Ireland: Individual Accountability Framework – Applicability to regulated firms

Trusted expertise that **adds value**

Introduction

Enhancing governance, performance and individual accountability in the Irish financial services markets.

The collapse of a significant banking institution in September 2008 sent shockwaves through the global financial system, which subsequently resulted in the failures of systemically important financial institutions around the world. In the years that followed, governments and financial market supervisors alike commissioned a variety of investigations in order to understand what led to those catastrophic events.

Investigations revealed severe shortcomings in corporate governance such as slack board oversight, lack of individual accountability by those responsible for managing the businesses of financial services providers, and flawed remuneration practices that encouraged excessive risk taking. These issues, compounded by limitations in the powers which supervisory bodies could exercise in pursuit of enforcement action, were found to have contributed to the inevitable global economic recession.

In the 15 years that have followed since the financial crisis, governments around the world have taken action to improve the standards of governance and powers for enforcement within the financial services sector, not least because financial services are crucial to the proper functioning of an economy.

In Ireland, an investigation was commissioned into the banking sector – Commission of Investigation into the Banking Sector in Ireland (2011), 'Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland'. This investigation found that cultural failings within the banking sector were a significant contributory factor in the financial crisis.

Stemming from the ongoing examination, the Minister for Finance requested the Central Bank of Ireland under Section 6A of the Central Bank Act 1942 to prepare a report on the ‘current cultures and behaviours and the associated risks in the retail banks today and the actions that may be taken to ensure that banks prioritise customer interests in the future’. The above findings from this investigation set the foundations of today’s Individual Accountability Framework.

The Central Bank (Individual Accountability Framework) Act 2023 was signed into law on 9 March 2023 and in a speech given on 18 April 2023, to mark the commencement of a large part of the Act, the Minister for Finance Michael McGrath described the new legislation as an “important further step in work to transform the culture of the financial services industry in Ireland”.

He noted that the legislation would give the Central Bank of Ireland (the ‘Central Bank’) the “regulatory tools necessary to ensure that consumers dealing with financial service providers in this country can be confident that their best interests will be protected.”

In this article, we draw upon a variety of jurisdictions that have implemented a similar regime, to provide insight into what the Irish financial services industry can expect, but also to provide guidance on how best to prepare for the IAF regime.

Contents

1 What is the Individual Accountability Framework ('IAF') Regime?

There are three core components of the new IAF that impact regulated financial service providers, the new Senior Executive Accountability Regime (SEAR), the Conduct Standards, and the enhanced Fitness and Probity (F&P) Regime. The IAF also introduces a number of enhancements to the Administrative Sanctions Procedure (ASP).

The aim of the IAF is to deliver better outcomes for consumers and users of financial services and the ongoing stability and integrity of the financial system.

The IAF includes the following key elements:

- **SEAR Regime:** This will require in-scope firms to set out clearly and fully where responsibility and decision-making lie within the firm's senior management. The SEAR Regime will apply to some but not all regulated financial service providers.
- **Conduct Standards:** Common Conduct Standards are basic standards such as acting with honesty and integrity, with due skill, care and diligence, and in the best interest of customers, and will apply to individuals in all regulated firms. Senior executives will also have Additional Conduct Standards related to running the part of the business for which they are responsible.
- **Enhancements to the current F&P Regime:** This will include clarifying firms' obligations to proactively certify that individuals carrying out certain specified functions are fit and proper.
- **Amendments to the ASP:** A key change will be the Central Bank's ability to take enforcement action under the ASP directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

The Central Bank of Ireland has stated “This is to be achieved through the improvement of governance, performance and accountability in financial services firms by establishing a transparent and enhanced framework setting out who is responsible for what and where decision making lies, together with clarity as to the expected standards of behaviour and conduct in support of positive culture change within financial services.”

The Central Bank proposed the following implementation period:

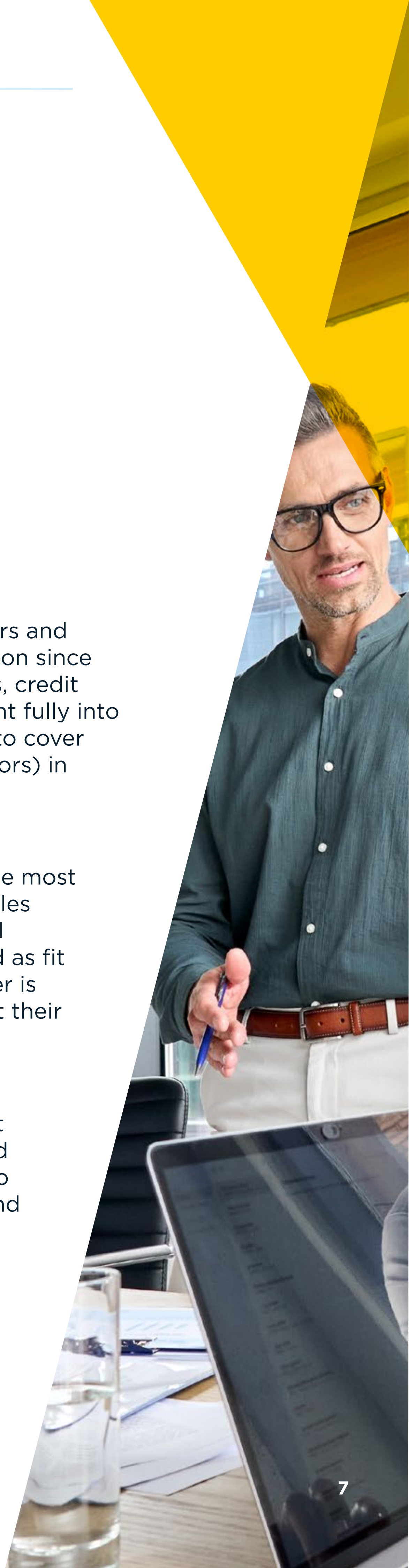
- Conduct Standards including accountability of senior individuals for running their parts of the business effectively to apply from **31 December 2023;**
- Fitness & Probity Regime - Certification and inclusion of Holding Companies to apply from **31 December 2023;**
- Regulations prescribing responsibilities 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 estimates that **1500** firms will be in scope for SEAR. The regime will apply to the following sectors:

- Credit Institutions (excluding credit unions)
- Insurance undertakings (excluding reinsurance undertakings, captive (re) insurance undertakings and insurance special purpose vehicles)
- Investment firms that underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold client assets; and
- Incoming third country branches of the above.

