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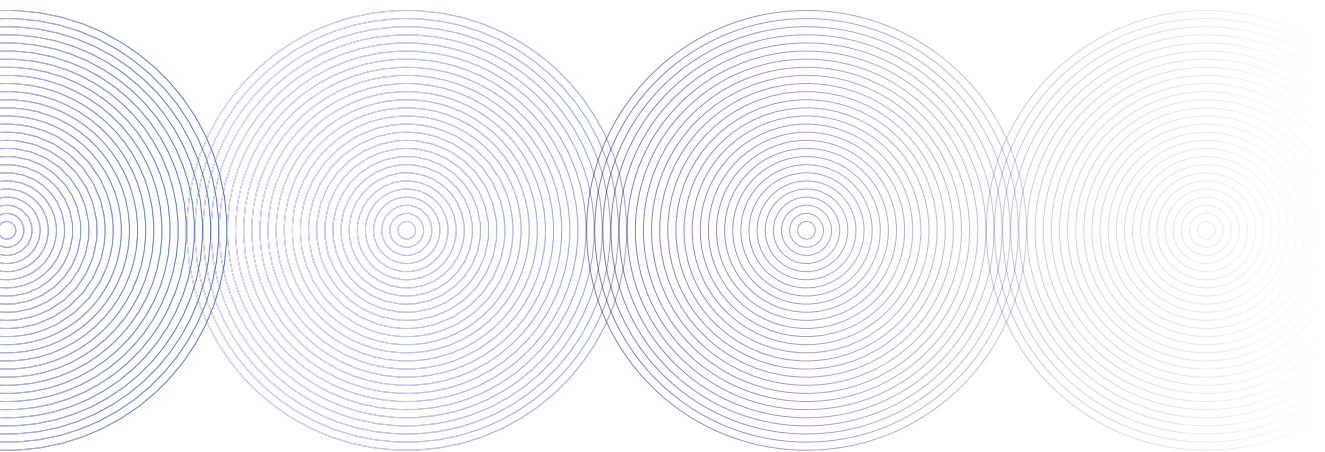
# The Individual Accountability Framework and Senior Executive Accountability Regime

*Supporting our clients in ensuring a positive and customer-focused culture*

McCANN FITZGERALD







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## What is the Individual Accountability Framework?

The new Framework is intended to confer powers on the Central Bank of Ireland (the “**Central Bank**”) to strengthen and enhance individual accountability in the management and operation of regulated financial service providers (each an “**RFSP**”).

The new Individual Accountability Framework is mapped out in the General Scheme of Central Bank (Individual Accountability Framework) General Scheme 2021 (the “General Scheme”), which was published on 27 July 2021.

### The General Scheme will:

- a) provide for obligations on RFSPs with respect to senior executive accountability and other governance and management arrangements;
- b) set out standards of behaviour for RFSPs and individuals performing functions in RFSPs;
- c) enhance sanction processes for individuals who breach their responsibilities under financial services legislation; and
- d) prescribe and allocate responsibility and accountability for the management and operation of RFSPs to individuals.



## Who does it apply to?

The Individual Accountability Framework under the new regime will apply to RFSPs.

The term RFSP is defined broadly under the General Scheme and essentially includes all financial service providers whose business is subject to regulation by the Central Bank and in certain circumstances other European regulators or the ECB. The new Framework will comprise four parts, including SEAR.

SEAR will be implemented on phased basis and initially apply to:

- credit institutions (excluding credit unions);
- certain insurance undertakings and
- investment firms, and
- third country branches of such firms.

Other sectors may be included in the future.

Other elements of the Framework, such as the introduction of new conduct standards, will not be implemented on a phased basis.

RFSPs should expect that such standards will have wider application to all RFSPs, beyond those RFSPs and senior executives to which SEAR will apply.

The changes to the Fitness & Probity regime and to the Central Bank's enforcement powers will apply to all RFSPs.

## What does the new regime involve?

The Individual Accountability Framework, will be comprised of four parts.



**Senior Executive  
Accountability Regime  
("SEAR")**



**New Individual and  
Business Conduct Rules**



**Enhancements to  
the Fitness & Probity  
Regime**



**Enhancements to the  
Central Bank's Powers**



What does the new regime involve? cont.

“Implementation will be a significant undertaking for RFSPs, involving inputs from throughout the business.

RFSPs and senior executives need to be aware that this is happening, so that they can take steps to ensure that their organisational controls are fit for purpose when the new regime and Conduct Standards come into effect.”

