

*Banking & Payments Federation Ireland*

*CP160 Submission*

*10 July 2025*

[www.bpfi.ie](http://www.bpfi.ie)

## Introduction

BPFI represents over 125 domestic and international member institutions. We mobilise the sector's collective resources and insights. BPFI members are committed to high standards of governance and accountability.

We welcomed the publication of Mr Enria's independent review of the CBI's fitness and probity approval process and the CBI's acceptance of all of the recommendations contained in the report.

BPFI engaged with Mr Enria and we acknowledged that the Fitness and Probity Regime (the "Regime") has driven higher standards in regulated firms and improved governance standards. The Regime has had positive effects by making clear the standards to which those in senior positions in regulated financial service providers are held. BPFI members continue to work hard to ensure compliance with the Regime and with the Individual Accountability Framework.

We note that CP160 intends to address the Enria report's recommendations which called for increased clarity and transparency of the CBI's supervisory expectations in relation to the application of the Regime. BPFI raised points around transparency and clarity in its engagement with Mr Enria, including seeking more information and details around the provision of questions to applicants/ firms in advance of interviews; clarity around the CBI's approach to interviews; clarity around timing and the benefits of accelerating the application process and the benefits of adopting a less restrictive approach in the consideration of skills and experience.

We provide our feedback to the questions which are set out in CP160 below.

## **Executive Summary**

- **Time Commitments** – Notwithstanding the CBI's general expectation, contained in the draft guidance that executive PCF roles will be fully dedicated to that role, some BPFI members' view is that this does not reflect the reality of the structure of some firms, particularly international firms.
- **One Individual Holding Multiple PCF Roles** – It is noted that while the CBI may approve an individual holding more than one PCF role, the expectation is that this would be limited. Some BPFI members' view is that one individual can hold additional PCF roles where the firm has assessed and considers the individual is fit for the role, can discharge the responsibilities effectively from a time commitment perspective and there are no conflicts of interest.
- **Inherent and Prescribed Responsibilities** – We have provided detailed comments below around seeking clarification that the CBI does not have an expectation that firms which are currently out of scope for SEAR are required to adhere to SEAR standards.

- **Ten Year look back:** The 10 year look back guidance does not align with the expectations for disclosure set out in the draft guidance (which is unlimited in time) and the result is that there is uncertainty as to how this is to operate in practice. Given the practical challenges with the collation of historic information from public sources, it is critical that there is clarity in respect of the requirements.
- **Approach to be taken to consideration of past events:** Member firms had hoped for more clarity in respect of the approach to be taken, noting the commentary in the Enria report. However, the draft guidance is limited.
- **Outsourcing of a PCF to a Regulated Entity:** Consistent with comments raised in BPFi's submission on the CBI's IAF Consultation (CP153), clarity is required in respect of the effect of the outsourcing exemption and the regulatory status of employees affected by the exemption.
- **Types of relevant criminal actions:** There are different messages in respect of what is considered to be a relevant criminal action within the draft guidance and in the CBI's separate FAQ on Fitness and Probity. Clarity and consistency is required.
- **Standards of Financial Soundness & Due Diligence** – Clarity around the distinction between due diligence expectations between PCFs, CF1 – 2 and CF3 – 11 would be welcome. We have included a table at Appendix A detailing the salient points in this regard.
- **Corporate Governance Requirements for Investment Firms and Market Operators** – BPFi members would welcome CBI's clarification around its expectations on the level of "assessment" a firm needs to apply to a Board Member's ability to commit sufficient time to the role. We explain this point in detail below.
- **Proposed revisions to PCF list** – Some BPFi members' view is that it would be beneficial to conduct a consultation around revisions to the PCF list closer to 2027, when a review of SEAR will take place. We have included some useful feedback on the list of PCF roles below

### **Question 1(a) Do you agree with the proposed revision to the draft Guidance?**

We welcome the proposed revision to the draft guidance.

The revised draft guidance delivers a number of positive enhancements to the Regime ,however, as set out below in response to the other questions, there are areas which we believe require further consideration to ensure clarity and consistency of requirements.

### **Question 1(b) Are the enhancements to the draft Guidance useful to you?**

The enhancements contained in the draft guidance are useful.

We note that the revised draft guidance predominately consolidates current guidance and materials. This is a welcome development in the context of seeking clarity and from a simplification perspective.

