Banking & Payments Federation Ireland

Consultation Paper 153

Enhanced governance, performance and accountability in financial services

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Introduction

BPFI welcomes the opportunity to contribute to the CBI's Consultation Paper CP153 - Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023 (the "IAF"). BPFI previously welcomed the proposal to introduce an enhanced individual accountability regime in our submission to the Department of Finance (October 2018), at our appearance before the Oireachtas Committee on Finance, Public Expenditure and Reform and Taoiseach (March 2019) and in our submission to the Committee on Pre-Legislative Scrutiny of the General Scheme for the Central Bank (Individual Accountability Framework, IAF) Bill 2021 (October 2021).

BPFI members have been working with stakeholders over the past number of years to improve corporate governance in the banking sector in Ireland. We are supportive of the introduction of the IAF and members agree that the IAF, when finalised, will benefit financial services, customers, the sector more broadly, and contribute to further enhancements to the culture of accountability in firms, bringing further clarity for individuals in respect of the standards of conduct which they are expected to meet.

Executive summary

The BPFI has collaborated closely with its members on our response to CP153. The key purpose of the response is to seek further guidance and clarification of the IAF to ensure that the industry can meaningfully meet the CBI's expectations along with applying a consistent approach across the industry in its implementation.

We have provided detailed responses to each of the questions set out below. In particular, there are four thematic areas where the draft regulations set out in the Consultation Paper (the "Regulations") and the CBI's draft guidance on the IAF (the "Guidance") require further clarification/ refinement, so that the industry as whole will be in a position to incorporate all requirements into their governance and operational arrangements and structures.

1. Prescribed Responsibilities

Articulation of Responsibilities: Based on the draft wording of some Prescribed Responsibilities, read together with the Guidance, the intended scope is currently unclear and to whom it is intended that they should be allocated, for example PR26, which could be interpreted as either a 1st or 2nd line responsibility.

Splitting / Sharing: Noting that neither the Act nor the Regulations restrict the splitting or dual allocation of responsibilities, having regard to the scope of certain Prescribed Responsibilities, it is unclear how firms can manage the proposal set out in the Guidance that sharing, splitting or multiple holders of responsibilities is not envisaged. We note that many of the Prescribed Responsibilities legitimately apply to a number of roles. This causes two different challenges:

i.) Some responsibilities as currently articulated may (in existing operating models and governance structures) sit across different PCF role holders e.g., PR15 which often sits across both Finance and Operations.

ii.) Some responsibilities may sit fully with different PCF role holders, relative to their accountable area / business line e.g., PR7 in the context of Retail Customers or Corporate Customers (PCF50 and/or PCF17 role holders).

Allocation to PCF Only: In several instances in firms, there are Senior Management Team ("SMT") members who are not PCFs, some of whom are members and chairs of executive level committees where they are involved in strategic decision making for firms. As Prescribed Responsibilities may only be allocated to PCF role holders, this will result in Prescribed Responsibilities being allocated to a PCF role holder who does not manage the day-to-day activities, for them to be then delegated to a more appropriate person (e.g., CF1 role holder).

Importantly, it is noted from the CBI that it does not intend to interfere with "well-run firms' corporate governance". Therefore, CBI's consideration of these practical challenges, would be very welcome from industry.

2. Reasonable Steps

Reasonable steps are key to the effective management of the IAF and we welcome the Guidance provided by the CBI in relation to reasonable steps and that proportionality, predictability and reasonable expectations are the foundations of the CBI's approach to implementation. Taking into consideration the broad cohort and varying levels of experience of people impacted by the IAF from PCF Role Holders, including Board members, to all Control Function role holders (which covers a wider cohort of a firm's population, from junior to senior staff), a clear understanding and further guidance as to the CBI's expectations of appropriate reasonable steps and how proportionality will be applied is welcomed.

3. Conduct Standards

Conduct Standards impact the largest number of staff across the industry, at varying levels of seniority and experience. Clear guidance as to the proportionate application of these standards and reasonable steps expectations is required together with further guidance in relation to potential and actual breaches of Conduct Standards, the materiality of such breaches and how and when they are reported. Our members' view is that the reporting of such breaches should not occur until due process has concluded, to include allowing for any appeals' expiry timelines.

4. Timelines

The introduction of the IAF will impact thousands of individuals within the financial sector, and even thousands within some individual firms. As set out in the Regulations and Guidance, the communication and training to impacted individuals is critical and it is a legal requirement set out in the Central Bank (Individual Accountability Framework) Act 2023 (the "Act), to ensure expectations are clear, understood and fully embedded within relevant processes and controls. We understand that the CBI expects to publish final Regulations and Guidance in September 2023, with an implementation date of 31 December 2023 for Fitness and Probity and Conduct Standards. We also note that there will be a separate CBI Consultation on the changes to the Administrative Sanctions Procedure (ASP). The CBI's intentions in relation to

the publication of guidance on the relevant changes to the enforcement framework are yet unknown. While the effective date of SEAR is not until 1 July 2024 and ASP presumably at some stage in 2024, clear, final Regulations and Guidance for both need to be understood well in advance to be incorporated into training as necessary, including the CBI's expectations under the Conduct Standards.

Many firms have made a lot of progress in their preparations for implementing the IAF. That said, based on expectations and assumptions in respect of certain matters, having regard to the status and content of the published IAF and in the absence of detail on the related ASP, (as set out below in our response to question 1) the proposed timeframe of under three months from the date of final publication of the Regulations and Guidance is not sufficient time for many in-scope firms to fully incorporate the Conduct Standards within internal policies, design and deliver comprehensive training on these standards and ensure high quality and consistent implementation.

Please see our response to Question 15 where we elaborate on these points.

Conclusion

BPFI and its industry members recognise, understand, and agree with the CBI that financial regulation and guidance is about supporting positive outcomes, the interests of consumers and, ultimately, the economic well-being of society. As stated earlier, we welcome the introduction of the IAF, and its enhanced standards and expectations. Our detailed response has been prepared in this context, and we look forward to the CBI considering our feedback, as our members endeavour to implement and embed the IAF in a meaningful way.

Question 1: What are your overall views and comments on the draft SEAR Regulations and related draft guidance?

Within the above Executive Summary, we have summarised the key themes of our submission and further elaborated on those broad themes in response to Question 1 and provided further detailed responses to each other question raised under CP153.

1.1 We welcome that the CBI has outlined that its approach to implementation of the IAF is based on the principles of proportionality, predictability, and reasonable expectations. The draft Guidance is helpful for firms in their implementation of the IAF.

1.2 We note that the changes proposed to enforcement procedures which will form part of the IAF will be captured in a separate CBI consultation. As the CBI will appreciate, the enforcement powers applicable to the IAF are one of its key components. The effect on firms and individuals and the scope of the powers is one of the key drivers of the need for clarity in respect of the items described in our response. The implementation of the IAF is welcomed by our members and is a positive step in the development of firms' cultures. However, we are aware of the materiality of the potential consequences for firms and individuals where there is a failure to comply with the IAF, including potential significant financial and reputational consequences and detrimental effects on individuals' livelihoods. For individuals, it is critical that

there is no ambiguity or uncertainty in the drafting of the IAF, the meaning of any Inherent or Prescribed Responsibilities; the threshold for “reasonable steps”, and the means of demonstrating those “reasonable steps” in the context of the Common Conduct Standards and Additional Conduct Standards. In this spirit, we have identified matters in our submission which require clarification and potentially further development, to ensure that the IAF is clear and can be practically implemented in a consistent and effective manner within firms to achieve its purpose.

1.3. **Approach to implementation and timelines:** Our members have highlighted that implementation of the IAF requires significant steps across multiple divisions of firms, including governance, contracts of employment, platforms for issuing Fitness and Probity Certificates, codes of conduct (to reflect Common and Additional Standards), agreeing Statements of Responsibilities (“SORs”) updating and refining Management Responsibility Maps (“MRMs”), updating disciplinary procedures, documenting “Other Responsibilities” and determining the implications of any pre-existing issues or breaches which have arisen in advance of the effectiveness of the IAF, but which trigger responsibilities under the IAF (in respect of reporting, resolution or avoidance of the continuation of a breach) Appropriate training is critical for the in-scope population of firms, which will be in scope, to ensure that, having regard to the significance of the effects of non-compliance, there is complete certainty on the scope of their statutory obligations, their SORs (for PCFs) and the regulatory expectations for compliance with those obligations. New and complex administrative processes to support in-scope populations in demonstrating their compliance with the IAF will be required. We have identified points (below) in relation to the Regulations and Guidance which require further clarity and development.

Training and implementation cannot be completed for individuals until it is clarified whether and to what extent those individuals are in scope. We have expanded on these points below which relate to the scope of requirements and regulatory expectations (for example, the need for clarity on certain of the Conduct Standards and the treatment of historic issues and the scope of certain Prescribed Responsibilities which are currently unclear), firms cannot provide complete, accurate and clear training to in-scope populations until these matters are further developed and until the final Regulations and Guidance are published.

Adequate and appropriate training must be concluded in advance of the effective date of the Conduct Standards and those in scope must know what a conduct standard breach “looks like” and have certainty as to what the CBI’s expectations are in that regard, through the final published Guidance.

With the above in mind, a period of at least six months from the date upon which final Regulations and Guidance is available is needed by some firms.

