

Matheson

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The Matheson LLP Fitness & Probity Handbook



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Fitness and Probity Handbook

“The Central Bank’s vision for the fitness and probity regime is that regulated firms and individuals who work in these firms are committed to high standards of competence, integrity and honesty, and are held to account when they fall below these standards. This is an ideal that should resonate with you all, and indeed with the wider public”.

Seana Cunningham (Director of Enforcement and Anti-Money Laundering), 17 May 2019



1 Introduction to the Handbook

Since its introduction, the Central Bank of Ireland’s (the “**Central Bank**”) fitness and probity regime (the “**Regime**”) has added significant layers of compliance obligations to human resource and compliance teams within Regulated Financial Service Providers (“**Firms**”).

When the Regime was first introduced, Matheson published a hardcopy Fitness and Probity Handbook to assist clients in navigating the new requirements. Over a decade later the Regime remains an area of high priority for the Central Bank. In light of this, we have updated the original handbook to account for the intervening years and have moved it to an online platform for ease of reference and updating (the “**Handbook**”).

This online Handbook is intended as a resource for those required to deal with the Regime by bringing together, in a simple, easy-to-use volume, links to all the relevant legal instruments and Central Bank documents (which together make up the Regime), along with Matheson’s own commentary and guidance, where appropriate.

We will update the Handbook as and when the law develops in this area, particularly in relation to the forthcoming introduction of the Senior Executive Accountability Regime (“**SEAR**”). We hope it becomes your go-to resource on all matters relating to the Regime.



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2 Resource Materials

We have included links to some of the key legislative and regulatory materials relevant to the Regime below. These materials are referred to throughout this document:

2.1 Part 3 of the 2010 Act:

In respect of Part 3 of the Central Bank Reform Act 2010 (the “**2010 Act**”), we have included two links.

- **Part 3 of the 2010 Act**. This link brings you to Part 3 of the 2010 Act on the Oireachtas website, as it was enacted in 2010.
- **Part 3 of the 2010 Act (as amended)**. This link brings you to the revised version of Part 3 of the Act, published by the Law Reform Commission (the “**LRC**”). This consolidated version reflects all the amendments made to Part 3 of the 2010 Act since its enactment. At the time of writing, the latest version is dated as at 23 April 2021.

To understand more about the LRC’s revised acts, please click [here](#).

Where we have linked other sections of the 2010 Act, we have used the LRC’s version (where possible) to show the most up to date picture.

2.2 Regulations:

- **Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011**
- **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011**
- **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2015**
- **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2020**
- **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2022**

2.3 Central Bank materials:

- **Lists of Controlled Functions and Pre-approval Controlled Functions prepared by the Central Bank - CFs and PCFs**
- **Fitness and Probity Standards** (Code issued under Section 50 of the 2010 Act)
- **Central Bank’s Guidance on Fitness and Probity Standards**
- **Central Bank’s Online Individual Questionnaire**
- **Central Bank “User Guide” on completing the Online Individual Questionnaire**
- **Central Bank Report on the Behaviour and Culture of the Irish Retail Banks July 2018**
- **Dear CEO Letter on Fitness and Probity dated 8 April 2019**
- **Central Bank Additions to the List of PCFs dated 9 October 2020**
- **Dear CEO Letter on Fitness and Probity dated 17 November 2020**
- **Fitness and Probity Interview Guide dated June 2021**



3 Background to fitness and probity and where it stands today

The decisions and actions of high-ranking individuals within Firms can have a far-reaching effect, not only on the business of that institution but also on the stability of the financial sector as a whole. It was for this reason that following his appointment as Deputy Governor at the Central Bank¹ in January 2010, Matthew Elderfield identified the absence of a statutory basis for the approval of key persons in the financial services industry as a significant weakness in Ireland's regulatory infrastructure.

The former Minister for Finance, the late Brian Lenihan, addressed this weakness in the introduction of the Central Bank Reform Bill 2010 (the "**2010 Bill**"), noting that the new powers contained in the Bill would enable the Central Bank to ensure the fitness and probity of key office-holders within Firms.

The 2010 Bill became law on 17 July 2010, with the 2010 Act bringing the Regime into effect. The key provisions include:

- **Part 3 of the 2010 Act** which creates the system for the regulation of persons performing "*controlled functions*" ("**CF**") or "*pre-approval controlled functions*" ("**PCF**") within Firms (with the exception of credit unions);
- Sections **20** and **22** of the 2010 Act give the Central Bank the power to prescribe certain functions as CFs / PCFs, and set out certain conditions that must be satisfied in order for a function to be prescribed as such;
- Section **50** of the 2010 Act empowers the Central Bank to issue a code establishing the Regime; and
- several sections which give the Central Bank power, to ensure the efficacy of the new regime.

After the 2010 Act was introduced, the Central Bank issued the following documents to supplement the legislative framework already in place:

- a set of statutory instruments (S.I. No. 437 of 2011), (S.I. No. 615 of 2011), (S.I. No. 394 of 2014), (S.I. No. 545 of 2015), (S.I. No 410 of 2020), and (S.I. No. 169 of 2022) which identify "CFs" and "PCFs" (the "**Regulations**");
- a **Code on Fitness and Probity Standards** (the "**Code**"). The Code specifies the Standards of Fitness and Probity (the "**Standards**"), with which all persons performing CFs and PCFs must, at a minimum, comply with (see **below**). The Code, like the 2010 Act and the Regulations, has the force of law; and
- a **set of non-statutory guidance** on the application of the Standards (the "**Guidance**").

The introduction of the Regime over a decade ago has required Firms to change how they appoint their key personnel, as well as making changes to systems and procedures to ensure and monitor compliance. However, the current view of the Central Bank is that not enough has been done. This is evidenced in recent communications from the Central Bank such as the **Dear CEO Letter from April 2019** and **November 2020** (detailed **below**), and more recent enforcement actions taken against firms and individuals (detailed **below**). With the proposed introduction of an enhanced Regime as part of the Central Bank's Individual Accountability Framework ("**IAF**"), Firms need to be more mindful than ever of compliance with fitness and probity requirements.

¹ Pursuant to section 23 (2) of the Central Bank Act 1942, the Commission of the Central Bank decided to change the title of "Head of Financial Regulation" [and "Head of Central Banking"] to "Deputy Governor", as announced in Iris Oifigiúil 13 May 2011.

The layout of this Handbook follows the chronological development of the Regime, set out above, addressing each area in turn. However, we stress that when dealing with any aspect of the Regime, a Firm must have regard to the 2010 Act, the Regulations, the Standards and the Guidance and should not read any section in isolation of the others to ensure the full view is achieved².

3.1 PCFs and CFs – Part 3 of the 2010 Act and the Regulations

As outlined above, sections 20 and 22 of Part 3 of the 2010 Act allows the Central Bank to prescribe both “CFs” and “PCFs” through the introduction of regulations. Regulations to this effect were first introduced on 1 September 2011 by way of S.I. No. 437 of 2011, which were subsequently amended by S.I. No. 615 of 2011, S.I. No. 545 of 2015, S.I. No 410 of 2020, and S.I. No. 169 of 2022.

3.2 Identification of CFs and PCFs

Schedule 1 and Schedule 2 of the Regulations identify certain staff and office holders within Firms as performing CFs and PCFs, respectively. In total, 54 senior positions have been identified as PCFs, for which Central Bank approval is required prior to a candidate’s appointment. 11 categories of staff have been identified as CFs, and though CF appointments are not subject to pre-approval by the Central Bank, individuals in CFs who fail to meet the required standards of fitness and probity can be temporarily or permanently removed from such positions or can be prohibited from taking up such positions in future.³

Persons performing PCFs are approved by the Central Bank on an institution-specific basis. Therefore, a previous approval in respect of one Firm will not of itself enable a person to perform a PCF for another.⁴

The Regulations provide that it is the nature of a person’s role within a Firm and whether others within the organisation are accustomed to act in accordance with that person’s instruction, which should be the key considerations in determining whether a person performs a PCF. Whether or not any title, or any particular title, is used in relation to the person concerned will not be relevant if the person does in fact perform a PCF role. It should also be noted that any reference to “directors” in the Regulations includes shadow directors and alternate or substitute directors.⁵

The Regulations do not limit CFs to functions performed within Ireland. Accordingly, where someone performs a CF or PCF outside Ireland, but on behalf of a Firm that is authorised, licensed or registered in the State, they will be subject to the same rules (including prior approval of the Central Bank in the case of PCFs). However, the Regulations do provide that where the performance of a function is outsourced by written agreement, to an entity which is regulated either by the Central Bank or by a comparable regulatory authority in another jurisdiction, that function will not be taken to be a CF or a PCF.⁶

In the event of a temporary officer being appointed to a particular PCF, that person will not be taken as responsible for that PCF, provided he/she has been appointed on a temporary basis with the prior written agreement of the Central Bank.⁷

2 For example, when deciding to appoint a PCF, a Firm should review the relevant sections in the Regulations in conjunction with the Standards and the Guidance to ensure the correct steps are followed and compliance achieved with the Central Bank’s expectations.

3 SI No 437 of 2011 (as amended), Schedules 1 and 2

4 Regulation 12, SI No 437 of 2011 (as amended)

5 Regulations 7,8 and 9, SI No 437 of 2011 (as amended)

6 Regulation 11A, SI No 437 of 2011 (as amended) It should be noted, however, that a person benefitting from this exclusion may still be subject to an investigation, suspension or prohibition notice under Part 3 of the 2010 Act.

