



**ADVISORY**  
Industry Information

## Ireland To Introduce Individual Accountability Regime

September 2018

Recent speeches by the Central Bank of Ireland's (the "Central Bank") Director of Enforcement (August 2018) and the Director of Securities and Markets Supervision (September 2018) highlight proposals for the adoption of policy "reforms assigning responsibility to senior personnel" in regulated financial service providers ("RFSPs") which will be modelled on the UK's Senior Managers and Certification Regime (the "SMCR").

The proposals target four areas of reform; (i) the introduction of high level standards of behaviour in the financial services industry, (ii) the establishment of a senior executive accountability regime, (iii) enhancements to the current Fitness & Probity regime (the "F&P Regime") and (iv) the unification of the Central Bank's enforcement process. The first, third and fourth proposals are to be applied to at all RFSPs, including investment funds and fund management companies regulated by the Central Bank. The second proposal for a senior executive accountability regime is intended, initially, to be limited in scope to banks, insurers and certain types of investment firms.

Although the Central Bank has acknowledged that the introduction and operationalisation of such reforms would be a "multi-year project" these appear, nonetheless, to be a key regulatory focus for the Central Bank. As such, early familiarisation with the proposals would be advisable to allow for a considered implementation of the reforms in due course.

### Policy Reform – what is proposed by the Central Bank?

In its response to the Irish Minister for Finance's request for a report on the behaviour and culture of Irish retail banks (July 2018), the Central Bank took the opportunity to outline its recommendations for an individual accountability framework comprising:

- i. standards of behaviour for RFSPs and the individuals working within them ("Conduct Standards") which set out the behaviour the Central Bank expects of RFSPs and their employees;
- ii. a Senior Executive Accountability Regime ("SEAR") "which ensures clearer accountability by placing obligations on firms and senior individuals within them to set out clearly where responsibility and decision-making lies for their business";
- iii. enhancements to the current F&P Regime to further solidify the obligation on firms "to proactively assess individuals in controlled functions on an ongoing basis"; and
- iv. "a unified enforcement process, which would apply to all contraventions by firms or individuals of financial services legislation".

#### (i) Conduct Standards

The current regulatory framework for RFSPs provides for certain conduct standards. For example, under the F&P Regime the Central Bank has a "standard setting role" which allows it to impose statutory standards of fitness and probity for individuals in the financial services industry to follow. Under this regime, persons in senior positions are required to be competent and capable, act honestly, ethically and with integrity and be financially sound.

Under the reforms proposed, the Central Bank's standard setting role would be enhanced with the introduction of three sets of "non-sector specific, core common standards" to which RFSPs and individuals would be obliged to hold themselves; common conduct standards for all staff in RFSPs; additional conduct standards for senior management; and standards for businesses.



### Common Conduct Standards for all RFSPs

*"In the case of individuals working in RFSPs, it is proposed that they would be required to:*

- » *Act honestly, ethically and with integrity;*
- » *Act with due skill, care and diligence;*
- » *Be open and cooperative with the Central Bank and other regulators and deal with them in good faith;*
- » *Act in the best interests of customers and treat them fairly and professionally; and*
- » *Observe proper standards of market conduct."*

### Conduct Standards for Senior Management

*"Recognising the specific responsibilities imposed on those in more senior roles, it is proposed that the following additional Conduct Standards be imposed on those in PCF roles [roles which require advance Central Bank approval (Pre-Approval Control Function or PCF roles)] or captured by the SEAR:*

- » *You must take all reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively;*
- » *You must take all reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant regulatory requirements;*
- » *You must take all reasonable steps to ensure that any delegation of tasks for which you are responsible is to an appropriate person and that you oversee the discharge of the delegated task effectively; and*
- » *You must disclose promptly, proactively and appropriately any information of which the Central Bank would reasonably expect notice."*

### Standards for Businesses

*"The proposed Standards for Businesses are consistent principles setting out in clear and simple terms the common standards that all firms, regardless of sector, must meet – they are to firms what the Conduct Standards are to individuals:*

