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Fitness and  
probity  
The  
challenge  
continues

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# Deloitte have provided assistance to many institutions implementing the new fitness and probity requirements including the assessment of over 200 pre-approved control functions.

The Central Bank Reform Act 2010 introduced a revised and significantly enhanced fitness and probity regime, which applies to all Regulated Financial Services Providers (RFSP) authorised by the Central Bank of Ireland (CBI) with the exception of Credit Unions. A number of Statutory Instruments, a set of standards and detailed guidance provide the ground rules on how to comply with the revised regulation in relation to the level of fitness and probity of both senior management and staff. The new regime is reflective of that implemented in the UK, but in parts, may be viewed as more stringent and far reaching. However, the requirements are in line with recent European standards.

## Who is subject to the regime?

Pre-approved Control Functions (PCFs) are board members and significant senior managerial positions requiring prior approval of the appointee by the CBI. Appointment of Control Functions (CFs) do not require prior approval by the CBI but must be assessed as fit and proper by the RFSP. CFs include customer facing staff and many other control functions reporting into the PCF roles.

RFSPs should also consider the impact of any outsourced arrangements. The Guidance now provides that to the extent that the outsourcing is to an equivalent regulated entity (Irish, EEA or EEA equivalent) and an appropriate written agreement is in place, then no further requirements apply. Any roles or activities within scope, which are outsourced to a non-regulated entity, will require assessment and compliance with the requirements. In the current climate of integration and restructuring, it is critical that fitness and probity is managed appropriately with regard to any form of restructuring.

The Central Bank may investigate, suspend, remove or prohibit any person from acting in a CF position.

## Identify your control functions

Identifying PCFs is not as straight forward as it seems. This regime applies to those who commonly perform the functions of the titles listed in the legislation and is not restricted to those who carry the titles listed.

This may result in more than one person being responsible for the functions of any one specific PCF role. A restructure or change in responsibilities may also impact the allocation of PCF roles within your organisation.

CFs are identified based on activity and are not listed as specific roles. The categories are vague in description and require well defined and documented mapping to the activities and roles within your organisation. CF1 (significant influence roles) and CF2 (compliance roles) are to be treated in a similar manner to PCF roles and hence are deemed by the Central Bank of more importance than other CF roles. These two roles in particular are broad in definition and hence a documented and robust interpretation of both functions is critical to the success of identifying such roles within your organisation.

Finally, certain roles within an organisation may fall into more than one PCF and/or CF role. It is important that the highest level of due diligence required is applied in that case.

## Due diligence

Due diligence focuses on ensuring that the PCF or CF is competent and capable, acts honestly, ethically and with integrity, and is financially sound. Generally, the first element of the test has proven the most difficult to establish, albeit that a failure in respect of the latter requirements is more catastrophic. The due diligence process focuses on gathering appropriate documentation supported by clear assessment criteria within an appropriate governance structure.

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The level of due diligence required is higher for PCFs than for CFs and is higher for CF1 and CF2 than for the remaining CF roles. Your organisation must define competence for each of these roles and establish a suitable process for gathering sufficient evidence to conclude that the individual is both competent and capable. The guidance notes provide many examples of how to carry out this process. The assessment process and indeed conclusion of fitness and probity for senior roles should be approved at board level.

Putting the appropriate governance structures in place around the due diligence process is also extremely important. Issues will arise which may be of a sensitive and subjective nature. Such issues must be dealt with in a transparent and appropriate manner. Ensuring that files are of a consistent quality and contain the necessary information to support a decision is vital. Benchmarking against your peers also plays an important role.

### On-going obligations

The on-going requirement of continuous compliance under the new regime will remain a challenge post implementation. HR processes should include fitness and probity assessment of new employees and existing employees against the relevant criteria. While annual declarations by employees will go a long way to meeting the requirements, other trigger events should be identified within your organisation which will need to assess the level of fitness and probity, these will include, secondments, transfer, promotions, etc. Performance reviews should be an indicator of fitness failure to meet objectives, is not necessarily an indicator of non-competence.

Firms should also review their employment contracts and HR policies to ensure they meet the new requirements.

### Timeframes

PCFs have been subject to the regime since 1 December 2011. Your CEO was required to confirm competence of the PCFs in situ as at 1 December 2011 to your supervision team by 31 March 2012. All newly appointed PCFs since 1 December 2011 must be pre-approved by the Central Bank prior to appointment. Your PCF register should record all appointments and resignations from PCF roles since 1 December 2011.

All newly appointed Control Functions roles (whether external or internally appointed or promoted) have been subject to the regime since 1 March 2012. All other employees in situ in CF roles since 1 December 2011 must be fully assessed as fit and proper by 1 December 2012.

### How can we help?

While the first hurdle may now be successfully cleared, in reality the new fitness and probity regime is not a point in time exercise. The powers of the Central Bank have been considerably strengthened under Part 3 of the Central Bank Act 2010, with new enhanced powers of investigation, suspension and prohibition. Firms must ensure that their implementation and ongoing application of the fitness and probity standards are sufficiently robust to address the requirements of the regime. In this regard, external assurance can be very useful. We engage with firms on an individual level and can tailor a package of deliverables to suit your specific requirements, from the following range of services:

- Full assessment of the interpretation and implementation of the standards to date, including the due diligence procedures and execution of same;
- End to end implementation of the regime across existing CFs for 31 December 2012 deadline;
- Establish awareness through the development and delivery of fitness and probity training including board and senior executive training;
- Provision of general fitness and probity advice;
- Interview coaching for the PCFs awaiting pre-approval from the Central Bank;
- Formation of a robust procedural and policy framework, and
- Development of an automated fitness and probity management database.

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