



INSTITUTE OF DIRECTORS
IN IRELAND

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Briefing Senior Executive Accountability Regime Update

The general scheme of the proposed new accountability regime for senior executives of regulated financial service providers has been published. When enacted and implemented, the proposals will introduce highly significant changes for regulated entities and for their senior managers.

On 27 July 2021, the Minister for Finance, Paschal Donohoe TD, received Cabinet approval to publish the General Scheme of the Central Bank (Individual Accountability Framework) Bill. When enacted, this Bill will create an Individual Accountability Framework, empowering the Central Bank of Ireland to hold those in management roles at regulated firms accountable for wrongdoing that occurs under their supervision. Our previous briefing on the Individual Accountability Framework, published when the Minister indicated that work on the General Scheme was commencing, can be accessed [here](#).

The proposal

There are four main elements to the draft legislation which makes up the Individual Accountability Framework:

1. The establishment of the Senior Executive Accountability Regime (“SEAR”), which will be rolled out on a phased basis. Under SEAR, regulated financial service providers (“RFSPs”) and senior individuals within these firms must lay out clearly where decision making and responsibility lies.
2. The introduction of common conduct standards which will be applicable to all individuals in controlled function (“CF”) roles, additional conduct standards for senior staff (performing pre-approval controlled function (“PCF”) roles) and business conduct standards which will apply to all RFSPs and employees within them. The Central Bank will be empowered to impose binding obligations on RFSPs and their employees with respect to these conduct standards.

3. The enhancement of the Fitness and Probity Regime to guarantee the effective practice of the regime and its ability to support the conduct standards.
4. A breaking of the “Participation Link” in the existing enforcement regime, which requires the Central Bank to first prove that the RFSP itself has broken the rules before the Central Bank can investigate and sanction individuals. Under the new regime, the Central Bank will have the ability to directly enforce the new common conduct standards that will apply to all CFs and PCFs.

The aim of the draft legislation is to improve individual accountability in the financial sector and prevent misconduct by senior management. SEAR encourages regulated firms to improve their internal processes by clarifying the roles of senior management and through management responsibility maps. This creates real accountability for senior staff and increases the accountability of senior executives for decisions that they take and omissions that they make.

To what RFSPs will SEAR apply?

Banks, investment firms and insurance firms will fall within the scope of this legislation. SEAR will not apply to credit unions and certain aspects of the insurance industry such as Insurance Special Purpose Vehicles, though the scope of the legislation may be extended in time to include additional sectors.

Minister Donohoe has indicated that SEAR is likely to be phased in and will apply, in the first instance, to banks, insurance companies, and other sectors that have a high degree of interaction with retail consumers. These include:

- a) credit institutions (but not credit unions);
- b) insurance undertakings (but not reinsurance undertakings, captive insurance undertakings, captive reinsurance undertakings, insurance SPVs or reinsurance SPVs);
- c) investment firms that underwrite on a firm commitment basis and / or deal on own account and / or are authorised to hold client monies / assets; and
- d) third country branches of any of the above.

The indicative timeframe currently is that SEAR will be phased in, for certain types of RFSPs initially, from a date in Q3 or Q4 2022.

What will RFSPs need to do?

Planning for and implementing SEAR will be a significant cross-functional exercise involving representatives from the RFSP's commercial, compliance and HR functions.

While detailed regulations, guidance, and indeed a legislative enactment will need to be in place before SEAR will become law, at this point, armed with the general scheme of the Bill and an indicative timeframe, RFSPs should consider establishing a SEAR implementation group and begin their preparatory work.

Responsibility mapping

SEAR will require every in-scope RFSP to set out clearly where responsibility and decision-making lies within the organisation, including by preparing:

- a) a "statement of responsibility" for each senior executive within that RFSP, identifying every key risk within her or his area of responsibility within the RFSP; and
- b) a "management responsibility map" for the entire RFSP, illustrating where each of the RFSP's senior executives fits within the RFSP's management and governance structures and the reporting lines to which each senior executive is subject.

Developing individual statements of responsibility for senior executives and a wider responsibility map will require RFSPs to undertake a careful gap analysis of existing organisational and governance arrangements to ensure that all prescribed senior executive functions (not yet published) are allocated appropriately. This will likely involve changes to contracts of employments and job descriptions for multiple personnel.

Policies and Training

RFSPs will be required to establish and maintain policies in relation to the new standards of business and conduct standards that will be introduced. Ensuring that in-scope staff are appropriately trained on the policies and standards will be essential to their effective implementation.

Periodic F&P certification of CF and PCF roles

Enhancements to the Fitness and Probity regime will require RFSPs to periodically certify the fitness and probity of persons in CF and PCF roles. In order to comply with this, RFSPs will need to put systems in place for conducting regular due diligence of CF and PCF role holders, though the precise requirements of that due diligence will not be known until regulations are published by the Central Bank.

Next stages in the legislative process

The Minister will now engage with the Taoiseach and the Chair of the Committee on Finance, Public Expenditure and Reform in relation to pre-legislative scrutiny.

Officials will communicate with the Office of the Parliamentary Counsel to the Government to start drafting the legislation on the basis of the General Scheme which has just been published.

As mentioned, RFSPs should expect that SEAR will begin to be rolled out on a phased basis from some time in Q3 or Q4 2022.

How can we help?

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

Alternatively, your usual contact in McCann FitzGerald would be pleased to provide further information.

Further information is available from



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