

Consultation Paper 160
Central Bank of Ireland
North Wall Quay
Dublin 1

Sent by email to: CP160@centralbank.ie

10 July 2025

Re: Consultation Paper Amendments to the Fitness and Probity Regime (CP160)

Dear Sir/Madam,

Thank you for the opportunity to engage on Consultation Paper 160 (CP160) concerning the proposed revisions to the Fitness and Probity (F&P) Regime Guidance. We also wish to acknowledge the Central Bank's continued engagement with industry throughout this process.

Financial Services Ireland (FSI) is the Ibec trade association representing the full breadth of Ireland's financial services sector. Our 160 members operate across domestic and international banking, (re)insurance, funds and asset management, payments, fintech, aircraft leasing, and other related sectors. Our objective is to support and enhance Ireland's standing as a leading global financial centre.

We welcome the overarching intent of CP160 to improve clarity, consolidate existing guidance, and promote consistent supervisory outcomes. While the proposed revisions aim to strengthen governance and accountability, some elements appear however to expand the existing Fitness and Probity framework. In light of this, we suggest that any enhancements beyond consolidation be supported by a cost-benefit analysis to assess their proportionality and impact on firms. As we set out below, we also believe a number of elements within the draft Guidance and proposed PCF revisions would benefit from additional clarification and a more proportionate approach to ensure effective implementation and alignment with broader EU regulatory simplification efforts.

1(a) Do you agree with the proposed revision to the draft Guidance?

The proposed revisions to the draft Guidance have been well received, and we are broadly supportive of the changes, subject to the following comments and recommendations. We believe these enhancements are important to ensure greater clarity, consistency, and ease of practical implementation for regulated firms. We understand that the final Guidance is expected to be issued

in Q4 2025, and we would encourage the CBI to allow for an implementation period of at least six months to enable firms to effectively integrate the new and amended elements into their regulatory and governance frameworks.

Key Issues for Consideration

1. Administrative and Procedural Clarity

- **Section 1.38 – Statement of Responsibilities (SoR):**

While the Guidance requires a SoR (for in scope firms) as part of PCF applications, the current Individual Questionnaire (IQ) form does not accommodate this. We recommend updating the IQ form to include a dedicated section for the SoR, ensuring consistency and ease of submission.

2. Controlled Function (CF) Designations and Definitions

- **Section 2 – General**

In Chapter 2, *Approach to Identifying the CF Population*, the draft Guidance states that it is the responsibility of each firm to determine whether an individual is performing a Controlled Function (CF), based on the definitions set out in the Fitness and Probity (F&P) Regulations. While we acknowledge that it would not be practical to prescribe criteria for all governance structures, and we recognise the value in allowing firms to consider their specific organisational context, we believe that additional guidance would be helpful in supporting a more consistent and objective approach to CF designation.

In particular, Section 2.9 of the Guidance notes that CF designation should be based on the functions performed by the individual, rather than their job title or place within the organisation's structure. It states that any individual "ensuring, controlling or monitoring compliance" may fall within scope of CF-2, beyond those solely working in the designated Compliance function.

However, it is important to note that the current industry interpretation of the phrase "ensuring, controlling or monitoring compliance" does not typically extend to junior compliance staff or individuals outside the Compliance function. Many firms apply the CF-2 designation only to individuals whose primary responsibilities involve oversight or assurance activities and may also consider seniority when making this determination.

For large global organisations, which often utilise centralised teams to deliver aspects of the compliance programme while maintaining local accountability and oversight, this approach may result in a disproportionately large number of individuals being brought within scope. In many cases, responsibility and control over compliance matters resides with a small number of senior individuals locally, rather than across the broader team involved in programme execution.

We therefore recommend that the Guidance provide additional clarity on the interpretation of "ensuring, controlling or monitoring compliance," with reference to the level of seniority and the nature of the individual's role. This would support a proportionate, risk-based application of CF-2 designations and assist firms in making and explaining these determinations in a consistent manner.

- **Section 2.28 – PCF16 Branch Managers required to remain as PCF116s even if below quantitative criteria**

Requiring current Branch Managers to keep their PCF116 designation when new appointees in the same role would not meet the criteria seems inconsistent. We recommend applying the updated criteria equally to both new and existing Branch Managers, with suitable transitional arrangements, to ensure a fair and proportionate approach.

