



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2011

Guidance on Fitness and Probity Standards



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1. Background

- 1.1** Part 3 of the Central Bank Reform Act 2010 (“the Act”) provides that a person performing a controlled function (“CF”) must have a level of fitness and probity appropriate to the performance of that particular function.

The Central Bank of Ireland (the “Central Bank”) also has the power to prescribe a subset of CFs as functions for which the prior approval of the Central Bank is required before a person can be appointed (PCFs).

The Central Bank published SI No 437 of 2011 on 1 September 2011 prescribing particular functions as CFs and PCFs¹.

- 1.2** Part 3 of the Act applies to regulated financial service providers², with the exception of credit unions. The Minister for Finance may apply Part 3 of the Act to credit unions at a future date.

- 1.3** Section 50 of the Act permits the Central Bank to issue a code setting out standards of fitness and probity for the purposes of Part 3 of the Act. In September 2011, the Central Bank published a code setting out fitness and probity standards (“the F & P Standards”) pursuant to Section 50 of the Act. Please refer to Section 3.2-3.4 herein for further information as to who the F & P Standards apply to, and the phased implementation of the F & P Standards.

- 1.4** The Central Bank also published the Minimum Competency Code 2011 (“MCC”) on 1 September 2011 to replace the Minimum Competency Requirements (“MCR”) which came into effect in January 2007. Part 1 of the MCC is issued as a set of standards

¹ The Central Bank Act 2010 (Sections 20 & 22) Regulations 2011.

² Regulated financial service provider is defined in Section 2 of the Central Bank Act 1942.

pursuant to Section 50 of the Act. Please refer to Section 23 herein for further information on the MCC.

- 1.5** In general, the F & P Standards require that persons must:
- (a) be competent and capable;
 - (b) act honestly, ethically and with integrity; and
 - (c) be financially sound.
- 1.6** The F & P Standards are available on the Central Bank's website at www.centralbank.ie.
- 1.7** All proposed appointments to CFs which are prescribed as PCFs (referred to as 'PCFs' in the remainder of this guidance), on or after 1 December 2011, require the prior written approval of the Central Bank. Details regarding this approval process are set out in Section 8 herein.
- 1.8** Section 21 of the Act provides that a regulated financial service provider shall not permit a person to perform a CF unless:
- (i) the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to Section 50 of the Act (i.e. the Standards); and
 - (ii) the person has agreed to abide by any such Standard.
- 1.9** Failure to comply with Section 21 of the Act is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act 1942.
- 1.10** The Central Bank has a range of powers available to it to investigate, suspend, remove or prohibit individuals from CFs in the financial services industry where concerns arise about their fitness and probity. Those powers are set out in Part 3, Chapters 3 & 4 of the Act.

2. Purpose and effect of this guidance

- 2.1** In 2011, the Central Bank consulted upon a draft of the Regulations and the F & P Standards and asked stakeholders and interested parties if the Central Bank should publish guidance in relation to the fitness and probity regime. The responses to consultation (as detailed in the feedback document) were in favour of guidance and this document has been prepared for that purpose.
- 2.2** The primary purpose of this guidance is to assist regulated financial service providers in complying with their obligations under Section 21 of the Act in relation to the F & P Standards, by setting out the steps which the Central Bank would expect a regulated financial service provider to take in order to satisfy itself on reasonable grounds that persons performing CFs or PCFs are compliant with the F & P Standards. We have also included guidance, however, on other issues including, for example, approval by the Central Bank of appointments to PCFs.
- 2.3** It should be noted that where the Central Bank approves a proposed appointment to a PCF that, in itself, is not a certification of the person's compliance with the F & P Standards. The regulated financial service provider is obliged pursuant to section 21 of the Act to satisfy itself on reasonable grounds that the person is compliant with the F & P Standards. Please refer to Section 21 herein for further information on the nature of the obligations imposed by this section.
- 2.4** Nothing in this guidance may be construed so as to constrain the Central Bank from taking action, where it deems it to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.
- 2.5** This guidance is not intended to be comprehensive nor to replace or override any legislative provisions or binding code. It should be read in conjunction with Part 3 of the Act and any regulation, code

or other legal instrument as the Central Bank may issue from time to time.

- 2.6** The Central Bank may update or amend this guidance from time to time, as appropriate.

3. Implementation of the Regime

3.1 The Regulations

Regulations prescribing CFs and PCFs pursuant to Section 20 and 22 of the Act respectively will come into effect on **1 December 2011**. Persons in situ in PCFs on 1 December 2011, may continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF³.

There are 41 PCFs prescribed in the Regulations.

The CFs in the Regulations are categorised as CF1 –CF11. The level of due diligence which is required from a regulated financial service provider in fulfilling its obligations under Section 21 of the Act may differ depending on the categorisation of the CF. CF1 and CF2 will attract higher levels of due diligence than CF3-CF11. Due diligence is discussed further at Sections 15, 17 and 18 herein.

3.2 The Standards:

The Standards will have a phased application to PCFs and CFs, as follows:

1. From 1 December 2011, the Standards shall apply to persons performing CFs which are also prescribed as PCFs with effect from the date;
2. From 1 March 2012, the Standards shall apply to all persons performing CFs for the first time (other than CFs which are also prescribed as PCFs). This is to include new offers of employment and internal transfers/promotions to a CF role after that date. Accordingly where a person already occupying a CF is transferred after 1 March 2012 to another CF, the Standards will apply to that person from the date of commencement of the new CF;
3. The Standards will apply to all persons occupying CFs as at 1 December 2012.

³ The regulated financial service provider is, however, required to comply with Section 21 of the Act in respect of persons in situ, See section 21 herein for further information.

