

FINANCIAL REGULATION: INVESTIGATION AND ENFORCEMENT

SEAR/Individual Accountability: Minister for Finance publishes General Scheme of Bill

28 July 2021

The Minister for Finance has published the long-awaited General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021. The General Scheme provides further information on the proposed senior executive accountability regime for regulated financial services providers, proposed conduct standards, changes to the Central Bank's Fitness and Probity regime, and the breaking of the 'participation link'.

"The changes to Central Bank legislation will put individual accountability at the centre of decision making in financial services organisations." (1)

The Minister for Finance [announced](#) cabinet approval for the drafting of the Central Bank (Individual Accountability Framework) Bill 2021 on 27 July 2021, and published both the [General Scheme of the Bill](#) and the Department of Finance's [Regulatory Impact Analysis \(RIA\)](#).

As expected, the individual accountability framework will include:

- a new senior executive accountability regime (**SEAR**) under which regulated financial services providers (**RFSPs**) and senior managers within those RFSPs will clearly frame where responsibility and decision-making rests within their organisation;
- new conduct standards, setting out the standards of behaviour expected by the Central Bank of RFSPs, their senior management teams, and their other staff;
- enhancements to the Central Bank's Fitness and Probity (**F&P**) regime; and

- changes designed to strengthen the Central Bank's enforcement capabilities by breaking the 'participation link' whereby an RFSP must first be found to have breached financial services legislation before relevant individuals can be pursued by the Central Bank.

The publication of the General Scheme follows lengthy consultation between the Department of Finance, the Attorney General's Office and the Central Bank. The Central Bank is expected to consult on its areas of responsibility once the Bill is signed into law (see the Central Bank's press release [here](#)), and the Department of Finance will consult with the European Central Bank (**ECB**) before the Bill is finalised.

As emphasised in the RIA, the individual accountability framework is intended to "...support positive cultural change by providing banks and other regulated financial services providers with the tools on which a positive culture is built. It will also introduce greater individual responsibility and accountability, particularly at senior management level."

A NOTE ON SCOPE

SEAR

The SEAR will, at least initially, apply only to banks, insurance undertakings, certain investment firms (those that underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client monies/assets), and (in each case) their third country branches.

The SEAR may be rolled-out to other types of RFSPs at a later point. This will be a matter for the Central Bank to implement by regulation with Ministerial approval.

Conduct Standards

The conduct standards will apply to all RFSPs.

(1) Minister for Finance, Paschal Donohoe TD, 27 July 2021.

SEAR

The precise terms of the SEAR will be set out in regulations to be made by the Central Bank. Those regulations are expected to be the subject of a Central Bank consultation.

Scope

As mentioned above, the SEAR will apply to banks, insurance undertakings, certain investment firms, and (in each case) their third country branches. Other categories of RFSP may be brought into scope at a later date.

Senior Executive Functions

At the core of the SEAR is how responsibility is allocated and managed among persons performing senior executive functions (**SEFs**) within in-scope RFSPs. The concept of an SEF is to be aligned to the concept of a pre-approval controlled function (**PCF**) under the F&P regime.

Key Deliverables

Under the SEAR, in-scope RFSPs will be required to allocate prescribed responsibilities, develop management responsibility maps, and draw up statements of responsibility. Each SEF will have responsibilities that are inherent to its role.

<p>Prescribed responsibilities</p>	<p>The Central Bank will prescribe mandatory responsibilities for RFSPs. Those RFSPs must, in turn, allocate those responsibilities to their SEFs.</p> <p>This will ensure that, for every key conduct risk and key prudential risk, responsibility is clearly allocated to a person performing an SEF.</p> <p>The lists of prescribed mandatory responsibilities are expected to be tailored to industry sector and firm size.</p>
<p>Management responsibility maps</p>	<p>Each in-scope RFSP will be required to draw up a management responsibility map and submit it to the Central Bank.</p> <p>That map must contain the RFSPs key management and governance arrangements, and will need to include matters reserved to the RFSPs board, the terms of reference for committees, and reporting lines for persons in SEF roles.</p>
<p>Statement of responsibilities</p>	<p>There must be a documented statement of responsibilities for each SEF within an RFSP, setting out the role and responsibilities of the person performing that SEF.</p> <p>This is to ensure that the experience, qualifications, knowledge and competence of each person performing an SEF can be measured against the responsibilities allocated to them. These statements of responsibilities must be kept up to date and submitted to the Central Bank.</p>

‘Duty of Responsibility’

Those performing SEF roles within the SEAR framework will have a legal duty (referred to as a *‘duty of responsibility’*) to take reasonable steps to prevent the RFSP committing a *‘prescribed contravention’* (i.e. a breach of financial services legislation, Central Bank codes of conduct, or

Central Bank conditions, directions or requirements) in relation to areas of the business for which the relevant SEF is responsible.

A draft (non-exhaustive) list of circumstances which the Central Bank may take into account when assessing whether an SEF has taken *‘reasonable*

steps’ to prevent the contravention is set out in the General Scheme.

A breach of the *‘duty of responsibility’* will be a *‘prescribed contravention’*, and the Central Bank will be able to take action against the SEF directly under its Administrative Sanctions Procedure (**ASP**).

