



August 2018

The CBI's Plans for Individual Accountability

The Central Bank of Ireland (the “CBI”) wants more powers to make senior management in regulated entities accountable for their actions. It has set out these requests in different fora, including in its response to a Law Reform Commission paper which it published late last year (see previous article on the topic here: [Link](#)) and in its recent report to the Minister of Finance on behaviour and culture in Irish retail banks (July 2018). This week (27 August) the CBI's Director of Enforcement and Anti-Money Laundering has again set out its proposals for reform in the area.

What are the CBI's proposals?

The CBI wants an Individual Accountability Framework to be introduced which consists of the following:

- ▣ **Conduct Standards** – the CBI recommends that three sets of enforceable Conduct Standards should be introduced:
 - (i) *Common Conduct Standards For All Staff In Regulated Entities* – these would require all staff in regulated entities to adhere to certain standards, including requirements to act honestly, ethically and with integrity and to be open and cooperative with the CBI/other regulators and to deal with them in good faith;
 - (ii) *Additional Conduct Standards For Senior Management* – additional conduct standards would be imposed on those performing pre-approval controlled functions (“PCFs”) or who are captured by the Senior Executive Accountability Regime (see below), such as requiring them to take all

For further information on any of the issues discussed in this article please contact:



Muireann Reedy

DD: +353 (0)1 674 1002

Muireann.reedy@dilloneustace.ie

reasonable steps to ensure that where they delegate a task it is delegated to an appropriate person and they oversee its delegation. The Standards would also, for example, require individuals in scope to take all reasonable steps to ensure that the business of the relevant firm is controlled effectively; and

(iii) *The Standards for Businesses* – these would apply to all firms regardless of the sector in which they operate and would include requirements around communications with customers, customers' interests and financial prudence, among others matters.

- ▣ **The Senior Executive Accountability Regime** (the “SEAR”) – it is proposed that a SEAR would be applied initially to a sub-set of regulated entities (credit institutions, insurance undertakings, investment firms and their third country branches, with specified exemptions in each sector) where certain “*prescribed responsibilities*” set out by the CBI would be assigned to individuals performing Senior Executive Functions (“SEFs”). The SEFs would include board members, executives reporting directly to the board and heads of critical business areas. Each SEF would have a documented “Statement of Responsibilities” clearly setting out his/her role and area of responsibility. The CBI notes that this would make it harder for individuals to argue that the responsibility for wrongdoing lay elsewhere.

The CBI also recommends that each in-scope firm would be required to produce a “Responsibility Map” documenting key management and government arrangements in a clear single source of reference.

- ▣ **Enhancements to the fitness and probity regime** – the CBI would like firms to be required to certify annually that all individuals performing controlled functions are fit and proper to perform their functions. The CBI has said it would also like the power to publish details of where it has refused to approve an individual's appointment to a PCF role and the power to investigate those who performed controlled functions in the past.

Other

Separately, the CBI has said that it would also like the legislation underpinning its Administrative Sanctions Procedure (“ASP”) to be changed so it can pursue individuals directly in an enforcement action, without needing to show that the individual “participated” in some wrongdoing by the firm.

What does this mean?

The CBI cannot implement its proposals without legislative change and has recommended the introduction of such changes to the Minister for Finance. It has also acknowledged that even if it is given these powers, it would “*be a multi-year project*” before the Individual Accountability Framework would become operational, as it would need to be underpinned by policies, procedures and supporting guidance and the CBI would also consult with stakeholders.

However if the proposals are introduced they will result in more exposure for senior management in regulated entities. Firstly, their areas of responsibility will be explicitly spelt out. Hopefully this will benefit everyone in terms of clarity but if the CBI deems that there are issues which fall within an individual's remit, that person could find themselves personally on the hook for any failures. Senior managers will therefore want to ensure that they are receiving adequate support from their firm to discharge the functions which have been assigned to them.

We would also likely see more settlements with individuals under the ASP, as the CBI would be able to proceed against personnel directly instead of being required to tie their actions into a regulatory breach by the firm. To date only a small proportion of settlements have been with individuals, possibly due to evidential difficulties in bringing such cases. Lastly, where an individual's application to the CBI for approval to perform a PCF is refused, details of the refusal could potentially be published on the CBI's website, having negative consequences for the person's reputation.

Contact information

If you have any queries about the information contained in this article, please contact Muireann Reedy of our Regulatory Investigations Unit at Muireann.Reedy@dilloneustace.ie or at 01-674 1002.

Dillon Eustace
August 2018

DILLON  EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022
Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2018 Dillon Eustace. All rights reserved.