



CP – 153 - Regulation & Guidance under the Central Bank (Individual Accountability Framework) Act 2023

Irish Life and Canada Life Companies Submission – June 2023

INTRODUCTION

ABOUT IRISH LIFE AND CANADA LIFE

Canada Life was founded as Canada's first life insurance company in 1847. It has now grown into one of the world's largest and most financially secure providers of life insurance. Since 2003, Canada Life has been a part of Great-West Lifeco Inc., one of the leading financial service providers in Canada. Great-West Lifeco Inc. cares for more than 28 million clients around the world.

Irish Life empowers its customers to look to the future with more confidence and certainty. We manage the financial needs of more than 1.6 million Irish customers. We think ahead to find opportunities and anticipate challenges to help deliver more security and certainty for their futures. We have over 80 years' experience serving corporate and private customers in Ireland. So we pride ourselves on having a deep understanding of our customers' needs, interests and concerns for themselves and their families.

Irish Life Group (ILG) includes inter alia Irish Life Assurance and Irish Life Health as well as its associated companies Irish Life Investment Managers and Setanta Asset Management. We currently have 2,400 people working at our campuses in Dublin and Dundalk, and we continue to grow.

Canada Life Assurance Europe plc has been operating in Germany since the year 2000. It supports over 600,000 customers and is regulated by the Central Bank of Ireland and regulated by the German regulator Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) for business conduct purposes.

Canada Life International Assurance (Ireland) dac sells unit-linked life assurance and capital redemption bonds to UK residents through UK independent regulated intermediary channels.

EXECUTIVE SUMMARY

Irish Life Group and the Canada Life companies welcome the opportunity to share its views in relation to the draft Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023.

The Irish Life Group companies and the Canada Life companies based in Ireland make up one of the largest and most diverse financial services groups in Ireland. The companies are focussed on providing a wide range of investment, reinsurance, protection and health insurance products to a diverse range of customers.

While we welcome the introduction of the Individual Accountability Framework and the guidance provided there are a number of key areas where we believe improvements could be implemented or further clarity provided. In particular, in areas where the proposals are contradictory, not proportional or likely to lead to adverse unintended consequences.

The scale and cost of implementation of the new Individual Accountability Framework should not be underestimated, in particular when linked with the numerous other proposed regulatory changes, most notably the revised Consumer Protection Code. The level and scale of regulatory change over the forthcoming years needs to be assessed prior to the introduction of any further changes or guidance.

Key concerns within the current draft are:

1. The timelines for implementation and in particular the gap created between the implementation of the additional conduct standards and SEAR. We would recommend alignment of implementation to July 2024;
2. The inherent responsibilities for certain PCF roles appear to capture both first and second line functions and need to be reassessed;

3. The inclusion of non-executive directors within the parameters of the framework would appear to directly fracture the collective responsibility of the Board of Directors. Holding individual directors accountable for collective decisions is contradictory to both existing Company Law requirements and also extensive case law developed over decades. However, most worryingly it could lead to a change in behaviours at Board level and move from collective decision, oversight and monitoring to individual behaviours more similar to a senior executive team.
4. The volume and nature of prescribed responsibilities need to link back to PCF function holders as a number do not link to any specific PCF;
5. The impact of the new framework on cross border firms needs to be reassessed, in particular as the business standards are linked to the Consumer Protection Code to which cross border entities are not in scope.
6. Impact to human resources – the proposed changes will, in several instances, require contractual changes and dialogue with employees which has not been considered. For cross border firms where differing labour laws are applicable, the implementation timeline needs to take this into consideration.
7. Proportionality – the proposed scope of some measures within the framework goes far beyond previous expectations. The required annual due diligence of all PCF's and CFs is a significant administrative burden. The inclusion of all CFs, including more junior staff in the financial services industry means that the financial services industry will annually carry out a larger scrutiny and review of staff than any other industry in the State. Gathering data on judgments, searches and intruding on the privacy of thousands of staff annually for a minimal, limited benefit. There are over 1200 CF and PCF roles within the Irish Life and Canada Life companies in Ireland.

