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Key HR considerations for Irish regulated firms

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The Irish Central Bank's (Individual Accountability Framework) Act 2023 (the **Act**) was signed into law on 9 March 2023. The Act has been a key focus of the Central Bank of Ireland's agenda since 2018. Readers can learn more about the Act generally and its impact for Irish financial providers in our previous article here.

Consultation for the framework closed on 13 June 2023 and feedback is yet to be published. The Act will not commence until the Central Bank has completed the public consultation process on its proposed regulations and guidelines under the Act. However, it is prudent for firms to prepare for these changes given the significance of the proposed obligations placed on regulated roles. In this article, we provide guidance from a HR perspective on how to best prepare for these changes.

Step 1: Project management and identification of roles and responsibilities

- The relevant entity/firm should prepare a project plan to manage the process going forward. Ideally, this would include establishing a dedicated project team of varying roles (HR, legal, management etc.).
- The framework provides scope for a senior executive accountability regime (the **SEAR**) which will initially only apply to banks, insurers and certain MiFID firms, however, its application may be extended in due course. Firms should first identify the individuals who carry out executive and pre-approval controlled functions (**PCF**) in order to assess who the framework and SEAR will apply to.
- Firms should then map out what roles lie with each of these individuals, detailing their day-to-day responsibilities.

Step 2: Review and audit

- Firms should review draft regulations and carry out an audit exercise against the individuals and roles that have been identified during step 1 above to ensure that prescribed responsibilities lie with the correct individuals and that they are appropriately regulated by the Central Bank to carry out those roles. This will assist firms in identifying any gaps or mismatched responsibilities and may indeed trigger a reshuffling of duties between these individuals.

Step 3: Prepare Statements of Responsibilities and a Management Responsibility Map for those carrying out PCF roles

- Under the SEAR, firms are required to ensure that individuals in a PCF role have in place a documented Statement of Responsibilities setting out each of their individual responsibilities. Firms must also have in place a Management Responsibility Map that comprehensively sets out the key management and governance arrangements within the firm.

Step 4: Conduct a HR review

- **Fitness and probity standards**: The Act reinforces existing requirements on firms to ensure that prior to hiring an individual into a controlled function (**CF**) role, they have obtained the necessary documentation that satisfy the fitness and propriety of the individual in question. This applies both at the time of engaging the individual at the outset, as well as annually thereafter.

- **Conduct Standards**: A review of the firm's HR policies and procedures and employment contracts should be conducted in light of the proposed Conduct Standards. Where applicable, firms should engage with senior management and identify what reasonable steps must be taken to ensure compliance with the Conduct Standards, how these changes will be documented and effectively communicated rolled-out throughout the firm.

- At a minimum, employment contracts should clearly set out the individual's roles to ensure there is no discrepancy as to what that they are responsible for and so that any failure by an employee in this regard can be referred back to in the contract. Further, employment contracts should also require employees to acknowledge their requirement to comply with the new Conduct Standards.

- Firms will also be required to certify that each of their employees carrying out CF roles meet applicable fitness and probity standards on an annual basis (at a minimum). Therefore it would be prudent to implement a certification policy clearly detailing how the certification process will be conducted, and making the employment conditional of this.

- The new regime obligates firms to engage in disciplinary action against those who may have breached these standards. Firms should review and update their disciplinary procedure accordingly, taking into account the reporting obligations to the Central Bank and the amended investigation process and enhanced enforcement powers, under the Administrative Sanctions Procedure (**ASP**).

- It is also advisable for firms to implement a handover policy where one does not exists to ensure that employees taking over a CF role from another employee, have all the required information and resources to carry out that role from the outset. Following the approach taken in the U.K. under the Senior Managers and Certification Regime, having this policy in place has already proven beneficial in the changeover of employees who are within scope of the framework.
- The draft SEAR Regulations currently require each version of an individual's Statement of Responsibilities to be retained for a period of ten years from the date it is superseded (or the individual ceases to be a PCF holder with the firm). Further, under the draft Certification Regulations, all regulated firms must retain all information relating to the certification of its employees for at least six years after they have ceased performing the CF role in question. Accordingly, firms should review their data retention policies to ensure compliance with these requirements.
- Firms should also review their code of conduct generally to ensure alignment with the new Conduct Standards.

Step 5: Internal training

- The Act requires all regulated firms to provide training to its employees carrying out CF and PCF roles in their firm on the Conduct Standards to all employees. The training provided must ensure that individuals in scope of the framework have "appropriate knowledge" of the Conduct Standards and how they apply to a person performing a CF role. Such training must be specific to each of the roles in question and is considerably more onerous than the current system. Therefore the level of training provided must be more than merely a box-ticking exercise.

Conclusion

The Act undoubtedly imposes an onerous administrative burden on regulated firms in Ireland. Irish regulated firms should not underestimate the efforts involved in engaging with senior managers and achieving compliance with the Act. Additionally, regardless of whether a firm is in scope of the SEAR, it will still be subject to the Conduct Standards and the fitness and probity enhancement, which are expected to be published by 31 December of this year. Until then and whilst we await feedback from the Central Bank's consultation process, regulated firms in Ireland should proactively progress compliance plans and HR reviews in order to avoid falling on stony ground at the outset.

For further information on the Act and/or assistance with reviewing and updating workplace policies and procedures and employment contracts to ensure compliance with the Act, please *contact Bláthnaid or Marianne via their contact details below.*

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