



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2014

Guidance on the Fitness and Probity Amendments 2014



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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”) in a regulated financial service provider¹ 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. These are called pre-approval controlled functions (“PCFs”).

The Central Bank published S.I. No 437 of 2011 on 1 September 2011² and S.I. No 615 of 2011 on 30 November 2011³ prescribing particular functions as CFs and PCFs.

1.2 On 3 September 2014 the Central Bank published **S.I. No 394 of 2014** (“the Amending Regulation”) prescribing a further 6 PCFs. This Amending Regulation also serves to update other aspects of the fitness and probity regulations, summarised herein.

1.3 All proposed appointments to CFs which are prescribed as new PCFs, on or after 31 December 2014, require the prior written approval of the Central Bank. Details regarding this approval process are set out in **Section 6** herein.

1.4 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

¹ Regulated financial service provider is defined in Section 2 of the Central Bank Act 1942.

² Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011

³ Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011

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.

1.5 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.

1.6 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 and 4 of the Act.

2. Purpose and effect of this guidance

- 2.1 The primary purpose of this guidance is to assist regulated financial service providers in complying with their obligations under the Amending Regulation [S.I. No 394 of 2014].
- 2.2 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 Fitness and Probity Standards (“the Standards”). Please refer to the [Guidance on Fitness and Probity Standards 2011](#) (the “2011 Guidance”) for further information on the nature of the obligations imposed by the Standards and the due diligence that is expected to be undertaken by regulated financial service providers to satisfy these obligations.
- 2.3 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.
- 2.4 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.
- 2.5 The Central Bank may update or amend this guidance from time to time, as appropriate.

3. Implementation of the Regime

3.1 The Regulation

The Amending Regulation prescribing the six new PCFs pursuant to Section 20 and 22 of the Act respectively will come into effect on **31 December 2014**. Persons in situ in any of the six new PCFs on 31 December 2014, may continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF⁴.

The level of due diligence which is required from a regulated financial service provider in fulfilling its obligations under Section 21 of the Act is set out in the [2011 Guidance](#).

3.2 There are six new PCFs prescribed in the Amending Regulation.

3.3 Identifying persons in new PCFs

Regulated financial service providers are required to compose a list of persons performing the new PCFs as of **31 December 2014**.

⁴ 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 in the 2011 Guidance for further information.

4. Summary of Amendments

4.1 The Amending Regulation serves to prescribe six new PCFs and update other parts of the fitness and probity regulations, summarised below:

4.2 New PCFs

- The office of **Chief Operating Officer (PCF-42)** for all regulated financial service providers;
- **Head of Claims (PCF-43)** for Insurance Undertakings;
- **Signing Actuary (PCF-44)** for Non-Life Insurance Undertakings and Reinsurance Undertakings;
- **Head of Client Asset Oversight (PCF-45)** for Investment Firms;
- **Head of Investor Money Oversight (PCF-46)** for Fund Service Providers;
- **Head of Credit (PCF-47)** for Retail Credit Firms.

4.3 Clarification on the exclusion of Certified Persons

In April 2012 the Central Bank agreed and communicated to the Approved Professional Bodies that certified persons within the meaning of Section 55 of the Investment Intermediaries Act 1995 were exempt from the pre-approval provisions of the Fitness and Probity Regulations and the scope of the Standards. The Amending Regulation serves to explicitly clarify this exclusion.

The Amending Regulation also clarifies that regulated financial service providers cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons.

4.4 PCF Title Changes

The title of **PCF-14** has been changed from 'Head of Risk' to 'Chief Risk Officer'. This change reflects the title more generally used by regulated financial service providers and does not change the substance of the role itself.

The title of **PCF-26** has also been changed from 'Head of Markets Supervision' to 'Head of Regulation' as this is deemed to be a more accurate title for the role.

4.5 Stock Exchange Amendment

On 11 April 2014, the Irish Stock Exchange ('ISE') Ltd was demutualised and it became a public limited company. As a result, the authorisation of the ISE Ltd was withdrawn and the ISE plc was authorised in its place. The Amending Regulation captures this change.

4.6 Alternative Investment Fund Managers

European Directive 2011/61/EU on Alternative Investment Fund Managers introduced a new sector of firms, Alternative Investment Fund Managers ("AIFMs"), to the Irish financial services industry. This Directive was transposed into national law on 16 July 2013 by S. I. No. 257 of 2013. The Amending Regulation serves to incorporate these firms into the scope of the Fitness and Probity regime.

