

Asset Management & Investment Funds Update

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August 2022



Individual Accountability Bill Published

On 28 July 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (the **Bill**) was published. The Bill was preceded by, and largely reflects, a July 2021 Heads of Bill and a July 2018 Central Bank report into the behaviour and culture in the retail banking sector. As outlined in our previous briefings (available [here](#)), the purpose of the Bill is to empower the Central Bank to strengthen and enhance individual accountability in regulated financial service providers (**RFSPs**), including fund management companies, investment companies and ICAVs through the allocation of responsibility and accountability for the management of the RFSP to individuals. As a result, the Bill is focussed primarily on ensuring the Central Bank has the necessary powers and legislative construct to allow for its implementation of an individual accountability framework (**IAF**), the detail of which, including the obligations to be imposed on RFSPs and individuals carrying out functions on their behalf, will be set out in the Central Bank consultation on the IAF, which is slated to follow very shortly after the enactment of the Bill. As the Bill must now pass through the Irish legislative process, commencing with its debate in mid-September following the summer recess, it may be some months before the specifics of the IAF are known.

Proposed IAF

In line with the IAF proposed under the Heads of Bill and the Central Bank's 2018 report, the Bill provides additional detail on the four pillars of the IAF:

1. New Senior Executive Accountability Regime (**SEAR**) applicable initially only to banks, certain insurance firms and certain investment firms, requiring in-scope entities to allocate responsibility for different areas within the entity to particular individuals
2. New conduct standards providing greater clarity about the behaviour expected of all RFSPs and individuals working in RFSPs
3. More onerous requirements for RFSPs regarding the fitness and probity of persons exercising controlled functions (**CFs**) and pre-approval controlled functions (**PCFs**)
4. Streamlined enforcement process designed to break the "participation hurdle" so that the Central Bank will no longer be required to first prove a contravention of legislation against an RFSP before it can take enforcement action against an individual.

As fund management companies, investment companies and ICAVs will not be in scope of the first phase of SEAR, the following focusses on the impact of the Bill's publication on pillars 2, 3 and 4 above.

2. Conduct Standards

The Bill provides for the establishment of three levels of conduct standards: (i) business standards applicable to all RFSPs, regardless of sector; (ii) common conduct standards; and (iii) additional conduct standards.

RFSP business standards: all RFSPs, regardless of sector, must meet these standards which are intended to 'create an essential counterbalance' to the standards at (ii) and (iii). The business standards will seek to ensure that RFSPs act honestly, fairly, professionally, with due skill, care and diligence and in the best interests of customers and the integrity of the market. These shall include standards to ensure the RFSP does not mislead customers, maintains adequate financial resources, controls and manages sustainably, responsibly and in a sound and prudent manner, manages conflicts of interest, protects client assets, engages in good faith with the Central Bank and other NCAs/authorities performing similar functions, and makes adequate disclosures to the Central Bank. A breach of the RFSP business standards will be considered a prescribed contravention enforceable against the RFSP.

RFSP business standards and the necessary RFSP systems, controls, processes, policies and procedures will be set out in detail in Central Bank regulations which, as set out above, will be the subject of industry consultation following the enactment of the Bill.

Common conduct standards: all CFs (including PCFs) will be required to take reasonable steps to act honestly and with integrity, act with due skill care and diligence including acting appropriately in any decision-making (collective and individual), act in the best interest of customers including treating them fairly and professionally, be cooperative with the Central Bank and other NCAs/authorities performing similar functions, and observe proper standards of market conduct.

Additional conduct standards: PCFs and those in a position to exercise significant influence must take reasonable steps to ensure the RFSP is controlled effectively, complies with regulatory requirements, that any delegation of tasks by the PCF is to an appropriate person and is effectively overseen by the PCF, and ensure appropriate disclosures are made to the Central Bank.

