

## Central Bank of Ireland Regulations and Guidance on the Individual Accountability Framework: Key Points

Following its consultation process earlier in the year, the Central Bank of Ireland (“**Central Bank**”) has published a Feedback Statement and issued Regulations and Guidance to firms on the Individual Accountability Framework last Thursday, 16 November 2023.

The Guidance provides clarity regarding the Central Bank’s expectations for the implementation of three aspects of the framework: the Senior Executive Accountability Framework (“**SEAR**”), the Conduct Standards and certain aspects of the enhancements to the Fitness and Probity (“**F&P**”) regime. In this publication we have highlighted a number of the key changes that the Central Bank has implemented to the final draft Regulations and Guidance from the version published with the Consultation Paper.

We have reviewed and cross-referenced the requirements to provide a comprehensive snapshot of what the updated requirements mean for you.

### Application of SEAR to independent non-executive directors or non-executive directors (“(I)NEDs”)

- The SEAR will not apply to (I)NEDs until 1 July 2025 (though they must still be included in the Management Responsibilities Map).
- The Common and Additional Conduct Standards will still apply to (I)NEDs from 29 December 2023.

### Application of SEAR to outgoing branches

- SEAR will only apply to managers of outgoing branches where a materiality threshold is exceeded. The Pre-Approval Controlled Functions (“**PCF**”) Regulations will be amended and guidance on the practical operation of this will be made available in the coming weeks.

### Changes to Prescribed Responsibilities

- Some Prescribed Responsibilities have been removed, merged, moved or amended, including:
  - removed PR8 (“*Responsibility to adequately consider the impact of key business initiatives and strategic decisions and to ensure that any necessary changes are made to such initiatives / decisions prior to their implementation to avoid any harm to customers*”);

- removed PR26 (“*Responsibility for leading the development of a framework for and monitoring the implementation of the conduct requirements including ensuring accuracy, completeness and timely production and submission of the firm’s conduct information*”);
- merged PR29 (“*Responsibility for overseeing the adoption of the firm’s policy on diversity and inclusion*”) with PR4 (“*Responsibility for leading the development of the firm’s culture, including conduct, by the Board as a whole including the implementation of effective conflicts of interest policies and procedures in relation to consumer protection risk*”) and PR5 (“*Responsibility for adopting the firm’s culture, in the day-to-day operation of the firm*”), so that they now read as follows:
  - PR29 is deleted;
  - PR4: “*Responsibility for leading the development of the firm’s culture, including on matters relating to diversity and inclusion, by the Board*”; and
  - PR5: “*Responsibility for overseeing the adoption of the firm’s culture, including on matters relating to diversity and inclusion, in the day-to-day operation of the firm*”; and
- moved PR19 (“*Responsibility for managing the firm’s treasury management functions and associated risks*”) and PR23 (“*Responsibility for the firm’s compliance with client asset requirements*”) from the General list of Prescribed Responsibilities to the Sector or Circumstance Specific list.

## Sharing of PCF roles and responsibilities

- Sharing of PCF roles will only be permitted in the following limited circumstances, on the basis of a case-by-case assessment:
  - in the case of an employment arrangement where two people are employed on a part-time or reduced-time basis to perform a job normally fulfilled by one person (under the SEAR, each individual is fully accountable for all the responsibilities inherent in and allocated to that PCF and, as such, responsibilities must be allocated jointly to all individuals holding that PCF role);
  - PCF-18 (Head of Underwriting) taking into consideration retail and corporate business lines; and
  - PCF-19 (Insurance – Head of Investment), PCF-29 (Investment Firms – Head of Trading) and PCF-30 (Investment Firms – Chief Investment Officer) taking into consideration different investment types i.e. equity and bonds.
- The Central Bank acknowledges that the following PCF roles by their nature can be held by several individuals: PCF-1 (Executive Director), PCF-2A (NED), PCF-2B (INED), PCF-16 (Branch Manager of branches established outside the State), PCF-28 (Investment Firms – Branch Managers in Ireland), PCF-41 (Manager of a branch in Ireland of a regulated financial service provider established in a country that is not an EEA country), PCF-50 (Banking – Head of Material Business Line) and the new Head of Material Business Line roles for Insurance and Investment Firms (explained below).

