



October 2020

## New Central Bank Pre-Approval Control Functions to take effect that impact the Asset Management industry

As readers will recall from our [update](#) earlier this year, the Central Bank of Ireland (the “**CBI**”) announced its intention (the “**Notice**”) to expand the Pre-Approval Controlled Functions (“**PCFs**”) regime. The Notice proposed introducing three new PCF roles and splitting the current PCF-39 Designated Person role into six PCF roles aligned to the specific managerial functions.

The CBI has now [published](#) the Central Bank Reform Act 2010 (Sections 20 & 22) (Amendment) Regulations 2020 (the “**Amending Regulations**”) which amends the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 (S.I. No. 437 of 2011) as amended by the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2015 (S.I. No. 545 of 2015).

The three new PCF roles that are being introduced are as follows:

- ▣ Chief Information Officer PCF-49 (under the ‘General’ category);
- ▣ Head of Material Business Line PCF-50 (under the ‘Banking’ category);
- ▣ Head of Market Risk PCF-51 (under the ‘Banking’ category).

Of particular relevance to the Asset Management industry will be the introduction of the Chief Information Officer PCF-49 role and the reassignment of the Designated Person PCF-39 role to the new

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PCF-39A to PCF-39F roles based on the management function that the relevant Designated Person is appointed to.

## Designated Person PCF-39 roles

This reassignment of the PCF-39 role for Fund Management Companies<sup>1</sup> is set out below.

UCITS Self-Managed Investment Company / Management Company	
PCF-39	Designated Person
PCF-39A	Designated Person with responsibility for Capital and Financial Management
PCF-39B	Designated Person with responsibility for Operational Risk Management
PCF-39C	Designated Person with responsibility for Fund Risk Management
PCF-39D	Designated Person with responsibility for Investment Management
PCF-39E	Designated Person with responsibility for Distribution
PCF-39F	Designated Person with responsibility for Regulatory Compliance

The CBI has helpfully provided guidance alongside the Amending Regulations in the form of an [“FAQ”](#) in respect of the introduction of the new and revised PCFs.

The FAQ outlines that those discharging the relevant Designated Person PCF-39 role who are in place on the 5 October, 2020 will not be required to obtain any additional CBI approval to continue to perform the relevant role. However, Fund Management Companies will be required to submit a list of individuals performing each of the PCF-39A to PCF-39F roles to the CBI via an “In Situ Return”. Fund Management Companies have a period of 6 weeks within which to complete the “In Situ Return” via the CBI’s Online Reporting System, meaning that Fund Management Companies must make the relevant filing by **Friday 27 November, 2020**. If the person discharging the relevant PCF-39 function changes after 5 October, 2020, he/she will need to obtain the CBI’s prior approval before performing this role by completing the CBI’s individual questionnaire.

## Chief Information Officer PCF-49

As set out in our previous article and in the [Guidance](#) on the Fitness and Probity Standards, the CBI does not require a PCF, such as PCF-49 role, to be in existence in a regulated financial service provider (“**RFSP**”) where one did not previously exist or where the size or complexity of an RFSP’s business does not warrant it. This is for the RFSP to determine itself. An RFSP should review its functions and determine whether any would meet the PCF roles as listed in the Amending

<sup>1</sup> As defined in the Central Bank’s Fund Management Companies Guidance 2016

Regulations. The CBI reminds RFSPs that they should apply substance over form when reviewing such functions, including the PCF-49 role, and be mindful that it is the function rather than the job title of the individual performing that function that determines which PCF category, if any, it falls under. In considering the applicability of the PCF-49 role, RFSPs should do so in light of the principle of proportionality which takes into account the size and complexity of the RFSP's operations, the nature of the RFSP's activity, the types of services provided and the corresponding information and communication technology and security risks related to its processes and services.

The CBI has noted in the FAQ that it is possible that an RFSP may not require a specific Chief Information Officer ("CIO") and that the role may instead be shared amongst other Controlled Functions e.g. an individual could be listed as Chief Operating Officer and CIO. It is the responsibility of the RFSP to determine if a position represents two PCF roles. In such circumstances, the individual must be approved by the CBI in respect of the performance of each PCF role.

By way of reminder, the PCF-49 role will be a function, which is likely to enable the individual responsible for its performance to exercise a significant influence on the conduct of the affairs of an RFSP and will typically apply to the most senior individual at the RFSP with responsibility for Information Technology ("IT") matters. This may be referred to as "Chief Technology Officer" or other such similar titles in some instances. The PCF-49 role would be "likely to apply" where:

- ▣ The RFSP has a PRISM impact rating of High or Medium High; or
- ▣ IT is a key enabler or core element of the RFSP's business model.

The FAQ further outlines the circumstances in which IT is a "key enabler or core element of the RFSP's business model" which RFSP's should refer to.

The FAQ outlines that individuals "in situ" on 5 October, 2020 when the Amending Regulations 2020 came into effect in respect of the PCF-49, PCF-50 and PCF-51 roles will not be required to seek the approval of the CBI to continue to perform these new PCF roles. However, RFSPs must review their assessment under Section 21 of the Central Bank Reform Act 2010 (the "**2010 Act**") in respect of individuals "in situ" and submit confirmation of such an assessment to the CBI. RFSPs have a period of 6 weeks within which to provide the "In Situ" confirmation to the CBI via email which means that such confirmations must be submitted to the CBI by **Friday 27 November, 2020** and such email must be sent by the Chairperson (PCF-3) or Chief Executive (PCF-8) of the relevant RFSP.

As a reminder, under [Section 21 of the 2010 Act](#) the RFSP must be satisfied on reasonable grounds that the relevant individuals comply with the [Fitness and Probity Standards](#) (the "**F&P Standards**") and that the relevant individuals have agreed to abide by the F&P Standards. Notably, the CBI does not cross-refer to this assessment in respect of the "In Situ Return" for the new PCF-39 roles. However, it would be prudent that the same assessment is carried out in this regard.

If the individual discharging the relevant PCF-49, PCF-50 or PCF-51 role changes after 5 October 2020, the prior approval of the CBI will be required by completing and submitting an individual questionnaire.

Further information on the PCF-50 and PCF-51 roles, which will be of particular relevance to the Banking sector, is also set out in the FAQ and Amending Regulations.

Please refer to our previous [update](#) which discusses changes to current practices as a result of these PCF roles.

If you have any queries in respect of the issues raised in this article or you require assistance with completing and submitting the “In Situ” confirmations/returns, please do not hesitate to contact us.

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