that where the firm has *“allocated an allocated responsibility to more than one PCF holder, the firm shall explain its rationale for doing so, together with the arrangements for the effective operation of that joint allocation of responsibility”*. This is consistent with the existing requirements under the F&P regime and is an approach that would be supported by industry. It is reflected in the guidelines under 2.6.12(h) and 2.8.10 which both make reference to sharing responsibilities. However, page 29 of the consultation paper suggests, and section 2.3.1 of the draft guidance explicitly states that sharing or splitting of PCF roles amongst individuals is not permitted under the SEAR (other than in the case of job sharing).

Some of the PRs listed are unlikely to be capable of being assigned to a single individual given the operational structure of companies and so we consider that it is necessary for companies to be able to share such responsibilities. Some examples of this are:

- *“PR 18 Responsibility for managing the calculation and maintenance of the firm’s financial resources including accuracy of capital, funding and liquidity”*, which would likely be done by the CFO, HoAF and perhaps a Head of Investments.
- *“PR 24 Responsibility for oversight and governance of the development, design and distribution of products, review of products and sale and post-sale arrangements to ensure fair customer outcomes”*, which again would likely be

done by a number of individuals, across Product, Sales and Customer Service areas.

- Where a firm has appointed separate PCF50 (Head of Material Business Line) roles, it is likely that certain PRs e.g. PR7 and PR8 are managed separately for their functional area. In this case, it would be appropriate for PRs to be assigned to each PCF50.

We envisage that if such PRs cannot be split, it is likely that a number of these responsibilities will 'roll-up' to the CEO, which we consider is against the spirit of the framework.

- The guidance in relation to sharing of roles and responsibilities should specifically take into account any periods of absence for family related matters up to a maximum duration to be determined by the CBI. It would not appear appropriate to require a PCF role holder to complete the full regulatory approval process for a second time when returning from such leave. However, some guidance on the split of responsibilities between any interim role holder and the PCF availing of the leave could usefully be provided.

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

We consider that the inclusion of INEDs/NEDs in SEAR is inconsistent with their roles and purpose. INEDs/NEDs should by definition not be involved in the executive business of the undertaking. The proposal to now assign responsibilities that would normally reside with the executive management to INEDs/NEDs seems incompatible with their role. Assigning responsibility to an individual director also conflicts with the concept of collective responsibility which underlies the operation of the Board of Directors.

Q6: Do you agree with our proposed approach to the Statements of Responsibilities (SOR)?

We believe the requirement to keep the SOR continuously updated seems onerous and somewhat unrealistic for the in-scope firms. A requirement to update annually or following a material change (for example) may be more realistic for individuals.

Q7: Do you agree with our proposed approach to the Management Responsibilities Map (MRM)?

In a similar manner to our view on SOR, the requirement to keep the MRM continuously updated seems onerous and somewhat unrealistic for the in-scope firms. A requirement to update annually or following a material change (for example) may be more realistic for individuals.

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

- We believe the CBI should provide feedback to the industry based on the submissions they have received. This will aid companies who haven't submitted their documents yet, so they are aware of what is required in practice.
- The regulation contains a requirement to retain documents for 10 years after an individual has ceased to be a PCF role holder in the firm. However, F&P certificates are only required to be retained for 6 years. We believe 10 years to be unduly long given that action can be taken against an individual only for a period of up to six years after they leave a firm. We would like to understand the reason for difference in approach in the two cases.
- We agree that the proposed approach removes an unnecessary administrative overhead by avoiding regular periodic reporting for Statements of Responsibilities and the Management Responsibilities Map. It would be useful for the Central Bank to confirm that existing SLAs for the approval of new PCF candidates will be maintained.

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

- The draft SEAR regulations require that the firm shall identify who is responsible for oversight of each outsourcing arrangement that has been entered into. This aligns with the practice in most firms where a range of people (not necessarily all PCFs) are responsible for different outsourcing arrangements. In order to align with this practice, we believe that the definition of PR 21 could be clearer. Whilst one individual can be responsible for the requirement to put an appropriate outsourcing oversight framework in place, the current wording suggests they would also take responsibility for oversight of all critical and important outsourcing arrangements. It should be clear that responsibility for operational aspects may sit elsewhere.

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?

- We believe (a non-exhaustive list of possible) tangible examples of reasonable steps should be provided by the CBI to help guide individuals within the scope of SEAR. This would assist in providing PCFs/CFs with clearer guidance of what is expected of them in attempting to pro-actively ensure positive outcomes and preventing negative ones.

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

- The Central Bank might outline the process to be followed for in-situ PCFs at the date of the regulations coming into force.

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