



ADVISORY
Industry Information

IRELAND UPDATE

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SEAR and the individual accountability landscape: The Central Bank (Individual Accountability Framework) Bill 2022

Executive Summary

The Central Bank (Individual Accountability Framework) Bill 2022 (the “IAF Bill”) was published on 28 July 2022 by the Department of Finance, following the publication of the General Scheme of the IAF Bill (“General Scheme”) in July 2021.

The main purpose of the IAF Bill is to improve accountability and trust in the financial sector by creating a framework which contributes to bringing about cultural and practical change in the banking sector and throughout the financial services industry at large.

The IAF Bill mirrors to a great extent the content of the General Scheme although it includes important changes to the scope of the conduct standards and the Central Bank of Ireland’s (“CBI”) investigative powers.

The IAF Bill can be divided into four key pillars which we will address in turn in this briefing note:

1. SEAR

2. Conduct
Standards

3. Enhanced
F&P Regime

4.
Enforcement

Once enacted, which might be as soon as Q4 2022, the IAF Bill will introduce significant changes to the regulation and supervision of regulated financial service providers (“RSFP”) and persons performing controlled functions (“CF”) and pre-approval controlled functions (“PCF”), through, *inter alia*, the introduction of the Senior Executive Accountability Regime (“SEAR”), business and conduct standards, and an enhanced fitness and probity (“F&P”) regime. The CBI’s administrative sanctions regime will also be adjusted, removing some of the difficulties that currently exist for enforcement in respect of individuals.

The CBI has issued a statement accompanying the publication of the IAF Bill, confirming that it will launch a public consultation on the implementation of the Individual Accountability Framework once the legislation has been passed. Firms will have an additional opportunity at that stage to feed in to the development of the relevant regulations and guidelines which will be necessary to implement the regime.

The IAF Bill will amend three main pieces of legislation:

- » The Central Bank (Supervision and Enforcement) Act 2013 (the “2013 Act”);
- » The Central Bank Reform Act 2010 (the “2010 Act”); and
- » The Central Bank Act 1942 (the “1942 Act”).



“**controlled function**” means-

(a) in relation to a RFSP, a function prescribed in regulations made under section 20 of the Central Bank Reform Act 2010, as a controlled function in relation to a RFSP, and

(b) in relation to a holding company, means a function prescribed in regulations made under section 20 of the Central Bank Reform Act 2010, as a controlled function in relation to a holding company.

“**pre-approval controlled function**” shall be construed-

(a) in relation to a RFSP in accordance with section 22(1) of the Central Bank Reform Act 2010, and

(b) in relation to a holding company, in accordance with section 22(1A) of the Central Bank Reform Act 2010.

1. SEAR

SEAR is to be implemented by way of amendments to the 2013 Act by granting the CBI “regulation-making powers” to impose obligations on in-scope RFSPs regarding their governance and management arrangements.

The IAF Bill does not specify the sectors to be included in SEAR as this will be provided for by CBI’s implementing regulations, however, the General Scheme noted that it is intended for SEAR to initially apply to the following sectors:

- » Credit institutions (excluding credit unions);
- » Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles);
- » Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets; and
- » Third country branches of the above.

Under SEAR, in-scope RFSPs will be required to:

- » Specify the responsibilities that are inherent to each PCF-holder;
- » Specify the responsibilities of each PCF-holder that are allocated to them by the RFSP;
 - *Prepare Statements of Responsibilities for each PCF-holder*
- » Implement arrangements and documentation to ensure the proper conduct of its affairs;
- » Implement arrangements and documentation to monitor the performance of PCF-holders; and
- » Implement arrangements and documentation which identifies and clarifies the management and governance structure of its lines of authority and accountability.
 - *Create Management Responsibility Maps*

Additionally, amendments to the 2010 Act provide for a “duty of responsibility” on all PCF-holders with inherent or allocated responsibility to take such steps, which are reasonable in the circumstances, to secure that the affairs of the RFSP are “conducted so as to avoid contravention by it of its obligations under financial services legislation”. Based on the General Scheme it is currently expected that this will apply to RFSPs which are within scope of SEAR.



