



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# **Fitness and Probity –** Frequently Asked Questions 2018

# 1

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## Introduction

This document ('the FAQs') is drawn up by the Central Bank of Ireland ('the Central Bank') to address commonly asked questions which have been raised in relation to the operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010 ('the F & P Regime'). It further addresses certain questions that may arise in the context of the amendments made to the Central Bank Reform Act 2010 by the European Union (Single Supervisory Mechanism) Regulations 2014. Specific matters which have arisen in respect of compliance with both S.I. 545 of 2015 and the Solvency II (European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) are addressed in the [Guidance for \(Re\)Insurance Undertakings on the Fitness and Probity Amendments 2015](#). Please see Section 1 below for other documents issued by the Central Bank concerning the F & P Regime.

The FAQs have no legal status. Interested parties should consult their legal advisers concerning any matter of legal interpretation of the Act, the Regulations or any Codes issued thereunder.

Financial Risks and Governance Policy Division  
December 2017

Version	Date	Amendments
1	March 2012	
2	July 2012	Addition of questions 3.7, 3.12, 3.15, 4.10, 4.18, 6.4, 6.6, 6.17, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, and 7.22.
3	March 2013	Addition of questions 3.17 and 3.18.
4	November 2014	Addition of Section 4 and question 3.19.
5	April 2015	Addition of question 8.13.
6	July 2015	Updated Information 3.1, 5.6, 5.20, 7.14, 7.21 and 8.1.
7	December 2016	Updated Information 7.14, 8.1 and 8.13.
8	December 2016	Addition of questions 3.20 – 3.36 and of Section 4 (taken from previously published Guidance on Fitness and Probity Amendments)
9	December 2017	Updated Information 2.4
10	June 2018	Updated Information 1.3, 3.6, 5.4 and 6.8

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**1 Existing Documentation issued by the Central Bank relevant to the operation of Part 3 of the Act**

- 1.1** The Central Bank has issued a number of statutory instruments<sup>1</sup> prescribing controlled functions ('CFs') and pre-approval controlled functions ('PCFs') by regulation ("the Regulations") which should be read together and not in isolation. A further statutory instrument was issued on 2 March 2012, 'The Central Bank Reform Act 2010 (Procedures Governing the Conduct of Investigations) Regulations 2012'.<sup>2</sup>
- 1.2** The Central Bank has also issued two codes under Section 50 of the Act, the Code setting out Standards of Fitness and Probity ('the F & P Standards') and the Minimum Competency Code ('the MCC').
- 1.3** The standards contained in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders and the Capital Requirements Directive 2013/36/EU (the "the Union Standards") apply, in addition to the F & P Standards, to persons occupying controlled functions and to all applications to perform pre-approval controlled functions in credit institutions and certain investment firms. From 4 November 2014, for applications made by a regulated financial service provider to the Central Bank to appoint a person to perform a pre-approval controlled function where that function is part of the management body of a significant institution as defined in Article 3 Capital Requirements Directive 2013/36/EU and Article 6 SSMR, and therefore falling within the exclusive competence of the ECB as set out in Article 4 of the SSM Regulation, the Union Standards shall apply.
- 1.4** For guidance purposes the Central Bank has issued the following non statutory guidance documents in relation to Part 3 of the Act:
- The Guidance on the Fit and Proper Standards ('the Guidance');
  - The Guidance on Investigations under Part 3 of the Act;
  - In Situ Pre-Approval Controlled Functions: Confirmation of Due Diligence undertaken.

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<sup>1</sup> SI No 437 of 2011, SI No 615 of 2011, S.I. 394 of 2014 and S.I. 545 of 2015.

<sup>2</sup> SI No 56 of 2012.

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- 1.5** The Central Bank's Regulatory Transactions Division ('RTD') has published the Individual Questionnaire ('the IQ') together with the Online User Manual for fitness and probity applications.
- 1.6** In addition, the Central Bank has a dedicated web page to Fitness and Probity which can be accessed [here](#).

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## 2 Controlled Functions (CFs)

### 2.1 What is a Controlled Function?

A Controlled Function ('CF') is a function in relation to the provision of a financial service which is prescribed by the Regulations as a CF.

The Central Bank prescribed CF roles in Schedule 1 of the Regulations as follows:

- CF-1: Significant Influence function
- CF-2: Compliance function
- CF3-9: Customer facing functions which are likely to involve one or more of the following tasks:
  - giving of advice to a customer of the regulated financial service provider, in the course of providing, or in relation to the provision of, the financial service (CF-3); or
  - arranging, or offering to arrange, a financial service for a customer of the regulated financial service provider (CF-4); or
  - assisting a customer in the making of a claim under a contract of insurance or reinsurance (CF-5); or
  - determining the outcome of a claim arising under a contract of insurance or reinsurance (CF-6); or
  - acting in the direct management or supervision of those persons who act for a regulated financial service provider in providing the services referred to in subparagraphs (a) to (d) (CF-7); or
  - adjudicating on any complaint communicated to a regulated financial service provider by a customer in relation to the provision of a financial service (CF-8).
  - in respect of a person referred to in paragraph (a) or (b) of Regulation 15(1) of the European Communities (Insurance Mediation) Regulations 2005, the function of a person described in that Regulation (CF-9).
- CF10-11: Dealing in property functions

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**2.2 How does a Regulated Financial Service Provider know if a person is performing a CF or a PCF?**

In determining whether an individual is performing a CF or a PCF, Regulated Financial Service Providers ('RFSPs') should assess the role and functions of each individual in line with the definitions prescribed in the Regulations. The RFSP should consider the responsibilities of the specific function and determine the specific competencies expected of a person performing that specific CF. PCFs are a subset of CFs – in other words PCFs are by definition also CFs.

**2.3 If an individual is captured by the definition of a CF, what does this entail for that individual?**

If an individual is performing functions which fall within the definition of one or more of the CFs (CF1-11), that individual is subject to the Central Bank's powers under the F & P Regime.

The practical implication of this includes that the individual:

- i. Must comply with the F & P Standards (as applicable);
- ii. Must agree in writing to abide by the F & P Standards issued under Section 50 of the Act;
- iii. Must provide the RFSP with the required information to enable it to conduct the appropriate due diligence e.g. for example, if relevant to the performance of the function, then a transcript of a specific qualification should be provided where requested;
- iv. May be the subject of an investigation pursuant to Section 25 of the Act where the Head of Regulation has reason to suspect that person's fitness and probity to perform the relevant CF, and decides in the circumstances that an investigation is merited;
- v. May be required to comply with an evidentiary notice;
- vi. May be the subject of a suspension notice or a prohibition notice issued under Part 3.

Where an individual is captured by the Minimum Competency Code ('MCC') with respect to CF3-9 then that individual must comply with the MCC.

An individual performing a CF is not required to submit an IQ to the Central Bank in relation to the performance of those CFs.

## 2.4 What are the obligations on the RFSP, for the purposes of the F & P Regime, with respect to those individuals captured by the definition of a CF?

If an individual is performing functions which fall within the definition of one or more of the CFs (CF1-11), practical implications for the RFSP may include:

- i. The RFSP must satisfy itself on reasonable grounds that the individual complies with the F & P Standards. To this effect the RFSP is expected to conduct due diligence on the individual's compliance with the F & P Standards. The level of due diligence expected to be undertaken will vary depending on the role. See Section 8 'Due Diligence' later in this FAQ document;
- ii. The RFSP must get written confirmation from those individuals performing CFs that they will comply with the F & P Standards;
- iii. The RFSP cannot permit a person to perform a CF unless satisfied on reasonable grounds that the person is compliant with the F & P Standards;
- iv. Where the CF is or has been the subject of an investigation, the RFSP may have to:
  - comply with a suspension notice ([See Section 27 of the Act](#));
  - comply with an evidentiary notice; or
  - comply with a prohibition notice.

The Minimum Competency Regulations (MCR) impose certain obligations on RFSPs under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013. Under the MCR, RFSPs must ensure that persons performing relevant functions on its behalf comply with the standards set out in the MCC. Where an individual is captured by the MCC with respect of CF3-9 then the RFSP must get confirmation from those Individuals that they comply with the MCC.

## 2.5 What are the reasonable grounds on which a RFSP can satisfy itself that a person performing a CF is compliant with the F & P Standards?

The RFSP should consider the responsibilities of the specific role and should determine the specific competencies and level of probity that should be expected of an individual performing that specific CF. The level of due diligence may differ depending on the categorisation of the CF. The Central Bank has set out its opinion as to what it considers are 'reasonable grounds' on which RFSPs can satisfy themselves that a person performing a CF is compliant with the F & P Standards in [Section 13 of the Guidance](#).

