



THE SOCIETY OF ACTUARIES IN IRELAND

**Submission on the Central Bank of Ireland's Consultation on
"The Fit and Proper Regime in Part 3 of the
Central Bank Reform Act 2010"**

May 2011

1 Introduction

- 1.1 The Society of Actuaries in Ireland is the professional body representing the actuarial profession in Ireland. Many of our members hold responsible roles within or as advisers to financial services firms. They act as Board members, Appointed Actuaries (with statutory responsibilities), Signing Actuaries (also with statutory responsibilities), and senior managers carrying a range of responsibilities including financial and risk management.
- 1.2 In addition, the Society is an active member of the Groupe Consultatif Actuariel Européen and is fully engaged in the Groupe's ongoing work on governance systems and prudential regulatory standards, especially in relation to the development of Solvency II.
- 1.3 The Society welcomes the opportunity to participate in this Central Bank of Ireland ('Central Bank') consultation on "the Fit and Proper Regime in Part 3 of the Central Bank Reform Act of 2010".
- 1.4 We provide general comments in Section 2 followed, in Section 3, by answers to specific questions posed in the consultation paper.

2 General Comments

- 2.1 In general we agree with the proposed fitness and probity regulations, subject to some general comments set out in this section and some specific comments set out in Section 3.
- 2.2 We recognise the importance of a robust fitness and probity regime and support the objectives of the Central Bank in “raising the bar” in this area. In addition, we support the Central Bank’s undertaking that it “will adopt a proportionate and risk based approach in use of [its] powers.”
- 2.3 The Introduction to the paper makes it clear that the global financial crisis frames the context for the development of the fitness and probity regime. One fundamental point that should be considered is the extent to which the new fitness and probity regime would have reduced or mitigated the governance issues which led to the financial crisis, if the regime had already been in place. We believe that a stricter fitness and probity regime alone will not eliminate the possibility that unsuitable individuals will attain positions of significant influence. Fitness and probity must therefore be seen as only one part of an overall corporate governance and risk management structure.
- 2.4 A strict fitness and probity regime will increase the administrative and compliance burden on financial services undertakings. It is therefore important to focus the limited resources of financial services undertakings on fitness and probity requirements that can have a real influence on the governance of the undertaking.
- 2.5 In preparing this response we have not attempted to comment on every item in the proposed Regulations and Standards, but have focused on areas relating to the feasibility of implementing the requirements or areas where we feel further clarity would be of benefit.

3 Response to Questions

In this section, we respond to most of the specific questions posed in the Central Bank's consultation paper. The question numbers below correspond to paragraph numbers in the paper.

Questions relating to proposed PCFs and CFs

Qt. 16.i(a): Do you consider any PCFs or CFs should be removed from the list? If so, the reasons why?

3.1 Pre-Approval Controlled Functions

The proposed regulations provide a list of Pre-Approval Controlled Functions (PCFs). Broadly we agree with the list of PCFs proposed, but observe that in some cases the position or title described is not a clearly defined position which would be consistently interpreted across a range of companies. In particular we note the following:

Chief Actuary

We agree that person(s) who discharge key actuarial responsibilities should be included within the PCF framework.

That said, the position of "Chief Actuary" (PCF-21) is not a defined role across Insurance Undertakings generally. Because the term "Chief Actuary" is not defined, many companies will not have the specific role, and various actuarial responsibilities might be discharged by different people. Where companies do have the role, the interpretation of what the role means (and the job description) is likely to vary considerably. We recognise, however, that the naming of the role of Chief Actuary in the Fit and Proper Regulations will help to establish and bring greater uniformity to this role.

It may be helpful to include additional detail in relation to this PCF, possibly through the proposed non-statutory guidance, indicating the nature of responsibilities which should be considered a PCF.

We comment further on this PCF in our response to 16.i(b) below.

3.2 Controlled Functions

The proposed regulations do not provide a list of specific Controlled Functions (CFs). Instead, the term "Controlled Function" is defined in terms of the attributes of a function which could be considered a CF, and these attributes mirror closely those set out in the Central Bank Reform Act, 2010 itself. We provide comments on the definition of a CF in paragraphs 3.7 and 3.13 of this submission.

Qt. 16.i(b): Do you consider any other positions or functions should be added to the lists of CFs and PCFs?

3.3 Statutory Actuarial Roles

3.3.1 It is not clear from the consultation if the Regulations are intended to capture the defined statutory roles of Appointed Actuary for life insurance undertakings and Signing Actuary for non-life insurance and reinsurance undertakings. Both of these roles are currently important elements of the overall governance framework of insurance undertakings (see *Appendix*). Both roles may be discharged either by employees of the undertaking or on an outsourced basis (usually to a member of a professional firm). We would welcome clarification on whether the Central Bank considers that the PCF of “Chief Actuary” includes the Appointed Actuary and Signing Actuary roles, and if not, whether these statutory roles are considered to be CFs.