#### **CBI engagement with industry and communication**

Communication between industry and the CBI has become an increasingly positive experience. The establishment of the CBI's single F&P Unit will be of further benefit.

The consolidation exercise will assist with queries and ensures that all relevant information is easily accessible and available at one source.

The inclusion of additional details which provide greater clarity is useful, including the use of objective measures, such as specific qualifications and certification or experience requirements within the assessment process. Chapter 4's (page 74) "Level of Knowledge and Experience" will be helpful along with the easily accessible details set out in the supporting Tables around "level of knowledge".

BPFI members welcome the CBI's commitment to provide internal training to ensure consistent and appropriate skills are applied throughout each element of the Regime's process and the introduction of a complaints procedure/ channel for feedback, details of which we note the CBI will publish in the coming months.

#### **Fitness and Probity Gatekeeper Process**

We welcome the publication of the CBI's "Fitness and Probity Gatekeeper Process" document. The document provides a useful overview and practical guidance for BPFI members and for "Proposed Appointees" to PCF roles.

The clarity and enhancements to the interview process are positive. The applicant and firm will be equipped with information prior to the interview which will assist the individual in her/ his preparation. We welcome the inclusion of the option for an applicant to be accompanied by her/ his note taker; the ninety minute time limit commitment and the commitment to provide feedback.

The CBI's recognition of the importance of efficiency and effectiveness in conducting fitness and probity gatekeeping assessments and its commitment to concluding its assessment of applications within a 90-day timeframe is positive.

### **Question 1(c) What other elements could the Central Bank include within the draft Guidance?**

In our response to this question, we will address some elements which the CBI could consider including in the draft guidance and also highlight some points in respect of which further consideration is required to ensure that the guidance is sufficiently clear and consistent for members and for individual role holders to understand the CBI's expectations.

#### **Chapter 2**

- **Maintaining a PCF role when no longer required**

**Section 2.28** of the draft guidance dealing with PCF16 Branch Managers, states the following;

*‘After an individual has been approved and is performing the role, that individual remains a PCF until such time as they leave their role, even if there are fluctuations above and below the threshold post-approval.’*

We note this wording was contained in the CBI’s February 2024 Information Note on the introduction of thresholds for PCF16s (Amendment to PCF-16 Branch Manager of branches established outside the State, Section 4, page 3). Some BPFIs’ view is that once a Branch falls below the quantitative thresholds set by the CBI then the individual concerned should no longer be required to be a PCF. The on-going requirement means the individual is subject to SEAR whilst any successor or any individual taking up the Branch Manager of a country where thresholds are not met, would not be subject to SEAR. This creates an unnecessary administrative burden on the individual required to maintain their PCF16 role and a lack of consistency across Branches where CBI thresholds are not met for the PCF16 designation. In general, when firms review the PCF16 thresholds, they only change a designation when there is no realistic prospect of that particular Branch meeting or exceeding the thresholds and there is therefore no “fluctuating” effect resulting from an individual going in and out of the SEAR.

- **Outsourcing** (paragraphs 2.40 -2.42 and 2.45 – 2.46)

The current guidance states that where a PCF benefits from an outsourcing exemption, they remain a CF. The draft guidance has removed this reference and it is now unclear what regulatory status is intended to apply to such individuals. The draft guidance states that “an individual benefiting from this exclusion may, nevertheless, be subject to an investigation, suspension and prohibition and provisions of the 2010 Act “. The investigation, suspension, and prohibition provisions of the 2010 Act can only apply to individuals who are deemed to perform CFs, have performed CFs or are proposed to perform CFs.

The table in 2.45 states that CFs and PCFs are exempt from the application of the Fitness and Probity Standards where the outsourcing exemption applies. It is unclear what the basis of an investigation, suspension, or prohibition under the 2010 Act could be where the Fitness and Probity Standards are not applicable. Is it envisaged that an investigation would consider fitness and property outside of the Fitness and Probity standards?

- **Non-PCF roles – CF-1 and Non-PCF compliance roles – CF2**

**Section 2.6** - There are other non- PCF roles which should be captured by CF-1. For example, in the context of credit unions the board of directors.

**Section 2.8** - There are other non- PCF compliance related roles that the CBI expects to be captured by CF-2. For example, the functions commonly performed by a Money Laundering Reporting Officer would be considered to fall under the category of CF-2.