3.3 The F & P Standards do not apply to the following:

- (i) a person whose function is solely concerned with acting in accordance with a written set of instructions in the form of a script providing for that person to give a prescribed reply or follow a prescribed course of action in the event of a particular matter being raised with respect to a range of routine matters arising in the course of providing, or in relation to the provision of, the financial service.

This exemption may typically include call centre staff acting in accordance with a specific script or routine.

- (ii) a person performing a CF or a PCF on behalf of a regulated financial service provider authorised, licensed or registered by the competent authority of another EEA country, and which provides services in the State on a cross border or branch basis.
- (iii) a person performing a function in a separate legal entity in a group structure of companies (whether such an entity is a regulated financial service provider or otherwise) who may exercise a significant influence over a person performing a CF or a PCF in a regulated financial service provider in an entity in that group which is authorised, licensed or registered by the Central Bank.

This exemption typically excludes from the F & P Standards, persons who have functional responsibility at group level and who may be able to exert a significant influence over the performance of CFs or PCFs in the Irish entity.

- (iv) persons performing functions with respect to a regulated financial service provider where that function is carried on by another person (the “other person”) and all of the following conditions are satisfied:

- (a) there is in place a written agreement between the regulated financial service provider and the other person for the carrying on of that function by that other person on behalf of the regulated financial service provider; and
- (b) the other person is a financial service provider who is regulated either:
 - i. by the Bank; or
 - ii. by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
 - iii. by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.”

This exemption typically excludes persons performing CFs or PCFs who are performing that function under a written outsourcing agreement.

3.4 It is important to note that where a CF or a PCF benefits from one of the exemptions to the application of the F & P Standards, s/he will remain subject to Part 3 of the Act and any Code or Order issued thereunder, including the MCC (as applicable).

3.5 Identifying persons in PCFs and CFs.

PCFs

Regulated financial service providers are required to submit to the Central Bank by **31 December 2011**, a list of **PCFs** as of 1 December 2011. The list should be submitted to the regulated financial service provider’s lead examiner or supervisor.

The CEO, partner or sole trader (as the case may be) must confirm in writing to the Central Bank **by 31 March 2012**, that the regulated financial service provider has performed the due diligence set out herein in respect of persons performing **PCFs** in the regulated financial service provider, that they are satisfied on reasonable grounds that those persons are compliant with the F

& P Standards, and that they have obtained those person's written agreement to abide by the F & P Standards. These confirmations should be submitted to the regulated financial service provider's lead examiner or supervisor.

The information referred to above can be submitted in word, excel, PDF or JPG files.

CFs

The Central Bank requires regulated financial service providers to identify and maintain a record of persons who are performing CFs from the date of application of the F & P Standards to those persons⁴, together with a record of due diligence undertaken in respect of those persons.

Regulated financial service providers are not required to submit this list to the Central Bank unless requested to do so. The list of persons performing CFs must be made available to Central Bank staff on request.

⁴ See Section 1.5 of the F & P Standards.

4. How do I know if a person is performing a CF or a PCF?

- 4.1** The meaning of CF and PCF are set out in the Regulations.
- 4.2** References in the Regulations to a title commonly used for a person who performs a function (e.g. Head of Finance, Head of Compliance etc.) shall be taken to refer to the functions commonly performed by a person of such title. If you are in doubt as to whether you or your employee is performing a CF or a PCF, please contact a member of the supervisory team within the Central Bank assigned to your regulated financial service provider for clarification⁵.
- 4.3** In addition to the PCFs set out in the Regulations, Section 22(8) of the Act provides that the Central Bank may declare in writing to a regulated financial service provider that a function performed by, for or on behalf of the regulated financial service provider is a PCF if - (a) the person who performs the function is concerned in the management of the regulated financial service provider, (b) the function is not prescribed as a pre-approval controlled function in the Regulations, and (c) no other person in the regulated financial service provider performs a PCF.
- 4.4** The Regulations and Part 3 of the Act do not require all CF or PCFs to be in existence in a regulated financial service provider. Where a regulated financial service provider is not required to have a compliance committee, for example, that regulated financial service provider will not be obliged to form a compliance committee because of anything stated in the Regulations.

⁵ See Section 7 of the Regulations.

5. Outsourcing

5.1 *General*

In this guidance, outsourcing means a written arrangement of any kind between a regulated financial service provider and a service provider who is a natural or legal person (whether regulated or unregulated) whereby the service provider performs a CF or PCF which would otherwise be performed by the regulated financial service provider itself.

It should be noted that not every provision of a function or service to a regulated financial service provider by a service provider will fall within the definition of outsourcing. Hiring a specialist consultant, for example, to provide one-off technical advice or one-off support for compliance, internal audit, accounting, risk management or actuarial functions does not normally constitute outsourcing. However, it may become outsourcing if the regulated financial service provider subsequently relies on that consultant to manage an internal function or service when it is installed or becomes fully operational.

5.2 *Outsourcing to another regulated entity:*

PCFs

The Regulations provide that in respect of a person who would otherwise require the Central Bank's prior written approval to his/her appointment as a PCF, the regulated financial service provider will not require to obtain such prior approval pursuant to Section 23 of the Act, where the following conditions are met:

- (1) There is in place a written agreement between the regulated financial service provider and a separate financial service provider for the carrying on of that PCF by that other person on behalf of the regulated financial service provider; and
- (2) That other financial service provider is regulated either:
 - i) by the Bank; or

- ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
- iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

It should be noted that a person benefitting from this exclusion from the requirement to obtain the Central Bank's prior written approval to appointment as a PCF is a CF and, as such, will remain subject to the provisions of Part 3 of the Act, and may be the subject of an investigation, suspension or prohibition notice.

