Individual accountability
Preparing for the new regime

What should firms do now to prepare for the new Individual Accountability Framework, including the Senior Executive Accountability Regime?
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td><strong>Step one:</strong> create a project plan</td>
<td>5</td>
</tr>
<tr>
<td><strong>Step two:</strong> SEAR – clarify roles and responsibilities</td>
<td>6</td>
</tr>
<tr>
<td><strong>Step three:</strong> prepare to ensure that the proposed Conduct Standards are embedded and adhered to</td>
<td>7</td>
</tr>
<tr>
<td><strong>Step four:</strong> prepare for the annual Fitness &amp; Probity certification process</td>
<td>8</td>
</tr>
<tr>
<td><strong>Step five:</strong> internal training etc</td>
<td>9</td>
</tr>
<tr>
<td>We can help you prepare effectively for the new Individual Accountability Framework</td>
<td>10</td>
</tr>
<tr>
<td>Key contacts</td>
<td>11</td>
</tr>
</tbody>
</table>
## Introduction

The Central Bank of Ireland (CBI) is significantly increasing its focus on the accountability of individuals working in the financial services sector, in particular through the forthcoming introduction of a new Individual Accountability Framework.

The CBI is increasingly using its existing powers, under the current Fitness & Probity (F&P) and Administrative Sanctions Procedure (ASP) regimes to address individual accountability. For example, under the F&P regime, to date over 80 applications for senior positions have been withdrawn following challenge by the CBI.

Nevertheless, as stated by the CBI in its July 2018 Behaviour and Culture Report ("2018 Report") into the retail banks, “without a strengthened Individual Accountability Framework, the likelihood of profound cultural change in the regulated financial services sector is reduced”.

The key elements of the proposed new Individual Accountability Framework are:

<table>
<thead>
<tr>
<th>Senior Executive Accountability Regime (SEAR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>This will place obligations on in-scope firms and senior individuals within them to set out clearly where responsibility and decision-making lies, and hold senior individuals to account where failings arise in the firm.</td>
</tr>
<tr>
<td>In the words of the CBI’s Director of Enforcement and Anti-Money Laundering, Seana Cunningham:</td>
</tr>
<tr>
<td>the days of individuals hiding behind the collective are numbered</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Conduct Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>For all regulated firms and individuals, with particular additional Conduct Standards for senior management.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Enhancing the current F&amp;P regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>In particular to impose a positive obligation on firms to certify on an annual basis that persons in controlled function (CF) roles are fit and proper.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Enhancing the ASP regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>In particular to enable the CBI to take action against individuals without first having to establish that the individuals “participated” in a breach of regulatory requirements by their firm.</td>
</tr>
</tbody>
</table>
The Heads of a new Central Bank (Amendment) Bill, introducing this new Individual Accountability Framework, are expected to be published by the end of 2019 and the new legislation may be adopted sometime in 2020.

In anticipation of the legislation introducing the new regime, firms can and should start preparing for it now. The steps firms can take include:

**Create a project plan**
- inform the board and get its buy-in
- appoint sufficiently senior sponsor
- set up project team, involving a range of stakeholders (eg Legal, Compliance, HR, Risk)
- consider internal communications plan

**SEAR – clarify roles and responsibilities**
- prepare Statement of Responsibilities for key functions (board members, executives reporting to the board and heads of critical business areas)
- prepare Responsibilities Map, documenting key management and governance arrangements

**Prepare to ensure that the proposed Conduct Standards are embedded and adhered to**
- review employment contracts, HR policies and procedures, disciplinary policies and procedures
- consider “reasonable steps” senior management should take to ensure compliance with Conduct Standards and how this will be documented

**Prepare for the annual Fitness & Probity certification process**
- review performance management process
- review how HR-related and compliance-related information on individuals is gathered/shared/reviewed and how compliance with Conduct Standards is to be monitored

**Internal training etc**
- board and staff training
- review directors & officers (D&O) policies
Step one: create a project plan

The Individual Accountability Framework will be a significant transformation project that will require regulated firms to review and amend their current governance procedures and internal policies, together with their HR arrangements, including reviews of individual contracts of employment.