**Section 2.9** - We note that 2.9 states that the roles listed are not exhaustive and that it is a matter for the firm to determine any additional roles that fall within CF-1 and CF-2. However, further guidance would welcome.

- **Chapter 3 – Standards of Financial Soundness and Due Diligence**

Please see feedback on technical elements of the Standards of Financial Soundness and Due Diligence at Appendix A of this submission, which we have set out in a table for ease of reference. Clarification is sought in relation to a number of points in the draft guidance. In addition, we set out the following material points on due diligence:

- **Ten year look back**

The draft guidance states that:

- “all information must be disclosed in Section 5 of the Individual Questionnaire, regardless of when or where the relevant matter occurred” (para 3.34);
- “as a general rule, if ten years have passed since the relevant action (save where a custodial sentence may have been imposed) and there are no other facts that raise material concerns regarding the individual’s fitness and probity, the individual can be presumed to meet the F&P Standards. Notwithstanding the passage of time since matters occurred that may have given rise to a criminal, civil or regulatory action, the underlying facts may still be relevant to an assessment of fitness and probity. It is for the firm or for the Central Bank to assess on a case-by-case basis in the context of a particular assessment.” (para 3.40);
- the expectation for disclosure of relevant experience is 10 years of employment history together with any other prior relevant experience (3.22).

The practical effect of these three separate components of the draft guidance is that applicants are expected to use a 10-year lookback for listing previous roles (together with prior relevant experience), but disclosure of regulatory/civil matters relating to prior roles is expected to be unlimited in time. This could, in theory, cover their entire employment history (in circumstances where their list of employment history might be limited to 10 years only), and the expectation of assessment of those disclosed matters is that, in general, something that occurred more than 10 years ago will not be considered to give rise to an issue. This means that applicants are expected to collate prior employment information based on two different time thresholds within the same IQ, when ultimately, the assessment guideline of 10 years will negate the relevance of the older information. This is not practical from an operational perspective.

Collation of historic matters relating to prior employments is an onerous and time intensive process for applicants and for firms. Historic information beyond 10 years is often unavailable from public sources, including from the CBI’s enforcement register which recently publicised the removal of historic public statements for the period 2006-2014, meaning that enforcement records are only available for a 10-year period. In circumstances where the draft guidance is stating that, in general, matters older than 10 years will not be considered to give rise to an issue, it seems impractical that there is still an expectation of sourcing and disclosure of these matters, in particular where the public records are not available. Omission of information from disclosures can be a material issue and the potential consequences for individuals and firms is significant, noting that this can be considered a prescribed contravention of itself. Clarity in respect of expectations, and a recognition of the practical effects of expectations, is critical and firms request that this element of the draft guidance be revisited by the CBI.

- **Criminal actions**

Criminal actions are described in footnote number 30 as including criminal prosecutions, without a carve out for relevance to role. This would include, for example, traffic and road related offences. Later in the draft guidance, paragraph 3.41 states: “certain types of conviction may be considered particularly relevant. This includes, but is not limited to, convictions for offences involving dishonesty, fraud, breach of trust, misrepresentation, financial crime or offences under company or financial services law. The conviction may be relevant whether the individual was convicted in the State or in some other jurisdiction.” The CBI’s FAQ on the Fitness and Probity Standards states: “Convictions which may not be relevant in particular circumstances might be road traffic offences where a custodial sentence was not imposed, or minor public order offences.” It is unclear as between the two documents and within the draft guidance itself what the CBI’s expectation is in relation to disclosure and assessment of criminal actions and clarity is required.

- **Approach to consideration of previous regulatory history**

The draft guidance states at paragraph 1.22 that it provides additional information on the approach to be adopted in relation to considering past events in the context of a PCF application. This was a key point discussed in the Enria report. The only information in the draft guidance on past events is in paragraph 3.40: *“As a general rule, if ten years have passed since the relevant action (save where a custodial sentence may have been imposed) and there are no other facts that raise material concerns regarding the individual’s fitness and probity, the individual can be presumed to meet the F&P Standards. Notwithstanding the passage of time since matters occurred that may have given rise to a criminal, civil or regulatory action, the underlying facts may still be relevant to an assessment of fitness and probity. It is for the firm or for the Central Bank to assess on a case-by-case basis in the context of a particular assessment.”* While it is helpful to articulate the general rule, it remains unclear as to what approach is to be taken by the CBI in assessing historic matters that are within 10 years and those that occurred more than 10 years previously (noting the draft guidance states that there will be a case by case consideration of matters notwithstanding the passage of time and that there is a requirement (described above) to make disclosure(s) on a unlimited time basis).