7 Regulations 11, SI No 437 of 2011 (as amended)



4 PCF Roles

4.1 What roles are PCF roles?

In general terms, in order to be designated as a PCF, a function must enable a person to exercise significant influence in terms of how the affairs of a Firm are conducted.⁸

The legislation also allows the Central Bank to designate functions as being PCFs by reference to factors such as whether the person performing the function is an officer of the company or the Chief Executive, or whether they report directly to an officer of the company or the Chief Executive.⁹ In such cases, the Central Bank must also be satisfied that the designation of the function as a PCF is: (i) warranted on the basis of the size or complexity of the Firm or its business; and (ii) necessary or prudent in order to verify the Firm's compliance with its obligations.

Where a Firm is a body corporate of a prescribed class, it will be taken that an officer of the company or the Chief Executive,¹⁰ and persons who hold offices or positions in which they report directly to an officer of the company or the Chief Executive,¹¹ exercise significant influence in terms of how its affairs are conducted. Similarly, all members of a partnership which is a Firm of a prescribed class will be taken to exercise significant influence on the conduct of its affairs,¹² and where a natural person is a Firm of a prescribed class, that person will be taken to exercise the level of influence necessary to designate their function as a PCF.¹³

Aside from designation by way of regulations, the Central Bank may also declare a function to be a PCF by way of written notice served on a Firm.¹⁴ In order to do so, the function must not already have been designated a PCF, the person performing the function must be concerned in the management of the Firm and there must be no other person who performs a PCF in the Firm.

4.2 Appointment of a PCF

Crucially, a Firm cannot appoint an individual to perform a PCF without the Central Bank having first approved that person for the role.¹⁵

This pre-approval requirement adds an extra and potentially onerous stage to the recruitment process, as potential candidates will need to be identified to the Central Bank so that their adherence to standards of fitness and probity can be assessed.

4.3 The Assessment Process for PCFs

As part of the process by which a candidate's fitness and probity is assessed, the Central Bank is entitled to request certain documents or information, or seek answers to specific questions. On the strength of this section of the Act, the Central Bank has put in place specific steps in relation to appointment of PCFs, see below¹⁶

8 Section 22 (2)

9 Section 22 (3)

10 Section 22 (4) (a) (i) (ii) and (iii)

11 Section 22 (4) (iv) (I)

12 Section 22 (4) (b)

13 Section 22 (4) (c)

14 Section 22 (8)

15 Section 23 (1)

16 Section 23 (2)

“**Approval Process for PCFs**”. Any such request will be made by way of notice in writing, which may be addressed to either the candidate directly or to an officer or employee of the Firm proposing to appoint the candidate. In addition, the Central Bank may request that either the candidate concerned, or an officer or employee of the Firm, present themselves for interview in connection with the matter.

4.4 Refusal and Withdrawal of PCFs

The Central Bank can refuse to approve a proposed appointment where it is of the view that the candidate does not meet the requisite standard of fitness and probity.¹⁷ Equally, the Central Bank may refuse to approve an appointment where it is unable to decide, on the basis of available information, whether a person is suitably fit and proper,¹⁸ or in circumstances where a request for information, documents or an interview has not been complied with.¹⁹

If the Central Bank decides to refuse approval, this will prohibit the candidate from being appointed to that PCF role. However, a refusal can be appealed using the appeal process set out in **Part VIIA of the Central Bank Act 1942** (the “**1942 Act**”).²⁰ To date, the Central Bank has “refused a number of applications”, according to **Derville Rowland, Deputy Governor of the Central Bank**. It is of note that a previous refusal must be disclosed in the Information Questionnaire (“**IQ**”) when an individual is seeking approval in respect of another PCF role.

In its response to the **Law Reform Commission Issues Paper on “Regulatory Enforcement and Corporate Offences”**, the Central Bank suggested that it should be given the power to publish details of refusals to approve the appointment of an individual to a pre-approval controlled function, in order to further strengthen its gatekeeper role and increase transparency. This was raised again in the Central Bank’s IAF proposal.

The Central Bank highlighted the marked increase in the number of PCF applications referred to fitness and probity specialists in the Enforcement Directorate within the Central Bank due to concerns raised at the initial interview stage in its 2019 Dear CEO letter.

Up to Q3 of 2020 the Central Bank referred 33 PCF of the 2,848 applications to the Enforcement Division. Specific interviews and 11 applications were withdrawn following this referral. This can be compared to just 5 withdrawals in 2016. The Central Bank has remarked that the high level of withdrawals are relative to the number of refusals issued once a Firm or an applicant becomes aware that the Central Bank has concerns with the PCF application.

17 Section 23 (5) (a)

18 Section 23 (5) (b)

19 Section 23 (6) (a)

20 Section 23 (7)



5 CF Roles

5.1 Controlled function roles.

A function can only be designated as a CF if it relates to the provision of a financial service. In addition, one of the following criteria must also be met²¹:

1. the function must be likely to enable a person to exercise significant influence on how the affairs of a Firm are conducted;
2. the function must be related to either ensuring, controlling or monitoring the compliance of a Firm with its relevant obligations; or
3. the function must be likely to involve a person in the provision of a financial service by a Firm. This involvement can be in any of the following ways:
 - giving advice or assistance to customers of a Firm;
 - dealing in or having control over property of a customer of a Firm to whom a financial service is provided; or
 - dealing in or with property on behalf of the Firm or providing instructions or directions in this regard.

Though pre-approval in respect of appointment to CFs is not required, a Firm must not permit a person to perform a CF unless it is satisfied, on reasonable grounds, that the person meets the **Standards** and further, that the person has agreed to abide by the Standards.²²

It should be noted that the Standards still apply in circumstances where the CF is performed from a location outside the State (save for where Regulations 11A, S.I. No.437 of 2011 (as amended) applies).²³ Equally, where the function is performed in Ireland but relates to the business of the Firm in another country, the Standards apply in respect of the person performing that function.²⁴

5.2 Where a CF is suspected of not being fit and proper.

As noted previously, individuals performing CF roles are not required to be pre-approved by the Central Bank prior to their appointment. However, the Central Bank has a range of powers available to investigate, suspend, remove or prohibit individuals from performing a CF role in the financial services industry where it suspects that the individual's fitness and probity is not up to the required standards.

Additionally, as explained above, PCFs must be pre-approved by the Central Bank prior to their appointment. Throughout this approval process, the Central Bank has the power to probe and investigate an individual's fitness and probity. If an individual fails to meet the required standards at this point the application will be refused or an individual may withdraw their application prior to a refusal decision being given. Once a PCF has been appointed the Central Bank has the same powers to investigate and sanction as it has with CFs.

Significant Institutions are supervised directly by the ECB and are no longer supervised for prudential purposes though the Central Bank Framework for supervision called PRISM (Probability Risk and Impact System) but rather through the ECBs equivalent Framework.

21 Section 20 (2)

22 Section 21

23 Section 20 (4) (a)

24 Section 20 (4) (c)

In the case of Less-Significant Institutions, the Central Bank supervises them directly, while the ECB supervises them indirectly. In these cases, the ECB, which has ultimate responsibility for the functioning of the SSM, may issue guidelines to ensure consistent supervision or even take over the direct supervision of an institution if it considers it necessary.

5.2.1 CF Investigations

The Central Bank can investigate the fitness and probity of a person²⁵ in three circumstances:

- while a person is performing the role of a CF²⁶;
- the Central Bank has knowledge that a person is to be appointed to a CF role by a Firm²⁷; or
- the Central Bank has reason to believe that a person is to be appointed to a CF role by a Firm²⁸,

if the Deputy Governor of the Central Bank considers there is reason to suspect whether the person is suitably fit and proper, or in any other circumstances warranting such an investigation²⁹. Investigations are therefore initiated and conducted by the Deputy Governor.

The legislation provides that the reasons an individual's fitness and probity can be questioned, include:

- (i) a suspicion that the person does not have the necessary experience, qualifications or skills³⁰, or
- (ii) that they fail to meet the particular standards prescribed by the Code³¹. Previous participation in serious misconduct relating to the business of a Firm³², or failing to make a disclosure to the Central Bank or making a disclosure knowing it to be false or misleading in a material respect³³ or the provision of false or misleading information to the Central Bank (whether directly or through another person)³⁴, will also suffice.

In addition, causing or seeking to cause information requested by the Deputy Governor by way of evidentiary notice not to be provided³⁵, or having been convicted of certain offences³⁶, will constitute reasons to question an individual's fitness and probity.

5.2.1.1 Evidentiary Notices

As part of an investigation into an individual's fitness and probity, the Deputy Governor may serve an evidentiary notice on the individual or Firm concerned, or on any other person whom it is believed may be able to give evidence or produce documentation relating to the individual's fitness and probity³⁷. Failure to comply with the terms of an evidentiary notice without reasonable excuse is an offence, with the maximum penalty on summary conviction being a fine of €5,000 and / or 12 months' imprisonment³⁸. Conviction on indictment can attract a fine and / or up to five years' imprisonment. Where a person has been required to produce a document or to provide information, the legislation states that they will have a "reasonable excuse" for not doing so in circumstances where they do not have the document or information sought and they cannot by any reasonable effort obtain it³⁹. Equally, they will have a "reasonable excuse" if they could not be compelled to produce the document or information sought in a court of law⁴⁰. It is stated however, that these examples do not serve to limit what will be taken to be a reasonable excuse and accordingly, there may be other circumstances which would justify non-compliance with a request to provide documents or information in accordance with an evidentiary notice.

