

FINANCIAL REGULATION  
INDIVIDUAL ACCOUNTABILITY AND SEAR GROUP

## IAF/SEAR: Act signed into Law

March 2023

The President signed the Central Bank (Individual Accountability Framework) Act 2023 (the IAF Act) into law on 9 March 2023, paving the way for the introduction of a new framework which [“...will put individual accountability at the centre of decision making in financial services organisations”](#).

### WHAT HAPPENS NEXT?

When the IAF Act completed its passage through the Houses of the Oireachtas on 1 March 2023, the Minister for Finance confirmed that commencement orders would be published shortly after the IAF Act was signed into law other than in respect of the parts of the IAF Act dealing with SEAR, conduct standards and the new certification requirement as part of the Central Bank's fitness and probity (F&P) regime. The Minister will not commence those remaining sections until after the Central Bank's consultation process (which begins on Monday 13 March). The Minister intends to commence those remaining sections before the end of 2023.

### A FOUR-YEAR JOURNEY

The signing of the IAF Act concludes a seminal phase in the development of the proposed individual accountability framework (IAF) which began in earnest in 2018 with the publication of the Central Bank's [July 2018 Report to the Department of Finance on “Behaviour and Culture of the Irish Retail Banks”](#).

#### July 2018: Central Bank Recommendations

The Central Bank formally recommended, in its [July 2018 Report](#), the introduction of an IAF comprising:

- a senior executive accountability regime (SEAR);
- conduct standards;
- enhancements to the existing Central Bank F&P regime; and
- enhancements to the existing administrative sanctions regime.

#### May 2019: Work began on the Heads of Bill

In May 2019, the Government asked the Department of Finance to begin work on drafting heads of bill (in close consultation with the Attorney General's office). Those heads of bill were to provide for the introduction of SEAR and conduct standards, set out proposed enhancements to the F&P regime, and break the *'participation link'* whereby the Central Bank first had to prove

a breach of financial services legislation by a regulated financial services provider (RFSP) before it could pursue an individual in connection with that breach.

#### July 2021: General Scheme published

Following lengthy consultations between the Department of Finance, the Attorney General's office, and the Central Bank, the Minister for Finance [announced](#) cabinet approval for the drafting of the Bill on 27 July 2021. At the same time, the Department published both the [General Scheme of the Bill](#) and its [Regulatory Impact Analysis \(RIA\)](#).

The RIA emphasised that the proposed IAF was 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.”

#### July 2022: Bill published

On 28 July 2022, the Department of Finance published the Bill, together with an accompanying [Explanatory Memorandum](#).

### THE FOUR KEY PILLARS

The four key pillars of the IAF have remained the same since they were first proposed by the Central Bank in July 2018:

- a **SEAR** under which RFSPs and their senior managers would clearly frame where responsibility and decision-making rested within their organisations;
- **conduct standards**, setting out the standards of behaviour expected by the Central Bank of RFSPs, their senior managers and their other staff;
- enhancements to the **F&P regime**; and
- stronger enforcement capabilities for the Central Bank, via the **breaking of the 'participation link'**.

**Pillar 1: SEAR**

SEAR is being introduced by way of amendments to the Central Bank (Supervision and Enforcement) Act 2013.

It has been well signposted, since the time that the General Scheme was published, that 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. This will be confirmed by the Central Bank in regulations.

The individuals that will be subject to SEAR are those who perform Pre-Approval Controlled Functions (PCFs) within in-scope RFSPs.

The IAF Act gives regulation-making powers to the Central Bank, and we expect to see the precise terms of SEAR outlined in the draft regulations on which the Central Bank will consult, starting on Monday 13 March. These regulations are expected to cover four key areas:

|                                |   |
|--------------------------------|---|
| Inherent Responsibilities      | Specifying a range of responsibilities that are inherent to each PCF  |
| Allocated Responsibilities     | Prescribing further responsibilities which an RFSP must allocate to PCFs.<br><br>This will ensure that, for every key conduct risk and key prudential risk, responsibility is clearly allocated to a PCF.<br><br>The lists of prescribed mandatory responsibilities are expected to be tailored to industry sector and firm size. |
| Statements of Responsibilities | Requiring RFSPs to prepare statements of responsibilities for each of their PCF roles, assigning clear responsibilities to each role  |
| Management Responsibility Maps | Requiring RFSPs to produce a management responsibility map outlining key management and governance arrangements in a comprehensive and accessible way in a single source document.  |

**Duty of responsibility**

The IAF Act will introduce a *'duty of responsibility'* by way of amendment to the Central Bank Reform Act 2010.

All individuals with inherent or allocated responsibility for an aspect of an RFSP's affairs will have a duty of responsibility to *"take any steps that it is reasonable in the circumstances for the person to take"* to ensure that the affairs of the RFSP (for which the individual is responsible) are conducted in so as to avoid a contravention by the RFSP of its obligations under financial services legislation.

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

**Pillar 2: Conduct Standards**

The IAF introduces three sets of conduct standards that apply to all RFSPs: Business Standards, Common Conduct Standards, and Additional Conduct Standards.

