

**Private & Confidential**

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**Attention: IAFconsultation@centralbank.ie**

13 June 2023

Our ref: CBI-IRE001

Dear Sir / Madam

**The Chartered Governance Institute UK & Ireland – Irish Region Submission on the Central Bank of Ireland Individual Accountability Framework Consultation**

The Chartered Governance Institute UK & Ireland ("CGI") is the membership body for Company Secretaries and governance professionals. It is one of nine divisions of the Chartered Governance Institute, the global governance body which assures world class standards of governance by setting the international qualifying standard as the only chartered professional body for Company Secretaries and governance professionals. Company Secretaries and governance professionals are high-ranking professionals with a broad range of skills unique among the professions. The Irish Region of the Chartered Governance Institute UK & Ireland is the representative body for the CGI in the Republic of Ireland with its own Council and Sub-Committees.

The CGI recognises the importance of good governance and the positive impact it has on organisations and their stakeholders. As an advocate for corporate governance, the Irish Region of the CGI is supportive of the introduction of an Individual Accountability Framework ("IAF") by the Central Bank of Ireland ("CBI") and agree that it will further enhance existing governance arrangements within Irish financial services institutions.

We welcome the opportunity to submit a response to the consultation. We have prepared this response following engagement with a sub-set of our members across a range of financial services institutions and provide a view as a professional body. Further, we have focused on questions we believe our skills and experience complement and position us to share a perspective. The CGI thank the CBI in advance for considering our feedback.

Yours faithfully,



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**Jillian O'Sullivan**

President, Chartered Governance Institute UK & Ireland – Irish Region

### **Q1. What are your overall views and comments on the draft SEAR Regulations and related draft guidance?**

As noted in our introduction, the CGI welcome the introduction of the IAF. Overall, the regulations and guidance are well structured and comprehensive. However, given the possible consequences for organisations and individuals where there is a failure to comply with the IAF, the CGI notes the importance of ensuring that there is clarity in the documents. Throughout this document we provide specific examples of our views on where further clarity would be beneficial.

In terms of the overall responsibilities of PCF holders, a clear connection exists between the Conduct Standards, SEAR and the “reasonable steps” concept yet different dates apply to the application of the Conduct Standards and SEAR. We suggest the CBI reconsider aligning the Conduct Standards timeframe with the SEAR timeframe of 1 July 2024, for the following reasons:

- Firms can focus on establishing and implementing enhancements to governance arrangements and defining responsibilities across the organisation. Individuals will be clear on their roles and responsibilities in advance of embedding the conduct standards; and
- In the absence of an aligned timeframe further clarity would be required in respect of expectations for the time period between 31 December 2023 and 1 July 2024. Particularly in respect of the consequences of breaches of the Conduct Standards by a PCF holder before SEAR is effective, as well as the obligations on firms.

We note there is limited reference to subsidiary / parent relationships. Given the significant number of subsidiaries based in Ireland, including subsidiaries that are themselves regulated entities, we welcome further clarity on the impact of group structures. For example, in respect of (i) strategy and policies which are subject to group/parent influence and oversight; and (ii) the recognition of the balance between the responsibility of the subsidiary board and the oversight required from the parent board.

### **Q2. Do you agree with our proposed approach to the Inherent Responsibilities?**

The CGI agree with the proposed approach in principle to the Inherent Responsibilities. We have not commented on specific PCF roles where other professional / industry bodies are best positioned to respond. We note the following two general observations for the CBI’s consideration:

- The current language for some Inherent Responsibilities implies first line responsibilities in roles that are second line. For example, the reference to the PCF14 Chief Risk Officer ‘managing risk exposures’.
- Reporting for certain second lines is to the board. This could be expanded to reference relevant board committees.

### **Q3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?**

The CGI agree with the proposed approach in principle to the Prescribed Responsibilities. However, we note the following observations for the CBI’s consideration:

- We acknowledge that the Prescribed Responsibilities to be allocated to Non-Executive Directors (“NED”) are broadly reasonable and in line with existing obligations for firms. Care needs to be taken to ensure that the allocation of certain responsibilities to individual NEDs does not contradict the collective responsibility of the board. For example, PR6 and the reference to ‘embedding culture’. See further information in respect of Q5 below.
- There are a significant number of Prescribed Responsibilities, some of which are very broad in terms of scope. For example, PR7 and PR8. As a result, this could present

challenges for firms' allocation of responsibility to the relevant (and most appropriate) individual. In the absence of clarity and detailed guidance we expect this will present a challenge to the PCF holder in terms of demonstrating reasonable steps. Further, there is a risk that there will be inconsistencies in the interpretation of the Prescribed Responsibilities by firms, without more explicit guidance.