Key Action Points for In-scope RFSPs

- » Identify the staff that are subject to the SEAR regime.
- » Identify a part of the organisation which will take the lead to implement SEAR/IAF. Consider creating a dedicated SEAR/IAF implementation group.
- » Review existing management and governance procedures.
- » Create responsibility maps and statements of responsibility, alongside other policies and procedures.
- » Consider any potential gaps and issues identified from a mapping exercise and consider whether it will be necessary to issue updated job specifications to PCF-holders and/or to amend their contracts of employment to reflect any necessary changes.
- » Consultation may be required with PCF-holders in order to obtain their consent if any proposed changes would constitute a material change to their terms and conditions of employment. In specific circumstances, additional remuneration and/or benefits may need to be considered where PCF-holders would be required to accept additional responsibilities or changes to their roles.
- » Other sectors may be included within the scope of SEAR in the future following the enactment of the legislation. This follows the approach taken under the Senior Managers and Certification Regime (“SMCR”) in the UK (on which SEAR is largely based), which was gradually expanded from an initial limited list of in-scope entities.

2. Conduct Standards

The IAF Bill creates three new types of conduct standards which will apply in respect of all RFSPs, irrespective of the sector specification for SEAR. These are summarised below:

Business Standards	Common Conduct Standards	Additional Conduct Standards
<p><i>Addressees:</i> All RFSPs, however, CBI implementing regulations may provide different provisions to different classes of RFSPs</p>	<p><i>Addressees:</i> All CF-holders</p> <p><i>Standard:</i> take any steps that are reasonable in the circumstances to ensure that the standards are met</p>	<p><i>Addressees:</i> All PCF-holders or any other function with significant influence</p> <p><i>Standard:</i> take any steps that are reasonable in the circumstances to ensure that the standards are met</p>
<ul style="list-style-type: none"> » to act in the best interests of customers and of the integrity of the market; » to act honestly, fairly and professionally; » to act with due skill, care and diligence; » to not mislead a customer as to the advantages or disadvantage of any financial service; » to maintain adequate financial resources; 	<ul style="list-style-type: none"> » to act with honesty and integrity; » to act with due skill, care and diligence; » to cooperate in good faith and without delay with the CBI, and any other authorities; » to act in the best interests of customers and treats them fairly and professionally; and » to operate in compliance with standards of market conduct and trading venue rules to which the RFSP is subject by law and any market codes that apply to the affairs of the RFSP. 	<ul style="list-style-type: none"> » to ensure that the business of the RFSP is controlled effectively; » to ensure that the business of the regulated financial service provider is conducted in accordance with its obligations under financial services legislation; » to ensure that any delegated tasks are assigned to an appropriate person with effective oversight; and » to ensure that any information of which the CBI would reasonably expect notice in respect of the business of the RFSP is disclosed promptly and appropriately to the CBI, including information relevant to, or giving rise to a suspicion or expectation of, any of the following: <ul style="list-style-type: none"> - commission of an offence; - commission of a prescribed contravention or any other breach of obligations under financial services legislation;



Business Standards	Common Conduct Standards	Additional Conduct Standards
<ul style="list-style-type: none"> » to control and manage its affairs and systems sustainably, responsibly, and in a sound and prudent manner; » to prevent, or identify and appropriately manage conflicts of interest; » to arrange adequate protection for customer assets; » to engage and cooperate in good faith and without delay with the CBI, and any other authorities; and » to disclose to the CBI promptly, any matter relating to the RFSP of which the CBI would reasonably expect notice. 		<ul style="list-style-type: none"> - concealment or deliberate destruction of evidence; - provision of false or misleading information to the CBI; - obstruction or impeding of an investigation; - commencement of legal proceedings by or against the RFSP; and - anything that may otherwise interfere significantly with the operation of the RFSP; and - a decision by the regulated financial service provider to cease to provide financial services.

A RFSP shall, for the purpose of ensuring compliance with the common conduct standards and additional conduct standards, notify CF-holders and PCF-holders of the standards which apply to them and provide them with training in order to ensure that they have appropriate knowledge of the standards.

Furthermore, RFSPs are required under the IAF Bill to “establish, maintain and give effect to policies on how the common conduct standards are integrated into the conduct of the affairs” of the RFSP.

It is flagged in the General Scheme that the CBI may impose sanctions for non-compliance with any of the three types of conduct standards.