CFs

Section 1.5 of the F & P Standards provides that the F & P Standards do not apply to a person performing a CF or a PCF under the following conditions:

- (1) There is in place a written agreement between the regulated financial service provider and a separate financial service provider for the carrying on of that function by that other person on behalf of the regulated financial service provider; and
- (2) That other financial service provider is regulated either:
 - i) by the Bank; or
 - ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
 - iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

It should be noted that a CF or PCF benefitting from this exemption from the F & P Standards will remain subject to the provisions of Part 3 of the Act, and may be the subject of an investigation, suspension or prohibition notice.

5.3 Outsourcing to an Unregulated Entity

PCFs

Where the PCF(s) is outsourced to an 'unregulated entity', the arrangement (e.g., the service level agreement or other contract) between the regulated financial service provider and the service provider must identify the individual or individual(s) who will perform the outsourced PCF(s) function.

In such cases, the regulated financial service provider is responsible for ensuring that it has obtained the Central Bank's prior written approval for the appointment of that individual to the PCF.

Persons performing PCFs under an outsourcing arrangement must be compliant with the F & P Standards.

The arrangement must also identify the individual in the regulated financial service provider who is responsible for the performance of the PCF.

CFs

Where the CF(s) is outsourced to an 'unregulated entity', the unregulated entity performing the outsourced activities must be able to identify the individuals who will perform the CFs, and assess whether those persons are compliant with the F & P Standards. The entity must also obtain those persons' agreement to abide by the F & P Standards.

The Central Bank expects that unregulated entities who propose themselves for the performance of outsourced activities on behalf of a regulated financial service provider would include compliance with

the F & P Standards and Part 3 of the Act generally as a critical part of their Human Resources procedures.

Section 21 of the Act requires that a regulated financial service provider must satisfy itself on 'reasonable grounds' that persons performing CFs comply with the F & P Standards and those persons have agreed to abide by the F & P Standards.

Notwithstanding that a regulated financial service provider has entered into an outsourcing arrangement with an unregulated entity third party for the performance of a CF the regulated financial service provider remains responsible for compliance with its obligations under Section 21.

The outsourced service provider should provide written confirmation to the regulated financial service provider that those individuals performing CFs are compliant with the F & P Standards and have agreed to abide by them. In addition to this written confirmation, the outsourced service provider should furnish the regulated financial service provider with sample documentation as to how compliance with the F & P Standards is adhered to.

In this subsection 'unregulated entity' means a person other than a financial service provider who is regulated either:

- i) by the Bank; or
- ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
- iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

6. Provision of services on a branch basis

- 6.1** Section 20(4) of the Act provides that *“a controlled function remains a controlled function even if ...it is carried on at an office or location outside of the State”*.
- 6.2** The Regulations do not limit CFs to functions performed in the State.
- 6.3** Accordingly, a person performing a CF at a location outside of the State on behalf of a regulated financial service provider authorised, licensed or registered in the State, will be subject to Part 3 of the Act.
- 6.4** Similarly, where a regulated financial service provider proposes to appoint a person to a PCF at a location outside of the State, it must obtain the Central Bank’s prior approval in writing.

7. Provision of services into the State by regulated financial service providers authorised, licensed or registered in another EEA member state

- 7.1** The Regulations do not limit the definition of CF to the performance of functions in a regulated financial service provider authorised, licensed or registered by the Central Bank. Part 3 applies to the performance of CFs in the State irrespective of whether the CF is performed by a regulated financial service provider authorised, registered or licensed by the Central Bank or by another EEA competent authority.
- 7.2** The F & P Standards, however, do not apply to persons performing CFs on behalf of a regulated financial service provider authorised, licensed or registered by the competent authority of another EEA country, and which provides services in the State on a cross border or branch basis.
- 7.3** Accordingly, regulated financial service providers authorised, licensed or registered by the competent authority of another EEA country will not have compliance obligations under Section 21 of the Act.

8. Approval process for PCFs

- 8.1** Before a regulated financial service provider can appoint a person to a PCF, the Central Bank must have approved the appointment in writing.
- 8.2** A person performing a PCF on 1 December 2011, will not be required to apply for approval to continue the performance of that PCF. Of course, should that person change to a 'new' PCF within the same organisation, or to the same PCF in a different organisation, s/he will be required to seek the Central Bank's prior approval in writing to that appointment.
- 8.3** The Central Bank expects a regulated financial service provider to have conducted its own due diligence before proposing a person for appointment to a PCF. The Central Bank expects that, at a minimum, the regulated financial service provider undertakes the due diligence set out at Sections 15, 17 & 18 herein.
- 8.4** The approval process will require the submission of an individual questionnaire ("IQ") which is available on the Central Bank's website.
- 8.5** Regulated financial service providers will be provided with User Accounts, allowing them to log on to the online system. Individual accounts for PCF applicants can then be created by regulated financial service providers, enabling applicants to complete their IQs online. The system includes:
- i) an online IQ form, to be completed by the proposed holder of the PCF (including pre-formatted curriculum vitae sections within the IQ form itself);
 - ii) ability to attach additional documentation to support an application where necessary⁶;

⁶ The additional information can be submitted in word, excel, PDF or JPG file. The IT system currently supports documents submitted in MS EXCEL .xls, .xlsx MS WORD .doc,

- iii) option/ability to export core data once completed online which can later be imported by the applicant for a subsequent application;
- iv) an online declaration by the proposed holder of the PCF as to the accuracy and veracity of the information provided;
- v) an online declaration by an appropriate officer from the proposing regulated financial service provider confirming the checks of the individual were undertaken by the regulated financial service provider (e.g. appropriate due diligence regarding qualifications and experience, previous employer reference checks etc.), and confirming that the regulated financial service provider is satisfied that the proposed holder of the PCF is fit and proper.

8.6 For the most part, the Central Bank expects that the approval process will be based on the IQ, reference checks, and in some cases requests for further information. Where the Central Bank considers it necessary, it may conduct an interview with proposed holders of PCFs before deciding on whether or not to approve an application.