Questions 2.8, 6.16, 7.4, and 8.2 below are also relevant to this issue.



**2.6 Are CF3–9 only intended to capture roles covered by MCC?**

CF3–9 apply to customer facing roles rather than consumer facing roles and are thus not limited to the scope of the MCC. If an individual is captured by the MCC, s/he will be captured by CF3-9. However, not all individuals captured by CF3-9 will be subject to the MCC. The scope of CF3-9 is thus broader than the MCC.

**2.7 Is the definition of CF2 limited to the compliance function?**

CF2 is “a function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations”. Thus the scope of CF2 goes beyond the business unit, that is to say, an individual who works outside of the designated ‘compliance unit’ in an RFSP may nonetheless be a CF2. The designation as a CF is dependent on the functions performed by the individual rather than their job title or physical location in the organisation structure or their job title. Therefore, any individual who may be considered to be ‘ensuring, controlling or monitoring compliance’ in the RFSP may fall under the scope of CF2. Question 2.9 is also relevant to this issue.

**2.8 What happens if an individual is promoted into a CF role or if an individual changes role in the organisation?**

Given that the RFSP has determined that the role in question is a CF, the RFSP must satisfy itself on reasonable grounds that the individual fulfilling that new or changed role complies with the F & P Standards. The level of due diligence may differ depending on the categorisation of the CF. This is discussed further in [Section 18 of the Guidance](#). The RFSP should consider the responsibilities of the specific role and should determine the specific competencies and level of probity that should be expected of an individual performing that specific CF. See [Section 13 of the Guidance](#).

**2.9 What category of CF would the position of Money Laundering Reporting Officer fall under?**

The functions commonly performed by a Money Laundering Reporting Officer would be considered to fall under the category of CF2.

**2.10 What does ‘property’ mean in CF10 and CF11 of the Regulations? Would ‘property’ include company owned assets which are used for the purpose of the business to house staff e.g. buildings?**

In order for a function to fall within the definition of CF10 or CF11, the function must be a function in relation to the provision of a financial service. CF11 does not include the performance of functions in relation to physically housing staff of the RFSP, e.g. building maintenance.

‘Property’ in CF10 is ‘property of the customer’, whether the property is held in the name of the customer or some other person. This would include, for example, client monies or client financial instruments.

CF11 concerns a function in relation to the provision of a financial service which is likely to involve the person responsible for the performance of the function, *‘dealing in or with property on behalf of the RFSP, or providing instructions or directions in relation to such dealing’*. This could include, for example, stocks/shares held by a stockbroker as principal basis.

**2.11 What category of CF might members of committees of the board fall under?**

The category of CF should be determined by the individual’s key function within the RFSP. To the extent that members of committees of the Board are directors, they would be captured under PCF1 – executive director or PCF2 – non-executive director.

### 3 Pre-approval Controlled Functions (PCFs)

#### 3.1 What is a Pre-Approval Controlled Function?

A function is a PCF if it is prescribed as such in Regulations made pursuant to Section 22(2) of the Act, or it has been declared by the Bank to be a pre-approval controlled function by written notice pursuant to Section 22(8) of the Act.

PCFs are a sub-set of CFs which by virtue of the nature of the role require the pre-approval of the Central Bank. In the case of applications to the management body of significant credit institutions, this assessment will be performed by the European Central Bank (“ECB”) and the procedure for such applications is explained at Section 5 of this document. Therefore, PCFs are, by definition, also CFs. The Central Bank prescribed PCF roles in Schedule 2 of the Regulations as follows:

- PCF1-8: Member of a Board / Committee / CEO
- PCF9-10: Member of a Partnership / Sole Trader
- PCF11-17 and PCF42: Senior Management Positions (Core)
- PCF18-40 and PCF43-48: Senior Management Positions (Industry specific)
- PCF41: Non-EEA Firm - branches in the State.

As stated, persons performing PCF roles must be pre-approved by the Central Bank or the ECB in order to take up that role. The process for pre-approval is outlined in [Section 8 of the Guidance](#).

#### 3.2 If an RFSP does not have a particular PCF, is it required to create one in order to comply with its obligations under the F & P Regime?

No. A RFSP is not required to create a PCF to comply with its obligations under the F & P Regime where one did not previously exist. A RFSP should review its functions and determine whether any of its functions would meet the PCF roles as listed in the Regulations. RFSPs should apply substance over form when reviewing such functions and be mindful that it is the function rather than the job title of the person performing that function that determines which PCF category, if any, it falls under.

#### 3.3 Is it possible for an entity to have no PCF roles?

No. It is expected that each RFSP holds at least one PCF role.

#### 3.4 Can multiple persons be listed in each PCF category?

Yes. As referred to in the Regulations, where more than one individual is responsible for part of a PCF in a RFSP, each individual will be considered to occupy that PCF.

**3.5 If an approved individual in a PCF role is also performing CF functions (e.g. if a director is performing a customer facing role) does the individual require further approval?**

The obligation to seek the Central Bank’s prior approval refers to the PCFs which s/he performs.

Insofar as the person is also performing CF functions, s/he must be ‘fit and proper’ to perform those functions, i.e. the person must display competency for each role. See [Section 13.7 of the Guidance](#).

If the higher standard is a PCF, the separate role as CF should be covered by the due diligence that will be undertaken for the PCF position.

**3.6 Can an individual be appointed to a PCF role without the written approval of the Central Bank?**

A RFSP must not offer to appoint a person to perform a PCF role unless the Central Bank has approved, in writing, the appointment of the person to perform the function. However, the Central Bank is satisfied that a RFSP can inform a person of an intention to offer the person a position which is a PCF if it is made clear that the actual offer is subject to receiving the Central Bank’s prior approval in writing of the appointment of the person to perform the function. The statement of intention made by the RFSP should include the following paragraph:

“This shall not be taken to be an offer for the purposes of Section 23 of the Act unless and until approval is granted by the Central Bank of Ireland.”

As a practical matter, the inclusion of a statement of intention could have the same operational implications as making an offer subject to, for example, obtaining satisfactory references or a medical report. See [Section 11 of the Guidance](#).

Institutions in scope of the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders should notify the Central Bank no later than two weeks after the institution decides to propose an appointment to the board.

**3.7 Is an RFSP required to seek CBI pre-approval for the appointment of an individual to a PCF position if that individual performed the same PCF role in a different RFSP and had already been approved by the CBI?**

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Yes, an RFSP must seek pre-approval when an individual is appointed to a PCF role in its firm for the first time regardless of whether the individual has been previously approved by the CBI.

### **3.8 Can an individual hold multiple PCF roles?**

Yes. However, it should be noted that the individual must display competency for each role demonstrating that the holding of such roles do not provide for conflict of interest, and must be approved by the Central Bank in respect of the performance of each PCF role.

### **3.9 Are all applicants for PCF roles subject to interview by the Central Bank?**

A risk based approach will be adopted in deciding whether individuals in PCF roles are called for interview by the Central Bank. The Central Bank will use a firm's risk impact ratings derived from the Probability Risk and Impact System (PRISM) to inform its decisions as to who should be called for interview. The Central Bank will interview applicants for Chairman, CEO, Finance Director or Chief Risk Officer at any high impact firm as routine. In addition, the Central Bank will interview applicants for Chairman and CEO at any medium high impact firm as routine. The Central Bank can decide to interview any individual proposed for a PCF role at its discretion. See [Section 9 of the Guidance](#).

### **3.10 How will the Company Secretary be captured in the F & P Regime?**

The Central Bank amended the Regulations to remove the Company Secretary function from the PCF category. However, the role of Company Secretary is captured by the CF1 category (a function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a RFSP).

### **3.11 Where a company is headed by a General Manager rather than a CEO is this role a PCF?**

Yes. It is not the title of the role that determines whether a function is a PCF - rather it is the functions carried out and the role the individual assumes. An RFSP should apply substance over form when determining whether or not a role is a PCF.

### **3.12 What is that appropriate PCF code for persons who are responsible for the direction or management of an insurance or reinsurance intermediary?**

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The decision as to which PCF is appropriate to this role depends on a number of factors, namely the size and complexity of the firm and whether the person is responsible for advice to consumers, arranging or offering to arrange retail financial products for consumers or exercising the specified functions in Appendix 2 of the MCC. The most relevant PCF roles are likely to be: Executive Director (PCF-1), Chief Executive (PCF-8), Head of Compliance (PCF-12), Head of Compliance with responsibility for AML/CTF (PCF-15) or Head of Retail Sales PCF function (PCF-17).