Whilst the above mentioned categories are the first cohort of in scope firms, we expect (as has been indicated by the Central Bank), a phased approach to the extension of the regime across broader sectors. To this end, we would strongly recommend that firms not falling within scope at this time, consider these rules as guidance towards best practice.

The culture and governance regimes of key jurisdictions



United Kingdom

The IAF is closely modelled on the UK's Senior Managers and Certification Regime (SMCR) which has been in operation since 2016. SMCR initially applied to banks, building societies, credit unions and PRA-designated firms. Insurers were brought fully into scope in December 2018 and the SMCR was extended to cover all solo-regulated firms (except benchmark administrators) in December 2020.

The SMCR consists of three parts:

1. **The Senior Managers Regime:** Under this regime, the most senior people ('senior managers') performing key roles ('senior management functions') need FCA approval before starting their roles and they must be certified as fit and proper at least once a year. Each senior manager is assigned a 'statement of responsibilities', setting out their responsibilities and obligations within their role.
2. **The Certification Regime:** This regime applies to employees who aren't senior managers but whose role means it's possible for them to cause significant harm to the firm or customers. These roles are called 'certification functions'. These people do not need to be approved by the FCA, but firms need to check and certify that they are fit and proper to perform their role. This has to be done at least once a year.
3. **The Conduct Rules:** There are also some Conduct Rules that only apply to senior managers. However, broadly speaking, the regime applies to all staff. Firms need to make sure staff are trained in and know that the Conduct Rules apply to them, and to notify the FCA when someone breaches a conduct rule.

Given the similarities between the UK's SMCR regime and the IAF, some predictions can be made about the likely outcomes and effectiveness of the IAF based upon the operation of SMCR to date. The SMCR is now fully operational following a three-year, three-phase roll-out.

The SMCR introduced a statutory duty of responsibility, which empowers the UK regulators take action directly against a Senior Manager regarding a breach at a regulated firm if they can show that the Senior Manager failed to take 'reasonable steps' to prevent or stop the breach.

In a similar vein, the IAF imposes a duty of responsibility on individuals performing Pre-Approval Controlled Functions (PCFs) at in-scope firms. The Duty of Responsibility applies to all PCF role holders at in-scope firms to take any steps reasonable in the circumstances to avoid a contravention by their firm of its obligations under financial services legislation in relation to an aspect of the firm's affairs for which the PCF role holder is responsible under SEAR.

Considering this, those in senior managerial positions, and in particular PCF functions are, at this time, seeking to understand what this new statutory duty means for them, from a risk perspective. We offer useful tips for preparing for the IAF under 'Preparing for IAF' section of this article.

In November 2022, the Compliance Institute carried out an IAF readiness survey. The survey received 160 responses from Compliance Institute members. Some 84% of members surveyed felt that the implementation of the IAF would make it difficult to recruit individuals into Pre-Approved Control Function (PCF)/Senior Executive Function (SEF) roles. President of the Compliance Institute Diarmuid Whyte when addressing the annual conference stated: "There is a clear need to hold directors and officials to a higher standard and ensure customer outcome focus is key. It is also a necessity that we do not lose high-calibre individuals for fear of the personal liability associated with a senior executive position".

Prior to the introduction of SMCR, there were similar concerns expressed in the UK that firms would find it difficult to recruit individuals to senior roles given the new responsibilities. However, the PRA's December 2020 report on SMCR noted that most firms reported that the SMCR had not hindered them from recruiting individuals with the skills they needed.

Enforcement actions under SMCR have been fewer than may have originally been expected. Since its implementation, there has been one enforcement action taken against an individual for non-compliance. In response to a freedom of information request made in June 2022, the FCA revealed that at the time of the request there were 63 open enforcement investigations under the SMCR. Of the 63 open SMCR investigations, 39 relate to individuals linked to retail firms and 24 were individuals linked to wholesale firms. Whilst enforcement action has been low, we should consider the behavioural changes reported, that have resulted from the introduction of the regime. According to the PRA's report, 94% of senior managers and 96% of firms who participated in the survey observed that the SM&CR had brought about positive changes to behaviours, and nearly all firms reported integrating to some extent the SM&CR with internal practices.

Australia

The Australian Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill was introduced in 2017, as a response to a significant increase in banking scandals, leading to public criticism of the financial services sector for the lack of accountability and repercussions for senior executives engaging in misconduct.

The Banking Executive Accountability Regime (BEAR) commenced on 1 July 2018 for large authorised deposit-taking institutions (ADIs) and on 1 July 2019 for medium and small ADIs. The object of BEAR is to drive greater clarity and transparency of individual accountability at ADIs and is a key regulatory lever for the Australian Prudential Regulation Authority (APRA) to drive action from ADIs and to transform governance, risk culture, remuneration and accountability outcomes. The BEAR introduced an accountability framework, a list of accountability obligations (very similar to conduct rules) and prescribed responsibilities for certain roles.

By the end of 2019, the Australian regulators began to pursue firmer action against misconduct in financial services, with the APRA using BEAR to engage in enforcement against Westpac Banking Corporation, and ASIC against TAL Life Limited (a subsidiary of Dai-ichi Life). Despite this, the general consensus remained that the regulators were not doing enough.

