

---

# Briefing

## Central Bank consults on Individual Accountability Framework - key considerations for regulated firms



INSTITUTE OF DIRECTORS  
IN IRELAND

---

This briefing was produced by the Institute of Directors in association with McCann FitzGerald LLP for use in Ireland. McCann FitzGerald LLP is one of Ireland's premier law firms, providing a full range of legal services to many of Ireland's leading businesses. Clients include international organisations, major domestic concerns, emerging Irish companies and clients in the State and semi-State sectors.

On 13 March 2023, the Central Bank of Ireland (the “**Central Bank**”) issued its much-anticipated consultation on the individual accountability framework (the “**IAF**”) (the “**Consultation**”) ([here](#)). In this briefing, we highlight the key aspects of the Consultation of which regulated firms (“**Firms**”) should be aware.

---

### Background

On 9 March 2023, the Central Bank (Individual Accountability Framework) Act 2023 (the “**Act**”) was enacted ([here](#)). The Act provides for the introduction of the IAF which, the Central Bank states, is designed to improve governance, performance and accountability in Firms.

The IAF consists of four pillars:

- a senior executive accountability regime (“**SEAR**”) which will require in-scope<sup>1</sup> Firms to determine where responsibility and decision-making lie within a Firm’s senior management structure and impose a ‘*duty of responsibility*’ on senior executives;
- common conduct standards which will apply to persons in controlled functions (“**CFs**”), additional conduct standards which will apply to individuals in pre-approval controlled functions (“**PCFs**”) (together, the “**Conduct Standards**”) and business standards which will apply to a Firm itself;
- enhancements to the Central Bank’s existing fitness and probity (“**F&P**”) regime; and
- amendments to the Central Bank’s administrative sanctions procedure (“**ASP**”).

Our IAF hub ([here](#)) provides further briefings and commentary with background to the IAF.

---

## The Consultation

The consultation paper, CP153, entitled ‘*Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023*’ ([here](#)) confirms that the legal framework constituting the IAF will consist of:

- the Act;
- three sets of Central Bank Regulations consisting of (a) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Senior Executive Accountability Regime) Regulations 20XX (the “**SEAR Regulations**”), (b) the Central Bank Reform Act 2010 (Section 21(6)) Regulations 20XX (the “**Certification Regulations**”) and (c) the Central Bank Reform Act 2010 (Sections 20(1) and 22(2A) – Holding Companies) Regulations 20XX (the “**Holding Companies Regulations**”) (together, the SEAR Regulations, the Certification Regulations and the Holding Companies Regulations are referred to as, the “**Regulations**”), drafts of which are attached in Annex 1 to the Consultation ([here](#)); and
- Central Bank Guidance on the IAF (the “**IAF Guidance**”), a draft of which is attached in Annex 2 to the Consultation ([here](#)).

The Central Bank states that the draft Regulations and draft IAF Guidance are intended to provide clarity on regulatory expectations for the implementation of SEAR, the Conduct Standards and certain aspects of the enhancements to the F&P regime.

The Consultation poses 18 specific questions to stakeholders in respect of the Central Bank’s implementation plans and also invites feedback on the draft Regulations and draft IAF Guidance. The Consultation will remain open for 3 months from **13 March 2023 to 13 June 2023**.

---

## Key Aspects of the Consultation

### 1. SEAR

#### [Scope of SEAR](#)

The draft SEAR Regulations confirm that SEAR will initially apply to:

- 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 permitted to hold client assets; and
- incoming third country branches of the above.

The Central Bank confirms that SEAR will align with PCF roles at in-scope Firms. The Central Bank states that Firms will not be required to create new roles and, on this basis, the Central Bank does not expect SEAR to alter the “*existing governance structures of well-run firms*”.

### Inherent and Prescribed Responsibilities

The Central Bank confirms that there are two main types of responsibilities imposed under the IAF:

- “**Inherent Responsibilities**” which are automatic to any particular PCF role at an in-scope Firm. Schedule 1 of the draft SEAR Regulations sets out the Central Bank’s proposed Inherent Responsibilities; and
- “**Prescribed Responsibilities**” which each in-scope Firm must allocate among individuals in PCF roles. The proposed list of Prescribed Responsibilities is set out in Schedule 2 of the draft SEAR Regulations. The Central Bank notes that some of the Prescribed Responsibilities will apply to all in-scope Firms and some will apply to particular types of in-scope Firms.

