



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

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Corporate Governance Code for Credit Institutions and Insurance Undertakings - Frequently Asked Questions

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The Corporate Governance Code for Credit Institutions and Insurance Undertakings (“the Code”) sets out the Corporate Governance obligations which apply to Credit Institutions and Insurance Undertakings (excluding captive insurance and captive reinsurance undertakings). This document contains information which is provided for guidance purposes only. This guidance reflects questions which have been raised in relation to the Code and is informed by the Central Bank’s developing practice and experience in applying the Code. This guidance may be updated by the Central Bank from time to time.

This guidance has been updated to provide further clarification with regards to: (i) “Board Majority” (Q.15-J), (ii) “Role of the Board” (Q34) and (iii) Annual Compliance Statement (Q.53).

Governance, Accounting and Auditing Policy Division
June 2012

No.	<u>Section of the Code and Obligation Per Code:</u>	<u>Question:</u>	<u>Answer:</u>
Scope			
1.	1.1 <i>The Code imposes minimum core standards upon all credit institutions and insurance undertakings licensed or authorised by the Central Bank (including reinsurers but excluding captives)....</i>	<p>(a) How does the Code affect the application of existing guidance on corporate governance for reinsurance undertakings?</p> <p>(b) Does the code replace the existing requirements or do they continue to apply in conjunction with the requirements set out in the new code.</p> <p>(c) Does “captives” include captive Reinsurers?</p>	<p>(a) The Code for Reinsurers continues to apply per Section 3.6 of the Code.</p> <p>(b) We will continue to apply the Code for Reinsurers and in the event of any conflict, we shall apply the higher standard of requirements of the two codes.</p> <p>(c) Yes.</p>
2.	1.2 <i>The Code will not apply to foreign incorporated subsidiaries of an Irish institution. Such institutions are encouraged, however, to adopt equivalent good governance practices.</i>	<p>(a) Does the Code apply to the branches of a foreign institution based in Ireland?</p> <p>(b) Does the Code apply to foreign branches of Irish institutions?</p>	<p>(a) The Code does not apply to a branch of a foreign entity authorised in the <u>EEA</u>, passporting into Ireland, as such a branch is not a separate legal entity with its own authorisation or licence but instead avails of passporting provisions. With a number of exceptions its activities are supervised by the Home State regulatory authority.</p> <p>There are no passporting arrangements for <u>non-EEA</u> country institutions which have established a branch in Ireland. Such institutions are required to obtain a licence from the Central Bank and therefore are subject to all relevant parts of the Code.</p> <p>(b) Yes. A branch is not a separate legal entity but is part of an institution licensed or authorised by the Central Bank, and as such is subject to the Code as part of the institution as a whole.</p>

3.	1.4	<i>Institutions are required to disclose in their annual report that they are subject to the Code and whether they are required to comply with the additional requirements for major institutions.</i>	<p>(a) What constitutes an annual report for the purposes of this section?</p> <p>(b) Does this apply to non-major institutions?</p> <p>(c) Do non-major institutions need to disclose that they do not need to comply with the additional requirements for major institutions?</p>	<p>(a) For the purposes of this section, the annual report is the annual report which is available to shareholders.</p> <p>(b) Yes.</p> <p>(c) Yes. For clarity and transparency institutions should confirm whether or not they are subject to the requirements of Appendix 1. The Code encourages non-major institutions to comply with the requirements for major institutions. Where they decide to do so they should disclose this.</p>
Definitions				
4.	2.0	<p><i>A Major Institution is an institution that in the Central Bank's view has any or all of the following features;</i></p> <p><i>1. A significantly large presence in the local market; and/or</i></p> <p><i>2. Carries on significant international activities outside the State; and/or</i></p> <p><i>3. Is significant (including, but not limited to, by reference to size, substitutability, and reputation).</i></p>	<p>(a) How and when will institutions know if they are a "Major Institution?"</p> <p>(b) Why is there no quantitative guidance provided with regards to determining whether an institution is to be classified as a "Major Institution"?</p>	<p>(a) The Central Bank assessed whether or not an institution is a Major Institution in line with the criteria set out in the Code and wrote to institutions to inform them of their proposed status. Institutions can make representations to the Central Bank should they wish to query their proposed designation as a major or non-major institution. All institutions have been informed of their status.</p> <p>(b) The Central Bank took the decision to be flexible and not to impose a black line limit but instead to identify criteria which would apply on a continuous basis.</p>
5.	2.0	<i>Non-executive director: A director without executive management responsibilities for the institution but who may</i>	(a) Do these concepts apply in cases where the parent group is a non financial group?	(a) Yes, they apply to both financial and non financial groups as described by Sections 7.2, 7.7 and 7.8 of the Code.

		<p><i>have executive management responsibilities assigned to him or her within the Group.</i></p> <p><i>Independent Non-executive director: A non-executive director who satisfies the criteria for director independence.</i></p> <p><i>Group director: A director of an institution who would satisfy the criteria for director independence except for existing relationships with the institution's direct or indirect parent and/or any other direct or indirect subsidiary of such parent other than the institution.</i></p>	<p>(b) In the case of a Non-Executive Director employed with another group company, would any form of intra-group service provision between that other group company and the institution for which the person is proposed as director be regarded as automatically compromising their independence?</p> <p>(c) Is an internal director considered a Group director?</p>	<p>(b) Ultimately this depends on the facts of the case. In general terms any director who holds another directorship within the group could be described as a group director – the type of directorship held within the group might be an executive director, a non-executive director or an independent non-executive director.</p> <p>(c) The term internal director is not used in the Code.</p>
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Criteria for determining whether a director is independent

6.	2.0	<p><i>Independence is defined as the ability to exercise sound judgement and decision making independent of the views of management, political interests or inappropriate outside interests.</i></p> <p><i>The following criteria shall be considered and given reasonable weight when determining if a director is independent:</i></p> <ul style="list-style-type: none"> • <i>Any financial or other obligation the individual may have to the financial institution or its directors;</i> • <i>Whether the individual is or has been employed by the financial institution or a group company in the past and the post(s) so held;</i> • <i>Whether the individual is or has been a provider of professional services to the financial institution in the recent past;</i> • <i>Whether the individual represents a significant shareholder;</i> 	<p>(a) Is there a threshold in Euro beneath which could be considered a material factor for the purposes of assessing independence?</p> <p>(b) Would a former partner of the institution's audit firm be considered independent?</p> <p>(c) What if the proposed INED was formerly the audit partner for that institution?</p> <p>(d) What period is considered to be "the recent past" e.g. is it up to 2 years, 3 years?</p>	<p>(a) No, the Code does not apply a threshold; each case will be determined on its own merits.</p> <p>(b) This will depend on the facts of the case. The Central Bank will consider for example:</p> <ul style="list-style-type: none"> - the nature of the services provided by the professional services provider and his/her firm; - the period which has expired since those services were provided; and - the potential for any conflict of interest which might reasonably arise. <p>(c) This will depend on the facts of the case.</p> <p>(d) This will depend upon the facts – the more directly that an individual was involved in an institution's business, the longer the period might be. In general we consider that the expiration of 2 years might be sufficient for a partner who was not responsible for audit and three years might be sufficient for one who was responsible for audit. However, ultimately it is a question for the Central Bank to be satisfied as to whether a director meets the criteria for independence.</p>
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		<ul style="list-style-type: none"> • <i>Circumstances where the individual has acted as an independent non-executive director of the financial institution for extended periods;</i> • <i>Any additional remuneration received in addition to the director's fee, related directorships or shareholdings in the financial institution; and</i> • <i>Any close business or personal relationship with any of the company's directors or senior employees.</i> 		
7.	2.0	<p><i>Institution: A bank licensed under Section 9 of the Central Bank Act 1971 or a building society authorised under the Building Societies Act 1989 including a credit institution registered as a designated credit institution under the Asset Covered Securities Act 2001 and an insurance undertaking holding an authorisation within the meaning of paragraph (a) of the definition of 'authorisation' in Article 2(1) of the European Communities (Non-Life Insurance) Framework Regulations 1994 or Article 2(1) of the European</i></p>	<p>(a) Does this definition of 'Institution' refer only to those undertakings authorised by the Central Bank of Ireland?</p> <p>(b) Are the references in the Code to "financial institutions" intended to be covered by the definition in the Code for "Institution"?</p>	<p>(a) Yes. See question 2(a) above.</p> <p>(b) Yes.</p>