1.4 **Splitting or sharing of responsibilities:** It is unclear how firms can manage the proposal that sharing, splitting or multiple holders of responsibilities is not envisaged, noting that many of the Prescribed Responsibilities legitimately apply to a number of roles. We note that the Act does not restrict the sharing or splitting of responsibilities. We have set out the practical issues below and request the CBI consider the points raised. It is not clear how the Guidance can be implemented in a manner consistent

with draft Regulation 8, which states: "A firm shall ensure that a proposed allocation to a PCF holder of an allocated responsibility is consistent with the PCF holder's existing responsibilities" or how this position can align with the enforceable duty of responsibility set out in the Act. The proposed position in the Guidance means that firms would need to look at significant role restructuring as part of implementation programmes, necessitating contractual changes, and reworking of the allocation of PCFs (and potentially associated regulatory applications) and CFs, which would in turn require further regulatory interaction in a short timeframe in advance of the effective date for SEAR.

1.5 **Senior Management Teams:** In several instances there are SMT members who are not PCFs, some of whom are members and chairs of Executive level committees where they are involved in strategic decision making for firms. It is clear from the Regulations that such Senior Management are not in scope for SEAR and cannot have Prescribed Responsibilities attributed to them (though they are clearly CF1s and other impacts including reasonable steps requirements will apply). In these cases, the Prescribed Responsibilities may be attributed to the Chief Executive PCF-8, with the expectation that the day-to-day activities for these responsibilities will be delegated to the relevant SMT member. Notwithstanding the primacy of PCF role holders, clarification is sought as to the level of oversight required and whether there will still be a willingness by the CBI to engage directly with CF1s, should a query arise.

1.6 **Treatment of scenarios where one PCF holder reports to another PCF holder (in context of both Prescribed and Inherent Responsibilities):** The Guidance provides that: "Prescribed Responsibility should be allocated to the most senior individual, with the appropriate authority, responsible for that area taking into account the governance structures of the firm", clarity is required in respect of how this is to be applied where a PCF holder reports to another PCF holder. We have expanded on this point in further detail below.

1.7 **Scope of requirements in respect of individuals in regulated subsidiaries which are reliant on intergroup outsourcing:** Under the Regulations and Guidance, it is unclear how the IAF will apply to individuals involved in the performance of outsourced functions and clarity is required to enable firms to assess the proposed effects and comment on the proposals. Further detail on this point is provided within our response to Question 9.

1.8 **Nature, scope, and appropriate allocation of certain Prescribed Responsibilities:** Certain Prescribed Responsibilities could be interpreted in a number of different ways, and some are sufficiently broad as to capture multiple areas of a firm's business and therefore a number of PCF holders. For some Prescribed Responsibilities (highlighted below in response to Question 3), it is not immediately clear who the appropriate PCF holder for the scope of the responsibility is.

1.9 **Conduct Standards - Application of Conduct Standards to incoming EEA and third country branches**: The Conduct Standards apply to both incoming and outgoing third country and EEA branches. However, for incoming branches from an EEA Member State which historically fall outside Fitness & Probity requirements, clarity is required as to the CBI's intentions in respect of the application of Conduct Standards to these individuals, noting the position that they are not currently subject to the Fitness and

Probity Standards, which may create confusion and an inconsistency in the treatment of an in-scope population.

1.10 **Interaction between UK SMCR and CBI IAF/SEAR**: The Guidance states (2.2.2) that "SEAR will apply to outgoing branches as an integral part of the firm on the basis that branches (unlike subsidiaries) are legally part of the regulated firm. As such the Branch Manager in such branches will continue, as is currently the case under the Fitness and Probity regime, to be a PCF function (see Appendix 5)." Clarity is required as to how it is envisaged that SMCR and IAF will interact with each other, and which regime should take priority if there are differences in approach – this is particularly relevant where branches are in scope of each regime and individuals within branches are captured by both regimes.

1.11 **Scope of application of the Common and Additional Conduct Standards:** Section 53C of the Act is a requirement for all CFs to take reasonable steps to ensure that the Common Conduct Standards are met. The CP states: "Conduct Standards ***including accountability of senior individuals for running their parts of the business effectively*** [emphasis added] to apply from 31 December 2023". Clarity is needed as to:

1.11.1 whether it is intended that the common conduct standards will apply to all CF holders from 31 December 2023 or just CF holders who hold PCFs or CF1s (as senior individuals); and

1.11.2 noting that the CP states that SEAR is not intended to be applicable until 1 July 2024, what is intended by the reference to "including accountability of senior individuals for running their parts of the business effectively".

1.12 **Expectations in respect of errors and breaches which occurred before the commencement of the legislation/applicability of the Conduct Standards and SEAR litigation matters:** The Conduct Standards and SEAR impose obligations on individuals in respect of errors (53E(1)(d)(vi) and section 53F(d)) and breaches and failure to comply with those obligations will trigger the new enforcement regime set out in the IAF. Clarity is required on the following:

1.12.1 Section 53F(d) sets out a requirement that: "*any information* ***of which the Bank would reasonably expect notice*** *(emphasis added) in respect of the business of the regulated financial service provider is disclosed promptly and appropriately to the Bank, including information relevant to, or giving rise to a suspicion or expectation of, any of the following: ((i) commission of an offence by the regulated financial service provider or a person performing a controlled function in relation to it; (ii) commission of a prescribed contravention or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing a controlled function in relation to it; ….(vi) commencement of legal proceedings by or against the regulated financial service provider arising from its obligations under financial services legislation; (vii) commencement of legal proceedings against the regulated financial service provider which may impact on its ability to continue to trade….*". In respect of these matters, what types of matters are those "of which the Bank would reasonably expect notice". In particular, in respect of item (vi) above, noting that legal

proceedings are issued very regularly against financial institutions and the basis of those proceedings will often be an allegation of a breach of consumer contract, negligence, breach of duty and other matters which are reflected in a firm's obligations under financial services legislation (for example, the Consumer Protection Code), clarity is required as to the scope and timing of the notification obligation. We note that there is no materiality threshold in respect of paragraph (vi);

1.12.2 the expectations for in scope matters which have occurred before the activation of the requirements (31 December 2023);

1.12.3 the treatment of in scope matters which occurred before 31 December 2023 but are continuing as of 31 December 2023.

1.13 **Additional guidance on reasonable steps**: The Guidance on reasonable steps is welcomed, however, there remains a lack of clarity in respect of certain aspects of the CBI's expectations, including in respect of temporary role holders, more junior CF role holders, the treatment of those in regulated subsidiaries which are reliant on intergroup outsourcing and the different treatments of those subject to the Additional Conduct Standards. Considering the significance of the consequences for those who are considered not to have demonstrated reasonable steps, it is considered critical that there is clear and comprehensive guidance for those on the thresholds against which they will be assessed. We elaborate on this point throughout our detailed responses below.

1.14 **Need for clarity on interpretation of "disciplinary action":** Actions will be required in respect of the certification of colleagues and regulatory reporting where "disciplinary actions" arise, but there is ambiguity in respect of the definition and scope of "disciplinary actions" (see paragraph 13.3 below) and clarity is required to ensure that firms' processes and procedures are aligned with regulatory expectations.

1.15 **International Banks - extra-territoriality:** Some of our international bank members have suggested that there is a risk that the extra-territoriality of the SEAR provisions may place some of the international banks in Ireland at a competitive disadvantage, especially given the lack of equivalent regimes applying to PCF role holders for banks headquartered in other EU jurisdictions. This may limit the attractiveness of Ireland's international banks in seeking to recruit the best available talent. To avoid significant disadvantage in terms of talent, it will be important to have clarity on enforcement expectations and a high degree of confidence in how the principle of proportionality will be applied in practice.

1.16 **Irish Investment Firms - Incoming EEA Branches** - According to Appendix 5, Table 11 of the draft Guidance, SEAR does not apply to incoming EEA branches (which members appreciate is likely to reflective of the fact that those branches are regulated by other EU regulators). Certain Irish investment firm members have expressed concerns that SEAR will apply a more rigorous standard of accountability to local Irish investment firms than to such incoming investment firms. This is of particular concern where investment firms are incoming from a jurisdiction which does not subject its firm to a similar level of accountability to the IAF. Without the

application of SEAR to incoming EEA branches of investment firms, certain Irish investment firms would see a potential risk of losing senior staff to competitor investment firms which are not subject to SEAR. These members have suggested that if the branch of an incoming EEA investment firm can demonstrate to the CBI's satisfaction that similar or analogous measures apply to that branch, meaning that the home State's competent authority effectively achieves IAF objectives, this would help to create a level playing field between Irish and incoming investment firms within the IAF regime. Where this is not the case, it is suggested that SEAR be applied to such branches of investment firms, not unlike the UK's approach.

Question 2 - Do you agree with our proposed approach to the Inherent Responsibilities?

We welcome the allocation of the Inherent Responsibilities on a mandatory basis to PCF role holders and the codification of responsibilities that are considered to be intrinsic to each PCF position. Clarity is required in respect of the following:

2.1 **Effect on allocation of inherent responsibilities where a PCF role holder reports to another PCF role holder:** Are the Inherent Responsibilities allocated to specific PCFs considered by the CBI to be affected, for example, in the following circumstances:

- PCF49(CIO) reports to a PCF42(COO).
- PCF52 (MLRO) reports to a PCF 14 (CRO) or PCF12 (Head of Compliance)
- PCF 21 (Head of Treasury) reports to a PCF11 (Head of Finance).
- Where a PCF 23 (Head of Asset and Liability Management) reports to a PCF 11 (Head of Finance).
- Where a PCF 22 (Head of Credit) reports to a PCF14 (CRO).

