

Countdown to compliance: the IAF and SEAR July 2024 deadline

Insights - 27/05/2024

The Central Bank (Individual Accountability Framework) Act 2023 (IAF) was signed into law on 9 March 2023. The IAF was introduced to enhance individual responsibility in regulated financial services providers. It has established the Senior Executive Accountability Regime (SEAR), which sets out clear responsibilities for senior management decision-making.

The IAF also introduces common and additional conduct standards for certain individuals and senior executives in regulated firms. Furthermore, it enhances the Fitness & Probity (F&P) Regime, obligating firms to certify individuals in specified roles as "fit and proper".

Legislative updates

A number of Statutory Instruments were enacted which give effect to certain Regulations in the IAF, summarised as follows:-

- **I. No. 2 of 2024**-published on 12 January 2024, it introduced Regulations under the Central Bank Reform Act 2010 for certifying the compliance of individuals performing Controlled Functions (CF) and outlines the standards of fitness and probity for individuals performing or proposing to perform controlled functions within in-scope organisations.
- **I. No. 664 of 2023**- published on 22 December 2023, made regulations prescribing certain functions as CFs and Pre-approval Controlled Functions (PCF) and further prescribes that where an individual carries out the duties associated with a specific office or position, they are considered responsible for those duties, even where they do not officially hold that office or position.
- **SI No. 147 2024**- published on 16 April 2024, this enacted certain regulations under the Central Bank (Supervision and Enforcement) Act 2013. It specifies the aspects of a regulated financial service provider's affairs for which a PCF holder has inherent responsibility. It further notes the

aspects of a regulated financial service provider's affairs for which responsibility is to be allocated by the regulated financial service provider to a PCF holder. It also provides arrangements that a regulated financial service provider is to adopt.

Deadlines

The key future deadlines for compliance with IAF and SEAR which in-scope regulated financial services providers need to be aware of are as follows:-

- **1 July 2024** Date from which SEAR applies to relevant credit institutions (excluding credit unions), insurance undertakings, investment firms and incoming third country branches of these entities, as prescribed for in [SI No. 1472024](#).
- **1 January 2025** Date from which in-scope firms must annually submit, to the Central Bank of Ireland, confirmation of compliance with the certification requirements, see [here](#).
- **1 July 2025** the date from which SEAR applies to (independent) NEDs, see [here](#).

Impact of SEAR on D&O

The IAF increases the personal risk for individuals in significant positions within regulated companies, including directors and those in the role of PCF and CF. The SEAR regulations introduce comprehensive duties for various positions within companies. These responsibilities cover prevalent areas including anti-money laundering compliance and financial risks associated with climate change. These regulations extend specific duties to company branches in third countries, ensuring adherence to the regulatory framework.

The increased risks for specific individuals highlights the critical need for Directors and Officers (D&O) insurance and corporate indemnities as safeguards. D&O insurance provides cover to individuals with managerial responsibilities from legal and other costs resulting from potential litigation. Given the complexity of risks, it is essential for companies and insured individuals to verify that their D&O insurance policies are appropriately designed to encompass SEAR investigations and penalties.

Practical steps for responding to IAF and SEAR

Directors should take several steps to ensure compliance with the IAF to include:

1. carrying out a comprehensive review of its financial governance structures to ensure it will be in compliance with IAF and SEAR prior to the above deadlines
2. taking legal advice on compliance with IAF and SEAR

3. ensuring adequate D&O insurance coverage is in place
4. consulting with your insurance broker to explore insurance coverage options.

There is a real risk that the implementation of the IAF Act may impact in-scope firms' D&O insurance by introducing additional risk. Therefore, care must be taken to that the "*insured person*" definition covers all individuals within the SEAR regime and that the policy provides adequate coverage for SEAR investigations and sanctions.

Potential claims

The following are examples of the types of claims that in-scope firms may see arising from the duties imposed by IAF and SEAR:-

1. Government Investigations
2. Tax Investigations
3. Shareholder Actions
4. Insolvency issues
5. Misrepresentation issues
6. Health & Safety issues and
7. Breach of duty and conspiracy.

The recent publicity surrounding Start Mortgages' change in its insurance coverage in which it faced criticism from the Irish Independent and subsequently changed its position in relation to its retaining of professional indemnity insurance, acts as a cautionary tale. This emphasised the ongoing need for robust professional indemnity and D&O insurance coverage and concomitant risk of public scrutiny, against the backdrop of regulatory scrutiny and potential legal challenges. It underscores the importance of maintaining adequate insurance coverage as a means of ensuring that customers and clients have legal recourse, while also protecting the interests and personal assets of those in managerial and decision-making roles.

Conclusion

The IAF, together with the SEAR regulations are not merely a regulatory update but a shift towards greater accountability and governance within the financial sector. It necessitates a proactive approach from regulated, in-scope firms to ensure compliance, necessitating a thorough review and potentially significant adjustments to D&O insurance policies.

This initiative, although challenging, serves to foster a culture of high-quality governance,

judgment, and decision-making within firms, contributing to the overall stability and integrity of the financial system in Ireland. For more information please contact a member of our team via their contact details below.

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