		<i>Communities (Life Assurance) Framework Regulations 1994 and as Reinsurance undertaking as defined in Article 3 of the European Communities (Reinsurance) Regulations, 2006. This Code does not apply to Captive Insurance undertakings and Special Purpose Reinsurance Vehicles (SPRVs).</i>		
Legal Basis				
8.	3.5	<i>The obligation to submit an Annual Compliance Statement to the Central Bank pursuant to Section 25 of the Code shall be imposed by notice under Section 25 of the Central Bank Act 1997.</i>	(a) Will a specific format be provided or will a regulated entity's internally developed compliance statement be acceptable?	(a) In August 2011 the Central Bank published guidelines to assist institutions and directors in preparing the Annual Compliance Statement. The guidelines are non-exhaustive and should be read in conjunction with question 53 of this document.
9.	3.6	<i>This Code is imposed in addition to, and shall not affect, any other corporate governance obligations and standards to which an institution is subject otherwise than under these requirements and other conditions and/or requirements set out in the licence or authorisations of institutions.</i>	(a) Where there is a conflict between the Code and other corporate governance requirements, which takes precedence? (b) If a Central Bank authorisation imposes more onerous requirements than the Code, do the licence conditions take precedence over the Code? (c) Are Reinsurers governed by both the December 2007 Corporate Governance for Reinsurance Undertakings	(a) If a conflict arises between the Code and another corporate governance obligation or standard, the stricter of the obligations or standards should be met so as to ensure compliance with both sets of obligations. Any concerns that such compliance cannot be achieved due to identified conflicts should be notified to the Central Bank promptly. (b) Yes, the Code is imposed in addition to, and shall not affect, any other corporate governance obligations and standards to which an institution is subject. (c) Yes, please see question 1 above. The Central Bank issued a separate Corporate Governance Code for

			and the Code?	captives, "The Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings" in August 2011.
Reporting to the Central Bank				
10.	4.2	<i>Any institution which becomes aware of a material deviation from this Code shall within 5 business days report the deviation to the Central Bank, advising of the background and the proposed remedial action.</i>	<p>(a) Are there any precedents or guides as to what the Central Bank would view as a "material deviation", or is it the responsibility of the entity's board of directors to determine what constitutes a material deviation?</p> <p>(b) Can the importance of the sections in this regard be weighted?</p>	<p>(a) The board is responsible for determining (in the first instance) whether a breach is material based on the particular facts.</p> <p>(b) The Central Bank considers that compliance with all sections of the Code to be equally important.</p>
11.	4.3	<i>The Central Bank also requires each institution to submit an Annual Compliance Statement as set out at Section 25, in accordance with any guidelines issued by the Central Bank, specifying whether the institution has complied with the Code.</i>	<p>(a) Under the Corporate Governance Requirements for Reinsurance Undertakings, reinsurance entities are required to submit an Annual Directors' Compliance Statement with their annual returns. Is it correct to infer that the new requirements supersede the requirements from December 2007, and that therefore only one compliance statement will be required?</p> <p>(b) Is the Annual Compliance Statement required by the Code in addition to the annual compliance statement required for non-life companies and life companies?</p>	<p>(a) No, the new requirements operate in addition to the Corporate Governance requirements imposed upon Reinsurance Undertakings in December 2007. Confirmation of compliance will be required in relation to both sets of requirements, albeit they may be submitted together in one composite statement.</p> <p>(b) Yes. The Central Bank has no objection to one composite compliance statement being submitted by companies provided that it covers all of the existing requirements on insurance undertakings and re-insurance undertakings together with the code requirement.</p>

General Requirements				
12.	6.7	<i>Any director who has any material concern about the overall corporate governance of an institution shall report the concern without delay to the board in the first instance and if the concern is not satisfactorily addressed by the board within 5 business days, the director shall promptly report the concern directly to the Central Bank advising of the background to the concern and any proposed remedial action. This is without prejudice to the director's ability to report directly to the Central Bank.</i>	<p>(a) How would this work in practice?</p> <p>(b) Does the board have to convene for an ad-hoc meeting within the 5 day period?</p> <p>(c) If yes, unless teleconferencing is permitted, this may logistically problematic?</p>	<p>(a) Section 6.3 of the Code requires the board to have robust governance procedures in place. If, on notifying the board a director has a material concern which is not addressed within 5 business days then he or she must report it to the Central Bank.</p> <p>(b) It may not be necessary for the board to convene to have concerns addressed. This will depend on the facts of the case and the procedures adopted by the board to consider reported concerns, investigate them, establish whether they are justified, and merit making a report to the Central Bank, and what, if any, remedial action is required.</p> <p>(c) The Central Bank will take a pragmatic approach in relation to participation at such meetings. In so doing, the facts of the case will be considered, including whether the steps taken by the board were reasonable and sufficient to comply with their obligation to consider such concerns promptly, and whether teleconferencing to discuss matters sufficed.</p>
13.	14.4	<i>In the event of a material deviation from the defined risk appetite measure, the details of the deviation and of the appropriate action to remedy the deviation shall be communicated to the Central Bank by the board promptly in writing and no later than 5 business days of the Board becoming aware of the</i>	<p>(a) Can the scope of such reporting be clarified?</p> <p>(b) Institutions consider this would be challenging in 5 days, in particular determining the appropriate action,</p>	<p>(a) The section refers to business days so this would exclude Saturdays, Sundays and Bank Holidays. The scope of the report will depend on the facts of the case, but the Central Bank expects that at a minimum it will include details of the nature, extent and date of the deviation, potential consequences and remedial action taken or proposed to be taken.</p> <p>(b) Yes, an action plan might be adequate depending on the facts of case. The Central Bank would be</p>