5. In situ PCFs as of 31 December 2014

- 5.1 As stated in Section 3.3, persons who occupy the role of PCFs 42 – 47 as of **31 December 2014** will be allowed to continue in that role and will not require the approval of the Central Bank.
- 5.2 However, regulated financial service providers will be required to compose a list of all persons in situ in respect of PCFs 42 – 47 as of **31 December 2014**. The list should be submitted to the Central Bank, in a format to be prescribed, no later than **30 June 2015**. Details on the submission format will issue in good time to allow regulated financial service providers sufficient time to meet the deadline.
- 5.3 The Chief Executive Officer, partner or sole trader (as the case may be) must confirm in writing to the Central Bank, in a format to be prescribed, no later than **30 June 2015**, that the regulated financial service provider has performed the due diligence set out in the [2011 Guidance](#) in respect of persons performing the **new PCFs** in the regulated financial service provider
- 5.4 Regulated financial service providers will also be required to confirm that they are satisfied on reasonable grounds that persons performing the any of six new PCFs are compliant with the Standards, and that they have obtained those person's written agreement to abide by the Standards.
- 5.5 These confirmations should be submitted to the Central Bank, in a format to be prescribed, no later than **30 June 2015**.

6. New PCFs after 31 December 2014

- 6.1 The Amending Regulation will come into effect **on 31 December 2014**. From this point onwards regulated financial service providers wishing to appoint an individual to any of the six new PCFs must receive the Central Bank's prior approval in writing for that appointment. Please refer to Section 8 of the [2011 Guidance](#) for further information in relation to this process.

7. Frequently Asked Questions

7.1 Why are the Fitness and Probity Regulations being changed?

The Fitness and Probity Regulations have been updated as a number of initiatives have been completed in recent times resulting in certain changes being incorporated into the Fitness and Probity Regime by way of an Amending Regulation.

7.2 Why has the role of the Chief Operating Officer (PCF-42) been introduced as a new PCF?

The Chief Operating Officer has responsibility for the implementing of the strategic direction of regulated financial service providers. As a consequence, given the importance of the role, the Central Bank has seen it fit to introduce this as a new PCF.

7.3 Why has the role of Head of Claims (PCF-43) been introduced as a new PCF for Insurance Undertakings?

The role of Head of Claims is deemed to be important as this individual has responsibility for authorising the payment of claims which could have a direct impact on the solvency and liquidity of the insurer and therefore has been introduced as a new PCF.

7.4 Why has the role of the Signing Actuary (PCF-44) been introduced as a new PCF for Non-Life Insurance Undertakings and Reinsurance Undertakings?

The [Reserving Requirements for Reserving and Pricing for Non-Life Insurers and Reinsurers](#) introduced the requirement for the role of the Signing Actuary to be designated as a PCF. Please refer to these requirements for further information of the role.

7.5 Why have the roles of Head of Client Asset Oversight (PCF-45) and Head of Investor Money Oversight (PCF-46) been introduced as PCFs?

[Consultation Paper 71: Client Asset Regulations and Guidance](#)

proposed the inclusion of a Client Asset Oversight role as a PCF. This role has responsibility for the oversight of compliance with the client asset requirements and for any matters that relate to the safeguarding of client assets. The role was split into two PCFs and these will be introduced in the upcoming revised Client Asset Regulations and Investor Money Regulations. Please refer to the Consultation Paper for further details on these roles.

7.6 Why has the role of Head of Credit (PCF-47) been introduced for Retail Credit Firms?

Due to the increase in the number of authorisations for Retail Credit Firms it was deemed necessary, in the context of these firms' line of business, to introduce this role as a PCF.

7.7 Why are certified persons being excluded from the scope of the Fitness and Probity Regime?

Certified persons were considered to be initially captured within the scope of the Fitness and Probity Regime by virtue of the fact that they fall within the definition of a regulated financial service provider.

In April 2012 the Central Bank reviewed the appropriateness of applying the fitness and probity regime to certified persons. Taking into consideration the unique attributes of certified persons from a regulatory perspective and for the avoidance of doubt, it was decided to explicitly exclude certified persons from the pre-approval provisions of the fitness and probity regulations and the Standards. Certified persons will remain within the scope of Part 3 of the Act, by virtue of their coming within the definition of a regulated financial service provider, and the application of the

[Minimum Competency Code](#) (“MCC”) will continue to apply as currently.

This decision was communicated to the Approved Professional Bodies at the time. The Central Bank is taking the opportunity to incorporate this clarification into the Fitness and Probity Regulations as part of the Amending Regulation being introduced at this time.

7.8 What does the amendment to the outsourcing provisions for certified persons mean in practice?

The amendment to the outsourcing provisions simply clarifies that regulated financial service providers cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons.

7.9 If a regulated financial service provider does not currently have an individual in one of the new PCFs, is it required to create this position in order to comply with the Amending Regulation?

