

The Central Bank (Individual Accountability Framework) Act 2023 and its impact for Irish financial providers

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The new Central Bank (Individual Accountability Framework) Act 2023 seeks to enhance the Central Bank's existing fitness and probity regime, and ameliorate individual accountability among financial service providers.

The President signed the Central Bank (Individual Accountability Framework) Act 2023 (the **IAF Act**) into law on 9 March 2023, but it has not yet commenced. The signing of the IAF Act concludes a seminal phase in the development of the proposed Individual Accountability Framework, which began in 2018 with the publication of the Central Bank's July 2018 Report to the Department of Finance on "Behaviour and Culture of the Irish Retail Bank".

The IAF Act consists of restatements of sections of previous legislation and must be read in conjunction with such legislation. It provides for amendments to the Central Bank Acts 1942 to 2013.

The Central Bank of Ireland has also published its Consultation Paper 153, containing draft regulations and guidance, setting out how it proposes to implement the new Individual Accountability Framework. The Individual Accountability Framework is given legal effect by the IAF Act, draft Regulations and Guidance issued by the Central Bank:

- Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Senior Executive Accountability Regime) Regulations 20XX
- Central Bank Reform Act 2010 (Section 21(6)) Regulations 20XX
- Central Bank Reform Act 2010 (Sections 20(1) and 22(2A) – Holding Companies) Regulations 20XX

The Individual Accountability Framework will be comprised of four parts:

1. Senior Executive Accountability Regime
2. Conduct Standards
3. Fitness and Probity Regime
4. Breaking the "Participation Link"

Senior Executive Accountability Regime

The Senior Executive Accountability Regime will be implemented by way of amendments to the 2013 Act by granting the Central Bank "regulation-making powers" to impose obligations on in-scope regulated financial service providers regarding their governance and management arrangements.

The main elements of Senior Executive Accountability Regime are:

- inherent responsibilities which will apply automatically to a given pre-approval controlled functions holder
- allocated responsibilities which firms must ensure are allocated to individuals in senior roles
- statements of responsibilities to be completed by persons performing pre-approval controlled functions which will clearly set out their role and areas of responsibility
- management responsibility maps to document the key management and governance arrangements within a single source of reference

Conduct Standards

The IAF Act codifies standards of conduct, by way of amendments to the Central Bank Reform Act 2010, which sets out the fitness and probity regime.

The IAF Act proposes the introduction of three sets of business and conduct standards:

- **Business standards** which will apply to all regulated financial service providers irrespective of sector. These include a duty to cooperate in good faith and without delay with the Central Bank and other regulators
- **Common conduct standards** will apply to all pre-approval controlled functions holders and will include an obligation to observe proper standards of market conduct
- **Additional conduct standards** will apply to pre-approved controlled functions holders and those performing any other function by which the person may exercise a significant influence on the conduct of the regulated financial service provider's affairs

Fitness and Probity Regime

The Fitness and Probity Regime was introduced by the Central Bank under the Central Bank Reform Act 2010 (the **2010 Act**). Under the IAF Act the Central Bank's powers are widened. The Central Bank can investigate any pre-approved controlled functions holders for up to six years prior to the investigation as to their fitness and probity compliance. The Central Bank may suspend a pre-approved controlled functions holder for a period of six months, which can in turn be extended by up to 24 months. (This stands in contrast to the current suspension period of three months which can be extended by up to three months).

Breaking the "Participation Link"

Previously, regulators had to find that a financial firm committed regulatory breaches before they pursued individuals directly for their own misconduct. Now the Central Bank will be able to sanction accountable individuals within regulated financial service providers, without first finding the regulated financial service provider to have breached financial services legislation.

The Central Bank will be able to consider a number of factors in determining whether to impose sanctions on a natural person, including: the seriousness of the prescribed contravention, the effect of the prescribed contravention, the conduct of the person during and after the person's commission of or participation in the prescribed contravention, the previous record of the person, and any matter relevant to the financial position of the person.

Implementation of the Individual Accountability Framework

The Central Bank proposes the following implementation period for the Individual Accountability Framework:

- Conduct Standards to apply from 31 December 2023
- Fitness and Probity Regime to apply from 31 December 2023
- Conduct Standards including accountability of senior individuals for running their parts of the business effectively to apply from 31 December 2023

The Central Bank has launched a three-month consultation process on the main aspects of the implementation of the IAF Act. The consultation process remains open to 13 July 2023.

Accordingly, the main requirements of the IAF Act will not come into force until sometime after this consultation process has concluded.

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