2.2 **Sharing of responsibilities**: Please see Executive Summary and our response to Q4 below in respect of the proposed position in the Guidance on the sharing of responsibilities.

2.3 **Inconsistency of inherent responsibilities for PCF 52:**

2.3.1 The Regulations do not include an inherent responsibility for PCF52 (Head of AML and CFT Legislation Compliance) to report to the Board on AML compliance matters like PCF12 (Head of Compliance). Some firms consider that this is inconsistent and that both PCF52 and PCF12 should report to the Board, or in the case of branches to the branch manager. Clarification is required.

2.3.2 Two differing titles are used within Appendix 1 and 2 of the Guidance, with the word Compliance omitted from Appendix 2. It is assumed this is an oversight. However, in line with the full title, the Inherent Responsibility should also be updated to reflect the Compliance nature of the role i.e., Overall responsibility for managing the operation of the firm's anti-money laundering/counter financing of terrorism Compliance functions.

2.4 **Inherent Responsibility 13:** As per the CBI Corporate Governance Requirements, the CRO is responsible for ensuring that their firm has effective processes in place to identify and manage the risk to which the firm is or might be exposed and for

maintaining and monitoring the effectiveness of the credit institution's risk management system. Section 20 of the EBA guidelines on Internal Governance (EBA/GL/2021/05) indicates that the Risk Management Function , of which the CRO is normally the head, should ensure that risks are identified, assessed, measured, monitored, managed, and properly reported on by the relevant units in the institution. However, IR13 states that the CRO has overall responsibility for "managing risk exposures", which some firms consider not to be consistent with the existing regulatory provisions set out in the CBI Code/ EBA Guidelines or reflective of the governance requirements in respect of the independence of the function.

2.5 **Temporary appointments**: Clarity is requested as to whether it is expected that the full range of Inherent Responsibilities will apply to a temporary appointee.

Question 3 - Do you agree with our proposed approach to the Prescribed and Other Responsibilities?

The number and scope of the responsibilities outlined is significant and therefore firms will need to determine whether their existing structures are sufficiently resourced to support the additional administration required to ensure they fulfil SEAR obligations. See Executive Summary and responses to Question 4 in respect of the sharing/splitting of responsibilities, which is also part of the firms' views on Prescribed and Other Responsibilities.

Clarity and further consideration are required in relation to the points made within the table below.

Explanations of responsibilities:	A more detailed explanation of each Prescribed Responsibility, and the expectations of the CBI in respect of each responsibility, is necessary to ensure that across the industry, the requirements of each responsibility are interpreted in a uniform way. Some of our members have suggested that a more granular approach is required to Prescribed Responsibilities where only one responsibility is listed per Prescribed Responsibility which would allow firms to allocate the responsibilities more efficiently and appropriately within the firm.
PR 1 (responsibility for the firm's performance of its obligations under SEAR):	PR1 must be assigned to an individual, however, the day-to-day operation and management of SEAR may be delegated to a relevant department in a firm. Clarification around CBI's expectations would be helpful, for example, will firms be permitted to delegate across Operations, HR, and Compliance, provided this is clear in a firm's MRM.
PR3 (Responsibility for embedding the conduct standards throughout the firm):	PR3 appears to overlap with PR26, but as noted below in respect of PR26, the scope of PR26 is unclear. Clarity is required in respect of the relationship between these two Prescribed Responsibilities and perhaps further consideration of the overlap to ensure that there is complete certainty about the scope of accountability, what is intended to be captured under each.
PR 4 (Responsibility for leading the development of the firm's culture, including conduct, by the Board as a whole including effectively managing any conflicts of interest in relation to consumer protection risk):	Noting that there are a number of different sets of regulatory and legal requirements applicable to firms and individual directors in respect of the identification and management of actual and perceived potential conflicts of interest, it would be helpful to have an example in the Guidance of what the CBI envisages to present a potential conflict of interest in relation to consumer protection risk and/or spell out more clearly what steps a Board is expected to take to identify such conflicts.
PR5 (Responsibility for adopting the firm's culture in the day-to-day operation of the firm):	Noting (as set out in response to Question 4 below) that adoption of the firm's culture in day-to-day operations is a responsibility of all staff and some firms believe that, with the current drafting of this responsibility it could not be allocated to one individual. Firms suggest that the wording of this responsibility would be clearer if it included "overseeing" the adoption of the firm's culture in the day to day "management" of the firm.
PR 7 (Responsibility for ensuring that action is taken to prevent further harm or detriment to customers where the firm becomes aware that a decision or action taken or failure to act has caused harm or detriment to customers):	It is acknowledged that one of the purposes of the IAF is to seek to further enhance the protection of customers and minimise customer detriment. Firms strive to avoid customer harm and where errors arise, it is acknowledged that a fair and customer focussed approach is critical to restoring trust in the sector. Firms welcome the inclusion of a Prescribed Responsibility which reflects these principles but the scope of PR7 and the expectations for the thresholds applicable to its discharge are not currently sufficiently clear to enable certainty as to an individual's responsibilities under PR7. For example: • Clarity is required as to the point at which awareness of customer harm or detriment is considered to have arisen. Customer complaints generally allege harm and detriment resulting from actions by a firm, but it would only be where a complaint has been investigated or determined that causation of that harm or detriment is

	established. The same principle applies in respect of litigation initiated by customers against firms. In circumstances where a litigation is settled without a determination or finding as to causation of harm or detriment, it is unclear whether a PR7 responsibility has been triggered. Some firms have queried how this responsibility is intended to be assessed and when it is triggered in circumstances where the firm has a governance/review process for identifying customer detriment, and where a business area has identified a potential conduct issue. • Clarity is required in respect of what is meant by "further harm or detriment"; • Clarity is required in respect of the threshold for and type of "actions" which are considered to prevent further harm or detriment. Is it envisaged that these actions must include remediation of a customer, read-across analysis to identify other customers who might be affected by the same action/decision or other steps? The expectations for the timing of these actions also requires clarification to ensure that individuals are aware of the threshold for demonstrating the discharge of PR7. Confirmation is required regarding the materiality of the harm or detriment that would trigger the PR. The current scope of PR7 also gives rise to a concern in respect of the proposed approach to sharing/splitting of responsibilities, and some firms consider that the appropriate allocation of this responsibility is with the PCFs in the division or divisions in which the decision/action or failure to act has occurred, which may be different divisions depending on the issue giving rise to the harm or detriment. For example, where an action or inaction arises in respect of retail customers, the PCF holder who should be considered responsible for the PR7 is the Head of Retail and it would not be appropriate or practical for another PCF holder to be responsible for stopping further harm in relation to the relevant retail customers. Some firms consider that a potential solution in relation to the treatment of PR7 is that the SORs for all PCF holders would reference that where an issue has arisen in their division causing customer harm or detriment, they are responsible for ensuring that harm is stopped. Firms consider that this approach would also align with the Duty of Responsibility and an individual PCF holder's obligations to comply with the Common Conduct Standards and Additional Conduct Standards.
PR8 (Responsibility to adequately consider the impact of key business initiatives and strategic decisions and to ensure that any necessary changes are made to such initiatives/decisions prior to their implementation to avoid any harm to customers):	PR8 is considered by firms to be an expectation of all decision-makers and there is no objection to its inclusion, but clarity is required in respect of what is considered to constitute "key business initiatives and strategic decisions" and the threshold for the initiatives and decisions captured. This is necessary to enable firms to identify the appropriate PCFs to whom PR8 should be allocated. The current scope of PR8 also gives rise to a concern in respect of the proposed approach to sharing/splitting of responsibilities and it is considered that it would not be practical for this responsibility to sit with one PCF holder only noting that key business initiatives and decisions are made in multiple divisions of a firm. If (as noted above) there is clarity as to

	the type and threshold for decisions/initiatives which are envisaged under PR8 and this captures only the most significant strategic business decisions, firms might consider that the appropriate PCF holder for PR8 is the CEO as opposed to multiple other PCFs, but this is dependent on the threshold for the matters captured under PR8.
PR 10 (Responsibility for safeguarding the independence of the compliance function and for oversight of the function and the Head of Compliance):	Clarity is sought as to whether PR10 envisages a requirement for a formal reporting line between the Head of Compliance and the non-executive members of the Board. Currently under the Central Bank Corporate Governance Requirements for Credit Institutions (the "CG Code"), there is a requirement for a reporting line between the Chief Risk Officer and the Non-Executive members of the Board, but not the Head of Compliance. Where an institution's governance model is structured in a manner in which the Head of Compliance reports to the Chief Risk Officer, is it intended that there is a separate documented reporting line between the Head of Compliance and the Non-Executive Directors. The EBA Guidelines on Internal Governance requires Compliance to report on certain matters to the Management body, i.e., the Board.
PR 14 (Responsibility for monitoring implementation of effective policies and procedures for succession planning, induction, training and professional development of staff):	Having regard to the nature and scope, some firms consider that this Prescribed Responsibility does not appear to have an obvious placement with any one individual PCF on the list included in the Regulations, other than potentially the firm's CEO. While it is noted that the Guidance references the intention that the CBI will not direct to whom a Prescribed Responsibility will be allocated, having regard to the nature of the responsibilities, guidance is required from the CBI as to the intention for the allocation of this responsibility.
PR17 (Responsibility for the Board's development and maintenance of the firm's business model):	PR17 appears to comprise functions which are considered to be both executive and non-executive functions under the CG Code and separate EBA guidelines on corporate governance. Clarity is required from the CBI as to the intended scope of PR17 and the expectations in terms of its allocation and whether it is expected to be allocated to an Executive or Non-Executive Director. If PR17 is considered to be a Board-level Prescribed Responsibility, it is a responsibility which would need to be held by all PCF Directors, not one alone. Some firms consider that this approach is most aligned with the CG Code, noting the collective Board responsibility in respect of the adoption of the business model and the assessment, training, and development of the Board.
PR18 (Responsibility for managing the calculation and maintenance of the firm's financial resources including accuracy of capital, funding, and liquidity):	In practice, elements of this responsibility would cross between the PCFs of Head of Finance, Treasury and Head of Asset and Liability Management. Clarity is needed as to how this PR18 should be allocated in light of this (noting the proposed position on sharing/splitting of responsibilities).