8.7 The online IQ enables the applicant to submit a single application where applying for more than one PCF in the same regulated financial service provider (e.g. head of risk and head of compliance).

8.8 Where a person wishes to apply for several PCFs in different regulated financial service providers, however, s/he must submit an application for each PCF.

8.9 The individual is responsible for all information given to the regulated financial service provider and/or the Central Bank.

8.10 Section 23(7) of the Act provides that a decision of the Central Bank to refuse to grant prior written approval for an appointment to a PCF may be appealed to the Irish Financial Services Appeals

Tribunal (“IFSAT”) pursuant to Part VIIA of the Central Bank Act 1942.

9. Interviewing PCFs

- 9.1** A risk based approach will be adopted in deciding whether PCFs are called for interview by the Central Bank. The Central Bank is developing the Probability Risk and Impact System (PRISM) to assess both the impact and risk profile of a regulated financial service provider. The Central Bank will use the information on impact and risk stored on the PRISM system to inform its decisions as to who should be called for interview.
- 9.2** The ‘impact’ of regulated financial service providers refers to the impact of failure on the Irish financial system. Regulated financial service providers can be categorised as high, medium high, medium low and low impact. The measurement of impact is based on impact metrics.
- 9.3** Risk probability defines the risk or likelihood that a particular regulated financial service provider will fail.
- 9.4** The Central Bank anticipates interviewing applicants for the positions of Chairman, CEO, Finance Director or Chief Risk Officer at any high impact regulated financial service provider as a matter of routine. It is also likely that the Central Bank may wish to interview applicants for the position of Chairman or CEO at any medium high impact regulated financial service provider as a matter of routine.
- 9.5** The Bank may decide, at its discretion, to call any PCF applicant for interview irrespective of the impact rating of the regulated financial service provider.
- 9.6** It is likely that the Central Bank will wish to interview a higher proportion of PCF applicants from a regulated financial service provider which it assesses as being high or medium high risk probability than it would were a regulated financial service provider to be assessed as medium low or low risk probability.

- 9.7** The Central Bank's Regulatory Transactions Division will liaise with the supervisory division responsible for supervising the regulated financial service provider in coming to a decision as to who should be called to interview.
- 9.8** The interview panel is likely to comprise of members of the Central Bank's supervisory directorates, supplemented as appropriate with representatives from the Policy and Risk directorate.

10. Persons performing a PCF outside of the State who are proposed to perform a PCF in the State

10.1 Where a person is currently approved for a PCF role within a specific sector/industry in another EEA/EU Member State and proposes to take up a similar role within the same sector/industry in the State, the Central Bank will expedite the application by applying the following reduced regime:

- i) the applicant must complete an IQ omitting section 5;
- ii) the applicant must evidence that s/he is entitled under the laws of the EEA/EU Member State to perform some or all of the functions which are equivalent to the PCF in that other jurisdiction (e.g. by evidencing (whether through confirmation from the appropriate regulatory authority or otherwise) that the person performing some or all of the functions which are equivalent to the PCF is/was entitled under the laws of that EEA/EU Member State to conduct those functions in that other jurisdiction);
- iii) the applicant must certify that he/she complies with the F & P Standards and will abide by them.

10.2 Where the applicant is proposed for the performance of a PCF which is materially different to the role in which s/he was approved in another EEA/EU Member State, the reduced regime set out in Section 10.1 will not apply, and the approval process set out in Section 8 will apply in full.

11. Offers of appointment to a PCF

11.1 Section 23 of the Act requires that a regulated financial service provider shall not offer to appoint a person to perform a pre-approval controlled function unless the Central Bank has approved in writing the appointment of the person to perform the function.

11.2 The Act provides that an offer made in contravention of Section 23 of the Act does not create any contractual obligations between the parties.⁷

11.3 The Central Bank is satisfied that a regulated financial service provider can inform a person of an intention to offer the person a position which is a PCF if it is made clear that the actual offer is subject to receiving the Central Bank's prior approval in writing of the appointment of the person to perform the function. The statement of intention made by the regulated financial service provider should include the following paragraph:

"This shall not be taken to be an offer for the purposes of Section 23 of the Central Bank Reform Act 2010 unless and until approval is granted by the Central Bank of Ireland."

As a practical matter, the inclusion of a statement of intention could have the same operational implications as making an offer subject to obtaining satisfactory references or a medical report, for example.

⁷ A regulated financial service provider shall not offer to appoint a person to perform a pre-approval controlled function unless the Bank has approved in writing the appointment of the person to perform the function. An offer made in contravention of this subsection does not create any contractual obligation.

12. Persons performing PCFs on a temporary basis

12.1 Regulation 11 of the Regulations provides that:

“A person (the ‘temporary officer’) shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the regulated financial service provider appointing a person to perform such pre-approval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Bank in advance of the person in question assuming such responsibility as a temporary officer.”

12.2 If the function enables the person to exercise a significant influence on the conduct of the affairs of the regulated financial service provider, even for a relatively short period, it is likely that the Bank will require the firm to progress with the full PCF application process.

12.3 Where a regulated financial service provider wishes to extend for a further period an appointment to exercise a PCF in a temporary capacity, the regulated financial service provider must obtain the agreement in writing of the Central Bank. The regulated financial service provider should contact a member of the supervisory team assigned to that regulated financial service provider for that purpose in the first instance.

12.4 If the Central Bank agrees in writing that a person may perform a PCF in a temporary capacity pursuant to Regulation 11, the regulated financial services provider must be satisfied on reasonable grounds that the person complies with the F & P Standards, and has agreed to abide by the F & P Standards.