3.3.2 Some firms have an Appointed / Signing Actuary and a separate “Chief Actuary” who discharges other key actuarial responsibilities and to whom the Appointed / Signing Actuary might or might not report. Again, we would welcome clarification on how the PCF / CF regime is expected to operate in such instances.

3.3.3 We would also welcome clarification on whether, for PRSA providers, the statutory role of PRSA Actuary (see *Appendix*) is considered by the Central Bank to be a Controlled Function. It may be such under Schedule 1, paragraph 2 of the proposed Regulations – however, it is not clear what it meant by “relevant obligations” in this paragraph, and clarification or guidance would be useful.

3.4 Head of Product Pricing

We believe that a person who carries responsibility for product pricing within an insurance undertaking should be subject to the PCF regime. We would welcome clarification on whether the Central Bank considers that this role is covered by the PCF “Chief Actuary”. If the Central Bank does not consider that this role is covered by the PCF “Chief Actuary”, then the role should be regarded as a PCF.

3.5 Solvency II Roles

Under Solvency II, companies will be required to have an actuarial function and a risk management function. The role of head of risk management function is classified as a PCF. We believe that it would also be appropriate for the head of actuarial function to be considered a PCF. (This may be part of the intention of the PCF of “Chief Actuary”).

3.6 Outsourced Roles

It would be helpful for the Central Bank to provide further clarity in relation to outsourced roles. We note that “A CF remains a CF even if it is . . . carried on at the office or location of another person”. We interpret this as meaning that requirements for a PCF or CF should apply regardless of whether the person performing the function is employed by the organisation, and we agree with this. However, it may be reasonable for a company to rely on information provided by the provider of outsourced services in relation to meeting its obligations in this area.

Qt: 16.i(c):

**(1) Should we formally exempt specific categories of staff from the definition of a CF; or
(2) Should we provide non statutory guidance to firms on what we consider to be appropriate levels or types of due diligence which firms should carry out prior to appointing staff, thereby allowing for firms to adopt varying levels of due diligence (for example providing reduced vetting for assistance roles with a lower risk profile, such as call centre staff)?**

3.7 We believe that the definition of CF is very broad and that it would be appropriate to have very different levels and types of due diligence depending on the role in question. We consider separately the various qualifying characteristics of a CF set out in the proposed regulations.

3.7.1 Individuals exercising “a significant influence on the conduct of the affairs of the regulated financial services provider”.

We feel that this category of CF warrants a robust level of vetting, due diligence and documentation of fitness and probity standards. It may be helpful to publish guidance on the intended meaning of the term “significant influence”.

3.7.2 A function which “relates to ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations.”

We feel that senior individuals in this category – i.e. those with responsibility for compliance – should be subject to high levels of vetting and due diligence, whereas other members of staff working in this area may be less affected. It is not fully clear whether the regulations apply at the most senior level only, or whether staff reporting to a head of compliance would also be affected. We feel that it would be most beneficial to focus the fitness and probity requirements at the most senior levels.

3.7.3 “The giving of advice or assistance to a customer”

We believe that there can be a significant difference between giving advice and giving assistance. There are a range of roles which could be covered by this definition which could lead to a significant administrative burden for undertakings. We would welcome either an exemption for specific categories of staff (e.g. call centre staff) or guidance which shows that low levels of vetting would be suitable for many staff members who might be covered by this description. We believe that, for many categories of staff, the appropriate fitness and probity requirements could be met through evidence of a proper control and training regime.

3.7.4 “Dealing in or having control over property of a customer” and “dealing in or with property on behalf of the regulated financial services provider”

We believe that it is appropriate to have high levels of vetting for both of these categories of CF, although compliance with the fitness and probity regime should not be a replacement for having robust systems and controls in place in relation to these areas of responsibility.

Questions relating to the proposed Standards of Fitness and Probity

Qt. 41.i: Do you consider that the Standards are comprehensive in setting the appropriate standards for fitness and probity of individuals working in the financial services industry in Ireland? If not, have you additional standards or considerations to add?

3.8 We believe that the standards are comprehensive.

Qt. 41.ii: Do you consider that any of the Standards are superfluous? If so, the reasons why?

3.9 We believe that the standard set out in 3.2(f) may cause difficulties for both individuals and companies, such as abuse of the provision or legal challenge to an assessment of physical or mental health. We suggest that this provision be removed, or amended such that assessments are based on objective criteria.

Qt. 41.iii: “Do you consider that the Standards are sufficiently clear to be adopted by firms for their internal fit and proper process?”

3.10 We believe that the construction of requirement 3.2(c) is somewhat unclear. It is important for a person to be able to demonstrate that he or she “has shown the competence and proficiency to undertake the relevant function”. However the detail of the section may be seen to limit the capacity for a person who has not previously performed a CF to take on a CF. We believe that the fitness and probity regime itself should not be a barrier to career development for suitable individuals within the organisation.