- **Section 2.7, Roles Captured by CF-2: Ensuring, Controlling or Monitoring Compliance**

The requirement to classify individuals holding Pre-Approval Controlled Functions (PCFs)—who already ensure compliance as part of their role—as CF-2s is unclear. While we agree that individuals acting as Money Laundering Reporting Officers (MLROs) should appropriately be designated as CF-2s, we do not believe that individuals performing this function within their existing PCF-52 designation require additional classification. In such cases, the relevant compliance responsibilities are already captured within the scope of the existing PCF role. In our view, the additional requirement to classify PCFs as CF-1 or CF-2 introduces unnecessary complexity and administrative burden into the Fitness & Probity governance process, without delivering clear benefits in terms of regulatory effectiveness or operational efficiency. We would recommend that the Guidance clarify that, where compliance-related responsibilities are already encompassed within a PCF role, further CF designation is not required.

- **Section 2.8 – MLRO as CF2 and PCF**

Per Section 2.8 of the draft Guidance, the role of PCF-13 (Head of Internal Audit) for example is categorised as CF-2 as again this appears to be duplication of roles.

- **Section 2.10 – CF Reference Error**

CF8 is incorrectly described as overseeing CF3–CF6 roles (which aligns with CF7). CF8 relates to complaint adjudication and this should be corrected.

- **Section 2.14 – CF-11 Definition**

CF-11 is not defined in the Appendix or in official Controlled Function listings, and alignment with existing regulatory definitions would be helpful. Section 2.14 describes CF-11 as “dealing in or with property,” citing stocks or shares held by a stockbroker as an example. This appears to relate primarily to trading activity and may not offer sufficient clarity for firms in other sectors. We recommend including a broader range of sector-specific examples to support consistent application across the industry.

3. Time Commitments and Conflicts of Interest

- **Sections 3.22, 4.3, 4.4:**

Greater clarity is needed on how firms should assess time commitments and external roles, particularly in group structures.

- **Section 3.40 – Look-Back Period for Criminal, Civil and Regulatory Actions**

Section 3.40 of the draft Guidance states that firms are not required to investigate beyond a 10-year look-back period, except where a custodial sentence may have been imposed or where other facts raise concerns regarding an individual’s fitness and probity. However, it is unclear whether this look-back period also applies to investigations involving previous employers, as referenced in Q5.31 of the Individual Questionnaire (IQ), which asks whether

any business where the individual held a position of responsibility or influence has been subject to regulatory or legal action. We request clarification on whether the 10-year look-back period is intended to apply in such cases.

- **Section 4.26 – Independence of Mind**

The draft Guidance requires firms to assess board members’ “Independence of Mind,” including their ability to challenge decisions and resist groupthink. Given that independence of mind is a behavioural pattern, there is concern that Board minutes may be relied on excessively as evidence. Additionally, as this assessment is subjective, further guidance on acceptable methodologies—such as Board Effectiveness Reviews—and clear criteria for evaluating independence of mind would be valuable to ensure consistency.

- **Section 4.4 – Executive PCFs**

We suggest the Central Bank consider a more flexible approach to Executive PCF applicants who undertake additional activities within their organisations that align with their PCF responsibilities. For example, a proposed CEO may also have leadership roles in sales or product development that complement their PCF duties. Such flexibility would enable applicants to leverage their broader organisational roles to effectively represent and safeguard the interests of the Irish Regulated Financial Service Provider. The implication that Executive PCFs must operate full-time may not reflect common group governance practices and could benefit from reconsideration.

- **Sections 4.51 and 4.53 – Board Composition and Diversity**

These sections highlight the importance of board composition, noting that boards should collectively have the knowledge, skills, and experience necessary to understand the firm’s operations, key risks, and the broader financial environment. Diversity is rightly emphasised as essential to fostering varied perspectives and informed decision-making. We would appreciate further guidance on appropriate parameters, benchmarks, or targets for the use of board skills matrices, with consideration given to the nature, scale, and complexity of firms. In particular, it is important that guidance reflects the challenges that smaller firms may face with this new requirement. Additionally, clarification is sought on whether the references to Diversity and Inclusion (D&I) in the draft Guidance have been informed by the recent D&I thematic review conducted by the Central Bank’s Consumer and Competition Board (CCBI), and if the Guidance is expected to evolve following the review’s conclusion.