Submission - Questions to stakeholders

In addition to general feedback on the Guidance, the Central Bank would like feedback on the following overarching questions:

1. What are your views and comments on the draft SEAR Regulations and related draft guidance?

The Regulations and Guidance are helpful in providing an overview of the future regulatory obligations and framework. However, there are a number of areas that require further clarity, in particular where the current PCF roles and responsibilities do not match the current expectations, please see examples below. In addition, the inclusion of NEDs and INEDs to be held individually accountable for actions taken on a collegial basis would appear inherently contradictory. The unintended consequences of fundamentally breaking the collective responsibility of a Board by making each and every one of the directors individually responsible has not been appropriately considered. It has the potential to severely fracture the workings of the Board and more worryingly to fundamentally change the nature of the Board into a more executive role.

The timeframes allowed for do not take into account the work required to implement and embed the framework. We suggest that the timelines align to implementation by July 2024 and that a similar approach as was used for the introduction of the Operational Resilience Guidelines should be adopted: i.e. that firms should prepare a plan for implementation and be able to demonstrate progress against this.

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

A number of the inherent responsibilities would seem to split between the first and second line which is challenging – most obviously for PCF 14 and PCF52. In practice, risk is owned by the first line and the role of the second line is oversight and challenge. However, the inherent responsibilities as iterated appear to merge these two roles into one, meaning that it is very difficult to identify a primary owner.

- For example, the role of the Chief Risk Officer (PCF14): ‘Overall responsibility for managing the firm’s risk function including risk controls, setting and managing risk exposures and reporting directly to the Board on risk management matters.’ The reference to ‘managing’ the risk controls is generally a first line task. Additionally, the ‘setting and managing risk exposures’ aspect of this responsibility differs from the responsibilities assigned to the CRO in the Corporate Governance Requirements (CGR) and the language should be aligned.
- For PCF52 AML/CTF, the current definition suggests this role runs the AML / CTF activities operationally, whereas in practice (for insurers at least) this is more commonly an oversight role. It may be more appropriate to state “Overall responsibility for ensuring a robust anti-money laundering / counter financing of terrorism framework is in place within the firm.” In addition, this inherent responsibility overlaps with PR22 which would therefore not be required.

For PCF’s 11, 12, 13 and 14 in relation to “reporting to the Board”, this should be expanded to include “or relevant Board sub-committee”. In practice, a significant part of the reporting from these roles will be to the Board Audit Committee or Board Risk Committee.

For PCF49 CIO, it seems unreasonable that the CIO is responsible for “managing the firm’s information” as this includes a huge bulk of information not all of which may be within the CIO remit (in particular hard copy files), and may be more appropriate to include “Overall responsibility for managing the firm’s use of technology and controls to ensure firm information is available as required.”

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

Having reviewed the prescribed responsibilities (PRs) and in light of the proposal not to allow splitting of responsibilities we do not agree with the current proposal as responsibility for a number of PRs is typically not held by a single individual. A number of the prescribed responsibilities would also seem to be held by CF1s rather than PCF functions. e.g. existing activity in relation to staff development (PR14), diversity and inclusion (PR29), training (PR3) and staff behaviour (PR2) typically sit with the HR function. This is likely to lead to an unreasonable number of responsibilities sitting with the CEO as the PCF to whom those who are genuinely responsible for these items report. Given the primary legislation limits SEAR to those in PCF roles, it would seem appropriate to align the list of prescribed responsibilities to those currently held by existing PCF roles rather than fundamentally increasing these. If the prescribed responsibilities remain as currently set out then it is likely that key functions holders (such as the Managing Director) will hold a large number of prescribed responsibilities as ultimate owner.

Similarly, many of the PR’s cover both design and implementation whereas these two elements may well sit with a different PCF. For example, PR26 would span both the responsibility of 2nd Line (Development of a Conduct Framework – Head of Compliance) and 1st Line (accuracy, completeness and timely production of conduct information). Also, for larger entities (such as Irish Life Assurance), we are organised along divisional lines, retail versus corporate divisions. In this instance, it would be logical to have two persons occupying the Head of Material Business Line role and two Heads of Claims

In addition, some of the general prescribed responsibilities do not appear to be relevant to insurers e.g. treasury management function PR19 and client asset requirements PR23. Clarification is therefore required as to the applicability or otherwise of certain prescribed responsibilities within industry sectors.