Central Bank guidance

The Central Bank will publish guidelines setting out how RFSPs must embed the conduct standards throughout their organisation, including as to the determination of 'reasonable' in the context of the obligation on individuals to take 'reasonable steps' to meet the standards, and practical guidance for those subject to the standards. The Bill also sets out certain safeguards for RFSPs to have in place so that staff are aware of what is expected of them including notification of applicable standards, training of relevant staff and reporting on disciplinary action arising from breach of the standards. RFSPs will also be required to establish and maintain policies in respect of how the standards are implemented throughout the organisation. The Central Bank will publish guidelines relating to these obligations.

3. Fitness & Probity regime amendments

The Bill imposes more onerous obligations on RFSPs in relation to the fitness and probity (**F&P**) regime and introduces a number of enhancements to that regime, designed to ensure the effective operation of the IAF.

New obligation of RFSPs to certify the fitness and probity of CFs

In a formalisation and extension of the initial and continuing obligations for RFSPs under the current F&P regime, the Bill provides for RFSP certification of the fitness and probity of all CFs and revocation of that certificate if the RFSP is no longer satisfied that the CF is fit and proper. Currently, the Central Bank 'suggests' that RFSPs require CFs to notify any material changes to the initial due diligence carried out by the RFSP and 'recommends' that RFSPs carry out an annual CF audit, however the Bill's proposals would require RFSP certification to be on the basis of reasonable grounds for determining that the CF complies with the F&P standards and an ongoing obligation to maintain that due diligence to ensure revocation of the certificate if the RFSP considers the CF is no longer fit and proper. The Bill envisages that the Central Bank will issue regulations as to the form and content of the CF certificate, its period of validity, the RFSP procedures, systems and checks to be adopted and the form and content of the agreement with the CF to comply with the F&P standards.

Central Bank investigation of former CFs/PCFs

The Bill provides the Central Bank with the power to investigate CFs for six years after they have ceased performing that function subject to transitional arrangements to avoid any retrospective application of this power. The Bill also extends the maximum period of a Central Bank suspension of a CF by six months which period can be further extended by a maximum of 24 months by the courts. A suspension decision will be required to be confirmed by the courts and will be appealable to the Irish Financial Services Appeals Tribunal.

Financial holding companies to fall within the F&P regime

The Bill provides for the extension of the F&P regime to directors and staff of financial holding companies, mixed financial holding companies, insurance holding companies, and investment holding companies and to CFs of such holding companies established in Ireland.

4. Streamlined enforcement process

The Bill provides for removing the “*participation hurdle*” in current legislation which requires the Central Bank to first prove a contravention of legislation by a RFSP before it can take action against an individual. The Bill also provides for numerous other amendments to the administrative sanctions procedure (**ASP**) including those necessary to ensure it takes account of the required standards of fairness in the administration of justice, in light of a recent Supreme Court decision on topic.

Extension of Central Bank enforcement process

The Bill extends the scope of the Central Bank's powers of investigation and enforcement against individuals performing CF and PCF roles. The Bill also abolishes the concept of a “person concerned in the management” of a RFSP thereby removing the requirement for a “participation link”, which requirement has been identified by the Central Bank as hindering it in holding individuals to account and promoting a culture of individual accountability. Also, the common conduct standards (which will apply to persons performing CF or PCF roles) and the additional conduct standards (which will apply to persons performing PCF roles) and the duty of responsibility under SEAR will each be directly enforceable against individuals, enabling the Central Bank to pursue individuals directly for their own misconduct.

The Bill makes changes to the procedures of Central Bank inquiries taking account of its additional powers to investigate and enforce against individuals, including changes to protect the confidentiality of material disclosed during inquiry proceedings and to ensure that investigations or inquiry proceedings are privileged.

Next Steps

The Bill must now pass through the Irish legislative process, commencing with its debate in mid-September following the summer recess. Once the Bill is enacted, the Central Bank will publicly consult on the implementation of the IAF.

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