



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2016

**Corporate Governance Requirements for Insurance
Undertakings 2015 – Guidelines on the Compliance
Statement in accordance with Section 26**



Contents

| | |
|--|----|
| 1. Scope of the Compliance Statement | 4 |
| 2. Submission of the Compliance Statement | 4 |
| 3. Frequency of the Compliance Statement | 4 |
| 4. Material Deviations from the Requirements | 5 |
| 5. Auditor input | 5 |
| 6. Disclosure requirements under the Requirements | 5 |
| 7. Use of information by the Central Bank | 5 |
| 8. Confidentiality of the Compliance Statement | 6 |
| 9. Materiality | 6 |
| 10. Monitoring Compliance | |
| 11. Combining Compliance Statements with existing reporting Requirements | 6 |
| 12. Dis-application of certain obligations under the Requirements | 7 |
| 13. Retention of supporting documentation | 7 |
| - The board | 7 |
| - Directors | 8 |
| - Corporate governance policies and procedures | 8 |
| - Sub-committees | 9 |
| - Meetings | 10 |
| - Risk Appetite | 10 |
| 14. Availability to the Central Bank | 11 |
| 15. Role of Advisors to committees | 11 |
| 16. Sub-committees | 11 |
| Appendix 1 | 12 |

Introduction

The following guidelines are provided to assist insurance undertakings and directors in preparing the Compliance Statement which is required by Section 26 of the Corporate Governance Requirements for Insurance Undertakings 2015 (“the Requirements”). The guidelines are non-exhaustive and should be read in conjunction with the guidance which the Central Bank has published on its website in relation to Frequently Asked Questions on the Requirements.

The Central Bank has developed a Compliance Statement and an overview of the board and sub-committees (attached as Appendix 1) which insurance undertakings must, at a minimum, complete in order to comply with their obligation under Section 26.

This guidance may be updated by the Central Bank from time to time.

Financial Risks and Governance Policy Division
December 2016

1. Scope of the Compliance Statement

Sections 4.3 and 26 of the Requirements refer to the obligation on insurance undertakings to make a Compliance Statement in relation to the Requirements. The following is relevant when making such statements:

- (a) The scope of the Compliance Statement relates to reporting on compliance with the obligations set out in the Requirements;
- (b) The Compliance Statement should include reports of any material deviations from the Requirements together with details of the background to that deviation and the remedial action taken or proposed to be taken by the insurance undertaking;
- (c) The Compliance Statement should include details of any ad hoc reports of material deviations which an insurance undertaking has already made to the Central Bank (under Section 4.2) and/or which its directors have made (under Section 6.7) during that period.

2. Submission of the Compliance Statement

The Compliance Statement should be submitted to the insurance undertaking's examiner/supervisor in the first instance.

3. Frequency of Section 26 Compliance Statements

The Compliance Statement must be filed annually with the Central Bank. For Solvency II insurance undertakings this should be not later than the date on which the insurance undertaking is required to submit its annual Quantitative Reporting templates and Regular Supervisory Reports. For insurance undertakings not subject to the Solvency II regime it should be filed together with the insurance undertaking's annual report.

Under Section 26 of the Requirements, the Central Bank may request more frequent reports from an insurance undertaking. If this is the case, it will notify the insurance undertaking accordingly.

4. Material Deviations from the Code

Where an insurance undertaking has identified a material deviation it will also be required to submit to the Central Bank a report on material non-compliance. The Central Bank has not prescribed the form of such a report as this will depend upon the facts of the case. However, at a minimum this report should contain details of the material deviation, the background and any remedial action taken or proposed to be taken by the insurance undertaking.

5. Auditor input

Under the Requirements external auditors are not required to express an opinion on an insurance undertaking's compliance in the Compliance Statement.

6. Disclosure requirements under the Requirements

Insurance undertakings are required to publicly state in their annual report (i.e. the report which is available to shareholders) that they are subject to the Requirements and whether or not they are subject to the additional requirements in Appendix 1 (i.e. as "High Impact designated insurance undertakings"). The Requirements encourage non-High Impact designated insurance undertakings to comply with the obligations imposed on High Impact designated insurance undertakings. Where they decide to do so, they may disclose this in the annual report.

