MAPLES GROUP

UPDATE

Preparing for SEAR and IAF: Recommended Measures for all Irish Regulated Firms to Consider

The introduction of an Irish Individual Accountability Framework ("IAF") including a Senior Executive Accountability Regime ("SEAR") has gathered pace as the Central Bank (Individual Accountability Framework) Bill 2022 ("Bill") continues to make its way swiftly through the Irish legislative process.

The Bill has come about as a direct result of the Central Bank of Ireland ("Central Bank") pinpointing issues in the culture and governance structures in financial institutions. In response, it proposed to create a framework to facilitate cultural change and ensure greater individual accountability in regulated financial services firms ("Firms").

As the Bill progresses, we consider some tangible steps Firms can take now to prepare for the new regime. Importantly, we consider this from the perspective of all Irish regulated firms, including those that are not expected to be in-scope of the new regime in the shorter term[1]. This is because, using its existing powers, the Central Bank is already enhancing its focus on conduct, risk culture and individual accountability.

Reviewing a Firm's Regulatory Obligations

Under the Bill the Central Bank will be given powers to make regulations prescribing conduct standards that Firms must abide by, including a regulatory obligation to act in the best interests of customers and the integrity of the market; to act honestly, fairly and professionally and to act with due skill, care, and diligence.

Additional conduct standards will apply to those performing control and senior executive functions, requiring those individuals to take reasonable steps to ensure that the business of the firm for which they are responsible is controlled effectively and complies with relevant regulatory requirements; to take reasonable steps to ensure that any delegation of tasks for which they are responsible is to an appropriate person and that they oversee the discharge of delegated tasks effectively and to disclose promptly, proactively and appropriately any information of which the Central Bank would reasonably expect notice.

Firms will not only be expected to abide by these standards, but incorporate them into their internal policies as required, as well as have systems, controls and procedures to ensure compliance.

In order to align with the increased focus on compliance with regulatory obligations, Firms should have a clear and comprehensive understanding of all areas of law and regulation it is subject to and should appreciate the duties it owes to its clients / customers. In many instances this will require that:

- A policy is put in place; and
- A procedure and operational framework is implemented.

[1] It is proposed SEAR be introduced on a phased basis, with the first phase applying to banks, insurers and MiFID firms which underwrite on a firm commitment basis, deal on own account, or hold client assets, as well as third country branches of those entities.

Such policies, procedures and operational frameworks should be updated where necessary to ensure they are aligned with the Central Bank's expectations and best practices on conduct, risk culture and individual accountability.

Responsibility Mapping

Clear lines of responsibility are central to SEAR compliance. Firms should start to assess their business models and governance structures to begin the work of creating a *management responsibility map.*

Having clearly documented reporting lines (including a documented source for governance arrangements for boards and reporting lines for senior executives) will help Firms implement the new regime on time and with the input needed from key stakeholders, taking into account the Firm's existing operating model and governance structures, including outsourcing and intra-group arrangements.

Proper governance includes establishing an engagement model for when issues arise. There will be challenges in implementing these new requirements and having a clear process in place to manage these challenges will make for a smoother implementation. For example, the additional conduct standards imposed require control and senior executive function holders to take 'reasonable steps' to ensure the area of the business for which they are responsible is controlled effectively and complies with any regulatory requirements. Firms will need to define what steps are deemed reasonable and what threshold will be applied within the Firm for this test to be met.

Measures can also be taken to more formally document the specific duties and obligations of senior executives, with reference to the Firm's strategy.

Reviewing and Enhancing Fitness and Probity Processes

The Bill enhances the Central Bank's supervisory powers with regard to the fitness and probity ("F&P") regime. In addition to extending the F&P regime to holding companies, the Bill also introduces a requirement that persons can only be permitted to perform a control function where a certificate of compliance with F&P standards is given to the Central Bank.