12.5 The Central Bank expects that Regulation 11 will only be used in the most exceptional of circumstances, e.g., in the event of the death of an individual performing a pre-approval controlled function. The Central Bank does not envisage that Regulation 11

could be invoked for circumstances which can, in the normal course, be planned for, e.g., maternity cover, cover for career breaks, etc.

13. What standard of fitness and probity is appropriate to the particular CF?

- 13.1** Section 21 of the Act requires that a regulated financial service provider satisfies itself on *reasonable grounds* that a person complies with any code setting out standards of fitness and probity issued by the Central Bank under Section 50 of the Act (e.g. the F & P Standards). The person in a CF is also required to agree to abide by any standards of fitness and probity issued under Section 50 of the Act.
- 13.2** Where a person performing a CF does not comply with the F & P Standards the regulated financial service provider cannot permit that person to perform the CF.
- 13.3** In complying with Section 21 of the Act, the Central Bank expects regulated financial service providers to consider the responsibilities of the specific function and to determine the specific competencies, and level of probity that should be expected of a person performing that specific CF in the regulated financial service provider.
- 13.4** When considering compliance with Section 21 of the Act, the Central Bank will assess both the regulated financial service provider's analysis of what specific competencies and level of probity are required for the performance of a relevant function or functions, and the steps that the regulated financial service provider has taken to satisfy itself that the person performing the relevant CF is so competent, and has the requisite level of probity to be fit and proper to perform that CF.
- 13.5** Matters such as scale, complexity, risk profile, organisation structure, target market and so on are unlikely to be the same within any two organisations. Different functions will entail different responsibilities and different levels of knowledge and expertise. For this reason, this guidance cannot point to conclusive knowledge or expertise that is required for a particular function. The regulated financial service provider, using its own unique

knowledge of the CF, and taking into account all relevant matters (including those listed above) can make the assessment as to what makes a person fit and proper to perform the specific CF in that regulated financial service provider. This guidance sets out due diligence that the Central Bank expects would be undertaken by regulated financial service providers in particular cases when assessing compliance with the F & P Standards. In all cases, it is for the regulated financial service provider itself to assess the information and exercise judgment to determine whether a person is fit and proper to carry out a particular CF.

- 13.6** Irrespective of the title of the function, the regulated financial service provider should consider the activities constituting the function in order to assess the type of CF, and the specific competencies and level of probity that should apply to that CF.
- 13.7** Where a person performs more than one CF, and more than one set of specific competencies and level of probity applies in respect of the exercise of those multiple CFs, the higher standard is the relevant standard for the purposes of due diligence.
- 13.8** If a regulated financial service provider has insufficient information available to enable it to conclude on reasonable grounds that the F & P Standards are being complied with, particularly if due to lack of co-operation by the person, the F & P Standards may not be met. The regulated financial service provider should bring this to the attention of the person and allow them an opportunity to provide the required information.

14. Fitness - determining the standard of fitness that is appropriate to the particular CF

14.1 The regulated financial service provider should be well placed to determine the particular demands of a CF, i.e. what qualifications, experience, knowledge and other relevant factors will make a person fit for the performance of that function.

14.2 The requirements of the CF may also be dictated by the roles undertaken by persons in other CFs in the organisation. For example, where a regulated financial service provider employs both an anti-money laundering officer and a compliance officer, while the compliance officer will be expected to have a general understanding of anti-money laundering legislation, he or she may not be required to have the in-depth knowledge required of a specific anti-money laundering officer.

14.3 It is recognised that an individual considered fit for a particular CF within a regulated financial service provider may not be considered fit for another CF with different responsibilities or for a similar CF within another institution, and conversely, an individual considered unfit for a particular CF in a particular regulated financial service provider may be considered fit in different circumstances, e.g. in a different CF.

15. Fitness - due diligence to be undertaken by a regulated financial service provider to assess a person's fitness to perform a CF(s)

15.1 Section 3 of the F & P Standards relates to fitness and requires a person to be competent and capable. Section 3.1 provides that a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.

15.2 The Central Bank expects regulated financial service providers to undertake the following due diligence when assessing a person's fitness:

- i) Evidence of compliance with the MCC, where relevant:** where a person is performing or proposes to perform a CF(s) the performance of which is subject to the MCC that person can be taken to have the appropriate qualifications or competence to conduct that CF where compliant with the MCC. The regulated financial service provider should satisfy itself that the person has the recognised qualification(s) by obtaining a copy of the certificate/transcript/records evidencing the qualification. The records to be retained in relation to grandfathered persons are set out in the MCC. The MCC also contains requirements concerning the monitoring of compliance with ongoing continuing professional development (CPD) requirements.
- ii) Evidence of professional qualification(s):** where the CF requires a specific professional qualification, the regulated financial service provider should satisfy itself that the person has that specific qualification(s) (e.g., actuary, accountant, lawyer, etc.) by obtaining a copy of the certificate/transcript/record evidencing the qualification. Where the person is required to be registered with a professional body, the regulated financial service provider should require and maintain a copy of the person's licence or certificate to practise (howsoever described) and where that licence/certificate is renewed on an annual (or more or less

frequent) basis should require a copy of the most recent renewal.

The Central Bank expects regulated financial service providers to obtain copies of qualifications only where the regulated financial service provider has determined that those qualifications are relevant to the exercise of the CF, e.g., where a job specification requires that a person has 5 years post-qualification experience as a lawyer, for example, the Central Bank expects the regulated financial service provider to obtain evidence of the professional legal qualification.

- iii) **Evidence of CPD, where relevant:** where maintenance of a qualification is dependent on completing continuing professional development (CPD), the regulated financial service provider should require the person to self-certify that he or she is compliant with the particular CPD requirements.

Where an individual must maintain up-to-date CPD in order to renew his/her practising certificate, evidence of the renewal of that practising certification will be regarded as sufficient to evidence CPD for the purposes of these F & P Standards.