It would be helpful for firms and applicants to have more detailed guidance as to the approach that the CBI will take, for example, the expectations for self-reflection/learnings, consideration of the level of seniority of the individual at the relevant time of the matter, experience in the period since the matter, application of learnings etc.

## **Chapter 4 – Key Considerations that form part of an F&P Assessment**

- **Time Commitment**

### **Section 4.4 - Time Commitments**

#### **Section 4.13 – One Individual Holding Multiple PCF Roles**

Sections 4.4 and 4.13 of the draft guidance deal with time commitment to roles. The CBI’s general expectation is that executive PCF roles will be fully dedicated to the PCF role and that they expect approvals of individuals in roles that are not full time in their own right to be relatively limited, taking into account the nature and scale of the institution.



**Section 4.4** - *“Time commitments must form part of the assessment of an individual's suitability for a PCF role. In this regard, a number of factors should be taken into account including the nature, scale and complexity of the firm,..... For executive PCF roles, the general expectation of the Central Bank is that the role is carried out on a full-time basis.”*

Notwithstanding the “nature and scale” caveat, some BPFIs' view is that the introduction of these elements to the draft guidance does not reflect the reality of the structure of firms where individuals may hold a number of roles that are complementary e.g. CEO and PCF50 Head of Material Business Line. Nor does it reflect the reality of how international firms in particular are structured and where individuals may hold both a legal entity role and a geographical role for the international business. In the majority of these cases the role external to the legal entity will be of significant benefit to the legal entity. Requiring a full-time commitment may weaken the effectiveness of a PCF holder in some international firms, in particular. Where firms operate global or regional operating models a PCF role holder often carries out functional responsibilities in addition to their PCF role. This ensures that the PCF is aware of the firm's local requirements at a regional and/or global level which in turn supports a broader understanding of the business and emerging risks. All of this enhances a PCF's effectiveness and widens her/ his perspective of the business.

Additionally, there is a potential impact on Ireland's attractiveness and competitiveness as an international financial centre. International firms who want to put senior staff in PCF roles may want to “double hat” and as outlined above, there are advantages to this approach and there is also the potential impact on staff working on reduced hours, e.g. a four-day week. This should not present an obstacle to holding a CF or a PCF role.

We would request that the general proviso of executive PCF roles being full time be removed and that the overall time commitment assessment and rationale, as presented by a firm at the time of the PCF application, be assessed on a case-by-case basis.

- **One Individual Holding Multiple PCF Roles – Section 4.13**

Section 4.13 of the draft guidance states that while the CBI may approve an individual holding more than one PCF role, the expectation is this would be limited:

**Section 4.13** *‘.....However, where approval is sought for an individual to perform more than one PCF role it should be noted that the individual must display competency for each role. Specifically, it must be demonstrated that the individual is fit for the role from a time commitment perspective and that the holding of such roles does not provide for conflict of interest. The individual must be approved by the Central Bank in respect of the performance of each PCF role. Noting that the majority of executive PCF roles are considered to be fulltime roles in their own right, the Central Bank expects such approvals to be relatively limited, taking into account the nature, scale and complexity of the firm’.*

As stated above, some BPFIs' view is that one individual can hold additional PCF roles where the firm has assessed and considers the individual is fit for the role, can discharge the responsibilities effectively from a time commitment perspective, and the role does not present any conflicts of interest. Specifically, the firm is better positioned to judge the operational efficiencies at a local level, including streamlined governance and oversight activities, where synergies can be leveraged.

PCF role holders already have statutory accountability under the Individual Accountability Framework and must take reasonable steps to discharge those responsibilities, including allocating sufficient time to each PCF role.



The presumption that a PCF role must be a full-time undertaking overlooks the diversity of firms in the sector, as well as the potential for synergies from group arrangements and the evolving nature of roles. The presumption should be that a PCF role is *significant* but not necessarily full-time.

