

Central Bank of Ireland's "Dear CEO Letter" on the Fitness and Probity Regime

The "Dear CEO Letter"

On 8 April 2019, the Central Bank of Ireland ("**CBI**") published on its website and sent to the management of regulated financial services providers ("**firms**") a "Dear CEO Letter" addressing firms' obligations under the Fitness and Probity Regime (the "**F&P Regime**") which became effective in 2012 under the Central Bank Reform Act 2010 (the "**2010 Act**").

The CBI notes a lack of general awareness amongst firms of their obligations under the F&P Regime and highlights particular areas where compliance has been found to be lacking.

Action required by the Firm

The CBI explicitly states in the "Dear CEO Letter" that it expects:

- a.** CEOs and the boards of firms to be in a position to explain how the issues raised in the Letter have been considered; and
- b.** demonstrate the steps taken to address any shortcomings.

Firms are advised by the CBI to:

- read the public statements in respect of enforcement actions undertaken by the CBI against firms for failure to comply with the F&P Regime;
- report any issue that may affect an individual's Controlled Function ("**CF**") "fit and proper" assessment;
- ensure that persons performing CF roles undertake to notify the firm of any changes in circumstance which might be material to their fitness and probity;

- ensure that persons performing CF roles certify their compliance with the Fitness and Probity Standards 2018 (the “**Standards**”);
- notify the CBI of any occasions where a firm develops a fitness and probity concern regarding a person who is performing a CF role and takes action on foot of those concerns; and
- ensure the firm’s due diligence on proposed appointees is carried out fully in accordance with the CBI’s requirements and that the individual has disclosed to the CBI all “material facts” known to the firm during the individual questionnaire phase of the approval process for pre-approved controlled function (“**PCF**”) positions.

Firms Key Legal Obligations highlighted in the Letter

- Firms have ongoing obligations to ensure that they do not allow a person to perform a CF role unless they are satisfied on reasonable grounds that the individual complies with the Standards.
- Firms must not permit a person to perform a CF role unless that person has agreed to abide by the Standards.
- Firms are required to conduct due diligence on an ongoing basis to ensure that employees performing CFs comply with the Standards.
- Firms may not appoint a person to PCF role unless the CBI has approved the appointment in writing – it is the firm’s statutory obligation to seek approval.

Background to the “Dear CEO Letter”

As set out in the “Dear CEO Letter”, notwithstanding recent enforcement action, the CBI continues to see significant shortcomings in firms’ compliance with the F&P Regime. The CBI makes clear in its Letter that compliance with the F&P Regime is on the CBI’s radar and that it will take action where firms fall short.

In addition to current requirements as highlighted in the “Dear CEO Letter”, draft legislation is anticipated to be introduced containing further enhancements to the F&P Regime. Those enhancements propose to place a positive duty on firms to certify on an annual basis that individuals holding CF and PCF roles are fit and proper to perform their functions which will pose a significant burden on firms to ensure that they have a sufficient basis for providing such certification if this is ever challenged.

How Can William Fry Help?

William Fry can assist firms in relation to:

- carrying out the review of its compliance with the F&P Regime and identifying and addressing any shortcomings in order to meet the CBI's requirements identified in points (a) and (b) above (by way of a F&P Regime health-check matrix, for example);
- reviewing the firm's practices regarding monitoring of individuals holding PCF and CF positions and their continued compliance with the Standards;
- reviewing and updating processes in carrying out due diligence on PCF and CF individuals;
- providing training and advice with regards to compliance with the F&P Regime; and
- regulatory enforcement action.

Contact Our Financial Regulation Unit

For further information, please contact any member of the William Fry Financial Regulation Unit or your usual William Fry contact.



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