KPMG

Fitness and Probity Update

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Central Bank of Ireland Amendments to Pre-Approval Controlled Functions ("PCFs") under the Fitness and Probity Regime ("F&P Regime").

On 22 September 2021, the Central Bank of Ireland ("CBI") published its notice of intention to amend the list of Pre-Approval Controls Functions ("PCF").

It outlines three key changes to the PCF list applicable to all Irish Regulated Financial Service Providers ("RFSPs") other than credit unions.

This publication follows on from the **Additions to the list of Pre-Approval Controlled Functions** published in October 2020, in which the CBI:

- introduced three new PCF roles, Chief Information Officer (PCF-49), Head of Material Business Line (PCF-50) and Head of Market Risk (PCF-51) and;
- split the Designated Person PCF-39 role into six PCF roles aligned to the specific managerial functions as follows:
  - Designated Person with responsibility for Capital and Financial Management (PCF-39A)
  - Designated Person with responsibility Operational Risk Management (PCF-39B)
  - Designated Person with responsibility Fund Risk Management (PCF-39C)
  - Designated Person with responsibility Investment Management (PCF-39D)
  - Designated Person with responsibility Distribution (PCF-39E)
  - Designated Person with responsibility for Regulatory Compliance (PCF-39F)

The significance of the current proposals in the context of the Individual Accountability Framework

As with the additional PCFs outlined in October 2020, these amendments should be viewed in the context of the draft legislation for the Individual Accountability Framework ("IAF") released in July 2021. The introduction of the new PCF roles indicates the CBI's intent to reinforce the pre-existing structure under the F&P Regime and introduce an effective Senior Executive Accountability Regime ("SEAR").

According to the draft legislation, each PCF role, whether new or amended, as appropriate, will map to a Senior Executive Function ("SEF") for RFSP's in scope of the SEAR. The SEAR will introduce additional requirements for relevant executives including:

- Allocation of Prescribed Responsibilities
- Statements of Responsibility
- Overall Management Responsibilities Map

In addition, it will be vital to review succession planning, handover policies as well as conduct rule breach management procedures for these new and amended PCFs within the context of the IAF and SEAR.

1. Expand PCF-16 to include branch managers in non-EEA countries

The CBI intends to amend PCF-16 such that it includes managers of branches of Irish RFSPs in non-EEA countries. The extension of the scope of this PCF is seen as a necessary step in response to the changing structure of, and landscape surrounding, Irish financial services, including the lead up to and post-Brexit, given the number and size of branches of RFSPs outside of the EEA. The amendment would introduce the pre-approval requirement of Section 23 of the Central Bank Reform Act 2021 to all branch managers of RFSPs outside Ireland, based on the level of control and autonomy that such individuals may have.

2. Introduction of stand-alone PCFs

In addition, the CBI has introduced the following stand-alone PCF functions:

Independent Non-Executive Directors (INEDs) – PCF-2

The CBI intends to split PCF-2 to reflect the distinction between Non-Executive Directors ("NED") (PCF-2A) and Independent Non-Executive Directors ("INED") (PCF-2B).

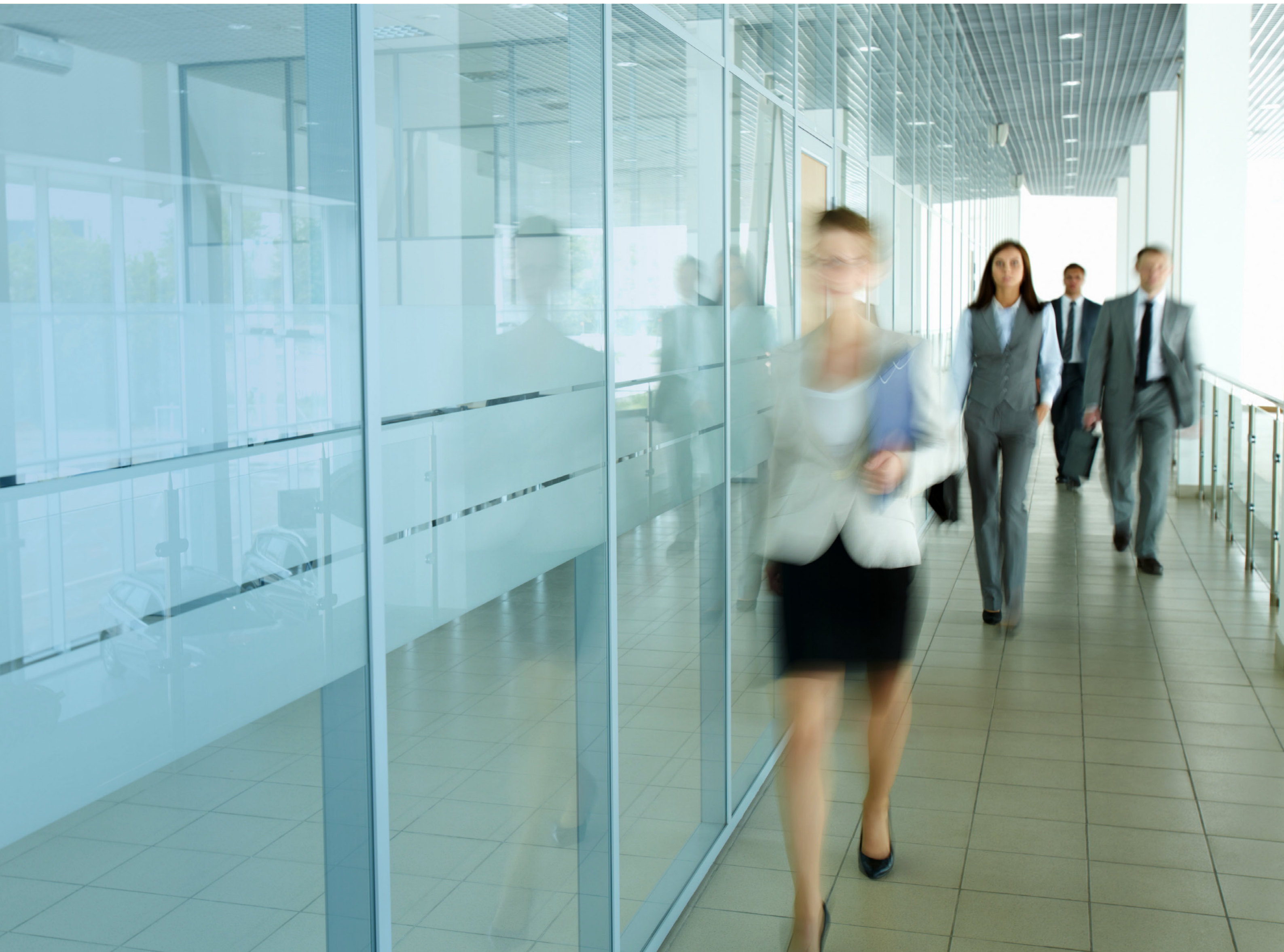
The intended amendments proposed by the CBI affirm the important role INEDs fulfil in providing independent oversight and challenge of firms and their boards.