**BUSINESS STANDARDS**

These will apply to all RFSPs, but the Central Bank may apply the standards differently as between different classes of RFSPs

**The Central Bank is empowered to make regulations prescribing business standards to ensure that RFSPs:**

- act in the best interests of their customers and of the integrity of the market;
- act honestly, fairly and professionally;
- act with due skill, care and diligence;
- do not mislead customers as to the advantages or disadvantages of any financial service;
- maintain adequate financial resources;
- control and manage their affairs and systems (including risk management systems, internal control mechanisms and governance arrangements) sustainably, responsibly, and in a sound and prudent manner;
- prevent, or identify and appropriately manage, conflicts of interest;
- arrange adequate protection for assets held by them on behalf of a customer;
- engage and cooperate in good faith and without delay with the Central Bank, and with equivalent regulators in other jurisdictions; and
- promptly disclose to the Central Bank, in an appropriate manner, any matter relating to the relevant RFSP of which the Central Bank would reasonably expect notice.

## COMMON CONDUCT STANDARDS

These will apply to all persons performing controlled function (CF) roles in RFSPs

A person who performs a CF role in an RFSP will be required to take *“any steps that it is reasonable in the circumstances for the person to take”* to ensure that the following common conduct standards are met:

- acting with honesty and integrity, including:
  - having regard to the legitimate interests of the RFSP, its staff, customers and other persons with whom it engages;
  - operating without bias and preventing, or identifying and appropriately managing, conflicts of interest;
  - not exerting pressure or influence on a customer so as to limit their ability to make an informed choice in relation to any financial service;
  - not misusing or misappropriating any assets or information of the RFSP or its customers;
  - reporting appropriately, and not impeding others from reporting, to the RFSP’s management, information relating to a prescribed contravention of breach of another legal obligation, or any matter otherwise adversely affecting the activities or interests of the RFSP, its customers, its related undertakings, or the Irish financial system;
- acting with due skill, care and diligence, including:
  - having appropriate knowledge of the RFSP’s business activities relevant to that CF role, and the risks associated with those activities,
  - having appropriate knowledge of the legal and regulatory framework applicable to the RFSP insofar as relevant to that CF role;
  - complying with the RFSPs systems and controls, processes, policies and procedures and any applicable legal obligation or standards;
  - acting without detriment to customers, the RFSP, its related undertakings, or the Irish financial system;
  - ensuring that any communication with a customer or other person is clear, accurate, up-to-date and not misleading;
  - acting appropriately in any decision-making, including collective decision-making, ensuring decisions are properly informed and exercising sound judgement; and
  - monitoring the performance of any delegated tasks and ensuring that those tasks are appropriately performed;
- cooperating in good faith and without delay with the Central Bank and equivalent regulators in other jurisdictions, in particular as regards responsiveness, disclosure of information and records when required to do so, attending meetings and interviews, providing accurate information, not destroying/hiding records, and not engaging in evasive, misleading or obstructive conduct;
- acting in the best interests of customers and treating them fairly and professionally, including:
  - ensuring that customers are informed in a clear manner of relevant information relating to financial services of which they ought to be aware, and not impeding the provision of relevant information to customers;
  - communicating with customers in a timely manner having regard to the urgency of any matter and the time required by the customer to consider the relevant information;
  - assessing the needs and circumstances of customers, including their level of knowledge and experience of financial services, their financial circumstances and the range of options available to them, and ensuring that any advice or recommendation provided to customers is appropriate and tailored to their needs and circumstances;
  - ensuring that customers are not misled as to the advantages of any financial service;
  - acknowledging and seeking to resolve any complaints received from customers;
  - resolving errors or mistakes affecting customers, and disclosing errors or mistakes to the customers affected in a timely manner; and
  - not acting in a manner that is unfair to customers;
- observing proper market conduct standards and rules.

The Central Bank has 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.

The Central Bank is required to publish guidelines for CFs to whom the Common Conduct Standards apply.

RFSPs will need to establish and maintain policies setting out how the Common Conduct Standards will be embedded within their businesses.

### ADDITIONAL CONDUCT STANDARDS

These will apply to persons performing PCF roles within RFSPs, and “other persons who exercise significant influence on the conduct” of an RFSP’s affairs

These persons will be required to take any steps that it is reasonable in the circumstances for the person to take to ensure that the following Additional Conduct Standards are met:

- the RFSP’s business is controlled effectively;
- the RFSP’s business is conducted in accordance with its obligations under financial services legislation;
- any delegated tasks are assigned to an appropriate person with effective oversight;
- any information which the Central Bank would reasonably expect to be given notice of regarding the RFSP’s is disclosed promptly and appropriately to the Central Bank, including information regarding:
  - commission of an offence by the RFSP or a person performing a CF role in respect of that RFSP;
  - commission of a prescribed contravention or any other breach of obligations under financial services legislation by the RFSP or a person performing a CF role in respect of that RFSP;
  - concealment or deliberate destruction of evidence, provision of false or misleading information to the Bank, or obstruction or impeding of an investigation, relating to either of the above matters;
  - commencement of legal proceedings by or against the RFSP arising from the RFSP’s obligations under financial services legislation;
  - commencement of legal proceedings against the RFSP which could affect its ability to continue in business;
  - anything that may otherwise interfere significantly with the operation of the RFSP or its compliance with its obligations under financial services legislation;
  - a decision by the RFSP to cease to provide financial services of a particular description.