## New PCF for Material Business Line (insurance undertakings and investment firms)

- A new Material Business Line PCF will be introduced for insurance undertakings and investment firms, applicable to an individual with significant influence over the performance of a material business line that satisfies the following quantitative criteria:

- in the case of insurance undertakings: (a) has gross total technical provisions (positive or negative) equal to or in excess of €10 billion; or (b) accounts for 25 per cent or more of the undertaking's gross earned premium, if that gross earned premium is above €1bn per annum; and
- in the case of investment firms: (a) has gross total assets equal to or in excess of €5 billion; or (b) accounts for 10 per cent or more of the firm's gross revenue.

### **Update to Statement of Responsibilities**

- The Statement of Responsibilities must now include relevant information in respect of the following:
  - a description of how a PCF role is shared in the permitted cases as set out previously above; and
  - relevant information in respect of delegation of tasks. The Central Bank's expectation is that only significant delegations should be recorded.

### **Due diligence and certification**

- The Central Bank has clarified its expectations with regard to ongoing due diligence. It has retained certain clarifications of its expectations, specifically: (i) due diligence is applicable to the entire Controlled Functions ("CF") population; and (ii) all due diligence must be performed both on an initial and ongoing basis. Importantly, the initial proposal to extend enhanced due diligence checks to CF-3 to CF-11 roles has been removed. The majority of due diligence in relation to the Certification Process for PCFs, CF-1 and CF-2 roles must be assessed by the firm / holding company itself. Self-certification is permitted by CF-3 to CF-11 roles in respect of Minimum Competency Code, Regulatory and Bankruptcy / Judgement searches.
- The amended draft certification regulations remove the deadline of two months from the Regulations for the giving of a certificate of compliance. Instead, the Central Bank has clarified that the requirement to submit the first annual submission (of confirmation of the completion of the certification process for each PCF role holder, and of confirmation of the completion of the overall certification process in respect of all CFs) will relate to the 2024 calendar year and will be required in 2025.
- The Central Bank has clarified that, in order to confirm to the Central Bank that the Annual Certification Process has been completed, firms will be required to do the following:
  - in respect of each PCF holder, submit confirmation of the completion of the certification process to the Central Bank on an annual basis via the Annual PCF Confirmation return; and
  - in respect of all other CF holders, confirm the overall certification process on an annual basis via the Annual Overall Certification Process return.

### **Reporting of formal disciplinary actions and prescribed contraventions**

- There is no longer an obligation to report to the Central Bank any formal disciplinary actions for breach of the Conduct Standards.
- However, Firms and PCFs are reminded of their duty to report suspected "prescribed contraventions", which includes breaches of the Common Conduct Standards or Additional Conduct Standards. The Guidance refers specifically to the reporting obligations of PCFs under Section 53F of the Central Bank

Act (i.e. Additional Conduct Standard #4) and the Central Bank (Supervision and Enforcement) Act 2013 (i.e. protected disclosures). The Central Bank expects that it will receive reports, under separate new or pre-existing reporting obligations, of suspected prescribed contraventions or any other breach of obligations under ‘financial services legislation’ in addition to suspected criminal offences.

### Holding companies

- For holding companies brought within scope of the F&P regime, the Central Bank will provide detailed operational guidance for those persons already performing the new roles at implementation, which will include a combination of an automated process and a consolidated in-situ process, so that those persons do not have to submit an Individual Questionnaire.

### Temporary Officers

- A Temporary Officer is not subject to SEAR, but will be subject to Additional Conduct Standards if they are a CF-1, which is the Central Bank’s expectation.

### Outsourcing arrangements

- Where there is outsourcing of a PCF role, the role-holder should fall under the oversight of a PCF role holder within the entity (which is to be reflected in the relevant Statement of Responsibilities and the Management Responsibilities Map).

### Key Dates

- **29 December 2023:** Conduct standards and amendments to F&P regime will apply.
- **1 July 2024:** SEAR implementation (excluding (I)NEDs).
- **1 January 2025:** Confirmation of compliance of the certification process in respect of PCFs and CFs.
- **1 July 2025:** SEAR implementation for (I)NEDs.
- The Business Standards are being reviewed and updated as part of the Central Bank’s review of the Consumer Protection Code. The publication of the final feedback statement and revised Central Bank Regulations in this regard is expected in 2024.