In addition, further clarity is sought on the following:

1. PR’s 6 & 12, These responsibilities would best fit with the Chair of the Remuneration Committee and Chair of the Nominations Committee respectively, however not all entities will have same as these functions may have been delegated to Group entities as allowed under the Corporate

Governance Requirements. These responsibilities more generally lie better with the Chair or with the Board as a collective rather than any individual NED.

2. PR17, responsibility for the Board's development and maintenance of the firm's business model, would seem to best fit with the Board Chair, so should probably be one of the proposed
3. Only one PCF can be assigned a PR but more than one can be held responsible for contravening the Duty of Responsibility. This seems contradictory and more clarity is needed on how this would happen in practice.
4. PR16- "Responsibility for managing the firm's internal stress tests and ensuring the accuracy and timeliness of information provided to the CBI for the purposes of stress-testing," this would typically sit with more than one individual as stress tests are performed across a number of functions and is therefore difficult to assign. Additional clarity is sought on the expectation from the CBI as to whether this is confined to one PCF.
5. PR18 - "Responsibility for managing the calculation and maintenance of the firms financial resources including accuracy of capital, funding and liquidity". In an insurance company while responsibility for the firm's financial resources rests with the CFO, accuracy of capital, funding and liquidity rests with the Head of Actuarial Function clarity is therefore sought on the expectation of who is responsible.
6. For PR26 "Responsibility for leading the development of a framework for and monitoring the implementation of the conduct requirements including ensuring accuracy, completeness and timely production and submission of the firm's conduct information", it is unclear if this relates to conduct risk in relation to managing interaction with customers and specifically perhaps the Conduct of Business Returns (CoBR), or to the conduct standards requirements outlined in the IAF.

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

There can be legitimate reasons for the sharing of roles, in particular in large organisations where there are very distinct customer bases. If there is clarity between the roles e.g. Head of Corporate Business underwriting and Head of Retail Underwriting and this is clearly evidenced through the responsibility maps then there should be no difficulty in having dual role holders of one PCF. For example, in organising along divisional lines retail versus corporate divisions, it would be logical to have two persons occupying the Head of Material Business Line role.

We note that Guidance 2.3.1 "sharing or splitting of PCF roles amongst individuals is not permitted under the SEAR, other than in the case of job sharing" appears to conflict with Regulation 6(3)(e) – "Where the firm has allocated an allocated responsibility to more than one PCF holder, the firm shall explain its rationale for doing so, together with the arrangements for the effective operation of that joint allocation of responsibility." and would seek further clarification on how both these provisions interact.

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

No, we believe there is a fundamental contradiction between the collective responsibility of the Board and the inclusion of NEDs and INED's into the scope of SEAR. In particular the inclusion of NEDs/INEDs into SEAR alongside the increasing amount of guidance that seeks to move responsibilities to the Board there is a real danger that the actions of the Central Bank effectively change the role of the Board as defined under the Companies Acts and extensive case law into an executive function. While it is stated that NED/INEDs are caught within SEAR due to their importance this fundamentally fails to recognise that the value of the Board stems from its collective decision making rather than individual accountability. An INED's role is one of oversight and challenge, and in the UK the application of the regime to INEDs is limited to Chair of certain Board Committees e.g., Remuneration Committee; Risk Committee etc. We are of the view this is a more appropriate approach for INEDs.

It is worth noting that the Companies Act 2014 does not differentiate between directors and NEDS in terms of duties and does not refer to INEDS at all.

Collective responsibility of directors and Irish Company Law Requirements.

The Companies Act 2014 (the “Act”) makes clear that the board, acting collectively, has the supreme authority to manage or to bind a company, while making no such provision in respect of an individual director in a multi-director company or between executive, nonexecutive and independent non-executive directors.

Section 40(1) of the Act provides that:

“For the purposes of any question whether a transaction fails to bind a company because of an alleged lack of authority on the part of the person who exercised (or purported to exercise) the company’s powers, ... the board of directors of the company [shall] be deemed to have authority to exercise any power of the company and to authorise others to do so”.

This applies “regardless of any limitations in the company’s constitution on the board’s authority”, save where the transaction is with a director or shadow director (or a connected person of them), or where the Act specifically requires that the power be exercised otherwise than by the board.

Therefore the Act makes clear that a company’s board of directors, acting collectively, have a broad authority to bind the company. All directors, whether they be executive or non-executive will share this function and no category of director has a higher level or authority than any other category.