		<p><i>deviation.</i></p>	<p>as it could take 5 days and more to identify the scale of the deviation. Would an action plan to address the deviation be adequate?</p> <p>(c) The same applies to reporting by directors of material concerns (Section 6.7), if not properly addressed within 5 business days. The absence of whistle blowing protection for individual directors is an added concern here.</p> <p>(d) Can the Central Bank provide a list of clearly defined criminal offences?</p>	<p>concerned if an institution delayed unnecessarily in identifying and implementing remedial action.</p> <p>(c) See (b) above. The Central Bank will consider any necessary amendment to the Code in the event that a legislative whistleblower protection provision is created.</p> <p>(d) Institutions should be fully aware of any applicable criminal offences, their governing supervisory legislation and where criminal offences are identified within that legislation.</p>
14.	6.8	<p><i>An institution shall comply with the Code on an individual basis. Accordingly, while an institution may adopt policies or procedures developed at group level, the institution shall satisfy itself that such policies or procedures meet all of the requirements of the Code.</i></p>	<p>(a) Can the Central Bank please confirm that all existing high level governance policies (i.e. Compliance, Whistle Blowing, AML, Anti Fraud, Conflicts of Interest etc.) meet this Code requirement?</p>	<p>(a) No, this is for institutions to satisfy themselves. Where high level policies already exist at group level, the institution must ensure that they comply with all aspects of the Code.</p>

Composition of the Board				
15.	7.2	<p><i>The majority of the board shall be independent non-executive directors (this may include the Chairman). However in the case of institutions that are subsidiaries of groups the majority of the board may be group non-executive directors, provided that in all cases the subsidiary institution shall have at least two independent non-executive directors or such greater number as is required by the Central Bank. Group directors shall act critically and independently so as to exercise objective and independent judgement.</i></p>	<p>(a) How does the requirement for board composition apply to subsidiaries?</p> <p>(b) For example, would the following composition be acceptable:</p> <ul style="list-style-type: none"> - one executive director; - two group non-executive directors (NEDs); - two INEDs. <p>(c) Could a NED in a group company qualify as an INED in a subsidiary?</p> <p>(d) Could an INED in a group company qualify as an INED in a subsidiary?</p> <p>(e) What does a group director mean as defined in Section 2 of the Code?</p> <p>(f) The term “group director” and “group non-executive director” are both used in the Code. Can we assume that due to “group non-executive director” not being defined in the Code, the two terms have the same meaning?</p> <p>(g) (i) The wording in the Code could be interpreted as requiring that the majority of the Board must be group non-executive directors and, in addition, that there should be two or more independent non-executive directors.</p>	<p>(a) The Board of a subsidiary may have a majority of non-executive directors and must include at least two INEDs.</p> <p>(b) Yes, on the basis that there are two INEDs, and a majority of NEDs.</p> <p>(c) A NED in a group company is very unlikely to be an INED in a subsidiary when the test of independence in the Code is applied.</p> <p>(d) An INED in a group company could probably be an INED in a subsidiary. This will depend on whether they can meet the test for independence. Independence must be tested and not just assumed.</p> <p>(e) A group director means an INED, NED or an executive director from the Group.</p> <p>(f) The terms do not have the same meaning. A group director is potentially broader than a group non-executive and may include an executive or non-executive director in any other company within the Group.</p> <p>(g) (i) The section states that in relation to a subsidiary the majority of the board may be group non-executives provided that there are at least two INEDs.</p>

			<p>(ii) Does the word 'may' have any specific relevance? Could it be inferred that, as long as an institution had at least 2 INEDs (a significant presence), it may choose to have as many Group Non-Executive Directors as seen fit /appropriate.</p> <p>(h) Where an INED is also a Non-Executive Director for a Group entity, for the purposes of meeting the minimum requirement to have at least 2 INED's on the board of the foreign subsidiary entities, would this disqualify the INED in question for being considered an INED as defined under the Code (assuming other independence criteria could be satisfied)?</p> <p>(i) Is there an error in the reference in Section 7.2 of the Code to "Group Non-Executive Director" which should instead refer to "Group Director"?</p> <p>(j) If a RFSP avails of the condition in Section 7.2 of the Code for subsidiaries of groups to use group non-executive directors to make up the majority of the board does this also apply to the creation of majorities at sub-committee level?</p>	<p>(ii) The section allows for a subsidiary of a non-major institution to have a majority of group non-executive directors as opposed to a majority of INEDS provided it has 2 INEDs¹.</p> <p>(h) The Central Bank will consider whether the director can meet the criteria for independence. An INED in a Group company may meet that criteria, however, if a director is a non-executive director in another group company rather than an INED, it raises questions as to why they do not meet the test for independence in that particular company?</p> <p>(i) No. The obligation upon group directors to act <i>critically and independently so as to exercise objective and independent judgement</i> applies to all directors who also hold directorships in the group regardless of whether the directors from other companies in the group are executive or non-executive directors in the institution which is subject to the Code.</p> <p>(j) As stated in the Code, 'in the case of institutions that are subsidiaries of groups the majority of the board may be group non-executive directors'. Where an institution applies this at board level it will translate to committee level also.</p>
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¹ 3 INEDs in the case of a major institution.

Board Meetings				
16.	7.4	<i>Board members shall attend each board meeting unless they are unable to attend due to circumstances beyond their control (for example, due to illness) and their attendance and eligibility to vote at each meeting shall be evidenced in the minutes of each meeting.</i>	<p>(a) What constitutes attendance for the purposes of the Code?</p> <p>(b) Where attendance by phone/videoconference /internet is permitted in the Articles of Association, would it be permissible for a reasonable proportion of board meetings?</p> <p>(c) Company law permits alternate directors to act as a director where the director is unavailable. Does the attendance of an alternate fulfil this requirement of the code?</p> <p>(d) What conditions will apply for ad hoc board meetings especially as, mentioned below, greater geographic diversity is encouraged, to increase the pool of suitable directors?</p> <p>(e) All companies currently have a quorum which may consist of two directors. How does this interact with the requirement for all directors to attend all meetings (where possible) in the Code?</p>	<p>(a) Directors should attend each board meeting in person wherever possible. However, the Central Bank is anxious to increase the pool of potential directors and recognises that because of the location of some directors, they may not always be able to attend each meeting in person, in which case videoconferencing or teleconferencing is permissible. The Central Bank is of the view that an individual director's active participation at board meetings is critical to the effective functioning of the board and the Central Bank will assess individual director performance and overall board participation and performance in this context.</p> <p>(b) See (a) above.</p> <p>(c) The Code does not provide for attendance by an alternate director and the Central Bank is not disposed to the use of alternate directors. However, it shall consider such attendance by an alternate director on an exceptional basis.</p> <p>(d) See (a) above.</p> <p>(e) The code applies in addition to all applicable corporate governance requirements.</p>

Meetings with the Central Bank				
17.	7.5	<i>An institution shall ensure a majority of its directors are reasonably available to the Central Bank at short notice, if so required.</i>	<p>(a) What would constitute <i>short notice</i>? Would 24 hours suffice?</p> <p>(b) Where directors are based overseas or have international travel commitments as part of their remit, does "reasonably available" include participation via telephone, videoconference or internet?</p> <p>(c) Does 'reasonably available' in Section 7.5 mean 'resident in the EU'?</p>	<p>(a) The meaning of short notice will depend on the facts of the particular case, and would be influenced, for example, by the urgency of the issue, and the reasonable travel time needed by the directors.</p> <p>(b) The Central Bank will consider the facts of the particular case, and depending on the urgency of the issue, and the travel time needed by directors, contact by telephone or video conference may suffice.</p> <p>(c) No.</p>
Directors' time commitment				
18.	7.6	<i>Each member of the board shall have sufficient time to devote to the role of director and associated responsibilities. The board shall indicate a time commitment expected from directors in letters of appointment.</i>	<p>(a) Where letters of appointment currently exist, should these be updated before the end of the time of appointment?</p> <p>(b) Can the Central Bank provide any guidelines about the time commitments it expects?</p> <p>(c) What is the position if the Central Bank disagrees with the time commitment set out in the letter of appointment - can it direct boards to increase this?</p>	<p>(a) Yes, institutions will be expected to update/amend directors' letters of appointment within the transitional timeframes provided for in the Code.</p> <p>(b) This is a matter for the institution to establish taking into consideration the directors' duties and functions.</p> <p>(c) Yes, the Central Bank would consider using its regulatory and supervisory powers to ensure that the time commitment is sufficient.</p>