4. Fitness and Probity (F&P) Notification Thresholds

- **Sections 5.32 and 5.33:**

It would be helpful to distinguish between reportable breaches and internal HR matters (e.g. formal warnings) that do not impact F&P. Improved structure would aid compliance.

5. Technical and Definitional Issues

- **SEAR-Derived Definitions (p.77)**

The use of SEAR-specific terminology may cause confusion for firms not currently subject to the Senior Executive Accountability Regime (“SEAR”). We understand that references to inherent responsibilities and SEAR within the draft Guidance are not intended to extend these requirements to non-SEAR firms. Such firms should regard these provisions as non-binding, helpful guidance, with no expectation that inherent responsibilities be formally

applied to roles outside the SEAR scope. We therefore request that this be explicitly clarified in the final Guidance.

- **Glossary Improvements:**
 - Include the Irish Funds Corporate Governance Code.
 - Define “geographical provenance” (p.90).
 - Clarify “in scope firms” in Section 1.34.
- **Section 2.5 – CF1 Definition:**

Appears inconsistent with Section 2.2. Alignment is recommended.
- **Section 2.7 – PCF-13 and CF2:**

Further rationale is needed for this dual categorisation and its practical benefit.
- **PCF/CF Duplication:**

Clearer guidance would reduce unnecessary overlap.

6. Due Diligence – Background Checks

- **Section 3.12**

Criminal checks are difficult to obtain in Ireland. Further guidance on acceptable alternatives (e.g. self-certification) would support compliance. We request that the Central Bank provide further guidance on tailoring these background checks to align with the seniority of roles.

7. Company Secretary – CF1 Designation

It would be helpful if the Guidance clarified that the CF1 designation for Company Secretaries should be limited to cases where the Company Secretary has significant influence, as per Section 2.5. The language in the existing FAQ 3.10 is unclear and arguably implies an automatic CF1 designation for Company Secretaries.

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

Yes, the consolidation of supervisory expectations, Dear CEO letters, FAQs, and guidance into a single reference document is highly beneficial. It enhances accessibility and reduces ambiguity. Nonetheless and as mentioned above, we observe a number of requirements which are additional. The value of the Guidance depends on addressing the issues outlined.

We particularly welcome:

- Consolidation into a single text, which is more user-friendly and accessible.
- The use of a tracked changes format in future updates to facilitate regulatory horizon scanning and change management for all involved.

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

- **Gatekeeper Process:** Consider integrating the Gatekeeper Process directly into the Guidance to support a more cohesive and streamlined compliance framework.
- **Consolidated Guidance Document:** A “one-stop shop” approach would enhance usability for firms by reducing reliance on multiple documents. We also recommend that, following implementation, all “Dear CEO” letters, FAQs, and similar communications be archived or clearly marked as historic, to avoid confusion with current guidance.
- **Supervisory Approach Transparency:** Clearer articulation of when a supervisory or enforcement-led approach will apply—particularly in the context of new regulatory frameworks such as the European Accessibility Act (EAA)—would aid planning and compliance.
- **Temporary PCF Arrangements:** Guidance akin to the UK’s temporary PCF provisions would provide certainty in cases of unexpected or short-term PCF absences.
- **Non-Ireland-Based PCFs:** Further clarification on the criteria for approving PCFs based outside Ireland would assist firms in navigating cross-border governance structures.
- **Cost-Benefit Analysis:** For changes that go beyond guidance consolidation, a cost-benefit analysis would help assess merit, proportionality, and support transparent decision-making.

2(a) Do you agree with the proposed revisions to the PCF list?

Yes, in principle, we welcome the streamlined approach, particularly the consolidation of sector-specific PCFs, which better reflects evolving business models and supports greater cross-sector clarity.

We also appreciate the guidance provided in the section titled “Approach to Identifying the PCF Population,” which assists firms in determining whether internal roles meet the definition of certain PCF roles. While this guidance on less clear-cut or non-universal roles is helpful, we believe it would be beneficial if all PCF roles were defined in this manner to promote a consistent approach across all firms.

Regarding the proposed changes to the PCF list, the merging of duplicated roles is a positive development. However, the removal of sector-specific categorisations may have unintended consequences. Currently, firms can determine applicable PCF roles based on their sector and authorisation, allowing them to de-scope roles outside their remit and focus on relevant designations. The proposed unified list risks inconsistent designation of PCF roles across firms.

