



CENTRAL BANK CONSULTS ON IMPLEMENTATION OF THE INDIVIDUAL ACCOUNTABILITY FRAMEWORK

On 13 March 2023 the Central Bank of Ireland (Central Bank) published Consultation Paper 153 – Enhanced Governance, Performance and Accountability in Financial Services (CP153)¹, which consults on key aspects of the implementation of the Individual Accountability Framework (IAF), including the publication of draft Regulations² (Annex 1) and Guidance (Annex 2).³

In addition to the IAF, the draft Regulations and Guidance seek to provide clarity in terms of the Central Bank's expectations for the implementation of three aspects of the IAF: the Senior Executive Accountability Regime (SEAR), the Conduct Standards and certain aspects of the enhancements to the Fitness & Probity regime.

CP153 follows on from the enactment of the Central Bank's IAF Bill 2022⁴, which was signed into law on 9 March 2023 by the President of Ireland and became the Central Bank IAF Act 2023 (the Act).

Background and objectives

In the introduction to CP153, the Central Bank states that poor governance, lack of consumer-focused cultures and weak structures of accountability within firms were among the issues that it set out in its Report on the 'Behaviour and Culture of the Irish Retail Banks'⁵ in July 2018, and in which the Central Bank had proposed the IAF to address the serious issues it had identified in the financial sector.

The Central Bank states that the objective of the Act is to achieve better outcomes: for consumers and users of financial services and for the ongoing functioning of the economy. It continues that it does this based on supporting firms in being well run and having sustainable business models.

The Act provides for the introduction of the IAF, which is designed to improve governance, performance, and accountability in firms providing financial services to individuals and businesses. The Act achieves this by establishing a framework of enhanced clarity as to who is responsible for what within firms.

The Act also empowers the Central Bank to issue Regulations requiring that key tasks and responsibilities be assigned. It also clarifies the standards to be met by individuals having these responsibilities, with a particular focus on senior executives.

In terms of its approach to the development and implementation of the IAF, the Central Bank states that it is founded in proportionality, predictability and reasonable expectations.

It is first and foremost about ensuring good quality governance.

Collective versus individual

In CP153 the Central Bank explains that it is important to ensure that the role of collective responsibility and decision-making remains central to firms, and that this aspect must not be negatively impacted as a result of an increased focus on individual responsibilities in the IAF.



The IAF makes clear that a key responsibility of individuals remains to act appropriately in the collective decision-making of firms, in line with their role. In this way, the IAF is designed to reinforce the concept of collective responsibility as a core aspect of well-functioning firms.

Cost benefit considerations

In Chapter 2 of CP153 the Central Bank sets out its cost benefit considerations. It states that the IAF is designed to bring substantive benefits. It should:

-  Act as a driver of high-quality governance and performance amongst all firms;
-  Support positive outcomes, including helping firms to secure the interests of their customers while ensuring sustainable business models;
-  Enhance levels of trust and confidence in the financial system so that it fulfils its potential in supporting the Irish and European economy; and
-  Advance the maturity of the regulatory system so that where levels of responsibility and accountability within firms are increased, supervision can focus more on performance and outcomes.

The Central Bank explains that there will be costs associated with the introduction of the IAF. Some of these will be inherent, others will depend on the manner in which it is implemented. Overall, the Central Bank adds, it is important that the benefits outweigh the costs.

This requires both upfront consideration and ongoing review as the IAF is implemented and experience gained. In terms of up-front assessment, the Central Bank’s Department of Finance has conducted a Regulatory Impact Assessment.⁶

The Central Bank outlines that there will be costs to firms in complying with the proposed legislation. Every regulated firm will have to comply with the certification requirements of the enhanced Fitness and Probity Regime and provide training to individuals on their obligations under the Conduct Standards.

Also, firms in sectors in scope of the SEAR will face additional costs in relation to the preparation and maintenance of a Management Responsibilities Map and Statements of Responsibilities.

Full details of the Central Bank’s cost benefit considerations can be found in Chapter 2 of CP153.

The IAF

In Chapter 3 of CP153 the Central Bank provides an overview of the key aspects of the IAF. These include:

-  **Senior Executive Accountability Regime (SEAR)**
-  **Conduct Standards**
-  **Business Standards**
-  **Enhancements to the current Fitness & Probity (F&P) Regime**
-  **Amendments to the Administrative Sanctions Procedure (ASP)**

SEAR

Scope

The Central Bank are proposing that SEAR will initially apply to a defined range of regulated firms, namely:

- Credit institutions (excluding credit unions);
- Insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and Insurance Special Purpose Vehicles);
- Investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are permitted to hold client assets; and
- Incoming third country branches of the above are also within scope.

The Central Bank says that taking into account nature, scale and complexity, a proportionate approach applies to Low PRISM⁷ impact rated in-scope investment firms and incoming third country branches.