Limits on Numbers of Directorships				
19.	7.7	<p><i>The number of directorships held by directors of institutions shall be limited. The Central Bank requires that the number of directorships of credit institutions and insurance undertakings held by a director shall not exceed five.² This restriction does not apply to other directorships within a financial services group. The Central Bank considers that an individual holding more than five directorships of credit institutions and insurance undertakings creates a rebuttable presumption that the director has insufficient time available to fulfil his or her role and functions as a director of a financial institution. However, the nature of the directorships and the time commitments required are also factors, hence fewer than five directorships of credit institutions and insurance undertakings may also indicate a possible constraint on the ability of a director to comply. Where it is proposed that a director of an institution holds more than five directorships of</i></p>	<p>(a) How do the limits on directorships operate? Are they cumulative?</p> <p>(b) Is there any scope to exceed these limits?</p>	<p>(a) For a non-major institution a director can hold the following directorships without requiring the prior approval of the Central Bank:</p> <ul style="list-style-type: none"> • up to 5 financial directorships (i.e. directorships in companies or groups of companies which are credit institutions or insurance undertakings); and • up to 8 non financial directorships (i.e. any other type of company which is not a credit institution or an insurance undertaking). <p>For major institutions a director can hold the following directorships without requiring the prior approval of the Central Bank:</p> <ul style="list-style-type: none"> (i) up to 3 financial directorships; and (ii) up to 5 non financial directorships. <p>(b) In relation to non-major institutions, where an institution proposes to appoint a director who already holds 5 financial directorships, there is some scope for the institution to seek the Central Bank's prior approval to appoint that director to the board of an additional credit institution or insurance undertaking. However there is no scope to do so where a director is a director of a major institution (per Section 7.7 in Appendix 1).</p> <p>In relation to the ability to appoint a director who has exceeded the maximum number of non financial directorships to either a major or non-major institution, institutions may apply to the Central Bank for its prior approval as provided for in both</p>

² In Appendix 1 of the Code, which sets out the requirements for "Major Institutions", this limit is 3.

		<p><i>credit institutions and insurance undertakings, the institution shall satisfy itself as to whether this is appropriate and seek the prior approval of the Central Bank. The institution shall also provide the Central Bank with a detailed rationale, together with supporting documentation, as to why it considers the number of directorships does not constitute an inordinate constraint on their time. Factors covered in such a submission shall include the degree to which the directorships held are with respect to companies actively trading, the degree of complexity of the operation of such companies and whether such companies are part of a group.</i></p>	<p>(c) How does the Group exemption operate?</p> <p>(d) Where an individual holds more than one directorship, does the responsibility for notification rest with the individual, with one of the institutions (if so, which one), or all institutions?</p> <p>(e) Where an individual holds group directorships, is it correct to surmise that each group counts effectively as one directorship from the maximum numbers specified, taking into account the indicated constraint factors?</p> <p>(f) Where a group includes, but is not limited to, financial services operations, are there any implications for directorships held in other parts of the group which are not financial services based?</p> <p>(g) Where an individual holds directorships in a variety of operations including captive re/insurers, do the latter fall into either of these restrictions on permissible number of positions?</p>	<p>Section 7.8 of the Code and Section 7.8 of Appendix 1.</p> <p>(c) All directorships held within the group, whether they are financial or non financial companies, shall be counted as one directorship.</p> <p>(d) It is a matter between the director and the institution to keep the institution fully informed about the number of directorships which a director intends to hold.</p> <p>Any institution proposing to appoint a director who exceeds the maximum number of directorships under the Code shall be responsible for notifying the Central Bank to seek prior approval to appoint the director. Institutions are required to satisfy themselves of compliance both on appointment of the director and on a continuing basis.</p> <p>(e) Yes, see (c) above.</p> <p>(f) No, see (c) above.</p> <p>(g) Directorships in captive insurance undertakings or captive reinsurance undertakings fall within the category of non financial directorships for the purposes of calculating directorships held.</p>
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			<p>(h) Are directorships held in funds or trustees included in the count for “non financial directorships”?</p> <p>(i) Are the limits on the number of directorships which can be held restricted to institutions regulated by the Central Bank or can they be institutions anywhere in the world?</p>	<p>(h) Yes.</p> <p>(i) The limits imposed are not limited to institutions regulated by the Central Bank. When considering proposed appointments the Central Bank will look at directorships beyond Ireland.</p>
20.	7.9	<p><i>In calculating the number of directorships held, the Central Bank shall exclude directorships held in the public interest on a voluntary and pro bono basis provided that such directorships shall not interfere with the director’s ability to fulfil properly his or her role and functions as a director of a financial institution.</i></p>	<p>(a) How does the exclusion for directorships held in the public interest on a voluntary and pro bono basis operate?</p> <p>(b) Does this include:</p> <p>(i) Personal not for profit directorships, such as trade associations and industry sector bodies. Although not necessarily in the public interest these would be unremunerated and non-executive;</p> <p>(ii) Not for profit board memberships such as: parish development boards, school boards, resident’s boards, cultural festivals and other such directorships?</p>	<p>(a) Directorships held on a pro bono basis or held in the public interest are excluded from the limits imposed under Sections 7.7 and 7.8 of the Code and Appendix 1 provided that such directorships do not interfere with the director’s ability to properly fulfil his or her role and functions as a director of a financial institution.</p> <p>(b) Such unpaid directorships would be excluded but only if they do not interfere with the director’s ability to properly fulfil his or her role and functions as a director of a financial institution. Any such directorships should be notified to the Central Bank for the purposes of seeking to avail of the exclusion.</p>