- **4.8 Corporate Governance Requirements for Investment Firms and Market Operators**

A similar point arises in the context of Section 4.8.

“The Corporate Governance Requirements for Investment Firms and Market Operators require investment firms and market operators to assess whether individuals proposed as Board/ Committee members have the ability to commit sufficient time to the role.”

BPFI members would welcome CBI’s clarification around its expectations on the level of “assessment” a firm needs to apply to a Board Member’s ability to commit sufficient time to the role.

- **Minimum expectations of Directors**

#### **Section 4.49 and Table 4**

Table 4 refers to the minimum experience expectations required of Directors. The guidance notes the following;

*Three years of recent relevant practical experience at high level managerial positions (including theoretical knowledge in relevant financial services). Practical experience gained in administrative or academic positions could also be relevant depending on the position held.*

No guidance is given in relation to the meaning of theoretical knowledge; however, the common understanding would be of some formal qualifications in this regard. Recognising that Directors and (I)NEDs in particular, are likely to have had many years of executive experience across a wide range of industries, including but not limited to financial services, some firms have requested that this be removed from the guidance. Boards will often recruit from outside financial services to broaden the skill set at Board level and may recruit for specific expertise (e.g. IT). In these cases, Directors may not necessarily have a formal theoretical qualification in Financial Services and the inclusion of this clause may narrow the pool of potential Directors.

- **Requirements of a Role - Inherent and Prescribed Responsibilities**

**Section 4.34** of the draft guidance provides that in the first instance, the assessment of competency for the PCF role will focus on the requirements of the role and goes on to state “*Inherent Responsibilities* of PCF roles that are captured by the SEAR have been defined (within the SEAR Regulations)...While the SEAR and the *Inherent Responsibilities* under the SEAR Regulations apply to certain sectors only, the *Inherent Responsibilities* define relevant roles in broad terms and as such the Central Bank considers that they are relevant for all such roles across all sectors.”

In addition, the draft guidance identifies two areas where the Regime interacts with the SEAR, (i) the submission of an IQ application for a PCF role and (ii) the application of the Fitness & Probity Outsourcing Exemption. **Section 1.37** states that the Regime “addresses the suitability of individuals to fulfil relevant roles and the SEAR focuses on their responsibilities while performing those roles”.

In the absence of a legal obligation, there should not be an expectation for the SEAR to apply to firms which are not currently in scope for the SEAR. The draft guidance seems to require firms which are not in scope for the SEAR to adhere to SEAR standards.

We would welcome clarification that this is not the expectation and that the draft guidance will be amended to make the position clear.

A separate point arises in the context of the Inherent and Prescribed Responsibilities associated with each PCF. It would be useful to provide a table detailing the responsibilities associated with each PCF (both Inherent and Prescribed Responsibilities), together with guidance clarifying the CBI's expectations in relation to the role and its materiality, for example – materiality PCF16.

Finally, under this heading, when linking requirements or guidance between similar regimes, some firms have identified that there are inconsistencies in application. Clear guidance would be helpful. For example, reference to SEAR requirements applying to (all) PCF holders:

	Inward Branch EAA	Inward Third Country Branch	Financial Holding Company (if not an rfs)	Directly authorised by CBI
SEAR	No	Yes	No	Yes
F&P Regime	No	Yes	Yes	Yes
IAF Conduct Standards	Yes	Yes	No	Yes

- **Portal**

It would be useful for an applicant and a firm to have the option to monitor the status/ progress of an application (which facility is available on the ECB's portal).

It can be challenging for firms using the CBI Portal as they cannot view the application in draft format. Firms acknowledge that applicants are responsible for the accuracy of their responses. However, it would be useful if firms could check draft responses before they are submitted for accuracy and completeness in advance of submission. This is particularly important in light of the CBI's guidance that "Both the regulated entity and the Proposed Appointee must confirm the accuracy of the information provided in the Individual Questionnaire before submission".

- **Ten year look back**

Clarity in relation to the ten year look back period would be welcome. The draft guidance states:

"As a general rule, if ten years have passed since the relevant action (save where a custodial sentence may have been imposed) and there are no other facts that raise material concerns regarding the individual's fitness and probity, the individual can be presumed to meet the F&P Standards."