Where a person appears before the Deputy Governor in compliance with an evidentiary notice, it will be an offence for that person to refuse or fail to give evidence⁴¹, or to refuse or fail to answer a question put to them⁴². However, as above, having a "reasonable excuse" for not doing so will be a defence. An example given in the legislation is that a person may legitimately refuse or fail to answer a question posed where the answer to that question might tend to incriminate them⁴³. Where it is sought to rely on the "reasonable excuse" defence in respect of a failure to either give evidence or to answer a question, it will be necessary for the person concerned to provide a written statement to the Deputy Governor which sets out the details of that excuse⁴⁴. In the event of proceedings related to the person's refusal or failure to give evidence or answer a question posed, this statement will not be admissible in evidence against them⁴⁵.

25 Section 25 (2)
 26 This includes a PCF
 27 This excludes PCFs.
 28 This excludes PCFs.
 29 Section 25
 30 Section 25 (3) (a)
 31 Section 25 (3) (b)
 32 Section 25 (3) (c)
 33 Section 43 (2)(ca),
 Central Bank Reform Act 2010 (No.23).
 34 Section 25 (3) (e)

35 Section 25 (3) (f)
 36 Section 25 (3) (h)
 37 Section 32
 38 Section 49
 39 Section 36 (3) (a)
 40 Section 36 (3) (b)
 41 Section 37 (1) (a)
 42 Section 37 (1) (b)
 43 Section 37 (3)
 44 Section 37 (5)
 45 Section 37 (7)

5.2.1.2 Conduct of Investigations

In terms of how investigations are conducted, **Part 3 of the 2010 Act** gives the Deputy Governor a certain level of procedural autonomy, subject to any regulations which the Central Bank may prescribe⁴⁶.

However, the legislation does specifically provide, that the Deputy Governor may hear oral evidence where this is deemed necessary and that persons giving oral evidence may be cross-examined⁴⁷. As noted above, the Deputy Governor may issue evidentiary notices in relation to an investigation and such notices can require a person's attendance before the Deputy Governor for the purposes of giving evidence or producing documents⁴⁸. It should be noted however that any evidence provided to the Deputy Governor in relation to an investigation, and any report prepared on the basis of this evidence, will be absolutely privileged⁴⁹.

The normal procedure is that investigations will be conducted in private⁵⁰. Despite this, a person appearing in accordance with an evidentiary notice can request that the matter, or any part of it, be dealt with in public⁵¹. In this event, the Deputy Governor will adhere to this request unless the matter raises issues which, in his opinion, should be dealt with in private⁵². A decision not to deal with the matter in public may also be taken if the Deputy Governor considers it necessary or desirable to deal with the matter in private, so as to avoid the disclosure of confidential information relating to either the business of any person or body, or to avoid the disclosure of confidential information concerning the exercise by the Central Bank of its powers or the performance of its functions⁵³. In the absence of a request that evidence be given or a document be produced in public, the Deputy Governor may still depart from normal procedure and direct that the matter be dealt with publicly, in circumstances where he is satisfied that it is desirable to do so in the public interest⁵⁴.

Where evidence is to be given or a document is to be produced privately, the Deputy Governor may give directions as to the persons who are entitled to be present⁵⁵ and may also give directions either restricting or preventing the publication of such evidence or documents⁵⁶. A failure to comply with any such directions will constitute a criminal offence⁵⁷ and can attract, on summary conviction, a fine of up to €5,000 and / or 12 months' imprisonment, or where conviction is on indictment, a fine and / or up to five years' imprisonment⁵⁸.

Further, if during the course of an investigation, a person refuses or fails to provide information to the Deputy Governor, or if they refuse or fail to produce a document or present themselves as required by an evidentiary notice, it is open to the Deputy Governor to certify this matter to the High Court⁵⁹. Following certification, the High Court may, after hearing any witnesses which may be produced against or on behalf of the person concerned and any statement offered in defence, make an order or give directions as it sees fit⁶⁰. This could entail an order that the person attend or re-attend before the Deputy Governor, or that the person produce the document or information sought or answer the question posed. Conversely, the High Court could make an order that the person not be required to do any of the above.

5.2.1.3. Preparation of a report following investigation

Following conclusion of an investigation into a person's fitness and probity, the Deputy Governor must prepare a report which will be considered by the Central Bank and the Governor of the Central Bank⁶¹. A copy of this report will also be served on both the individual and the Firm concerned⁶² and they must be notified of their right to make a written submission to the Deputy Governor in relation to the contents of the report⁶³. Notice of the right to make a submission must also specify the period within which a submission may be made. This period will be prescribed by the Deputy Governor but the minimum period allowable is seven days.

5.2.1.4 Suspension Notices

Either during or following an investigation, the Central Bank may issue a suspension notice preventing the person under investigation from performing their CF⁶⁴. In reaching a decision on whether to issue a notice of this kind, the 2010 Act states that the Central Bank will take into account the need to maintain the stability of the financial system and the need to protect those who avail of financial services⁶⁵.

46 Section 34 (3)
47 Section 34 (1) and (2)
48 Section 32 (1)
49 Section 38
50 Section 35 (1)
51 Section 35 (2)
52 Section 35 (2) (a)
53 Section 35 (2) (b)
54 Section 35 (3)
55 Section 35 (4) (a)

56 Section 35 (4) (b)
57 Section 35 (6)
58 Section 49
59 Section 40 (1)
60 Section 40 (2)
61 Section 41 (1)
62 Section 41 (2)
63 Section 41 (5)
64 Section 26 (1)
65 Section 26 (2)

If the Central Bank is considering an investigation in respect of a person yet to be appointed to a CF (see above), it will ask the Firm concerned to confirm whether or not it is actually considering to appoint the person, before it moves to issue a suspension notice⁶⁶. Where confirmation is provided that the Firm is not considering making the appointment, the Central Bank will only issue a suspension notice where it believes that the appointment will be made regardless, or where it believes that it has already been made⁶⁷.

The terms of a suspension notice (which must be in writing) will set out the grounds upon which the investigation is deemed necessary and will specify whether the notice has the effect of suspending the person from the performance of a particular CF, an aspect of a particular CF or from the performance of all CFs⁶⁸. The notice must be served not only on the individual concerned but also on each Firm for which, to the Central Bank's knowledge, the individual performs a CF. In addition, the notice must be served on any Firm which the Central Bank believes is considering appointing the individual to a function within the terms of the notice⁶⁹.

5.2.1.5 *Effect of a Suspension Notice*

Where a Firm receives a suspension notice, it must immediately provide a copy to the suspended person (unless it is impracticable to do so) and then certify that it has done so to the Central Bank⁷⁰. The Firm must also immediately remove the individual concerned from performance of the function which is the subject of the notice⁷¹. If the individual has not yet been appointed, the Firm must not proceed to appoint them⁷². It should be noted however, that although a suspension notice requires an individual not to perform a particular function, it has no effect on any contractual arrangement between the individual and the Firm in respect of remuneration or benefits. Therefore, an individual's entitlement to remuneration or benefits will continue to be governed by the terms of the contractual arrangement in place⁷³.

A suspension notice also allows the suspended person, or the Firm concerned, to demonstrate, within five days of its service, why the notice should not be confirmed⁷⁴. Though submissions are not required in order for the Deputy Governor to make a decision, submissions made during the time allowed must be considered⁷⁵. A submission made outside of the permitted five-day period may be considered, where the Deputy Governor is satisfied there was good reason why it could not have been made during the period allowed, or where its consideration is deemed necessary in the interests of justice⁷⁶.

A suspension notice is effective from the date of service but unless subsequently confirmed by the Central Bank, it will expire after a period of ten days⁷⁷. It is, however, open to the Deputy Governor to revoke the notice at any stage before expiration. A person on whom a suspension notice has been served can request that the Deputy Governor make a decision on whether or not to confirm the notice before the expiration of ten days from service. If such a request is made and if that person provides material which the Deputy Governor is satisfied will allow a fair and proper decision to be made, the Deputy Governor is obliged to make all reasonable efforts to ensure the decision is made as soon as reasonably practicable⁷⁸.

5.2.1.6 *Confirmation of a Suspension Notice*

The Deputy Governor can confirm a suspension notice if, having considered any written submissions provided within the five day period permitted, it is considered that there is still reason to believe the individual concerned is not suitably fit and proper, or if it is considered that an investigation into the individual's fitness and probity is still warranted⁷⁹. A suspension notice can also be confirmed where the Deputy Governor considers it necessary, in the interests of proper regulation, to prevent the individual from performing the CF at issue while the matter is under investigation⁸⁰.

A confirmed suspension notice will remain in effect for a period of three months, which runs from the expiration of the ten-day period following service⁸¹. The Deputy Governor can however apply to the High Court for an order extending the period of its application, up to a maximum of an additional three months⁸².

5.2.1.7 *Revocation of a Suspension Notice*

The Deputy Governor can revoke a suspension notice at any time if it is considered that there is no longer any reason to suspect the fitness and probity of the individual concerned. Revocation may also take place if, during the course of the investigation, the Deputy Governor no longer considers it necessary in the interests of proper regulation that the individual concerned be prevented from performing the CF at issue⁸³.

66 Section 26 (3)

67 Section 26 (3)

68 Section 26 (4)

69 Section 26 (5)

70 Section 26 (7)

71 Section 27 (a)

72 Section 27 (b)

73 Section 27 (4)

74 Section 26 (9)

75 Section 29 (1)

76 Section 29 (3)

77 Section 28

78 Section 26 (10)

79 Section 29 (1) (a) and (b)

80 Section 29 (1) (c)

81 Section 29 (4)

82 Section 31

83 Section 29 (6)

5.2.1.8 *Failure to comply with a Suspension Notice*

Failure to comply with a suspension notice will allow the Deputy Governor to make an ex parte application to the High Court for an order directing the individual concerned or the Firm to comply with the terms of the notice⁸⁴.