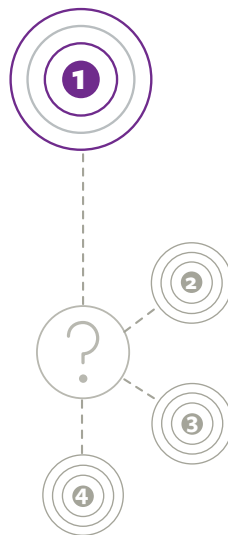
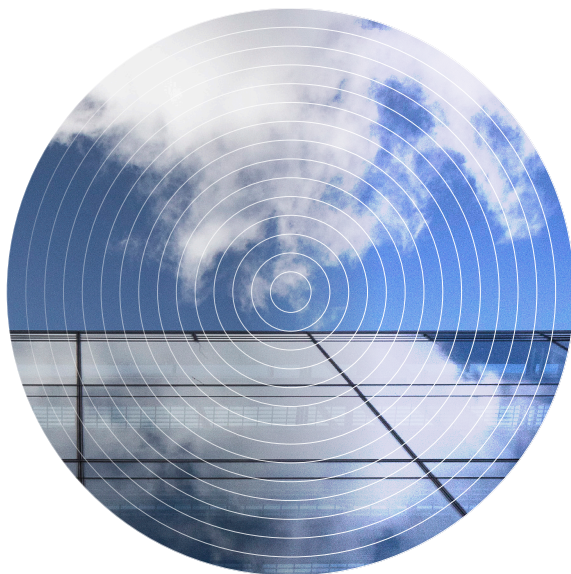


**- Josh Hogan**  
*Partner, Financial Services*

### Why is it important?

- Implementation is likely to be transformative in terms of corporate governance within RFSPs
- Senior executives will be individually accountable for decisions made on their watch
- New obligations for senior executives – ensuring that ‘reasonable steps’ have been taken will be key
- New obligation on RFSPs and SEFs to disclose to the Central Bank anything relating to the RFSP of which the Central Bank would reasonably expect notice
- New conduct standards will apply to individuals
- Annual certification requirements
- Increased focus on actions of individuals
- Increased Central Bank enforcement powers

What does the new  
Framework involve? cont.



## SEAR

The first part of the General Scheme, SEAR, will require every in-scope RFSP to set out clearly where responsibility and decision-making lies within the organisation.

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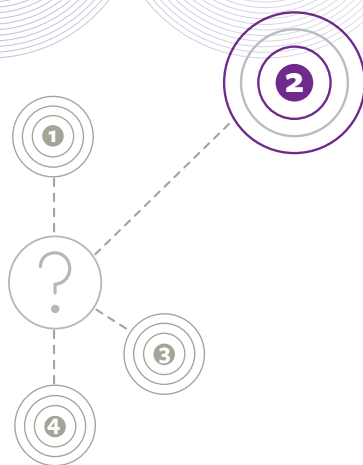
### RFSPs will be required to:

- identify the individuals within the RFSP who are carrying on Senior Executive Functions (each an “**SEF**”);
- allocate responsibilities to such individuals that are carrying out SEFs;
- provide a statement of responsibilities to the Central Bank for SEFs which clearly sets out their role and areas of responsibility; and
- produce a management responsibility map documenting key management and governance arrangements in a comprehensive and accessible way within a single source of reference.

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SEFs will have a duty of responsibility to take reasonable steps to avoid their firm committing or continuing to commit a “prescribed contravention” in relation to the areas of the business for which they are individually responsible.

What does the new Framework involve? cont.



## New Business and Conduct Rules

The new regime is intended to impose obligations on RFSPs with respect to expected standards of conduct (“**Standards for Business**”); and expected standards of conduct for every person carrying on a Controlled Function (“**CF**”) role (“**Common Conduct Standards**”); and certain additional expected standards of conduct for so-called ‘persons in senior roles’ (“**Additional Conduct Standards**”).

The Standards for Business will apply to the RFSP itself and will inform how it is managed and governed.

The Common Conduct Standards will apply to every CF in an RFSP and not merely to Pre-approval Controlled Functions (each a “**PCF**”). RFSPs will be required to ensure that CFs are aware of these Common Conduct Standards and CFs will be obliged to follow such standards.

The Additional Conduct Standards will apply to every PCF in every RFSP (irrespective of whether the relevant RFSP is within the SEAR regime) and to every other person “who exercises significant influence on the conduct of an RFSP’s affairs”.



### Breach Reporting

The new regime will introduce an obligation on RFSPs and SEFs to disclose to the Central Bank anything relating to the RFSP of which the Central Bank would reasonably expect notice. In addition, RFSPs and SEFs may be required to report, in a timely manner, any disciplinary action arising from breaches of the new business and conduct standards to the Central Bank.

## Key Themes

Key themes arising across the standards under the new regime are the obligations:

- a) to act honestly, ethically, and with integrity;
- b) to act with due skill, care and diligence;
- c) to act in the best interest of the customer;
- d) to avoid conflicts of interest;
- e) to maintain and follow adequate controls and procedures;
- f) to engage with the regulator openly and in good faith; and
- g) disclose to the Central Bank any information of which the Central Bank would reasonably expect notice.

