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The Central Bank (Individual Accountability Framework) Bill 2022 is published

On 28 July 2022 the Central Bank (Individual Accountability Framework) Bill 2022 (the “**Bill**”) was published by the Department of Finance.

According to the [Explanatory Memorandum](#) to the [Bill](#), its principal purpose is to confer powers on the Central Bank of Ireland (the “**Central Bank**”) to strengthen and enhance individual accountability in the financial services industry.

The Bill follows the outline set by the General Scheme of the Bill which was published in July 2021 (further details [here](#)), and has provided greater detail on the four pillars of the individual accountability framework (“**IAF**”), namely:

- The Senior Executive Accountability Regime (“**SEAR**”);
- The Conduct Standards;
- The Fitness and Probity Regime; and
- The Administrative Sanctions Procedure (“**ASP**”).

For the most part, the Bill follows the General Scheme relating to SEAR and the Conduct Standards. However, there are some substantial changes in relation to the Fitness and Probity Regime and ASP.

This article outlines some of the key points of the Bill relating to the four pillars of the IAF as outlined above.

SEAR

Extension of Regulation-Making Power for the Central Bank

The Bill proposes to extend the regulation-making power of the Central Bank regarding regulated financial service providers (“**RFSPs**”) to give effect to SEAR.

This will enable the Central Bank to make regulations in relation to inherent responsibilities and prescribed responsibilities, which relate to a pre-approval controlled function (“**PCF**”) holder. There is little detail in the Bill in relation to statements of responsibilities or

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management responsibility maps. This detail is expected to be set out in regulations to be issued by the Central Bank.

As mentioned in our previous briefing in relation to the General Scheme, it is expected that SEAR will be rolled out on a phased basis, with the initial scope extending only to credit institutions, insurance undertakings (except reinsurance, captive (re)insurance and insurance special purpose vehicles), certain investment firms and any third country branches of those companies.

Duty of Responsibility

The Bill includes a new legal ‘duty of responsibility’ on individuals in a PCF role who fall within the scope of SEAR. It requires these individuals to take “*any steps that it is reasonable in the circumstances for the person to take*” to ensure that the RFSP does not breach its obligations under financial services legislation.

When considering whether a relevant individual has discharged their ‘duty of responsibility’, the Central Bank will be required to consider all relevant circumstances. Examples of relevant circumstances are set out in the Bill. These include, among others, the function of the person and the level of knowledge and experience that a person with such function could reasonably be expected to have.

If a contravention of the duty occurs, then the individual may be held directly accountable for the breach, and may be subject to the Central Bank’s ASP.

Conduct Standards

There are three types of conduct standards provided for RFSPs and their staff in the Bill:

Business Standards

The Bill provides for a new regulation-making power for the Central Bank to prescribe business standards with which RFSPs shall comply to ensure they act in the best interests of customers and of the integrity of the market; act honestly, fairly and professionally; and act with due skill, care and diligence. The business standards will apply to all RFSPs.

A breach of the business standards will be a prescribed contravention so that the Central Bank can take direct enforcement action against, and may impose sanctions on, an RFSP.

The Bill outlines that the business standards must include, among others, standards requiring that a RFSP engages and co-operates in good faith and without delay with the Central Bank (and with similar authorities outside of Ireland), and discloses to the Central Bank promptly any matter relating to the RFSP of which the Central Bank would reasonably expect notice.

The Bill also outlines that the Central Bank, when making regulations, must ensure that the business standards are effective and proportionate having regard to the RFSPs to whom the regulations apply. Further, the regulations may apply either generally or to a specified class or classes of RFSPs and may include different provisions in relation to different classes of RFSPs, customers or financial services.

Individual Standards

The Bill provides for the following individual conduct standards:-

- **Common Conduct Standards:** these standards will apply to all persons performing controlled functions (“CF”) in RFSPs (i.e. CF or PCF roles).
- **Additional Conduct Standards:** these standards will apply to more senior persons performing PCF roles or who exercise a significant influence on the conduct of the RFSP’s affairs. Such persons would include chief executives, executive or non-executive directors, heads of functions, and branch managers and they will need to comply with both the Common Conduct Standards and the Additional Conduct Standards, regardless of whether the RFSP in which they perform their role is within the scope of SEAR.

Further detail is provided in the Bill in relation to the above standards and the behaviours expected. The Bill also provides that the Central Bank will issue “*guidelines for the purposes of providing practical guidance*” on these standards.

The Bill outlines that any person who performs a CF or PCF in relation to a RFSP or any other function by which the person may exercise a significant influence on the conduct of the RFSP’s affairs “*shall take any steps that it is reasonable in the circumstances for the person to take*” to ensure the applicable standards are met. If they do not, these individuals can be pursued under the Central Bank’s ASP.

The Bill sets out further detail in relation to determining what circumstances are relevant for the purposes of assessing what are reasonable steps to ensure that the conduct standards are met, and the duty of responsibility discharged.