7. Use of information by the Central Bank

Where an insurance undertaking reports a material breach of the Requirements to the Central Bank pursuant to Section 26 of the Requirements (or any other section of the Requirements), the Central Bank may use that information for any of its regulatory functions, including those referred to in Section 3.7 of the Requirements.¹ This may expose the insurance undertaking and/or the persons concerned in its management to, inter alia, financial penalties and other sanctions.²

Where an insurance undertaking reports a material breach of the Requirements in the Compliance Statement, which constitutes a criminal offence to the Central Bank, then, having regard to the insurance undertaking's constitutional entitlements under Section 38 of the Constitution, the information provided in the Compliance Statement (pursuant to the exercise of compulsory powers) may not be used as evidence in criminal proceedings.

¹ Including pursuant to Part IIIC of the Central Bank Act 1942 and Part 3 of the Central Bank Reform Act 2010.

² Failure to report a material breach to the Central Bank in the first instance also constitutes a breach of the Requirements.

8. Confidentiality of the Compliance Statement

The Central Bank does not require the Compliance Statement to be published in the insurance undertaking's annual report. The Compliance Statement is confidential when submitted to the Central Bank. However, where a Compliance Statement contains reports of material non-compliance in respect of which the Central Bank subsequently takes enforcement action (against an individual or insurance undertaking), publication of such non-compliance may be required as part of that enforcement action.

9. Materiality

The board is responsible for determining (in the first instance) whether a deviation from the Requirements is material. Whether a deviation is material or not will depend upon the facts of each case. The Central Bank considers all areas of the Requirements to be equally important.

10. Monitoring compliance

The Requirements state that insurance undertakings must establish and monitor compliance with certain policies and procedures (for example in relation to risk management, potential conflicts of interest, or reporting material non-compliance with the Requirements to the Central Bank). It is important that such policies and procedures are properly documented and that any reviews of compliance are carried out regularly and acted upon promptly where non-compliance is identified. It is also important that the individuals responsible for establishing and monitoring compliance are clearly identified and documented.

11. Combining Compliance Statements with existing reporting Requirements

For Solvency II insurance undertakings³ the Compliance Statement in accordance with Section 26 of the Corporate Governance Requirements forms part of the overall Compliance Statement to be provided by insurance undertakings as set out in the Guideline for Solvency II (Re)Insurance undertakings on Directors' Certifications 2016. For insurance undertakings not subject to the Solvency II regime the Compliance Statement in accordance with Section 26 of the Corporate Governance Requirements forms part of the Directors Compliance Statement to be provided by insurance undertakings as

³ Undertakings authorised under the EU (Insurance and Reinsurance) Regulations 2015 and required to comply with financial services legislation in the following areas;

- Insurance Act, as defined in the EU (Insurance and Reinsurance) Regulations 2015;
- EU (Insurance and Reinsurance) Regulations 2015 ("S.I. 485"); and
- Applicable European Commission Delegated Regulations and European Commissions Implementing Regulations designated as designated enactments in section 2(2a) of the Central Bank Act 1942.

set out in the Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings – Compliance Statement 2014.

12. Dis-application of certain obligations under the Requirements

The Requirements have adopted a proportionate approach to imposing corporate governance requirements on insurance undertakings based on their nature, scale and complexity. This has resulted in the separate approach applied to High Impact designated insurance undertakings and to non-High Impact designated insurance undertakings.

In certain circumstances, the Requirements also provide for insurance undertakings and subsidiaries to seek the Central Bank's consent to dis-apply certain obligations under the Requirements. Where such consent is sought, it should be sought on a timely basis and should include any particular submissions required by the Requirements. Any written consents to dis-apply parts of the Requirements which are provided by the Central Bank should be retained by the insurance undertaking and referred to in the Compliance Statement for the relevant period.

