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Briefing: The Central Bank of Ireland's Individual Accountability Framework

BACKGROUND - 4 PILLARS

The Central Bank of Ireland's (CBI's) Individual Accountability Framework (IAF) is an important milestone in Irish financial regulation. Its fundamental aim is to promote more effective corporate governance for regulated financial service providers in Ireland. The new framework is designed to ensure that those exercising roles across regulated firms act in the best interests of customers and the integrity of the market, while meeting clearly laid-out standards of conduct.

The [IAF Act](#) was partially commenced on 19 April 2023 and the CBI's Administrative Sanctions Procedure (ASP), new Conduct Standards and enhancements to the Fitness and Probity (F&P) Regime became applicable in December 2023 and heralded the Senior Executive Accountability Regime (SEAR) which became applicable to certain in-scope firms from 1 July 2024, with SEAR applicable to in-scope non-executive directors and independent non-executive directors ((I)NEDs) from 1 July 2025.

The Individual Accountability Framework introduced four key elements:

1. The Senior Executive Accountability Regime (SEAR):

SEAR, a key pillar of the new framework, applied from 1 July 2024 to all in-scope firms (credit institutions, investment firms, insurance firms and 3rd country branches thereof). It brings a targeted focus on compliance by individual personnel of in-scope firms, with defined responsibilities for designated individuals intended to drive change and improve governance across the sector. It imposed a statutory Duty of Responsibility on those in Pre-Approval Controlled Functions (PCFs) to ensure that senior executives took reasonable steps to meet their responsibilities within the firm. This was demonstrated through PCF Statements of Responsibility (SoR) and a firm's Management Responsibility Map (MRM). Other documents such as those that evidence the reasonable steps of PCFs or delegation matrices showing how responsibilities are delegated within the firm, are also required. (I) NEDs are out of scope of SEAR until 1 July 2025.

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2. Conduct Standards:

The Common Conduct Standards were introduced and apply to all those in Controlled Functions (CFs) and PCF's (as this is a subset of the Controlled Functions). Additional Conduct Standards were also introduced and apply only to those in PCF roles and those in CF1 roles (persons that may exercise a significant influence on the firm's affairs). Unlike SEAR the Conduct Standards apply to all regulated firms regardless of sector. Firms are required to incorporate the Conduct Standards in their internal policy documentation and provide training on them.

3. Enhancements to the Fitness & Probity (F&P) Regime:

Firms are now required to proactively certify that those in CF and PCF roles meet the Central Bank's F&P standards.

4. Enhancements to the Administrative Sanctions Procedure (ASP):

The CBI now has the ability to take enforcement action directly against those that may breach their duty of responsibility or those that may fall short of the Conduct Standards.

All in-scope firms of SEAR were legally obliged to implement elements 1-3 above. This was not an insignificant undertaking. Many firms will have had complex group structures with employees in distant jurisdictions being informed that they were now subject to Conduct Standards in a country they may never have even visited! In those same firms, PCF mapping to the relevant inherent, prescribed and other responsibilities will have proved challenging. Drafting SoRs that clearly define a PCF's remit of responsibility and for the said PCF to agree, is no small ask. Moreover, setting up a first-time MRM for large group structures will have been a difficult and complex task.

EXTENSION OF SEAR TO (I)NEDS

SEAR will be extended to (I)NEDs from 1 July 2025. In order to be compliant (I)NEDs have a number of statutory obligations to meet.

1. Statements of Responsibilities (SoRs)

The new obligations include the preparation of individual SoRs which is a separate document for each PCF setting out their role and indicating inherent, prescribed (for those holding additional governance roles) and other responsibilities. From a practical perspective a SoR for each (I)NED should already actually be in place and should be reviewed on a regular basis.

2. Management Responsibility Map (MRM)

All in-scope firms must at all times have an up-to-date MRM in place. The MRM describes the firm's management and governance arrangements including key elements such as reporting lines of PCF's and terms of reference for key board committees. As the CBI has explained, a firm's MRM is in effect a sum of the individual SoRs and therefore should provide an overarching view of the allocation of prescribed responsibilities and other responsibilities across a firm.

3. Duty of Responsibility

(I)NEDs will also be subject to a statutory Duty of Responsibility, introduced as part of SEAR, given they are individuals holding PCF roles. This statutory Duty of Responsibility will oblige them to take reasonable steps to avoid a contravention by their firm of its obligations under financial services legislation, in relation to any aspect of the firm's affairs for which they are responsible as a PCF role holder.

4. Preparation

To ensure that (I)NEDs are well prepared to meet their legal duties and obligations, when the time comes, they need to get prepared and ready in advance. To ensure compliance and for effective implementation of all aspects of IAF/SEAR, (I)NEDs should ensure to do the following:

- Seek active support from their firms to ensure they have a clear understanding of the regimes' requirements, and they are in a position to provide adequate oversight, have clarity on their specific responsibilities and most importantly are fully aware of the risks involved.
- Seek the provision of appropriate training and support, for themselves and their teams, in order to understand the totality of their obligations.
- Ensure the required MRMs & SoRs have been drafted with an eye to enforcement, and implemented and appropriately reviewed and maintained afterwards, to ensure the materials are kept up to date in terms of reflecting changes such as management moves and restructuring and the like.
- To ensure they meet all their statutory responsibilities, they should seek specific technical advices as necessary, for example regarding what constitutes reasonable steps in specific circumstances. Also, they will need to ensure that all statutory requirements are embedded appropriately in the governance arrangements and contracts are reviewed on a regular basis.
- Overall, (I)NEDs would also be well advised to seek the creation of a bespoke IAF/SEAR handbook which is specific to them and their particular role. This will assist them in navigating all of their statutory obligations and also to set out how best to record their evidence of effective oversight management and delegation.