- There is also a risk of some of the broad responsibilities being allocated to a small number of senior individuals due to the requirement to allocate the Prescribed Responsibilities to the most 'senior person' as set out in the 'appropriate level of seniority' sub-section. This could result in the majority of Prescribed Responsibilities being allocated to the CEO role, which raises a concern regarding the capacity of the PCF1 and PCF8 role holders. Furthermore, it may present challenges in recruiting the CEO role. We note the CBI recognises this and has included a sub-section on 'over-allocation'. Further guidance on the balance between allocating Prescribed Responsibilities to the most 'senior person' and 'over-allocation' is welcome.
- The broad nature of some of the responsibilities may also present a challenge for individuals in respect of demonstrating reasonable steps. In particular, the need to provide assurance on compliance with the regulatory obligations given that it may require existing structures within firms to be altered and well documented registers setting out how they comply with regulations.
- Some of the Prescribed Responsibilities do not align with the limited number of PCFs in an organisation and further, do not take account of individuals where accountability for certain Prescribed Responsibilities naturally lies. For example, several Prescribed Responsibilities would naturally rest with the Head of the HR function, which is not a PCF role. This presents a risk that some of the Prescribed Responsibilities will be allocated to individuals that would not necessarily have the subject matter expertise for which they are held accountable.

We understand the rationale for 'Other Responsibilities' is to capture roles not defined elsewhere and allow a degree of flexibility. However, there is a risk of inconsistencies in the approach adopted by firms when applied in practice. A more detailed explanation, or guidance, is welcome to support firms identifying 'Other Responsibilities'.

**Q5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?**

The CGI welcomes the guidance which advises that the standards to be met by independent non-executive directors ("INED") and NEDs correlate directly to their non-executive oversight duties existing in the Companies Act, the CBI Corporate Governance Requirements, and other corporate governance regulations and codes (the "Corporate Governance Codes"). The importance of directors' role in the governance of organisations is well-recognised by CGI, as are the important expectations that must be met by the individuals filling those roles. The CGI welcome the CBI's acknowledgement that INEDs/NEDs do not manage an organisation's day-to-day activities (which is an executive role), but rather provide governance and oversight of such activities.

In respect of the Prescribed Responsibilities held by NEDs, the CGI welcomes the acknowledgment that board decisions are made on the basis of collective decision-making (consistent with the corporate governance code) and would welcome continuation of embedding collective decision-making at board level in all IAF/SEAR Guidance documentation. We suggest the guidance could be further strengthened with the inclusion of a statement which clearly acknowledges that Inherent and Prescribed Responsibilities held by board members are discharged on the basis of collective decision-making, consistent with the Companies Act and the relevant Corporate Governance Codes

and guidelines. As noted in our response above, without further clarity there is a risk of contradiction.

**Q6. Do you agree with our proposed approach to the Statements of Responsibilities?**

The CGI agree with the proposed approach to the Statements of Responsibilities. We consider formally documented roles and responsibilities as a core component of sound corporate governance. The Statement of Responsibilities should be aligned to the role profile of each individual PCF (which should be also limited in nature to their exact responsibilities) and demonstrate clear and concise understanding of the role each PCF plays in the effective function of the Board and Management.

**Q7. Do you agree with our proposed approach to the Management Responsibilities Map?**

The CGI agree with the proposed approach to the Management Responsibilities Map. From our perspective this is effectively documenting the overarching corporate governance framework and should clarify how the business is governed and managed. It should be aligned to the reasonable steps framework to support documenting how the PCF intends to discharge their responsibilities in the context of the wider governance structure.

While it is positive to see the inclusion of a sample Management Responsibilities Map in Appendix 4, we note this is a simplistic schematic and for large complex firms this will be more challenging to document. We also note that it does not cover all components within a detailed governance framework (policies, controls) or the linkage to other key documents. It is important that firms consider how the regime complements such wider arrangements. We welcome further guidance from the CBI on how firms can align the management responsibilities with their wider governance framework.

**Q8. Do you agree with our proposed approach to submission of documents?**

The CGI supports the proposed approach that documents are made available upon request. This will limit the burden of regular reporting to the CBI and place the onus on firms to ensure documents are kept up to date and are ready for inspection, as required.

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

The CGI agree with the proposed approach to reasonable steps. We welcome the guidance in relation to reasonable steps and emphasis on proportionality, predictability and reasonable expectations as the foundations of the approach to implementation. We also agree with the statement in the guidance that the assessment must be viewed “as they existed at the time rather than applying standards retrospectively or with the benefit of hindsight”.

**Q11. 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?**

The CGI welcomes the guidance on the duty of responsibility and non-exhaustive list of factors that need to be considered with regard to reasonable steps. We acknowledge that the CBI do not seek to be overly prescriptive however, suggest the addition of more practical steps PCF holders must take to demonstrate reasonable steps would be helpful.

The CGI acknowledges the importance of a director's primary duty under company law, together with its legal duty proposed under SEAR. In this context we welcome further guidance on what the CBI consider best practice to ensure compliance with the duty of responsibility.

