

# MARSH

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Governance, Accounting and Auditing Policy Division  
Policy and Risk Directorate  
Central Bank of Ireland  
PO Box 559  
College Green  
Dublin 2

**Subject:** Consultation Paper 51: The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010

Dear Sir/Madam,

We refer to Consultation Paper 51, The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010 (CP51) and wish to thank the Central Bank (Bank) for the opportunity to provide our comments thereon. We too recognise that individuals at board and senior level in the financial services industry must have the requisite knowledge, experience and be of good repute and integrity. We believe that this is an essential cornerstone of an effective corporate governance system.

As Company Managers, we would like to find an optimum solution that encourages captives and (re)insurance undertakings to continue to operate within Ireland whilst ensuring that the Bank is satisfied that there are appropriate, proportionate and effective standards of fitness and probity in place for such entities.

Set out below are some general comments and observations relating to CP51. Some of these are also repeated in our detailed comments also provided below:

We note that the fitness and probity standards are to be implemented through the enactment of a Statutory Instrument (SI) rather than by way of a Regulatory Guideline. We believe, in keeping with previous consultation processes, that a Regulatory Guideline instead of a SI should be the preferred means to implement the regime as it provides more flexibility should alterations, for whatever reason, be deemed necessary.

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The definition of Controlled Functions (CFs) taken from the Act is extensive and has already created uncertainty within industry as to what roles or functions meet the definition. Therefore, we would ask that there is specific designation of positions as CFs included in the new regime.

There will be a very short, if any, transition period between the publication of the final fitness and probity regime and its commencement. In order to allow for any further dialogue and for entities to implement new processes and procedures to enable them to comply with the new regime we recommend at least a three month transition period from date of release to date of commencement.

The Central Bank Reform Act 2010 (the Act) states that a regulated financial services provider shall not offer to appoint a person to perform a pre-approval controlled function unless the Bank has approved the appointment in writing. We believe that this may dissuade potential candidates and a conditional offer subject to regulatory approval needs to be provided for. We also note that there is no reference to the length of time the Bank can take to approve or decline a requested appointment. There needs to be a clear timeline specified that entities and proposed individuals can rely on and work within, otherwise delays will adversely impact on attracting talent to the industry.

Set out below, we have included a detailed commentary on each clause within the Consultation Paper from the perspective of both captives and (re)insurance undertakings.

## **Section 2**

3(b) There needs to be a time commitment given to the approval or refusal of a PCF appointment. The reasons for the refusal also need to be clearly articulated with some mechanism for appeals.

3(d) We would ask that there is specific designation of positions as CFs included in the new regime.

3(e) (ii) Can the Bank provide guidance on or specify the extent to which an entity should monitor those individuals carrying out CFs to ensure that they continue to comply with the fit and proper standards?

## **Section 4**

8 (a) to (c) We would ask that there is specific designation of positions as CFs included in the new regime.

10 Examples are given in the CP of positions below executive level that should also be fit and proper. We would ask that a definitive list of designated positions is set out in the new regime.

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16 We would welcome non statutory guidance on what you consider to be appropriate levels of or types of due diligence required prior to appointing individuals to CF positions.

## **Section 5**

20 last bullet point, the main thrust of this point is already included in the fourth bullet point. We believe that it would too difficult, if not impossible, to realistically determine whether a person performed a function in a regulated financial service provider which received state financial support.

26 There should be a transition period that gives entities sufficient time to enable them to review persons in CFs for compliance with the new standards of fitness and probity. We recommend at least a three month transition period to allow for the reviews to be completed.

## **Section 6**

32, see also Section 5 sub 26 comment above.

## **Section 7**

37 Under the Act a regulated financial services provider shall not offer to appoint a person to perform a pre-approval controlled function unless the Bank has approved in writing the appointment. There needs to be a timeline specified whereby the Bank must respond within a specific period to PCF applications that entities and proposed individuals can rely on and work within, otherwise delays could adversely impact on attracting talent to the industry.

38 We request that the Bank release, in advance of the new regime, the online IQ including the required declarations that the proposed holder of the PCF and the proposing firm are required to confirm.

## **Section 8**

42 We would welcome non statutory guidance on the statutory Standards. This could take the form of Frequently Asked Questions compiled from responses received on this CP.

## **Section 9**

44 There will be a very short, if any, transition period between the publication of the final fitness and probity regime and its commencement. In order to allow for any further dialogue and for entities to implement new processes and procedures we recommend a three month transition period from date of release to date of commencement.

## **Appendix 1**

Schedule 1 - The definition of Controlled Functions (CFs) taken from the Act is extensive and has already created uncertainty within industry as to what roles or functions meet the definition. Therefore, we would ask that there is specific designation of positions as CFs included in the new regime.

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Outsourcing of services and functions to specialist provider's e.g. captive managers, is commonplace within the industry. Where a CF is outsourced we assume that the entity need only ensure that the outsource provider meets the fitness and probity standards and not each individual employed by the outsource provider. Can the Bank provide further guidance in this regard?

## **Appendix 2**

3(c) is already covered by 3(b). We believe that it would too difficult, if not impossible, to realistically determine whether a person performed a function in a regulated financial service provider which received state financial support.

3(e) Guidance is needed on what the Bank considers to be "appropriate to the relevant function".

3(f) We believe that this may have employment law implications and should be removed.

4.1 Guidance is needed on what the Bank considers to be material where it states "...a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree.....".

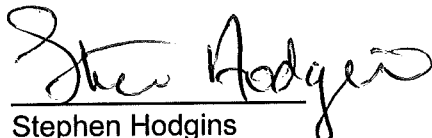
4.1 (e) This statement should be qualified for situations other than at the request of the company in circumstances where there were no liabilities to discharge.

4.1 (g), (h), (i) & (j). Exclude/remove all references to where proceedings or investigations are pending or have not been concluded.

5.2 (g) We believe that there are adequate legal processes already in place that deal with this and it should be removed.

Finally, we would like to thank you for the opportunity to comment on the Consultation Paper and confirm our availability to discuss any aspect of this submission with you.

Yours sincerely,



Stephen Hodgins  
Senior Account Manager