No. Unless a particular regulated financial service provider is obliged to have one of the new PCFs (e.g. the requirement for Non-Life Insurance Undertakings and Reinsurance Undertakings to have a Signing Actuary) then it will not be obliged to create a new PCF. As set out in the Fitness and Probity Regulations and Part 3 of the Act, the Central Bank does not require all CFs or PCFs to be in existence in a regulated financial service provider where one did not previously exist or where the size or complexity of a regulated financial service providers business does not warrant it. This is for the regulated financial services provider to determine itself.

7.10 Is it possible for an individual who is already approved as a PCF to also be appointed as one of the new PCFs?

Yes. As stated in 3.8 of the [Fitness and Probity FAQ Document](#), an individual can hold multiple PCFs, but they must be approved by the Central Bank and display competence in respect to the performance of each role.

7.11 Is it possible for a single PCF role to be occupied by more than one individual?

Yes. As stated in Section 3.4 of the [Fitness and Probity FAQ Document](#) and as referred to in the Fitness and Probity Regulations, where more than one individual is responsible for part of a PCF in a regulated financial service provider, each individual will be considered to occupy that PCF.

7.12 What duties and responsibilities might the role of the Chief Operating Officer likely encompass?

The Central Bank recognises that the role of the Chief Operating Officer could encompass a wide range of duties and responsibilities and therefore does not intend to specifically define it. Instead a common sense approach should be taken by regulated financial service providers in determining whether this PCF is applicable, and who performs it.

In general, the individual performing this PCF is likely to be responsible for the day-to-day operations and strategy implementation in the regulated financial service provider. It is also anticipated that this role would be held by a senior individual with a direct reporting line to the CEO.

7.13 Some regulated financial service providers may have spread the duties and responsibilities of what a Chief Operating Officer might be considered to do over a number of CFs. Does the introduction of this PCF mean that these roles will now have to be combined into one?

No. Section 7.9 should be considered here in that not all CFs or PCFs need to be present in a regulated financial service provider where one did not previously exist or where the size or complexity of a regulated financial service providers business does not warrant it.

It is possible that a regulated financial service provider may not require a specific Chief Operating Officer and that the role may instead be shared amongst other CFs. This is for the regulated financial service provider to determine, although the Central Bank expects that they apply substance over form when reviewing such functions and is mindful that it is the function rather than the job title of the individual that determines if they are captured within the scope of a PCF or not.

7.14 How does Head of Claims (PCF-43) interact with CF-6 ('determining the outcome of a claim arising under a contract of insurance or reinsurance')?

The Central Bank expects that CF-6 would likely have a reporting line into the Head of Claims (PCF-43). However, regulated financial service providers should consider the responsibilities of each specific function in determining whether that individual is a CF or PCF.

7.15 An Insurance Undertaking may have several Head of Claims within the firm e.g. Head of Motor Claims, Head of Household Claims, etc. Will each of these be considered a PCF-43?

No. Section 7.9 should again be considered in this context.

7.16 Would an Insurance Undertaking that is purely involved in unit linked investment business and therefore have a lower risk profile still be required to have a Head of Claims (PCF-43)?

These entities are not exempt from the pre-approval provisions for PCF-43. However, consideration should be given to Section 7.9.

7.17 The [Reserving Requirements for Non-Life Insurers and Reinsurers](#) permit the role of the Signing Actuary (PCF-44) to be outsourced. How will this operate for firms wishing to avail of this?

Requirement 12 of the Reserving Requirements states that “Save for where the company is a High Impact company, the function of Signing Actuary may be outsourced. However, a company may only outsource the function of Signing Actuary to a Signing Actuary which has been approved as a pre-approval controlled function by the Central Bank for that company”.

Therefore, this rule precludes Signing Actuaries who are outsourced from availing of the outsourcing provisions provided for in Regulation 11A of the Principal Regulations and as set out in Section 5 of the [2011 Guidance](#).

7.18 If a regulated financial service provider wishes to appoint an individual to one of the new PCF roles before the effective date of the Amending Regulation of 31 December 2014, can it do so?

Yes. Individuals can continue to be appointed to these roles in line with their standard appointment process under the current fitness and probity regulations. Appointments to these PCFs will not warrant pre-approval until after **31 December 2014**. However, the regulated financial service provider will still have to comply with its obligations in relation to conducting due diligence on the individual and ensuring they have agreed to comply with the Standards.

These individuals will be considered in situ PCFs from 31 December 2014 onwards. Please refer to Section 5 for further information.

7.19 If I am currently approved as a Head of Risk (PCF-14), am I required to do anything as a result of the change of title?

No. This is a mere change of title and will not have any effect on the roles captured by the scope of PCF-14 itself. In the future, whether the job title is Head of Risk, Chief Risk Officer or similar, these types of roles will still be captured by the scope of PCF-14.

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