

# Central Bank of Ireland Amendments to Fitness and Probity and Minimum Competency Code

## Latest Updates

### Central Bank of Ireland Amendments to Pre-Approval Control Functions (“PCFs”) under the Fitness and Probity Regime (“F&P Regime”)

In **October 2020** and **September 2021**, the Central Bank of Ireland (“CBI”) amended the list of Pre-Approved Controlled Functions (“PCFs”) as follows:

- Introduction of three new PCF roles, Chief Information Officer (PCF-49), Head of Material Business Line (PCF-50) and Head of Market Risk (PCF-51) and;
- Division of the Designated Person PCF-39 role into six PCF roles aligned to the specific managerial functions.
  1. Designated Person with responsibility for Capital and Financial Management (PCF-39A)
  2. Designated Person with responsibility for Operational Risk Management (PCF-39B)
  3. Designated Person with responsibility for Fund Risk Management (PCF-39C)
  4. Designated Person with responsibility for Investment Management (PCF-39D)
  5. Designated Person with responsibility for Distribution (PCF-39E)
  6. Designated Person with responsibility for Regulatory Compliance (PCF-39F)

On the 5 April 2022, the CBI published a Feedback Statement outlining **amendments to the List of PCFs**. It outlines three key changes to the PCF list applicable to all Irish Regulated Financial Service Providers (“RFSPs”) other than credit unions:

1. Expanding PCF-16 Branch Manager of Branches in Other EEA Countries to include Branch Managers in non-EEA countries;
2. Introducing stand-alone PCFs;
  - a. Independent Non-Executive Directors (“INEDs”) PCF-2b
  - b. Head of Anti-Money Laundering and Counter Terrorist Financing Compliance – PCF-52
3. Removing PCF-31 Head of Investment.



In addition, the CBI proposes to amend the title of all roles which relate to the chairing of a Board or Committee. Accordingly, the titles of such roles will be amended from “Chairman” to “Chair”, as detailed below;

- PCF-3 Chairman of the Board → Chair of the Board
- PCF-4 Chairman of the Audit Committee → Chair of the Audit Committee
- PCF-5 Chairman of the Risk committee → Chair of the Risk Committee
- PCF-6 Chairman of the Remuneration committee → Chair of the Remuneration Committee
- PCF-7 Chairman of the Nomination committee → Chair of the Nomination Committee

The applicable in-situ process started on 25 April 2022. All Regulated Financial Services Providers (“RFSPs”) captured by the expansion of PCF-16 were required to submit confirmation of their assessment under Section 21 of the Central Bank Reform Act 2010 (“CBRA 2010”) in respect of individuals in-situ to the CBI. This required RFSPs to notify the CBI which individuals should be designated with the amended PCF titles by 3 June 2022.

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

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

- PCF-2** All PCF-2s will be re-designated as PCF-2A. RFSPs were required to notify the Central Bank which individuals should be designated as PCF-2B by 3 June 2022.
- PCF-3** No action required; title will be automatically amended.
- PCF-4** No action required; title will be automatically amended.
- PCF-5** No action required; title will be automatically amended.
- PCF-6** No action required; title will be automatically amended.
- PCF-7** No action required; title will be automatically amended.
- PCF-12** No action required.
- PCF-15** All individuals designated as PCF-15 will have this designation end-dated. RFSPs were 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 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, including the UK) were required to submit confirmation of their assessment under Section 21 of the Central Bank Reform Act 2010 ("the CBRA") in respect of individuals in situ to the Central Bank by 3 June 2022.
- 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 PCF15 to be re-designated as PCF-52 as set out above, RFSPs are required to notify the Central Bank accordingly. In all other cases, an RFSP should review its functions and determine whether any would meet the definition of 'Head of Anti-Money Laundering and Counter Terrorist Financing Compliance'. Where it is determined by the RFSP that this role does exist, the RFSP is required to review their assessment under Section 21 of the CBRA in respect of individuals in situ and submit confirmation of such an assessment to the Central Bank.



Any individuals being appointed to the amended PCF roles after the 03 June 2022 are required to undergo the full PCF appointment process.

These developments should be considered in the context of the Individual Accountability Framework "IAF". 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 released in July 2021, 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. In addition, all PCF roles, irrespective of whether they are initially in scope of SEAR, will be subject to Additional Conduct Standards requiring them to take "reasonable steps" to oversee their respective functions correctly. Breach of these Conduct Standards will be a Prescribed Contravention under the relevant Central Bank Acts. The final legislation on the IAF is expected to be published in Q3 2022.