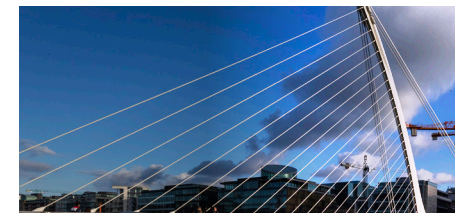
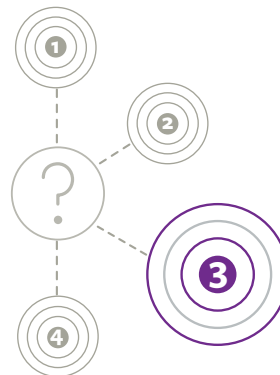


## What does the new Framework involve? cont.

### New Business and Conduct Rules cont.

The Additional Conduct Standards will include obligations to:

- a) ensure that the business of the RFSP is controlled effectively;
- b) ensure that the business of the RFSP complies with relevant regulatory requirements;
- c) ensure that delegation of relevant tasks is to an appropriate person and that they oversee the discharge of the delegated task effectively;
- d) disclose promptly, proactively and appropriately to the Central Bank any information of which the Central Bank would reasonably expect notice; and
- e) participate effectively in collective decision making.

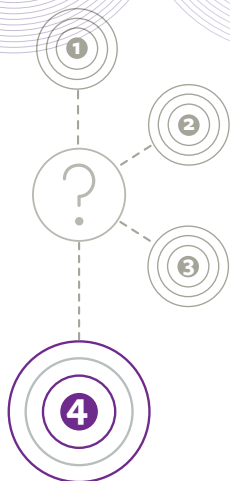


## The Enhanced Fitness and Probity Regime

The new regime will require RFSPs to periodically certify the fitness and probity of persons in CF and PCF roles. All RFSPs must not permit a person to perform a CF unless the RFSP has certified that they are satisfied that a person complies with the applicable Fitness and Probity standards before any appointment to a CF (including PCF) role.

The Central Bank will be given the power to make regulations specifying requirements in relation to certification, the due diligence that RFSPs must undertake prior to certifying persons in CF roles, the adoption of fitness and probity policies and procedures.

What does the new  
Framework involve? cont.

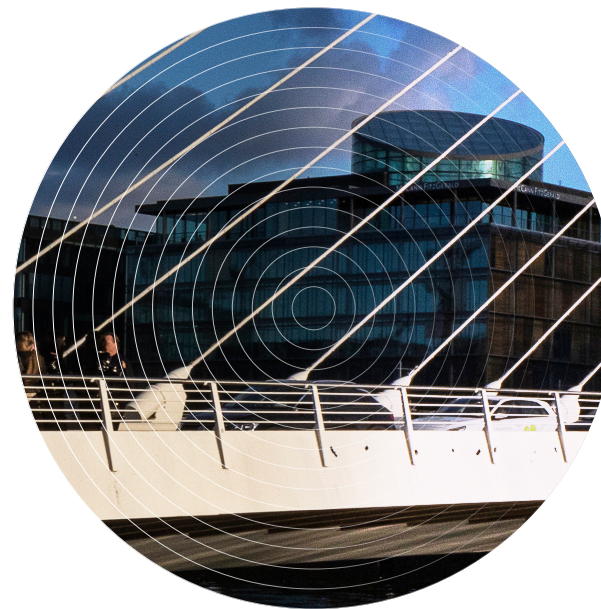


## Enhanced Central Bank Enforcement Powers

Commentary from the Central Bank indicates that the new regime will remove the so-called “participation link” so that the Central Bank will no longer have to first find that an RFSP has committed a regulatory breach before it can take enforcement action against any individual in that RFSP.

The legislation will also amend the Central Bank’s Administrative Sanctions Regime and the Fitness and Probity Standards, so that breach of the new Conduct Standards will be a prescribed contravention of financial services legislation, such that the Central Bank will be able to take action against the individual(s) who are accountable.

The General Scheme indicates that the Central Bank’s approach to making a decision to take enforcement will remain unchanged, and that it will be ‘proportionate and risk-based’. It will be a defence for an individual to show that they acted reasonably in all of the circumstances of the case.





## What do RFSPs need to do, and what can they do now?

Implementing the Individual Accountability Framework, and driving the culture changes necessary to embed new processes within an organisation is likely to be a multi-year project.

The Bill is expected to be enacted, and an implementation period will be needed once the Bill is enacted into law. Implementation is likely to be some time away, but small steps now are needed to prepare.