The CGI welcomes the acknowledgement by the CBI that human error can occur, that perfection is not the required standard and the importance of judgment being exercised by senior individuals discharging their responsibilities. However, further clarity is required in respect of how the CBI will approach "acts and omissions" in relation to reasonable steps as there appears to be a level of subjectivity attached to this.

**Q12. What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?**

The CGI welcomes the expansion and codification of certain aspects of the standards of behaviour (noting they are non-exhaustive). Regarding the interaction with fitness and probity, the CGI would suggest that the current proposal may add complexity in assessing individuals who fall below the Conduct Standards and the interaction with employment rights. The CGI would suggest that broadly speaking, the introduction of the IAF allows an opportunity to take a streamlined and amalgamated approach while maintaining the tenants of the fitness and probity standards and the conduct Standards and the CGI would encourage any opportunity to do so.

The Additional Conduct Standards apply to individuals in PCF and CF1 positions. The CGI would suggest that some of the additional Conduct Standards could be characterised as 'companywide' and an individual (currently) in a CF1 position may not be appropriately placed to have influence over same. This could place undue responsibility on a CF1, or cause firms to reconsider who should be allocated as same.

**Q13. What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?**

The CGI welcomes the clarity on the firms' obligations regarding Conduct Standards. The concepts of notification, training and integration appear reasonable and achievable. Moreover, they will play a crucial role in embedding the regime and expected behaviours throughout firms.

The CGI notes the difference in wording in the Duty of Responsibility and Conduct Standards may cause unnecessary confusion and as noted above in our response to Q12, would suggest that any opportunity for streamlining and alignment is taken.

The concept of 'integrity' appears broad in respect of non-adherence to policies. For example in some case failure to follow a policy may be due to human error and not call an individual's integrity into question. Further clarity on the interpretation of the concept of 'integrity' and how it will apply in practice would be welcomed.

**Q14. Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?**

The CGI welcomes the wording in the consultation regarding temporary appointments. This appears to be wider, than the current wording utilised in IAF (which specifies that it must be something extreme, such as death), as it refers to exceptional circumstances. Clarity on the definition of a temporary appointment and whether a change was implied by the current language in the consultation would be most welcome. In addition, further information would be helpful in respect

of the practical steps in obtaining such approval, for how long it may last and on what grounds it may be granted or refused.

**Q15. What are your views and comments on the draft Certification Regulations and related guidance?**

The CGI welcomes enhancements to the certification process. However, we consider the tight timelines, the evidence requested and the extension of the requirements to the entire CF population potentially over burdensome in practice. The proposed approach appears to be neither proportionate nor risk based, and will add an unnecessary burden on firms with a large CF population.

**Q.16. Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?**

Given the nature and purpose of holding companies, the CGI believe there is an unnecessary risk in extending the regime to such entities that are not regulated financial service firms as this would create additional burdens on such firms. We also note that directors of holding companies are already subject to directors' duties as set out in the Companies Act 2014, in addition to requirements of EU law. The CGI believe this goes above and beyond the requirements of EU law whereby directors and senior executives of such holding companies must be suitably skilled, qualified and of good reputation, without the need for the full rigour of the CBI Fitness and Probity regime being applied to them. It is an unnecessary and burdensome requirement on firms that are already subject to compliance with consolidated supervision requirements and other requirements by competent authorities.

All legal entities have distinct responsibilities and introducing this requirement creates a risk of blurring boundaries within group structures and 'piercing the corporate veil'. Further, where the holding company directors are different to the regulated entity directors this could impact the ability to recruit INEDs for holding companies (or related group entities) that need particular expertise in other areas and who do not have expertise in the regulated financial services sector. The CGI would welcome more rationale on the extension and consideration of unintended consequences.

In terms of larger group structures, 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". Also, we suggest 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 Fitness and Probity certifications required or can this be combined under the regulated firm?

**Q17. Do you agree with our proposed approach to reporting of disciplinary actions?**

The CGI does not agree with the CBI's proposed approach to reporting of disciplinary actions. We believe that this is a matter for the firm to deal with in the ordinary course in compliance with employment law. It is important to have regard to the due process that may be required, notwithstanding the provisions of the Corporate Governance Codes to notify the CBI of the removal from office of the head of a control function within five days, with clear articulation of the underlying rationale for the removal.

There appears to be inconsistency where the CBI acknowledges that due process should be applied. However, it appears to be contradictory where the CBI expects firms to notify them of a suspected prescribed breach. The CGI is of the view that the requirement is contrary to the rights and

entitlement of an individual to preserve their good name and standing, pending the outcome of any disciplinary procedure by the firm. Further there may be additional legal implications in respect of GDPR which may benefit from some guidance.

Furthermore, the CGI is of the view that this proposal creates administrative burden with additional reporting requirements within tight timeframes. If the fitness and probity of an individual comes into question, it is a matter for the firm and its board to take action, as appropriate, and address the issues in a manner that is consistent with preserving the integrity of the individual, the firm and upholding the conduct standards.