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## Fitness and Probity - Action points for Irish funds and their management companies

In our earlier Dillon Eustace Briefing Paper, which can be accessed [here](#) we considered the second “[Dear CEO](#)” letter issued by the Central Bank of Ireland (CBI) on fitness and probity on 17 November 2020 (Letter).

In this follow-up Briefing Paper, we suggest certain action points for Directors of Irish funds and their management companies to consider in order to address the key findings of the CBI as outlined in the Letter.

### Gap analysis

As an initial step, we suggest that a gap analysis should be undertaken of the firm’s relevant policies, processes and procedures against the CBI’s expectations as set out in the Letter and that any deficiencies should be identified and addressed.

### Allocation of roles and responsibilities

The firm should identify those individual(s) who will be responsible for undertaking the relevant activities on the firm’s behalf including:

- ▣ **Oversight of compliance with the firm’s fitness & probity processes:** In the Letter, the CBI sets out its expectation that the fitness and probity processes of regulated firms should be subject to comprehensive oversight by the compliance function. The individual who will carry out this oversight should be identified.
- ▣ **Record retention:** individual(s) with responsibility for retaining all records required under the Fitness and Probity Standards

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(Code issued under Section 50 of the 2014 Central Bank Reform Act 2010) (**Standards**), including all due diligence information used to assess fitness & probity for personnel, and for ensuring that these can be made available to the CBI promptly upon request, should be identified.

- ▣ **Engagement with the CBI:** the individual(s) with responsibility for identifying, escalating and notifying the CBI without delay of any potential concerns regarding the fitness and probity of a CF or PCF holder as part of its initial or ongoing due diligence assessment, should be identified.
- ▣ **Internal audit:** individual(s) with responsibility for the internal audit function should be identified. In the Letter, the CBI sets out its expectation that the fitness and probity processes of regulated firms should be subject to periodic independent review by the internal audit function.
- ▣ **Others roles:** In order to assist with compliance, we suggest that it would be prudent for firms to identify specific individual(s) who will be responsible for other key roles such as: (i) the initial and ongoing due diligence processes; and (ii) the oversight of outsourcing arrangements, as opposed to relying upon collective responsibility.

### **Board appointments and succession plans**

In the Letter, the CBI expressed concern that the level of awareness by Board members of their fitness and probity obligations was poor, particularly in relation to the process for appointing members to the Board. The CBI stated that Chief Executive Officer (**CEO**) screening of potential Board candidates is inappropriate given the conflict of interest between the respective responsibilities of directors and the executive.

Firms should ensure that the fitness and probity framework implemented by the firm sufficiently addresses Board appointments in line with the Letter. In addition, Firms should ensure that suitable Board succession plans are in place in line with the Letter.

### **Update of fitness & probity policies**

Fitness & probity policies should be updated to ensure that all expectations of the CBI are met. All procedures, including those concerning the IQ submission process, should be adequately developed, documented and embedded.

### **Contact information**

If you have any queries about the information contained in this article, please contact the authors or your usual Dillon Eustace contact.

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