RFSPs must ensure that they notify any relevant persons of the conduct standards that will be expected of them, and that they provide training on these standards. The Bill also provides that the Central Bank will provide guidelines relating to the notification and training obligations of RFSPs.

The Fitness and Probity Regime

Certificate of Compliance with Standards of Fitness and Probity

Part 3 of the Bill provides for the amendment of Section 21 of the Central Bank Reform Act 2010 Act (“**the 2010 Act**”) to strengthen the existing obligations on firms in relation to the fitness and probity of their key personnel under the Fitness and Probity Regime.

The Bill provides that RFSPs will not allow an individual to perform a CF role unless a certificate of compliance with standards of fitness and probity, given by the RFSP, is in force in relation to the person. This requirement also applies to a holding company.

A certificate can be given only if the RFSP or holding company “*is satisfied on reasonable grounds*” that the person concerned complies with any standard of fitness and probity in a code issued under Section 50 of the 2010 Act and the person has agreed in writing to comply with any such standard.

The Central Bank will have the power to make regulations in relation to the form and content of these certificates, the validity period of a certificate, and the RFSP's or holding company's procedures, systems and checks, in connection with the giving or revoking of a certificate.

Amendments to Central Bank's investigative processes

The 2010 Act sets out the procedures for the Central Bank to investigate the fitness and probity of any individual in a CF role. The following proposed amendments to the current procedures are important to note:-

- The Bill extends the scope of the Central Bank procedures to include individuals in CF positions in holding companies.
- The Bill enables the Central Bank to carry out a fitness and probity investigation into any individual who has performed a CF after the commencement of the section (when enacted) and within six years immediately preceding the commencement of the investigation.
- The current maximum period of suspension for a person in a PCF role by the Central Bank's Head of Financial Regulation is three months. This period would be extended to six months, and could be further extended by the High Court, subject to a total of thirty months.

The Bill also includes amendments which have been made to ensure that the Central Bank's processes conform to the standards of fairness in the administration of justice required following the Supreme Court decision of *Zalewski v An Adjudication Officer & Ors [2021] IESC 24* (see details [here](#)).

In this regard, the Bill proposes a requirement that individuals be kept informed as to the progress of the investigation, and certain information (set out in the Bill) has to be contained in a notice commencing the investigation. It also seeks to ensure the independence of decision-makers and to separate the investigative and adjudicative functions of the Central Bank under the Fitness and Probity Regime. There is an additional structure proposed in relation to confirmation of a 'prohibition notice' by the High Court.

The Administrative Sanctions Procedure

To ensure that the IAF works effectively, the Bill makes a number of amendments to the Central Bank Act 1942, as amended ("the 1942 Act"), the legislation which underpins the ASP. The following proposed amendments to the current legislation are important:-

- The Bill provides for High Court oversight for the 'settlement process' under section 33AR of the 1942 Act (where the RFSP or individual acknowledges the commission of the contravention), meaning that any sanction imposed by the Central Bank will not have effect unless confirmed by the High Court.
- The High Court will confirm the decision unless it is satisfied that the Central Bank "made an error of law" in its decision or that a sanction is manifestly disproportionate.
- If a settlement takes place without any acknowledgment of the prescribed contraventions by the party under investigation (under section 33AV of the 1942 Act), no High Court confirmation is required.
- The Bill also provides a list of relevant considerations that the Central Bank must take into account when determining under section 33AQ or AR whether to impose a

sanction, what sanction to impose and the level of any monetary penalty to impose. These include, among others, the person's seniority and level of responsibility in the firm and whether the person's conduct was intentional, negligent or dishonest.

- The Bill also amends the 1942 Act to facilitate the breaking of the "participation link" by replacing the concept of a 'person concerned in the management of an RFSP' with the concept of a 'person performing a controlled function' with a view to facilitating individual accountability of the relevant individual.

Privilege

The Bill proposes to put on a statutory footing the ability of the Central Bank to enter into a disclosure agreement under which a person may disclose privileged legal material to the Central Bank without otherwise waiving the privilege attaching to such material.

What happens next?

It is not yet certain when the Bill will be enacted but it is anticipated that it could be before the end of this year. It remains to be seen, however, what changes will be made to the draft Bill as it progresses through the legislative stages in the Oireachtas and we will be monitoring the progress of the Bill during this process.

The Central Bank has confirmed that once the legislation is enacted, it intends to consult key stakeholders on the implementation and operation of the IAF. Following this process, the IAF will come into effect.

Comment

The introduction of the IAF represents a key challenge for all RFSPs and in-scope firms have been preparing for the IAF for some time now.

Dillon Eustace LLP is strategically positioned to advise clients in respect of preparing for such regulatory reform due to our experience in acting for a number of clients, both individuals and regulated entities, within this field. If you require advice in relation to the matters covered in this briefing, please contact your usual contact in Dillon Eustace LLP.

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