**3.13 Are branch managers in non-EEA countries captured as PCFs?**

No. The manager of a non-EEA branch of an Irish authorised, licensed or registered entity is not prescribed in the Regulations as a PCF.

**3.14 What obligations will the PCF role of Head of Internal Audit (PCF13) have if this service is being provided as part of an intra-group arrangement?**

If the RFSP is using services provided at group level, then this is akin to an outsourcing arrangement and an exemption from the F & P Standards may be availed of subject to compliance with the conditions stipulated in respect of outsourcing arrangements. Please refer to [Section 5 of the Guidance](#) for details on outsourcing.

**3.15 Is an individual who performs the role of Head of Compliance and Risk performing a PCF-14 role Chief Risk Officer and a PCF-12 role Head of Compliance or is he/she performing a PCF-12 role only?**

It is the RFSP's responsibility to determine what PCF role an individual occupies by reviewing the roles and functions of that particular position. An individual could occupy 2 PCF positions and thus could be listed as the Head of Compliance (PCF 12) and the Chief Risk Officer (PCF 14).

A person performing the Head of Compliance and Risk may only be occupying the role of PCF 12 but equally that person may occupy 2 PCF positions - PCF 12 and PCF 14. It is the responsibility of the RFSP to determine whether the position is solely a Head of Compliance role or whether the individual in that position is carrying out the roles of Head of Compliance and Chief Risk Officer and thus performing 2 PCF roles.

**3.16 How is Chief Actuary defined?**

A Chief Actuary is an individual who is seen as having the prime source of expertise in that area and very likely to be relied upon by senior management and the Board of Directors. The mere giving of advice in one area is not sufficient to make somebody a Chief Actuary. There may be situations in which there are two PCF Chief Actuary roles,

however more than that would be unlikely (except possibly in a large entity split into internal divisions).

**3.17 Are individuals who were in-situ at the time of the introduction of the regime required to go through the pre-approval process and submit an IQ whereby they are subject to re-election/re-appointment provisions?**

Yes. The re-election/re-appointment of an individual constitutes a ‘break in service’. This means that individuals who were in-situ at the time the regime was introduced or amended and thus were not required to submit an IQ will be required to receive approval from the Bank through the submission of an IQ if they are subject to re-election/re-appointment. This is in accordance with the law as set out in section 23 of the Central Bank Reform Act 2010.

Once an individual has been approved to a role that is subject to re-election/re-appointment provisions, it is the intention of the Bank that the approval given shall state that he/she shall not be required to undergo the approval process again as long as he/she remains in that role. The board however will be required to confirm to the Bank upon re-election/re-appointment that his/her circumstances have not changed since pre-approval was granted.

For example, individuals who were in-situ in PCF positions such as directors, who are subject to re-election/re-appointment as would typically be set out in a firm's Articles of Association will be subject to the process set out above.

The requirement to seek the Bank's approval upon re-election/re-appointment is particularly relevant for [credit institutions](#) and [insurance undertakings](#) that are subject to the Corporate Governance Requirements. Section 8.8 of the requirements states that ‘the Chairman of the board shall be proposed for election or reappointment on an annual basis’. This means that Chairmen of institutions subject to annual re-election/re-appointment under Section 8.8 of the Requirements, who were in-situ at the time the regime was introduced, will be required to submit an IQ for approval by the Bank upon their re-election or re-appointment in accordance with Section 8.8.

**3.18 Does this also apply to in-situ PCFs who are subject to employment contract renewals?**

Yes. Individuals who were in-situ in PCF positions who are subject to employment contract renewals may also be subject to the approval process. There may be situations where contracts contain certain provisions which mean a contract renewal is not reappointment as such. Ultimately it will be for the regulated financial service provider to determine based on the terms of contracts, in conjunction with legal advice if appropriate, whether they need to comply with the obligation of section 23 of the

Central Bank Reform Act 2010 in this regard or not. It is the intention of the Central Bank that after the initial approval that that approval would cover any subsequent contract renewals. However, the regulated financial service provider will be required to confirm that the individual's circumstances have not changed for contract renewals subsequent to the initial submission of the IQ and the Central Bank's initial approval.

**3.19 Should an individual who performs the role of Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF15) also be designated as Head of Compliance (PCF12)?**

No. PCF15 is deemed to be an extension of the responsibilities of PCF12, i.e. it incorporates responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation ('AML/CTF'), and therefore an individual should not be designated for both. If a Head of Compliance is also responsible for AML/CTF they should be designated as PCF15 only. However, if the Head of Compliance is not responsible for AML/CFT they should be designated as PCF12 only.

**3.20 Why was the role of the Chief Operating Officer (PCF-42) introduced as a new PCF in 2014?**

The role of Chief Operating Officer includes responsibility for the strategic direction of RFSPs. Given the importance of the role, the Central Bank deemed it appropriate to introduce it as a PCF.

**3.21 What duties and responsibilities might the role of the Chief Operating Officer likely encompass?**

The Central Bank recognises that the role of the Chief Operating Officer could encompass a wide range of duties and responsibilities and therefore does not intend to specifically define it. Instead a common sense approach should be taken by RFSPs in determining whether this PCF is applicable, and who performs it.

In general, the individual performing this PCF is likely to be responsible for the day-to-day operations and strategy implementation in the RFSP. It is also anticipated that this role would be held by a senior individual with a direct reporting line to the CEO.



**3.22 Some RFSPs may have spread the duties and responsibilities of what a Chief Operating Officer might be considered to do over a number of CFs. Does the introduction of this PCF mean that these roles will now have to be combined into one?**

It is possible that an RFSP may not require a specific Chief Operating Officer and that the role may instead be shared amongst other CFs. This is for the RFSP to determine, although the Central Bank expects that they apply substance over form when reviewing such functions and is mindful that it is the function rather than the job title of the individual that determines if they are captured within the scope of a PCF or not.

**3.23 Why was the role of Head of Claims (PCF-43) introduced as a new PCF for Insurance Undertakings in 2014?**

The role of Head of Claims was deemed to be important as it assumes responsibility for authorising the payment of claims which could have a direct impact on the solvency and liquidity of the insurer and therefore has been introduced as a new PCF.

**3.24 How does Head of Claims (PCF-43) interact with CF-6 ('determining the outcome of a claim arising under a contract of insurance or reinsurance')?**

The Central Bank expects that CF-6 would likely have a reporting line into the Head of Claims (PCF-43). However, RFSPs should consider the responsibilities of each specific function in determining whether that individual is a CF or PCF.

**3.25 An Insurance Undertaking may have several Head of Claims within the firm e.g. Head of Motor Claims, Head of Household Claims, etc. Will each of these be considered a PCF-43?**

No. Section 3.2 should again be considered in this context.

**3.26 Would an Insurance Undertaking that is purely involved in unit linked investment business and therefore have a lower risk profile still be required to have a Head of Claims (PCF-43)?**

These entities are not exempt from the pre-approval provisions for PCF-43. However, consideration should be given to Section 3.2.

**3.27 Why were the roles of Head of Client Asset Oversight (PCF-45) and Head of Investor Money Oversight (PCF-46) introduced as PCFs in 2014?**

[Consultation Paper 71: Client Asset Regulations and Guidance](#) proposed the inclusion of a Client Asset Oversight role as a PCF. This role has responsibility for the oversight of compliance with the client asset requirements and for any matters that relate to the safeguarding of client assets. The role was split into two PCFs and these will be introduced in the upcoming revised Client Asset Regulations and Investor Money Regulations. Please refer to the Consultation Paper for further details on these roles.

**3.28 Why was the role of Head of Credit (PCF-47) introduced for Retail Credit Firms in 2014?**

Due to the increase in the number of authorisations for Retail Credit Firms it was deemed necessary, in the context of these firms' line of business, to introduce this role as a PCF.

**3.29 If an RFSP does not currently have an individual in one of the new PCFs, is it required to create this position in order to comply with the 2014 Amending Regulation?**

No. Unless a particular RFSP is obliged to have one of the new PCFs (e.g. the requirement for Non-Life Insurance Undertakings and Reinsurance Undertakings to have a Signing Actuary) then it will not be obliged to create a new PCF. As set out in the Guidance on the Fitness and Probity Standards and Part 3 of the Act, the Central Bank does not require all CFs or PCFs to be in existence in an RFSP where one did not previously exist or where the size or complexity of an RFSP's business does not warrant it. This is for the RFSP to determine itself.