This is a major task that will take a considerable amount of time to plan and implement.

It is not simply a ‘compliance’ project. It has significant employment implications for staff and for the governance arrangements within firms. Accordingly, firms will need to ensure a wide range of stakeholders is fully involved and that the task is properly resourced.

It will be essential, in the first place, to inform the board about the transformation project and seek its buy-in. Further, it will be important to ensure that the transformation project is sponsored by a sufficiently senior individual within the firm and that the appropriate ‘tone from the top’ is set about the importance of getting this project right.

An internal communications plan will also need to be put in place, so that all staff are clear in due course on what the new regime entails, how it might affect them individually and how they will be supported to ensure that the objectives of the new regime are met.

The project needs to focus on the key elements of the new Individual Accountability Framework:

- clarifying responsibilities and decision-making processes
- ensuring that the Conduct Standards are understood and adhered to across the firm
Step two: SEAR – clarify roles and responsibilities

A key element of the new Individual Accountability regime is ensuring that there is clarity within firms and for the CBI as to who is responsible for what within the firms. As the CBI noted in its 2018 Report, “insisting on clarity in respect of individual responsibility reflects the priority that is placed on a culture of good conduct and the need for accountability”.

Under the proposed SEAR, persons in Senior Executive Functions (SEFs) in in-scope firms will be required to have in place an individual Statement of Responsibilities (SoR), clearly setting out their role and areas of responsibility. It is expected that SEFs will include board members, executives reporting to the board and heads of critical business areas.

The CBI has proposed that the in-scope regulated firms would, in the first instance, be credit institutions, insurance undertakings, certain types of investment firms and third country branches of each of these types of firm.

Firms that are likely to be in-scope should also now review their governance arrangements and put in place an appropriate Responsibility Map. As noted in the 2018 Report, firms will be required to have in place a Responsibility Map: “documenting key management and governance arrangements in a comprehensive, accessible and clear single source of reference. It is proposed that such maps would include, inter alia, matters reserved to the board, terms of reference for key board committees, and reporting lines of SEFs to individuals, committees and, if applicable, within the wider group. Where firms are part of a larger group, they would be required to provide details of the interaction of the firm’s and the group’s governance arrangements. Responsibility Maps would be required to be kept up to date and submitted to the Central Bank.”

Is it too early, in advance of the new legislation, to consider this issue? No, as it is a matter of good governance. As stated by the CBI in the 2018 Report, “well run firms have clear lines of responsibility and decision-making processes, and the reforms we propose … should not fundamentally change how those firms organise “and run their businesses.”
Step three: prepare to ensure that the proposed Conduct Standards are embedded and adhered to

The new Individual Accountability Framework will introduce new Conduct Standards for all regulated firms and individuals.

All staff in regulated firms will be required to adhere to specified Conduct Standards. They will be required, for example, to “act honestly, ethically and with integrity” and to be “open and co-operative with the Central Bank and deal with them in good faith”. As the CBI noted in its 2018 Report, some of these proposed Conduct Standards are already provided for in the current regulatory framework (eg the general principles in the Consumer Protection Code; the current Fitness & Probity regime).

Also, regulated firms will be required to adhere to Standards for Businesses, being required, for example, to conduct their business “professionally, honestly, ethically and with integrity” and to act in the best interests of customers and treat them fairly and professionally.

Additional Conduct Standards will be imposed on all more senior management, who hold Preapproval Controlled Function (PCF) roles or who are SEFs. These additional standards will require these senior managers to take “all reasonable steps” to ensure that their firm is controlled effectively, that it is compliant, that any tasks they delegate are to an appropriate person with proper oversight and they “must disclose promptly, proactively and appropriately any information of which the Central Bank would reasonably expect notice”.