5.2.2 *Prohibition Notices*

A person may be prohibited from carrying out a CF where the Central Bank or the Governor of the Central Bank has, on reasonable grounds, formed the opinion that they do not meet the appropriate standards of fitness and probity. A prohibition can be absolute in prohibiting the individual concerned from carrying out the CF in any circumstances, or it may simply attach conditions to their performance of the CF.

The notice in writing, which sets out the prohibition, will state whether the prohibition is to apply for a specified period or whether it will apply indefinitely. This notice will also state whether the prohibition will apply in respect of the performance of a particular CF, an aspect of a particular CF or CFs generally⁸⁵.

The grounds upon which the Central Bank, or the Governor of the Central Bank, may form the view that an individual does not meet the applicable standards of fitness and probity are broadly the same as the grounds upon which the Deputy Governor can suspect a person's fitness and probity for the purpose of initiating an investigation⁸⁶:

- the person does not have the experience, qualifications or skills necessary to properly and effectively perform the CF at issue, a part of that CF or CFs generally;
- the person does not meet specific standards prescribed by the Central Bank in respect of fitness and probity;
- the person has participated in serious misconduct in relation to the business of a Firm;
- the person has failed to make a disclosure to the bank or has made such a disclosure knowing it to be false or misleading in a material respect;
- the person has provided information to the Central Bank which they knew or ought to have known was false or misleading, whether the provision of this information was direct, indirect or through another person;
- the person has caused or sought to cause information requested by the Deputy Governor by way of an evidentiary notice not to be provided;
- the person has failed to comply with an evidentiary notice or a suspension notice; and
- the person has been convicted of an offence of money-laundering, terrorist financing or an offence involving fraud, dishonesty or breach of trust.

5.2.2.1 *Issuing a Prohibition Notice*

A prohibition notice can only be issued in certain circumstances and when certain requirements are met. Firstly, a prohibition notice can only be issued where each of the following steps have been taken:

- the Deputy Governor has conducted an investigation into the person's fitness and probity and prepared a report of the findings, which was provided to those entitled to receive it; and
- the Central Bank, or the Governor of the Central Bank, considered this report and any submissions made to the Deputy Governor during the period allowed⁸⁷.

Secondly, a prohibition notice can be issued without an investigation into a person's fitness and probity, provided there are undisputed facts which, in the opinion of the Central Bank or the Governor of the Central Bank, renders an investigation unnecessary⁸⁸. However, where a prohibition notice is being issued without an investigation into the individual's fitness and probity having been conducted, the individual concerned and the Firm must have been afforded a reasonable opportunity to make a submission in relation to the matter⁸⁹.

84 Section 30

85 Section 43 (1)

86 Section 43 (2)

87 Section 43 (3) (a) (i)

88 Section 43 (3) (a) (ii)

89 Section 43 (3) (a) (ii)

There are two further requirements which must be satisfied before a prohibition notice is issued, regardless of whether or not an investigation has taken place, they include:

- (i) that individual and the Firm concerned must have been afforded a hearing in relation to the proposed issue of the notice⁹⁰. The nature of this hearing must be sufficient to do justice in the circumstances.
- (ii) that the Central Bank, or the Governor of the Central Bank, must be satisfied that the circumstances necessitate the issue of a prohibition notice⁹¹.

5.2.2.2 *Effect of a Prohibition Notice*

A prohibition notice will take effect from the time it is first served on either the individual concerned or the Firm concerned⁹². If the Central Bank does not subsequently apply to have the notice confirmed, or in the absence of an agreement between the Central Bank and the individual or the Firm regarding the notice, it will cease to be effective two months from the day following first service⁹³. If however, during the period of validity of the notice, the Central Bank makes an application to the High Court for its confirmation, the effect of this application will be to give the notice full effect until such time as the application is determined by the Court or withdrawn⁹⁴.

5.2.2.3 *Agreement in relation to a Prohibition Notice*

Once a prohibition notice has issued, it is open to the individual concerned to enter into a written agreement with the Central Bank in respect of the terms of the notice⁹⁵. If the individual is, at the time of the notice, performing a CF on behalf of Firm, that Firm may also be party to such an agreement. The effect of the agreement is to confirm that the individual will comply with the terms of the notice for an agreed period and it removes the need for the Central Bank to make a High Court application seeking to have the notice confirmed⁹⁶. Rather, the terms of the notice will be effective in the manner agreed by the parties and the two month expiration period will not apply. The Central Bank may, during the agreed period, decide to terminate the agreement if it considers that there is no longer any need for the notice to continue in effect⁹⁷. In order to terminate the agreement, written notice must be provided to the individual concerned and to the Firm, where applicable. If the terms of the agreement are breached during the agreement's lifetime, the Central Bank may apply to the High Court for an order to enforce the prohibition notice⁹⁸.

5.2.2.4 *Confirmation of a Prohibition Notice*

Where no agreement has been entered into with the parties concerned, the Central Bank may make an application to the High Court to confirm the prohibition notice⁹⁹. If such an application is made with the consent of the individual concerned, the notice can be confirmed without the individual being present in court. If the individual has not consented to the application, a hearing will be necessary. Once confirmed, a prohibition notice has the full effect of a court order and can be enforced accordingly¹⁰⁰.

The legislation provides that the High Court is under a duty, in so far as is practicable, to hear and determine an application to confirm a prohibition notice, within three months from the date the application is first made¹⁰¹. It is open to the High Court to order that a hearing take place in private, in circumstances where this is deemed necessary for reasons of confidentiality or commercial sensitivity. An order of this kind can also be made so as to avoid the disclosure of confidential information relating to either the business of any person or body, or to avoid the disclosure of confidential information concerning the exercise by the Central Bank of its powers or the performance of its functions¹⁰².

During the course of the hearing, the High Court may decide to consider evidence which was not previously adduced in relation to the matter or to hear arguments which were not previously advanced to the Central Bank or the Governor of the Central Bank¹⁰³. In order to do so, the Court must be satisfied that there are cogent reasons justifying why the evidence was not previously presented or the arguments were not previously made. The Court must also be satisfied that it is just and equitable to consider the evidence or hear the arguments, as the case may be.

90 Section 43 (3) (b)

91 Section 43 (3) (c)

92 Section 43 (7) (a)

93 Section 43 (7)

94 Section 43 (7) (b)

95 Section 46 (1)

96 Section 46 (2)

97 Section 46 (3)

98 Section 46 (2) (c)

99 Section 45 (1)

100 Section 45 (9)

101 Section 45 (2)

102 Section 45 (3)

103 Section 45 (4)

The High Court can confirm a prohibition notice where it is satisfied that there are reasonable grounds for the opinion of the Central Bank, or the Governor of the Central Bank, that the individual concerned does not meet the appropriate standards of fitness and probity¹⁰⁴. An order may be made confirming the original prohibition notice or the Court may make an order varying the terms of the original prohibition notice such as, for example, by attaching conditions. Additional or ancillary orders may also be made as the Court sees fit. Any orders made by the Court will state whether they are to have indefinite effect, or whether they will remain in effect for a particular period of time only. An order may also be stated to be effective pending such time as a further order is made.

Where the High Court is not satisfied that there are reasonable grounds for the Central Bank or Governor of the Central Bank's opinion that the individual concerned does not meet the appropriate standards of fitness and probity, the Court may order that the prohibition notice be set aside and / or that the matter be remitted to the Central Bank or to the Governor of the Central Bank¹⁰⁵.

In the alternative, the Court may make any such order as it thinks fit. Where the Court makes an order remitting the matter to the Central Bank, the same procedure and criteria apply in respect of any reconsideration of the matter as apply to its consideration in the first instance.

5.3 SSM Requirements

Firms who are categorised as "Significant Institutions" and "Less Significant Institutions" by the European Central Bank ("**ECB**") are subject to the fitness and probity regime introduced by the Single Supervisory Mechanism ("**SSM**") Regulation and the SSM Framework Regulation.

With the introduction of the SSM, the ECB became the competent authority for the supervision of credit institutions in Ireland.

Significant Institutions are supervised directly by the ECB and are no longer supervised for prudential purposes though the Central Bank Framework for supervision called PRISM (Probability Risk and Impact System) but rather through the ECBs equivalent Framework.

In the case of less-significant institutions, the Central Bank of Ireland supervises them directly, while the ECB supervises them indirectly. In these cases, the ECB, which has ultimate responsibility for the functioning of the SSM, may issue guidelines to ensure consistent supervision or even take over the direct supervision of an institution if it considers it necessary.

104 Section 45 (5) (a)

105 Section 45 (5) (b)



6

The Standards

Part 3 of the 2010 Act provides that a person performing a CF must have a level of fitness and probity appropriate to the performance of that particular function. As noted above, the Code, issued under section 50 of the 2010 Act, sets out the Standards which all persons performing CF or PCF shall, at a minimum, comply with.

The Standards require a person to be:

- competent and capable;
- honest, ethical and to act with integrity; and
- financially sound.

6.1 Competent and capable¹⁰⁶

A person must have the qualifications, experience, competence and capacity appropriate to their function. This means that they should be able to demonstrate that they have relevant professional qualifications and capability and that they have obtained appropriate competence and skills through training or through experience gained during their employment. They should also be able to show competence and proficiency to undertake the function through their performance of previous or current similar functions.

Where a person performs (or has performed) similar functions in an institution that has received financial support from the State, an assessment of whether they meet the Standards must also involve consideration of their performance of those functions and the extent, if any, to which that performance may have contributed to the necessity for financial support from the State.

In addition, a person must have a sound knowledge of both their specific responsibilities and the business they are engaged in as a whole, together with a clear and comprehensive understanding of the relevant legal and regulatory environment. Any other responsibilities which they hold cannot impair their ability to discharge their duties and personal conflicts of interest should not arise in the performance of their functions.

