

FS industry leaders warn of potential for unintended damage to Irish financial services industry of IAF regulation

NOT SINCE the years of the financial crisis in 2007-8 has there been deep concern about the impact of the enforcement of financial services regulation on the Irish financial services industry, particularly its international trading activities, as a deadline looms in early January for the implementation of the first pillars of a potentially far reaching legal framework known as the 'Individual Accountability Framework' - an unique Irish code that would place all Irish regulated financial companies and funds with boards under the aegis of a regulatory regime operated by the Central Bank of Ireland. The chief executives of the five biggest financial services representative organisations, FSI, Insurance Ireland, Banking & Payments Federation Ireland, Irish Funds, the Irish Association of Investment Managers, and two leading institutes for directors in the industry, the Institute of Directors (IOD), and the Irish Funds Directors Association, express their concerns while also referencing the potential benefits of the regime's intentions - to enhance the jurisdiction's reputation as a centre of financial services excellence. ALSO: This month's GLOSSARY, on Page 21 has an IAF theme, providing a guide to key terms and acronyms used.

The IAF's fundamentals and unknowables for bodies corporate and individuals

A deep sense of unease about the potential unintended consequences of the IAF framework currently exists on a broad scale across the financial services industry, with industry representatives, as revealed in this survey, beginning on page 10 overleaf, of their views. They ask for clarifications, delays, and indeed raise fundamental questions about the objectives of the IAF as currently formulated that are on the face of it irreconcilable - such as a clash between collective responsibility at board level and individual designated responsibilities. This latter is revealed in a survey of the majority of members of the IOD, one third of whose members are financial services industry board members.

There is extensive use of a Public Consultation process in regard to proposed, forthcoming, and enacted legislation in Ireland, and its use has been growing. Perhaps even an additional cost of doing FS business in Ireland might be that the demands of the public service system put on FS firms in terms of providing insight and advice on ongoing legislation through the PCs process is significant.

The flip side of that, of course, is the opportunity it gives to provide input into ongoing legislation that may well be listened to. When that input is into the legislative framework of a member state of the European Union, and when that member state, to quote a recent important speech by the Attorney General, is the only effective member of the 'Anglosphere' remaining in the EU, it is a process that takes place in Ireland that is of potentially global importance in a financial services regulatory - and juridical - context.

That is a potential positive of the engagement process that has been conducted in recent years about the SEAR and the IAF, culminating in PCs that have been extensively engaged in this year.

But, as 2024 looms, the putative

original date for the introduction of the Government orders to give effect to the IAF and its pillars, it is clear that the industry is not ready for its implementation yet.

For example, Michael D'Arcy, the CEO of the IAİM, himself a former Minister of State for Financial Services at the Department of Finance, calls for a postponement of the measures, along with a realignment of the dates for Pillars implementation, to July 2024.

Others suggest even longer postponements, especially those who are fundamentally concerned about the seeming irreconcilables at the heart of the envisaged framework - highlighted for example in the contributions by director organisation contributors, Margaret Cullen, Governance advisor of the Institute of Directors in Ireland and Lisa Martensson, chair of the Irish Funds Directors Association.

What is particularly worrying is the potential that the individual accountability framework will diminish, not strengthen, the effectiveness of boards in Ireland from a corporate governance point of view.

This is revealed in the statement by Margaret Cullen that an IOD survey of

its members found them "concerned that the emphasis on individual accountability is misaligned with the fundamental governance principle that no-one person has unfettered control and could in fact compromise the effectiveness of decision-making forums within the system of governance".

Furthermore, she says, members are questioning whether a board chair can continue to make a call on a board decision absent a consensus, as is best practice, or can the view of one director who has responsibility for a particular prescribed responsibility in their PCF role hold things up or force the board into an alternative decision for fear of regulatory scrutiny?

IOD members furthermore are concerned that the Senior Executive Accountability Regime will create "a more siloed approach to director role execution" which negates the benefit of NED representation on boards and adds risk to individual financial services companies and the sector as a whole, she says.