Confirmation from the CBI that this means that a firm's searches can be limited to a ten-year period would be very useful together with confirmation that the ten year look back applies to all matters (noting that there is an exclusion for custodial sentences), experiences, bankruptcy, adverse media publications, civil proceedings etc.

- **CF2**

The draft guidance at 2.7 states that:

Noting the role of CF-2 is compliance-related, and given that PCFs are a subset of CFs, all compliance-focused PCF roles are considered CF-2 (as well as CF-1s). Examples include PCF12 (Head of Compliance), PCF-13 (Head of Internal Audit) and PCF-52 (Head of Anti-Money Laundering and Counter Terrorist Financing Compliance).

Is it the CBI's expectation that this will be documented accordingly.

Note that there are two paragraphs indicated as 2.9. Check page 26 of the draft guidance from 2.6.

- **Head of Compliance – Section 4.50**

Some BPF1 members would welcome clarification regarding what training the CBI expects the Head of Compliance to undertake, given that this is the only role which the draft guidance specifies "and should have access to regular training".

Some members have asked that a version of the IQ form be provided which includes some useful CBI comments/"signposts" which would be useful to help individuals navigate the IQ.

- **Clarification re roles CF-3 to CF- 9**

**Section 2.10** - the roles captured by CF- 3 to CF- 9 are those which relate to the provision of a financial service to a customer (Any person to whom a regulated financial service provider provides or offers to provide a product or service that is the subject of the Consumer Protection Code, and any person who requests such a product or service).

While CF-3, CF- 4 and CF- 8 are broad, wide-ranging roles likely to apply in all regulated firms, other CFs relate to specific sectors e.g. CF-5 and CF-6 relate specifically to insurance and reinsurance contracts, and CF-9 is relevant only in the context of insurance or reinsurance mediation.

CF-8 specifically focuses on those roles that involve the management or supervision of all the individuals in roles which constitute CF-3 - CF-6.

This is incorrect, CF-7 refers to the management or supervision of those persons undertaking CF-3-CF-6 roles- not CF- 8. CF-8 refers to the adjudication on any complaint communicated to a regulated financial service provider by a customer. In Section 2.10, there is no mention of adjudicating on complaints, but there is a reference to the other CFs. The draft guidance should be updated to reflect the correct CF, and for consistency should also mention CF-8 adjudicating on complaints.

- **CF -11 – Guidance should align with Regulations**

Section 2.14 - the draft guidance refers to CF11 as “dealing in or with property on behalf of the regulated financial service provider *or providing instructions or directions in relation to such dealing*”, however the text in italics is not in the existing CF listing on the CBI website or the appendix in the draft guidance (it is in the Regulations), the CF listing and draft guidance appendix should be updated to align with the Regulations.

## **Chapter 5**

- **Material Changes**

Section 5.30 – 5.33 - The draft guidance states that firms should notify the CBI without delay of material changes and any action taken, if for any reason the individual no longer complies with the Regime. These include “for example issuing of a formal written warning, suspending or dismissing an individual for fraud or reducing / recovering some of their remuneration as a result of issues relating to fitness and/ or probity.”

Suggested wording in this regard is included in the agreement to comply with the Standards of fitness and probity at Appendix 3 and BPFi welcomes its inclusion.

More guidance would be welcome on when the CBI expects to be notified of a breach of the Fitness and Probity Standards Clarification would be useful, including clarification on the following points:

- The CBI’s expectations on non-financial misconduct in relation to Fitness and Probity and the Common and Additional Conduct Standards.
- In relation to 5.33, it would be useful to get further clarity on the application of “reducing/ recovering some of their remuneration as a result of issues relating to fitness and/or probity” and the CBI’s expectations.

- **Conflicts of Interest – 4.19 and 4.22**

4.19 states that “ When assessing the existence of conflicts of interest, firms should identify actual or potential conflicts of interest”.

Appendix 4 indicates that conflicts of interest should be self-certified by a CF. 4.19 states that firms should “identify” conflicts.

Some firms have raised the following points:

Suggestion that 4.19 be amended to read, “assess actual or potential conflicts of interest that have been notified to the firm by the CF”;

similarly in Section 4.22 , the responsibility for the firm to identify conflicts is a new requirement and it does not align with Appendix 4 which states that conflicts are to be self-certified by the CF, and

if it is the CBI’s expectation that firms identify conflicts of interest, guidance on how firms can identify if a CF has political influence that may affect the firm would be required.