On 20 September 2021, Australian consumer advocacy group CHOICE noted that the BEAR regime had been in operation for over three years and in that time, no executives had been disqualified, no executives have had their bonuses clawed back, no banks had been fined.

Following consumer criticism on the lack of enforcement and in light of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry's report, the Australian government has introduced the new Financial Accountability Regime (FAR). FAR extends the scope of BEAR, introduced greater accountability obligations and an extended responsibility framework. The core elements of FAR are as follows:

- Accountability obligations will be placed on both firms and Accountable Persons who will have to establish that they took reasonable steps in carrying out their responsibilities.
- Firms must submit accountability statements and maps to the regulator.
- Firms must notify the regulator of any changes in their FAR environment.
- Firms must ensure they appoint the correct persons as Accountable Persons and that their responsibilities cover all operations of the firm.
- Provision of deferred remuneration of Accountable Persons of up to 40% of the Accountable Persons variable remuneration.

Breaches of FAR can result in civil penalties for financial institutions and disqualification of senior executives as accountable persons.

Hong Kong

On 16 December 2016, the Hong Kong Securities and Futures Commission (SFC) issued a circular to all licensed corporations setting out specific measures for augmenting the accountability of senior management (Circular). This introduced the "Managers-In-Charge of Core Functions" (MICs) concept, which seeks to enhance individual accountability. This regime is similar in many respects, to those of the UK SMCR and Irish IAF.

The circular entered into force in 2017, and the stated aims are to:

- add clarity as to which individuals should be regarded as members of the senior management of a licensed corporation, and heighten awareness of their accountability, regulatory obligations and potential liabilities.
- standardise the format for submission of information by licensed corporations and corporate licence applicants in respect of their management structures.
- better align senior management with the existing regime governing responsible officers (ROs); and
- help further strengthen the corporate governance of licensed corporations.

The MIC did not introduce any new sanctions; however, it did provide the SFC with further powers of enforcement and empowered them to hold individuals to account.

What we can learn from SMCR and the regimes of other jurisdictions?

Looking at the impact of SMCR and the individual accountability regimes of other jurisdictions, a key observation across all of those jurisdictions is that to date, the level of enforcement action has been lower than expected.

Whilst we cannot conclude with certainty, the reasons for such outcomes, a correlation can certainly be drawn between the low number of enforcement cases, and the positive cultural changes which have been observed across the financial services industries in question. Such qualitative data, although difficult to measure, should form an important part of any assessment into the effectiveness of the various individual accountability regimes.

As explained above, the PRA's December 2020 report on SMCR noted that 94% of senior managers and 96% of firms who participated in the survey observed that the SMCR had brought about positive changes to behaviours, and nearly all firms reported integrating to some extent the SM&CR with internal practices. We presume therefore, that this shift in behaviours and attitudes towards a top level culture of compliance, would in a way, have contributed to the levels of lower than expected enforcement action.

Notwithstanding the above, we have seen, as is the case with Australia, that the public and the industry would need to see demonstrable improvement in oversight and supervision by the regulators, and where the perception is that the regulators have or are not taking adequate steps to enforce compliance with the relevant individual accountability regime, they too will be held to account.

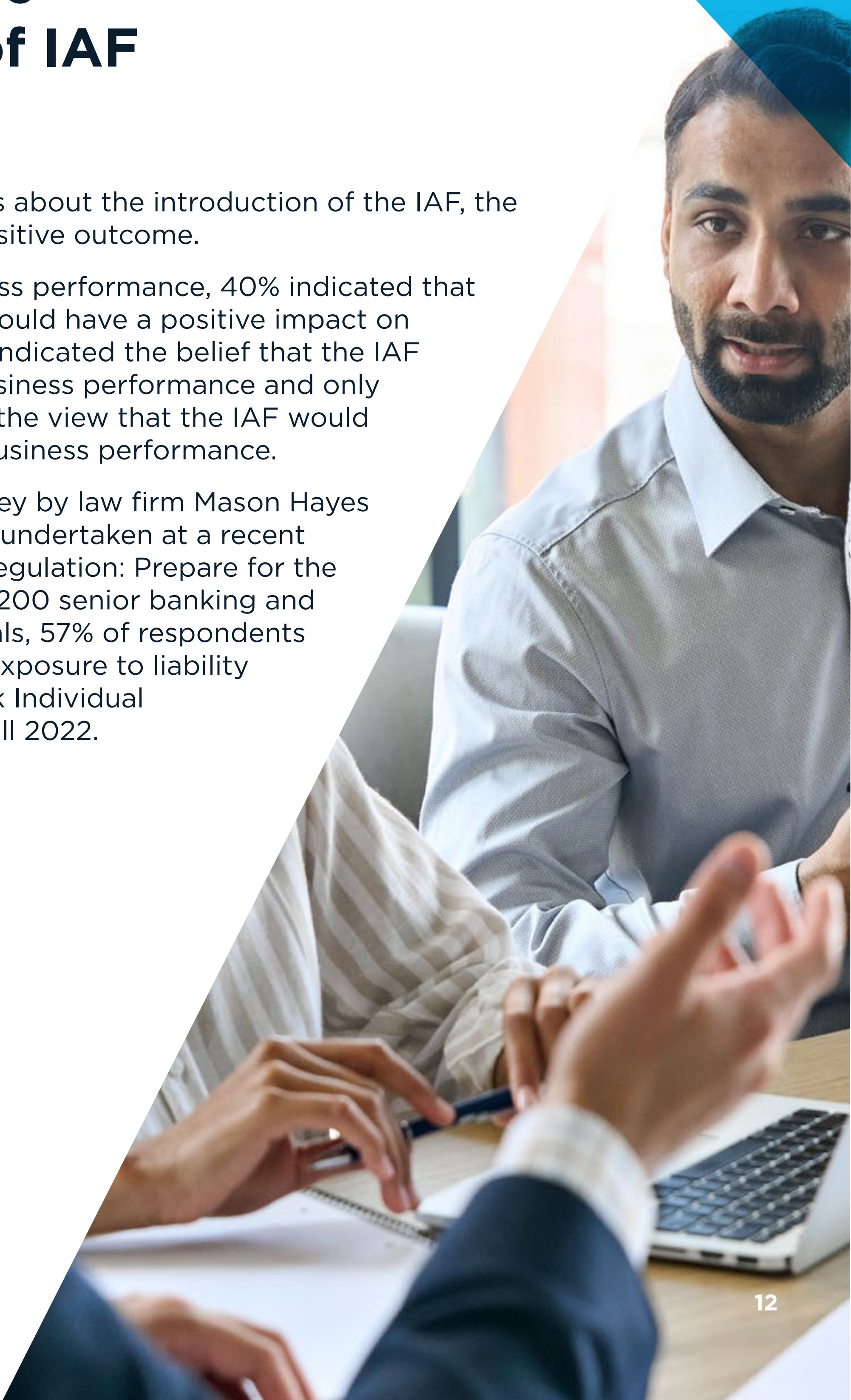
To this end, we can expect not only an increase in positive behavioural and cultural change, but from a supervisory perspective, we can also expect the Central Bank to draw upon the approaches taken by other supervisory bodies, which have proven effective. The advantage of this will be the Central Bank's ability to fine tune its approach to the implementation of this regime, while avoiding unintended consequences or perceived weaknesses observed within similar regimes.