13. Retention of supporting documentation

Directors are required to undertake reasonable enquiries to satisfy themselves as to whether the insurance undertaking has complied with the Requirements.

In some cases, compliance shall be supported or to some extent demonstrated by the existence and/or content of certain documents. These documents should be retained by the insurance undertaking so that they are available to the Central Bank if required. Documents should be retained for 6 years. The following types of supporting documentation may be used to demonstrate compliance with obligations under the Requirements.

(a) The board

- Terms of reference for the board might include, for example:
 - Matters reserved to the board;
 - Authority of the board and details of powers which have been delegated by the board;
 - The board's functions;
 - Membership;
 - Reporting lines;
 - Meeting frequency;

- Voting rights;
 - Quorums; and
 - Method and frequency of review of terms of reference.
- Details of method of assessment of appropriateness of size, expertise and independence of board membership.
- Process for review of the individual members and the board's overall performance.

(b) Directors

- Information concerning their appointment, for example, confirmation of each director's job description and their ability to meet the job description and obligations under the Requirements by virtue of their knowledge, skills, experience, expertise, competencies, professionalism, fitness, probity and integrity to carry out their duties (such as C.V., references, confirmation of qualifications, regulatory approvals).
- Letters of engagement/appointment of each director on the board including:
 - Date of appointment;
 - The required time commitment;
 - Their role on the board and on any sub-committees;
 - Their collective and individual responsibilities;
 - The basis for performance review and review of membership generally;
 - Their training needs (generally and in relation to the business, risks and activities of the insurance undertaking) and the basis for monitoring training received;
 - Details of all directorships held by directors and policy/procedure for considering subsequent appointments to directorships;
 - Details of resources available (generally and in relation to understanding the insurance undertaking's financial statements); and
 - Contact details.

(c) The insurance undertaking's corporate governance policies and procedures

- The insurance undertaking's strategies, goals and objectives.
- The insurance undertaking's and the board's succession plan.
- Procedures for:
 - Monitoring compliance with the Requirements;

- Considering reports of suspected material deviations from the Requirements and policies for identifying and taking remedial action; and
 - Reporting material deviations to the Central Bank.
- Corporate governance policies and procedures including:
 - Structures put in place;
 - Lines of responsibility of board, sub-committees and senior management (and where applicable within the group);
 - Method of monitoring compliance;
 - Internal control mechanisms;
 - Administrative and accounting procedures;
 - IT systems and controls;
 - Remuneration policies and practices; and
 - Confirmation of how corporate governance policy and procedures have been communicated to all appropriate staff.
- Policy for documenting responsibilities of senior management and delegated powers.
- The insurance undertaking's policy on identifying, preventing and managing potential conflicts of interest.

(d) Sub-committees

- Terms of reference for each sub-committee including:
 - Authority;
 - Functions;
 - Membership (i.e. numbers and types of membership);
 - Reporting lines (to and from individuals and to and from the board);
 - Meeting frequency;
 - Voting rights;
 - Quorums;
 - Role of specific members;
 - Oversight responsibilities; and
 - Method and frequency of review of terms of reference.
- Where the functions of sub-committees are carried out at group level or by the board, written confirmation of:
 - The basis upon which this was decided by the board;
 - The Central Bank's consent (where required); and
 - The basis upon which the board is satisfied that reliance on the group structure for sub-committees is appropriate to the specific circumstances of the insurance undertaking.

(e) Meetings

- Documentation relating to board meetings and meetings of sub-committees including:
 - Agendas (including resolutions proposed and by whom);
 - Board papers;
 - Minutes of board meetings or sub-committee minutes showing:
 - Date and time of meeting;
 - Location held;
 - Members' attendance;
 - Key items discussed and who proposed them;
 - Resolutions passed and decisions taken;
 - Members' input in such resolutions and decisions (including dissenting views and challenges raised);
 - In the cases of sub-committees, details of the method of managing cross membership; and
 - Reports to the board and sub-committees; and
- Documentation relating to matters agreed and decisions taken by the board bilaterally.