The collective nature of the Board began to fracture with the splitting of PCF 2 to distinguish between INEDs and NEDs, the new approach of including INEDs/NEDs within SEAR only further moves to undermine the role, oversight and supervisory nature of the Board and push it further and further into an executive role. The increasing view also from the CBI to have specialist directors in place i.e. requirements to appoint directors with IT, Climate Change, DEI specific backgrounds will eventually just mean that the Board no longer acts as broad collective in the best interest of the Company but just an extension of Senior Management.

It is notable that the UK chose to take a differing approach and this has not lead to any adverse regulatory outcomes. If the fundamental tenor of the Board changes for companies subject to SEAR it will be interesting to see how this will impact the ability to access Directors and Officers liability insurance in Ireland.

6. Do you agree with the proposed approach to the Statements of Responsibility?

Yes we would agree with the Statements of Responsibility, however, would note that as these may not align with contracts of employment that it may take some time to implement within firms. Additional challenges may arise where employment contracts are subject to the laws of another EU Member State, particularly where collective labour agreements may be in place.

The requirement to keep the statements of responsibility “continuously updated” would appear disproportional and would involve constant assessment to fulfil the requirement.

In order not to overly burden the regulatory implementation, proportionality should be applied with the removal of the words “continuously updated” and instead it is recommended that the review cycle be annually or when a change in the nature of the role occurs.

The retention period of 10 years for Statements of Responsibility after a PCF leaves a firm would appear to be out of alignment with both GDPR requirements and also the Statute of Limitations. It is unclear why they need to be retained for this period when most data retention policies would hold personal information for only 7 years post leaving a position.

We believe that newly appointed PCF role holders should have the opportunity to view their predecessor's Statement of Responsibility and this should be recommended through the Guidance.

7. Do you agree with our proposed approach to the Management Responsibility Map?

The wording relating to 'keep up to date' and 'review when changes happen' are somewhat contradictory – we suggest the requirement be worded in a more pragmatic manner, such as a half-yearly/annual review as well as updating when material changes occur.

8. Do you agree with our proposed approach to the submission of documents?

Yes.

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

We would agree with the general approach, however, care needs to be taken for internal outsourcing arrangements to allow flexibility in governance structures. For example, where there is a Group Internal Audit function and this provides services to regulated entities then the reporting requirement for this outsourcing model tends not to be to an executive within the regulated entity but to the Chair of the Audit Committee. This is important in order for third line functions to maintain their independence and there should be capability to retain these distinctions. While there is an executive reporting line also for these functions this is not within the regulated entity to which it provides services.

We note that the Fitness & Probity Guidance 5.2 allows PCF roles to be outsourced to another regulated entity, without the requirement to appoint a PCF. The guidance states "a person benefitting from this exclusion from the requirement to obtain the Central Bank's prior written approval to appointment as a PCF is a CF". This appears to conflict with the requirement to allocate all Prescribed Responsibilities to a PCF. Please clarify whether the Central Bank's intention is to allow Prescribed Responsibilities to be allocated to an outsourced PCF-exempt CF, or to a PCF within the firm. For example, may a firm outsourcing its internal audit function to a group company allocate PR27 (internal audit) to an outsourced Head of Internal Audit (i.e. a CF), or should it be allocated to a PCF within the entity?

The guidelines could be clearer that PR21 is in relation to putting an appropriate outsourcing oversight framework in place but responsibility for oversight of specific critical and important outsourcing arrangements is likely to sit with a range of people across the business. 2.9.16 in the guidelines would potentially suggest that one individual is responsible for all operational aspects of the outsourcing arrangements of a firm.

Based on the Guidance provided by the CBI so far, we are of the belief that when F&P impacted CF Roles (non PCF and CF1) are outsourced to Regulated Outsourced Providers, RSFPs will not be required to issue Annual Certifications to these staff and will instead, as per the existing F&P exemptions, depend on amended Annual Confirmations from the relevant Regulated Outsourced Providers, that these have been issued. We are also assuming that in a similar vein, the requirement to ensure that CF Roles outsourced to a Regulated Entity adhere to the Conduct Standards, that this will be met by RSFPs using the same Annual Confirmations from the Regulated Outsourced Providers,

It can be difficult for firms to have appropriate oversight of staff turnover in third party support firms, for example and may well result in longer notice periods needed to allow for training and negotiation of contracts.