Reaction to the introduction of IAF

Despite some initial concerns about the introduction of the IAF, the belief is that it will have a positive outcome.

In terms of impact on business performance, 40% indicated that the implementation of IAF would have a positive impact on business performance, 40% indicated the belief that the IAF would have no impact on business performance and only 20% of those surveyed took the view that the IAF would have a negative impact on business performance.

However according to a survey by law firm Mason Hayes & Curran (MH&C) which was undertaken at a recent webinar entitled 'Financial Regulation: Prepare for the SEARing Heat', attended by 200 senior banking and financial services professionals, 57% of respondents are worried about personal exposure to liability arising from the Central Bank Individual Accountability Framework Bill 2022.



5

Preparing for IAF

The overarching objective of the IAF regime is to increase individual accountability at senior executive level to deliver an enhanced culture of ownership, responsibility and transparency in relation to the key-decisions made by individuals operating businesses within the Irish financial services industry.

Different components of the regime apply proportionately to both in-scope firms and individuals, based on the level of material risk that their actions and operations pose to the integrity of financial markets and the protection of consumers. The various components of the regime are set out in further detail below. The IAF Guidance represents the Central Bank's expectations, and the rules should be read in conjunction with the guidance as a starting point for firms preparing to develop their implementation plans.

Duty of Responsibility under SEAR

The purpose of the Duty of Responsibility is to reinforce the PCF holder's responsibilities under SEAR – the 'Inherent Responsibilities', 'Prescribed Responsibilities' and 'Other Responsibilities', each of which relates to a specific aspect of the firm's affairs. The Duty does this by imposing an enforceable legal duty on each person in relation to Prescribed Responsibilities.

The Duty of Responsibility is discharged where a PCF holder takes reasonable steps to ensure that the firm complies with its obligations under financial services legislation in relation to an aspect of the firm's affairs for which they are responsible under SEAR. It is not possible for a PCF role holder to contravene the Duty if they have taken such steps.

A contravention of the Duty is a 'prescribed contravention' for the purposes of Part IIIC of the Central Bank Act 1942. The Central Bank may, therefore, take enforcement action under the Administrative Sanctions Procedure (ASP) against a PCF role holder who has contravened the Duty. Such action may lead to sanctions including monetary penalties.

What does this mean for PCF holders?

1. What does 'reasonable steps' mean?
Whilst the IAF does not offer an explicit definition of what 'reasonable steps' means, the Central Bank's Guidance proposes a non-exhaustive list of considerations that it will consider when determining whether or not a Senior Manager has taken 'reasonable steps'.

These include:

a) The nature, scale and complexity of the business.
b) The function of the person and the level of knowledge and experience the person would be reasonably expected to have in relation to the function.
c) The level of knowledge and experience of the person.
d) The existence and application of appropriate and effective systems and controls:
    - The effective oversight of any delegation of responsibilities and effective safeguards against inappropriate delegation
    - Appropriate and effective procedures for identifying and remedying problems
e) The extent to which the matters referred to in 'd' was within the influence of the person.
f) Any guidelines published by the Central Bank.

2. How should a PCF assess reasonable steps?
Factors to consider in the assessment of reasonable steps include:

- How effective the existing governance arrangements are.
- How effective the existing internal systems and controls are in preventing non-compliance.
- How effective the existing compliance policies and procedures are in preventing non-compliance.
- The level of competence, knowledge and experience a PCF holder possesses in the discharge of their obligations.
- The adequacy of existing resource in ensuring the day-to-day activities of the function are adequately discharged.

3. How should a PCF demonstrate reasonable steps?
Whilst the burden of proof lies with the regulator to evidence that a PCF holder did not take reasonable steps in discharging their Duty of Responsibility, a strong paper trail of the steps taken in the discharge of the PCF's roles and responsibilities can prove to be a solid defence against potential enforcement action. It can also support PCF holders to protect themselves against the increased legal/regulatory risk exposure under the IAF regime. Such evidence should include information about how issues are reported, escalated and subsequently resolved.

The Central Bank has indicated that in assessing reasonable steps, it will consider what steps an individual, in that position, could reasonably have been expected to take at that point in time. The Central Bank will look to the overall circumstances and environment, as they existed at the time rather than applying standards retrospectively or with the benefit of hindsight.

