



FINANCIAL SERVICES

Central Bank reminds Regulated Financial Service Providers of Fitness and Probity Regime Obligations

by **David Naughton, David Williams, Adrian Mulryan, Trevor Dolan, Aoife Bradley**

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The fitness and probity regime for the financial services industry in Ireland was introduced by the Central Bank Reform Act 2010 (2010 Act).

A regulated financial service provider (firm) is required by section 21 of the 2010 Act to ensure that it does not allow a person to perform a controlled function (CF) or a pre-approval controlled function (PCF) unless the firm is satisfied on reasonable grounds that this person complies with the fitness and probity standards (the Standards), a code issued under section 50 of the 2010 Act.

Central Bank reminder letter

On 8 April 2019 the Central Bank of Ireland (Central Bank) issued [a detailed 'Dear CEO' letter](#) to industry, reminding firms (including investment funds and fund management companies) of their significant obligations under the fitness and probity regime, after a compliance review. In particular, this letter highlights the main areas of non-compliance with the fitness and probity regime and details recommendations for improved compliance, which are briefly outlined below:

- **Failure to provide for the ongoing nature of the due diligence obligation.**

The Central Bank has identified some firms that have not been conducting due diligence on an ongoing basis to ensure that employees performing CF or PCF roles comply with the Standards. The Central Bank recommends that, at a minimum, firms should require those persons performing CF or PCF roles to undertake to notify the firm of any changes in circumstance, which might be material to their fitness or probity. Where appropriate, the Central Bank expects a firm to properly assess if that individual still satisfies their obligations under the Standards. Firms should also ask persons performing CF or PCF roles to certify, on at least an annual basis, that they are aware of the Standards and that they agree to continue to abide by them.

- **Failure to report concerns to the Central Bank.**

The Central Bank has seen instances where firms have identified, and taken steps to address, fitness and probity concerns about an individual but have failed to report them to the Central Bank. If a firm has any fitness and probity concerns about a person performing a CF or PCF role and has taken action, then the Central Bank requires a report without delay.

- **Failure to obtain Central Bank approval for a PCF appointment.**

The Central Bank has reminded firms that a person may not be appointed to a PCF role (including a director or designated person role) unless the Central Bank has approved the appointment in writing after reviewing a completed individual questionnaire (IQ). In circumstances where this does not happen, the appointing firm will be held responsible by the Central Bank for non-compliance with the 2010 Act.

- **Lack of proper due diligence by firms before proposing individuals for PCF roles.**

The Central Bank highlights instances where candidates for PCF roles have failed to disclose material facts on their IQs which are either known, or would have been known, by appointing firms if proper due diligence had been conducted. This is of particular concern to the Central Bank as the IQ includes a declaration from the appointing firm regarding the suitability of the candidate and a confirmation that all due diligence has been conducted. The Central Bank effectively asks each CEO to discuss the carrying out of proper due diligence with the firm's board or, if relevant, nomination committee. Firms are reminded that they play a critical role in ensuring that the right people are proposed as PCFs and the letter provides that: "It is crucial that [CEOs] ask not merely whether a given candidate is competent, but also whether the individual acts with integrity at all times."

Action Required

As a result of this letter, the Central Bank expects each firm to:

1. Ensure that any person subject to the fitness and probity regime is fit and proper prior to appointment and on an ongoing basis.
2. Read the letter in conjunction with the guidance on the Standards issued by the Central Bank and then, together with the firm's board, review the firm's fitness and probity policies, procedures and practices and address any shortcomings.
3. Demonstrate how the issues raised in the letter have been considered and be able to explain and evidence any remedial actions taken.

How can LK Shields help?

This letter is an important reminder by the Central Bank to industry of the legal and regulatory obligations of the fitness and probity regime. The focus of the letter is on the significant obligations of firms to ensure staff performing CF and PCF roles meet the highest standards of competence, integrity and honesty.

Our Financial Services and Employment teams at LK Shields can:

- (1) advise on the application of the 2010 Act, the Standards, related guidance and this letter to a firm and its staff and provide training;
- (2) benchmark these requirements against the firm's current compliance with the fitness and probity regime; and
- (3) as a result of this benchmarking exercise, advise on any remedial actions to be taken which may include drafting or enhancing a firm's fitness and probity policies, procedures and practices.

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