

# New Irish Legislation on Individual Accountability

On 27 July 2021, the General Scheme<sup>1</sup> of the Central Bank (Individual Accountability) Bill (the "Bill") was published. The Bill will introduce a new legislative framework to improve individual accountability in the financial sector, known collectively as the "Individual Accountability Framework".

## Key Elements

The objective of the new Individual Accountability Framework is to enhance the supervisory and enforcement powers of the Central Bank of Ireland (the "Central Bank") to hold individuals to account for regulatory breaches in the area for which they are responsible. This includes:

1. The introduction of a **Senior Executive Accountability Regime** ("SEAR"), which places obligations on firms and individuals performing 'Senior Executive Functions' to set out clearly where responsibility and decision-making lies. In-scope firms will be required to produce detailed responsibility maps and statements of responsibility. These will require changes to existing terms of employment and engagement with employees and directors.
2. The introduction of the following '**Conduct Standards**':
  - (i) Common Conduct Standards which will apply to anyone performing a 'Controlled Function';
  - (ii) Additional Conduct Standards for individuals performing Senior Executive Functions; and
  - (iii) Standards for Businesses which will apply to all regulated firms in the financial sector.
3. Enhancements to the **Fitness and Probity Regime** to ensure the effective operation of, and ability of the regime to support, the Individual Accountability Framework. This includes the introduction of a new certification regime which will require firms to certify that they are satisfied with the fitness and probity of those individuals performing Controlled Functions. The Bill will also amend the Central Bank Reform Act 2010 to allow the Central Bank to investigate those who previously performed Controlled Functions. Another important change is that the Bill proposes extending the Fitness and Probity Regime to apply to the directors / staff of financial holding companies established in Ireland.
4. Providing for **sanctions and procedural matters** for investigations and breaches of the new requirements, which will be 'prescribed contraventions' under the Administrative Sanctions Procedure. The Bill will also remove the 'participation link', which currently requires the Central Bank to first prove a contravention of financial services legislation by the regulated firm, before it can take action against an individual within that firm.

<sup>1</sup> <https://www.gov.ie/en/publication/d28d9-general-scheme-central-bank-individual-accountability-framework-bill/>

## Scope of SEAR

SEAR will be introduced on a phased basis, initially applying 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 authorised to hold client monies / assets
- Third country branches of the above

Additional financial service sectors may be brought into scope in the future, at the determination of the Central Bank.

## Scope of Conduct Standards

The Common Conduct Standards will apply to all individuals performing a Controlled Function role in any regulated firm, i.e. including roles which are not Senior Executive Functions under SEAR.

Individuals holding Pre-Approval Controlled Function roles in any regulated firm will be subject to the Common Conduct Standards and the Additional Conduct Standards.

The Standards for Businesses will apply to all regulated firms, regardless of whether or not they come within the scope of SEAR.

A breach of any of the respective standards will be a 'prescribed contravention' and therefore the Central Bank can take direct enforcement action against, and may impose sanctions on, the individual / firm responsible for such a breach.

## Managing People and Managing Change

SEAR and the introduction of new Conduct Standards will change the way individuals are expected to conduct themselves and how their employers hold them accountable. Early

planning for that change is important and will include:

- Assessing current HR policies and processes governing conduct and performance
- Consulting with employees whose terms and conditions of employment may be altered
- Communicating and documenting changes to affected employees
- Training employees
- Managing performance, capability and conduct concerns using fit for purpose processes

## Long Term Focus on Culture, Conduct and Behaviour

The introduction of the Bill marks a significant step in the Central Bank's '*strategic commitment to elevate the regulation of the behaviour of regulated firms*' referenced in its Strategic Plan 2019 – 2021<sup>2</sup> as detailed in our previous client update Irish Regulation in Focus: Culture and Individual Accountability<sup>3</sup>.

The Department of Finance has commented as follows:

*"SEAR's focus is on preventing misbehaviour or mismanagement by senior management. By requiring individual accountability from senior management, supported by enforcement powers, there is an incentive for senior management to comply with financial services law."*

## Timeframe

The Bill will now be drafted and go through the legislative process. Following this, the Central Bank may also develop a range of new and

<sup>2</sup> <https://www.centralbank.ie/docs/default-source/publications/corporate-reports/strategic-plan/central-bank-of-ireland-strategic-plan-2019---2021.pdf?sfvrsn=5>

<sup>3</sup> <https://maples.com/en/knowledge-centre/2021/3/irish-regulation-in-focus-culture-and-individual-accountability>

revised regulatory rules and guidance to support the implementation of the framework.

It may be some time before the new framework comes into effect but the amount of work required by firms should not be underestimated and early planning will be important. With a clear path set for the introduction of the new regime, regulated firms can now begin to take appropriate steps in preparation for its introduction.

## How We Can Help

Our Financial Services Regulatory Group works closely with our Employment Group and has advised clients on the introduction of the existing Fitness and Probity regime, CP86 and other corporate governance requirements. We worked with a number of clients implementing the Fitness and Probity regime when it was first introduced, and conducted gap analyses for clients when additional guidance and feedback has been published over the years to ensure the firm's framework remains up to date and fit for purpose.

We conduct mock interviews, prepare compliant offers of employment and letters of appointment, advise firms on managing issues relating to fitness and probity which occur during the employment relationship / director tenure, manage regulatory engagement with clients and guide clients through contentious matters including, internal disciplinary procedures, formal investigations and litigation. We are very well placed to advise clients looking to implement the new Individual Accountability Framework.

## Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide, is available on our website<sup>4</sup> and in our brochure<sup>5</sup>.

If you would like further information, please liaise with your usual Maples Group contact or:

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**July 2021**  
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<sup>4</sup> <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

<sup>5</sup> <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>