- iv) **Record of interview and application:** where the regulated financial service provider uses the interview process to assess competence and capability (such as skills and experience) it should maintain written notes of the interview to evidence this. Similarly where a written application was submitted for the particular CF this should be maintained on file.
- v) **References:** the Central Bank expects regulated financial service providers to make all reasonable efforts to obtain references from former employers or other relevant persons. The Central Bank expects regulated financial service provider to maintain evidence of this correspondence.

Where the regulated financial service provider is unable to obtain a reference(s) for whatever reason, it must record the steps which it has taken to obtain the reference(s). The regulated financial service provider must also record how, in the absence of the reference, it has satisfied itself that the person is competent to perform the CF.

In relation to persons in situ at 1 December 2011, the requirement to obtain a reference(s) will not apply where the person has performed the same CF or PCF in that regulated financial service provider for at least 1 year as at 1 December 2011.

- vi) Record of previous experience:** where a person demonstrates skills and experience gained through a previous role (for example, through the applicant's CV, or the institution's interview process), the regulated financial service provider should assess and document how the person's performance in that role equips that person with the expertise and experience necessary for the performance of the current function.

- vii) Record of experience gained outside the State:** where some or all of the experience gained is outside of the State, the regulated financial service provider should consider the extent to which the person can demonstrate competency that relates specifically to the function within the State, i.e. does the person have a clear full understanding of the regulatory and legal environment appropriate to the relevant function? The regulated financial service provider should maintain a record of this consideration.

- viii) Concurrent Responsibilities:**
 - a) Directorships:** in relation to persons performing CFs designated as PCF, CF1 or CF2 in the Regulations, the regulated financial service provider should require the person to confirm whether or not he/she has any directorships. Where the person

performing the CF or PCF has other directorships, the regulated financial service provider should seek confirmation from that person that the performance of his/her responsibilities in the other directorships will not adversely impact on his or her ability to perform the CF or the PCF from a timing perspective or otherwise.

- b) Other:** the regulated financial service provider should ensure that the person performing the CF does not have other employment which interferes with, or create conflicts in relation to, the exercise of the CF. The regulated financial service provider should require the person to self-certify in writing that the person is capable of conducting the relevant function, including that the person has adequate time to perform those functions having regard to those other potential concurrent responsibilities.

16. Probity- determining the standard of probity

- 16.1** Individuals proposed for CFs or PCFs must be honest, diligent and independent-minded and must act ethically and with integrity.
- 16.2** Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to a lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF.
- 16.3** Probity may also include individuals ensuring that they act without conflicts of interest.

17 Probity - Due diligence to be undertaken by a regulated financial service provider to assess a person's probity to perform a CF(s)

17.1 Sections 4.1 and 5.2 of the F & P Standards relate to the assessment of probity. Much of an assessment of a person's character, in terms of their probity, can only be undertaken in the case of exceptions, i.e., it is only when evidence is available to suggest that a person might not comply with the standard of probity required of him/her that a regulated financial service provider must investigate thoroughly. Prior to there being any indication of a failure to meet the F & P Standard, there is a limit to the 'due diligence' that an employer, or a prospective employer, can reasonably carry out.

17.2 The Central Bank expects regulated financial service providers to undertake the following due diligence when assessing a person's probity:

- i) The regulated financial service provider should seek and obtain signed written confirmation from the person performing or proposing to perform a CF as to whether or not any of the circumstances set out in Section 4.1 (a) – (k) and Section 5.2 (a) - (e) inclusive of the F & P Standards, apply to that person. Questions 5.1-5.21 set out in the IQ for proposed appointments to PCF(s) require information in relation to these issues and regulated financial service providers may wish to use these questions as a template.
- ii) Where the person confirms that one of more of the circumstances set out in Section 4.1 (a)-(k) or Section 5.2 (a)-(e) apply, the person must be in a position to demonstrate that his or her ability to perform the CF (s) is not adversely affected to a material degree by that matter(s).
- iii) The regulated financial service provider should require from the person concerned submit to the regulated

financial service provider underlying documents relevant to the matter (for example, a final decision or report and/or key correspondence). The regulated financial service provider should inform the person concerned that failure to provide information requested by the regulated financial service provider and which is relevant to the matter may result in the regulated financial service provider being unable to satisfy itself that the person complies with the F & P Standards.

- iv) The regulated financial service provider should make an assessment based on all of the information received as to whether the matter is material to the performance of the CF. Where it is decided that it is not material, and the regulated financial service provider has satisfied itself that the person complies with the F & P Standards, the matter rests here. The regulated financial service provider should document this assessment.
- v) If it is considered that the matter is material, the regulated financial service provider should make all reasonable enquiries arising on foot of the information provided by the person, such as, where relevant, contacting third parties for further information, e.g., former employers, regulatory authorities, etc.
- vi) A regulated financial service provider is not required to remove or suspend a person from acting in a CF solely on the basis that one or more of the matters listed in Section 4.1 or Section 5.2 of the F & P Standards may have occurred.
- vii) For example, in 4.1 (c) of the F & P Standards, the fact that a person has been the subject of disciplinary proceedings will not automatically mean that the person fails to meet the level of probity required for the performance of the CF. In assessing the impact of the

proceedings on that person's probity, issues for consideration include the subject matter of the proceedings, the circumstances surrounding the disciplinary proceedings, the length of time passed since the proceedings, the explanation offered by the person and the relevance of the proceedings to the proposed role.

