

Credit Union Update

Fitness & Probity

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Legislation/Guidance

- Part 3 of Central Bank Reform Act 2010 – **‘The Act’**
 - Powers of Bank in relation to officers, etc., of financial service providers
- SI 171 of 2013 – **‘The Regulations’**
 - Identifies the CF and PCF
- Code issued under Section 50 of the Central Bank Reform Act 2010 – **‘The Standards’**
 - Sets out the minimum standards of fitness and probity that a CF must comply with.
- Guidance on Fitness & Probity for Credit Unions – **‘The Guidance’**
 - To assist CU’s in complying with their obligations under Section 21 of the Act.
- Fitness and Probity for Credit Unions **Frequently Asked Questions**
 - Exactly as it says – however, no legal status
- Fitness & Probity **Service Standards**
 - Outlines target turnaround times for processing PCF

Fitness & Probity

Briefly

- What is it?
 - Be competent and capable;
 - Act honestly, ethically with integrity
 - Be financially sound
 - Minimum standards set by CB for individuals carrying out certain functions.
- Phased introduction?
 - P1 - CU's with assets greater than €10m – 1 August 2013
 - P2 – all remaining CU's – 1 August 2015

Controlled Function

- CF – Controlled Functions
 - CUCF-1: significant influence function
 - CUCF-2: ensuring, controlling or monitoring compliance function

CUCF – 1 Examples	CUCF-2 Examples
<ul style="list-style-type: none">- Board of Directors- Chairperson- Manager- Risk Management Officer- Committees: Credit, Credit Control, Membership, Nomination- Other significant influence function	<ul style="list-style-type: none">- Board oversight committee- Compliance offices- MLRO- Internal audit function- Other compliance functions

- **NB - CU identifies CF roles**

PCF

- PCF – Pre-approval Controlled Functions
 - CUPCF-1: Chair of the Board
 - CUPCF-2: Manager
- Subset of Controlled Functions
- Cannot be appointed or re-elected to role without pre-approval by Central Bank
- CU to carry out Due Diligence prior to proposing
- Individual Questionnaire

PCF

- PCF's in-situ do not require approval for the remainder of their term
- If being re-elected then approval is required
- Once approved, not required again once they remain in that role – CU to confirm no changes in circumstances since approval

- **Note** – if being re-elected because of rotation then pre-approval is required.

Dates

- After 1 Aug 2013 **Prior** written approval from CB for proposed appointments to CF's who are also **PCF's**
- 1 Nov 2013 All CF's for the **first time** (not re-election/re-appointment) Prior approval not required
- 1 Dec 2013 List of PCF's to CB at 1 August 2013
 - Confirm due diligence (CB to provide details on how this will be submitted)
- 1 Aug 2014 All persons occupying CF's
- 1 Aug 2015 Applicable to all Credit Unions

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Individuals CF

- Competent & Capable
 - Demonstrate experience, qualification, training
 - Demonstrate knowledge of CU and understand regulatory and legal environment
- Honest, Ethical and with Integrity
 - Track record
- Financial Soundness
 - Manage affairs in a sound and prudent manner
 - Issues not to adversely affect ability to perform CF to a material degree (bankruptcy, unsatisfied judgement, default from agreed arrangement etc.)

Fitness & Probity Individuals CF

- Must comply with the Standard
- Confirm in writing to abide by the Standard
- Must provide CU information to enable it to conduct Due Diligence
- May be subject to investigation if CB suspicion on fitness & probity
- May be required to comply with an evidentiary notice
- May be subject to suspension notice or prohibition notice under Act

Credit Union

- Initially : satisfied that CF & PCF comply with Standard
- On-going : ensure officers comply with and have agreed to comply with Standard (**Document**)
- **Identify and maintain** a record of persons performing CF together with a record of due diligence
- Carry out appropriate due diligence
- Establish system of controls to comply and retain supporting documents.

- Not required to submit list of CF's to Bank unless requested.