Steps that can be taken now:

1	2	3	4	5
<b>Put SEAR on the agenda</b>	<b>Pick your team</b>	<b>Assess the landscape</b>	<b>Prepare</b>	<b>Start high level engagement with stakeholders</b>
Consider your existing culture and what may need to change to comply with the SEAR and Individual Accountability Framework proposals.	Establish a cross-functional SEAR implementation group (regulatory, compliance, legal, HR, and other relevant stakeholders). This group should board led or have board access.	Identify those carrying senior executive functions in your organisation and prepare an initial Responsibility Map based on existing job descriptions. This will help you to identify any existing gaps in responsibilities or any activity for which no identified role is currently responsible.	<p>Collate your existing regulatory and HR policies and template contracts of employment identify areas that will need to be updated during the course of your SEAR project.</p> <p>Raise awareness regarding SEAR, and its implications and timeline, within the RFSP, initially within the leadership team.</p>	Consider engaging with your Directors & Officers Insurance provider with a view to assessing the level of cover that would be available to individuals arising from alleged breaches of conduct standards.

What do RFSPs  
need to do, and  
what can they do  
now? cont.

## Projects Steps

### Scoping exercise

Determine what obligations under the new regime will apply to the RFSP; and

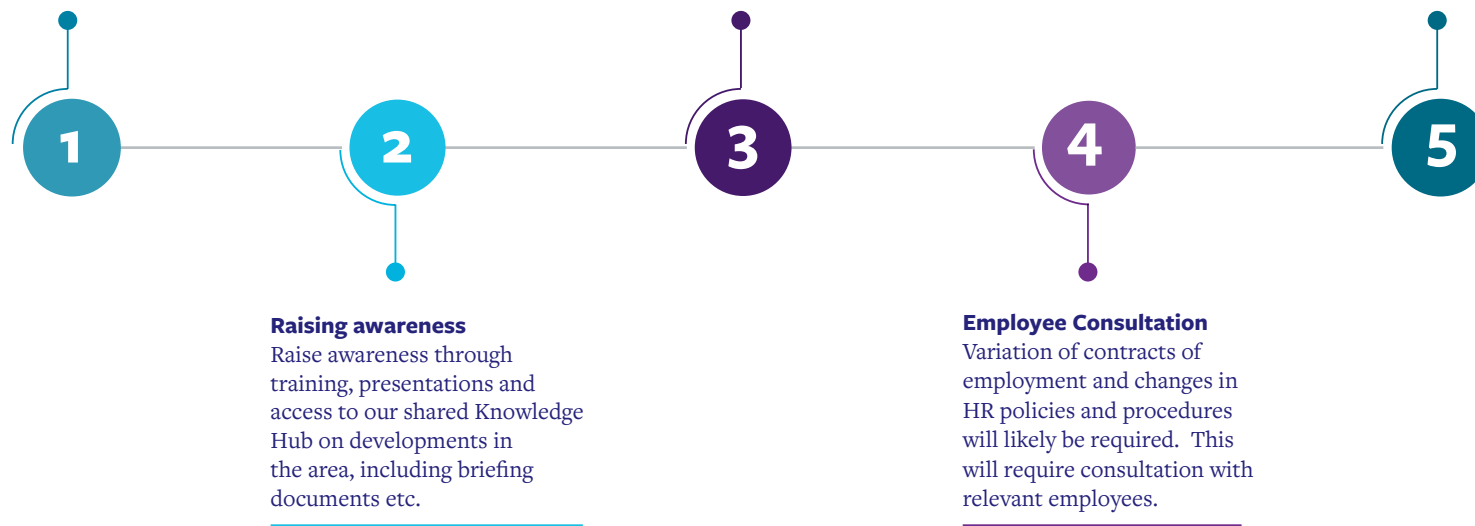
Identify the senior management who will be required to comply with the new regime within the RFSP.

### Responsibility Map & Statement

Develop a Responsibility Map and Statements of Responsibility for individuals carrying out senior executive functions will require many RFSPs to rethink their decision making and governance arrangements. Look at this as an opportunity.

### Execution and Ongoing Engagement

Once enacted, RFSPs and in-scope individuals will be required to ensure their ongoing compliance with the new Framework.





## How can we help?

Implementing a robust internal framework to promote a positive customer-focused culture, and to address the new challenges posed by the new regime will be a significant undertaking for many RFSPs and will involve considerable management time. We can assist in the process from start to finish.

We expect that the new regime will require multi-disciplinary expertise, access to specialists across multiple areas of legal practice, and the ability to run large-scale complex legal projects.

Our team of regulatory, employment law, corporate, litigation, pensions and technology experts spans the firm's entire

range of expertise. This enables us to offer a composite, first-class professional service to in-scope RFSPs. The key strength of our specialist team lies in the ability to provide support and assistance on a cross-disciplinary basis, offering a fully-integrated, seamless service to in-scope RFSPs, both large and small.



**Integrated  
Offering**



**Proven Track  
Record**



**Cost Effectiveness  
and Transparency**



**Market Leading  
Experience**

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