In this regard, a reduced number of Prescribed Responsibilities are applicable to such firms. All other elements of the SEAR apply, including Statements of Responsibilities and the Management Responsibilities Map.



Also, the Central Bank states that key components of the IAF will apply to all regulated firms – the Conduct Standards, enhancements to the F&P Regime and strengthening the ASP. Though the SEAR Regulation will initially apply to a limited number of firms and the Central Bank will have power via Regulations to rollout the SEAR to other sectors in due course (which is the Central Bank's intention).

Responsibilities

For consistency and coherence, the Central Bank says that the roles to which the SEAR applies to in-scope firms align with those Pre-Approval Controlled Functions (PCFs) to which the F&P Regime applies in those firms.

Also, as is the case under the F&P Regime, firms will not be required to create new roles. Therefore, while bringing enhanced clarity, the SEAR should not be expected to alter the existing governance structures of well-run firms.

CP153 outlines that, under the framework, there will be two main types of responsibilities imposed:

1

Inherent Responsibilities. These are the responsibilities which automatically go with any given PCF role at an in-scope firm. The proposed description of such Inherent Responsibilities is set out in the draft SEAR Regulation at Annex 1.

2

Prescribed Responsibilities. These comprise a list of responsibilities which it is proposed that each in-scope firm must allocate among individuals in PCF roles. Some of these apply to all in-scope firms, and some apply to particular types of in-scope firms – e.g., credit institutions, insurance undertakings, etc. The Central Bank's proposed list of Prescribed Responsibilities is set out in the draft SEAR Regulations at Annex 1.

In addition, there is a residual category of *Other Responsibilities*, which are material activities or risks not captured by the list of Prescribed Responsibilities in the case of a given firm. These are identified by firms and are required to be allocated to individuals in a PCF role.

Sharing of responsibilities/roles

While in principle Inherent and Prescribed Responsibilities are integral to the relevant PCF role and cannot be shared

or split amongst different individuals, the Central Bank states that this does not apply in the case of job sharing.

It proposes that while the default position is that each job sharing individual will have full accountability for the relevant responsibility, this will be discharged where they can demonstrate that they took reasonable steps to discharge the responsibility, including in relation to the manner in which activities and tasks were shared amongst the job sharers and in respect of their completion on that basis.

Non-Executive Directors

In CP153 the Central Bank states that it has closely considered the advantages and disadvantages of bringing Non-Executive Directors including Independent Non-Executive Directors (collectively INEDs/NEDs) within the scope of SEAR.

The Central Bank recognises that INEDs/NEDs have existing responsibilities under the corporate governance framework and should not impose increased obligations in that regard.

On that basis, the Central Bank proposes that INEDs/NEDs should fall within the scope of the IAF.

Statements of Responsibilities and Management Responsibilities Map

The Central Bank states that firms will need to set out clearly the responsibilities of each individual in a PCF role in their Statement of Responsibilities. This will assist firms to develop a Management Responsibilities Map for the firm documenting key management and governance arrangements.

A draft template for the Statement of Responsibilities is set out for consultation in the IAF Guidance at Appendix 3.

Submission of documents

To reflect the enhanced approach to supervision reflected in the IAF, the Central Bank is not proposing to impose initial or regular/periodic reporting requirement on firms in respect of their Statements of Responsibilities and the Management Responsibilities Map.

Instead, the Central Bank sets out, in CP153, that firms will prepare these materials on implementation and keep them updated. This reflects their primary importance as tools to support the sound governance of firms. They should be available to the Central Bank on request.



Additionally, and for consistency within the F&P Regime, firms will be required to submit a Statement of Responsibilities with new PCF applications.

Outsourcing

In the context of SEAR, to ensure transparency and accountability, the Central Bank requires that where outsourcing arrangements are in place then there will be a PCF role holder in the regulated firm with responsibility for outsourcing arrangements.

Moreover, where there is outsourcing of a PCF role, the role-holder should fall under the oversight of a PCF role holder within the entity, and this will need to be reflected in the relevant Statements of Responsibilities and the Management Responsibilities Map.

Duty of Responsibility/Reasonable Steps

The SEAR introduces a duty of responsibility for individuals performing PCFs at in-scope firms to take reasonable steps to ensure that the areas of the firm for which they are responsible conform to legislative and regulatory requirements.

To provide clarity about what is expected in this context, and given that reasonable steps also apply in respect of the Conduct Standards, the Central Bank are proposing to provide Guidance on the meaning of “reasonable steps”. This draft Guidance is set out in Chapter 3 of Annex 2.

The Guidance seeks to provide sufficient clarity while ensuring that there is the necessary flexibility to accommodate different governance structures, business models, and situations across firms.

Conduct standards

The Common Conduct Standards will impose a single set of readily understood, basic obligations on individuals carrying out Controlled Functions (CFs) within firms.