- viii) It is for the person who is subject to Sections 4.1 and 5.2 of the F & P Standards to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree by any of the factors in Section 4.1(a)–(k), or Section 5.2 (a)- (e).
- ix) The question of what is material to a particular CF, however, is a matter for the regulated financial service provider. Where a matter may be relevant (for example, where the disciplinary proceedings are in respect of a serious matter), the regulated financial service provider may consider it in conjunction with other relevant matters in assessing whether the person is fit and proper to perform the current or proposed function including:
 - a) the seriousness of, and surrounding circumstances of the particular set of facts;
 - b) the relevance of those to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by that person;
 - c) repetition and duration of the behaviour;
 - d) the passage of time since the matter under consideration; and
 - e) evidence of rehabilitation.
- vii) When assessing a person's fitness and probity, a regulated financial service provider need not make enquiries about a matter that is unlikely to be material. The regulated financial service provider should document

why s/he considers that the issue is not likely to be material.

- viii) A series of matters used to assess fitness and probity may be significant when taken together, even if each matter in isolation might not be significant. The cumulative effect of such matters might determine whether the regulated person or approved person is fit and proper to perform the CF.
- ix) Where the regulated financial service provider has made reasonable efforts to contact third parties and has received no response or a response which is insufficiently detailed to allow the regulated financial service provider to make a decision, the regulated financial service provider should revert to the person concerned in an effort to identify other possible avenues of inquiry.
- x) If the regulated financial service provider is unable to obtain information which is sufficiently detailed to allow the regulated financial service provider to make a decision, the regulated financial service provider may therefore, be unable to satisfy itself that the person complies with the F & P Standards.

18. Additional due diligence for CF1 and CF2 and PCF

18.1 In relation to the following sections of the F & P Standards, the Central Bank expects regulated financial service providers to undertake the following minimum additional due diligence in relation to persons conducting CF1, CF2 and PCFs:

- i) In relation to Section 4.1(c) of the F & P Standards, the regulated financial service provider should refer to the Central Bank's website and those of other regulatory authorities (where available) to confirm for their own records that the person has not been the subject of sanction, or other regulatory action.
- ii) In relation to 4(1)(f) of the F & P Standards, the regulated financial service provider should check the Companies Registration Office records for restrictions or disqualifications from acting as a Company Director.
- iii) In relation to Section 4.1(j) of the F & P Standards, the regulated financial service provider should require those performing CFs to confirm whether, to the best of their knowledge, the circumstances set out in Section 4.1(j) have arisen in relation to matters which may have occurred during the time in which that person held that position of responsibility or influence.
- iv) In relation to Section 5.2(c) of the F & P Standards, the regulated financial service provider should check against publicly available sources whether a judgment debt has been registered against a person. Publicly available resources may include, for example, experian all Ireland gazette or stubbs gazette. Where the person has lived outside the State for more than six months in the previous five years, the regulated financial service provider should request that the person provide a check

from a publicly available source in relation to judgment debts from that other jurisdiction(s).

- 18.2 For illustration purposes, there is a table at **Appendix 1** which set out examples of due diligence required.

19. Due diligence for criminal offences

- 19.1** Pursuant to Section 4.1(g) of the F & P Standards, a conviction for a criminal offence will not automatically mean that the person fails to meet the standard of probity. The firm must ensure that it is satisfied that a person is fit and proper having regard to any conviction for an offence, “...*which **could be relevant** to that person’s ability to perform the relevant function*”.
- 19.2** Convictions which could be considered relevant in this regard include, but are not limited to, offences involving dishonesty, fraud, financial crime or offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking or any other financial service, insolvency, consumer credit, insurance, consumer protection, market manipulation, insider dealing or revenue law. The offences may be relevant whether the person was convicted in the State or in some other jurisdiction.
- 19.3** 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.
- 19.4** In assessing the impact of a conviction on a person’s probity, issues for consideration include the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person, the relevance of the offence to the proposed role and any evidence of the individual’s rehabilitation.

20. Register to be maintained and documents to be retained by the regulated financial service provider

- 20.1** As referred to in Section 3 herein, regulated financial service providers must identify and maintain a record of persons performing PCFs and CFs.
- 20.2** Regulated financial service providers are required to document and record all due diligence undertaken in relation to persons performing CFs together with any documentation provided by the person including any responses given and signed by the person in relation to standards of probity. The Central Bank may require to see any such records or due diligence either in the context of an investigation of a regulated financial service provider's compliance with Section 21 of the Act, or an investigation in relation to a person's fitness and probity to perform a CF.
- 20.3** These records should be made available for review by the Central Bank at its request.
- 20.4** Regulated financial service providers should have regard to their obligations under Data Protection law in holding the information referred to in this Section including ensuring that the information is held securely and in an appropriate manner.

21. The continuing nature of the obligation imposed on firms in Section 21 of the Act

- 21.1** Section 21 is a continuing obligation on regulated financial service providers. It is not a one off obligation discharged once due diligence has been undertaken upon commencement of the regime, or in relation to an initial appointment to a CF or a PCF. The Central Bank suggests that regulated financial service providers require persons performing CFs to undertake to notify the regulated financial service provider of any material changes in respect of initial due diligence carried out. Suggested wording in this regard is included in the agreement to abide by the F & P Standards at **Appendix 2**.
- 21.2** The Central Bank recommends that regulated financial service providers carry out an audit of persons performing CFs and PCFs on an annual basis by asking persons in CFs and PCFs to confirm whether they are aware of any material developments in relation to their compliance with the F & P Standards of which the regulated financial service provider ought to be aware.
- 21.3** Where a regulated financial service provider becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF, the Central Bank expects the regulated financial service provider to investigate such concerns and take action as appropriate without delay.
- 21.4** The regulated financial service provider should notify the Bank of any action referred to in Section 21.3 without delay.