Finally, where applicable, persons must also comply with the **Minimum Competency Code** issued by the Central Bank.

6.2 Honest, ethical and to act with integrity¹⁰⁷

A person must be able to demonstrate that their ability to perform the relevant function is not adversely affected to a material degree by factors such as whether they are or have been:

- prohibited from carrying on a trade in any jurisdiction, or had any authorisation or licence revoked on an involuntary basis;

¹⁰⁶ Section 3 of the Standards

¹⁰⁷ Section 4 of the Standards

- the subject of any complaint made to the Central Bank, the Ombudsman or any equivalent body relating to the performance of any regulated activity;
- subject to any disciplinary proceedings, or been issued with any warning or administrative sanction;
- dismissed or asked to resign and did resign;
- a director of any company in any jurisdiction that was struck off the register on an involuntary basis;
- disqualified or restricted from acting in any jurisdiction as a director or in a managerial capacity;
- convicted of an offence of money laundering, terrorist financing or any other offence which may be relevant to their ability to perform the relevant function;
- the subject of a finding, judgement or order made against them involving fraud, misrepresentation, dishonesty or breach of trust;
- the subject of current proceedings involving fraud, misrepresentation, dishonesty or breach of trust;
- the subject of any civil penalty or enforcement action taken by a regulatory authority in any jurisdiction;
- untruthful or provided false or misleading information to the Central Bank, or been uncooperative in any dealings with the Central Bank;
- investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal or any similar body, including circumstances where any business in which they held a position of responsibility or influence has been so investigated, disciplined, censured, suspended or criticised; or
- found by the Central Bank (or any regulatory authority in any jurisdiction) to have perpetrated or participated in any negligent, deceitful or otherwise discreditable business or professional practice.

6.3 Financial Soundness¹⁰⁸

A person must manage their affairs in a sound and prudent manner. In this regard, they should be able to demonstrate that their role in a relevant function is not adversely affected to a material degree by the fact that they defaulted upon any payments due arising from a compromise or scheme of arrangement with their creditors, or that they made an assignment for the benefit of their creditors. Similarly, factors such as whether they are subject to an unsatisfied judgment debt or have been the subject of a bankruptcy petition, or been adjudicated as bankrupt in Ireland or elsewhere, or whether they acted as director of an insolvent entity, will also be taken into consideration.

6.4 Exceptions

The Standards do not apply to any person whose function is solely concerned with acting in accordance with a written set of instructions in the form of a script which provides for that person to give a prescribed reply, or follow a prescribed course of action, where a particular routine matter is raised. This excludes the application of the Code to certain call centre staff.



7

The Guidance

The **Central Bank's non-statutory Guidance** restates some of the provisions set out in the 2010 Act and in the Regulations. It is not intended to be comprehensive however and does not override any of the legal provisions discussed above. The Central Bank also reserves the right to update and amend the Guidance as it sees fit. Nonetheless, the Guidance does provide assistance on how Firms can comply with the Code¹⁰⁹.

7.1 Application of the Code

The Guidance sets out those persons to whom the Code does not apply. Excluded are persons operating to a set of written instructions in the form of a script and any person performing a function in a separate legal entity within a group structure, who may exercise significant influence over a person performing a CF or PCF in an entity regulated by the Central Bank. This exemption typically excludes persons with functional responsibility at group level.

Despite these stated exclusions, it should be noted that any person exempt from the Code will remain bound by **Part 3 of the 2010 Act** and **the Central Bank's Minimum Competency Code**, if applicable¹¹⁰.

7.2 Identifying CFs and PCFs

A Firm is not necessarily required to have all CFs or PCFs in existence¹¹¹. In setting out how a Firm should identify a PCF or CF, the Guidance refers to **section 7 of the Regulations** which outlines that it is the nature of the function rather than its title which will identify a CF or PCF.

In addition to those set out in the Regulations, as outlined above, the Central Bank may declare in writing that a particular function is to be considered a PCF. The Guidance sets out the criteria which will be used for this purpose:

- the person who performs the function is concerned with the management of the firm;
- the function is not prescribed as a PCF in the Regulations; and
- no other person in the firm performs a PCF¹¹².

7.3 Outsourcing¹¹³

The Guidance restates the legislative provisions regarding outsourcing to an entity regulated in another jurisdiction by an authority comparable to the Central Bank.

Where a Firm outsources the performance of a PCF, it will not be required to obtain Central Bank approval in respect of the person performing that function, provided there is a written agreement in place and the Firm to which the function is being outsourced is regulated by the Central Bank or an equivalent authority in another jurisdiction. It should be noted however that although the pre-approval requirement of **section 23** does not

109 Guidance, Section 2

110 Guidance, Section 3

111 Guidance, Section 4.4

112 Guidance, Section 4.3

113 Guidance, Section 5

apply, a person benefitting from this exclusion may still be subject to an investigation, suspension or prohibition notice under [Part 3 of the 2010 Act](#). This also applies to those performing CF roles.

Where the performance of a PCF is outsourced to an unregulated entity, the Firm concerned must obtain the approval of the Central Bank before appointing the unregulated entity to perform the PCF on its behalf. The written outsourcing agreement must also name the person within the unregulated entity who will be responsible for performing the PCF and persons performing a PCF under such an outsourcing agreement must comply with the Standards.

If a CF is outsourced to an unregulated entity, the unregulated entity must be able to identify the individuals who will perform the CFs and assess whether those persons are compliant with the Standards. In such cases, the outsourced service provider should be able to provide written confirmation to the Firm that the individuals performing CFs are compliant with the Standards and have agreed to be bound by them.

7.4 Approval process for PCFs¹¹⁴

Before an individual can be appointed to a PCF, the Central Bank must have approved their appointment in writing. The Central Bank will expect a Firm to have conducted their own due diligence in relation to an appointee before proposing them for approval. The approval process involves the submission of an IQ to the Central Bank, which is now completed online.

In making a submission to the Central Bank to appoint a PCF, a Firm will be provided with a user account allowing it to log on to the Central Bank's online IQ system. Individual accounts can then be created by the Firm in respect of each PCF, enabling the proposed candidates to complete their IQ online.

For the most part, the Central Bank expects that the approval system will be based on the IQ. However, it may, in certain circumstances, request further information and if it considers it necessary, it may also seek to conduct an interview with the proposed candidate¹¹⁵. The decision on whether or not to interview a PCF will be based on PRISM. This involves an analysis of the impact of the Firm on the Irish financial system and the risk probability that that entity will fail. However, the Central Bank reserves the right to call any PCF for interview, regardless of the Firm's impact rating.

The Central Bank anticipates that applicants for the roles of Chairman, CEO, Head of Finance or Chief Risk Officer at any high-impact Firm will always be interviewed. The Central Bank will however expedite the application process for a PCF role where the applicant already performs the PCF role within another EEA Member State.

If an interview is to be conducted, the interview panel is likely to be comprised of members of the Central Bank's Regulatory Transaction and Supervisory Directorates and members of the Policy and Risk Directorate and / or the Enforcement Directorate, as appropriate.

Offers of appointment to PCFs should only be made subject to Central Bank approval. The performance of a PCF by a person on a temporary basis must be approved in advance by the Central Bank and any extension of the temporary period must also be approved.

7.5 Fitness and Probity Interview Guide

On 10 June 2021, the Central Bank published a new [Fitness and Probity Interview Guide](#) (the "**Guide**"). The Guide provides candidates with an overview of the Central Bank's F&P interview process, what to expect on the day of the interview and what happens after the interview's takes place.

A PCF applicant may be called for either an 'assessment interview' or a 'specific interview' or both. Assessment interviews occur more frequently than specific interviews and typically include general questions about a candidate's professional experience, his/her skill set and the key accountabilities of the relevant role. Specific interviews are more often focused on gathering more detailed information on particular matters relevant to the candidate's fitness and/or probity. In either case, the Central Bank will provide the candidate in advance with an outline of the matters which are intended for discussion during the interview so that he/she may prepare accordingly.

7.6 Standard of fitness and probity appropriate for a CF

The standard of fitness and probity required of a particular CF needs to be judged by the Firm concerned on a subjective basis and the particular demands of each role must be considered. For this reason, the Guidance does not categorically set out the knowledge or expertise that is required in respect of a particular function.¹¹⁶

¹¹⁴ Guidance, Section 8

¹¹⁵ Guidance, Section 9

¹¹⁶ Guidance, Section 14

In determining the fitness of an individual to perform a CF, the Firm should determine their qualifications, experience and knowledge, amongst other relevant factors. The Central Bank then expects the Firm to perform due diligence to assess a person's fitness to perform the CF. This due diligence should include¹¹⁷:

- evidence of compliance with the **Minimum Competency Code**;
- evidence of professional qualifications (where those qualifications are relevant to the exercise of the CF)¹¹⁸.
- evidence of having met continuing professional development requirements where relevant;
- record of interview and application;
- references;
- where the Firm is unable to obtain a reference it must record the attempts it has made to obtain the reference. It must then record how it was able to satisfy itself that the person was competent to perform the CF in the absence of a reference¹¹⁹.
- record of previous experience;
- record of experience obtained outside the State; and
- details of concurrent responsibilities including directorships and any other employment.

“Probity”

The probity of an individual relates to his/her character. **The Guidance** states that it is only when evidence is available to suggest that a person might not comply with the required standard of probity that a Firm must investigate this thoroughly.

