

KEY INDIVIDUALS – GUIDANCE NOTE

The Financial Advisory and Intermediary Services Act defines a Key Individual as follows:

"key individual", in relation to an authorised financial services provider, or a representative, carrying on business as-

(a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or

(b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person.

Sub-paragraph (b) of the definition requires little or no explanation, in that it deals with entities (persons) which are managed, owned or governed by one natural person only. In this scenario it is clear that this natural person is the key individual as defined.

Sub-paragraph (a) of the definition provides interpretation problems and I will break down and define the two functions mentioned in this sub-paragraph, that is the function of managing and the function of overseeing.

The Interpretation Act has no reference to these functions and reference is made to the Concise Oxford Dictionary for definition of the terminology.

Managing is defined as *"having executive control or authority (Managing Director)."*

Overseeing or oversee is defined as *"officially supervise (workers, work, etc.)"*.

It is therefore clear from these definitions that a key individual mentioned in sub-paragraph (a) would include persons in executive control such as directors and other persons performing a managerial function over activities relating to the rendering of a financial service.

In a life insurance company, for example, key individuals would therefore include, directors, provincial managers, and depending on the structure of a particular entity, any other individual whom in the opinion of the controlling body is also engaged in overseeing the activities of a representative, in rendering a financial service regulated by the Act. However, it is not the intention to include every person in a supervisory capacity.