(f) Risk Appetite

- Documented risk appetite which tracks performance and compliance with the agreed strategy in line with Section 15.1 of the Requirements.
- Details of the risk management framework.
- Policy for reviewing the risk management framework and reporting to the board and to the Central Bank on compliance and deviations from the defined risk appetite.
- Policy for ensuring independence from business units of all key Control Functions such as:
 - Internal audit;
 - Compliance; and
 - Risk management.
- Policy for ensuring all key control functions have:
 - Adequate resources; and
 - Authority to operate effectively.
- Policy for ensuring that the board receives timely, accurate and sufficiently detailed information from risk and control functions.
- Remuneration policy and practices and system of review for effectiveness and compliance.

14. Availability to the Central Bank

The Requirements state that the majority of directors must be reasonably available to the Central Bank at short notice. The meaning of “short notice” will depend on the facts of the particular case and will be influenced, for example, by the urgency of the issue and the reasonable travel time needed by the directors. Depending on the facts of the case the Central Bank will also consider whether contact by telephone or video conference would suffice in the place of a meeting.

15. Role of advisors to Committees

Where non directors such as actuaries, risk management or accounting executives provide a role or function to the board, or to a sub-committee of the board, that role, their functions, reporting lines and responsibilities should be clearly documented in the board or sub-committee’s terms of reference.

16. Sub-committees

The Requirements set out the mandatory sub-committees which insurance undertakings must establish and those sub-committees where discretion to establish such a sub-committee exists. Insurance undertakings should not combine committees. Where the board carries out the functions of sub-committees, it should do so separately for each committee. It should be clear from the minutes of the meeting the capacity in which the board was sitting. This also applies in the event that the board decides to establish additional sub-committees to those referred to in the Requirements e.g. a compliance committee. Where the board considers that there are mutual areas of interest, it should establish and document appropriate reporting lines.

Appendix 1

Compliance statement⁴ in accordance with Section 26 of the Corporate Governance Requirements for Insurance Undertakings 2015

We, the Directors of [Name of insurance undertaking], confirm that, to the best of our knowledge, during the reporting period ended on [reporting date] the insurance undertaking:

- (i) has materially complied with all of its obligations and requirements under the Corporate Governance Requirements for Insurance Undertakings 2015; or
- (ii) has failed to materially comply with its obligations and requirements under the Corporate Governance Requirements for Insurance Undertakings 2015 in the instance(s) identified in the Report of material non-compliance annexed to this statement.

[Delete as appropriate]

SIGNED:

| | | |
|----------|----------|----------|
| _____ | _____ | _____ |
| DIRECTOR | DIRECTOR | DIRECTOR |
| _____ | _____ | _____ |
| DIRECTOR | DIRECTOR | DIRECTOR |
| _____ | _____ | _____ |
| DIRECTOR | DIRECTOR | DIRECTOR |

DATED: _____

⁴ For Solvency II insurance undertakings this compliance statement will form part of the overall Compliance Statement set out in the Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications. For insurance undertakings not subject to Solvency II this compliance statement will form part of the Directors Compliance Statement as set out in the Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings – Compliance Statement 2014.

Overview of board and sub-committees

Directors:

| Directors Name | Status on board ⁵ | Membership and status on Sub-Committees | Length of Tenure on board and sub-committees | No. & nature of other Directorships held ⁶ |
|----------------|------------------------------|---|--|---|
| | | | | |
| | | | | |
| | | | | |

Sub-Committees established:

| Audit | Risk | Remuneration | Nomination | Other |
|-------|------|--------------|------------|-------|
| | | | | |

Meetings:

| Type of meeting ⁷ | Number of meetings required | Total Number held | Frequency of meetings | Attendance ⁸ |
|------------------------------|-----------------------------|-------------------|-----------------------|-------------------------|
| | | | | |
| | | | | |

⁵ For example, Chairman, CEO, Independent Non-Executive Director, Executive Director, Advisor.

⁶ E.g. number of financial directorships and non-financial directorships.

⁷ Board meeting or sub-committee meeting.

⁸ Members who attended each meeting.

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