

// ASSET MANAGEMENT & INVESTMENT FUNDS

Individual Accountability for Fund Managers

March 2023



On 13 March 2023, following hot on the heels of facilitative legislation, the Central Bank published its long-promised individual accountability framework (**IAF**) for industry consultation.

The IAF has been a key agenda item for the Central Bank since 2018, when it was recommended to address behaviour and cultural issues identified during a regulatory review of Irish retail banks. In advance of launching the recommended IAF, however, the Central Bank required legislative power to pursue individuals directly for misconduct rather than only when they have participated in the firm's wrongdoing (the 'participation hurdle'). The participation hurdle was removed by legislation signed into law on 9 March 2023 (the **IAF Act**) and the Central Bank made good on its promise to rapidly pursue introduction of the IAF with the publication of its consultation a mere 4 days later.

As the name suggests, the IAF seeks to hold individuals accountable for their responsibilities in regulated firms. The framework includes:

- a senior executive accountability regime (**SEAR**) for banks, insurers and certain MiFID firms;
- conduct standards for individuals in all regulated firms and firms themselves;
- enhancements to the Fitness & Probity (**F&P**) regime; and
- enhanced Central Bank powers of enforcement to ensure individuals' and firms' compliance.

What's included in the IAF consultation?

The consultation includes draft Central Bank rules and guidance for three of the four pillars of the proposed framework:



What's still to come?



Enforcement changes – the consultation did not include anticipated changes to the Central Bank's Administrative Sanctions Procedure (**ASP**) following the removal of the participation hurdle and while no explanation is provided, the Central Bank has confirmed a separate consultation on updates of "all core ASP documents" will issue in mid-2023.