The Guidance sets out that the Central Bank expects the Firm to, *inter alia*, conduct the following due diligence¹²⁰:

- obtain written confirmations from the person as to whether any of the circumstances set out in section 4.1 (a) – (k) and section 5.2 (a) – (e) of the Standards apply to that person (these provisions relate to past conduct and financial soundness). The Guidance suggests that Firms use the questions on these matters in the IQ (questions 5.1-5.23) as a template for their due diligence in this regard; and
- where a person confirms that one or more of the circumstances set out above apply that person must be able to demonstrate that his/her ability to perform the CF is not adversely affected to a material degree by that matter(s).

7.7 Additional due diligence for CF1, CF2 and PCFs¹²¹

The Guidance sets out the standard of additional due diligence that must be conducted on a person being appointed to perform a CF1 (exercising significant influence), a CF2 (controlling or monitoring compliance) and PCFs. The Firm must investigate whether the person has been the subject of a sanction under the Central Bank's administrative sanctions regime or any other regulatory action. The Firm should check the Companies Registration Office records for any restrictions or disqualifications and should check publically available sources to ascertain whether a judgment debt has been registered against that person. Due diligence should also be conducted to ascertain whether the person has any criminal conviction which could be relevant to his/her ability to perform the function, such as convictions for offences relating to dishonesty and financial crime¹²².

For the purposes of conducting due diligence on proposed appointees, the Guidance sets out a sample due diligence grid at Appendix 1 and a pro-forma agreement for the employee to sign pursuant to **section 21(1)(b) of the 2010 Act**.¹²³

7.8 Failure to comply with the Code

Where there is a failure by a person to comply with the **Code**, the Central Bank may:

- in the case of a PCF, refuse to approve such a person to perform the relevant function;
- conduct an investigation into the fitness and probity of the person; or
- issue a prohibition notice under the 2010 Act which prohibits that person from acting in the relevant function.

117 Guidance, Section 15

118 Guidance, Section 15.2 (ii)

119 Guidance, Section 15.2 (v)

120 Guidance, Section 17.2

121 Guidance, Section 18

122 Guidance, Section 19

123 Guidance, pages 52 and 53

Firms may not permit any person to perform a CF unless they are satisfied on reasonable grounds that the person complies with the Code and that the person has agreed to abide by the Standards. A failure to comply with these requirements may expose the Firm and/or its management to financial penalties and other sanctions.

7.9 Continuing nature of the obligation

The obligation on Firms to ensure compliance with the Standards is an ongoing one. For this reason, this obligation is not simply discharged by undertaking due diligence upon commencement of the regime or when a person is first appointed to a CF or PCF role. To assist with ensuring compliance on an ongoing basis, persons in a CF or PCF should be required to notify the Firm of any material changes from when initial due diligence was carried out.

The Central Bank also recommends that Firms carry out an annual audit in respect of persons performing CFs. Such an audit should involve asking these persons to confirm whether they are aware of any material developments in relation to their compliance with the Standards. An investigation should be undertaken if the Firm has any concerns regarding the fitness and probity of relevant persons and the Central Bank should be notified without delay.

As part of a system of ongoing performance monitoring, the Firm should also, at least annually, ask persons performing CFs to certify that they are aware of the Standards and agree to continue to abide by them.

Ultimately, it is the Firm's responsibility to determine what is appropriate in order to satisfy itself, on reasonable grounds, that a particular person meets the Standards. In each case, how a Firm came to be satisfied that a person meets the Standards should be recorded and documented, to include documenting each step in the decision-making process and the reasoning behind decisions made.



8

Additional PCF Roles

8.1 October 2020

On 9 October 2020, the Central Bank published an **update** on its website to its February 2020 **Notice of Intention** noting the enactment of a new statutory instrument **SI 410 of 2020** (the “**Amending Regulations**”) introducing three new PCF roles:

- PCF-49 CIO (under the ‘General’ category);
- PCF-50 Head of Material Business Line (under the ‘Banking’ category); and
- PCF-51 Head of Market Risk (under the ‘Banking’ category);

and the splitting of PCF-39 Designated Person into six new roles aligned to the specific managerial functions highlighted in the Central Bank’s UCITS Regulations, AIF Rulebook and the Fund Management Companies Guidance as follows:

- PCF-39A Designated Person with responsibility for Capital and Financial Management;
- PCF-39B Designated Person with responsibility for Operational Risk Management;
- PCF-39C Designated Person with responsibility for Fund Risk Management;
- PCF-39D Designated Person with responsibility for Investment Management;
- PCF-39E Designated Person with responsibility for Distribution; and
- PCF-39F Designated Person with responsibility for Regulatory Compliance.

The Central Bank has introduced these new PCF roles due to the (i) increasing importance of and reliance on IT within firms; and (ii) the changing landscape of the banking sector in Ireland due to Brexit, including the entry / expansion of investment banks / broker-dealer firms with significant capital markets activity.

On the creation of the new PCF roles outlined above, the Central Bank stated that it is its aim to capture a greater number of individuals responsible for the performance of key functions so as to ensure they fall under the remit of the Regime. In doing so, the Central Bank ensures that a greater number of individuals will be required to uphold fit and proper standards in relation to the relevant PCF role which they carry out within their Firm.

8.2 April 2022

On 5 April 2022, following a **Notice of Intention** to amend the list of PCFs issued in September 2021, the Central Bank published **the Central Bank Reform Act 2010 (Sections 20 And 22) (Amendment) Regulations 2022**.

The Amending Regulations set out the Central Bank’s amendments to the list of PCFs as follows:

- Splitting the existing PCF-2 Non-executive director into PCF-2A Non-executive director and PCF-2B Independent non-executive director;
- Amending the titles of the roles which relate to the chairing of a board or committee i.e. PCF-3 – PCF-7;

- Expanding PCF-16 Branch Manager of branches in other EEA countries to include branch managers in non-EEA countries;
- Removing PCF-31 Head of Investment; and
- Removing the existing PCF-15 Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation and introducing PCF-52 Head of Anti-Money Laundering and Counter Terrorist Financing Compliance.

With the exception of the removal of PCF-31 (which is relevant to investment firms only), the amendments to the PCF list are applicable to all Irish regulated financial service providers, other than credit unions.

8.2.1 Expansion of PCF-16

The Central Bank noted that the Irish financial services landscape has changed since Brexit with number of branches of regulated financial service providers now sitting outside the EEA. Given this change, the Central Bank has expanded PCF-16 to include managers of branches of Irish regulated firms in non-EEA countries. The Central Bank considers this amendment warranted on the basis of the level of control and autonomy that such individuals may have.

8.2.2 Segregation of PCF-2

The Central Bank has split PCF-2 Non-Executive Director to reflect the distinction between Non-Executive Directors and Independent Non-Executive Directors to add greater clarity of the distinction between the two roles:

- PCF-2A Non-Executive Director
- PCF-2B Independent Non-Executive Director

8.2.3 Segregation of PCF-15

Noting the increasing importance of the role of individuals with responsibility for Anti-Money Laundering (“**AML**”) and Counter Terrorist Financing (“**CTF**”), and the number of appointments of individuals to carry out this role in its own right (as opposed to within the remit of the role of Head of Compliance), the Central Bank noted that it is necessary to replace PCF-15 with a dedicated role for Anti-Money Laundering and Counter Terrorist Financing as follows:

- PCF-12 Head of Compliance
- PCF-52 Head of Anti-Money Laundering and Counter Terrorist Financing

8.2.4 Removal of PCF-31

The Central Bank has removed the role of PCF-31 Head of Investment due to its similarity to PCF-30 Chief Investment Officer.

8.2.5 Title of Chair roles

The Central Bank noted that in line with the importance of, and focus on, diversity and inclusion within regulated financial service providers, the Central Bank has amended the title of all roles which relate to the chairing of a board or committee. Therefore the, the titles of PCF-3 Chairman of the board, PCF-4 Chairman of the audit committee, PCF-5 Chairman of the risk committee, PCF-6 Chairman of the remuneration committee and PCF-7 Chairman of the nomination committee will be amended to read “Chair of” only. There is no action required from firms the titles of individuals occupying such roles have automatically been amended.

8.2.6 Interaction with the SEAR

The Central Bank confirmed that while the intention is for the Senior Executive Functions (“**SEFs**”) under the SEAR, to align with the list of PCFs under the Regime, the amendments to the PCF list are not related to the SEAR.

8.2.7 The application of the in-situ process

The in-situ process was originally expected to commence on 25 April 2022 and end on 3 June 2022, however, on 12 May 2022 the Central Bank published Guidance for the notification process for in-situ individuals extending the in-situ period to 30 June 2022. The applicable in-situ process is summarised in the table below.

PCF	Applicable in-situ process
PCF-2	All PCF-2 roles have been re-designated as PCF-2A. Firms were required to notify the Central Bank of which individuals should be designated as PCF-2B by 30 June 2022.
PCF-12	No action required.
PCF-15	For a person currently performing PCF-15, this role has been end-dated and firms were required to notify the Central Bank by 30 June 2022 as to how that person's role should now be designated (i.e. re-designated as a PCF-12, PCF-52 or both).
PCF-16	No action required from firms with an existing PCF-16. Firms with branches outside of the EEA that now fall in scope were required to submit confirmation of their F&P assessment in respect of individuals in situ by 30 June 2022.
PCF-52	Firms were required to review their existing functions to determine if a role within the organisation met the substance of PCF-52. Where a firm decided that a PCF-52 role did exist, a fitness and probity assessment was to be carried out and confirmation of such an assessment was required to be submitted to the Central Bank by 30 June 2022. For any new appointments to perform the role of PCF-52 after 5 April 2022, the individual must be pre-approved by the Central Bank.

