

Fitness and Probity – Central Bank of Ireland Expectations Not Being Met

Following its initial "Dear CEO letter" in April 2019 ("2019 Letter"), the Central Bank of Ireland ("Central Bank") in November 2020 issued a subsequent letter to the management of all regulated financial service providers ("Firms") following inspections in the insurance and banking sectors ("2020 Letter")¹. Firms must now review their existing frameworks and address any shortcomings identified. See below for a link to our previous update² on the 2019 Letter.

Findings

The Central Bank's findings can be grouped into five themes:

- 1) **Role of the Board in the Fitness and Probity Process** - The importance of documenting fully the due diligence and suitability assessment of proposed directors, succession plans and the discussion and debate around proposed board appointments.
- 2) **Initial and Ongoing Due Diligence** - The CEO cannot complete assessments for potential directors. Checklists are useful to document the initial comprehensive due diligence but Firms must also conduct ongoing due diligence and maintain certain searches/checks up to date, including the annual confirmation. Firms should define what information is "material" and, if there is any doubt, it should be disclosed to the Central Bank.
- 3) **Outsourcing of Roles subject to Fitness and Probity** - When outsourcing to unregulated entities, Firms must maintain evidence of the provider's processes for assessing the fitness and probity of a pre-approval controlled function ("PCF") or controlled function ("CF") holder and must have a process to verify whether any CF / PCF roles are being performed by the provider.
- 4) **Central Bank Engagement** - Firms must document and implement a process for engaging with the Central Bank, including reporting fitness and probity concerns without delay, and for the various stages in completing Individual Questionnaires.
- 5) **Governance, Registers and the Compliance Function Role** – Firms must have a documented internal escalation process for dealing with potential fitness and probity concerns and must map the roles and responsibilities of all functions which are assigned fitness and probity related tasks. The compliance function must exercise robust oversight in relation to fitness and probity, including periodic reviews and the internal audit function must also undertake period reviews. CF / PCFs registers should be reviewed regularly so they are up to date and Firms must develop guidelines with key principles for interpreting the various CF roles to identify relevant individuals.

¹ <https://www.centralbank.ie/news/article/press-release-weaknesses-in-firms-compliance-with-fitness-probity-regime-17-november-2020>

² <https://maples.com/Knowledge-Centre/Industry-Updates/2019/08/Fitness-and-Probity-CBI-Update>

Noting that many of the shortcomings identified in the 2019 Letter have yet to be addressed by Firms, Deputy Governor Ed

Sibley noted that "It is wholly unacceptable that such shortcomings continue to exist in circumstances where the F&P Regime was introduced almost ten years ago. The Central Bank will continue to engage with firms to assess the robustness of their application of the F&P Regime and will initiate necessary supervisory responses to any weaknesses identified."

Sanctions

The Central Bank warns Firms that failure to comply may lead to potential sanctions for Firms and individuals. In the first three quarters of 2020, the Central Bank referred 33 PCF applications to its Enforcement Division. During that period the Enforcement Division conducted 16 specific interviews and 11 applications were withdrawn by Firms.

How the Maples Group Can Help

The Maples Group can help in a range of ways including:

- Reviewing and enhancing existing policies and procedures, including board appointment procedures and ongoing monitoring processes
- Undertaking mock inspections and providing assurance reports on the level of compliance within the Firm
- Preparing board and executive team succession plans
- Documenting outsourcing arrangements and oversight mechanisms
- Providing training to boards and CF holders on the constituent elements of acceptable fitness & probity standards and how to regularly monitor that appropriate standards are being maintained
- Creating robust checklists to demonstrate compliance with the fitness and probity regime

- Advising on the GDPR and privacy considerations of processing personal data connected to fitness and probity checks and controls
- Managing legal risk associated with performance management or disciplinary processes arising out of fitness and probity issues with CF holders
- Preparing PCFs for interview and supporting Firms in their engagement with the Central Bank

Further Information

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

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