Reviewing Board Membership

21.	7.13	<p><i>Institutions shall review board membership at least once every three years. Institutions shall formally review the membership of the board of any person who is a member for nine years or more and it shall document its rationale for any continuance and so advise the Central Bank in writing. The frequency with which board membership is renewed shall be documented. The renewal frequency shall consider the balance of experience and independence sought.</i></p>	<p>(a) Does this apply to all directors (ED, NED and INED)?</p> <p>(b) If there is an INED on the board for a period of greater than nine years presumably the Central Bank of Ireland can use this section to remove the INED status and reassign as NED, and therefore look to the entity to appoint another INED to the board?</p> <p>(c) Is it correct to assume the factors that should be taken into account in carrying out these reviews should incorporate attendance, level of contribution, expertise relative to the bank's needs/strategy, independence, conflicts of interest and compliance with the Code obligations?</p> <p>(d) Does the Board itself do this review?</p> <p>(e) In relation to the frequency with which board membership is renewed: (i) Does the three year review refer to the overall board composition relative to skills required, or is it to review an individual board member's position for a further three years? (ii) For the nine year review, is it open to institutions to renew automatically any Director who has successfully passed the review, when the Central Bank has been advised?</p>	<p>(a) Yes, it applies to all members of the board.</p> <p>(b) It is up to the institution to satisfy itself that it is in compliance with the Code, and whether its board members satisfy the relevant independence criteria.</p> <p>(c) Yes.</p> <p>(d) In non-major institutions the board is responsible for carrying out the reviews, in Major Institutions review by an external evaluator is required on a three year basis (per Appendix 1, Section 13.5).</p> <p>(e) (i) It requires an overall review of both individual board members and the composition of the board. (ii) Reviews should be comprehensive and not lead to automatic renewal. For example, institutions will have to satisfy themselves as to whether INEDs still meet the criteria for independence. Reviews should be carried out annually where directors have been members of the board for more than 9 years.</p>
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			(f) Is there a conflict with section 13.5	(f) No. Section 13.5 refers to reviewing the board's performance, whereas Section 7.13 refers to a review of board membership.
The Chairman				
22.	8.1	<i>There shall be a Chairman appointed to the board of every institution.</i>	(a) Where there is an incumbent as Chairman, is that individual permitted to remain?	(a) The individual would be permitted to remain if he or she meets the criteria set out in Section 8 of the Code.
23.	8.10	<i>An individual who has been the CEO, executive director or member of senior management of an institution during the previous 5 years shall not advance to the role of Chairman of that institution.</i>	(a) Is there any flexibility in the application of this requirement? (b) For clarification, as at what date should institutions start counting back from?	(a) The Code does not permit advancement by CEO to the role of Chairman. (b) 1 January 2011.
24.	8.6 & 8.7	<i>Section 8.6: The roles of Chairman and CEO shall be separate.</i> <i>Section 8.7: The Chairman shall be an independent non-executive director except in the case of a subsidiary where the Chairman may be a group director. If a deputy Chairman is required, the role shall be taken by an independent non-executive director or in the case of a subsidiary, may be taken by a group director.</i>	(a) In the event that the permanent Chairman is absent from a meeting (due to illness or another genuine reason) does the Central Bank have any objection to the CEO chairing a one-off meeting?	(a) This would not be acceptable except in limited circumstances where agreed by the Central Bank. Section 8.7 of the Code provides for a Deputy Chairman who is an INED or a group director to be appointed if required. If a Deputy Chairman is not appointed then the meeting should be chaired by an INED and not by the CEO.

25.	8.7	<i>The Chairman shall be an independent non-executive director except in the case of a subsidiary where the Chairman may be a group director. If a deputy Chairman is required, the role shall be taken by an independent non-executive director or in the case of a subsidiary, may be taken by a group director.</i>	<p>(a) Can a group director (who is an executive elsewhere within the group) be appointed as Chairman?</p> <p>(b) Does group director include a group executive director who has no other connections with the subsidiary?</p>	<p>(a) Yes, provided that he or she has sufficient time available to discharge his/her obligations as Chairman and director.</p> <p>(b) The role of Chairman in a subsidiary company can be filled by a group executive director.</p>
26.	8.9	<i>The required time commitment for a Chairman may be significant. In light of this and to ensure that a Chairman has sufficient time to devote to his or her responsibilities as Chairman, the prior approval of the Central Bank shall be obtained prior to taking on any other directorships (other than within the group).</i>	<p>(a) If a Chairman wishes to take on a new directorship this year, when is he required to seek the prior approval of the Central Bank?</p> <p>(b) If a proposed directorship would take his number of directorships to 4 (so still below the 5/8 limit) does the Code require that a Chairperson must gain prior approval regardless of whether the number of directorships would still fall below these limits?</p> <p>(c) Who should an Institution/Chairperson contact to seek obtain approval of new directorship(s)?</p> <p>(d) Is there any further guidance on the type of specific information which should be submitted with each application in addition to that in Sections 7.7 and 7.8 of the Code</p>	<p>(a) A Chairman should seek the Central Bank's prior approval before accepting any appointment after 1 January 2011.</p> <p>(b) Yes, given the importance of the role of Chairman, the Central Bank's prior approval is required before taking up any other directorships (other than within the group) notwithstanding the fact that the Chairman may hold less than the maximum number of directorships.</p> <p>(c) In the first instance the institution should contact the examiner in the applicable supervisory department. The Central Bank will be establishing a Regulatory Transactions Department.</p> <p>(d) The relevant information will depend on the facts of each case. Applications for prior approval may use the guidance provided in Section 7.7 and 7.8 and Appendix 1. The key issue shall be the rationale as to why and on what basis the institution and Chairman are satisfied that the additional directorship shall not impact negatively or adversely affect the time commitment required to carry out the Chairman's role.</p>

27.	8.11	<i>The Chairman shall not hold the position of Chairman or CEO of a credit institution or insurance undertaking for more than one institution at any one time.</i>	<p>(a) Where an individual holds more than one directorship within a financial services group, as permitted under Section 7.7, does that provision extend to holding the position of Chairman or CEO within more than one of the entities within the group?</p> <p>(b) Does Section 8.11 of the Code apply to an Irish entity only or to any institution?</p> <p>(c) If an individual holds the position of Deputy Chairman or Deputy CEO in another institution, should this be taken into account?</p>	<p>(a) The Central Bank may specifically permit them to do so, if it is convinced that both roles can be discharged simultaneously in light of the time commitments involved.</p> <p>(b) This applies to all entities. An exception has been made for insurance undertakings writing solely Payment Protection Insurance where the law requires dual authorisations to be held.</p> <p>(c) While the Code does not explicitly prohibit a Chairman from holding a Deputy Chairman role or Deputy CEO role in another institution, it would be inappropriate to hold both positions where potentially an individual could end up either chairing two boards or acting as CEO on one board and chairing another board.</p>
The Chief Executive Officer (CEO)				
28.	9.1	<i>The Chief Executive Officer is the top executive responsible for the institution with ultimate executive responsibility for the institution's operations, compliance and performance. The CEO serves as the main link between the board and the executive.</i>	<p>(a) Is it mandatory to have a CEO?</p> <p>(b) Where companies currently are being headed by a General Manager, do the CEO requirements extend to the General Manager?</p>	<p>(a) Yes.</p> <p>(b) Yes the person responsible for carrying out the role and responsibilities of the CEO must comply with the requirements as CEO in addition to any additional requirements as General Manager. The Central Bank expects individuals and institutions to comply with the spirit and the letter of the Code. Institutions should appoint the CEO within the transitional period set out in the Code.</p>

29.	9.5	<i>The renewal of the CEO contract shall be reviewed at least every 5 years.</i>	<p>(a) Does Section 9.5 of the Code apply to contracts of employment such as permanent contracts, given that there may be legal issues surrounding the continued employment of the CEO under this provision?</p> <p>(b) From when does the 5 year period start with respect to existing CEO contracts? For example, if a CEO is already in place for 5 years or longer, what are institution's requirements?</p>	<p>(a) Institutions are expected to adhere to the Code irrespective of existing contractual arrangements.</p> <p>(b) Institutions should establish the amount of time which a CEO has been in place as at 1 January 2011 and where this exceeds 5 years, the Institution should carry out a review. All directorships are subject to review after 9 years.</p>
Independent Non-Executive Directors (INEDs)				
30.	10.2	<i>Independent non-executive directors shall be identified clearly in the institution's annual report.</i>	<p>(a) Is the annual report referred to in the code the annual financial statements?</p> <p>(b) Should this disclosure be included for the first time for the year ended 2011?</p>	<p>(a) The annual report is the report that is made available to shareholders.</p> <p>(b) Yes.</p>
Non-Executive Directors (NEDs) and Executive Directors				
31.	11.2	<i>The role of executive directors, led by the Chief Executive Officer, is to propose strategies to the Board and following challenging board scrutiny, to execute the agreed strategies to the highest possible standards.</i>	<p>(a) What guidance is available on what constitutes "highest possible standards"?</p>	<p>(a) Institutions should take a common sense approach to this requirement. The board will have adopted the strategies and should therefore identify the appropriate standards.</p>