In addition, some firms have suggested that it would be helpful for the CBI to confirm what evidence (along with self-certification) would firms be expected to obtain and retain regarding

conflicts of interest. Would this be a requirement for the entire CF population and would the assessment have to be carried out annually.

### **Question 2(a) & 2(b)**

#### **Do you agree with the proposed revision to the PCF list?**

#### **Have you identified any issues within this revision?**

We have amalgamated our responses to Question 2(a) and (b).

Some BPFIs' view is that any revision to the PCF list should form part of a separate CBI consultation and might best be conducted in line with and in anticipation of the CBI's review of the SEAR in 2027.

It may not be beneficial to make any changes to the PCF list between now and the CBI's review of the SEAR, given that it is only one year since in-scope firms implemented SEAR.

As the CBI is aware from the above and from previous submissions, BPFIs have made suggestions about the Regime, SEAR, and the PCF list.

We will include some comments from members in response but would suggest that stakeholders get the opportunity to engage on this aspect of CP160 in detail closer to the time at which the CBI conducts its review of SEAR.

In general, firms note that the PCF listing has been reduced, however no PCF roles have been removed. The listing has been amalgamated and sector specific categorisation has been removed. Some firms find the sector specific categorisation useful.

- **Proposal for one list of PCFs**

We note that the CBI's intention is that there will be one list of PCFs that applies to all regulated firms. For firms that are in scope of SEAR, we would ask the CBI to clarify if the additional roles that are set out in the proposed list (which have applied only to certain sectors which were not in scope of SEAR) are now in scope of SEAR (we expect that this is not the intention), and if so to provide additional guidance in this regard and provide details of the proposed Inherent Responsibilities.

We draw the CBI's attention to the following rules which previously would have applied to UCITs Self-Managed Investment Company/ Management Company type firms. For example, for credit institutions, many of these roles already have a PCF with responsibility for these areas, is it intended that these PCF roles would also now apply, for example, would credit institutions needing to appoint a PCF-39B even if there is a PCF 14 (Chief Risk Officer) already in place, and as stated in the consultation an in situ process will apply to reflect these changes, this will trigger significant administrative work for firms and applicants, when in reality there is no practical change to the role or the individual. Firms query the practical efficacy of this proposed approach.

As outlined below, BPF members would appreciate if the CBI could give additional consideration as to whether PCF 39 A-F applies to all firms and in what instances could firms not appoint these roles (e.g. for PCF 39B if there is an “in-situ” PCF 14, of PCF39E, if there is an “in situ” PCF 12).

In addition, clarification regarding PCF-26, PCF-28 and PCF-29, as outlined below, would be welcome.

PCF-28	Branch Managers within the State	Is this intended to be applicable to all rfsp Branch Managers?
PCF-26	Head of Regulated Markets	Are these required for all institutions? Even when there is a more senior role holder, which of these role holders would she/ he report into (e.g. Operational risk is a core element of the CRO role, similarly Regulatory Compliance is a core role of the Head of Compliance), while these existing PCF role holders will likely have a member of their senior team focus on this area, is it required to have a subordinate PCF also?
PCF-29	Head of Trading	
PCF-39A	Designated Person with responsibility for Capital and Financial Management	
PCF-39B	Designated Person with responsibility for Operational Risk Management	
PCF-39C	Designated Person with responsibility for Fund Risk Management	
PCF-39D	Designated Person with responsibility for Investment Management	
PCF- 39E	Designated Person with responsibility for Distribution	
PCF-39f	Designated Person with responsibility for Regulatory Compliance	

- Pending clarification of the above, if these roles are applied broadly, there will be a significant increase in PCF role holders within each entity ( e.g. large credit institutions have c150/200 branch managers).

- The introduction of subordinate PCFs potentially complicates where accountability lies, in particular where the subordinate PCF role is a specific aspect of another ( e.g. Operational Risk is a specific aspect of the role of the CRO).
- The increase in new PCF roles, even in its limited interpretation, results in a notable increase in particular in group structures which may have a number of entities in scope. While members have already acknowledged the importance of the Regime and the role it plays in enhancing standards, even in compliance with current CBI expectations the role holder would already be a CF role and likely a CF1 or CF2. Therefore, having additional due diligence conducted prior to appointment seems excessive. This cohort of a firm's population will be subject to the Conduct Standards and the Additional Conduct Standards of the Individual Accountability Framework.