Accordingly, key issues that all regulated firms (not just firms falling within the scope of SEAR) need to consider in early course include:

– review employment contracts, HR policies and procedures to take account of the proposed Conduct Standards

– review current disciplinary policies and procedures, to ensure that they adequately reflect the need to ensure appropriate investigation of potential breaches of the proposed Conduct Standards and the potential need to report misconduct issues to the CBI

– identify the “reasonable steps” that senior management should be taking and how these will be documented

– a failure by a senior manager to be able to evidence the “reasonable steps” they have taken will leave the person exposed to possible CBI sanction in the event of any regulatory breach in their area of responsibility
Step four: prepare for the annual Fitness & Probity certification process

Under the proposed new regime, all regulated firms will be required to certify, on an annual basis, that persons in Controlled Function roles are fit and proper. This positive obligation on firms is quite different to the current situation; under the CBI’s current F&P Guidance, firms are expected, on an annual basis, to ask all persons in their firm performing a Controlled Function role to confirm their awareness of, and compliance with, the Central Bank’s F&P standards. This has tended to be a ‘box-ticking’ exercise for many firms. Accordingly, all regulated firms will need to consider how they will carry out this more onerous certification process. Issues to be considered include:

- how will this process be managed so that the Conduct Standards are being met? This may involve a review of the firm’s performance management process, to ensure that it adequately considers the Conduct Standards (eg poor performance may raise questions as to fitness for their role)

- the circumstances in which conduct by individuals outside of work needs to be taken into account for the purposes of making this assessment

- the types of conduct that should raise concerns. For example, in line with the approach taken by the UK regulators, bullying or sexual harassment by an individual may breach the Conduct Standards and may need to be reported to the CBI

- how will this process be managed, in a manner that complies with employees’ employment rights and their constitutional rights, including due process rights, right to a good name and right to earn a livelihood
Step five: internal training etc

All regulated firms should also carry out the following steps:

- prepare for ensuring the board and all staff receive appropriate training on the new regime, in particular the proposed new Conduct Standards and the implications for them as individuals if they do not adhere to these Conduct Standards

- review the Directors & Officers (D&O) policies in place to assess the adequacy of insurance cover for individuals who may be subject to investigation under the Individual Accountability Framework
We can help you prepare effectively for the new Individual Accountability Framework

We have the expertise to assist you with all aspects of preparations for the new regime. In particular we have extensive experience advising on the equivalent regime in the UK, the Senior Managers and Certification Regime (SMCR), which has been in place since 2016 and upon which SEAR is largely based.

We are supported by the financial services team within Konexo, the global alternative legal and compliance division of Eversheds Sutherland. Through Konexo we are able to field financial services compliance specialists and programme management personnel alongside our lawyers to provide you with a ‘one stop shop’ in circumstances where you would otherwise have to instruct separate law and consulting firms. We will be able to bring you the latest thinking on the UK’s approach to SMCR, the strategies that worked and pitfalls to avoid, together with the processes and technology to support implementing the key elements of the new Individual Accountability Regime.
For further information, please contact:

**Pamela O’Neill**  
Partner and Head of Dispute Resolution & Litigation  
+353 1 6644 241  
pamelaoenell@eversheds-sutherland.ie

**Piaras Power**  
Partner and Head of Banking & Financial Services  
+353 1 6644 216  
piaraspower@eversheds-sutherland.ie

**Ciaran Walker**  
Consultant, FS Governance & Regulation  
+353 1 6644 986  
ciaranwalker@eversheds-sutherland.ie

**David Saunders**  
Head of Client Development, Konexo  
+ 44 20 7919 4685  
davidsaunders@eversheds-sutherland.com

**Joanne Hyde**  
Partner, Head of Employment  
+353 1 6644 252  
joannehyde@eversheds-sutherland.ie

**Simon Collins**  
Managing Director – Financial Services, Konexo  
+44 20 7919 0725  
simoncollins@eversheds-sutherland.com