

15 March 2023

Central Bank of Ireland issues Consultation Paper on Individual Accountability Framework (CP153)

Following the signing into law of the <u>Central Bank (Individual Accountability Framework) Act 2023</u> (**Act**) on 9 March 2023, the Central Bank of Ireland (**Central Bank**) has published its <u>Consultation Paper 153</u> (**CP153**) containing draft regulations and guidance, which set out how it proposes to implement the new Individual Accountability Framework (**IAF**).

By way of reminder, the IAF includes the following key elements:

- Senior Executive Accountability Regime (SEAR): This will require in-scope firms to set out clearly and fully where responsibility and decision-making lie within the firm's senior management.
- Conduct Standards: Common conduct standards are basic standards such as acting with honesty and integrity, with due skill, care and diligence, and in the best interest of customers, and will apply to individuals performing controlled functions (CFs) in all regulated firms. Senior executives will also have to comply with additional conduct standards related to running the part of the business for which they are responsible (together Conduct Standards).
- Enhancements to the current Fitness & Probity (F&P) Regime: This will include clarifying firms' obligations to proactively certify that individuals carrying out certain specified functions are fit and proper.
- Amendments to the Administrative Sanctions Procedure (ASP): A key change will be the Central Bank's ability to take enforcement action under the ASP directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

What is CP153?

In CP153, the Central Bank outlines its proposals for the implementation of the IAF and seeks feedback from stakeholders on various aspects of the IAF. CP153 includes:

- (a) draft implementing regulations, namely (i) SEAR Regulations; (ii) F&P Certification Regulations; and (iii) Holding Companies Regulations (**Regulations**); and
- (b) draft Guidance proposed by the Central Bank to give further effect to the IAF set down under the Act (**Guidance**).

The draft Regulations and Guidance seek to provide clarity in terms of the Central Bank's expectations for the implementation of SEAR, the Conduct Standards and certain aspects of the enhancements to the F&P regime.

The Central Bank also outlines that the framework is underpinned by the principles of proportionality, predictability and reasonable expectations, confirming that the framework should be implemented by each individual firm in a way which is appropriate taking into account the nature, scale and complexity of the firm and its activities.

What is the proposed timeline for the introduction of the IAF set out under CP153?

The Central Bank has outlined the following proposed staggered implementation timeline, noting that impacted firms will need appropriate time to prepare for and implement the IAF.

- Conduct Standards to apply from <u>31 December 2023</u>.
- F&P Regime certification and inclusion of Holding Companies requirements to apply from <u>31 December 2023</u>.
- SEAR Regulations prescribing responsibilities of different roles and requirements on firms to clearly set out allocation of those responsibilities and decision-making to apply to in-scope firms from <u>1 July 2024</u>.

What are the key elements of CP153?

Conduct Standards (31 December 2023)

The Conduct Standards will impose a single set of obligations on all CFs within each regulated firm. It should be noted that the conduct standards apply to all regulated firms - it is not linked to whether the firm in which they perform the role is in-scope of SEAR.

A small number of additional conduct standards are imposed on individuals carrying out PCF roles as well as individuals in a CF1 role i.e., those individuals who may exercise significant influence on the conduct of the firm's affairs. This is to ensure the framework is not circumvented by the creation of shadow structures or responsibilities.

The draft Guidance sets out the Central Bank's expectations in relation to the Conduct Standards and provides some non-exhaustive examples of the steps it may be reasonable in the circumstances for an individual to take to ensure the Conduct Standards are met.

F&P Regime (31 December 2023)

CP153 provides further detail on the new F&P certification requirements, to include the following:

■ Firms and holding companies will be required to certify annually the ongoing compliance with standards of fitness and probity of all CFs within the firm as part of the existing annual PCF return;

- Firms will not be required to submit details regarding such certifications to the Central Bank, however, this information should be available upon request;
- Firms will be required to inform the Central Bank where formal disciplinary action has been taken against individuals in the firm in respect of breaches of the Conduct Standards; and
- In order to close an acknowledged gap in the current framework, the F&P regime will be extended to apply to holding companies established in Ireland. In this regard, the Central Bank is proposing to prescribe CFs and PCFs for holding companies.

SEAR (1 July 2024)

CP153 confirms that SEAR will initially apply to:

- credit institutions (excluding credit unions); (i)
- (ii) insurance undertakings¹;
- (iii) investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are permitted to hold client assets; and
- (iv) incoming third country branches of the above (with a proportionate approach to apply to low PRISM impact rated in-scope investment firms and incoming third-party branches).

It further clarifies that it is the Central Bank's intention to extend the scope of application of SEAR to other regulated firms over time.

The Central Bank has set down the 'inherent responsibilities' (i.e., those intrinsic to a specific PCF role) and the 'prescribed responsibilities' (which in-scope firms must allocate to an individual in a PCF role in the firm). Examples of the latter include responsibility for managing policies related climate-related and environmental risks within the firm, whistleblowing and succession planning. Adopting a flexible approach, the Central Bank does not intend to be overly prescriptive in terms of how prescribed responsibilities are allocated to specific PCF roles.

In addition, CP153 provides for a residual category of "other responsibilities", which are those material activities or risks which are not covered by the list of prescribed responsibilities applicable to the relevant firm. Such "other responsibilities" must be identified by the relevant firm and then allocated to individuals in a PCF role.

As above, the draft Guidance provides clarity on the considerations the Central Bank proposes to take into account when assessing whether or not an individual has taken "reasonable steps" to discharge their obligations.

Template Statements of Responsibilities and a sample Management Responsibilities Map are also included as well as guidance on completing such documents. Firms may be required to submit these documents to the Central Bank upon request.

^{1 (}excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles)

How can stakeholders provide feedback on CP153?

The Central Bank has posed a number of key questions under CP153 and the consultation is open to feedback for three months from 13 March 2023 to 13 June 2023.

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Interested stakeholders have been requested to provide their responses via email to IAFconsultation@centralbank.ie with the following subject heading in the email "Consultation Paper on the Individual Accountability Framework".

Dillon Eustace is hosting a webinar on CP153 on 23 March 2023, registration for which can be made here. In addition, if you have any queries on the proposals outlined in CP153, please do not hesitate to contact any member of the Dillon Eustace IAF team listed below or your usual contact in Dillon Eustace.

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