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Individual Accountability Framework and SEAR – Key Questions

In July 2018, the Central Bank of Ireland (**CBI**) proposed an Individual Accountability Framework (**IAF**) which includes the Senior Executive Accountability Regime (**SEAR**) to be modelled on the United Kingdom’s Senior Manager and Certification Regime.

The long awaited General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 (the **Scheme**) has now been published and the Cabinet has approved the drafting of the necessary legislation to implement the IAF.

What is the intention of the IAF?

The purpose of the IAF is to create a framework to facilitate individual accountability and responsibility, particularly for individuals performing senior executive functions (**SEFs**) within a regulated financial services provider (**RFSP**).

The Scheme also aims to remove the existing “participation link”, whereby regulators must first find that a financial firm committed regulatory breaches before they may impose sanctions on individuals for regulatory contraventions.

The Scheme is comprised of six parts:

- ▣ Part 1 (General provisions);
- ▣ Part 2 (SEAR);
- ▣ Part 3 (Conduct Standards);
- ▣ Part 4 (Fitness and Probity Regime);
- ▣ Part 5 (Enforcement Investigations and Sanctions); and
- ▣ Part 6 (Miscellaneous Provisions).

You can read more about the background to the Scheme in our previous briefing [here](#).

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What is SEAR?

Part 2 of the IAF implements the SEAR, which will mandate regulated entities to improve their internal processes by clarifying the roles of their SEFs. This will be achieved by the creation of individual statements of responsibility, together with a management responsibility map documenting the RFSP's wider governance and management arrangements.

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. Additional sectors may, and likely will, be brought within the scope of the SEAR in the future.

SEAR will require each RFSP to carry out the following in respect of each SEF:

- ▣ determine those responsibilities that are inherent to each SEF;
- ▣ prescribe responsibilities allocated to individuals carrying out SEFs;
- ▣ identify and allocate other responsibilities by RFSPs to relevant SEFs;
- ▣ impose requirements on RFSPs to provide a statement of responsibilities to the CBI for SEFs which clearly sets out their role and areas of responsibility; and
- ▣ impose requirements on RFSPs to produce a management responsibility map documenting key management and governance arrangements in a comprehensive and accessible way.

Which roles are deemed to be SEFs?

The population of SEFs is aligned to the list of pre-approval controlled functions (**PCFs**) under the CBI's Fitness and Probity regime.

What duties do SEFs have?

A legal duty of care is imposed on individuals while performing SEFs within regulated entities. Such SEFs are required *"to take reasonable steps to avoid their firm committing, or continuing to commit, a 'prescribed convention' in relation to the areas of the business for which they are individually responsible."*

A prescribed contravention is a contravention as provided for in Part IIIC of the Central Bank Act 1942, as amended. The Scheme proposes that the Central Bank (Supervision and Enforcement) Act 2013 (**2013 Act**) will be amended to provide that a SEF will be considered to be in breach of this duty if:

- ▣ at a time when the individual was performing that SEF role, the RFSP committed or continued to commit a prescribed contravention;
- ▣ the individual was, at that time, responsible for the business area relevant to that prescribed contravention; and

- ❑ the individual did not take reasonable steps to avoid the prescribed contravention occurring or continuing.

The CBI will be able to take enforcement action and impose administrative sanctions on individuals who breach the duty of responsibility. Where a firm is in breach of its obligations, the CBI will be required to consider all relevant circumstances when determining whether or not the relevant individual discharged their duty as required. The Scheme proposes amendments to the 2013 Act to provide examples of the circumstances that may apply in a given case.

What are the IAF Conduct Standards?

There are three types of conduct standards provided for RFSPs and their staff in Part 3 of the Scheme:

- ❑ Standards for Business: these are obligations which are imposed upon RFSPs with respect to expected standards of conduct, including an obligation to deal with regulators in good faith and in an open and cooperative manner. The Standards of Business will apply to all RFSPs regardless of whether or not they come within the scope of SEAR;
- ❑ Common Conduct Standards: these are obligations which are imposed upon all persons performing “controlled functions” roles in RSFPs (i.e. CF or PCF roles) under the CBI’s Fitness and Probity regime. Such obligations include acting in the best interests of customers and treating customers fairly and professionally. The aim is for these standards to provide clarity as to the standards of behaviour the CBI expects of individuals working in the financial services; and
- ❑ Additional Conduct Standards: these obligations, which include ensuring that parts of RFSPs business for which the person is responsible are controlled effectively and comply with relevant regulatory requirements, apply only to “persons in senior roles”. The Scheme proposes that such persons in senior roles comprise persons performing PCF roles or other persons who exercise significant influence on the conduct of an RFSP’s affairs, such as chief executives, executive or non-executive directors, heads of functions, and branch managers. Such persons 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 the SEAR.

Breaches of the various conduct standards provided will be a “prescribed contravention” and will be enforceable against the RSFS/ the relevant CF/ PCF/persons in senior roles, as applicable.

What changes are being made to the Fitness and Probity Regime?

Part 4 of the Scheme provides for an amendment to Section 21 of the Central Bank Reform Act 2010 (the **2010 Act**) to strengthen the existing obligations on firms in relation to the fitness and probity of their key personnel under the CBI’s Fitness and Probity Regime. An RSFP will be required to certify that it is satisfied that any individual performing a PCF/ CF role meets the requirements under this regime.

The Scheme also provides for an amendment to the 2010 Act to ensure that the CBI can investigate individuals who the CBI suspects pose a danger to consumers or the financial system, irrespective of whether they continue to perform a CF role at the time when an investigation is being commenced.

In addition, various other amendments to the 2010 Act are proposed including:

- ▣ an amendment to allow the CBI to gather information required to assess persons for the PCF roles whilst the relevant proposed RSFP is still at the authorisation application stage; and
- ▣ an amendment to the 2010 Act to extend the fitness and probity regime to apply to the directors/staff of unregulated holding companies/ a mixed financial holding companies established in Ireland.

What changes are being made to the CBI's enforcement, investigations and sanctions powers?

Part 5 of the Scheme provides for the amendment of the CBI's Administrative Sanctions Procedure (**ASP**) to align the scope of the ASP with the broader IAF proposals. The changes include:

- ▣ the abolition of the concept of a “person concerned in the management” as currently contained in the ASP and the alignment of the ASP to the PCF/ CF/ “persons in senior management” concepts, where applicable.
- ▣ permitting the direct enforceability of legal obligations on CFs/ PCFs/ “persons in senior management”
- ▣ removing the “participation link” currently provided for under legislation (see above).

When can we expect the Scheme to be implemented?

Having initially been expected to be drafted in early 2019, significant events such as the COVID-19 pandemic have delayed the progress of the IAF legislation. Following the publication of the Scheme on 27 July 2021, no revised date has been provided for the delivery of the draft bill. However, the Minister for Finance has indicated that the legislative process may require 12 – 18 months to be fully implemented.

A full copy of the Scheme can be accessed [here](#).

Comment

The introduction of the IAF represents a key challenge for all financial service providers. Although the indicative framework suggests implementation not before Q3 2022, the Scheme provides RFSPs with an element of certainty so that they may commence their initial preparations to ensure that they are equipped for the new regime when it inevitably arrives.

We recommend that all in-scope firms start preparing now for IAF/ SEAR. This should include establishing internal teams to begin preparing the necessary organisational

responsibility maps and individual statements of responsibility and addressing any consequential internal policy or contractual considerations that arise.

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.

Our [Regulatory Investigations Team](#) is available to help clients through this process.

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