PR19 (Responsibility for managing the firm's treasury management functions and associated risks):	Clarification is requested as to what the CBI means by the "firm's treasury management functions and associated risks in PR19 including the specific activities considered to be treasury management and associated risks.
PR20 (Responsibility for ensuring accuracy, completeness and timely production and submission of the firm's financial reports and regulatory returns):	It is acknowledged that the Guidance envisages that PR20 will sit with the Head of Finance. Firms make broad categories of "regulatory returns", including non-financial information and data collected as part of regulatory supervisory activities, for example, returns in respect of targeted statutory requests, specific supervisory programmes, reporting on culture, error reporting etc. To ensure the appropriate allocation of PR20, clarity is required as to what is captured by "regulatory returns" for this purpose. It is considered that where the returns are intended to capture financial returns only, the PR20 would be the Head of Finance, but if non-financial matters are captured, in practice these returns would be owned and overseen by other PCFs.
PR22 (Responsibility for managing the anti-money laundering/ countering the financing of terrorism ('AML/CFT') function in order to address the firm's money laundering and terrorist financing risks including the development, implementation and oversight of a robust AML/CFT framework including effective systems and controls.):	As set out under Question 2, the compliance nature of this responsibility should be clear as to whether this Prescribed Responsibility is intended to lie within the 1st or 2nd line. If it is intended to be 2nd line then a suggested amendment would be: Responsibility for managing the anti-money laundering/ countering the financing of terrorism ('AML/CFT') compliance function in order to address the firm's money laundering and terrorist financing risks including the development and oversight of a robust AML/CFT framework, including oversight of implementation and oversight of the effective application of AML/ CFT controls applied by the first line of defence.
PR24 (Responsibility for oversight and governance of the development, design and distribution of products, review of products and sale and post-sale arrangements to ensure fair customer outcomes):	Clarity is required in respect of what type of activity is intended to be captured by the term "post-sale arrangements", noting that there is a wide category of matters captured in the post-sale customer journey, which might include the management of disputes, credit, complaints, arrears, potential sales, or securitisation of the products. PR24 does not exclude the credit granting aspect of the development and design of products, but there is a separate PR30 in respect of credit granting, and so there is uncertainty as to where responsibility in respect of the credit granting aspects of products is to sit. The current scope of PR24 also gives rise to a concern in respect of the proposed approach to sharing/splitting of responsibilities, see Question 4 below. Depending on the structure of the entity responsibilities for product oversight and governance may be spread across a number of business units, each under the responsibility of a PCF role holder, e.g., PCF50 or PCF17. Also, the scope of PR24 comprises the combination of a number of different actions and decisions which are made in different divisions of a firm depending on the type of product. A firm's product offering might include a range of products, such as mortgages, credit cards, business banking accounts, business/corporate banking loans and credit line products, overdrafts,

	HP, investment products, wealth products. Some firms believe it is not considered that PR24 as currently drafted could appropriately be allocated to one person within a firm which has a large range of different products or customer lines. Even within a specific product itself, there are multiple decisions and determinations made across a number of divisions of a firm. For example, the development and design and distribution of a retail credit product includes decisions, reviews and determinations which are made in a number of areas of a firm, including Retail, Operations, Credit, Compliance/Conduct, Risk. Noting there are separate PCFs for Head of Credit, Head of Retail, COO, Compliance it is unclear how PR24 could be allocated to one person or who that one person would appropriately be having regard to how PCF designation is currently designed. It is noted that PR 30 (credit granting processes, referenced below) is listed as a separate Prescribed Responsibility, but the current drafting of PR24, having regard to its scope, would include the credit aspects of a product, and so the relationship between these is uncertain.
PR26 (Responsibility for leading the development of a framework for and monitoring the implementation of the conduct requirements including ensuring accuracy, completeness and timely production and submission of the firm's conduct information):	See above in respect of the apparent overlap between PR 26 and PR3. Clarity is required as to what is meant by "conduct requirements" and "conduct information" including a description of the relevant sources of these requirements and information submissions which are intended to be captured. Firms expect that this may be intended to refer to the new Common Conduct Standards and Additional Conduct Standards, but it is noted that it could also be intended to capture conduct requirements for firms and individuals which are set out in a wide range of other regulatory requirements, including the Consumer Protection Code, CCMA, the CBI Corporate Governance Code which set out expectations for behaviours of firms and specific individuals in firms, the CBI Fitness and Probity Standards which set out expectations in respect of conduct by firms and individuals, EBA guidelines relating to corporate governance and suitability, the Minimum Competency Code ("MCC"), and others. It is also unclear as to whether this is intended to be assigned to a PCF with 1st or 2nd Line responsibilities. While development of frameworks would often be a 2nd line responsibility, ensuring the accuracy, completeness, timely production and submission of information to the Regulator would be a 1st Line responsibility. Certainty as to the scope of this responsibility is necessary to ensure that firms accurately allocate PR26 to the appropriate individual but also to ensure that individuals have clarity on the scope of their responsibilities.
PR28 (climate related and environment risks) responsibility for managing the firm's approach to identifying, assessing and managing climate related and environmental risks across the firm):	It is recognised that the ESG landscape and agenda is evolving quickly and therefore it is important that the scope of PCF accountability is defined to ensure the reasonable steps expected of PCFs can be defined and monitored. By way of comparison, in the UK the equivalent responsibility is limited to "managing financial risks from climate change" which enables clear allocation of senior manager responsibility and reasonable steps to be defined and monitored. The scope of this responsibility also gives rise to concerns in respect of the approach to sharing/splitting set out in response to question 4 below.

PR 29 (responsibility for overseeing the adoption of the firm's policy on diversity and inclusion):	Firms consider this to be broad and hard to allocate to one PCF. As above for PR14, it is not immediately obvious to which current PCF this responsibility should be allocated. Aspects will touch on HR, the line of business recruitment lead, and the Boards or branch manager responsible for setting the culture from the top. CP153 confirms that these allocations should not materially change the operating model of the firm but there are some instances where this would have to be the case
PR37 (Where the firm has established a specific steering committee to address regulatory matters, responsibility for managing the operation of the committee and for providing comprehensive and timely reporting to senior management and to the Board):	The governance structures of firms will often include a range of committees, in particular risk oversight committees, the terms of reference of which will usually include at least some reference to consideration or decision making in respect of "regulatory matters" or particular "regulatory matters". Firms interpret PR37 as being applicable only to committees which are called steering committees, established specifically for regulatory matters (not wider purposes which include regulatory matters as one component) and not to any other committees which might exist in the governance structure of a firm. Taking that interpretation, it remains unclear as to whether PR37 is intended to apply only where a firm has established a general steering committee to address "all" regulatory matters, or whether it will apply where a firm establishes a steering committee to address a topic-specific regulatory matter or particular regulatory matter event, or where a steering committee is established for a particular matter, which happens to have a regulatory element – such as a steering committee to supervise a transaction, acquisition/disposal, or an error within the firm. Examples of steering committees or matters which are envisaged to trigger PR37 are welcomed to demonstrate the CBI's intentions. To the extent that PR37 is intended to be applicable in respect of any steering committee established to address a particular regulatory matter (i.e., a topic specific steering committee, of which there may be a number established at any given time) the current scope of PR37 also gives rise to a concern in respect of the proposed approach to sharing/splitting of responsibilities. Lastly, presently programmes of regulatory change may have sponsors from the relevant business area and the individual may not necessarily be in a PCF role for example regulatory programmes related to Human Resources.
Prescribed Responsibility Numbering	Firms note that there are specific Prescribed Responsibilities that apply to MiFID Firms and Third Country Branches, and these are numbered with the same numbering as other Prescribed Responsibilities, which means that there are, for example, two Prescribed Responsibilities numbered 7 (see below). Suggest that these are numbered differently to those that are "General Prescribed Responsibilities" to avoid confusion. Table 6 – General Prescribed Responsibility PR7 – Responsibility for ensuring that action is taken to prevent further harm or detriment to customers where the firm becomes aware that a decision or action taken or failure to act has caused harm or detriment to customers. Table 9 – Third Country Branch Prescribed Responsibility PR7 – Responsibility for monitoring and on a regular basis assessing the adequacy and effectiveness of measures and procedures put in place by the Third Country Branch to comply with its regulatory and supervisory obligations, as well as associated risks.