32.	11.5	<i>Dedicated support shall be available to non-executive and executive directors on any matter requiring additional and/or separate advice to that available in the normal board process.</i>	(a) Can the Central Bank indicate how it expects institutions to comply with this provision?	(a) This will depend on the particular requirements of members of the board and at a minimum should enable them to obtain such support as is necessary to enable them to fulfil their obligations as members of the board and its sub-committees. It might include but not be limited to training, administrative support, access to information from the executives, or any third party professional advisers.
Role of the Board				
33.	12.1	<p><i>The board of each institution is responsible for:</i></p> <ul style="list-style-type: none"> • <i>The effective, prudent and ethical oversight of the entity;</i> • <i>Setting the business strategy for the institution; and</i> • <i>Ensuring that risk and compliance are properly managed in the institution.</i> 	(a) Can the Central Bank please expand upon what it means by 'ethical'?	(a) Institutions should apply a common usage and common sense approach to the meaning of ethical.
34.	12.2	<i>The role and responsibilities of the board shall be clearly documented.</i>	(a) What type of documentation is expected?	(a) Guidance on supporting documentation is provided in Section 15 of the Central Bank's publication "Guidelines on the Annual Compliance Statement in accordance with Section 25".

Appointments				
35.	13.5	<i>The board shall formally review its overall performance and that of individual directors, relative to the board's objectives, at least annually. The review shall be documented.</i>	(a) Will the format of such a performance review be at the company's discretion?	(a) Yes.
36.	13.5	Section 13.5 of Appendix 1: <i>At a minimum, a board shall conduct an annual assessment of its own performance and compliance with relevant provisions. Every three years an evaluation by an external evaluator shall be undertaken. Where the external evaluation is critical of the performance of the board, the frequency of subsequent evaluations shall be increased to annually until acceptable performance is noted. Any such evaluation shall be provided to the Central Bank.</i>	(a) Who is considered suitable as an external evaluator? Would the External Auditor or Group Auditor for a subsidiary be acceptable?	(a) An External Auditor or an External Group Auditor would be acceptable.
37.	13.6	<i>The board shall ensure that there is an appropriate succession plan in place.</i>	(a) Does the succession plan relate specifically to the board?	(a) The succession plan should relate to the institution including the board.
38.	13.7	<i>The removal from office of the head of a Control Function shall be subject to prior board</i>	(a) Would the Central Bank consider an Appointed Actuary who is not an employee of an insurance company (e.g. an actuarial consultant) to be a head of	(a) Yes.

		<i>approval. Any decision to remove the head of a Control Function shall be reported within 5 working days to the Central Bank with clear articulation of the underlying rationale for the removal. An institution shall not enter into any agreement with a head of Control Function that would purport to preclude, or would dis-incentivise, the provision of information to the Central Bank by the head of the Control Function.</i>	a Control Function for the purposes of Section 13.7?	
Risk Appetite				
39.	14.2	<i>The risk appetite definition shall be comprehensive and clear to all stakeholders. The definition shall clearly define the appetite and address separately the short, medium and long term horizons.</i>	(a) What is meant by “stakeholders”? (b) Who defines these?	(a) Stakeholders will depend on the nature of the institution’s business and would include all types of stakeholders for example shareholders, depositors, policy holders, creditors and staff. (b) The institution should know who its stakeholders are in the first instance.
40.	14.4	<i>In the event of a material deviation from the defined risk appetite measure, the details of the deviation and of the appropriate action to remedy the deviation shall be communicated to the Central</i>	(a) This implies that the institution specifies a single risk appetite measure against which they judge any deviation for the purposes of reporting under this Code - is this interpretation correct?	(a) No. Section 14.1 requires the board to understand the risks to which the institution is exposed and to establish a documented risk appetite. Section 14 also states that the appetite shall be expressed in qualitative terms and also include quantitative metrics to allow tracking of performance and compliance with agreed strategy (e.g. Value at Risk,

		<i>Bank by the board promptly in writing and no later than 5 business days of the Board becoming aware of the deviation.</i>	(b) Will the Central Bank give guidance on the format/content of the risk appetite statement along with planned guidance on the compliance statement?	leverage ratio, range of tolerance for bad debts, acceptable stress losses, economic capital measures). (b) The Central Bank will consider, arising from the on-going interaction with institutions, what (if any) guidance is appropriate.
41.	14.5	<i>The board shall satisfy itself that all key Control Functions such as internal audit, compliance and risk management are independent of business units, and have adequate resources and authority to operate effectively.</i>	(a) How is "independent" to be interpreted for example independence of tasks or independence of reporting structure/lines?	(a) Independence can be assessed on a number of factors including independence of tasks, independence of reporting structures/lines and funding/finance independence. The primary rule is that no influence should be brought to bear on these control functions as a result of any connection.
Meetings				
42.	15.1	<i>The board shall meet as often as is appropriate to fulfil its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the institution. In any event, the board shall meet at least quarterly.</i>	(a) Does the board of a non-major institution have to meet quarterly or would four times a year also suffice?	(a) The Code requires that boards of non-major institutions must meet at a minimum on a quarterly basis.

Committees of the Board			
43.	18.1	<i>Where the board comprises only 5 members, the full board may act as the Audit Committee and/or the Risk Committee.</i>	<p>(a) Is it possible to amend/clarify the Code as it applies to credit institutions, such that when the board is acting as the Audit Committee then the presence of the Chair or CEO is by invitation only (in-line with best practice for Audit committees and 21.4)?</p> <p>(b) Would the Central Bank be amenable to applications for a financial institution having more than five directors utilising its entire board to sit as an Audit Committee?</p>
			<p>(a) Where the board comprises only 5 members, the full board including the CEO and Chairman, may act as the Audit Committee provided that the Chairman of the Audit Committee is an independent non-executive director.</p> <p>(b) The Central Bank will consider an application on the facts of the case.</p>
44.	18.2	<i>Where an institution is part of a wider group which has a Group Audit Committee and a Group Risk Committee, it may rely on those committees provided that the board is satisfied that they are appropriate to the specific circumstances of the institution.</i>	<p>(a) Where an institution which is part of a group, chooses to rely on the group audit committee should it notify the Central Bank prior to doing so?</p>
			<p>(a) Yes, it is preferable that such institutions should discuss this option in advance with their line supervisors in the Central Bank.</p>
45.	18.4	<i>The non-executive directors and in particular independent non-executive directors shall play a leading role in these committees or where the functions are carried out at group level, they shall play a leading role in satisfying the board that the institution's audit and risk functions are adequately carried out.</i>	<p>(a) Can we assume this requirement for independent non-executives to play a leading role applies only to the Audit and Risk Committees or does it apply to each board committee established?</p>
			<p>(a) No. The INEDs roles with respect to board committees is set out in the relevant sections of the Code, namely:</p> <ul style="list-style-type: none"> -the Audit Committee (per Sections 21.2 and 21.3); -the Remuneration Committee (per Section 23.2); -the Nomination Committee (per Section 24); and the Risk Committee (per Section 22.2).