The Individual Questionnaire has been amended to allow new applicants apply for these roles via the Central Bank's Online Returns system (the "ONR"). As mentioned above, the PCF in-situ process closed on 30 June 2022. The full application process now applies to any new appointment to the amended PCFs after the Amending Regulations came into effect.



9 Central Bank (Individual Accountability Framework) Bill

9.1 July 2018 - Report on the Behaviour and Culture of the Irish Retail Banks

One of the most recent developments in respect of reform of the Regime, the Central Bank (Individual Accountability Framework) Bill, arose from the Central Bank's report on "*Behaviour and Culture of the Irish Retail Banks*" (the "**Report**"), which was mandated in 2017 by the Minister for Finance and Public Expenditure and Reform following the completion of the Central Bank's Tracker Mortgage Examination.

Although the Report stemmed from a review of the five retail banks, the Central Bank clarified in the Report that "*these reforms will apply more widely than to retail banks alone*".

The Report sets out the four parts of the Central Bank's IAF:

- Conduct Standards which set out the behaviour the Central Bank expects of Firms and the individuals working within them;
- A Senior Executive Accountability Regime (the "**SEAR**") which places obligations on certain Firms and senior individuals (equivalent to individuals conducting PCFs under the Regime) to set out where responsibility and decision-making lies for their business, to ensure clearer accountability. The Central Bank has proposed that, in the first instance, the SEAR will apply to credit institutions, insurance undertakings and certain investment firms;
- Enhancements to the current Regime, which will increase the focus on the responsibility of Firms by requiring Firms to proactively assess individuals in CFs on an ongoing basis; and
- A unified enforcement process, which would enable the Central Bank to pursue individuals directly for their own misconduct rather than having to link the misconduct to their participation in a regulatory breach by their Firm.

9.2 Central Bank (Individual Accountability Framework) Bill

9.2.1 July 2021 - General Scheme of the Central Bank (Individual Accountability Framework) Bill

On 27 July 2021, the Department of Finance published the **General Scheme** of the Central Bank (Individual Accountability Framework) Bill (the "**IAF Bill**"). The purpose of the Central Bank (Individual Accountability Framework) Bill is to introduce the SEAR, conduct standards for regulated financial service providers and persons performing functions in RFSPs.

The four key components of the General Scheme broadly follow the recommendations of the Report as noted above.

9.2.2 April 2022 - Joint Committee on Finance report published its report on the pre-legislative scrutiny of the General Scheme of the IAF Bill

On 5 April 2022, the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach (the “**Joint Committee**”) published its **Report** on its pre-legislative scrutiny of the General Scheme of the IAF Bill.

While the Joint Committee’s report runs to some 68 pages, none of the recommendations made are relevant to the Regime.

9.2.3 July 2022 - Central Bank (Individual Accountability Framework) Bill 2022

On 28 July 2022 the Central Bank (Individual Accountability Framework) Bill 2022 (the “**Bill**”) was published by the Department of Finance. The long awaited Bill remains largely similar to the General Scheme.

According to the **Explanatory Memorandum** to the Bill, its primary purpose is to confer powers on the Central Bank to strengthen and enhance individual accountability in the financial services industry.

The original proposal of four key pillars remain:

- **Responsibility Mapping**

SEAR will require firms to identify and map out the roles, responsibilities and decision making powers of senior management within their firms. The aim of SEAR is to overcome the difficulties the Central Bank has noted it often encounters in identifying precisely who is in charge of which decisions at regulated financial service providers: “*Assigning responsibility to individuals in a regulatory context aims to decrease their ability to claim that the culpability for wrongdoing lay outside their sphere of responsibility.*”¹²⁴ Firms will have to create statements of responsibilities and responsibility maps describing their governance arrangements, demonstrating that there are no gaps. These documents will be the primary source of truth for the regulator and therefore firms must ensure they are clear, comprehensive and current.

- **Enforceable Conduct Standards**

All regulated financial services providers must comply with the Conduct Standards. The Conduct Standards set out the Central Bank’s expectations for behaviour of RFSPs and their employees. These include obligations on both firms and individuals to conduct themselves with honesty and integrity, to act with due skill, care and diligence, and in the best interest of consumers. There will be:

- Common Conduct Standards, which will apply to all persons in controlled function roles;
- Additional Conduct Standards, pertaining to those holding senior positions (PCFs and others with significant influence); and
- Business Conduct Standards for RFSPs.

- **Enhancements to the Central Bank Fitness and Probity Regime**

Firms will have to do more to ensure and proactively certify that the individuals who are responsible for carrying out controlled functions have the requisite competencies and integrity to fulfil those roles. “*Effective culture is about people. And people are at the heart of the Fitness & Probity regime.*”¹²⁵

- **Removal of the “participation link” in the Administrative Sanctions Procedure**

Under the current administrative sanctions procedure “*which is one of the toughest powers*”¹²⁶ available to the Central Bank, it must prove the breaches against the firm **before** it is able to sanction an accountable individual (otherwise known as the “**participation link**”). Under the IAF Bill however, the participation link will be broken and the Central Bank will be able to sanction an individual directly for their misconduct.

As anticipated, the IAF Bill is presented as a series of amendments to three pieces of Central Bank legislation – namely:

- The Central Bank Act 1942;
- The Central Bank Reform Act 2010; and
- The Central Bank (Supervision and Enforcement) Act 2013.

In accordance with the IAF Bill and the Explanatory Memorandum to the IAF Bill, the key amends to the above pieces of legislation can be summarised as follows:

124 <https://www.centralbank.ie/news-media/press-releases/speech-accountability-regime-derville-rowland-31-october-2019>

125 <https://www.centralbank.ie/news/article/press-release-effective-culture-is-about-people-derville-rowland-10-june-2021#:~:text=%E2%80%9CEffective%20culture%20is%20about%20people,Rowland%2C%20Director%20General%2C%20Financial%20Conduct>

126 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2021-03-09/2/

The Central Bank Act 1942:

- extends the application of the administrative sanctions procedure to persons performing controlled functions and to certain holding companies;
- provides for the appointment of a panel from which appointments may be made for the purposes of certain decisions;
- provides for the admissibility of business records at an inquiry;
- provides for disclosure agreements; and
- provides for an application for confirmation by the High Court of a decision of an inquiry under Part IIIC and a decision of the Irish Financial Services Appeals Tribunal under Part VIIA of that Act;

The Central Bank Reform Act 2010:

- extends the regulation and supervision of financial service providers and persons performing controlled functions and pre-approval controlled functions through the introduction of business standards, conduct standards and the duty of responsibility;
- provides for the independence of persons carrying out an investigation in the performance of their functions;
- provides for the independence of persons to whom a function of the Head of Financial Regulation, the Central Bank or the Governor is delegated in the performance of their functions;
- provides for a right of appeal to the Irish Financial Services Appeals Tribunal of a decision of the Head of Financial Regulation to confirm a suspension notice,
- increases the period for which the High Court may extend the duration of a suspension notice, and
- provides for an application for confirmation by the High Court of a decision of the Central Bank or Governor to issue a prohibition notice.
- The Central Bank (Supervision and Enforcement) Act 2013:
- extends the regulation making power of the Central Bank; and
- provides for arrangements that financial service providers shall adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation.

9.2.4 *Zalewski v Adjudication Officer and Others*

The most significant changes from the General Scheme are the adaptation of the IAF Bill to reflect the outcome of the Supreme Court decision in *Zalewski v Adjudication Officer and Others*¹²⁷.

In this decision, the Supreme Court held that elements of the operations of the Workplace Relations Commission were unconstitutional. As a result of the judgment and the subsequent examination of ‘administrative bodies’ with adjudicatory powers by the Attorney General’s Office, changes were necessary to the F&P Regime and the Administrative Sanctions Procedure.

9.3 Implementation Timeline

It is generally expected that the IAF Bill be enacted by the end of 2022. However, given the tenor of the discussions during the pre-legislative scrutiny, we anticipate that there will be extensive debate during the relevant stages on various aspects of the proposal.

Regarding an expected enactment date for the IAF Bill, the Minister of Finance explained during the Joint Committee’s pre-legislative scrutiny of the General Scheme that he hoped the legislation would be “*operational in the early part of 2023...because I anticipate it will take time to get the legislation through the Oireachtas effectively and deal with the matters*”.

At all times throughout the process, the Central Bank has maintained that once the IAF Bill is enacted it will publish without delay the relevant draft regulations and supporting guidance along with a consultation paper. The Central Bank has also indicated that post publication of final regulations, relevant guidance and a feedback statement, there will not be a long implementation period. The expectation is that firms will have had a good lead in time to consider the proposals and to prepare accordingly.

9.4 What should Firms do now?

On 23 June 2022, Gerry Cross, Director of Financial Regulation gave a speech on the IAF framework, considering key aspects of the new regime, including the Central Bank's approach to the regulations and guidelines that will implement the primary legislation and how firms might prepare for the introduction of the new framework:

"I would encourage firms to use this time to prepare to implement the new framework by understanding their obligations and assessing their current governance structures in order to identify clearly who is responsible for what within the firm. Firms will need to clearly define the roles and responsibilities of the SEFs and ensure clarity over reporting lines and any delegation of tasks. Firms should review their current Fitness and Probity processes to assess any enhancements required to meet the annual certification requirements. Firms should also examine their internal culture and values as compared to the IAF principles and identify areas of focus. Education and training will also play an important part in the success of this framework. These steps will help firms to assess gaps and identify the key changes needed on a timely basis."