CONDUCT STANDARDS

Three new types of conduct standards applicable to all RFSPs

<p>Standards for Businesses</p>	<p>These standards will include:</p> <ul style="list-style-type: none"> • conducting business professionally, honestly, ethically, with integrity, and with due skill, care and diligence; • taking appropriate steps to prevent or effectively manage conflicts of interest; • acting in the best interests of its customers, and treating customers fairly and professionally; • maintaining adequate financial resources; • controlling and managing its affairs and systems in a sustainable, responsible, sound and prudent manner; • adequately protecting clients’ assets; • dealing with its regulators in good faith and in an open and cooperative manner; • promptly and proactively disclosing, to the Central Bank, anything of which the Central Bank would reasonably expect notice. <p>The Central Bank will have the power to supplement these standards.</p>
<p>Common Conduct Standards (applicable to all persons performing controlled function (CF) roles in RFSPs)</p>	<p>These standards will include:</p> <ul style="list-style-type: none"> • acting honestly, ethically, with integrity, and with due skill, care and diligence; • cooperating with the Central Bank and other regulators; • acting in the best interests of customers, and treating customers fairly and professionally; and • observing proper market conduct standards. <p>The Central Bank will have the power to make regulations requiring RFSPs to notify staff of the conduct standards that apply to them, provide suitable training and report disciplinary action arising from breaches of those standards.</p> <p>The Central Bank is expected to issue guidance for CFs to whom the Common Conduct Standards apply.</p> <p>RFSPs will need to establish and maintain policies setting out how the Common Conduct Standards are to be embedded within their businesses.</p>
<p>Additional Conduct Standards (applicable to persons performing PCF roles and “other persons who exercise significant influence on the conduct” of an RFSPs affairs)</p>	<p>Those persons will be required to:</p> <ul style="list-style-type: none"> • ensure that the parts of the RFSP’s business for which they are responsible are controlled effectively, and comply with relevant regulatory requirements; • ensure that any delegation for which they are responsible is to an appropriate person and overseen effectively; • promptly and proactively disclose, to the Central Bank, anything of which the Central Bank would reasonably expect notice; and • participate effectively in collective decision making. <p>The Central Bank will have the power to make regulations requiring RFSPs to notify staff of the conduct standards that apply to them, provide suitable training and report disciplinary action arising from breaches of those standards</p>

Breaches of Conduct Standards

The Central Bank may invoke its ASP in respect of breaches of the Common Conduct Standards, Additional Conduct Standards, or Standards for Business.

A breach of the Common, or Additional, Conduct Standards may also underpin a finding by the Central Bank that a person does not meet the requirements of its F&P regime.

FITNESS AND PROBITY REGIME**New Certification Requirement**

As expected, a certification requirement will be introduced into the F&P regime.

An RFSP will not be permitted to allow a person perform a CF role unless the RFSP has certified, in writing, that it is satisfied that the person complies with the applicable fitness and probity standards. The Central Bank will be empowered to make regulations in relation to how that certification is made, what policies, procedures and diligence checks should be in place within RFSPs and how information should be reported to the Central Bank.

Other Proposed Changes

Other proposed amendments to the F&P regime include:

- permitting the Central Bank's Head of Financial Regulation to investigate the fitness and probity of a person who previously performed a CF role but no longer does so at the time that the investigation is launched;
- updates to reflect the fact that fitness and probity assessments for those who perform PCF roles within banks that are classified as *'significant'* for the purposes of the Single Supervisory Mechanism are carried out by the ECB. The ECB launched a public consultation last month on a new draft Guide to Fit and Proper Assessments and draft updated Fit and Proper Questionnaire, with a very strong focus on gender diversity;
- extending the F&P regime to financial holding companies, mixed financial holding companies and insurance holding companies established in Ireland.

ENFORCEMENT**Breaking the 'participation link'**

As expected, the Central Bank's ASP will be amended to break the *'participation link'* whereby an RFSP must first be found to have breached financial services legislation before relevant individuals can be pursued by the Central Bank.

The concept of a *"person concerned in the management"* of an RFSP will be removed from the ASP framework (albeit that such persons will remain liable for participation in the actions of an RFSP before the new legislation comes into force).

The ASP's scope will then be extended to persons performing CF and PCF roles within an RFSP. This will allow the Central Bank to enforce the Common Conduct Standards, the Additional Conduct Standards, and the *'duty of responsibility'* against the relevant individuals directly. Those persons will not have retrospective liability for matters occurring before the new legislation comes into force, unless they were also *"persons concerned in the management"* of the RFSP.

Other ASP Amendments

The General Scheme also proposes a number of other amendments to existing legislation to give a stronger statutory basis to key aspects of the ASP. We will be publishing a more detailed briefing on the ASP-related amendments shortly.

TIMETABLE

The implementation timetable for the Central Bank (Individual Accountability Framework) Bill 2021 is not set in stone. In remarks made to reporters, the Minister for Finance indicated that it will take up to 6 months for the proposals to go through pre-legislative scrutiny by the Oireachtas Finance Committee and a further 6 months for the legislation to pass through the Oireachtas. As an implementation period will presumably apply, and the Central Bank will also consult on the accompanying regulations and materials, it seems reasonable to assume that it could be around 18 months before the SEAR comes into effect.

In the meantime, we can expect frequent briefings and announcements from the Central Bank on their expectations as regards the SEAR and the preparations that RFSPs should be making pending the SEAR coming into force.

KEEPING YOU INFORMED

We will be hosting a series of events on the individual accountability framework in September and October. If you are interested in attending please reach out to your usual Arthur Cox contact or email events@arthurcox.com for further details.

CONTACT

Please get in touch with any member of our market-leading [Financial Regulation: Investigation and Enforcement team](#) if you wish to discuss the potential impact of the proposed individual accountability

framework on your business. We advise and support clients on a wide range of financial regulatory investigations and enforcement issues, and have deep specialist knowledge of the financial services regulatory environment and

experience in managing complex contentious regulatory matters.



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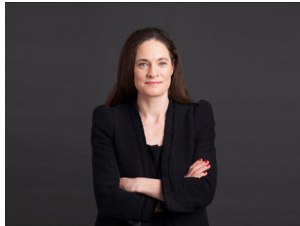
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