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.

### Breaches of Conduct Standards

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

A breach of the Common Conduct Standards 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.

### Pillar 3: Changes to the F&P Regime

The IAF Act will make the following changes to 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 F&P standards. The Central Bank will be empowered to make regulations regarding 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. The IAF Act provides that the Central Bank may make regulations in relation to the form and content of a certificate, the period of the validity of the certificates and procedures to be followed by RFSPs. By way of comparison, under the equivalent UK Regime, a firm must confirm at least annually that each individual performing a role falling within the certification regime has been certified as fit and proper to perform that role. We expect a similar period of validity to be set by the Central Bank with respect to these certificates.
- The Central Bank will be able to investigate individuals under the F&P regime even if they are no longer in a CF role, if they were in the role within 6 years of commencement of the Central Bank investigation.
- The F&P regime will be amended to align with standards of fairness in the administration of justice in light of the Supreme

Court decision in *Zalewski v An Adjudication Officer and Others* (discussed in our briefing of [24 May 2022](#)). In addition, the IAF Act:

- extends the scope of the investigation mechanism to include persons in CF positions in holding companies; and
- allows the Central Bank to suspend a person from performing a CF for an increased period of six months (previously 3), which can be extended to 24 months by the High Court.

The IAF Act takes account of the fact that F&P 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.

### Pillar 4: Enforcement: Breaking the ‘participation link’

The IAF Act provides for amendments to the ASP, including the breaking of the ‘*participation link*’.

Breaking the ‘*participation link*’ is intended to facilitate individual accountability as the Central Bank will not be required to prove breaches against an RFSP before sanctioning an accountable individual.

The IAF Act contains further provisions and clarifications on the extension of the Central Bank’s capabilities, including the following:

- The High Court will have oversight of the settlement process under the ASP and will have to confirm sanctions imposed by the Central Bank.
- The IAF Act provides a statutory list of relevant considerations that the Central Bank must take into account in determining potential sanctions or the level of a financial penalties to be imposed on a natural person, including:
  - any consideration affecting the seriousness of the prescribed contravention concerned e.g. seniority and

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- level of responsibility, seriousness of the offence, duration of participation in the prescribed contravention etc;
- the effect of the prescribed contravention e.g. loss or determinant to consumers or effect on orderliness of markets;
- the conduct of the person during and after the commission of or participation in the prescribed contravention, e.g. level of cooperation with the Central Bank;
- the previous record of the person e.g. previous sanctions or convictions;
- any consideration relating to pending or possible criminal proceedings, including whether such proceedings may be prejudiced by the imposition of a sanction;
- any matter relevant to the financial position of the person; and, in the case of a contravention of the conduct standards applicable to CFs; and
- more generally, the importance of promoting a culture of compliance with the conduct standards.

### CHANGES MADE IN THE OIREACHTAS

The IAF Act is substantially in the same form as the Bill first published on 28 July 2022, save for some minor Government-led amendments made at Committee Stage in both Dáil Éireann and Seanad Éireann.

The changes made at Committee Stage in Dáil Éireann in December 2022 were minor/for clarification purposes, and also to reflect the role of the European Central Bank in carrying out *'fit and proper'* assessments in respect of those holding senior roles in banks treated as *'significant'* for the purposes of the Single Supervisory Mechanism.

One set of amendments was made at Committee Stage in Seanad Éireann in February 2023 – these were designed to clarify that the changes made by the IAF Act to the Central Bank Act 1942 as regards inquiry decisions will apply not just to an inquiry decision made after the commencement of Section 53 of the IAF Act, but also to an inquiry decision made before the commencement of Section 53 if that decision has not been notified by the Central Bank to the RFSP or person concerned before Section 53 is commenced. According to the Minister of State with responsibility for Financial Services, Credit Unions and Insurance, those amendments were to ensure that *"...the changes necessitated by the Zalewski judgment in regard to the appeal and court confirmation of inquiry decisions take effect at the earliest practicable opportunity."*

### NEXT STEPS

- Assemble your implementation team. Your HR, legal and compliance teams will each be key to the implementation process
- Brief your internal stakeholders on the latest developments, and let them know the likely timeframe for next steps
- Gather your existing raw materials, such as reporting line maps/charts, job descriptions, template offer letters and governance policies
- Consider how best to run training for your existing teams; think about how that will be refreshed for new joiners
- Assess how your project will deal with matters such as the delegation or sharing of functions between different individuals
- Review the detail in the Central Bank consultations (expected to be published shortly), and consider engaging on points which are of particular relevance to your organisation

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