The Central Bank also recognises the role of judgement exercised by those in senior roles in discharging their responsibilities and that while that judgement may have turned out to be wrong in a given circumstance, with the benefit of hindsight, it is clearly possible for that individual to demonstrate how that judgement may have been reasonable at the time.

In practice, a PCF holder should have well documented records in place to evidence questioning/challenging, being thorough, making informed decisions, appropriate delegation and that the PCF was in a position to discharge their duties.

PCFs should also ensure:

- They understand the regulatory obligations to which they are responsible and are aware of the expectations of the Regulator (training logs and records).
- They keep up to date with regulatory rules and guidance relevant to the discharge of their function.
- Their roles and responsibilities are clearly defined and are supported by a Statement of Responsibilities and job specification.
- Where responsibilities are delegated, these are clearly documented and there are clear and effective reporting lines in place.
- There are documented policies and procedures in place for the supervision of delegates, and clear processes are in place for reporting and escalation.
- Where PCF holders are responsible for key-decision making at committee or board level, the scope of their obligations, rights and or powers are clearly documented in charter of terms of reference.
- All actions are tracked and there is clear documentary evidence of decisions taken individually or collectively.
- Demonstrate effective ownership and management of risks within the functions to which they are responsible.

4. What sort of records might the Central Bank seek to obtain?

- Meeting minutes of board, board committee and other internal meetings (i.e. any decision making committee that an individual sits on in respect of the discharge of their duties).
- Statements of Responsibilities and the Management Responsibilities Map (for individuals at in-scope firms).
- Organisation charts, job descriptions, performance appraisals, documentation on delegation, agreements with delegates and reporting lines.
- Any other internal materials such as emails, training materials, manuals, regulatory correspondence, telephone recordings, presentations and escalation briefings in respect of issues identified.

SEAR

Implementation of the SEAR regime will require a focus on effective governance. The purpose of SEAR is to improve governance, performance, and accountability in firms by placing obligations on firms and senior individuals within them to set out clearly where responsibility and decision-making lies for their business and by setting out what those responsibilities entail. Individuals that occupy a PCF role at in-scope firms are subject to the SEAR.

Scope
It is proposed that as PCFs, all Non-Executive Directors (NEDs) and Independent Non-Executive Directors (INEDs) at in-scope firms are included within the scope of the SEAR on the basis of the significance attached to their roles in terms of governance, oversight and constructive challenge, as reflected in the relevant Corporate Governance Requirements.

Role splitting
Inherent and Prescribed Responsibilities are integral to the relevant PCF role, as such sharing or splitting of PCF roles amongst individuals is not permitted under the SEAR, other than in the case of job sharing. The details of the job-sharing arrangements must be set out clearly in the respective Statements of Responsibilities and on the Management Responsibilities Map.

Core requirements

Prescribed Responsibilities
SEAR Regulations set out the Inherent Responsibilities for each PCF role at in-scope firms, a list of Prescribed Responsibilities and the meaning of Other Responsibilities.

General prescribed responsibilities apply to all in scope firms. However, Sector or Circumstance Specific Responsibilities will not apply to all in-scope firms. They will only apply as relevant, and in such cases, the relevant Sector and Circumstance Specific Responsibilities must be assigned to a PCF role holder.

Prescribed Responsibilities ensure that responsibilities, including the management or oversight of key risks, have been allocated to a PCF role holder, which will provide clarity as to who is responsible for key activities of the firm.

The categories of Prescribed Responsibilities are as follows:

- General Prescribed Responsibilities.
- Sector or Circumstance Specific Responsibilities.
- Prescribed Responsibilities for low impact in-scope Investment Firms.
- Prescribed Responsibilities for Incoming Third Country Branches.

The Central Bank has clarified its expectations in terms of the allocation of Prescribed Responsibilities to individuals in PCF roles as follows:

- **Consistent allocation:** Firms should seek to ensure that there is appropriate consistency and coherence to the way in which Prescribed Responsibilities are allocated.
- **Appropriate level of seniority:** A Prescribed Responsibility should be allocated to the most senior individual, with the appropriate authority, responsible for that area taking into account the governance structures of the firm.
- **The over-allocation of Prescribed Responsibilities:** Firms should carefully consider the allocation of multiple Prescribed Responsibilities to any one individual in a PCF role, noting that each Prescribed Responsibility is significant. As such, firms must ensure that individuals have sufficient time and resources to carry out the allocated responsibility.
- **The sharing of Prescribed Responsibilities:** With the exception of job sharing, Prescribed Responsibilities should not be shared. However, in these cases each of those individuals will in general, be considered accountable for all of the responsibilities attached to that role and be subject to the Duty of Responsibility.
- **The nature of the Prescribed Responsibility:** In allocating a Prescribed Responsibility to an individual in a PCF role, the nature of the Prescribed Responsibility being allocated must also be considered. Specifically, where the Prescribed Responsibilities are non-executive in nature, these must be allocated to NEDs.

Statements of Responsibilities
PCF holders must have a documented Statement of Responsibilities which set out their roles and responsibilities. These Statement of Responsibilities must be in place on implementation of SEAR.

The Statement of Responsibilities must be submitted to the Central Bank along with the Individual Questionnaire (IQ), when approval for a PCF role is being sought.

The Statements of Responsibilities must be:

1. Kept up to date, contain the date and version control and signed by the PCF role holder;
2. Reviewed on a regular basis by firms;
3. Approved on initial implementation and when it is updated; and
4. Available to the Central Bank on request.

Management Responsibilities Map
In-scope firm will be required to produce a Management Responsibilities Map, documenting its key management and governance arrangements, and demonstrating that there are no gaps in material responsibilities across the firm.

Each in-scope firm must at all times have a comprehensive and up-to-date Management Responsibilities Map that describes its management and governance arrangements.