Key Action Points for all RFSPs

- » Identify the staff that may be subject to the new conduct standards.
- » Notify CF-holders, PCF-holders and any other function with significant influence of the standards which will apply to them and provide tailored training and support to enable them to comply with the conduct standards applicable to their roles.
- » Review employment contracts, policies and handbooks to take account of the applicable common conduct standards and additional conduct standards and consider whether consultation and/or employee consent is required to implement the necessary changes.
- » Introduce policies and procedures to adopt the Business Standards throughout the RFSP on an ongoing basis. Undertake an impact analysis to identify documentation and training needs.
- » Consider standards as part of your firm’s culture and conduct risk frameworks.



3. Enhanced F&P Regime

The IAF Bill proposes to amend the 2010 Act to extend the F&P regime to certain holding companies of credit institutions, insurance undertakings and investment firms. The IAF Bill will also require RFSPs and holding companies to certify in writing that they are satisfied that any persons proposed to carry out a CF comply with the fitness and probity standards. The IAF Bill does not stipulate how frequent certifications need to be renewed, however, it does provide that the CBI may put in place a renewal requirement through delegated regulations.

Additionally, the IAF Bill proposes to widen the scope of the CBI's powers under the F&P regime:

- » The CBI may investigate any person who performed a CF up to six years prior to the investigation as to their fitness and probity compliance.
- » The CBI may suspend a CF-holder for a period of six months, which can in turn be extended by up to 24 months. (This stands in contrast to the current suspension period of 3 months which can be extended by up to 3 months.)

“**holding company**” means any of the following established in the State-

- (a) a financial holding company, within the meaning given by point (20) of Article 4(1) of the Capital Requirements Regulation;
- (b) a mixed financial holding company, within the meaning given by point (21) of Article 4(1) of the Capital Requirements Regulation;
- (c) an insurance holding company, within the meaning given by Regulation 215(1) of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);
- (d) an investment holding company, within the meaning of the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021);

Key Action Points for all RFSPs and In-scope Holding Companies

- » Update an existing / introduce a new F&P policy.
- » RFSPs will have recently been assessing the robustness of their application of the F&P processes in light of the CBI's Dear CEO letters of 2019 and 2020. RFSPs should review existing policies and procedures in place to ensure these accurately reflect the operation of the enhanced F&P regime, in particular the due diligence underpinning the additional certification requirement.
- » Consider alignment of SEAR and F&P compliance frameworks (e.g. in relation to due diligence processes pre-appointment to in-scope roles).
- » Review pre-employment due diligence and assessment/appraisal practices for existing staff to ensure that appropriate steps are taken to enable the relevant entity to certify that such persons comply with the fitness and probity standards.
- » Review relevant employment contracts, offer letters and other employment documents to ensure that ongoing compliance with the fitness and probity standards is a condition of employment.
- » Review relevant contractual suspension clauses, investigation processes and disciplinary procedures to balance the rights of all parties in the event of a CBI investigation.
- » Investigation of former CF-holders will have consequences for staff moving on who may wish to retain access to documents and ongoing insurance cover.



4. Enforcement

In order to implement a uniform enforcement mechanism, the IAF Bill proposes to amend several provisions of the 1942 Act to align the scope of the Administrative Sanctions Procedure (“ASP”) with the proposals under the IAF Bill, by replacing the concept of “person concerned in the management” of an RFSP with references to persons performing a controlled function and/or a pre-approval controlled function in relation to an RFSP, and by extending the scope of the ASP to holding companies, as defined above.

Additionally, the IAF Bill proposes to amend the ASP by breaking the “participation link”. This amendment will allow the CBI to sanction accountable individuals within RFSPs, without first finding the RFSP to have breached financial services legislation.

The CBI may consider a variety of factors in determining whether to impose sanctions on a natural person, including:

- » the seriousness of the prescribed contravention;
- » the effect of the prescribed contravention;
- » the conduct of the person during and after the person’s commission of or participation in the prescribed contravention;
- » the previous record of the person;
- » any consideration relating to pending or possible criminal proceedings; and
- » any matter relevant to the financial position of the person.

How Can Walkers Help?

The Walkers IAF Team are ready to assist clients by:

- » assessing how the changes introduced by the IAF Bill may impact the governance, management and employment arrangements in their businesses; and
- » assisting with implementation of the necessary changes such as preparing maps and statements of responsibility, reviewing employment contracts and updating F&P policies.
- » If you have any concerns or queries regarding the impact that the introduction of the IAF Bill may have on your business, please speak to your usual contact in Walkers or any of the key contacts listed below:

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