These apply to all regulated firms; it is not linked to whether the firm in which they perform the role is in scope of the SEAR.

The standards are:

- Acting with honesty and integrity;
- Acting with due skill, care and diligence;
- Cooperating in good faith and without delay with regulators;

- Acting in the best interests of customers and treating them fairly and professionally; and
- Operating in compliance with standards of market conduct and trading venue rules.

The legislation itself sets out a range of helpful detail as to what is required under the different Conduct Standards. As required by the Act, the Central Bank propose to provide further Guidance to help with clarity and understanding. This is set out at Chapters 4 to 6 of Annex 2.

The draft IAF Guidance sets out the Central Bank's expectations in relation to the Conduct Standards and some non-exhaustive examples of the steps it may be reasonable in the circumstances for an individual to take to ensure the Conduct Standards are met.

Training

A firm has a critical role to play in embedding the Conduct Standards in its culture in a meaningful way for all individuals, including via notifying and the provision of training (both on an initial and ongoing basis) to individuals performing CF (including PCF) roles to ensure that such individuals have appropriate knowledge of the standards and how they apply to an individual in the performance of their role.

For firms within the scope of SEAR, in addition to Board oversight, the individual in the relevant PCF role allocated the prescribed responsibility for embedding the Conduct Standards throughout the firm should oversee training in respect of the Conduct Standards.

Enforcement

The objective of the IAF is to drive a permanent uplift in governance standards. It is the Central Bank's view that this is where firms taking real ownership of the IAF will make a major difference. If firms embed the IAF properly, it should ideally result in fewer serious issues in the financial sector over time – and, correspondingly, less need for enforcement actions.

The Central Bank states its approach to enforcement – both in relation to the IAF and more generally – is based on the key concepts of proportionality and targeted deployment with an outcomes focus.



The Central Bank also states its approach to enforcement of the IAF is consistent with the approach adopted in other jurisdictions, such as the UK and Hong Kong, where similar frameworks have brought significant benefits in terms of improved governance within firms without material increases in enforcement activity.

Interaction with the F&P Regime

The Central Bank notes that the introduction of IAF will not result in a substantive change to the F&P Regime. It explains that the F&P Regime and the IAF can be thought of as two aspects of one overall framework of sound governance – with the F&P Regime being about suitability of individuals and the IAF about their ongoing conduct.

Though for reasons of clarity, familiarity and convenience, the Central Bank says that they can continue to be considered separately.

The F&P Standards require individuals in CF roles to ensure that they are sufficiently skilled and have the requisite integrity to be trusted in their roles. For example, a CF must be competent and capable to perform their role. The purpose of the Conduct Standards is different in that they govern the conduct of individuals in CF and PCF roles, imposing positive, legal obligations on individuals to act in a particular way.

This section of CP153 also covers:

- Temporary appointments;
- Enhancements to the Fitness and Probity Regime; and
- New PCF Role – Head of Material Business Line.

Full details of the proposals on the interaction with the F&P Regime can be found in Chapter 3 of CP153.

Implementation

In Chapter 4 of CP153 (Implementation) the Central Bank states that it is critical that the initial and ongoing implementation of the IAF is not approached as a compliance exercise but rather that it is internalised throughout firms' culture, approach and practices to ensure its successful and sustainable adoption.

To ensure a focus by firms on high quality implementation of the IAF, the following implementation period is proposed by the Central Bank:

- Conduct Standards, including accountability of senior individuals for running their parts of the business effectively, to apply from 31 December 2023;
- Fitness & Probity Regime – Certification and inclusion of Holding Companies to apply from 31 December 2023; and
- Regulations prescribing responsibilities of different roles and requirements on firms to clearly set out allocation of those responsibilities and decision making to apply to in-scope firms from 1 July 2024.

The Central Bank's CP153 proposals close for comment on 13 June 2023.

¹ See https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp153/cp153---enhanced-governance-performance-and-accountability-in-financial-services.pdf?sfvrsn=142a991d_2.

² See https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp153/annex-1-to-the-consultation-paper-153-draft-regulations.pdf?sfvrsn=502a991d_4.

³ See https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp153/annex-2-to-the-consultation-paper-153-draft-guidance-on-the-individual-accountability-framework.pdf?sfvrsn=a32b991d_4.

⁴ See https://data.oireachtas.ie/ie/oireachtas/bill/2022/75/eng/ver_c/b75c22d.pdf.

⁵ See <https://www.centralbank.ie/docs/default-source/publications/corporate-reports/behaviour-and-culture-of-the-irish-retail-banks.pdf?sfvrsn=2/>.

⁶ See <https://www.gov.ie/en/publication/23bf3-regulatory-impact-assessment-revised-july-2022-central-bank-individual-accountability-framework-bill/>.

⁷ See <https://www.centralbank.ie/regulation/how-we-regulate/supervision/prism>.

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