HOW CAN IRISH FIRMS AVOID THE PITFALLS?

The Senior Managers and Certification Regime (SMCR) is the UK equivalent individual accountability regime to SEAR and has been in place since 2016. Our London office colleagues have been at the forefront of advising many financial institutions for the past 8 years on its correct implementation and ongoing maintenance to comply with the standards set by the Financial Services Authority. It is to be expected that the CBI will take a similar approach to the embedding of IAF/SEAR in this jurisdiction, and we set out below the key learnings and insights that they have gathered over time, and which can help Irish institutions cut straight to best practice and avoid the potential pitfalls.

- **Implement with purpose in mind**

IAF/SEAR, like SMCR, is partly an enforcement tool. It aims to make it easier for regulators to identify which executive is accountable for an area of a business that has gone wrong, and to hold them responsible by using their own words in describing what they should have done to oversee the area and prevent breaches. It is essential to draft MRMs, SoRs and handover documents with that in mind. Language that is too broad and aspirational will create risk. A review with an eye to enforcement is essential.

- **Flex governance**

IAF/SEAR forces individual accountability and a clarity that does not necessarily fit with many firms' governance arrangements. With SMCR, there was also often an awkward fit which required adjustment. However, it did make things clearer and got rid of unnecessary repetition and duplication, which in many situations enhanced governance. A governance review that does not understand the rigours of IAF/SEAR will be pointless, so governance exercises need to be tailored to the rigours of the regime. It will take time to establish and embed a framework that works for both the organisation and IAF/SEAR.

- **Make accountability match control**

Under SMCR assigning senior executive functions and prescribed responsibilities often exposed mismatches between power and accountability. Where someone is accountable but not autonomous, or where someone wants control and authority without regulatory accountability, those tensions will need to be addressed under SEAR – and cannot usually be avoided or ignored. That can be particularly acute with overseas executives and parent company oversight. Communication about the regime and its requirements will be important.

- **Cascade changes down**

To avoid exposing executives to unnecessary risk, firms should look at how they can create processes to cascade rigorous oversight down through the organisation. Internal conduct rules which ask staff to also adopt and follow the same behaviours as executives will help reduce risk.

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- **Record effective oversight**
Many senior executives will be concerned about capturing evidence (and finding the time to do so) to prove they are properly delegating, challenging and overseeing their areas of the business, in case the CBI request to review their oversight. Setting out ways of working to support recordkeeping, including suggested procedures for 1-2-1s, committee minutes showing challenge, can help alleviate these concerns and establish good practices.
- **Embed requirements into policies and contracts**
Staff conduct and disciplinary policies, annual appraisal processes, training and onboarding, as well as recruitment processes all need to be adjusted to reflect the new rules and standards. Similarly, employment contracts and director letters of appointment should dovetail with the rules to ensure the company has the contractual rights it needs to implement and enforce the consequences of a breach.
- **Set standards consistently**
For conduct standards and fitness and probity assessments it is important to set a framework of the types of conduct which fall short, and the considerations in calibrating different types of behaviour. Without a flexible framework, there's a high risk of making inconsistent decisions regarding breaches which could lead to a challenge from both the regulator and from employees negatively impacted by a decision.
- **Keep refreshing**
Getting IAF/SEAR in place is a major undertaking for Irish firms. UK firms implementing SMCR also found that keeping their materials up to date afterwards, was a similar burden. Reflecting changes such as governance and management moves and restructuring needs to be reflected in MRMs and SoRs and updated in notifications to the regulator. This task should be allocated to someone to coordinate.
- **Actively support executives**
When SMCR was being introduced in the UK circa 2015 there was great concern from (I)NEDs and directors about how firms would support them to prove adequate oversight. Giving active support to directors and (I)NEDs in Ireland, including offering to advise them of their risks, can assist in successfully meeting the requirements. Similarly, adopting handover templates and processes, as well as onboarding support for new executives, will help prevent IAF/SEAR potentially derailing recruitment. In Ireland (I)NEDs must also be aware and understand that they will be in scope of SEAR as of 1 July 2025. It's important for them to get ready in advance so they are well prepared to meet their legal duties and obligations when the time comes.

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COMMENT

These regulations have placed a much higher regulatory burden on in-scope financial service providers and the senior executives within these firms. The regulations have also bolstered the CBI's ability to take enforcement actions against individuals who have breached their statutory duty of responsibility. A breach of the statutory duty of responsibility will be considered a 'prescribed contravention' and may result in monetary or other penalties. It remains to be seen how the CBI will deploy its enforcement powers to enforce the provisions of SEAR.

The CBI believe that the extension of the application of SEAR to (I)NEDs can significantly contribute to the enhancement of governance, accountability, and risk management practices within financial institutions, ultimately benefiting the financial system as a whole. By holding (I)NEDs to high standards of accountability and requiring them to take personal responsibility for their actions and decisions, SEAR can help in building and maintaining trust among consumers, investors, and regulators in the integrity of the financial services sector.

It is anticipated that in due course the CBI will require in-scope firms to demonstrate that they meet all their legal obligations under IAF/SEAR and this is likely to happen sooner rather than later before SEAR is extended to other regulated entities within the financial services sector.

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