**3.30 Why has the role of the Head of Actuarial Function been introduced as a new PCF?**

The Domestic Actuarial Regime requires each (re)insurance undertaking to appoint a HoAF who will have distinct responsibility for the actuarial function. Under Solvency II all (re)insurance undertakings are required to have in place an effective actuarial function and are required to notify the Central Bank of the person proposed to take responsibility for that key function. The HoAF has been introduced as a PCF in recognition of the importance of the role and responsibilities it holds, to facilitate the

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notification process and compliance with Solvency II requirements and the Domestic Actuarial Regime. Please refer to the [Guidance for \(Re\)Insurance Undertakings on the Fitness and Probity Amendments 2015](#) for further information.

**3.31 Why have PCF20 [Chief Actuary] and PCF44 [Signing Actuary] been removed as PCFs?**

The role of the Signing Actuary (“SA”) is outlined in the Reserving Requirements for Non-Life Insurers and Non-Life and Life Reinsurers 2014 (the “Reserving Requirements”). The SA had responsibility for signing the Statement of Actuarial Opinion (“SAO”), which provided an independent view on the adequacy of an undertaking’s reserves, and for producing the report underlying the SAO. Under the Domestic Actuarial Regime the HoAF will certify the undertaking’s Technical Provisions in an Actuarial Opinion on Technical Provisions (“AOTPs”) to the Central Bank and produce an Actuarial Report on Technical Provisions (“ARTPs”). From 1 January 2016 the Reserving Requirements will cease to apply for all Solvency II undertakings. Therefore, it is appropriate that PCF44 is removed from this date.

The Central Bank has defined the Chief Actuary as the individual having the prime source of expertise in that area and is likely to be relied upon by senior management and the Board of Directors. The Chief Actuary role will be removed from the PCF list for all (re)insurance undertakings as the HoAF role will be the person responsible for the actuarial function which therefore makes the Chief Actuary role redundant. Therefore, it is appropriate that PCF20 is removed.

**3.32 If an individual was previously pre-approved by the Central Bank as either PCF20 or PCF44, what does the removal of these PCFs mean?**

The removal of the roles of **PCF20** [Chief Actuary] and **PCF44** [Signing Actuary] as PCFs means that any future appointments to these roles will not require the pre-approval of the Central Bank. All persons currently holding such positions will have their positions end dated as at 31 December 2015. It is likely that these roles will be designated as CF1, however it is for the undertaking to determine this.

**3.33 If an individual was previously pre-approved by the Central Bank as either PCF20 or PCF44, does this mean they can now be automatically be considered to be performing the new Head of Actuarial Function role (PCF48)?**

No. The Central Bank is of the view that the current PCF roles of PCF20 [Chief Actuary] and PCF44 [Signing Actuary] do not align directly to the role of the HoAF as there are responsibilities of the HoAF role which currently fall outside of the common

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understanding of the role of Chief Actuary and Signing Actuary. As such, the Central Bank does not propose that individuals currently performing these roles can **automatically** become the HoAF.

## **4 Certified Persons**

### **4.1 Why were certified persons excluded from the scope of the Fitness and Probity Regime in 2014?**

Certified persons were considered to be initially captured within the scope of the Fitness and Probity Regime by virtue of the fact that they fall within the definition of an RFSP.

In April 2012 the Central Bank reviewed the appropriateness of applying the fitness and probity regime to certified persons. Taking into consideration the unique attributes of certified persons from a regulatory perspective and for the avoidance of doubt, it was decided to explicitly exclude certified persons from the pre-approval provisions of the fitness and probity regulations and the Standards. Certified persons will remain within the scope of Part 3 of the Act, by virtue of their coming within the definition of an RFSP, and the application of the MCC will continue to apply as currently.

This decision was communicated to the Approved Professional Bodies at the time.

### **4.2 What does the amendment to the outsourcing provisions for certified persons mean in practice?**

The amendment to the outsourcing provisions simply clarifies that RFSPs cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons.

## **5 SSM Related Matters**

### **5.1 When does the ECB have competence in respect of Fitness and Probity?**

From 04 November 2014, the ECB will be exclusively competent as the authority for fitness and probity assessments of the management board and key function holders of significant credit institutions and the management board and key function holders of all credit institutions seeking authorisation.

### **5.2 What is the management body of a significant credit institution?**

Significance of a credit institution will be determined by the ECB in accordance with conditions set down in the SSM Regulations (“SSMR”) (Council Regulation (EU) No 1024/2013). The management body as defined in the Capital Requirements Directive 2013/36/EU (Article 3.1(7)) consists of the board of directors.

### **5.3 How does a significant credit institution apply to appoint a person to its management body?**

The individual proposed for appointment to the management board of significant credit institutions must complete the online Individual Questionnaire, which is then endorsed by the proposing entity and submitted to the Central Bank. The Central Bank will transmit the application onwards to the ECB for assessment pursuant to Union Law. The Central Bank will notify the entity in writing of the ECB’s decision as soon as practicable after the receipt of the decision of the ECB.

### **5.4 What standards will the ECB assess the application?**

The ECB will make its fitness and probity assessment in accordance with Union Law. Union Law means the standards contained in the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders and the Capital Requirements Directive 2013/36/EU.

### **5.5 What happens in the context of applications to the management body of credit institutions that are in the process of applying for authorisation?**

As part of the initial authorisation of any credit institution, individuals proposed for appointment to the management body must complete the online IQ, which is then endorsed by the proposing entity and submitted to the Central Bank as part of the authorisation application. The Central Bank will undertake the initial fit and proper assessment which will form part of the national assessment of the application for

authorisation. If the application passes that assessment, it will then be determined by the ECB.

**5.6 Can an individual simultaneously apply for two PCFs, one of which falls outside of the management body?**

The individual should apply for both positions on the same IQ. The management body PCF will be assessed by the ECB as described above. The non-management body PCF will be assessed by Central Bank.

**5.7 What happens in the case of subsidiaries of significant institutions based in another SSM member state?**

Significance is determined at the highest level of consolidation within the SSM and extends to all group entities (including those that are less significant on a stand-alone basis, and including branches). Therefore, Section 5 of this document applies to applications to the management bodies of all such entities and the ECB will assess those applications in accordance with Union Law.

## 6 Scope

### 6.1 Under what circumstances may a RFSP apply for a derogation from certain obligations of the F & P Regime?

The Central Bank does not have the power to grant a derogation from the F & P Regime as compliance with the F & P Regime is a mandatory legislative requirement.

### 6.2 Who is exempt from the F & P Standards?

Subject to meeting certain conditions where relevant, the F & P Standards do not apply to:

- i. Call Centre staff;
- ii. An individual in a group entity who may be able to exert a significant influence over the performance of CFs or PCFs in the RSFP by virtue of a reporting line;
- iii. Outsourced CFs and PCFs when those functions have been outsourced to a regulated entity;
- iv. EEA branches established in the State and inward freedom of services ('FOS') providers.

However, those individuals who are excluded from the F & P Standards under any of the above exemptions will continue to be captured by Part 3 of the Act (see question 4.3 below). See [Section 1.5 of the Fitness & Probity Standards](#) and [Section 3.3 of the Guidance](#).

### 6.3 Where an individual is exempt from the application of the F & P Standards, why are they still subject to Part 3 of the Act and what does this mean?

The exemptions from the F & P Standards as outlined in question 6.2 above do not equate to an exemption from the F & P Regime in full.

Part 3 of the Act applies, and any other Code issued under Section 50 may also apply, other than where an express exclusion is possible. Additional features include that s/he:

- i. May be the subject of an investigation pursuant to Section 25 of the Act where the Head of Regulation has reason to suspect that the person's fitness and probity to perform the relevant CF, and in the circumstances an investigation is merited;
- ii. May be required to comply with an evidentiary notice; and



- iii. May be the subject of a suspension notice or a prohibition notice issued under Part 3.

#### **6.4 How does the F & P Regime interact with regulatory requirements and specifically the Corporate Governance Requirements for Credit Institutions and Insurance Undertakings and the Corporate Governance Requirements for Captive Insurance and Captive Reinsurance Undertakings?**

The corporate governance requirements set responsibilities for the RFSP in relation to the governance of that firm, for example requirements with respect to the composition of the Board. Non-compliance with the corporate governance requirements may result in a RFSP breaching a condition of its authorisation which has serious implications for the RFSP as a whole.

The F & P Regime is centred on the Central Bank's powers in relation to the individual performing CFs and PCFs in the RFSP. The F & P Regime's primary purpose is to ensure that persons performing those functions are 'fit and proper' to do so. If a person is not compliant with the F & P Standards (for example), this may result in the Central Bank taking action to investigate that individual, and ultimately prohibit the individual where s/he is not 'fit and proper' to perform the relevant functions.