22. Agreement to abide by the F & P Standards

- 22.1** Section 21(1)(b) of the Act provides that a regulated financial service provider shall not permit a person to perform a CF⁸ unless the person has agreed to abide by the F & P Standards.
- 22.2** Regulated financial service providers must bring the F & P Standards to the attention of every person performing a CF on its behalf, and obtain a signed copy of the template agreement at **Appendix 2** for each such person.
- 22.3** As part of ongoing performance monitoring, the regulated financial service provider should ask persons performing CFs to certify that they are aware of the F & P Standards and agree to continue to abide by those Standards at least on an annual basis.

⁸ Please note a PCF is a subset of CF.

23. Minimum Competency Code 2011

- 23.1** The Central Bank has issued the Minimum Competency Code 2011 (MCC) to replace the Minimum Competency Requirements (MCR) which came into effect in January 2007. Part 1 of the MCC is issued as a set of Standards pursuant to Section 50 of the Act. Part 2 of the MCC is issued pursuant to a range of statutory powers including Section 117 of the Central Bank Act 1989.
- 23.2** The MCR was implemented to establish minimum professional standards for financial service providers, particularly when dealing with consumers. The Requirements were introduced to ensure that consumers obtain a minimum acceptable level of competence from individuals acting for or on behalf of regulated firms in the provision of advice and associated activities in connection with retail financial products.
- 23.3** The MCC replaces the MCR with effect from 1 December 2011. The MCC preserves the core substantive requirements of the MCR, while updating those requirements in light of experience, market developments and the new powers granted under the Act. Part 1 of the MCC, which houses the knowledge and competency requirements, is imposed directly on the individual performing the function to which the MCC applies. Part 2 of the MCC imposes obligations on the financial service provider.
- 23.4** The MCC and the F & P Standards are closely linked. Section 3.2 (g) of the F & P Standards provides that:

“Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she..... is compliant with the applicable Minimum Competency Code issued by the Central Bank”.

Accordingly, where a person is non-compliant with their obligations under Part 1 of the MCC, s/he is also likely to be non-compliant with the F & P Standards.

23.5 It is worth noting, however, that the application of the MCC is limited to persons exercising a controlled function or a pre-approval controlled function on a professional basis, the exercise of which includes the following:

- a) providing advice to consumers on retail financial products;
- b) arranging or offering to arrange retail financial products for consumers, including any amendments to insurance cover and the restructuring or rescheduling of loans, or
- c) the exercise of a specified function.

The MCC applies to:

- (i) firms authorised, registered or licensed by the Central Bank (except moneylenders authorised under the Consumer Credit Act 1995);
- (ii) certified persons as defined in Section 55 of the Investment Intermediaries Act, 1995; and
- (iii) financial service providers authorised, licensed or registered in another EU or EEA Member State when providing services into the State on a branch or cross-border basis, except where responsibility for requirements in relation to the provision of such services into the State is reserved to that provider's home state regulator or to a provision of EU law by a European Community instrument.

24. Internal controls

The Central Bank expects regulated financial service providers to implement procedures to manage the regulated financial service provider's compliance obligations with Section 21 of the Act.

25. Maintenance of Records

- 25.1** The Central Bank expects regulated financial service providers to maintain all information collected in compliance with its obligations under Section 21 of the Act for the duration during which the person performs the CF of PCF.
- 25.2** In relation to PCFs and CF1 and CF2, and without prejudice to any other requirement imposed by law, the Central Bank expects regulated financial service providers to maintain the information collected in compliance with Section 21 of the Act for a minimum of 6 years after that person has ceased to perform the PCF or CF1 and CF2 on behalf of the regulated financial service provider.
- 25.3** In relation to CF3- CF11, and without prejudice to any other requirement imposed by law, the Central Bank expects regulated financial service providers to maintain the information collected in compliance with Section 21 of the Act for a minimum of 2 years after that person has ceased to perform the CF3- CF11 on behalf of the regulated financial service provider.

26 Administrative Sanctions under Part IIIC of the Central Bank Act 1942

- 26.1** Breach of Section 21 of the Central Bank Reform Act 2010, may result in the imposition of sanctions on the regulated financial service provider pursuant to Part IIIC of the Central Bank Act 1942.
- 26.2** A decision by the Central Bank to impose sanctions under Part IIIC of the Central Bank Act 1942 for breach of Section 21 of the Act may be appealed to the IFSAT.

APPENDIX 1

Examples of due diligence to be undertaken by regulated financial service providers for assessing an individual's compliance with the F & P Standards:

Standard	Supporting documents obtained from a third party	PCF	CF1	CF2	CF3-CF11
Competent and Capable	Provision of a copy of the relevant transcripts	Y	Y	Y	Y
	Professional Body Check	Y	Y	Y	-
	Employer's References	Y	Y	Y	Y
	Minimum Competency Code 2011	I/A	I/A	I/A	SC/Y
	Conflicts	SC	SC	SC	SC
Honest, ethical and with Integrity	Garda Check/Convictions	SC	SC	SC	SC
	Regulator Check	Y	Y	Y	SC
Financial Soundness	Judgements Search	Y	Y	Y	SC

Y = Checks undertaken by the regulated financial services provider

SC = Self Certify

I/A = If Applicable

APPENDIX 2

Agreement of employee pursuant to section 21(b) of the Central Bank Reform Act 2010 (the “Act”)

Section 21 of the Act provides as follows:

- (1) A regulated financial service provider shall not permit a person to perform a controlled function unless-
 - (a) the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity in a code issued under section 50, and
 - (b) the person has agreed to abide by any such standard.

I confirm that I have read the code setting out Standards of Fitness and Probity and the Guidance issued by the Central Bank of Ireland pursuant to Section 50 of the Act (the “F & P Standards”) and I confirm that I comply with those Standards.

I agree to abide by the F & P Standards.

I agree to notify the regulated financial service provider without delay if for any reason I no longer comply with the F & P Standards.

Employee Signature

Date

www.centralbank.ie fitandproper@centralbank.ie



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