



// FINANCIAL REGULATION

Preparing for Individual Accountability

PART 3 - Senior Executive Accountability Regime (SEAR)

June 2022

INTRODUCTION

In the run-up to the Central Bank's expected Summer 2022 consultation on its proposed individual accountability framework, this is the third in a new series of client briefings on what steps firms should be taking now to prepare for the Central Bank's individual accountability framework which is expected to come into effect in early 2023.

Our recent briefings on actions that can be taken by firms to prepare for the conduct standards pillar and the fitness and probity reforms pillar of the Central Bank's individual accountability framework are available [here](#) and [here](#).

Our previous briefing on the heads of bill on individual accountability published in July 2021 is available [here](#).

In this briefing, we examine the proposed introduction of a senior executive accountability regime (**SEAR**) - one of the four pillars of the individual accountability framework - and we outline the actions that can be taken by firms and individuals to prepare for SEAR before it comes into effect.

SCOPE

Unlike the other three pillars of the individual accountability framework which are expected to apply to all regulated firms from the outset, SEAR will only apply to a sub-set of regulated firms in its initial phase, including:

- Credit institutions (excluding credit unions).
- Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and insurance SPVs).
- MiFID investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorized to hold client monies or client assets.
- Third country branches of any of the above.

In April 2022, the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach recommended that the scope of SEAR should be extended to other regulated firms within one year of the commencement of the individual accountability framework.

KEY OBLIGATIONS

SEAR will place obligations on in-scope regulated firms and senior individuals in those firms which are designed to promote greater transparency about responsibility for different areas of the business and to facilitate holding senior individuals to account for matters falling within their area of responsibility.

1. Allocation of responsibilities to Senior Executive Function holders (SEFs)

In-scope regulated firms will be required to allocate responsibilities to individuals holding SEFs. For this purpose, the new concept of a SEF will be aligned with the existing concept of a pre-approval controlled function (PCF) in functions in an in-scope regulated financial service provider. Regulated firms will be obliged to allocate three different types of responsibilities to SEFs, namely:

- Inherent responsibilities - these are responsibilities which are inherent to a specific SEF role and must be allocated to the holder of that particular SEF role;
- Prescribed responsibilities - these are responsibilities which all in-scope regulated firms will be required to allocate to a SEF role holder without being prescriptive about the particular SEF role holder to whom the regulated firm must allocate the responsibility;
- Other responsibilities - these are other responsibilities which an in-scope regulated firm allocates to a SEF role holder.

2. Statement of Responsibility

In-scope regulated firms will be required to issue a statement of responsibility to each SEF. A statement of responsibility is a description of the SEF's role and of the areas of responsibility (whether inherent, prescribed or other responsibilities) allocated to the SEF. In-scope regulated firms will also be required to submit the statements of responsibility to the Central Bank.

3. Responsibility Map

In-scope regulated firms will be required to produce and to submit to the Central Bank a document which maps all responsibilities of all SEFs and shows governance arrangements regarding the board, board committees and any other decision-making fora as well as showing the reporting lines of all SEFs (both within the regulated firm and across its group where applicable). The responsibility map is designed to be an accessible document which shows the Central Bank at a glance which SEF is responsible for each area of responsibility without leaving any gaps. It is likely that it will be required to be a standalone document without cross-references to any other document.

4. Duty of responsibility

Each SEF within an in-scope regulated firm will be subject to a legal duty to take reasonable steps to avoid their firm committing or continuing to commit a prescribed contravention in the areas of business for which they are individually responsible. A breach of this duty of responsibility will itself be considered a prescribed contravention which will be enforceable against an individual SEF under the Central Bank’s administrative sanctions procedure. When considering whether a SEF is in breach of obligations under SEAR, the Central Bank will be required to consider all relevant circumstances, including

- the nature, scale and complexity of the business of the firm;
- the relevant SEF and the responsibilities of that function;
- the level of knowledge and experience that a person performing the relevant SEF could reasonably be expected to have had in their position at the relevant time;
- the level of knowledge and experience that the person performing the relevant SEF had at the relevant time;

- whether the person took such steps as a person in his or her position could reasonably have been expected to take to:
 - › ensure there were appropriate and effective systems (including risk management systems), controls and governance arrangements in place,
 - › ensure the effective oversight of any delegation of responsibilities, and the implementation of effective safeguards against inappropriate delegation,
 - › implement appropriate and effective procedures for identifying and remediating problems that could arise, and
 - › apply such systems, controls, arrangements, safeguards and procedures to the circumstances of the case; and
- whether the person performing the relevant SEF acted in accordance with any statutory, common law and other legal obligations.

KEY DATES

Date	Milestone
July 2021	General Scheme of Bill published.
Mid-2022 at the earliest	Subject to the legislative process, Central Bank consultation expected to be launched.
Early 2023 at the earliest	Individual accountability regime expected to come into effect.

ACTIONS

1	IDENTIFY POTENTIAL SEFS	Identify the potential population of SEFs with reference to the firm's existing population of PCFs.
2	CONDUCT PROVISIONAL SCOPING, MAPPING AND GAP ANALYSIS	Seek input from existing PCFs on initial scoping and mapping of responsibilities and a preliminary gap analysis. A holistic, collaborative approach will be important here, particularly as complexities are likely to arise where different individuals/functions in the firm contribute to the performance of an area of responsibility.
3	PREPARE PRELIMINARY DRAFT STATEMENTS OF RESPONSIBILITY AND RESPONSIBILITY MAPS	Review outputs from the initial scoping and mapping of responsibilities and a preliminary gap analysis and prepare preliminary working drafts of statements of responsibility for each PCF.
4	CONSIDER INTERACTION WITH EXISTING GOVERNANCE ARRANGEMENTS	Consider the interaction with existing management, governance and operational processes such as delegation of authority, third party management and outsourcing arrangements, recruitment etc. Check that terms of reference exist for all existing governance fora.

CONCLUSION

Many of our clients have been taking steps for some time to prepare for SEAR coming into effect as part of the individual accountability regime. If you require assistance in preparing for individual accountability, please contact any member of our financial regulation team.

CONTACT US

For more information, please contact any member of the Financial Regulation Unit listed below or your usual William Fry contact



Shane Kelleher
PARTNER
Head of Financial Regulation
+353 1 639 5148
shane.kelleher@williamfry.com



Lisa Carty
PARTNER
Litigation & Dispute Resolution
+353 (1) 639 5386
lisa.carty@williamfry.com



Derek Hegarty
PARTNER
Litigation & Dispute Resolution
+353 1 639 5040
derek.hegarty@williamfry.com



Louise Harrison
PARTNER
Employment & Benefits
+353 1 489 6580
louise.harrison@williamfry.com



Patricia Taylor
PARTNER
Asset Management & Investment Funds
+353 1 639 5222
patricia.taylor@williamfry.com



John Aherne
PARTNER
Asset Management & Investment Funds
+353 1 639 5321
john.aherne@williamfry.com



Ian Murray
PARTNER
Insurance and Reinsurance
+353 639 5129
ian.murray@williamfry.com



Louise McNabola
PARTNER
Banking & Finance
+353 1 639 5196
louise.mcnabola@williamfry.com



Ciaran Herlihy
PARTNER
Banking & Finance
+353 1 639 5234
ciaran.herlihy@williamfry.com

WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com

williamfry.com