#### **6.5 When are individuals who were previously approved under the old F & P Regime (pre-2011) required to submit an IQ?**

Insofar as the person remains 'in situ', s/he will not be required to submit an IQ. However, if s/he moves into a different PCF role, even within the same RFSP, s/he will be required to submit an IQ for the Central Bank's approval.

All individuals performing CFs and PCFs are subject to the F & P Regime.

#### **6.6 Are individuals who were approved under the old F & P Regime, but no longer fall under any of the new PCF roles, required to submit an IQ?**

Since 1 December 2011, only those persons who are proposed for appointment to PCF1 – 41 are required to submit an IQ. On 31 December 2014, six new PCFs (PCF42-47) came into effect and anyone proposed for one of these roles after this date is also required to submit an IQ.

If someone was previously approved for a position this does not mean that this role is automatically a PCF under the new Regulations before 1 December 2011 (or before 31 December 2014 for PCF42-47). The Regulations provide a list of PCFs and this should be

used to assess who may be considered a PCF, and therefore who must submit an IQ to the Central Bank for approval prior to appointment (for appointments after 1 December 2011).

#### **6.7 Do retail credit firms fall within the scope of the F & P Regime?**

Yes. As a retail credit firm is a RFSP (as defined in Section 2 of the Central Bank Act 1942) and thus will fall within the scope of the F & P Regime. See [Section 1.2 of the Guidance](#).

#### **6.8 Are directors of unregulated holding companies within the scope of the F & P Regime where part of the Group structure is made up of RFSPs?**

Part 3 of the Act applies to persons performing CFs/PCFs for or on behalf of RFSPs.

As an unregulated holding company is not a RFSP, persons performing functions in that entity which would otherwise be CFs or PCFs will not be subject to Part 3.

In the ordinary course, directors of unregulated holding companies are not subject to Part 3 of the Act in their own right. However, where the director of an unregulated holding company is able to exert a significant influence over the affairs of a RFSP within the same group, s/he may be a CF1, and subject to the Central Bank's powers under Part 3 of the Act in that context (e.g. the powers of investigation, suspension and prohibition).

It is important to note, however, that the F & P Standards do not apply to a person performing a function in a *“separate legal entity in a group structure of companies (whether such an entity is a RFSP or otherwise) who may exercise a significant influence over a person performing a CF or a PCF in a RFSP within that group which is authorised, licensed or registered by the Central Bank.”* See [Section 1.5 of the Standards](#) and [Section 3.3 \(iii\) of the Guidance](#) for further information.

The Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders apply to financial holding companies as defined in Article 4(20) of Regulation (EU) No 575/2013 (CRR) and mixed financial holding companies as defined in Article 4(21) of CRR. Holding companies should be aware of their obligations under these Guidelines.

#### **6.9 If the non-Irish parent of an Irish subsidiary exerts a significant influence over the subsidiary, is it exempt from the F & P Regime?**

If the parent is not authorised or regulated by the Central Bank, then the parent is not captured by the F & P Regime.

However, to the extent that individuals within the parent exercise a *significant influence* over individuals within the subsidiary by virtue of reporting lines, those individuals fall within Part 3 of the Act. Those individuals are, however, exempt from the requirement to comply with the F & P Standards. See question 6.11 below.

**6.10 Is a person who is employed by other group companies (non-regulated/ with no Service Level Agreements ('SLA') in place) and who from time to time provides services/advice to customers of the Irish regulated entity, captured within the scope of the F&P regime?**

In determining whether this person would be captured in the scope of the F&P regime the RFSP should consider whether if this function was being performed in-house, would that person be performing a CF or a PCF? Where the answer to this question is yes then Part 3 will apply.

The RFSP will not be able to avail of the various outsourcing exemptions unless there is 'a written agreement' between the RFSP and the other person for the carrying on of the function(s).

If an individual within a group is performing a CF role and the outsourcing exemption does not apply, then that individual is captured under the F&P Regime and must comply with the F&P standards. In determining whether an individual is performing a CF role the RFSP should assess the role and the functions of the individual in line with the definitions in the Regulations.

**6.11 Would a member of a non-Irish Parent board that acts as a Chair of an Irish sub-committee of the board be exempt under the matrix management exemption?**

No. Chairs of sub-committees are subject to the F & P Regime as they are prescribed in the Regulations (PCF4-7). The matrix management exemption operates so as to exempt individuals within group functions from the F & P Regime where there is a reporting line to an individual at group level.

**6.12 Are RFSPs in liquidation required to comply with the F & P Regime?**

Yes. Irrespective of whether an RFSP is in liquidation, a RFSP is still responsible for complying with its obligations under the F & P Regime and individuals in CF roles and/or PCF roles must comply with the F & P Regime.

**6.13 If a company is not regulated by the Central Bank but has had its prospectus approved under the Prospectus Directive, will it be subject to the Standards?**

No. The firm must be a RFSP. Part 3 of the Act only applies to RFSPs.

**6.14 Do the F & P Standards apply to inward passporting EEA branches and those providing services under freedom of services?**

No. The F & P Standards do not apply to persons performing CFs on behalf of a RFSP authorised, licensed or registered by the competent authority of another EEA country, and which provides services in the State on a cross-border or branch basis. However, Part 3 of the Act, including the MCC 2017 (as applicable) will apply. See Question 6.3 for further information on Part 3 of the Act.

**6.15 Does the F & P Regime apply to outward passporting branches and those providing services under freedom of services out of a RFSP?**

The F & P Regime, including the F & P Standards, apply to RFSPs passporting services on a branch or cross-border basis. See [Section 6 of the Guidance](#).

**6.16 How can a RFSP comply with its obligations under Section 21 of the Act in satisfying itself on reasonable grounds that the CF is compliant with the F & P Standards where there are impediments to an RFSP's ability to gather the required information for due diligence purposes (for example where a branch is located in a jurisdiction which legally restricts the gathering of certain types of information)?**

The obligation in Section 21 is that the RFSP satisfy itself, 'on reasonable grounds' that a CF is compliant with the F & P Standards.

The Central Bank has set out what it considers as 'reasonable grounds' in the due diligence sections of the Guidance on Fitness and Probity.

Insofar as is practical, the Central Bank expects RFSPs to undertake the due diligence set out of the Guidance. If there is an obstacle to applying the due diligence (for example a local law restriction where undertaking due diligence for individuals located outside of the State is impeded) the RFSP should record how it has satisfied itself that the person is compliant with the F & P Standards.

**6.17 Is there a simplified system for RFSPs authorised, registered or licensed by the Central Bank to comply with the F & P Regime with respect to non-EEA branches of RFSPs which are captured by the F & P Regime?**

No. Part 3 of the Act, including the F & P Standards, apply in full to CFs in a non-EEA branch of a RFSP licensed, authorised or registered in Ireland. In accordance with the obligations under Section 21 of the Act the RFSP should be satisfied on reasonable grounds that CFs are compliant with the Standards. Also refer to Question 6.15 above.

**6.18 Do branch managers in non-EEA country branches fall within the scope of the F&P Regime?**

The F&P Regime applies to EEA and non-EEA branches of Irish RFSPs in the same way it applies to RFSPs within Ireland. Section 20(4) of the Act provides that “a controlled function remains a controlled function even if...it is carried on at an office or location outside the State”. While the Regulations do not prescribe a Branch Manager in a non-EEA branch as a PCF, they may still be captured by the scope of CFs, and subject to Part 3 of the Act.

**6.19 How will the F & P Regime apply to acting and/or interim appointments?**

See [Regulation 11 of the Regulations](#) and [Section 12 of the Guidance](#) on Fitness and Probity.

If the function is a CF, the F & P Regime applies in the normal way.

**6.20 Is compliance with Section 21 of the Act an on-going requirement? What does this mean in practise?**

Section 21 of the Act is a continuing obligation. It is not a once-off obligation discharged when due diligence has been undertaken upon commencement of the F & P Regime or in relation to an initial appointment to a CF or PCF.

Further, RFSPs should have regard to the following:

- RFSPs should require persons performing CFs to undertake to notify the RFSP of any material changes to initial due diligence. See [Section 20 of the Guidance](#).
- In terms of internal controls, the Central Bank expects RFSPs to implement procedures to manage their compliance obligations with Section 21 of the Act. See [Section 22 of the Guidance](#).

- RFSPs will need to maintain a Register of individuals in CF and PCF roles that is current at all times. They will also need to document and record all due diligence undertaken in relation to persons performing CFs.
- As part of the continuing obligation, each RFSP is required to submit an Annual PCF Confirmation Return to the Central Bank via the Online Reporting System (ONR). The Return should set out a list of all active PCF Holders within the firm as at year end. The Return also provides for the RFSP to confirm that each active PCF Holder is compliant with the Fitness and Probity Standards and that they continue to agree to abide by those Standards.
- Firms should have regard to their obligations under Data Protection law in this regard.