The Management Responsibilities Map must be produced at a legal entity level, in a comprehensive, proportionate, and clear single source of reference. The Management Responsibilities Map should identify the individuals in PCF roles at in-scope firms (and therefore the related Inherent Responsibilities) as well as the allocation of Prescribed Responsibilities and Other Responsibilities among individuals in PCF roles at in-scope firms, to demonstrate that there are no gaps in responsibilities across the firm. The Management Responsibilities Map should be utilised by firms in the embedding of an effective governance framework.

In-scope firms are required to prepare and maintain an up to date approved Management Responsibilities Map on implementation of the SEAR.

The Management Responsibilities Map must be:

1. Kept up-to-date, contain the date and version control.
2. Reviewed on a regular basis by firms.
3. Approved on initial implementation and when it is updated.
4. Available to the Central Bank on request.

Conduct Standards

The Conduct Standards prescribe a single set of applicable standards of behaviour which will apply to relevant individuals irrespective of the sector in which they operate. In relation to Business Standards, the requirements will apply to all individuals within in-scope firms. With regards to Common Standards, Controlled Function (CF) and PCF holders will be expected to comply; whilst only PCFs and other individuals who may exercise significant influence on the conduct of a firm's affairs will be subject to the Additional Conduct Standards.

The Conduct Standards will serve as a benchmark to guide firms and individuals as to the standards of behaviour expected of them, which are expected over time to contribute to the ultimate goals of better outcomes for consumers and a more sustainable financial system.

1. Business Standards
Under the IAF, the Central Bank is provided with a regulation making power to prescribe standards for the purpose of ensuring that in the conduct of its affairs a firm:

- acts in the best interests of customers and of the integrity of the market.
- acts honestly, fairly and professionally.
- acts with due skill, care and diligence.

The Business Standards will be developed in conjunction with the separate review and consultation on the Consumer Protection Code noting the parallel with the General Principles and the importance of simplification and streamlining of the regulatory framework and the conduct obligations imposed on firms in this regard.

The IAF provides that a person acts honestly and with integrity where:

- They have regard to the legitimate interests of the business, its staff, customers and other persons with whom it engages.
- They operate without bias and manage conflicts of interest effectively.
- They do not exert pressure or influence on a customer so as to limit their ability to make informed choices in relation to the product or service.
- They do not misuse or misappropriate any assets or information of the business or its customers.
- It reports appropriately and does not impede others from reporting to senior management, information relevant to or giving rise to a suspicion of, or commission of a prescribed contravention or contravention of any other legal obligations or standards imposed on the business.

The IAF provides that a person acts in the best interests of customers and treats them fairly and professional where they:

- Ensure that customers are informed in a clear manner of relevant information which they ought to be aware, and it does not impede the provision of relevant information to customers.
- Ensure that any advice or recommendation provided to customers is appropriate and tailored to their needs and circumstances.
- Ensure that customers are not misled as to the advantages of any financial service.
- Acknowledge and seek to resolve complaints received by customers.
- Resolve errors or mistakes affecting customers and discloses errors or mistakes to the customers affected in a timely manner.
- Does not act in a manner that is unfair to customers.

The above standards apply regardless of whether a relevant person has direct contact or dealings with customers. The IAF contains a non – exhaustive list of example behaviours, which are aligned to acting in the best interests of customers and treating them fairly and professionally, and it is not intended to provide specific guidance on each behaviour on the basis that they are generally self-explanatory.

Whilst firms await further guidance from the Central Bank, direction may be sought from existing regimes, regarding the likely expectation of the regulator on how these standards should be upheld.

With regards to the requirement to act with ‘due skill, care and diligence’ the IAF provides that in practice, this means where an individual:

- Acts to the best of their abilities and in a consistent manner to a standard that would be reasonably expected from an individual performing such a role. This includes consideration of their qualifications, experience, knowledge, and other relevant factors, for example, the length of time in a particular role and other responsibilities that the individual may have.
- Has a clear and comprehensive understanding of the business activities of the firm that are relevant to their role/function and the specific responsibilities that are to be undertaken in the relevant function.
- Remains up to date on developments relevant to their role/function, including for example, changes to the legal and regulatory framework, the firm’s market, customer base, industry and the associated impact on risks.
- Engage in relevant training and keep their qualifications up to date.
- Where relevant, remain compliant with the applicable Minimum Competency Code issued by the Central Bank.
- In respect of a delegated task, monitor performance of the delegated task on an ongoing basis.
- Where compliance goes beyond box-ticking and the individual is able to demonstrate adherence to internal compliance policies, procedures, systems and controls.

All of the above factors should be taken into account when firms review existing practices and in the development of their internal compliance framework.

2. Common Conduct Standards

The Conduct Standards govern the conduct of individuals in CF roles and create enforceable legal obligations on individuals to act in accordance with a single set of standards of expected behaviour. The Conduct Standards apply once an individual has been appointed into a CF role.

The Central Bank will be required to prepare guidance on notification and training that firms must provide to CFs subject to the Conduct Standards.

3. Additional Conduct Standards

Additional Conduct Standards apply to PCFs or other persons that have the ability to exercise a significant influence on the conduct of the affairs of an in-scope firm. In practice, this means that PCFs are required to comply with both the Common Conduct Standards and the Additional Conduct Standards

Obligations on a firm in respect of Conduct Standards

The Central Bank expects that firms will play a critical role in embedding the Conduct Standards in its culture in a meaningful way for all individuals. Firms will be expected to:

- Notify and train in-scope individuals on the standards and how these apply within the context of the performance of their role.
- Firms should maintain up to date records regarding the notification of the Conduct Standards to the relevant individuals. Records do not need to be submitted to the Central Bank but retained and made available for review upon Central Bank request.
- Report disciplinary action arising from a breach of the Conduct Standards to the Central Bank. A breach of the Conduct Standards by a CF and/or PCF holder is a prescribed contravention.
- A PCF must be assigned responsibility for embedding the Conduct Standards throughout the firm.
- For firms outside the scope of SEAR, the Chief Executive Officer or equivalent is responsible and accountable for embedding the Conduct Standards throughout the firm.
- Firms should develop appropriate policies and procedures for how Conduct Standards will be incorporated into the firm’s culture in order to drive the right behaviour standards.