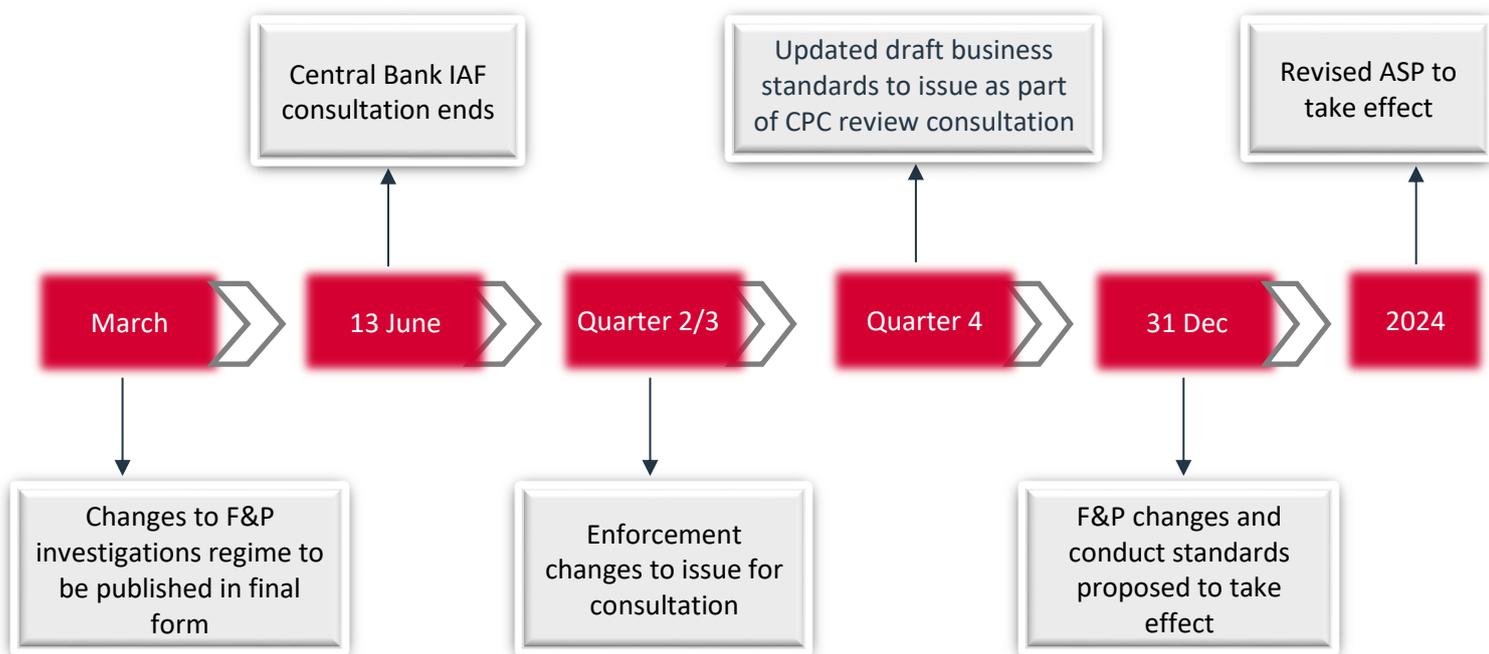


Business standards – these standards will be developed as part of the Central Bank's separate review and consultation on the update of the Consumer Protection Code (**CPC**)



Changes to F&P Investigations – updates to the Central Bank's F&P investigation regulations and guidance reflecting the IAF Act will issue separately this month

When does the consultation end and what happens next?



Pillar 1: SEAR – Effective 1 July 2024

The IAF imposes an enforceable legal duty on pre-approval controlled function (**PCF**) holders to take reasonable steps to avoid a firm breaching those legal obligations relating to activities for which the PCF is responsible. The consultation includes draft rules for the scope of this legal duty, PCF responsibilities and firms' documentation of those responsibilities along with draft regulatory guidance for assessing 'reasonable steps' and complying with the draft rules.

Are fund management companies in scope of SEAR?

Initially, SEAR will only apply to banks, insurers and MiFID firms carrying out bank-like activities. Fund managers are therefore, not in scope of SEAR. However, the Central Bank confirms, as per previous indications, that it intends to extend SEAR's application once lessons have been learned from the first wave. As this briefing is for fund managers it does not focus on SEAR however, further details of this pillar of the IAF can be found on our dedicated [IAF & SEAR site](#).

Conduct Standards – Effective 31 December 2023

The IAF imposes an enforceable legal duty on CF holders to take reasonable steps (further details below) to meet the conduct standards and requires regulatory reporting by firms of CF disciplinary action relating to breaches of those standards.

Common conduct standards for all CFs, including PCFs

The common conduct standards apply to all CF holders in any regulated firm including NEDs, INEDs and those exempt from the F&P regime e.g., outsourced CF roles and intra-group arrangements.

The IAF includes detailed guidance on the regulatory expectations for compliance with each of the common conduct standards (see Chapter 5 of the draft guidance under consultation) of acting with honesty and integrity; acting with due, skill, care and diligence; cooperating in good faith and without delay with regulators; acting in the best interests of customers and treating them fairly and professionally; and operating in compliance with standards of market conduct and trading venue rules.

Additional conduct standards for PCFs and CF1s

The additional conduct standards apply to PCFs and CF1s in any regulated firm, including temporary PCF appointments. However, unlike the common standards, the additional standards do not apply to those PCF roles which are exempt from pre-approval under the F&P outsourcing exemption, unless of course the holder is also a CF1.

The IAF includes detailed guidance on the regulatory expectations for compliance with each of the additional conduct standards (see Chapter 6 of the draft guidance under consultation) of ensuring that the firm's business is controlled effectively, is conducted in accordance with applicable legislation, that delegated tasks are assigned to an appropriate person with effective oversight and that any information that the Central Bank would reasonably expect notice of is disclosed promptly and appropriately.

Firms' obligation to embed conduct standards

The IAF requires firms to:



Notify CFs of the common and additional conduct standards, as appropriate, and make a record of such notifications.



Establish and maintain **policies** for the **integration** of the standards into the conduct and culture of the firm e.g., as part of performance and promotion reviews, and ensure they are kept under review and subject to senior management oversight and challenge.



Adopt a framework to identify, monitor and action potential **breaches** of the conduct standards and **report to the Central Bank** on formal disciplinary actions (formal warning, suspension, dismissal, pay reduction) for actual breaches of these standards.