As part of a system of ongoing performance monitoring, the Firm should, at least annually, ask persons performing control functions to certify that they are aware of F&P standards and agree to continue to abide by them. In the immediate term Firms should ensure that their systems to facilitate this are robust and consistent with Central Bank expectations (as communicated in previous industry letters).

Firms should also ensure that they have appropriate procedures for regulatory reporting of F&P related issues.

All of the recommended measures above may be reflected in a Firm's fitness and probity policy.

Training

Comprehensive and tailored training modules should be established to ensure that individuals within the scope of SEAR and other staff understand and can comply with the new regulatory obligations.

The Bill enhances the Central Bank's powers to impose fines on Firms and individuals and building training programmes is an effective way of mitigating the risk of breaching the new requirements once introduced.

Putting Culture on the Agenda

The Central Bank expects that the boards and senior management in Firms will take responsibility for, and be accountable for, embedding effective behaviour and culture in their organisations.

Firms need to start thinking about their culture and how this is demonstrated and influenced from the top down. This may involve assessing the measures that should be brought in to effect a positive change in the Firm's culture and about the behaviours and processes that the Central Bank expects to be in place to enhance accountability and eliminate misconduct risk.

Directors and senior executives should be pro-actively considering how they can deliver measures to effect positive change in the Firm's culture.

How We Can Help

With a depth of experience, our dedicated Financial Services Regulatory team supports clients across all regulated sectors in managing regulatory change, drafting policies, procedures and customer documentation, negotiating outsourcing arrangements, assessing corporate governance structures and guiding clients through engagements with the Central Bank on authorisation applications to supervisory and PRISM engagements (including interview preparation) and the administrative sanctions procedure.

Further Information

For full details on our Irish Financial Services Regulatory Group and the services we provide, please view our website[2] or FSR[3] and FinTech[4] brochures or liaise with any of the following Maples Group contacts:

Financial Services Regulatory

Stephen Carty
+353 1 619 2023
stephen.carty@maples.com

Lorna Smith
+353 1 619 2125
lorna.smith@maples.com

Philip Keegan
+353 1 619 2122
philip.keegan@maples.com

Alison Gibney
+353 1 619 2158
alison.gibney@maples.com

Funds & Investment Management

Dublin

Adam Donoghue
+353 1 619 2041
adam.donoghue@maples.com

Eimear O'Dwyer
+353 1 619 2065
eimear.odwyer@maples.com

Caitriona Carty
+353 1 619 2157
caitriona.carty@maples.com

Ian Conlon
+353 1 619 2714
ian.conlon@maples.com

Ronan Cremin
+353 1 619 2756
ronan.cremin@maples.com

John Gallagher
+353 1 619 2073
john.gallagher@maples.com

[2] https://maples.com/en/services/specialty-services/irish-financial-services-regulatory

[3] https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf

[4] https://maples.com/-/media/files/pdfs/general/fintech---june-2021.pdf

Deirdre McIlvenna
+353 1 619 2064
deirdre.mcilvenna@maples.com

Aaron Mulcahy
+353 1 619 2104
aaron.mulcahy@maples.com

Niamh O'Shea
+353 1 619 2722
niamh.oshea@maples.com

Peter Stapleton
+353 1 619 2024
peter.stapleton@maples.com

Emma Conaty
+353 1 619 2708
emma.conaty@maples.com

London

Fearghal De Feu
+44 207 466 1714
fearghal.defeu@maples.com

Cayman Islands

Pádraig Brosnan
+1 345 814 5441
padraig.brosnan@maples.com

Hong Kong

Ann Ng
+852 3690 7475
ann.ng@maples.com

Employment

Karen Killalea
Head of Employment
+353 1 619 2037
karen.killalea@maples.com

Ciara Ní Longaigh
Associate
+353 1 619 2740
ciara.nilongaigh@maples.com

Christopher Bew
Associate
+353 1 619 2114
christopher.bew@maples.com

The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland *in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2021).*

January 2023