The significance of the role of INEDs will become even more important under the proposed IAF providing independent oversight and challenge to ensure that the RFSP is both promoting the right culture and meeting its obligations under IAF. This distinction between Non-Executive and Independent Non Executive director roles, indicates that the CBI is making preparations now to ensure that the Conduct Standards and SEAR under the proposed IAF will be applied to each role accordingly.

The Head of Anti-Money Laundering and Counter Terrorist Financing (PCF-15)

Noting the increasing importance of the role of individuals with responsibility for Anti-Money Laundering and Counter Terrorist Financing, the CBI intends to replace PCF-15, Head of Compliance with responsibility for Anti Money Laundering and Counter Terrorist Financing Legislation, with a dedicated role for Anti-Money Laundering and Terrorist Financing (PCF-52).

Within the context of the CBI's IAF proposals, this addition will further align the PCF roles with the Senior Management Functions as outlined within the UK Senior Managers and Certification Regime ("SMCR"), namely the Money Laundering and Reporting Officer ("MLRO").



3. Removal of PCF-31

The CBI notes an element of duplication between PCF-30 and PCF-31 and accordingly intends to remove PCF-31, which is relevant to investment firms only.

Impact to those individuals in-situ at the date of implementation

Those in the affected PCFs on the date the amended regulations come into effect will not be required to seek the approval of the CBI to continue to perform one, or more, of the amended PCF roles.

PCF-2	All PCFs will be re-designated as PCF-2A. RFSPs will be required to notify the Central Bank which individuals should be designated as PCF-2B, and that they have confirmed that they have undertaken the relevant due diligence to assess independence.
PCF-12	No action required.
PCF-15	All individuals designated as PCF-15 will have this designation end-dated. RFSPs will be required to notify the Central Bank of the appropriate PCF designation(s) of the individual i.e. either or both PCF-12 and PCF-52
PCF-16	No action is required from RFSPs within which an individual holds an existing PCF-16 designation. RFSPs now captured by the expansion of PCF-16 (i.e. branches outside of the EEA) will be required to review their assessment under Section 21 of the Central Bank Reform Act 2010 in respect of individuals in situ and submit confirmation of such an assessment to the Central Bank.
PCF-31	No action required – all individuals who are PCF-31 will automatically be re-designated as a PCF-30.
PCF-52	Where an RFSP determines that it is appropriate for an individual designated as PCF-15 to be re-designated as PCF-52 as set out above, RFSPs will be required to notify the Central Bank accordingly. In all other cases, an RFSP should review its functions and determine whether any would meet the Head of Anti-Money Laundering and Counter Terrorist Financing role. Where it is determined by the RFSP that this role does exist, the RFSP will be required to review their assessment under Section 21 of the Central Bank Reform Act 2010 in respect of individuals in situ and submit confirmation of such an assessment to the Central Bank.

The in-situ process will commence after the amended regulations come into effect and a period of 6 weeks will be provided to submit the in-situ confirmation. The full application process will apply to any new appointment to the amended PCFs after the amended regulations come into effect.

How can KPMG help?

Readiness Assessment

We can assist you with a readiness assessment & identify required changes to be implemented. This includes a remediation plan and clear actions for any gaps identified.

Design and Implementation

We can assist you with the design and implementation of the regime across the four pillars using the output of a readiness assessment. This includes target operating model design and implementation.

Technology

We can provide BAU support and manage the on-going requirements as a service using our bespoke technology solution that is adaptable for your needs.

Assurance

We can assist you to ensure that you are in adherence with the new requirements prior to implementation or post implementation, leveraging our experience with the UK SMCR, Australian BEAR/FAR and current CBI F&P regime.

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