

Corporate M&A

New Fitness and Probity Standards

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The Central Bank of Ireland has published an enhanced Fitness and Probity regime for all Central Bank regulated financial service providers (this includes banks, insurance undertakings and investment firms but excludes credit unions) - this replaces the existing regime which had applied since 2006.

The Fitness and Probity Standards apply to individuals performing certain functions within the regulated financial service provider and the applicable regulations provide that the new regime applies to two categories of such individuals - those performing pre-approved controlled functions ("PCFs") and those performing controlled functions ("CFs"). The applicable regulations designate 41 senior positions as PCFs such as board directors, head of finance and head of compliance and Central Bank approval is required before appointments are made to these positions -the approval process is made through an online Individual Questionnaire. The second prescribed category identifies 11 categories of CFs which are described in more generic language and include individuals that exercise a significant influence on the conduct of the affairs of a regulated financial service provider. The updated regime captures a much broader range of individuals in regulated financial service providers than was previously the case.

A regulated financial service provider must not allow a person to perform a CF or PCF unless the entity is satisfied on reasonable grounds that the individual meets the Fitness and Probity Standards and that the individual has agreed to abide by the Fitness and Probity Standards. This is a continuing obligation and annual audits are recommended. In particular, regard should be had to the Fitness and Probity standards before an offer of employment is made, on appointment and on promotion.

The Central Bank has a range of powers available to it to investigate, suspend or prohibit individuals from PCFs and CFs where there exist concerns regarding their fitness and probity.

The new requirements have implications for the on-going management of financial institutions and dealing with employment issues including disciplinary and performance processes. The full impact of the new regime will only be appreciated as it is applied over the coming years.

This note is intended to provide a general overview. It is given wholly without any liability or responsibility on the part of Eugene F. Collins, Solicitors, and does not replace the necessity to obtain legal advice.

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