We suggest retaining sector-specific categorisations while providing additional guidance on which PCF roles are expected for particular entity types.

The consultation paper notes that the revised PCF list will not generally require the appointment of new PCFs but also acknowledges that some roles previously limited to certain sectors may become applicable more broadly. This will necessitate a comprehensive and resource-intensive review of existing PCF designations, particularly challenging for smaller firms.

Additionally, we seek clarification on the scope of the Head of Trustee Services (PCF-35) role—specifically, whether it is limited to situations where a Fund Service Provider acts as Trustee to a Unit Trust or extends to other legal entities. If limited, we recommend creating a separate “Head of Depositary Services” role to align with the definition of Depositary under the Alternative Investment Fund Managers Directive (AIFMD), encompassing safekeeping and oversight functions.

Finally, while acknowledging that the Senior Executive Accountability Regime (SEAR) is still in early stages, we question whether a two-stage implementation approach is appropriate. Firms will be required to review PCF roles in stage one without full visibility of forthcoming changes anticipated in stage two, potentially complicating compliance efforts.

2(b) Have you identified any issues with this revision?

Yes. We highlight the following:

- **Timing:** The review coincides with the rollout of a number of other initiatives, including part of the Individual Accountability Regime. We would reiterate our request that the Central Bank apply an implementation period of at least six months.
- **Alignment with SEAR 2027 Review:** It would be helpful for the Central Bank to clarify whether the PCF list will be reviewed in parallel with the planned SEAR review in 2027. Aligning these timelines would support long-term planning and operational certainty.
- **Single-Stage Implementation:** A single-stage revision of the PCF list would provide greater clarity and avoid the complexity and uncertainty associated with a phased, two-stage approach.
- **Sector-Specific PCFs:** Retaining sector-specific PCFs, where appropriate, would help reflect the unique characteristics of different financial subsectors and maintain proportionality.
- **EEA Branches:** Further clarity is required on the treatment of incoming EEA branches under the revised framework to support firms operating in a cross-border context. Additionally, while we support strong accountability mechanisms, the assignment of individual PCF responsibility for European Accessibility Act (EAA) compliance may inadvertently encourage a “finger-pointing” culture. A more proportionate and collaborative supervisory approach—particularly during the initial implementation phase—would better support effective compliance and positive engagement.

Additional Comments

- **Regulatory Certainty and Supervisory Judgement**
There remains concern around the reliance on supervisory discretion instead of a more rules-based framework. This increases compliance uncertainty and risks inconsistencies, especially for cross-border firms. We recommend further development of clear, binding rules to enhance predictability.

- **Regulatory Burden and Strategic Alignment**

As above, firms have recently completed the implementation of the Individual Accountability Framework (IAF) and SEAR (for in scope firms). As such, the introduction of further regulatory changes in the short term may present practical challenges from a sequencing and resource planning perspective. It may also be helpful to consider the alignment of these proposals with ongoing EU-level initiatives, including the Draghi Report and broader efforts to streamline and simplify regulatory requirements across Member States. While the proposed revisions aim to strengthen governance and accountability, some elements appear to expand the existing Fitness and Probity framework. In light of this, we suggest that any enhancements beyond consolidation be supported by a cost-benefit analysis to assess their proportionality and impact on firms.

- **Providing a public register of PCF roles.**

This would assist firms in understanding roles held by individuals to aid PCF selection and due diligence including verifying time commitments and conflict.

- **IQ Portal Access**

Firms face challenges as Legal Entity portal users cannot view or manage IQ applications on behalf of applicants. When queries go only to the applicant who may be unavailable, delays occur. We recommend allowing authorised firm staff (e.g., compliance, company secretaries) to respond to IQ queries and handle routine administrative tasks, ensuring coverage and reducing key person risk, while respecting GDPR and confidentiality.

Additionally, since firms cannot see draft IQs, verifying completeness is difficult. Allowing firms to download and review draft IQs before submission would improve oversight and accuracy.

Please do not hesitate to contact us if you require further detail on any of the points raised above.

Yours faithfully,



Audrey Crummy
Deputy Director, Financial Services Ireland
Audrey.crummy@ibec.ie