Therefore, all RFSPs should ensure that roles and responsibilities of PCFs are adequately defined and conduct an impact assessment of the Conduct Rules on PCFs and other in-scope individuals in advance of the legislation being published.

For further details on F&P, please find further information in our previous bulletin, issued in [December 2021](#) and [July 2020](#).

## CBI Addendum to the Minimum Competency Code (MCC) 2017

The CBI has published an **Addendum** to the Minimum Competency Code (“**MCC**”) 2017.

This applies to persons exercising controlled functions on a professional basis on behalf of a regulated firm in relation to Retail Credit Firm / Credit Servicing Firm activities (“RCF / CSF activities”) under the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022, the (“2022 Act”).

The changes to the 2022 Act ensure that consumers entering into hire purchase including Personal Contract Plans (“PCP”), consumer-hire and Buy Now Pay Later (“BNPL”) can be protected by the CBI’s consumer protection framework including key provisions of the Consumer Protection Code 2012, the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017. It has introduced a number of changes including bringing hire purchase, PCP, consumer-hire and BNPL agreements in Consumer Protection Code, introducing a maximum APR of 23%, updates to hire purchase agreements and a requirement for firms providing these services to seek authorisation from the CBI, with a three month transitional period in place. Firms providing these services will be required to seek authorisation as a Retail Credit Firm (“RCF”) or as a Credit Servicing Firm (“CSF”) as appropriate.

With effect from 16 May 2022, a person carrying out the new RCF / CSF activities must be authorised as a retail credit firm and / or a credit servicing firm (unless the person is specifically exempt from authorisation under the Central Bank Act 1997 (“1997 Act”), including, by way of an existing authorisation). For the purposes of applying the MCC to persons carrying out

the new RCF / CSF activities, the following amendments are now made:

- Persons carrying out the new RCF / CSF activities on behalf of a regulated firm must work towards obtaining a relevant recognised qualification by 16 May 2026.
- The definition of Consumer Credit falling within scope of the MCC has been expanded. The amendment removes the reference to cash loans and now includes consumer credit and credit sale agreements under the Consumer Credit Act 1995, as well as directly or indirectly providing credit or entering into a consumer hire or hire purchase agreement under the Central Bank Act 1997<sup>1</sup>.
- In addition, the definition of a new RCF / CSF activity has been updated within the MCC<sup>2</sup> to note that it now covers activities which previously did not require authorisation or for individuals to be appropriately qualified under the MCC.

As a result of the amendments above, RFSPs should review their current products and services to ensure that they:

- have accurately identified all services currently in scope of the new regulations; and
- have reviewed the qualifications of all individuals providing advise in respect of these products / services and ensured that they are either (a) appropriately qualified or, are (b) working towards a designated qualification well in advance of the deadline of 26 May 2026. In addition, RFSPs should ensure that their F&P registers are updated to reflect these changes and that adequate monitoring and tracking mechanisms are established to ensure that they are embedded within the organisation.

## How can KPMG help?

We understand how consumer-centric firms will look in the future, informed by our extensive experience of leading remediations and unique, in-depth financial products experience. This is reflected in our Compliance by Design key considerations and benefits, which incorporate the role of assurance with a consumer-first approach. KPMG has worked with multiple firms to develop their consumer protection approach throughout different stages of the product lifecycle. Our knowledge and understanding are based on a first-hand experience of working with industry peers and Regulators on their assurance programmes.



### Readiness Assessment

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



### Technology

We can advise you on technology solutions to manage both the F&P and IAF requirements, using our bespoke technology solutions that are adaptable for your needs.



### Design and Implementation

We can assist you with the design and implementation of amendments to the F&P, MCC and IAF requirements using the output of a readiness assessment. This includes target operating model design and implementation.



### 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 implementing and advising on F&P requirements as well as Individual Accountability regimes such as the UK’s Senior Manager and Certification Regime, and Australia’s Banking Executive Accountability Regime / Financial Accountability Regime.

<sup>1</sup> Minimum Competency Code, Appendix 1, Category 8, Consumer Credit Agreements and Associated Insurances

<sup>2</sup> Minimum Competency Code, Definitions

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