- **Inward EAA Branches**

The Regime excludes inward EAA branches. However, the experience of some firms is that the CBI requires some PCFs be established in an inward EAA branch on the basis of good practice, regulatory expectation, and application by peer firms.

Some firms have asked the CBI to clarify its approach and expectations in this regard. Sharing of best practice can be beneficial but should not be a method pursuant to which the scope of requirements is expanded or new requirements are introduced.

## **Conclusion**

BPFI and its members appreciate the opportunity to participate in CP160 and we are available to meet to discuss the above points in further detail with the CBI, if that would be useful.





## **Appendix A**

### Commentary on individual due diligence components

Chapter Heading	Paragraph Heading	Paragraph Text	Comment
Chapter 2 Population of CFs and PCFs (paras. 2.1-2.48)	Approach to identifying the CF population (paras. 2.1-2.21)	2.10. The roles captured by CF-3 to CF-9 are those which relate to the provision of a financial service to a customer [Any person to whom a regulated financial service provider provides or offers to provide a product or service that is the subject of the Consumer Protection Code, and any person who requests such a product or service.]. While CF-3, CF-4 and CF-8 are broad, wide-ranging roles likely to apply in all regulated firms, other CFs relate to specific sectors e.g. CF-5 and CF-6 relate specifically to insurance and reinsurance contracts, and CF-9 is relevant only in the context of insurance or reinsurance mediation. CF-8 specifically focuses on those roles that involve the management or supervision of individuals in roles	It is CF7 rather than CF8 that are involved in the management or supervision of individuals in in CF3 - CF6 roles.

			which constitute CF-3 - CF-6.	
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Standard of Financial Soundness (paras. 3.8-3.10)	3.8. In assessing an individual's financial soundness, firms must consider whether the presence of any of the following factors could compromise an individual's ability to carry out the role:	Guidance text does not clearly distinguish between due diligence expectations between PCFs, CF1-2, and CF3-11 as set out in the table in App. 4	
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Standard of Financial Soundness (paras. 3.8-3.10)	The individual has defaulted on any payment due arising from a compromise or scheme of arrangement with their creditors or made an assignment for the benefit of their creditors,	Self-certified for PCF & CF1-CF11 as part of questionnaire but paragraph 3.9 refers to performing checks generally	
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	3.12. This obligation includes the following key steps:		
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	<ul style="list-style-type: none"><li>Background checks: firms should perform comprehensive background checks, which include criminal record checks, where possible, credit checks and reference checks. The depth and scope of these checks depend on the seniority of the roles and the nature scale and complexity of the firm.</li></ul>	<p>Criminal Record Check - clarification required as Garda Check/Convictions is self-certify as per App. 4</p> <p>Credit Check - clarification required on what a credit check is, e.g. a CCR check is not permitted.</p>	

Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	3.15. For illustration purposes, a table at Appendix 4 sets out examples of due diligence required. The table is not intended to be exhaustive and does not supersede the due diligence requirements set out in this guidance.	This table at Appendix 4 is not fully aligned to paragraphs 3.8, 3.9 and 3.12
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	Probity - Due Diligence to be undertaken by a Firm	
			Independently verified for PCF/CF1/CF2 only. Self-certified for CF3-CF11 as part of questionnaire (aligned to due diligence table in App. 4)
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	iii) In relation to 4(1)(f) of the F&P Standards, should check the Companies Registration Office records for restrictions or disqualifications from acting as a Company Director;	This check is not referenced in App.4.
Chapter 3 Fitness and Standards (paras. 3.1-3.44)	Due Diligence (paras. 3.11-3.44)	v) In relation to Section 5.2(b) of the F&P Standards, check against publicly available sources whether a judgment debt has been registered against an individual. Publicly available	Independently verified for PCF/CF1/CF2 only. Self-certified for CF3-CF11 as part of questionnaire (aligned to due diligence table in App. 4)

		resources may include, for example, Experian, All Ireland Gazette or Stubbs Gazette. Where the individual has lived outside the State for more than six months in the previous five years, the firm should request that the individual provide a check from a publicly available source in relation to judgment debts from that other jurisdiction(s).	
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