Establish a **training programme**, subject to senior management oversight and challenge, for the provision of initial (post-IAF implementation), pre-appointment and ongoing CF training on the conduct standards so that role holders are aware of their obligations vis-à-vis the standards and what is expected of them in their role.

What are reasonable steps in the context of SEAR and the conduct standards?

In the case of both SEAR and the conduct standards, the IAF operates a 'reasonable steps' principle i.e., if these have been taken to achieve an outcome, that will be sufficient to discharge the relevant obligation.

In assessing the steps that an individual took in any given circumstance, the Central Bank will consider what steps an individual could reasonably have been expected to take in that position and at that point in time.

The IAF sets out a non-exhaustive list of considerations that the Central Bank may take into account, including:

- *prevailing regulatory landscape*: the overall circumstances and environment at that point in time and not applying standards retrospectively or with the benefit of hindsight.
- *role of judgement*: recognising that while judgement may, with the benefit of hindsight, turn out to be wrong in a given circumstance, it is possible it may have been reasonable at the time.
- *firm type*: the nature, scale and complexity of the business of the firm.
- *prevailing environment*: the overall circumstances in which the individual was operating at the time including the information available and how the individual reviewed and challenged it and the individual's participation in collective decision-making.
- *role*: seniority of the individual's role, length of time in the role and at that level of seniority.
- *competencies*: the knowledge, relevant professional qualifications, and previous experience the individual had or could reasonably be expected to have had.

F&P Enhancements – Effective 31 December 2023

(i) Additional CF certification process

Currently, firms must satisfy themselves of CF holders initial and ongoing compliance with the F&P standards and must obtain CF holders agreement to abide by those standards. The IAF introduces an additional step for firms of issuing a certificate of compliance in respect of each CF.

The form of certification is a matter for individual firms however, it must document (i) the firm's satisfaction as to the CF's compliance with the F&P standards and the steps taken to be satisfied, (ii) the CF's agreement to abide by the standards, (iii) the relevant CF role(s) held, (iv) an outline of the parts of the business in which the CF will be involved and (v) whether the role(s) is outsourced to an unregulated entity (in which case the firm retains responsibility for F&P compliance). One individual should be assigned overall responsibility for CF certification which, in the case of non-SEAR firms, should be the CEO or equivalent.

Firms must certify CF holders (including PCF holders) pre-appointment, annually and in advance of any appointment to a new CF role. For new firms, CF certificates must issue within 5 days of authorisation and existing firms will have a two-month transition period (from the date of implementation of the IAF) in which to certify current CFs, where a single certificate will be sufficient for those with multiple CF roles.

Firms' CF certificates are not required to be filed with the Central Bank, however the existing CF register should be updated to reflect certification and the register is required to be available, on request, to the Central Bank. The Central Bank's annual PCF return will be extended to include confirmation of the certification of CFs, including PCFs, and a firm must report to the Central Bank if it revokes or does not renew a certificate or on any formal CF disciplinary action relevant to F&P compliance.

(ii) Additional CF due diligence

Currently, PCF and CF1 and CF2 holders are subject to additional levels of due diligence under the F&P regime. The IAF applies this higher level of due diligence to all CFs meaning that, instead of relying on self-certification, firms are expected to carry out regulatory sanctions checks, director restriction/disqualification checks, and judgement searches as well as carrying out professional body checks and any other role/firm-specific checks on all CFs.

(iii) Holding companies now in scope

The F&P regime is extended to include holding companies and CF holders in those companies.

Next steps

Following publication of the IAF Act and the Central Bank's IAF consultation, fund managers should progress compliance plans and work programmes taking account of the proposed timeline for implementation of the IAF.

How we can help

We will be hosting a lunchtime webinar at 1pm on Wednesday 29 March 2023 to support firms' next steps/actions following enactment of the IAF Act and the publication of the Central Bank's IAF consultation. If you would like to attend our webinar please [register here](#).

Please visit our dedicated [Individual Accountability & SEAR](#) web page for our analysis and commentary to date.

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