Sector-specific Responsibilities:	The Guidance at 2.4.3 states that "it is mandatory that these responsibilities are allocated to an individual in a PCF role at in-scope firms", except as provided for in 2.4.5 for those under the heading "Sector or Circumstance Specific Responsibilities which the Guidance provides "will not apply to all in-scope firms". Some BPFI members have suggested that the CBI considers moving responsibilities to the Sector or Circumstance Specific section which are specific to banking rather than investment firms such as PR19, PR23 and PR24 to the Sector or Circumstance Specific section. Additionally, given the guidance in 2.4.3 that responsibilities must be allocated, some BPFI proprietary trading firm members who do not have customers or hold client assets would also seek clarity regarding how responsibilities such as PR7 and PR8 should be allocated or if they could be marked as not applicable.
Other Responsibilities:	In the absence of guidance, some firms have noted that it may be challenging to document "Other Responsibilities" and in the absence of detail, there may be a risk that there will be inconsistencies. Clarity in respect of expectations in this regard is critical having regard to the fact that Regulation 7 is drafted to create a mandatory positive obligation on firms to identify and allocate other responsibilities in respect of "each activity, business area and management function" of the firm. To comply with this mandatory obligation, firms are required to identify other areas / responsibilities in their business which have not been identified by the CBI in the IAF. We suggest that the Guidance and Regulations are updated to include materiality re expectations and examples of Other Responsibilities that capture the typical business activities of financial services firms (across banking, insurance and investment firms) in order to avoid ambiguity and discrepancies in how different institutions with similar business lines attribute these responsibilities.

Question 4 - Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?

4.1 We agree with the underlying principle that a firm should identify a single individual performing each Prescribed Responsibility but there may be circumstances in which it is appropriate or necessary for responsibilities to be divided or shared or sit with multiple individuals.

4.2 The principle that more than one person may hold a PCF is already reflected in the CBI's Fitness and Probity regime and the Fitness and Probity Regulations state that where a person performs part of a PCF, they are taken to perform that PCF, the effect of which is that more than one person can hold a particular PCF. It is unclear how this existing position in respect of the designation of PCFs can align with the proposed position on sharing of Prescribed Responsibilities in the Guidance. As stated in our response to Question 1, the fact that responsibilities may only be allocated to PCF role holders will mean that in certain instances, responsibilities will not be allocated to the person currently accountable for that activity in a firm and this does not align with Regulation 8 of the Regulations, which states: "A firm shall ensure that a proposed allocation to a PCF holder of an allocated responsibility is consistent with the PCF holder's existing responsibilities".

4.3 Furthermore, it is not wholly clear how this prohibition (of splitting or sharing) coalesces with section 2.8.10 of the Guidance which states "It is possible that more than one PCF role holder will be responsible under SEAR for an aspect of the firm's affairs. As such, it is possible that more than one PCF role holder will have contravened the Duty where each of them fails to take reasonable steps to avoid the firm contravening its obligations in relation to that aspect". For example, a firm could have distinct and separate business lines, where a PCF holder could be responsible for aspects of product governance, (e.g., PR24 Responsibility for oversight and governance of the development, design and distribution of products, review of products and sale and post-sale arrangements to ensure fair customer outcomes) etc. in relation to Retail only, and a separate PCF could be responsible for Corporate business. In this instance, it could be justifiable and appropriate to allocate the responsibility wholly to the PCF for Retail only and the other PCF for Corporate. Is this what is meant in section 2.8.10?

4.4 "Job sharing" is noted in the Guidance to be an acceptable reason for sharing responsibilities, firms believe that the IAF should also permit sharing/multiple role holders in certain circumstances (listed below at 4.3.1 to 4.3.5). Firms believe that any other treatment would not reflect the practical realities of the firms' governance structures and reporting lines and in the case of certain Prescribed Responsibilities (listed below at 4.4.1 to 4.4.7), the nature of the responsibility is not such that it could be held by only one person (as there are (appropriately) multiple persons within the firm who carry responsibility for that matter). We consider that in the following circumstances, all individuals who hold the Prescribed Responsibility would be considered accountable for all of the responsibilities attached to that role and be subject to the Duty of Responsibility and so we would not consider that there is a deviation from the concept of individual accountability:

4.4.1 where a firm has co-heads of a department or business unit;

4.4.2 where departing and incoming PCFs work together temporarily as part of a handover in circumstances where the incoming PCF already has regulatory approval to perform the relevant PCF;

4.4.3 In respect of the Prescribed Responsibilities held by Non-Executive Directors of the Board, noting that Board decisions are made on the basis of collective decision-making (consistent with the CG Code and separate EBA guidelines on corporate governance);

4.4.4 where the CBI approves the sharing of the responsibility; and

4.4.5 in the case of the specific Prescribed Responsibilities set out below in paragraph 4.5.

4.5 The table within response to Question 3 also sets out the complexities with assigning responsibilities to one PCF role holder, notably in relation to PR5, 7,8,17, 18,24 and 37.

4.6 The CBI has been clear that delegation is permitted, even to other functions. But the legal effect of delegation on the allocation of Prescribed Responsibilities and the accountability thereunder requires further guidance and clarity. Firms request that there is a specific statement in the Guidance in respect of the effect of delegation on Prescribed, Inherent and Other Responsibilities so that there is clarity for individuals and firms.

4.7 Clarity is requested on how to reflect scenarios in the MRM where there are individuals with the same PCF function at group and entity level. Firms do not consider that this constitutes "sharing" of a PCF from the perspective of the Group MRM but request that there is a statement in the Guidance to clarify the CBI's expectations.

Question 5 - Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?

5.1 We welcome the Guidance which outlines that the standards to be met by individuals in their role as INEDs/NEDs will relate purely to their non-executive oversight functions as set out within the Companies Act and Corporate Governance Requirements and will be limited to what can reasonably be expected of individuals in that context. We note the first line of 2.4.11 of the Guidance which acknowledges that NEDs and INEDs "do not manage a firm's business in an executive capacity."

5.2 We agree that INEDS/NEDS hold essential roles in the governance of firms and there are important expectations that must be met by the individuals filling them. We recognise that INEDs/NEDs have existing responsibilities under the corporate governance framework, including in respect of governance, oversight, and challenge.

In general, it is noted that the IAF's scope re NEDs and INEDs is broader than other regimes and some firms consider there may be unintended consequences such as the availability and/or retention of talent or negative impact on diversity.

5.3 Including the responsibilities of NEDs/INEDs in SEAR seems reasonable if applied proportionally, with collective decision making and separation of executive /non-executive powers clear. Further clarity would be welcome on how reasonable steps will be limited for INEDs/NEDs in practice.

5.4 BPFI members request that the Guidance include a statement which acknowledges that Inherent and Prescribed Responsibilities which are held by members of a Board are discharged on the basis of collective decision-making, consistent with Irish company law, the CG Code and the separate EBA guidelines on corporate governance.

5.5 Please see our response to Question 9 below in respect of intergroup outsourcing and treatment of subsidiaries. Firms consider that it is important to acknowledge that there are circumstances in subsidiary firms where strategy and policies are determined at the level of the parent institution and while these are considered and assessed by a subsidiary Board to ensure that they are suitable, there is a different level of control and autonomy applicable in respect of a subsidiary Board in these circumstances and this should be reflected in the scope and nature of the responsibilities allocated to Board members of subsidiaries and also the interpretation of reasonable steps for these individuals in respect of the Duty of Responsibility and Common and Additional Conduct Standards.

BPFI members found the Guidance in 2.4.11 to 2.4.16 to be useful in understanding the distinction between the expectations for different roles, further examples and clarity would be useful to support the Prescribed Responsibilities to be allocated.

<u>Question 6 - Do you agree with our proposed approach to the Statements of Responsibilities?</u>

We welcome that the CBI has provided a draft template, but clarification is required on the following:

6.1 **Level of detail in SORS for Inherent Responsibilities**: we note in the sample SOR template that there is a free text box "Additional information regarding the Prescribed Responsibility" which can be used to provide a breakdown of the key aspects of the Prescribed Responsibilities, if relevant, but this does not exist for Inherent Responsibilities. Considering the high-level nature of the drafting of the Inherent Responsibilities, some firms consider that it would be beneficial to allow for additional information on the meaning of each Inherent Responsibility to be included in the SOR and request the CBI's view on this approach (to be reflected in the Guidance). For example, for the PCF 17 – Head of Retail Sales, firms suggest that "Overall responsibility for managing the operation of the firm's retail sales function" might require further detail to ensure clarity and transparency for the individual and the firm and so might include more specific responsibilities relating to "design, pricing, management, advice, sale, distribution, processing, fulfilment etc.". This is particularly relevant where there are differences between products that are owned end to end by a specific PCF vs. only owning part of the process – e.g., credit only.