The Central Bank may inspect the Register. It may require proof of due diligence and/or records maintained either in the context of an investigation into a RFSP's compliance with Section 21 of the Act, or an investigation in relation to a person's fitness and probity to perform a CF. See [Section 19 of the Guidance](#).

## 7 Outsourcing

### 7.1 If a PCF is outsourced to a regulated entity what are the practical implications for the RFSP?

The practical implications are as follows:

- (i) Subject to the outsourcing of the PCF fulfilling the requirements of Regulation 11A of the Regulations, the RFSP is excluded from the requirement to obtain the Central Bank's prior approval to the appointment of that PCF role.
- (ii) The person performing the PCF role will not be required to comply with the F & P Standards and as such the obligation on the RFSP to obtain written agreement to abide by those F & P Standards will fall away. However, Part 3 of the Act will continue to apply. See question 4.3 for further details on the implications of Part 3 of the Act.

For further information, please refer to [Section 5.2 of the Guidance](#).

### 7.2 If a PCF role is outsourced to an unregulated entity what are the practical implications for the RFSP?

The written agreement which governs the outsourcing arrangement between the RFSP and an unregulated entity must identify the individual who will be performing the outsourced PCF on behalf of the RFSP. The agreement must also identify the individual in the RFSP who is responsible for the performance of the PCF role.

The RFSP is responsible for ensuring that it has obtained the Central Bank's prior approval to the appointment of the individual to the PCF. For further information, please refer to [Section 5.3 of the Guidance](#).

The individual performing the PCF role under the outsourcing agreement must comply with the F & P Standards.

### 7.3 Where a RFSP outsources a number of functions which are CFs to a regulated entity, what does the RFSP have to do?

Subject to the conditions set out in Section 1.5 of the Standards being met, persons who will perform CFs under the written agreement which governs the outsourcing arrangement are excluded from the scope of the F & P Standards.

Accordingly, in respect of those CFs, the RFSP will not have compliance obligations under Section 21 of the Act.

**7.4 Where a RFSP outsources a number of functions which are CFs to an unregulated entity, what are the practical implications for the RFSP?**

Persons performing CFs under an outsourcing arrangement between an RFSP and an unregulated entity must be compliant with the F & P Standards. The outsourced service provider must: (i) be able to identify the individuals who will perform the CFs and assess whether those persons are compliant with the F & P Standards; and (ii) obtain those persons' agreement to abide by the F & P Standards.

In contrast to the outsourcing of PCFs, it is not necessary to identify and list in writing each individual performing the CF in the written agreement which governs the outsourcing arrangement itself. However, the Central Bank expects the outsourced service provider to incorporate the F & P Standards into its Human Resource process.

The RFSP remains responsible for compliance with its obligations under Section 21 i.e. a RFSP must satisfy itself on reasonable grounds that individuals performing CFs comply with the F & P Standards and that those persons have agreed to abide by the F & P Standards. In practice the Central Bank expects RFSPs to consider the responsibilities of the specific function and to determine the specific competencies, and level of probity that should be expected of a person performing that specific CF in the RFSP.

The outsourced service provider should provide written confirmation to the RFSP that those individuals performing CFs are compliant with the F & P Standards and have agreed to abide by them. Please refer to [Section 5.3 of the Guidance](#) for further information.

**7.5 If an individual performing an outsourced PCF role is exempt from the F & P Standards, is the RFSP obliged to include that individual on the list of PCFs submitted to the Central Bank?**

No.



**7.6 If a function is carried out at group level for a RFSP, is the outsourcing exemption applicable?**

Yes. The same procedure and conditions for availing of the outsourcing exemption, as set out in [Section 5 of the Guidance](#), should be followed if the function is being carried out at group level.

**7.7 In relation to the application of the outsourcing exemption, which EEA and non-EEA authorities are considered equivalent?**

The Central Bank has not produced a list of equivalent authorities for the purposes of the outsourcing exemption. Section 1.5 of the F & P Standards, and [Section 5.2 of the Guidance](#) on Fitness and Probity set out the conditions that pertain when outsourcing to another regulated entity. The onus is on the RFSP to establish that these conditions are met. This will involve ascertaining whether or not the entity providing the outsourced services is regulated and by whom.

Specifically, the exemption applies to a financial service provider regulated:

- (i) By the Bank;
- (ii) By an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
- (iii) By an authority that performs functions in a non-EEA country that are comparable to the functions performed by the Bank.

The reference to 'comparable' refers to the functions of the regulator of the other regulated entity. For example, where the authority/regulator has the function of licensing credit institutions, investment firms and so on, the Central Bank would regard that authority as performing 'comparable' functions.

## 8 Due diligence

### 8.1 How does the Central Bank define “fitness” and “probity”?

Fitness relates to the qualifications, experience, knowledge and other relevant factors that will make a person fit for the performance of a CF or PCF.

Probity is a matter of character illuminated by a person’s past behaviour. It means acting honestly, ethically, with integrity and being financially sound.

The Central Bank requires individuals proposed for CFs or PCFs to be honest, diligent and independent-minded and to act ethically and with integrity.

### 8.2 Why do RFSPs have to conduct due diligence?

Section 21 of the Act requires that a RFSP satisfies itself *on reasonable grounds* that a person complies with the F & P Standards. The person in a CF role is also required to agree to abide by the F & P Standards.

In complying with Section 21 of the Act, the Central Bank expects RFSPs to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the RFSP.

### 8.3 What is the appropriate level of due diligence an RFSP should carry out?

RFSPs should consider the responsibilities of the specific function and determine the specific competencies and level of probity that should be expected of a person performing that specific CF in their firm. The level of due diligence may differ depending on the categorisation of the CF (i.e. CF1 and CF2 will attract higher levels of due diligence than CF3-11). Individuals in CF roles must sign written confirmation that they agree to abide by the F & P Standards and submit it to the RFSP. Some additional due diligence is set out in [Section 18 of the Guidance](#).

The Central Bank expects RFSPs to undertake the following due diligence when assessing a person’s ‘fitness’:

- a) Evidence of compliance with MCC 2017, where relevant;
- b) Evidence of professional qualification(s), where relevant;
- c) Evidence of CPD, where relevant;
- d) Record of interview and application;

- e) References;
- f) Record of previous experience;
- g) Record of experience gained outside the State;
- h) Concurrent responsibilities (Self-Certification - Directorships / Other Roles).

Please see [Section 15 of the Guidance](#) for further information.

RFSPs should undertake the following due diligence when assessing a person's 'probity':

- a) Signed written confirmation from the individual performing the CF as to whether any of the circumstances set out in Section 4.1(a)-(k) ['Honest, Ethical, Integrity'] or Section 5.2(a)-(e) ['Financial Soundness'] of the F & P Standards apply;
- b) Where one or more of the circumstances apply, the individual must be in a position to demonstrate that his or her ability to perform the CF is not adversely affected to a material degree.

Please see [Sections 16 and 17 of the Guidance](#) for further information.

#### **8.4 Can an electronic process be used to obtain the declaration required for "in-situ" CF's under the F&P regime?**

The Central Bank does not require a paper based process for the Section 21 written confirmation - electronic communication whereby an individual submits confirmation that they will abide by the Standards is sufficient.

#### **8.5 What due diligence is expected for In-situ PCFs/CFs?**

In relation to persons in situ at 1 December 2011, the requirement to obtain a reference(s) will not apply where the person has performed the same CF or PCF in that RFSP for at least 1 year as at 1 December 2011. While it may not be possible to ascertain all the same forms of due diligence for in situ PCFs/CFs, the RFSP must, however, satisfy itself on reasonable grounds that the individual meets the F & P Standards and agrees to comply with them.

**8.6 Can an RFSP rely on another RFSP's due diligence and assessment that an individual complies with the F&P Standards?**

No, an RFSP must take appropriate steps to satisfy itself on reasonable grounds that the individual complies with the F&P Standards.

**8.7 Does the same level of due diligence apply to PCFs (e.g. directors) who may be resident outside the state?**

Yes.

**8.8 Is the RFSP expected to seek evidence of all educational qualifications, including transcripts?**

No. A RFSP is not expected to seek evidence of all education qualifications but only those that are relevant to the exercise of the role. For example, if a RFSP deems a legal qualification to be relevant to the exercise of the Head of Legal function then evidence of same should be sought. See [Section 15.2 \(ii\) of the Guidance](#).