Inherent Responsibilities	Allocation of core responsibilities inherent to each PCF's role.
Prescribed Responsibilities	Responsibilities, including the management and oversight of key risks, which a firm must allocate to an individual carrying out a PCF role.
Other Responsibilities	Other material business areas, activities, control and management functions/ projects which are not captured by Inherent and Prescribed responsibilities.
Statement of Responsibilities	A statement from each PCF holder, clearly setting out their role, including their Inherent, Prescribed and Other responsibilities.
Management Responsibilities Map	Map setting out an in-scope firm's key management and governance arrangements.

Fit & Proper Certification Regime

The F&P Regime addresses the suitability of individuals to fulfil relevant roles. The F&P Regime prescribes standards that staff in CF roles must meet to ensure that they are sufficiently skilled and have the requisite integrity to be trusted in their roles, for example, an individual in a CF role must be competent and capable to perform their role.

Prohibits a firm from allowing an individual to perform a CF role unless the firm is satisfied on reasonable grounds that the individual complies with any standards of fitness and probity.

The related Fitness and Probity Standards and the Fitness and Probity Standards for Credit Unions (both referred to as F&P Standards) require individuals in CF roles to be:

- Competent and capable.
- Honest, ethical and to act with integrity.
- Financially sound.

Unlike the SEAR Regime, where individuals will require Central Bank approval to undertake PCF roles, CF individuals are required to be approved internally by the in-scope firm. The IAF enhances the existing F&P Regime, obliging firms to proactively certify that certain staff are fit and proper, capable of performing their roles with integrity and competence.

Firms are required to document the following in respect of each individual in a CF role as part of the certification process:

- Confirmation that the firm is satisfied that the individual meets any standards of fitness and probity applicable to the CF role(s).
- Confirmation that the individual has agreed to abide by those standards.
- Identification of the CF role(s) held.
- An outline of the aspects of the affairs of the firm in which the individual will be involved in performing the CF role(s).
- Details of the steps taken to the firm in forming the view that the individual meets any standards of fitness and probity applicable to the CF roles(s).
- Whether the role is outsourced to an unregulated entity.

Assessing that an individual meets the requirements
The firm must undertake appropriate due diligence to satisfy itself that each individual performing a CF role is fit and proper to perform that role and to be in a position to certify same.

Guidance on the specific due diligence to be undertaken and on how firms should determine the standard of fitness and probity to a particular CF role is provided in detail in the Guidance on the Fitness and Probity Standards.

In addition, under the enhanced regime:

- All due diligence is applicable to the CF population to which the certification requirement applies.
- All due diligence must be performed prior to appointment and on an ongoing basis, with limited exceptions relevant prior to appointment only (e.g. reference checks, interview or application, or record of previous experience) or which are applicable only in certain circumstances.
- Self-certification is sufficient only in respect of certain due diligence, while the majority must be assessed by the firm/holding company itself.
- It is not a one off obligation discharged once due diligence has been undertaken upon commencement, or in relation to an initial appointment to a CF role. Accordingly, under the Certification Regulations, firms are required to carry out the certification process in respect of all individuals in CF roles:
  - prior to appointment (or in the case of a PCF prior to the submission of an IQ to the Central Bank
  - on an annual basis; and/or
  - in respect of any new CF role(s) assumed, in advance of appointment to same.

Outsourced Roles

Where a CF role is outsourced to an 'unregulated entity' the firm remains responsible for its obligations, including the certification process in respect of each individual in a CF role. Certain categories of individuals occupying CF roles are exempt from scope of the F&P Standards, such as Temporary Officers.

The Fit & Proper Regime includes an exemption for outsourced roles. Where a PCF role is outsourced to a regulated firm under a written outsourcing arrangement and that firm is regulated (either by the Central Bank or by an authority in any jurisdiction with similar functions to the Central Bank) for a similar business to that conducted by the firm, the individual performing the outsourced role:

- Is not required to seek pre-approval from the Central Bank; and
- Is exempt from the F&P Standards.

The table below sets out the application of the regime to outsourcing arrangements.

	Outsourced PCF role to a regulated entity	**Outsourced CF role to a regulated entity**	**Outsourced PCF role to an unregulated entity**	**Outsourced CG role to an unregulated entity**
F&P Regime	Outsourcing firm is exempt from applying the F&P Standards and exempt from seeking approval from the Central Bank.	Outsourcing firm is exempt from the applying F&P Standards.	F&P Standards apply and the outsourcing firm must seek pre-approval from the Central Bank.	F&P Standards apply.
SEAR	Given individual is not a PCF role holder in the outsourcing firm there is no requirement to have a Statement of Responsibilities and Duty of Responsibility does not apply.	N/A	Individual is a PCF role holder and must have a Statement of Responsibilities. Duty of Responsibilities also applies.	N/A
Certification	Not subject to certification by outsourcing firm.	Not subject to certification by outsourcing firm.	Applicable.	Applicable.
Conduct Standards	Applicable.	Applicable.	Applicable.	Applicable.

6

Implementation Planning

Set up implementation team/focus group

- Set up an implementation team comprising senior individuals (who will endorse adoption of the regime internally), compliance and risk function individuals, Human Resources and external consultant (if required) who will be tasked with understanding the rules, the scope and impact of the rules on the business.

Undertake data gathering exercise

- Implementation of the regime will require a review of significant volumes of data, in order to thoroughly understand current state and to support with the development of a road map and project plan.
- Existing information on a range of existing governance and oversight practices will need to be obtained, including for example, board governing documents (such as terms of reference); job descriptions; board minutes and other papers evidencing key decision-making.