The Central Bank has also included a category of “**Other Responsibilities**” in Regulation 7 of the draft SEAR Regulations which are material activities or risks of a given Firm not captured by the list of Prescribed Responsibilities. The Central Bank states that these Other Responsibilities shall be identified by Firms, or the Central Bank in the interests of the proper and orderly regulation of a Firm, and are required to be allocated to individuals in a PCF role in a given Firm.

The Central Bank confirms that it intends to provide Firms with the flexibility to allocate responsibilities in a manner that accommodates different business models and organisational structures.

In-scope investment firms and incoming third-country branches should note that the Central Bank proposes applying a proportionate approach to those Firms. On this basis, a reduced number of Prescribed Responsibilities will apply to low-impact investment firms and incoming third country branches. The ‘*reduced*’ Prescribed Responsibilities are laid out in Schedule 2, Part 2 and Part 3, respectively, of the draft SEAR Regulations.

### Statements of Responsibilities and Management Responsibilities Map

SEAR will require Firms to set out responsibilities for each PCF holder in a “**Statement of Responsibilities**”. A Firm will also develop a “**Management Responsibilities Map**” documenting key management and governance arrangements for that Firm.

Appendix 3 and Appendix 4 of the draft IAF Guidance sets out a template Statement of Responsibilities and a guide for a Management Responsibilities Map, respectively.

### Duty of Responsibility and Reasonable Steps

A key aspect of SEAR is the introduction of a ‘*duty of responsibility*’ for PCF holders at in-scope Firms to take reasonable steps to ensure that the areas of the Firm for

which they are responsible do not contravene financial services legislation, for example, the Central Bank Acts 1942 to 2018.

What constitutes “*reasonable steps*” will be a key concern for Firms and PCF holders. In this respect, Part C, Chapter 3 of the draft IAF Guidance provides guidance on the considerations to be taken into account for the purposes of determining if reasonable steps have been taken under SEAR and the Conduct Standards. The Central Bank states that the draft IAF Guidance seeks to provide sufficient clarity while ensuring that there is flexibility to accommodate different governance structures, business models and situations across Firms.

### Non-Executive Directors

As expected, the Central Bank proposes that independent non-executive directors (“INEDs”) and non-executive directors (“NEDs”) should fall within the scope of SEAR, however the Central Bank states that the standards to be met by non-executive directors will relate to their non-executive oversight functions and will be limited to what should reasonably be expected of individuals in that context. A list of non-executive Prescribed Responsibilities is set out in Chapter 2, Table 1 of the draft IAF Guidance to eliminate any potential misallocation of executive and non-executive Prescribed Responsibilities.

### Submission of documents

The Central Bank will not require Firms to engage in initial or periodic reporting in respect of Statements of Responsibilities and the Management Responsibilities Map. Instead, the Central Bank states that these materials should be available to the Central Bank on request. Firms will be required to submit a Statement of Responsibilities with new PCF applications.

### Outsourcing

A Firm which utilise outsourcing arrangements should have a PCF holder in place at that Firm with responsibility for those arrangements. Where a PCF role is outsourced, the role-holder should fall under the oversight of a PCF role holder within a Firm. The Central Bank confirms that this arrangement should be reflected in the relevant Statement of Responsibilities and the Management Responsibilities Map.

## **2. Conduct Standards**

The Conduct Standards will apply to CFs in **all** regulated Firms and is not linked to whether a Firm is in scope of the SEAR.

For PCFs, additional conduct standards are imposed. These additional conduct standards will also apply to individuals in a CF1 role, that is, those individuals with the ability to exercise a significant influence on the conduct of the affairs of a Firm.

CFs, including PCFs, must take ‘*reasonable steps*’ to ensure that common conduct standards, and additional conduct standards, if applicable, are met.