6.2 **Treatment of PCFs in regulated subsidiaries:** It is acknowledged that regulated subsidiaries are regulated in their own right and PCFs within those institutions have direct legal and regulatory obligations, firms propose that where a subsidiary is reliant on group outsourcing for its operations or where the strategy and policies for that subsidiary are determined at parent institution level and reviewed and adopted by the subsidiary where appropriate, this is referenced in the SOR for PCFs in that subsidiary to ensure that there is clarity and transparency on the practical reality of how this affects the performance of PCFs in terms of autonomy and decision-making control. Firms consider that this is consistent with the approach outlined in the Guidance in respect of subsidiary relationships in MRMs.

6.3 **Lead in time for changes to SORS**: Clarity is requested as to the CBI's expectations for how quickly SORS would be updated and changed in the event of an organisational change. The Guidance at 2.5.6(ii) states "reviewed on a regular basis by firms", and it is suggested that this should be amended to state "no less than once a year or within a reasonable time frame from when a change occurs which impacts the MRM or SOR", for example so that there is more certainty on expectations.

6.4 **Outgoing branches**: In the case where a PCF has responsibilities at an in-scope firm and at an outgoing branch of that firm, clarity is required as to whether that PCF should have only one SOR or is the outgoing branch considered a separate firm (Guidance 2.5.5) and as such would require a separate SOR.

6.5 **Approval:** Clarity is required as to who the CBI expects to approve the SOR, Guidance 2.5.6(iii) – "approved on initial implementation and when it is updated;" Is it solely the PCF responsible for PR1 "responsibility for the firm's performance of its obligations under SEAR", if so, it would be helpful if this was contained in the Guidance.

6.6 **Templates**: It would be helpful if the CBI could provide an example of a best practice SOR, which firms could use as a benchmark. BPFI members would also welcome clarification as to the status of the SOR template, is it an example/ reference guide, or a prescribed template.

<u>Question 7 - Do you agree with our proposed approach to the Management Responsibilities Map?</u>

We welcome that the CBI has provided detail as to what needs to be captured in a MRM but further clarification is required on the following:

7.1 **Outsourcing:** The Regulations state that in respect of each outsourcing arrangement entered into by the firm, the firm shall identify who is responsible for oversight of the outsourcing arrangement. The requirement does not have a materiality threshold and based on the nature of outsourcing in larger firms, there may be a significant number of arrangements to be documented. Clarification is requested as to the intended scope and a materiality threshold is suggested to be included or if it is acceptable that a reference/link is made to the outsourcing register, which contains all of the information.

7.2 **CF1 role comprises the ability to exercise a significant influence on the conduct of the affairs of a regulated financial service provider.** CP153 states that "Firms will need to set out clearly the responsibilities of each individual in a PCF role in their Statement of responsibilities" and it is proposed that as PCFs, all NEDs and INEDs are included within the scope of SEAR. CP153 also states that "Reasonable information about the individuals who are able to exert a significant influence on the firms i.e., CF1s and are identified in the MRM…", in the case where an individual is designated as a CF1 but the areas for which they exercise significant influence becomes the responsibility of a PCF, clarity is requested as to whether this is considered to create a conflict or an unforeseen change in the operating model to accommodate the new requirements. Lastly, clarity is sought as to whether all CF1 role holders should be included in MRMs.

7.3 **Approval** - The Guidance states that the MRM must be approved (paragraph 2.6.6) but does not specify at what level within a firm. Is it solely the PCF responsible for PR1 "responsibility for the firm's performance of its obligations under SEAR", if so, it would be helpful if this was contained in the Guidance. Firms request that the Guidance prescribes the minimum level of governance expected. Firms note that as the requirements are broad and the MRM is expected to be "live", the map may change very frequently, potentially monthly and the approval mechanisms will need to be appropriate to reflect the dynamic nature of the MRM.

7.4 **Lead in time for changes to MRMS**: Clarity is requested as to the CBI's expectations for how quickly MRMs would be updated and changed in the event of an organisational change. The Guidance at 2.6.6(ii) states "reviewed on a regular basis by firms", and it is suggested that this should be amended to state "no less than once a year or within a reasonable time frame from when a change occurs which impacts the MRM or SoR", for example so that there is more certainty on expectations.

7.5 The Regulations state that the MRM should include matters reserved to Boards/committees. Clarity is required as to whether the CBI expects that full terms of reference of committees/Boards should be included here, noting many committees have quite significant responsibilities and the terms of reference can be lengthy which may not facilitate a succinct MRM.

7.6 **Guidance – Appendix 4 – MRM Visual** – BPFI members suggest it would be helpful if the CBI could provide an example of a best practice MRM, or a more comprehensive template, which firms could use as a benchmark.

<u>Question 8 - Do you agree with our proposed approach to submission of documents?</u>

We acknowledge that the CBI has outlined that all documents (SORS and MRMs) will need to be kept "live" at all times, but that documents will not need to be submitted to the Regulator. Clarity is sought as to when the requirement to submit an SOR with a new PCF application becomes effective, presumable aligned to the SEAR effective date of 1st July 2024?

Question 9 - Do you agree with our proposed approach to outsourcing in the context of SEAR?

9.1 The proposed position on outsourcing set out in the Guidance is not considered to be sufficiently clear to enable firms to assess the proposals or comments on their workability and further clarity is required. Firms note particular concern in relation to need for clarity on the proposed position in respect of intergroup outsourcing.

9.2 As outsourcing is a critical aspect of the applicability of the IAF and a key matter to determine the scope of responsibilities applicable to an individual, firms welcome clarification on this aspect of the Guidance and Regulations as a priority. Firms request that this is considered by the CBI, including from the perspective of the CBI's separate guidelines on outsourcing, which state that where a CF is outsourced by a firm, the responsibility for the performance of that outsourced function remains with that firm. Worked examples of theoretical scenarios would assist the presentation of this complex matter.

9.3 The position understood by firms in respect of the current applicability of the CBI's F&P regime in the circumstances of regulated outsourcing (on which the IAF is built, as it is through F&P that CFs and PCFs are identified) is as follows, using examples for clarity:

9.3.1 Where a PCF 12 (Head of Compliance) is outsourced by firm A to firm B and firm B is a regulated (by CBI or equivalent) for similar services and there is a written outsourcing agreement in place between firm A and firm B:

9.3.1.1 the PCF 12 function in respect of firm A is not considered to be a PCF in respect of firm A (so there is no individual considered to be holding a PCF 12 for firm A). This would mean that there is no person with Inherent or Prescribed Responsibilities or Duty of Responsibility flowing from a PCF 12 function for firm A, as there is no PCF 12 holder for firm A;

9.3.1.2 the person in firm B (the outsourcing service provider) who is performing the relevant PCF function for firm A is considered to be a CF in firm A. This would mean that the person in firm B who is performing the function for firm A is subject to the Common Conduct Standards in respect of the function they perform for firm A;

If the above understanding is correct, firms are unclear in respect of what appears to be a requirement in the Guidance that the outsourced function being done by a person in firm B for firm A is referenced in an MRM for that person in firm B. If the individual in firm B is not a PCF in firm B, in the context of their role for firm B, it is unclear how there would be an SRM for that individual in firm B, and how outsourcing functions they do for firm A would be reflected in an MRM. Clarity is equally required in respect of CF roles which are being carried out on an outsourced basis.

9.4 In the context of intergroup outsourcing, firms consider that further development is required in the IAF to reflect the practical realities of intergroup outsourcing. As set out above in respect of SORs for PCFs who are performing functions in subsidiaries or branches, firms consider that it is important that the context of the

subsidiary/parent relationship is reflected in the scope and nature of the responsibilities which are considered to apply to those individuals.

9.5 Firms consider that it is important to acknowledge that there are certain circumstances in certain subsidiary firms, in particular, where the ultimate parent institution/Group is in Ireland, and the business of the subsidiary is the same as the parent institution/Group where there are no risks in these subsidiaries that are not already considered and managed at the parent institution/Group level in Ireland. Group Strategy and policies are determined at the level of the parent institution and then considered and assessed and approved by the relevant subsidiary Board. This is particularly the case in relation to certain subsidiaries of parent institutions where the CBI is the regulator for both parent and subsidiary. In such instances, all of the subsidiaries' activities are often outsourced to another parent entity under an Outsourcing and Agency Agreement, and the business of the subsidiary is originated through the network and distribution channels of the parent. In such circumstances, the subsidiary may also be in receipt of certain derogations from Corporate Governance requirements.

While the subsidiary Board and any other PCFs (to the extent applicable having regard to the F&P outsourcing position outlined above) continue to hold legal and regulatory obligations in respect of those outsourced functions, their level of control over those functions is, in practice, more limited than would be the case for other firms. It is considered that this difference needs to be acknowledged throughout the Framework. We have set out above the proposal that SORs for individuals in subsidiaries would reflect this reality, whilst acknowledging the existence of the legal and regulatory requirements.

Question 10 - Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?

10.1 We welcome the Guidance provided by the CBI in relation to reasonable steps and that proportionality, predictability and reasonable expectations are the foundations of the CBI's approach to implementation of the IAF. Firms welcome in particular the statements in the Guidance in respect of the CBI's approach to assessment of circumstances and environment "as they existed at the time rather than applying standards retrospectively or with the benefit of hindsight" and that the CBI recognises "the role of judgement exercised by those in senior roles in discharging their responsibilities and that while that judgement may have turned out to be wrong in a given circumstance, with the benefit of hindsight, it is clearly possible for that individual to demonstrate how that judgement may have been reasonable at the time."