3.11 Under requirement 3.2(g), a person must not “allow personal conflicts of interest to arise ”in carrying out his or her” PCFs or CFs. While it would be appropriate to require a person not to allow personal conflicts of interest to impair his or her capacity to discharge the duties of the function, we question whether it is practicable to mandate that the person must always prevent such conflicts from arising.

3.12 Certain requirements in section 4.1 (notably (b), (c), (g), (j) and (p)) implicitly require a person who wishes to perform a CF or PCF to disclose *any* complaint, investigation or disciplinary proceedings against him or her, even if the outcome was a finding that the person was not at fault. We question whether this is just and fair.

Qt. 42: We are considering the benefit of providing guidance on the statutory Standards. Such guidance would be provided on a non-statutory basis and would take into account responses received to this consultation. Comments are therefore also invited as to whether non-statutory guidance would be useful to firms. If so, what issues should the guidance cover to assist firms in carrying out their own fit and proper test for persons proposed or holding both PCFs and CFs?

3.13 Determination of a CF

As per our response to question 16.i(c), we believe that the determination of a CF and the associated vetting requirements are somewhat vague and may be difficult to interpret. It would be very helpful in this context to provide a non-exhaustive list of sample roles, setting out the Central Bank's view as to whether the roles would be considered CFs or PCFs, and the level of vetting that the Central Bank would expect to apply. Noting the Central Bank's comments on adopting a "proportionate and risk-based approach", we believe that it would be important for the guidance to focus the vetting on roles with higher levels of risk, and show reduced or no vetting obligations in respect of less senior and lower risk roles.

3.14 Practising Certificates

Persons who act in any of the statutory roles of Appointed Actuary, Signing Actuary and PRSA Actuary are obliged to hold a practising certificate issued by the Society of Actuaries in Ireland. Pre-requisites for a practising certificate include minimum levels of education and practical experience and a clean record in respect of compliance with ethical standards. While practising certificates are not a substitute for the normal processes by which firms assess a person's competence in the context of the particular types of business written by the firm, we believe that they can play a useful part in the proposed fit and proper regime. Guidance in this regard may be helpful to firms.

Miscellaneous comments

3.15 In relation to the proposed regulations:

- (a) Regulation 9.(1) refers to the situation where a financial service provider is "accustomed to act in accordance with the directions or instructions" of a particular person. Consideration could be given to changing this to "accustomed to act in accordance with the directions, instructions or advice" of the person.
- (b) The wording of regulation 9.(2) is confusing and the intent is not clear.

4 Queries

We would be delighted to assist if clarification or elaboration is required on any of the points made in this submission. Please direct any queries to Ms. Yvonne Lynch, Director of Professional Affairs, at the contact details at the end of this submission.

APPENDIX

Appointed Actuary, Signing Actuary and PRSA Actuary are statutory roles that are part of the governance framework of life assurance companies, non-life / reinsurance undertakings and PRSA (Personal Retirement Savings Account) providers respectively. Persons holding these roles are responsible for carrying out duties set out in legislation and in regulatory requirements. They must hold a practising certificate issued by the Society of Actuaries in Ireland, prerequisites for which include minimum levels of education and practical experience and a clean record in respect of compliance with ethical standards.

A brief description of key responsibilities is set out below. More detailed information may be provided on request.

In addition to their statutory responsibilities, many Appointed Actuaries, Signing Actuaries and PRSA Actuaries also hold broader management roles within their organisations.

The **Appointed Actuary's** responsibilities include:

- (a) carrying out an annual investigation of the financial condition of the company's life assurance business, which includes valuing the long-term liabilities and determining any excess of assets over liabilities;
- (b) assessing the sufficiency of premiums for new business, in the context of the company's obligations to establish adequate technical reserves and meet its commitments to policyholders;
- (c) preparing a detailed Financial Condition Report, for submission to the Central Bank of Ireland, every three years;
- (d) advising the Board on reinsurance and investment policy; and
- (e) advising the company regarding information to be provided to customers in marketing materials and product illustrations

The Appointed Actuary is obliged to take all reasonable steps to ensure that he or she is, at all times, satisfied that the company's life assurance business is being operated on sound financial lines.

The **Signing Actuary** of a non-life insurance company or a reinsurance company must provide a formal Opinion on the amount of the technical reserves held by the Company in respect of its future liabilities. This Opinion is included in the company's Annual Return to the Central Bank. The Opinion must be supported by a comprehensive Actuarial Report to the company's Board.

The **PRSA Actuary's** responsibilities include:

- (a) making an annual report to the Pensions Board on the extent of the PRSA provider's compliance with legal obligations relating to the conduct of PRSA business and the amount of charges that may be deducted under PRSAs;
- (b) advising the PRSA provider regarding information to be provided to customers in marketing materials and product illustrations
- (c) advising the PRSA provider on the appropriateness of default investment strategies operated under PRSA products.



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