The Central Bank provides further guidance in respect of the Conduct Standards in Chapters 4 to 6 of the draft IAF Guidance. As highlighted in the section

‘SEAR’ above, Part C, Chapter 3 of the draft IAF Guidance provides guidance on the considerations to be taken into account for the purposes of determining if ‘reasonable steps’ have been taken under SEAR and the Conduct Standards.

For Firms subject to SEAR, the Central Bank states that, in addition to board oversight, the PCF allocated with the Prescribed Responsibility for embedding the Conduct Standards throughout a Firm should oversee training in respect of the Conduct Standards. While the day-to-day running and management of the training programme can be delegated, the Central Bank states that the relevant PCF should, through reporting and reviews, understand the approach and have sufficient awareness of training completion and effectiveness.

### 3. Job Sharing and Temporary Appointments

The Central Bank states that, in principle, Inherent and Prescribed Responsibilities cannot be shared or split amongst different individuals, however, this principle does not apply in the case of job sharing. The Central Bank proposes that while the default position is that each job sharing individual will have full accountability for the relevant responsibility, this will be discharged where *“s/he can demonstrate that s/he took reasonable steps to discharge the responsibility, including in relation to the manner in which activities and tasks were shared amongst the job sharers and in respect of their completion on that basis”*.

In respect of the appointment of a temporary officer to a PCF role, the Central Bank expects that such temporary appointments will only be used in exceptional circumstances. The Central Bank states that while SEAR, in the case of an in-scope Firm, and Conduct Standards will apply, the consideration of ‘reasonable steps’ will reflect the particular circumstances of the individual.

### 4. Enhancements to the Fitness and Probity regime

The IAF introduces a number of enhancements to the F&P Regime. Firms and holding companies will be required to certify annually ongoing compliance with F&P standards of individuals carrying out CF roles. The Central Bank states that Firms will not be required to submit details regarding such certification to the Central Bank, however this information should be made available to the Central Bank upon request. The Central Bank confirms that as part of the existing annual PCF return, Firms will be required to confirm the completion of the certification process.

Firms should take note that Regulation 9 of the draft Certification Regulations requires Firms to inform the Central Bank when “disciplinary action” has been taken against a person performing a CF role where that disciplinary action is *“relevant to compliance with the Fitness and Probity Standards, in particular, disciplinary action relating to breach of a provision of the additional conduct standards, the common conduct standards, or any other provision of financial services legislation”*. “Disciplinary action” is defined in the Certification Regulations as *“the issuing of a formal written warning or the suspension/dismissal of the individual or the reduction or recovery of any of the individual’s remuneration”*.

Under the IAF, the F&P Regime will be extended to apply to holding companies established in Ireland. Schedule 1 and 2 of the draft Holding Companies Regulations sets out proposed CF and PCF roles in respect of holding companies.

Further detail on F&P certification requirements are contained in the draft Certification Regulations and Part D, Chapter 7 of the IAF Guidance.

## 5. New PCF Role

The Central Bank is proposing introducing a new PCF role ‘*Head of Material Business Line*’ for insurance undertakings and investment firms. This follows the introduction of a new PCF-50 ‘*Head of Material Business Line*’ for credit institutions in October 2020 ([here](#)).

## 6. Application of the IAF to Branches

There has been some uncertainty in respect of how the IAF will apply to branches. Appendix 5, Table 11 of the draft IAF Guidance contains a reference table outlining the proposed application of the IAF to incoming and outgoing EEA and third country branches.

The Central Bank confirms that SEAR applies to incoming third country branches, however, a reduced number of Prescribed Responsibilities will apply. The Central Bank states that all other elements of SEAR, including preparing Statements of Responsibilities and a Management Responsibilities Map, will apply to incoming third country branches. For outgoing branches, there will be a requirement for a Statement of Responsibilities for the branch manager (and any other PCF holder within the branch) and the Central Bank confirms that the outgoing branch will need to be reflected in the Irish Firm’s Management Responsibilities Map.

Appendix 5, Table 11 of the draft IAF Guidance confirms that SEAR will not apply to incoming EEA branches.

