// FINANCIAL REGULATION

# Preparing for Individual Accountability

## PART 4 - Enforcement Reforms

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 fourth 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 (the **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, the fitness and probity reforms pillar and the Senior Executive Accountability Regime (SEAR) pillar of the Framework are available here, 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 proposed enforcement reforms - one of the four pillars of the Framework. We outline key reforms under the streamlined enforcement process and set out actions which firms can take now to prepare for this pillar of the Framework before it comes into effect.

## KEY REFORMS

### 1. Removal of the "participation hurdle" in regulatory enforcement action against individuals

Under current legislation, the Central Bank's enforcement powers against individuals are limited to circumstances in which the individual is suspected of having participated in a breach committed by a regulated firm. The Central Bank cannot currently pursue individuals directly for breaches in their own right. The new Framework is designed to facilitate enforcement action against individuals by removing this "participation hurdle". This will allow for direct enforcement by the Central Bank against an individual, under the Administrative Sanctions Procedure (**ASP**). This will mean that the Central Bank will no longer be required to first establish a breach by the regulated firm, and then prove that an individual participated in that breach. The Central Bank will hope that this will make its enforcement actions against individuals more straightforward and less expensive to pursue.

### 2. Expansion of the scope of the ASP

In order to pursue an individual under the current regime, the Central Bank must establish that the individual is a person "concerned in the management" of a regulated firm and that he or she has participated in a breach by that regulated firm. The Framework will expand the scope of the ASP beyond this definition to align with the other reforms set out in the Framework. For example, breaches of certain conduct standards and breaches of the duty of responsibility under SEAR will be enforceable directly against the individuals to whom those standards and that duty apply. This will mean that individuals beyond those who are "concerned in the management" of a regulated firm will now fall within the scope of the ASP.

### 3. Procedural reforms to Investigations and Inquiries

Existing provisions relied on by the Central Bank to conduct an enforcement investigation will be strengthened. There is currently very little statutory guidance around the conduct of investigations and the Central Bank tends to exercise its discretion in this respect which lacks transparency for those under investigation.

Reforms to the ASP should provide clarity for individuals who may be subject to investigation under the new Framework and ensure that all parties are afforded protections in line with those in similar regulatory regimes. Amendments to the inquiry process include additional constitutional and fair procedures safeguards, provisions to deal with obstructive actions and confidentiality and disclosure provisions (to protect privacy and data protection rights and to avoid unfair prejudice to the reputation of an individual).

### 4. Monetary sanctions

The Central Bank will be empowered to impose a monetary sanction on an individual for breach of the conduct standards. The Central Bank may also publish guidelines on determining appropriate sanctions and monetary penalties. If it is to impose a financial sanction, the Central Bank must ensure that the sanction is effective, proportionate and dissuasive. In assessing an appropriate sanction, the Central Bank will be required to consider all relevant circumstances, including, where applicable:

- the nature, seriousness and impact of the contravention;
- the conduct of the individual during and after the contravention;
- the relevant previous record of the individual; and
- the financial position of the individual.

## SCOPE

The enforcement reforms will apply in respect of all regulated financial service providers from the date when the individual accountability regime comes into effect.

## 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

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| 1 | REVIEW SYSTEMS AND PROCESSES FOR DOCUMENTATION OF COMPLIANCE | Review and update systems and processes to ensure compliance of individuals with their responsibilities is appropriately documented. It is important for individuals, not only to comply with their regulatory obligations but also to be able to demonstrate such compliance by reference to documentation if challenged. |
| 2 | REVIEW D&O COVER | Review D&O cover to ensure it makes appropriate provision for relevant individuals, bearing in mind that the scope for relevant individuals will expand beyond those concerned in the management of the firm. |

## CONCLUSION

Many of our clients have been taking steps for some time to prepare for the individual accountability regime. If you require assistance in preparing for individual accountability regime 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

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