

Central Bank issues Consultation on SEAR

The Central Bank of Ireland (the “Central Bank”) issued consultation paper 153 (“CP153”) entitled “Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Central Bank (Individual Accountability Framework (“IAF”)) Act 2023” on 13th March 2023. This outlines guidance and regulations proposed to be adopted by the Central Bank following the enactment of the IAF Act on 9th March 2023 and clarifying their interpretation of it.

Governance has been a key focus of regulatory bodies including the Central Bank in recent years in particular because of the extent to which related corporate failings were deemed to have contributed to previous financial crises both internationally and Ireland. It is as a direct result of this that the Central Bank (IAF) Act 2023 (the “Act”) was drafted and ultimately enacted in Ireland. This is designed to improve governance, performance, and accountability in financial services firms, whilst observing proportionality and reasonable expectations.

Central Bank Role

The Central Bank has been afforded responsibility for implementing the framework under the Act, which involves preparing detailed regulations as well as related guidance. These have been included within CP156 in draft form and in preparing these it has aimed to ensure they are forward looking, connected, proportionate, predictable, transparent, and agile. They have been prepared in light of international approaches already adopted and recommend best practice from bodies such as the European Commission and the Financial Stability Board. While these will result in an increased focus on individual responsibilities, collective responsibility is to remain central to firms. A cost-benefit analysis has been undertaken to seek to ensure that benefits from this new regime outweigh the inherent costs, including both administrative costs and the potentially “chilling” effect on the market in terms of deterring recruit

Key Elements

The IAF includes the following key elements:

- The Senior Executive Accountability Regime (“SEAR”): This will require relevant firms to set out

clearly and fully where responsibility and decision-making lie within the firm’s senior management and clarifies the duty to take reasonable steps in carrying out related duties.

- Conduct Standards: set out in the legislation, these are basic standards such as acting with honesty and integrity, with due skill, care, and diligence, and in the best interest of customers which will apply to individuals in all regulated firms. Senior executives will also have Additional Conduct Standards related to their specific responsibilities. There is also scope for Business Standards to be prescribed at the firm level.
- Enhancements to the current Fitness & Probity (“F&P”) Regime: This seeks to align F&P with the IAF and will include clarifying firms’ obligations to proactively certify that individuals carrying out certain specified functions are fit and proper.
- Amendments to the Administrative Sanctions Procedure (“ASP”): A key change will be the Central Bank’s ability to take enforcement action directly against individuals for breaches of their obligations under the IAF (rather than only for their participation in firm breaches).

Next Steps and Timeline

A three-month consultation period until 13 June 2023 has been provided for to facilitate industry feedback and a series of draft questions proposed to elicit responses. The proposed implementation timeline involves: (i) the Conduct Standards including accountability of senior persons to apply from 31st December 2023; (ii) the extension of the fitness and probity regime to apply from 31st December 2023; and the regulations prescribing responsibilities of different key roles and the requirements on firms to set out allocation of these responsibilities to apply from 1 July 2024.



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