

16 November deadline looms large for firms' Central Bank of Ireland confirmations regarding new PCF roles

On 25 February 2020, the Central Bank of Ireland (the “**Central Bank**”) issued a **Notice of Intention** (the “**Notice of Intention**”) proposing the creation of three new Pre-approval Controlled Functions (“**PCFs**”); PCF-49 Chief Information Officer, PCF-50 Head of Material Business Line and PCF-51 Head of Market Risk and the splitting of PCF-39 Designated Person into six new roles aligned to specific managerial functions.

On 9 October 2020, the Central Bank published an **update** noting the enactment of a statutory instrument **S.I. 410 of 2020** amending the existing regulations and introducing the new PCFs as proposed in the Notice of Intention.

Effective as of 5 October 2020, **S.I. 410 of 2020** details the:

1. introduction of three new PCFs:
 - PCF-49 Chief Information Officer (under the ‘General’ category);
 - PCF-50 Head of Material Business Line (under the ‘Banking’ category);
 - PCF-51 Head of Market Risk (under the ‘Banking’ category); and
2. the splitting of PCF-39 Designated Person into six PCFs aligned to the specific managerial functions:
 - PCF-39A Designated Person with responsibility for Capital and Financial Management;
 - PCF-39B Designated Person with responsibility for Operational Risk Management;
 - PCF-39C Designated Person with responsibility for Fund Risk Management;
 - PCF-39D Designated Person with responsibility for Investment Management;
 - PCF-39E Designated Person with responsibility for Distribution; and
 - PCF-39F Designated Person with responsibility for Regulatory Compliance.

The new PCF roles are exactly as outlined in the original Notice of Intention. The Central Bank’s FAQ document on the new PCFs has been updated “*in response to comments received on the proposal*”. This suggests that clarification was requested on at least some matters relating to the introduction of the new PCFs.

Firms will be required to complete an assessment of in situ individuals and write to the Central Bank by **16 November 2020** confirming they meet the Fitness and Probity Standards. Further detail is set out below.

The new PCF39 roles are relevant to the investment fund industry only so our analysis below covers PCFs 49 – 51 only.

PCF – 49: Chief Information Officer

The creation of PCF49 – Chief Information Officer is in response to the increased role which information technology (“IT”) is playing in financial services firms and the associated exposure to IT related risks. The Chief Information Officer role will typically apply to the most senior individual in the firm with responsibility for IT matters who is likely, by virtue of their role, to exercise a significant influence on the conduct of the affairs of the firm.

Who does the role apply to?

While not limited to the following circumstances, the Central Bank has noted its expectation that the Chief Information Officer role would likely apply where:

- the firm has a PRISM impact rating of High or Medium High;
- or
- IT is a key enabler or core element of the firm’s business model.

The Central Bank, in its FAQ document, has clarified that the criterion *‘Information Technology is a key enabler or core element of the firm’s business model’* is not intended to refer to all firms solely based on the use of technology within the firm. The role is only applicable where the size, nature and complexity of the firm warrants such a role and where failure of the firm’s IT system would have an adverse effect on one or more of the following:

- the provision of critical services to their customer base, taking into consideration potential customer detriment it may cause;
- the ability of the firm to meet its regulatory obligations; or
- the overall stability of the financial system in Ireland.

Next Steps

The Central Bank’s FAQ document clarifies that firms are not **required** to create the role of Chief Information Officer where the role did not exist within the firm prior to the implementation of the amending regulations and the size or complexity of a firm’s business does not warrant the creation of such a role. Firms are required, however, to review the IT function to determine whether it would meet the substance of the Chief Information Officer role. For some firms the nature, scale and complexity of their business will mean that it would be advisable to consider the appointment of a CIO even where one does not exist at present.

The review of the IT function should take account of the following:

- the size and complexity of the firm’s operations;
- the nature of the firm’s activity; and
- the types of services provided and the corresponding ICT and security risks related to its processes and services.

It is worth noting that it is the function rather than the job title of the individual performing that function that determines which PCF category, if any, it falls under.