It is unclear how certification will work for unregulated outsourced CFs and how an RSFP can issue certification if the employee is not employed by them or the holding company. On a practical level it is difficult to look through staff documentation on a third party, as well as considering the legal data protection/GDPR implications.

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

We would agree that the reasonable steps within SEAR do appear to set out an objective standard that can be followed. However, because “reasonable steps” for both Conduct Standards and the SEAR obligations have been provided together that has confused the guidance and resulted in a blurring of the lines on expectations with regard to the Duty of Responsibility (in the SEAR) versus the Conduct Standards.

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

There is a potential conflict between a director’s primary duty to company under Company Law and their duty under IAF and from a legal perspective, the obligations under Company Law must be met.

The phrasing of the guidance could be updated, as currently it refers PCF’s to ‘go beyond their scope and challenge the information given to them and ensure they have all information given to them’. When this is applied at Board level this would effectively mean directors delving and verifying each and every piece of information provided to them from management. In fact, it would require the PCFs reporting to boards to have undergone this exercise and then the directors to verify again. Effectively this places directors in the same loop as the executives in relation to the obligations. This may not be the intention of the Central Bank, but could effectively result in duplicated effort and an unintended culture of blame avoidance rather than assumption of accountability.

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

We would note that as currently set out the common conduct standards will align to those within the revised CPC. However, the CPC does not apply to firms who write business internationally who have their own domestic obligations. Clarity needs to be provided on this matter for international businesses.

It is also difficult to implement the conduct standards without implementing part of the SEAR – especially the explicit responsibility for the conduct standards for 31 December 2023 in advance of finalised Responsibility Maps and Statements of Responsibility for PCF’s for 1 July 2024 . Given the SEAR requirements will not apply until 1 July 2024 and allocation of certain prescribed responsibilities may be challenging, it would be more appropriate to align the implementation date for the additional conduct standards for senior individuals to the SEAR implementation date.

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

See Comments within Outsourced Providers Feedback above in Question 9.

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

It is not entirely clear on how this will apply in practice.

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

The CBI is proposing to include CFs 3-11 in professional body checks, judgement searches and regulator checks. This creates a significant administrative burden on firms with a large CF population and appears to be neither proportional nor risk based. The extension of due diligence requirements to this group of employees may also impact on the trust relationship between employer and employee, taking into

consideration that employees in these roles are lower grade than management and that this extension means we can no longer rely solely on self-certification. We therefore request that the CBI consider maintaining its current position (in line with the 2018 F&P Guidance) with regard to due diligence checks for CFs 3-11 who are not currently in scope of the additional checks.

Where role holders are employed under the laws of another EU member state, certain due diligence checks may require previous consent from the individual, or from a workers council as applicable and therefore may be very difficult to implement for cross-border companies.

The Central Bank has authority to investigate individuals who previously held CF or PCF roles up to six years prior to the investigation. This is regardless of whether they currently hold such roles or any other roles within the F&P Regime. This may put former PCF/CF role holders at a disadvantage, as their ability to retain evidence of their actions will be limited, given that it will be held on company systems. This needs further consideration and clarification.

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

Yes we would agree with the proposed approach.

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

Clarity is required on what is deemed 'misconduct' that would lead to the reporting of disciplinary actions. Otherwise, this may lead to large number of reports on minor matters that do not fundamentally impact on fitness, probity or individual responsibility i.e. if a CF is issued with a warning due to lateness should this be reported? As the reporting will be of a person's personal data and employment then it should be limited to matters of substance and that are in the final phases of a disciplinary process when a final determination has been reached.

There is an issue for employees of cross-border firms, who are subject to and protected by employment laws of another EU member state. Workers Council engagement may be required and it may take longer to reach agreement than the timeframes currently envisaged. There are employment law implications that need to be carefully considered.

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

We are organised along divisional lines, retail versus corporate divisions. In this instance, it would be logical to have two persons occupying the Head of Material Business Line role and this should be permissible within the one entity.

Conclusion

The Irish Life and Canada Life companies would welcome the opportunity to meet with the Central Bank to discuss any of the matters set out above and to clarify the position as detailed above. We would urge consideration of the need to align the Framework to the current PCF roles, proportionality of implementation, the consideration of implementation to cross-border firms and the inclusion of NEDs within the framework should be reassessed.