- » *Professionalism, honesty, ethics and integrity: A firm must conduct its business professionally, honestly, ethically and with integrity.*
- » *Skill, care and diligence: A firm must conduct its business with due skill, care and diligence.*
- » *Market conduct: A firm must observe proper standards of market conduct, comply with relevant market codes and exchange rules, and not engage in or permit market manipulation.*
- » *Communications with customers: A firm must pay due regard to the information needs of its customers; make full disclosure to its customers of all relevant material information in a way which is clear, fair and not misleading; and seek from its customers information relevant to the product or service requested.*
- » *Customers' interests: A firm must act in the best interests of its customers and treat them fairly and professionally;*
- » *Customers: relationships of trust: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment;*
- » *Management and control: A firm must take reasonable care to organise and control its affairs, systems (including risk management systems) and resources responsibly, effectively and in a manner appropriate to the business of the firm;*
- » *Financial prudence: A firm must maintain adequate financial resources and manage its affairs in a sound and prudent manner;*
- » *Clients' assets: A firm must arrange adequate protection for clients' assets when it is responsible for them;"*

### (ii) Senior Executive Accountability Regime or 'SEAR' (applicable only to banks, insurers and investment firms which underwrite on a firm commitment basis and/or deal on own account and/or are authorised to hold clients monies/assets, and third country branches of any of these three)

The Central Bank's proposals also recommend *"reforms assigning responsibility to senior personnel"* be adopted and that such reforms be modelled on the UK's SMRC, which the UK Financial Conduct Authority ("FCA") is currently rolling out to all firms following its introduction in March 2016 for banking firms.

The SEAR would allow the Central Bank to require every senior manager, which, broadly speaking, includes board members, executives reporting to the board and heads of critical business areas, to prepare a statement of responsibilities stating clearly the matters for which they are *"responsible and accountable"*. Under the SEAR, in-scope firms would be obliged to put in place responsibility maps in respect of their



senior managers, management and governance arrangements. The Central Bank considers that these requirements “would assist in assigning responsibility to individuals in a regulatory context and decrease the ability of individuals to claim that the responsibility for wrongdoing lay outside their sphere of responsibility”.

(iii) Enhancements to the Fitness and Probity Regime

Improvements to the F&P Regime are also proposed in relation to RFSP’s obligations vis-à-vis their controlled function (“CF”) roles. Such improvements provide for the introduction of a “certification regime, which would oblige firms to certify on an annual basis that the individuals in question are fit and proper persons to perform their functions”. Currently, under the F&P regime, RFSPs are recommended to carry out an annual audit of CF roles and obtain annual confirmations from those performing CF roles “of their awareness of, and compliance with, the Central Bank’s F&P Standards”. In relation to PCFs, RFSPs are currently required to submit an annual PCF confirmation return to the Central Bank confirming that each PCF is compliant with the F&P standards and that they continue to abide by those standards, as published by the Central Bank.

(iv) A Unified Enforcement Process

The Central Bank’s reform proposals also include the consolidation, into one single legislative act, of the “full suite of relevant inspection and investigations powers” of regulatory agencies to assist in the elimination of issues caused by the currently fragmented nature of the framework. Furthermore, it is recommended that provision be made for the Central Bank to “pursue individuals directly for their misconduct rather than only where they are proven to have participated in a firm’s wrongdoing” and that, “as with other requirements, a breach of the Conduct Standards would be subject to direct enforcement action”.

**Timing – when will the reforms be introduced?**

Each of the proposed reforms, set out at (i)-(iv) above, require legislative change to empower the Central Bank to provide for their introduction. In line with the FCA’s approach, the Central Bank would likely, following the publication of the necessary legislation, consult industry on the proposed policy reforms prior to their introduction and the issuance of any guidance to assist firms’ compliance with the new/amended regimes. The introduction of these proposals is, therefore, unlikely to be imminent, however, in light of their potentially significant impact, firms would be well advised to stay abreast of any developments and begin considering any likely impact on their current structures.

**Key Contacts**

For further information please speak with the authors (below) or one of your usual Walkers contacts.



**Nicholas Blake-Knox**  
Partner, Investment Funds  
T: +353 1 470 6669  
E: nicholas.blake-knox@walkersglobal.com



**Jennifer Fox**  
Partner, Investment Funds  
T: +353 1 863 8531  
E: jennifer.fox@walkersglobal.com



**Sarah Maguire**  
Partner, Investment Funds  
T: +353 1 470 6691  
E: sarah.maguire@walkersglobal.com



**Eoin O’Connor**  
Partner, Regulatory  
T: +353 1 470 6664  
E: eoin.oconnor@walkersglobal.com



**Shane Martin**  
Regulatory Compliance Director  
T: +353 1 470 6673  
E: shane.martin@walkersglobal.com



**Eimear Keane**  
Of Counsel, Investment Funds  
T: +353 1 470 6622  
E: eimear.keane@walkersglobal.com

**Disclaimer**

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.