General Requirement of Committees				
46.	19.1	<i>Committee members shall attend committee meetings regularly.</i>	<p>(a) What constitutes "regularly"? For example, attendance at a minimum of 3 of every 4 meetings?</p> <p>(b) Is physical attendance mandatory here or is there some flexibility regarding allowing teleconferencing?</p> <p>(c) Does the same requirement to attend board meetings apply in respect of sub-committees of the board?</p> <p>(d) What does an appropriate frequency of renewal of committee membership mean in Section 19; will every three years suffice, as per review of board membership?</p>	<p>(a) This will depend on the facts of the case and will relate, for example, to the nature, scale and complexity of the institution, the terms of reference of the committee and the manner in which it carries out its responsibilities.</p> <p>(b) Members should attend each Committee meeting in person wherever possible. However, the Central Bank is anxious to increase the pool of potential directors and recognises that because of the location of some directors, they may not always be able to attend in person, in which case videoconferencing or teleconferencing is permissible. The Central Bank is of the view that an individual director's active participation at board sub-committee meetings is critical to the effective functioning of such committees and the Central Bank will assess individual director performance and overall sub-committee participation and performance in this context.</p> <p>(c) Section 19.1(d) of the Code provides that committee members must attend "regularly" therefore there is no obligation to attend every sub-committee meeting.</p> <p>(d) What constitutes appropriate frequency will depend upon the facts of the case, including where there have been changes to the committee structure, business strategies etc. Thus these may be more frequent than 3 years, for example, in line with Section 19.1(d).</p>

			<p>(e) Can we assume that if a director's membership of the board is reviewed and renewed as above for Section 7.13, that his/her membership of a committee can be reviewed and renewed at the same time and with the same frequency?</p> <p>(f) Can institutions rely on sub-committees established by holding companies within a group?</p>	<p>(e) Any such review would depend upon the circumstances and should not be restricted to the fixed terms proposed in section 7.13. The institution should consider the role of the directors and whether, for example, they continue to meet the test for independence.</p> <p>(f) No.</p>
Committees - Terms of Reference				
47.	20.1	<i>The authority, functions, membership and reporting lines of the committees as well as meeting frequency, voting rights and quorums shall be clearly outlined in written terms of reference established by the board.</i>	(a) What does the Central Bank mean by the reporting lines of the committees? Do the requirements apply to all persons reporting into the committees?	(a) This means the reporting lines both into the committees and from the committees and any relevant individual reporting lines therein.

Audit Committees				
48.	21.2, 21.3 & 21.4	<p>Section 21.2: <i>An Audit Committee shall be composed of non-executive directors, the majority of directors being independent.</i></p> <p>Section 21.3: <i>The Chairman of the Audit Committee shall be an independent non-executive director.</i></p> <p>Section 21.4: <i>Subject to the provision contained in Section 18.1, neither the Chairman of the board nor the CEO shall be a member of the Audit Committee. The Attendance by the CEO or board Chairman at Audit Committees shall be by invitation and shall be managed to ensure the independence of the committee and the maintenance of appropriate relationships with other parties especially external auditors.</i></p>	<p>(a) Where the board of a subsidiary company acts as the audit committee would this overrule the requirements of Sections 21.2, 21.3 & 21.4 of the Code?</p>	<p>(a) Where the board chooses to carry out the functions of the Audit Committee:</p> <ul style="list-style-type: none"> • Section 21.2 will not apply; • Sections 21.3 and 21.4 will apply.
49.	21.4 & 18.1	<p>Section 21.4: <i>Subject to the provision contained in Section 18.1, neither the Chairman of the board nor the CEO shall be a member of the Audit Committee. The Attendance by</i></p>	<p>(a) In a situation where an INED is:</p> <ul style="list-style-type: none"> • both the chairman of the board and a member of the audit committee; and • the audit committee only allows for non-executives (i.e. 3 members of a board of 5) to be formal participants of the audit committee; 	<p>(a) No.</p>

		<i>the CEO or board Chairman at Audit Committees shall be by invitation and shall be managed to ensure the independence of the committee and the maintenance of appropriate relationships with other parties especially external auditors.</i>	Is it required to make all 5 members of the Board active participants of the audit committee?	
50.	21.5	<i>Audit Committee meetings shall be held at regular intervals and, where appropriate, to coincide with important financial reporting dates. They shall usually only be attended by the Chairman and members of the Audit Committee. However, members may also request the attendance of key individuals such as the external auditor, head of internal audit and the finance director. The Audit Committee shall operate in a manner consistent with ensuring its independence and shall report its activities and decisions to the board of directors.</i>	<p>(a) Does this imply that regular can be taken to mean an annual meeting held at a time to sign off on the statutory returns (i.e. one audit committee meeting per annum would suffice as it is held at the same time each year)?</p> <p>(b) Generally, do the Code provisions on Audit Committees take precedence over the provisions on Audit Committees of public-interest bodies (which includes credit institutions and insurance undertakings) in the Statutory Audits Regulations SI 2010/220 and will the Code also supersede the provisions on Audit Committees in Section 205B of the Companies Act 1990 (under Section 42 of the Companies (Auditing and Accounting) Act 2003)?</p>	<p>(a) No, “regular” means more than once.</p> <p>(b) The Code is imposed in addition to, and shall not affect any other corporate governance obligations and standards which an institution is subject. In the event of a conflict arising between the code and any other corporate governance requirements, the stricter of the requirements shall apply to ensure compliance with both sets of obligations. Any concerns that such compliance cannot be achieved due to identified conflicts should be notified promptly to the Central Bank.</p>

Risk Committee				
51.	22.1 & 18.1	Section 22.1: <i>The board shall establish a Risk Committee separately from the Audit Committee with responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy. Institutions may propose to the Central Bank that the board itself carries out the functions which would otherwise be delegated to a Risk Committee. The Central Bank's prior approval in writing shall be obtained if an institution wishes to fulfil this requirement without creating a separate committee of the board.</i>	(a) Section 18.1 seems to restrict this to cases where the board comprises only 5 members. Can a non-major institution with more than 5 board members apply for this?	(a) Yes.
52.	22.2	<i>The Risk Committee shall ensure that there is an appropriate representation of non-executive and executive directors which is appropriate to the nature, scale and complexity of the business of the institution.</i>	(a) Will the Central Bank issue any guidance on what it deems "appropriate representation"?	(a) What constitutes appropriate representation of non-executive and executive directors will depend upon the facts of the case and in particular the nature, scale and complexity of the business of the institution. It is important that institutions have sufficient expertise to recognise and mitigate against risks and independently challenge processes.