**8.9 Is there a database for the RFSP to examine any previous regulatory authority action against an applicant?**

The Central Bank publishes details of sanctions imposed on RFSPs and/or individuals concerned in the management of those RFSPs under the Administrative Sanctions Regime.

**8.10 In relation to due diligence expected on the 'competent and capable' Standards is Continuing Professional Development ('CPD') only expected of individuals in PCF/CF roles who are required by a professional body to maintain CPD as part of their qualification? For example, if a director has no requirement to maintain CPD for a professional body, is he required to maintain CPD to comply with the F & P Standards?**

No. A person is not required to maintain CPD for the purposes of compliance with the F & P Standards if they are not already required to do so under the MCC 2017. See [Section 15.2\(i\) of the Guidance](#).

### **8.11 What due diligence is expected to ensure compliance with the Financial Soundness Standard?**

The F & P Standards require individuals to manage their affairs in a sound and prudent manner. A person must be able to demonstrate that his/her role in a relevant function is not adversely affected to a material degree by any of the factors listed (e.g. a bankruptcy petition or judgment debt).

The seriousness of, and surrounding circumstances of the set of facts and in particular, the relevance of that set of facts should be considered with reference to the CF/PCF to be performed.

For example, the fact that a person defaulted on an arrangement with creditors to repay a €5,000 loan 10 years previous to applying to perform a CF5 role is unlikely to adversely affect that person's ability to perform the CF5 role to a material degree.

[Sections 15 and 17 of the Guidance](#) provide further detail on the due diligence to be carried out by a RFSP regarding the probity and fitness of individuals in CF and PCF roles.

### **8.12 Will a minor offence disqualify an applicant?**

In assessing the impact of a conviction on a person's probity, issues for consideration include the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person, the relevance of the offence to the proposed role and any evidence of the individual's rehabilitation.

Convictions which could be considered relevant include (but are not limited to) offences involving dishonesty, fraud, financial crime or offences under legislation relating to companies or Financial Service providers, market manipulation, insider dealing or revenue law.

Convictions which may not be relevant in particular circumstances might be road traffic offences where a custodial sentence was not imposed, or minor public order offences. See [Section 19 of the Guidance](#) ('Due diligence for criminal offences').

### **8.13 Is it necessary to obtain a tax clearance certificate?**

No. However, it is a requirement under the Consumer Credit Act 1995 for mortgage intermediaries to submit a tax clearance certificate as part of the authorisation process.

**8.14 Is an Applicant required to undertake Garda Vetting check in respect of all PCF roles?**

As part of the IQ application process, Applicants seeking pre-approval to the roles of PCF-01 (Executive Director) in a Single Director Entity or PCF-10 (Sole Trader) within a Regulated Financial Services Provider (RFSP) are required to undergo the National Vetting Bureau's e-Vetting process. It is required as part of the due diligence carried out by the Central Bank on the probity of Applicants. Please refer to Section 9.13 for further information.

**8.15 What steps is a RFSP expected to take where it becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF?**

The Central Bank expects the RFSPs to investigate such concerns and take action as appropriate without delay. The RFSP should notify the Central Bank of any such action without delay. See [Section 20 of the Guidance](#).

**8.16 If a person performing a CF is in a disciplinary process, how does this impact the RFSP's compliance with Section 21 of the Act?**

A disciplinary process is a matter between the RFSP and its employee. The mere fact that an individual has been the subject of a disciplinary process will not, of itself, indicate that s/he is not 'fit and proper' to perform a CF in compliance with the F & P Standards.

The outcome of the disciplinary process should be considered in terms of its relevance to the CF. The [Guidance at 17.2 and in particular at 17.2\(ix\)](#) may be of assistance to RFSPs in this regard.

Where, in light of the outcome of the disciplinary process, the RFSP is not satisfied on reasonable grounds that the individual performing the CF is compliant with the F & P Standards, Section 21 of the Act provides that the RFSP cannot permit the person to continue to perform the CF. Nothing in this FAQ affects the contractual rights or obligations of the RFSP and the persons performing the CF.

**8.17 At what stage is the RFSP required to advise the CBI that a CF holder may not be fit and proper, at the start of an investigation or on the conclusion of the investigation?**

The Central Bank would expect RFSPs to take a practical approach and investigate such matters before going to the Central Bank with potentially unrealised concerns.

The RFSP should notify the Central Bank without delay when its investigation is complete if it is not satisfied on reasonable grounds that the individual performing the CF role is compliant with the F&P Standards.

**8.18 What steps is a person expected to take if they believe that they are no longer compliant with the Standards?**

The Central Bank has recommended to RFSPs that they require persons performing CFs to undertake to notify the firm of any material changes in respect of initial due diligence carried out.

RFSPs should bring the F & P Standards and the Guidance to the attention of every person performing a CF on its behalf.

A person performing a CF or a PCF role is required to notify their firm without delay if for any reason they no longer comply with the F & P Standards.

**8.19 Is it only individuals captured on the list as of 1 December 2011 that are subject to the F & P Standards?**

No. The application of the F & P Standards is staggered as follows:

- The F & P Standards apply to PCFs from 1 December 2011;
- The F & P Standards apply to 'new' CFs from 1 March 2012; and
- The F & P Standards apply to all CFs from 1 December 2012.

See [Section 3.2 of the Guidance](#).

**8.20 Who can sign off on the confirmation of compliance with the F & P Standards?**

Confirmation of compliance with the F & P Standards must be provided by the CEO (PCF8), partner (PCF9) or sole trader (PCF10) (or equivalent as the case may be).

**8.21 Is there a system for recognising equivalent EEA/EU approvals?**

Where a person is currently approved for a specific PCF role in another EEA/EU Member State and wishes to take up a similar role in Ireland, the Central Bank will expedite the application as follows:

- (i) The applicant must still complete an IQ but will endeavour to process a completed application within 12 business days. Please refer to the [Fitness and Probity Standards](#) for further information.
- (ii) The applicant must obtain confirmation from the relevant regulatory authority that he or she is entitled under the laws of that EEA/EU Member State to conduct those functions in that jurisdiction;
- (iii) The applicant must certify that they comply with the F & P Standards and will abide by them.

Where the PCF role applied for is materially different to the PCF role previously performed in another EU/EEA Member State, the approval process set out in [Section 7 of the Guidance](#) will apply in full.

Where a person is subject to overseas fitness and probity requirements, the Central Bank will not consider whether those requirements are equivalent to the Irish F & P Regime. The individual performing the function must comply with both.

**8.22 What interaction does the Central Bank have with overseas supervisors regarding the application of the F & P Regime to employees located overseas?**

Part 3 of the Act, including any Code issued thereunder, is an Irish law requirement, and must be complied with in full in its own right.

The Central Bank does not recognise equivalence where a person performing CFs or PCFs may be subject to overseas legal requirements relevant to fitness and probity under the remit of the overseas supervisor.



## 9 The Individual Questionnaire

**For applications to the management body of significant credit institutions and in the case of authorisations for all credit institutions, the final assessment of the IQ will be made by the ECB. Please refer back to Section 5 of this document for the procedures in these cases.**

### 9.1 Who should complete the IQ, the RFSP or the individual proposed for the PCF role?

The proposing entity issues a user name and password to the applicant and to the proposer (an individual who will review the application and sign on behalf of the RFSP).

The applicant completes the relevant questions in Sections 1-11. The applicant selects 'submit to proposer'.

The proposer receives an email with a link to the application. The proposer reviews the application and completes 'Section 12: Proposer Declaration'. This includes contact details of a person within the RFSP who is the main contact for queries relating to the application. The proposer selects 'Submit to Central Bank'.

The sole trader/single director in a Private Company Limited by Shares completes the form and completes Section 13: Sole Trader/Single Director Declaration. The sole trader/single director selects 'submit to Central Bank'. Sole traders/single directors will be required to complete e-Vetting, please refer to 9.13 for further information on the process.

### 9.2 Is it possible to download a copy of the IQ?

Yes.

### 9.3 Is the information required to be submitted on the IQ limited in time?

Applicants are asked to provide a complete employment history from leaving full-time education or for the most recent 10 years, whichever is shorter.

In terms of the latter, applicants may still be asked to provide details of any other relevant employment which occurred prior to the most recent 10 year period that may assist when assessing fitness for the role. See Section 3 of the [Fitness & Probity Individual Questionnaire Application Guidance](#).