10 Dear CEO Letters

“Firms have the first line of responsibility under the Fitness and Probity Regime. Firms must ensure people subject to the regime are fit and proper. Further, this responsibility does not end following the hiring of staff; you must ensure that your staff are fit and proper on an on-going basis. Where Firms fall short, the Central Bank will take appropriate action.”¹²⁸

10.1 Central Bank Dear CEO Letter 8 April 2019

As mentioned in the **Background** above, one of the most recent pronouncements by the Central Bank on compliance with the Regime came in April 2019, when the Central Bank issued its ‘**Dear CEO**’ letter on the Regime (the “**2019 Dear CEO Letter**”). In the Dear CEO letter, the Central Bank stated that it continues to see significant shortcomings in Firms’ compliance with their fitness and probity obligations.

- The Central Bank noted the multiple failings. In particular, the Central Bank observed:
- the failure to provide for the ongoing nature of the obligation including Firms’ failing to carry out effective due diligence to ensure persons holding a CF role remain ‘fit and proper’;
- the failure by Firms to report issues to the Central Bank including when Firms have identified fitness and probity concerns about an individual in a CF role;
- the appointing of persons to PCF roles without obtaining prior Central Bank approval; and
- the failure of applicants in disclosing material facts on their IQs which have been submitted to the Central Bank and subsequent failures of Firms to adequately review these questionnaires.

In light of this, the Central Bank set out its expectations of Firms, which include:

- the review of Firms’ fitness and probity policies, procedures and practices;
- ensuring that individuals appointed under the Regime are fit and proper both at the application stage and on an ongoing basis; and
- consideration of the issues raised in the Dear CEO Letter, in conjunction with the guidance on the Standards issued by Central Bank, demonstrate the review process and explain and evidence what actions have been taken by the Firm to address any shortcomings.

As with many communications from the Central Bank in recent times, the contents of the Dear CEO Letter was to be brought to the board’s attention and any actions required to be taken to rectify shortcomings was to be carried out in conjunction with the board’s oversight. This Dear CEO Letter will continue to form part of the Central Bank’s supervision of the Regime and it would be prudent for Firms to treat same as an addition to the Guidance.

10.2 Dear CEO Letter dated 17 November 2020

Following on from the 2019 Dear CEO Letter, the Central Bank conducted a series of thematic onsite inspections across a sample of firms in the insurance and banking sectors, assessing the level of compliance with the Regime. On 17 November 2020, the Central Bank **issued a Dear CEO letter** (the “**2020 Dear CEO Letter**”) to

¹²⁸ <https://www.centralbank.ie/docs/default-source/news-and-media/press-releases/190408-dear-ceo-letter-fandp.pdf>

Firms following the conclusion of the inspections, highlighting the key findings and observations together with its expectations of Firms.

The Central Bank's inspections focused on the following areas:

- awareness and understanding within Firms of their compliance obligations;
- initial and ongoing due diligence processes;
- oversight and control where PCF or CF roles have been outsourced;
- processes and channels for effective engagement with the Central Bank; and
- role of the Compliance Function with regard to the Regime.

The Central Bank noted there was a wide divergence of standards in the implementation of the Regime across the Firms inspected. Some of the key findings of the inspections were in relation to:

- Due Diligence

The Central Bank noted that due diligence was the most consistent area of weakness across the Firms inspected. The initial due diligence undertaken by Firms was not sufficiently robust to evidence compliance with the requirements of the Standards. Issues identified included; a lack of evidence of qualifications, reference checks and suitability searches.

Ongoing due diligence processes were highlighted as being particularly poor and often limited to an annual self-declaration with no ongoing due diligence screening of an individual's fitness and probity.

- The Role of the Board in the Fitness and Probity Process

The Central Bank noted that the level of awareness by Board members of their fitness and probity obligations in many Firms was poor, particularly in relation to Board appointments. Issues included, lack of scrutiny of board, CEO involvement in candidate screening and inadequate succession plans. In a number of cases there was also no evidence of Board approval, discussion or challenge of proposed PCF appointments.

- Outsourcing of Roles subject to the Regime

In Firms where PCF or CF roles had been outsourced to unregulated Outsource Service Providers ("**OSPs**"), the majority of Firms had not, as part of their due diligence obtained the required documentation nor made appropriate inquiries as to the OSP's process for assessing fitness and probity. In addition, Firms did not have a process whereby outsourcing arrangements were analysed to verify whether PCF or CF roles were being performed.

- Engagement with the Central Bank

The processes related to engagement with the Central Bank on fitness and probity issues in the majority of Firms were found to be inadequate. The Central Bank noted that this lack of engagement is a reflection of the passive approach taken by Firms to their ongoing due diligence requirements.

- Role of the Compliance Function

Many firms were found not to be undertaking the necessary robust compliance testing of their fitness and probity processes and procedures.

The Central Bank expects that all firms will take appropriate action to address the issues outlined in the 2020 Dear CEO Letter. Evidence of actions taken must be available to be provided to the Central Bank, if requested.

The Central Bank's expectations include:

- Board Appointments

The same high standards be observed for board appointments as PCF appointments.

- IQs

IQs submitted to the Central Bank are required to declare that the Firm has carried out all necessary due diligence enquiries and contain full and frank disclosure of all relevant information including potentially adverse information. The Central Bank noted that non-disclosure, particularly, where there is an apparent attempt to mislead may call into question the individual's suitability for appointment and the Firm's decision to propose the individual in question.

- Ongoing Due Diligence

Annual self-declarations by PCF and CF role holders is the minimum expected. The Central Bank expects any concerns regarding the ongoing fitness and probity of a person performing a CF role to be investigated and appropriate action taken without delay.

- Outsourcing of PCF/CF Roles

Firms are reminded that fitness and probity obligations apply irrespective of whether the PCF or CF role is performed within the firm or outsourced to an unregulated OSP and firms are required to have appropriate processes and procedures to ensure compliance.

- Engagement with the Central Bank

The Central Bank expects firms to be proactive in identifying fitness and probity issues as part of its ongoing due diligence and in reporting as appropriate to the Central Bank without delay.

- Role of the Compliance Function

Firms' fitness and probity process should be subject to comprehensive oversight by the Compliance Function and periodic independent testing by the Internal Audit Function to ensure it is fit for purpose.

The Central Bank noted it will continue to engage with firms in assessing their compliance with the Regime and will initiate necessary supervisory action where weaknesses are identified. Given that this is the second communication in quick succession on the topic, it is a clear indication of the priority which the Central Bank is placing on fitness and probity and by extension, culture within Firms. Firms have now been reminded twice of their obligations and failure to ensure compliance with such obligation will likely lead to supervisory action.



11 Recent Enforcement Cases

The following is a brief account of some of the most recent enforcement cases and notices taken by the Central Bank against both Firms and individuals in respect of breaches of the Regime. The details of the notices are always recommended reading as they speak to the view of the Central Bank and gives insights to areas of priority and concern.

11.1 Mr Rory O' Connor

On 9 June 2020, following on from the Central Bank's investigation of RSA Ireland DAC ("**RSA**") in 2018, the Central Bank reprimanded Mr Rory O'Connor, former Executive Director and Chief Financial Officer of RSA and disqualified him from being a person concerned in the management of a firm for a period of 8 years 4 months and imposed a fine of €70,000 for his admitted participation in RSA's failure to maintain sufficient technical reserves from February 2010 to September 2013.

The Central Bank's investigation in respect of Mr O'Connor found that he:

- knowingly and actively participated in RSA's failure to maintain sufficient technical reserves through his involvement in the under-reserving of large loss claim reserve estimates;
- participated, along with certain other individuals, in undocumented meetings during which certain large loss claim reserve estimates were deliberately and wrongfully under-reserved;
- gave instructions and transmitted information relating to those claims within RSA knowing them to be under reserved; and
- concealed the under-reserving by knowingly providing inaccurate and misleading financial information to the Central Bank in his role as CFO.

11.2 Mr Juerg von Geitz

On 16 July 2020, the Central Bank published a Prohibition Notice prohibiting Mr Juerg von Geitz, an Executive Director of The Mortgage Department Limited, an authorised mortgage intermediary from performing any controlled function in any regulated financial service provider, for a period of ten years from 5 July 2019.

Mr von Geitz's prohibition arose from:

- the provision of several misleading answers in his IQ to the Central Bank in his application for a PCF position in The Mortgage Department Limited; and
- his failure to cooperate with the Central Bank's subsequent investigation.

11.3 Mr James Cuminsky

On 25 May 2021, the Central Bank published a Prohibition Notice prohibiting Mr James Cumiskey, former Managing Director of European Mortgage Call Centre Limited, from carrying out any controlled function in any regulated financial service provider, from 16 July 2020, for an indefinite period.

Mr Cuminsky's prohibition arose from an investigation by the Central Bank's into Mr. Cumiskey which established that between January 2018 and August 2018 Mr Cumiskey induced persons to provide mortgage deposits on the basis that Mr. Cumiskey required the deposit to process mortgage applications on their behalf. Further, although neither Mr Cumiskey nor his firm were authorised as a mortgage intermediary, the firm's website prominently advertised mortgage services.

11.4 Insure4Less Teoranta t/a Kerry Insurance Group

On 1 March 2022, the Central Bank reprimanded and fined Insure4Less Teoranta t/a Kerry Insurance Group (the "**Insure4Less**"), an authorised insurance retail intermediary, €8,400 in respect of breaches of its fitness and probity obligations.

The Central Bank's investigation found that Insure4Less failed to obtain the Central Bank's prior approval before appointing three individuals to PCF positions within the firm as required under section 23(1) of the 2010 Act

As a result of its own enquiries, the Central Bank became aware that the three directors had been appointed without approval. The fact that the contraventions were not self-reported, despite Insure4Less becoming aware of its failure to have obtained approval for the appointment of the three individuals to PCF positions was treated as an aggravating factor in determining the sanction.

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