Annual Compliance Statement

53.	25.1	<p><i>An institution shall submit to the Central Bank a compliance statement specifying, in accordance with any relevant guideline issued by the Bank, whether the institution has complied with this Code during the period to which the statement relates. This compliance statement shall be submitted to the Central Bank on an annual basis or with such other frequency as the Central Bank may notify to the institution from time to time. The first report will be for the year end 2011 and shall be submitted, with the institution's annual report. In the event of the institution deviating materially from the Code, the compliance report shall include a report on any material deviations, advising of the background to the breach and the actual or proposed remedial action.</i></p>	<p>(a) How will the compliance statement interact with the Companies Acts Compliance Statements?</p> <p>(b) In letters that have been sent to financial institutions it is stated that financial institutions have 21 days to submit representations in relation to the imposition of the Code as a condition of their licence. Can the Central Bank please confirm that financial institutions will be able to apply for the various exemptions set out in the Code on an ongoing basis and that they are not required to apply for any such exemptions in the 21 day notice period?</p> <p>(c) Will there be a protocol or time frame issued around response times of the Central Bank for requests made by financial institutions for deviations or exceptions from certain provisions of the Code?</p> <p>(d) How will the Corporate Governance Code for Collective Investment Schemes and Management Companies ("Code for Funds") interact with the Code?</p> <p>(e) If a director has resigned before the Annual Compliance Statement has been submitted, is he/she still required to sign the Statement?</p>	<p>(a) This is an independent code which must be observed in its own right, in addition to any other relevant codes or requirements.</p> <p>(b) Yes.</p> <p>(c) We will respond as expeditiously as possible. Speed of response will depend upon the detail, quality and adequacy of information provided by the institution.</p> <p>(d) The Code for Funds, issued in December 2011 by the Irish Funds Industry Association, shares many principles with the Code. However, the Code for Funds has been implemented on a voluntary basis.</p> <p>(e) (i) Directors who resign at any stage during the reporting year, for which the Annual Compliance Statement must attest to, are not required to sign it.</p> <p>(ii) The Central Bank anticipates that any Director who resigns at any stage after the reporting year, where they were in situ at the end of the reporting year for which the Annual Compliance Statement must attest to, would sign it.</p>
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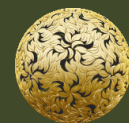
			<p>(f) If a director commences their role on the board at any stage during the reporting year is he/she still required to sign the Statement?</p> <p>(g) If a director commences their role on the board after the reporting year but before the Annual Compliance Statement has been submitted is he/she still required to sign the Statement?</p> <p>(h) Is it compulsory for all directors to sign the Compliance Statement?</p> <p>(i) Is the Annual Compliance Statement required to report on the 1 year period from the date a firm avails of the transitional arrangements?</p> <p>(j) If changes have been made to board or sub-committee structures after year end but before the deadline for submitting the Annual Compliance Statement, should these changes be documented in that Compliance Statement?</p> <p>(k) Should a RFSP disclose all board sub-committees on the Annual Compliance Statement?</p>	<p>(f) Yes.</p> <p>(g) No.</p> <p>(h) The Code requires all directors to sign the compliance statement.</p> <p>(i) The Annual Compliance Statement reports on the calendar year, i.e. 1 January to 31 December, irrespective of transitional arrangements availed of. If a firm avails of the transitional arrangements to become compliant they should reflect this in their first Annual Compliance Statement, as per section 4 of the Guidelines on the Annual Compliance Statement.</p> <p>(j) The Annual Compliance Statement should only report on the previous calendar year. Therefore, any changes that occurred following year end but before the deadline to submit the Annual Compliance Statement will be captured in the following years Annual Compliance Statement.</p> <p>(k) Yes. All board sub-committees (including sub-committees entirely composed of executive directors) should be disclosed on the Annual Compliance Statement.</p>
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			<p>(l) Where a RFSP has applied for a waiver from the Central Bank in advance of submitting the Annual Compliance Statement, and where the rejection of the waiver would result in non-compliance with the code, should the RFSP disclose this potential breach in the Annual Compliance statement?</p> <p>(m) Can the list of directors signing the compliance statement transverse more than one page?</p> <p>(n) How will the Capital Requirements Directive IV (CRD IV) impact on the Code?</p>	<p>(l) Yes. Any outstanding applications for waivers, which if denied, would result in non-compliance with the code should be disclosed.</p> <p>(m) Yes.</p> <p>(n) The Code will be reviewed as required.</p>
Additional Requirements				
54.			<p>(a) With regard to companies that have entered run-off, will there be an opportunity for such companies to seek an exemption from certain aspects of the Code, for example reducing the number of non-executive directors to one individual by applying appropriate proportionality?</p> <p>(b) Are 'quasi captives' required to adhere to all the requirements in the code or can a 'quasi captive' apply for exemptions on a case-by-case basis if it has very limited exposure to non-Group risk?</p>	<p>(a) The Central Bank will consider requests from companies in run-off to dis-apply parts of the code on a case by case basis.</p> <p>(b) The Central Bank has issued a separate Corporate Governance Code that applies to captives, "The Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings". This code for Captives incorporates the definition of a captive in Directive 2009/138/EC (the Solvency II Directive). The Code applies to all other directors of insurance and reinsurance undertakings which fall outside that definition.</p>

Appendix 1 – Additional obligations on Major Institutions			
55.		<i>General query</i>	<p>(a) Will firms that move from being Non-Major Institutions to Major Institutions once the Code is effective be given a period of grace to implement the additional requirements?</p> <p>(a) Generally, firms will move from being non-major to Major Institutions gradually and therefore the Central Bank will expect firms to tailor their position to the nature, scale and complexity of the firm. Where anticipated that a firm will be re-designated as a major institution, that firm would be given an opportunity to make representations to the Central Bank, including in respect of the timelines for implementation.</p>
56.	7.1	<i>The board of an institution shall be of sufficient size and expertise to oversee adequately the operations of the institution. The board shall have a minimum of seven directors. The board of a major institution shall consider whether a larger board is appropriate and shall record such considerations in writing. In particular, the board should comprise sufficient representation by executive directors to ensure that it is not dominated by one individual executive.</i>	<p>(a) Does this mean that Major Institutions must have at least 2 executive directors?</p> <p>(a) The Code does not prescribe how many executive directors there should be on any board. However the requirements at Section 7.1 (in both the Code and Appendix 1) and at Sections 6.5, 11.2, 11.4, and 22.2, are all relevant in satisfying the requirements regarding board composition.</p>
57.	7.7	<i>The number of directorships held by directors of institutions shall be limited. The Central Bank requires that the number of directorships of credit institutions and insurance undertakings shall not exceed</i>	<p>(a) Is the limit of 5 non financial institution directorships intended to be in addition to the limit of 3 financial directorships where one is a Major Institution?</p> <p>(a) Yes, these totals operate so that the maximum number of directorships which can be held by a director of a major credit institution or a major insurance undertaking is 8 (3 financial and 5 non financial) subject to the provisions concerning group directorships, pro bono directorships, and the ability to apply under Section 7.8 for the Central Bank's</p>

		<i>three where one of the directorships held is in a Major Institution.</i>		consent to hold additional directorships in companies which are not credit institutions and insurance undertakings.
58.	7.7		<p>(a) Is there a distinction between the terms “other” directorships and multiple directorships referred to in Section 7.7 of the Code and Appendix 1?</p> <p>(b) Can references to “financial services group” be extended to any group e.g. a manufacturing group?</p>	<p>(a) There is no intended distinction between other and multiple directorships.</p> <p>(b) No. The nature of the business/services provided by the companies in the group will define whether or not it is a financial services group. For the purpose of this code financial directorships are limited to directorships in credit institutions and insurance undertakings (excluding captive insurers and captive reinsurers).</p>

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