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How to assess

- CU to be satisfied on **reasonable grounds** that CF is compliant
- Each CF should be considered and determine specific competencies and level of probity

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Due Diligence - Competence

- In assessing competence and capability of a CF the CU should
 - Consider previous experience
 - Record of interviews/application
 - References
 - Evidence of professional qualifications
 - Evidence CPD (where relevant)
 - Evidence of Minimum Competency (where relevant)
 - Other responsibilities carried out

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Due Diligence - Competence

- Example – Board of directors - minimum
 - Knowledge in relation to business model and operating environment
 - Understand legislative and regulatory framework
 - Interpret CU financial statements
- Chair and others
 - Strategic planning
 - Risk management (identify, assess, monitor, control and mitigate)
 - Effective governance, oversight and controls

Due Diligence - Probity

- In assessing a CF's probity a CU should
 - Obtain **written confirmation** that there are no issues
 - Restricted director
 - Complaint to CB
 - Director of company that was involuntary struck off
 - Disqualified from acting as director (CRO)
 - Convicted of money laundering offence, fraud etc.
 - Disciplined by a professional body (incl if director of co.)
 - CU loan with arrears of greater than 90 days
 - Defaulted on any payment under a scheme of arrangement with creditors
 - Subject to judgement debt (Stubbs, Experian etc.)
 - Subject of bankruptcy petition
 - Adjudicated bankrupt (CU Act 97 requires person to cease)
 - A director of an entity which has been the subject of insolvency
 - If circumstances apply, CF to demonstrate that their **ability is not adversely affected to a material degree by the matter.**
 - CU should assess all documents submitted to determine if matter is material to the performance of the CF (**Document assessment**)

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Due Diligence - Probity

- If considered material
 - Make enquiries on the information
 - Not required to suspend or remove CF solely on matters listed
 - Up to CF to demonstrate that their ability is not adversely affected to a material degree
 - If CU unable to obtain sufficient information to make a decision they may be unable to confirm compliance with Standards.

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Due Diligence - Template

Examples of due diligence to be undertaken by credit unions for assessing a person's compliance with the Standards:

Standard	Supporting documents obtained from a third party	CF / PCF
Competent and Capable	Provision of a copy of the relevant transcripts	Y
	Professional Body Check	Y
	Employer's References	Y
	Minimum Competency Code 2011	I/A
	Conflicts	SC
Honest, ethical and with integrity	Garda Check/Convictions	SC
	Regulator Check ²⁹	Y
Financial Soundness	Judgments Search ³⁰	Y

Y = Checks undertaken by the regulated financial services provider

SC = Self Certify

I/A = If Applicable

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Who is responsible for Due Diligence

- For election to
 - Board of Directors – **Nomination Committee**
 - Board Oversight Committee – **Nomination Committee** and Board Oversight Committee jointly
 - Manager – Board of Directors or a sub-committee (**nomination committee**)
 - Other CF – CU to determine once no conflict of interest

Election of CF

- Allow sufficient time in **advance** of election for Due Diligence
- In advance of AGM
 - Identify potential candidates (members list?)
 - Carry out DD on each person for election
 - Potential candidates to confirm in writing they agree to abide by Standards
 - CU notify the person whether they are satisfied they are fit & proper and therefore eligible to stand for election
 - If CU deem person not fit & proper they must inform that person that they are not eligible to stand for election
- Note – no advance CB approval for CF

Election of PCF

- Chairperson elected at board meeting held after AGM (S63 CU Act 97)
- Person wishing to stand for election to Chair should be pre-approved by CB in advance of AGM
- Nomination Committee should identify in advance of AGM a potential candidate for Chair
- CU carries out DD to assess if person would comply with Standards
- CU notify person whether they are satisfied they are fit & proper and whether the person may seek pre-approval from CB
- If CU deem person not fit & proper they may not seek pre-approval and may not stand for election to Chair

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Election of PCF

- If CU deems person fit & proper, pre-approval must be sought from CB before AGM election
- Person to complete Individual Questionnaire
- CU to review IQ
- CB process – aim for 15 days
- CB will notify CU and CU then notify person
- If approved the person may be considered for election for that PCF only.
- CB may require an interview with PCF (based on CU PRISM rating)

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Outsourcing

- Regulated entity – do not apply
- Unregulated entity
 - Identify who will perform CF and assess that person
 - CU responsible for compliance with standards
 - Provider should confirm in writing compliance with Standards and sample documentation as to how compliance with Standards is adhered to.

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