- 9.4 If an individual has already sought and received approval for a PCF role under the new IQ system, and subsequently seeks approval for an additional PCF role, is it possible for previously submitted information to be auto filled, in order to avoid re-entering the same data twice?**

The IQ system provides functionality which allows individuals to export their submitted data, and import the data back into the online system at a later date if taking on an additional PCF role. This will avoid the need to resubmit detailed data more than once. Any changes will need to be entered and the proposing entity will be required to verify the information for each individual application.

- 9.5 Q2.1 of the IQ requires the applicant to select the principal sector in which the individual operates. Which sector is chosen in situations where the regulated entity is involved in multiple sectors e.g. an individual may be head of an insurance function within a credit institution?**

The applicant should choose the sector in which they will primarily operate. In this instance, the applicant should choose the insurance sector. The applicant should be guided by the licence of the regulated entity for which they will be working.

- 9.6 Q2.11 of the IQ requires individuals to provide passport details. Are people with dual/multiple nationalities required to disclose them all?**

No. The details of one passport are sufficient.

- 9.7 Q3.5 of the IQ requires applicants to detail relevant training undertaken but what does “relevant training” encompass? Does it include on-the-job and in-house training or is it restricted to external courses?**

This question is an opportunity for an applicant to provide any additional information on training which they feel would support their application. All types of training can be mentioned including on-the-job and in-house courses.

- 9.8 Section 4.7 of the IQ requires the applicant to confirm compliance with the requirement to complete CPD. What evidence must be supplied by persons claiming grandfathered status to demonstrate compliance with the CPD requirements of the MCC 2017?**

Where grandfathered individuals arrange their own CPD, they must retain written records, such as the maintenance of a log, to demonstrate that they have satisfied the CPD requirement, including the requirement that the content of the course was

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relevant to the retail financial products or the specified functions for which they are accredited. Grandfathered individuals should retain documentation, such as receipts, certificates of attendance etc., to verify attendance at CPD courses.

Examples of documentation which are acceptable include:

- Certificate of completion of a course relevant to the functions undertaken;
- Receipts for these courses;
- Statement from the Educational Institute that CPD hours were awarded.

In all cases the name of the person, the name of the course and the number of hours awarded must be included in the documentation.

Examples of documentation which are not acceptable include:

- Invitations to courses;
- Handwritten notes.

**9.9 If an applicant answers ‘Yes’ to any questions in Section 5 regarding the applicant’s reputation and character, what information should be submitted to the Central Bank?**

An explanation of the issue that arose must be included in Section 5.23 of the IQ. Copies of relevant documentation should also be submitted via Section 10 “Supporting Documentation files”, to enable the matter to be considered expeditiously.

**9.10 Q9.1 of the IQ asks “Do you have or will you have a shareholding in the proposing entity...?” Does the “Will you have...?” relate to whether the individual will be allocated shares as part of their remuneration package and / or be obliged to hold an allocated shares as part of their remuneration package and / or be obliged to hold a minimum holding as part of their new role?”**

“Will you have...?” refers to any future shares in the proposing entity which the individual knows of or anticipates. These may be as a result of their remuneration package.

**9.11 Q11.2 of the IQ requires the applicant to notify the Central Bank of any changes in the information provided in the IQ – does this include changes in email address, passport details, etc.?**

This relates to all material changes so it would include these examples.

**9.12 Section 12 requires declaration by the proposer on certain items regarding the proposing entity. If the application is being proposed by a new entity which is not yet authorised who should the proposing entity be? Should it be the parent company in the case of a subsidiary being established?**

The proposing entity is always the entity who is proposing the person, regardless of whether or not they are authorised yet. The applicant cannot be approved however until the proposing entity is authorised.

**9.13 How do I complete the Garda Vetting process?**

As part of the IQ application process, Applicants seeking pre-approval for the roles of PCF-01 (Executive Director) in a Single Director Entity or a PCF-10 (Sole Trader) within an RFSP are required to undergo the National Vetting Bureau's prescribed e-Vetting process.

The National Vetting Bureau's process involves 2 steps as follows:

Step 1 - requires an Applicant to provide an original vetting invitation form and proof of identity.

Step 2 – completion of an online vetting application form via the National Vetting Bureau system

Detailed description of steps to be taken as follows:

1. Following IQ submission, the Applicant must complete a “vetting invitation form – NVB1a” (Link to vetting invitation form including guidance is located [here](#)). The form must then be posted with relevant proof of identity to the Central Bank at the address provided below:  
  
Fitness and Probity Team  
Regulatory Transactions Division  
Central Bank of Ireland  
Spencer Dock  
Dublin 1  
PO Box 11517
2. The Central Bank will validate the information provided and send the Applicant an email with a link to the Garda National Vetting Bureau e-vetting system where the Applicant will complete and submit the online vetting application form.
3. The National Vetting Bureau will process the application and send a “vetting disclosure” outcome to the Central Bank at which point the Applicant will receive an email confirming their e-vetting application has been processed.
4. The Central Bank will review the disclosure as part of its F&P assessment of the IQ application and advise the Applicant in due course.

**9.14 The completion of section 1.3 of the IQ triggers the submission of "other documentation" in Section 10. What documentation should be submitted?**

Question 1.3 refers to 'persons performing a PCF outside of the State who are proposed to perform a PCF in the State'. Section 10 of the Guidance refers. If an applicant wishes to avail of this provision, evidence must be provided that s/he is entitled under the laws of the EEA/EU Member State to perform some or all of the functions which are equivalent to the PCF in that other jurisdiction (e.g. through confirmation from the appropriate regulatory authority). This evidence must be uploaded by the applicant in Section 10 of the online IQ.

**9.15 It is not possible to amend an IQ once submitted to the Central Bank- if the Central Bank requires an amendment to be made, it is necessary to complete a full new IQ (by exporting the information and importing it in, which is time consuming).**

The Applicant and Proposing Entity should ensure all information is fully complete prior to submitting it to the Central Bank. Specifically, the proposing entity is asked at question 12.7 to "confirm that the proposing entity has carried out the necessary due diligence enquiries as set out in the Guidance on Fitness and Probity Standards, and based on those enquiries that the applicant is a fit and proper person to perform the proposed function(s) and competent to fulfil the duties required of such function(s)". Where additional information is sought this can be provided via email. Where an application has been returned due to incorrect or incomplete submission, the applicant must complete a new application but can use the import facility (i.e. upload the core data previously completed) and update accordingly.

**9.16 Directors have been set up as business administrators when setting up their account to access the IQ form etc. But the directors were not able to view each other's IQs and therefore could not submit to the Central Bank. In order for the directors to be able to submit the other directors IQs, it was necessary to ring the Central Bank so that each director could have access to the other director's IQs.**

Not all directors should have access to view another applicants IQ unless they are endorsing IQs on behalf of the proposing entity. Where an individual requires access to complete an IQ, they should be given user access only. Business Administrator access should be limited to persons who are endorsing IQs.

**9.17 What should a System Administrator do once they have received login details for the ONR System?**

Upon receiving a password, the proposed administrator must enable their access by logging within 24 hours otherwise the password becomes void. Other issues may occur where a firm's email security blocks the password verification code to the individual.

**9.18 Does the Central Bank inform the RFSP that a PCF in a new UCITS has been approved?**

All proposing entities / regulated financial service providers who submit an IQ and who are subsequently approved receive an approval letter.

**9.19 When is the option available to import details from a previous IQ?**

The Applicant must complete Section 1 prior to importing previous IQ. This section will establish which sections of their previous IQ are relevant for their new application.

**9.20 "My ONR account has been locked. What do I do?"**

Accounts are locked when a password has been input incorrectly a number of times. The System Administrators can unlock User and Business Administrator accounts. System Administrator accounts must be reset by the Regulatory Transaction Division of the Central Bank.

**9.21 How long does it take for the verification code to be issued?**

The code is sent automatically and should be received within a couple of minutes from when the password is reset. If it appears that the verification code has not been received, the most common reasons why are: (i) it has been sent to the system administrator's email as recorded in the Online Report System, which may be set up incorrectly by either the Central Bank or the RFSP, or (ii) it may be in the Junk/Trash folder of a person's inbox.

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### 9.22 “I have selected to add a shareholding/position/previous employers etc. but I can’t scroll down to OK or Cancel”?

There are two solutions:

- A.** Zoom out in Internet Explorer: This can be done a number of ways:
- (i)** While the Internet Explore window is the active window hold down Ctrl and move the mouse wheel, this will zoom in or out depending on the direction.
  - (ii)** While the Internet Explore window is the active window hold down Ctrl press the + or - button to zoom in or out.
  - (iii)** Adjust the zoom level by changing the zoom percentage on the bottom right of the Internet Explorer window, you can see from the screen shot it is currently set to 100%.
- B.** Increase the screen resolution if possible.

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