The Central Bank states that the Conduct Standards will apply to the conduct of all individuals who perform CF roles at Firms wherever that conduct is performed. On this basis, the Central Bank confirms that the scope of the Conduct Standards includes CF roles at incoming and outgoing third country and EEA branches.

## 7. Further Regulatory Developments

The Consultation does not cover all aspects of the IAF:

- *Business Standards:* The Central Bank states that these standards are currently set out in the Consumer Protection Code 2012 (the “**Code**”) and are being considered as part of the current review of the Code. The Central Bank intends to update those standards as part of that review;
- The Central Bank states that enhancements relating to the F&P investigative process will be the subject of separate guidance and the Central Bank plans to issue updated F&P investigations regulations and F&P investigations guidance in March 2023; and
- The Central Bank intends to launch a public consultation on the changes to the ASP in mid 2023. The Central Bank states that this consultation package

will include the revised ASP outline, ASP inquiry guidelines and ASP sanctions guidance.

---

## Comments and Next Steps

The Central Bank states that it is critical that the initial and ongoing implementation of the IAF is not approached as a compliance exercise but instead is “*internalised throughout Firms’ culture, approach and practices*”.

The Central Bank acknowledges the costs associated with implementation of the IAF for Firms, including, the costs of compliance with new F&P certification requirements, providing training in respect of the Conduct Standards, preparing and maintaining a Management Responsibilities Map and Statements of Responsibilities for those Firms in scope of SEAR. However, the Central Bank considers it likely that the measures required to comply with IAF are already part of due diligence and governance controls in many Firms.

The Central Bank proposes the following implementation period for the IAF:

- Conduct Standards to apply from **31 December 2023**;
- F&P Regime (Certification and inclusion of Holding Companies) to apply from **31 December 2023**; and
- Regulations prescribing responsibilities of different roles and requirements on Firms to clearly set out allocation of those responsibilities and decision-making to apply to in-scope Firms from **1 July 2024**.

As an immediate priority, Firms should consider the questions posed by the Central Bank in the Consultation with a view to providing feedback by **13 June 2023**. Of particular interest to Firms and persons holding CF roles will be the considerations to be taken into account in determining whether ‘*reasonable steps*’ are taken under SEAR and the Conduct Standards (Part C, Chapter 3 of the draft IAF Guidance) and whether this guidance provides sufficient clarity and transparency for in-scope individuals.

Notwithstanding the fact that the template Statements of Responsibilities, guide to Management Responsibility Maps and lists of Inherent and Prescribed Responsibilities contained in the Consultation are in draft form, it would be sensible for Firms subject to SEAR to take practical steps to progress their implementation plan based on this information.

Similarly, Chapters 4 to 6 of the draft IAF Guidance which provides guidance on the Conduct Standards will be of assistance to all Firms for the purposes of taking practical steps to integrate the Conduct Standards into their organisation.

Our Employment, Pensions & Incentives, Financial Services Regulation and Investment Management Groups have significant experience in advising on the employment of senior executives and individuals in CF roles and would be happy to assist with any queries you may have.



*Further information is available from*



**Josh Hogan**  
Partner  
+353 1 607 1720  
josh.hogan  
@mccannfitzgerald.com



**Darragh Murphy**  
Partner  
+353 1 607 1433  
darragh.murphy  
@mccannfitzgerald.com



**Mary Brassil**  
Partner  
+353 1 607 1279  
mary.brassil  
@mccannfitzgerald.com



**Donal Hamilton**  
Partner  
+353 1 607 1782  
donal.hamilton  
@mccannfitzgerald.com

*Alternatively, your usual contact in McCann FitzGerald LLP will be happy to help you further.*



INSTITUTE OF DIRECTORS  
IN IRELAND

---

© McCann FitzGerald LLP and IoD in Ireland 2023. All rights reserved.

Institute of Directors in Ireland, Europa House, Harcourt Street, Dublin 2  
01 411 0010 | [info@iodireland.ie](mailto:info@iodireland.ie) | [www.iodireland.ie](http://www.iodireland.ie)

This document is for general guidance only and should not be regarded as a substitute for professional advice.  
Such advice should always be taken before acting on any of the matters discussed.