Individuals in situ on 5 October in the role of Chief Information Officer will not be required to seek the approval of the Central Bank to continue to perform this role. However, firms must review their assessment under Section 21 of the 2010 Act in respect of the individual in situ and submit confirmation of completion of such an assessment to the Central Bank by **16 November 2020**. Should the individual in the role change after 5 October 2020, however, the new individual will be required to seek the Central Bank's prior approval by means of a new Individual Questionnaire.

PCF50 - Head of Material Business Line

The Central Bank has indicated that PCF 50 - Head of Material Business Line is being introduced in light of the changing landscape of the banking sector in Ireland.

Who does the role apply to?

This role is expected to be held by a senior individual within a credit institution, typically with a direct reporting line to the CEO and who has responsibility for management of a material business line which would be considered capable of having an impact on the safety and soundness of the credit institution due to the commercial or strategic importance of that business line.

A Material Business Line is described by the Central Bank as being one which satisfies either of the following:

- has gross total assets equal to or in excess of €10 billion;
- or
- accounts for 10% or more of the credit institutions gross revenue^{1 2}.

Next Steps

Credit Institutions are not required to create the role of Head of Material Business Line where the role did not exist within the firm prior to the implementation of the Amending Regulations and the firm does not meet the criteria of material business line as outlined by the Central Bank. Relevant firms are required, however, to review their functions and determine whether any functions would meet the PCF role as listed in the Amending Regulations.

Individuals in situ on 5 October in the roles of Head of Material Business Line will not be required to seek the approval of the Central Bank to continue to perform this role, however, firms must review their assessment under Section 21 of the 2010 Act in respect of the individual in situ and submit confirmation via an "in situ notification" of completion of such an assessment to the Central Bank by **16 November 2020**. In addition, individuals who are already pre-approved as PCF 17 - Head of Retail Sales or PCF 21 - Head of Treasury will not be required to also seek pre-approval as a Head of Material Business Line. Should the individual in the role change after 5 October 2020, however, the new individual will be required to seek the Central Bank's prior approval by means of a new Individual Questionnaire.

PCF 51- Head of Market Risk

The Central Bank has decided to introduce PCF 50 - Head of Market Risk in response to the increasing materiality of market risk at some regulated credit institutions. This role will only apply where a credit institution meets the criteria of material risk as set out by the Central Bank.

1 Due to the absence of information contained within quarterly regulatory returns regarding financials by business line, determination about whether the qualifying criteria have been met will be made on the basis of a credit institution's annual financial statements or other relevant Board approved documents that are formally submitted to the Central Bank.

2 If the firm meets the qualifying criteria at the time that an individual is being considered for appointment to the role of Head of Material Business Line, once an individual has been approved and is performing the role that individual remains in place until such time as they leave their role, even if there are fluctuations in the quantitative criteria post approval.

Who does the role apply to?

The role of Head of Market Risk will only apply to a credit institution whereby the market risk of the credit institution satisfies either of the following quantitative criteria:

- €500 million of market risk (including Credit Valuation Adjustment) risk weighted assets;
- or
- €100 billion of notional derivatives traded³.

Next Steps

Firms are not required to create the role of Head of Head of Market Risk where the role did not exist within the firm prior to the implementation of the Amending Regulations and the market risk of the firm does not satisfy either of the quantitative criteria as outlined by the Central Bank. Relevant firms are required, however, to review their functions and determine whether any functions would meet the standard of the role as listed in the Amending Regulations.

Individuals in situ on 5 October in the role of Head of Market Risk will not be required to seek the approval of the Central Bank to continue to perform this role, however, firms must review their assessment under Section 21 of the 2010 Act in respect of the individual in situ and submit confirmation via an “in situ notification” of completion of such an assessment to the Central Bank by **16 November 2020**. Should the individual in the role change after 5 October 2020, however, the new individual will be required to seek the Central Bank’s prior approval by means of a new Individual Questionnaire.

Should you require any assistance in respect of the above, please do not hesitate to contact your usual Matheson contact.

³ If the firm meets the qualifying criteria at the time that an individual is being considered for appointment to the role of Head of Market Risk, once an individual has been approved and is performing the role that individual remains in place until such time as they leave their role, even if there are fluctuations in the quantitative criteria post approval.

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