10.2 Clarity is required in respect of the following:

10.2.1 As discussed above, it is considered that in respect of in-scope roles in subsidiary firms or branches, the interpretation of reasonable steps should reflect the specific subsidiary/parent relationship applicable to that firm, including where strategy or operations are determined at parent institution

level and the level of intergroup outsourcing being performed for the subsidiary firm or branch. It is acknowledged that section 3 of the Guidance references criteria for assessment of control over particular matters and firms consider that the specific nature of a subsidiary/parent relationship is a key consideration in this assessment that request its inclusion in the list of factors.

10.2.2 Reporting between subsidiaries and parent institutions and “group-wide roles”: Where a PCF holder in a subsidiary or branch has a reporting line to a PCF holder in a parent institution, firms query how the CBI considers this to affect (if at all) the assessment of reasonable steps for each individual, having regard to the concepts of responsibility, control and information flows set out in the Guidance in section 3. Firms consider that PCFs in a parent institution who have Group-wide responsibilities will have these responsibilities clearly set out within their SORs to ensure clarity and transparency of reporting arrangements, but it is not considered that a reporting relationship between a PCF in a subsidiary or branch and a PCF in a parent institution will shift responsibilities which attach to the subsidiary or branch PCF to the parent PCF. As subsidiary reporting a key component of good corporate governance, firms consider it is critical that there is clarity about the effect of reporting in the context of the IAF.

10.2.3 It is noted that reasonable steps can be evidenced via systems and controls, but guidance is required on how this is expected to operate for subsidiaries who rely on Group systems and controls through outsourcing (see paragraph 9 above).

10.2.4 A number of the reasonable steps examples listed are of a type which only senior leaders may be capable of evidencing, but the requirement for compliance with Common Conduct Standards extend through lower levels across a firm. Guidance relating to how the Regulator intends on applying proportionality in respects of reasonable steps for the differing cohorts of people impacted, across PCF/CF1/CF2-11 roles, in particular for more junior in-scope roles would be welcomed. Some specific examples where further guidance would be welcome include:

10.2.4.1 Annex 2 – Guidance 3.4 – Reasonable Steps – BPFI notes that this will apply to all CFs. Could the CBI provide examples of what might constitute reasonable steps for large cohorts of junior CF4, CF10 and CF11 staff who are not subject to MCC, for example.

10.2.4.2 Annex 2 – Guidance 3.4 – Reasonable Steps – BPFI members note that this applies to all CFs. Could the CBI provide examples of what might constitute reasonable steps for CF8s, to ensure a consistent approach across industry.

10.2.4.3 Annex 2 – Guidance 3.7 – Reasonable Steps – CBI expects that individuals in CF roles are experienced, competent professionals who manage appropriately – could the CBI clarify its expectations for junior staff who are not at manager level, e.g., CF4 sales staff and junior traders in CF10/ CF11 roles.

10.2.5 Records to evidence reasonable steps: Guidance around what records the CBI expects firm to retain to evidence that reasonable steps have been taken would be welcome.

10.2.6 Difference in reasonable steps to be taken by a PCF and a CF1: BPFI members would welcome clarification on the differences between reasonable steps to be taken by a PCF in execution of her/ his legal duty (2.8.4 Annex 2 – Guidance) and the expectations around CF1 holders who are subject to Additional Conduct Standards (6.1.1(b) Annex 2 – Guidance).

10.2.7 Temporary roles: Clarity is requested as to what extent the temporary nature of the role will be reflected in the CBI's assessment of what constitutes reasonable steps for that individual and provide additional guidance in this regard to ensure clarity for temporary role holders.

Question 11 - Does the guidance assist you in understanding the Duty of Responsibility and the non-exhaustive list of factors to be considered with regard to reasonable steps?

11.1 **Avoiding continued contraventions:** The Guidance (2.8.2) provides that "avoiding a contravention includes avoiding the continuation of a contravention and this section should be read accordingly." Clarity is required as to the treatment of pre-existing contraventions which may be continuing as at the effective date of SEAR as the Guidance does not currently address this. To the extent that there is an expectation that pre-existing and continuing contraventions are captured for the purpose of assessment of compliance with the duty of responsibility, in-scope PCFs could be in breach of the duty of responsibility on 1 July 2024. As this could have a very significant impact on those in-scope PCFs, clarity on scope and detailed guidance on the expectations in this regard is critical.

Question 12 - What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?

12.1 **Expectations in respect of errors and breaches which occurred before the commencement of the legislation/applicability of the conduct standards and SEAR litigation matters:** The conduct standards and the SEAR impose obligations on individuals in respect of errors (53E(1)(d)(vi) and section 53F(d)) and breaches and failure to comply with those obligations will trigger the new enforcement regime set out in the IAF. Clarity is required on the following:

12.1.1 Section 53F(d) sets out a requirement that: "*any information **of which the Bank would reasonably expect notice** (emphasis added) in respect of the business of the regulated financial service provider is disclosed promptly and appropriately to the Bank, including information relevant to, or giving rise to a suspicion or expectation of, any of the following: ((i) commission of an offence by the regulated financial service provider or a person performing a controlled function in relation to it; (ii) commission of a prescribed contravention or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing*

a controlled function in relation to it; ….(vi) commencement of legal proceedings by or against the regulated financial service provider arising from its obligations under financial services legislation; (vii) commencement of legal proceedings against the regulated financial service provider which may impact on its ability to continue to trade …". In respect of these matters, clarity is required as to what types of matters are those "of which the Bank would reasonably expect notice". In particular, in respect of item (vi) above, noting that legal proceedings are issued very regularly against financial institutions and the basis of those proceedings will often be an allegation of a breach of consumer contract, negligence, breach of duty and other matters which are reflected in a firm's obligations under financial services legislation (for example, the Consumer Protection Code), clarity is required as to the scope and timing of the notification obligation. We note that there is no materiality threshold in respect of paragraph (vi), as such Guidance should provide for;

12.1.2 the expectations for in scope matters which have occurred before the activation of the requirements (31 December 2023);

12.1.3 the treatment of in scope matters which occurred before 31 December 2023 but are continuing as of 31 December 2023.

12.2 **Guidance on practical steps for regulatory notifications required under the conduct standards**: Noting that firms have established processes and procedures for interaction with regulators as part of their risk controls for regulatory engagement, clarity is required as to the expectations for how in-scope individuals are to demonstrate their compliance with the standards requiring Regulatory notification. For example, clarity is required in the Guidance as to whether it is acceptable for an in-scope individual to have requested Regulatory notification through the appropriate internal division, or whether it is expected that in-scope individuals issue Regulatory notifications directly to the CBI.

12.3 **Application of reasonable steps to CFs:** The application of reasonable steps to CFs should be proportionate. The CF population in firms is typically provided with mandatory training required to carry out their roles. Some firms have commented that these processes and controls are the "reasonable steps" which should be taken to ensure that Conduct Standards are met noting that many CFs are junior people in a firm.

12.4 **Junior CF roles**: The examples given throughout the Guidance to help firms interpret the conduct standards are helpful and practical, particularly for a senior population. However, many CF holders are in customer-facing roles or at an early stage in their career and who are unlikely to be in a position to undertake many of the examples listed. We appreciate that the Conduct Standard descriptions are necessarily broad, and that the CBI expects firms to interpret the Guidance in the context of their specific business model, further examples suitable to individuals in such roles, particularly in "hot topic" areas which additional Regulatory attention or where previous poor behaviour has been highlighted during CBI reviews would be helpful. We appreciate that the Conduct Standard descriptions are necessarily broad to allow

for a variety of businesses to operate within them, but any additional guidance would be helpful.

12.5 "**Customer"** - The term "customer" is not defined in the Regulations. We would request that the CBI to adopt a definition similar to other regulations e.g., capturing any natural or legal persons in receipt of a financial service including a reference to consumers and non-consumers.

12.6 **Customers and counterparties** - It is noted that the Guidance s5.6.3 makes a distinction between customers and counterparties. The term counterparty is also not defined in the Guidance, we would request that the CBI provided clarity regarding their expectation of the difference between a customer and a counterparty (taking into consideration the three levels of counterparty: retail, professional and eligible).

12.7 Training - **Is there a specific timeframe the CBI expects for the review of the training programme** (e.g., at least annually)? Clarity would be welcome in this regard including:

- Will further direction be provided on what form a training programme should take i.e., the type of training and medium of delivery?
- How will a determination be made on the adequacy of the level of training provide?
- Whether there are specific expectations as to who would sign off on training material?
- Clarity on what will constitute sufficient evidence of training programmes and senior management oversight and challenge is required.
- Confirmation of what constitutes a "timely manner" for the provision of induction training would be welcome.
- Confirmation of what constitutes as "records regarding the notification" of the Conduct Standards to the relevant individuals.

Question 13 - What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?

13.1 **Exemptions from Fitness and Probity Standards -** Section 4.16 of the Guidance on the Conduct Standards sets out that the exemptions that apply to Fitness & Probity. The Guidance is clear that the functions or individuals that are currently exempt from the Fitness & Probity standards are to be considered in scope of the Conduct Standards.