Prepare implementation road map

- Identify the tasks required to be completed in order to ensure compliance (see project plan);
- Allocate adequate resources to the tasks identified (this should include financial and non-financial resources);
- Set deadlines for implementation in line with the Central Bank's proposed timelines.

Develop a Project Plan

Firm-wide level

- Review existing governance structure and undertake board effectiveness assessment.
- Review and enhance (as required) board and sub-committee governing documents.
- Update internal organisational structure chart ensuring all key individuals and their functions are identified. The chart should include details of reporting lines.
- Update existing processes to ensure culture remains focus - this include conflicts of interest policies, remuneration policies, whistleblowing policies, breach management and escalation.
- Implement fit and proper assessment if not already in place.
- Implement 'reasonable steps' protocol for senior executives.
- Review and update hiring processes to reflect the core requirements under SEAR - this should include a review and update of recruitment processes for hiring PCF and CF holders (taking into account the need for regulatory referencing and broader due diligence); update of induction and training programme specific to this population of individuals.
- Implement conduct rule breaches and escalation protocols.
- Ensure all newly developed policies and procedures obtain board approval prior to implementation.

Individual Level

- Identify in-scope individuals and categorise them by the regimes to which they are subject (more stringent rules apply to senior executives).
- Ensure each individual has in place a job description, setting out clearly, their roles and responsibilities.
- Assign prescribed responsibilities to the most senior individuals.
- For senior executives subject to the SEAR, ensure that their Statement of Responsibilities are aligned with their job descriptions.
- Undertake fit and proper assessments.

Deliver implementation programme and contingency plan

- Prepare for unexpected changes to existing arrangements - this should include transitional arrangements such as processes for the appointment of temporary officers.

Deliver training across the business

- Deliver firm-wide training and bespoke training to key stakeholders as required.

7 Conclusion

Preparing for and becoming compliant with Individual Accountability Framework and its introduction of the SEAR is going to be a significant undertaking for all Irish financial services firms over the next six to eighteen months. As can be seen from the high-level implementation plan set out above, there is considerable work to be done if firms are to be ready and compliant on day one.

Senior executive buy-in should be a priority for all in-scope firms as the regime calls for a shift in culture, not just a papering exercise.

8

How we can help

fscom is a firm of deep domain experts who specialise in the asset and fund management, capital markets, banking, payments and crypto sectors. Our senior team is a unique mix of experienced consultants, ex-regulators, ex-bankers and former in-house compliance experts who hold senior positions with leading compliance related industry associations and provide our clients with in-depth regulatory insight and industry best practice in all areas of financial services regulation to include authorisation, audit, financial crime, cyber security, and regulatory due diligence.

fscom has extensive experience with assisting client to implement individual accountability regimes especially SMCR on which the IAF is closely modelled.

Our services offering includes:

- SEAR toolkit
- Senior executives training and workshop (including in relation to Duty of Responsibility)
- Conduct breach training and workshop
- Conduct breach escalation, management, internal and external reporting support
- Responsibilities mapping support
- Development of due diligence policies and procedures
- Development of fit and proper assessments
- Development of supporting logs and registers to ensure robust recordkeeping
- Development of compliance monitoring programme

9

Resources

Enforcement Actions

PRA fines the former Chief Information Officer of TSB Bank plc for a breach of the PRA's Senior Manager Conduct Rules (bankofengland.co.uk)

Prudential Regulation Authority (bankofengland.co.uk)

Information on enforcement on SMCR - June 2022 (fca.org.uk)

Individual accountability in financial services - A global perspective (charteredaccountants.ie)

A slow start to enforcement activity under the UK SMCR (allenovery.com)

Useful Guidance

The Individual Accountability Framework – Key Highlights from the CBI Guidance (grantthornton.ie)

Implementation of Individual Accountability Framework Principles by Central Bank of Ireland (beauchamps.ie)

Practical Law: New Individual Accountability Framework in Ireland (dilloneustace.com)

IAF – what practical steps should financial service providers take now? (charteredaccountants.ie)

The Individual Accountability Framework, Financial Regulation and the Central Bank – consultation and next steps (centralbank.ie)

Reactions

Financial Services Ireland welcomes signing into law of new Individual Accountability Framework (ibec.ie)

Financial Services Ireland welcomes signing into law of new Individual Accountability Framework (ibec.ie)

Impact of an individual accountability regime on organisational culture (charteredaccountants.ie)

Individual Accountability (mhc.ie)

Individual Accountability – Holding Companies in the Spotlight (mhc.ie)

How new rules will soon hold senior financial services execs to account (rte.ie)

'Irish Times Coverage' Central Bank's Donnery defends plans to hold individual executives accountable (www.compliance.ie)

The Individual Accountability Framework (Mazars and the Compliance Institute)

Personal-liability risk worries finance chiefs (lawsociety.ie)

Analysis of UK Implementation of SMCR

Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc

Evaluation of the Senior Managers and Certification Regime (bankofengland.co.uk)

Other Jurisdictions

BEAR information paper (apra.gov.au)

Financial Accountability Regime Bill 2022 – Parliament of Australia (aph.gov.au)

Measures for augmenting senior management accountability in licensed corporations | Securities & Futures Commission of Hong Kong (sfc.hk)

Faqs on guidelines on individual accountability and conduct (mas.gov.sg)

Guidelines on individual accountability and conduct (mas.gov.sg)

MAS to strengthen individual accountability of senior managers in financial institutions (mas.gov.sg)

Decision Notices & Regulatory Actions (dfsa.ae)

Our Expert

Azariah Nukajam
Associate Director
fscom
azariah.nukajam@fscom.co

fscom

Expertise that adds value.

Have a compliance question?

For advice on any of the topics covered in this report, contact fscom for a free consultation.

+44(0) 28 9042 5451

+353 (1) 640 1986

info@fscom.co

@fscom1

fscom.co

@fscom-limited