And, when it comes to multinational organisations, she reports that "57% of respondents to the survey either agreed or strongly agreed that the introduction of the IAF would be challenging for

subsidiaries of global organisations that operate an integrated global system of governance".

The IAF, as is indicated in the special IAF-themed Glossary on page 21 of this issue derives its legal existence from the amended Central Bank Act of 2023. In turn, any legislation effective under the Act must be implemented by Orders from the Executive (the Government) to enable the Central Bank to enforce its provisions.

Thus, its effective implementation will be a political act, and thus is ultimately a decision at the behest of the Government.

The Central Bank in the meantime has the responsibility of preparing for any legislation that it might be entrusted with enforcing.

In this spirit, we asked the Central Bank to provide its perspective on the framework as it currently stands, and Deputy Governor for Regulation, Sharon Donnery provides an overview on page 20 of this report.

In it she provides a number of assurances about the Central Bank's intended approach, including an assurance that the Bank will intend to operate a proportional approach, distinguishing between larger and smaller organisations.

While there is a long list of concerns outlined in the articles in the following pages, (and in the editorial of this month's issue on page 2) there are very fundamental issues raised in the articles by Dr Cullen and the chair of IFDA, Lisa Martensson.

On the face of it some of these seem irreconcilable with the hope that Ireland can remain a benign jurisdiction for the hosting of headquarters, or even branches of multinational corporations.

This is of such a fundamental nature it may be time for a return to the drawing board for those architects of the IAF and SEAR who may have hoped that IAF and SEAR can somehow reconcile the contradiction between individual and collective responsibility at board and even corporate level so as not to negate each other.

Were that somehow to be achieved, and to the satisfaction of 'good actors' - the vast majority of staff and board members in the financial services industry - there would then be a positive potential outcome - an outcome that could indeed result in the achievement of the hopes expressed in each of the contributions in this feature - summed up in the words of one of the contributors - Financial Services Ireland Director Patricia Callan: "we want Ireland to be the best place for financial services companies to achieve success: for customers, clients, society and themselves. Strong and credible regulation is a vital part of this ambition."

Key FS industry concerns over the IAF, - the negatives and the potential positives

THE NEGATIVES

"The new powers being afforded to the CBI are significant, with the potential to have a profound impact on an individual's reputation, livelihood and wellbeing."

- FSI (Patricia Callan).

"The framework allows the CBI to implement greater personal sanctions on individuals than regulators of other industries."

- Insurance Ireland (Moyagh Murdock)

"The Law Society of Ireland and the Institute of Directors (IoD) have both raised concerns about the mismatch of an individual facing the full arm of the state coming down on them."

- IAİM (Michael D'Arcy).

"The intended scope of some responsibilities is currently unclear and to whom it is intended that they should be allocated. In addition, it is unclear how firms can manage the proposal set out in the CBI's guidance that sharing, splitting or multiple holders of responsibilities is not envisaged."

- BPFİ (Brian Hayes).

"Of particular concern is the potential divergence between the interests of individuals and those of regulated financial service providers. The forthcoming additional powers for the CBI carry significant weight, necessitating a careful equilibrium between these powers and the safeguarding of individuals' constitutional rights."

- Irish Funds (Pat Lardner).

THE POSITIVES

"This framework can serve to enhance Ireland's reputation as a location of choice for international financial services firms."

- FSI (Patricia Callan).

"The benefits of the regime are clear - supporting consumer confidence in financial services, and a clear delineation of responsibilities within financial services firms, strengthening oversight and governance and making regulatory action (where required) easier to deliver."

- Insurance Ireland (Moyagh Murdock).

"The IAİM supports the Individual Accountability Regime but, it is clear, that the proposals which the CBI states are "based on proportionality, predictability and reasonable expectations" require further consultation."

- IAİM (Michael D'Arcy).

"An implementation path where expectations are clear, appropriately timed and proportionate will enable firms to comply effectively and further enhance Ireland's reputation as a centre of excellence for funds and asset management."

- Irish Funds (Pat Lardner)