This has the potential to significantly expand the population (in some member firms by more than 1000s of individuals) of those in scope of the IAF Conduct standards. This particularly applies to those operating in outsourced roles in other regulated entities. Across entities there may be many individuals performing outsourced roles, globally, who will now be subject to the IAF. There are detailed outsourcing arrangements in place with regards to the governance of outsourced service provides and the inclusion in IAF would seem unnecessary.

With reference to those individuals outside of the legal entity who may exert significant influence over a CF or PCF, this is likely to include line managers of PCFs and CFs who are outside of the Irish regulated entity and regulated elsewhere.

We would consider that the existing exemptions that apply to Fitness & Probity Standards should be continued to IAF standards as the controls that are in place for Fitness & Probity have worked appropriately since Fitness & Probity was introduced.

13.2 **Effect of a conduct standard breach**: We note that embedding the Conduct Standards over time is a clear expectation of the CBI. One area where embedding is expected is into the performance management and promotions process. Section 4.33 of the Guidance states that "firms should consider how failure to meet the Common Conduct Standards could be linked to matters such as performance review and promotion", which implies that individuals looking for promotion may have a conduct breach on their record. However, there is evidence in the UK that in some cases, a breach of the standards generally led to dismissal from the firm and often leaving the industry. To help firms prepare appropriate training and guidance material, further clarity is requested in respect of the expectations for effects of conduct breaches.

13.3 Paragraph **4.41 of the Guidance states: "i**f the firm takes disciplinary action as a result of a breach of a Conduct Standard but the individual has appealed or plans to appeal, the firm should still report the disciplinary action but should include details of the appeal in the report and in due course update the Central Bank on the outcome of any appeal". In line with fair procedures for disciplinary matters, where a decision is made in respect of a disciplinary sanction, employees have a right of appeal, and the disciplinary sanction takes effect after the expiration of the appeals period (if there is no successful appeal). The Guidance is suggesting an expectation that actions are notified in advance of the expiration of an appeals period. Firms have concerns that this approach could prejudice the principles of fair procedures and potentially give rise to issues in respect of compliance with employment law. Having regard to these concerns, clarity is required as to the expected timing for notification of concluded disciplinary actions and firms propose that notification occurs after the expiration of an internal appeals period (where the breach of standards is applicable).

13.4 **Practical steps for reporting of breaches of Conduct Standards**: The Guidance (4.38) provides that responsibility for reporting disciplinary matters relating to breaches of the Conduct Standards sits with the individual holding PR3 but also includes a footnote which states that PCFs have an obligation to report breaches of the conduct standards to the CBI. Clarity is required in the Guidance as to whether the CBI expects multiple notifications in respect of the same breach from different individuals within a firm.

Question 14 - Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?

14.1 We agree that individuals who will hold PCF roles for a short period of time should be captured by the Conduct and SEAR requirements for the window of time relative to their appointment. However, we note that there is little specific guidance in this area. It is not clear if an individual is expected to document the reasonable steps which she/ he has taken or if they can rely on the documentation in place for the predecessor. Further clarity is required in relation to the inclusion of Temporary Officers within Conduct Standards and SEAR. 2.9.12 and 4.21 state that they are in scope for SEAR, Conduct Standards and Duty of Responsibility and that "reasonable steps will reflect the particular circumstances of the individual", however footnote 9 (2.9.12) states "*Under Regulation 11 of the PCF Regulations, Temporary Officers will not be subject to SEAR*".

Question 15 - What are your views and comments on the draft Certification Regulations and related guidance?

15.1 **Timing:** In relation to 7.2.16 of the Guidance, in terms of timing, some firms are on a current annual cycle to reconfirm Fitness & Probity by the end of November, which goes back to introduction of F&PR effective 31 December. Noting that in this year to meet the proposed implementation date, there will be a significant body of work to train all staff for the new regime during Q4 2023, firms consider it would be helpful if a derogation to reconfirm against the exiting F&PR in Q4 could be granted. Also, also recognising that many firms will be on a calendar year with regards performance reviews occurring in Q1 and noting desire to consider performance as part of certification, consideration is sought for the first certification date to be extended to 31 March. This would avoid two annual processes within a c. 4/5-month period and create additional capacity to focus on training and embedding of the new requirements.

Given that many of the inputs that feed into the F&P Certification will only come due for firms on 31 December (e.g., training, annual reviews, CPD hours), the deadline of two months after 31 December 2023 to have all certifications in place is very ambitious and will put firms under pressure.

15.2 **Further guidance is sought in relation to the information to be contained on the certificate** e.g., is the expectation for the certification to indicate the Business Area/Function the individual is under, or would it need to be more detailed highlighting the role title and role summary.

15.3 **Due Diligence processes** - Further guidance is sought in relation to the changes to the Due Diligence processes relative to individuals already within the role, previously deemed suitable and the need to reconfirm, for example, copies of relevant transcripts, in particular where these may not be held on file or are no longer available and / or the individual has been employed with the institution for a significant number of years. Furthermore, based upon on our interpretation, the expansion of judgement and regulator checks for full CF population, introduces

significant complexities which need to be solved for through an IT solution due to the size of the population. Further guidance is sought as to whether the CBI will be able to support such IT solutions (e.g., API for Regulator checks).

15.4 **Employers' References** - With regard to Employer's References (Table 3 – Due Diligence – page 115), can it be confirmed that there is no expectation for these to be completed for staff within existing impacted roles, and is only applicable to new role holders, and that a "grandfathering" approach for individuals who have been employed with the firm before January 2024 is appropriate.

15.5 **Disciplinary actions:** Please see our response to Question 17 in respect of the definition of suspensions and the thresholds for Regulatory notifications.

<u>Question 16 - Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?</u>

16.1 **Grandfathering:** Firms request a grandfathering process for in-situ in-scope roles, as was the case with previous new PCFs.

16.2 **Treatment of multiple holding companies**: Clarity is requested as to whether the CBI intends to capture only the ultimate parent holding company in a group or other holding companies within a group where they meet the definition of "holding company".

Can the CBI confirm that if an individual is a PCF or CF in both a regulated firm and a holding company which is a parent entity of the regulated firm, are separate F&P certifications required or can this be combined under the regulated firm?

<u>Question 17 - Do you agree with our proposed approach to reporting of disciplinary actions?</u>

17.1 **Meaning of suspension**: Regulation 5 of the Regulations sets out a definition of "disciplinary action" (which is defined as "the issuing of a formal written warning to a person, the suspension or dismissal of a person or, the reduction or recovery of any of a person's remuneration"). Clarity is required from the CBI as to the expected interpretation of "suspension". There are two types of suspension used in disciplinary matters. One is a disciplinary sanction in itself – where an employee has gone through a disciplinary procedure and has been found to have breached the code of conduct and suspension is imposed as a sanction. The second type of suspension that would be more common is placing an individual on "special paid leave" pending an investigation into an alleged wrongdoing. In line with Irish case law, suspension in this context is a purely administrative measure and does not denote any finding of wrongdoing. Reporting to the CBI the matter of a suspension in the context of an investigation (the second type of suspension) could be perceived as a penalty and could render the basis of the suspension open to challenge. It could be argued that the matter had been prejudged and the outcome was predetermined, particularly in circumstances where the other triggers for reporting are disciplinary sanctions. Noting the importance of fair procedures in the context of disciplinary processes, clarity is critical on this point.

17.2 **Paragraph 4.41 of the Guidance states: "i**f the firm takes disciplinary action as a result of a breach of a Conduct Standard but the individual has appealed or plans to appeal, the firm should still report the disciplinary action but should include details of the appeal in the report and in due course update the Central Bank on the outcome of any appeal". In line with fair procedures for disciplinary matters, where a decision is made in respect of a disciplinary sanction, employees have a right of appeal and if they are successful upon appeal the sanction will be overturned. The Guidance is suggesting an expectation that actions are notified in advance of the expiration of an appeals period. Firms have concerns that this approach could prejudice the principles of fair procedures and potentially give rise to issues in respect of compliance with employment law. Having regard to these concerns, clarity is required as to the expected timing for notification of concluded disciplinary actions and firms propose that notification occurs after the expiration of an internal appeals period.

17.3 **Practical steps for reporting of breaches of conduct standards**: The Guidance references that responsibility for reporting disciplinary matters relating to breaches of the conduct standards sits with the individual holding PR3 but also includes a footnote which states that PCFs have an obligation to report breaches of the conduct standards to the CBI. Clarity is required in the Guidance as to whether the CBI expects multiple notifications in respect of the same breach from different individuals within a firm.

17.4 **Concerns with staff performance**: The wording in 6.3.3 is very broad. We propose an amendment to include a threshold for "material concerns" before an independent investigation would be triggered. In practice when there are initial concerns about performance, steps are taken by a Line Manager and, if appropriate, a supportive 'performance support plan' put in place to bring an individual to the required standard. Guidance is required as to "independence" in this context and whether it is expected that the investigator has no prior experience of the employee (i.e., a person other than their line manager).

17.5 **Clarification on any other conduct circumstances that may warrant a notification to the CBI would be welcomed.** For example, circumstances where an individual in a regulated role has admitted to a criminal offence but a disciplinary process was somehow prevented from occurring, whether by the individual's resignation or arrest etc.

17.6 **Verbal Warnings**: Where an institution issues written evidence to an individual following a verbal warning, confirmation that this does not meet the expectations of the CBI for a breach which would require reporting.

Question 18 - Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms?

No comments on this question.