



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2011

Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings



Contents

<i>Section No.</i>	<i>Contents</i>	<i>Page No.</i>
1	Scope	4
2	Definitions	6
3	Legal Basis	8
4	Reporting to the Central Bank	11
5	Transitional Arrangements	12
6	General Requirements	13
7	Composition of the Board	15
8	Chairman	18
9	Chief Executive Officer	20
10	Directors	21
11	Role of the Board	22
12	Appointments	25
13	Risk Appetite	27
14	Meetings	29
15	Reserved Powers	30
16	Consolidated Supervision	31
17	Committees of the Board	32
18	Compliance Statement	33

1.0 Scope

1.1 The Code imposes the following minimum core standards upon all captive insurance undertakings and captive reinsurance undertakings which meet each of the following criteria:

(1) (a) are authorised as 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;

or

(b) are authorised as a reinsurance undertaking as defined in Article 3 of the European Communities (Re-insurance) Regulations, 2006;

and

(2) which have been deemed as a captive by the Central Bank of Ireland (“the Central Bank”);

and

(3) which meet the definition of a captive referred to in section 2 of this Code.

1.2 The Central Bank may from time to time impose such additional corporate governance requirements on any captive where it considers it necessary to do so, due to the nature, scale and complexity of the captive. In such circumstances a captive will be

notified in writing in advance of such additional requirements being imposed.

- 1.3 The Code will not apply to foreign incorporated subsidiaries of an Irish captive. Such subsidiaries are encouraged, however, to adopt equivalent good governance practices.
- 1.4 Captives are required to disclose in their annual report that they are subject to the Code.

2.0 Definitions

The following is a list of definitions of terms used in the Code:

Corporate Governance: Procedures, processes and attitudes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making.

Captive¹: An insurance or reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of point (c) of Article 212(1) of Directive 2009/138/EC (the Solvency II Directive) or by a non-financial undertaking, the purpose of which is to provide insurance or reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member.

¹Taken from the definition contained in Article 13 (2) of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance and, for clarity, the definition in this Code includes the risks of entities that are consolidated in the audited financial statements of the group.

Captive manager: The firm to which the board has delegated by way of contract the management and administrative functions of the captive.

Control Functions: These shall include the Internal Audit, Risk Management, Compliance, and Actuarial Functions and any other controlled function prescribed as such by the Central Bank pursuant to its power to do so under the Central Bank Reform Act, 2010.

Non-Group Director: A director who is not employed by or is not a director of the captive's direct or indirect parent and/or any other direct or indirect subsidiary of such parent other than the captive.

3.0 Legal Basis

- 3.1 The Code is introduced as conditions to which captives are subject pursuant to:
- Section 24 of the Insurance Act, 1989; and
 - Regulation 12 of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006).
- 3.2 In addition, the Central Bank is of the opinion that the Code is necessary to ensure captives' compliance with the following:
- Article 10(3) of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994); and
 - Regulation 20 of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006).
- 3.3 To the extent that a captive is obliged under the Code to submit returns, statements and information to the Central Bank, such information and returns shall also be required under Section 16 of the Insurance Act, 1989, as applicable.
- 3.4 The obligation to submit an annual compliance statement to the Central Bank pursuant to Section 22 of the Code shall be imposed by notice under Section 25 of the Central Bank Act 1997.
- 3.5 The Code may be amended or supplemented by the Central Bank from time to time.

3.6.1 Subject to section 3.6.2, this Code is imposed in addition to, and shall not affect, any other corporate governance obligations and standards imposed upon the captive.

3.6.2 The Central Bank hereby revokes the application of the 2007 Corporate Governance Requirements for Reinsurance Undertakings (the 2007 Requirements) in so far as those requirements relate to Captive Reinsurance Undertakings with effect from the end of the transitional period as set out in paragraph 5.1 or an earlier date that a captive has complied with the Code and has notified this date to the Central Bank. Accordingly the Code shall replace the 2007 Requirements for Captive Reinsurance Undertakings. The 2007 Requirements shall continue to apply to Reinsurance Undertakings which are not captives.

3.7 A contravention of the Code may be liable to the Central Bank using any of its regulatory powers, including, but not limited to, any or all of the following:

- the imposition of an administrative sanction under Part IIIC of the Central Bank Act, 1942;
- the prosecution of an offence;
- the refusal to appoint a proposed director to any pre-approval controlled function where prescribed by the Central Bank pursuant to Part 3 of the Central Bank Reform Act, 2010; and/or;
- the suspension, removal or prohibition of an individual from carrying out a controlled function where prescribed by the

Central Bank pursuant to Part 3 of the Central Bank Reform Act, 2010.

4.0 Reporting to the Central Bank

- 4.1 The Central Bank will monitor adherence to the Code through its on-going supervision of captives.
- 4.2 Any captive that 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.
- 4.3 The Central Bank also requires each captive to submit an annual compliance statement as set out at Section 18, in accordance with any guidelines issued by the Central Bank, specifying whether the captive has complied with the Code.
- 4.4 Where a captive no longer complies with the definition of a captive² (set out in section 2 of this code) it shall notify the Central Bank within 5 business days. The Central Bank will consider the matter and advise if the status is deemed to be non-captive. In such cases, this Code will cease to apply and the Corporate Governance Code for Credit Institutions and Insurance Undertakings will apply instead.
-

² For example, where a captive commences providing insurance for non-group risks.

5.0 Transitional Arrangements

- 5.1 The Code applies to existing boards and directors with effect from 1 September 2011. The Central Bank is conscious that captives may need time to implement changes to systems and structures in order to ensure compliance with the Code. Captives will be given until 31 May 2012 to introduce the necessary changes so as to allow them to become compliant with the requirements introduced by the Code.

6.0 General Requirements

- 6.1 The Code contains the minimum requirements that a captive shall meet in the interests of promoting strong and effective governance.
- 6.2 The board retains primary responsibility for corporate governance within the captive at all times.
- 6.3 All captives shall have robust governance arrangements and effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, adequate internal control mechanisms, including sound administrative and accounting procedures, IT systems and controls and practices that are consistent with and promote sound and effective risk management. The system of governance shall be subject to regular review.
- 6.4 The governance structure put in place by each captive shall be sufficiently sophisticated to ensure that there is effective oversight of the activities of the captive taking into consideration the nature, scale and complexity of the business being conducted.
- 6.5 No one individual may have unfettered powers of decision.
- 6.6 The corporate governance structure and policies shall be articulated clearly and communicated to the board and the captive manager or CEO.
- 6.7 Any director who has any material concern about the overall corporate governance of a captive 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.

- 6.8 A captive shall comply with the Code on an individual basis. Accordingly, while a captive may adopt policies or procedures developed at group level, the captive shall satisfy itself that such policies or procedures meet all of the requirements of the Code.

7.0 Composition of the Board

- 7.1 The board of a captive shall be of sufficient size and expertise to oversee adequately the operations of the captive and shall have a minimum of three directors.
- 7.2. 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.
- 7.3 A captive shall ensure a majority of its directors are reasonably available to the Central Bank at short notice, if so required.
- 7.4 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 non-group directors in letters of appointment. The Board shall confirm to the non-group directors on an annual basis at the beginning of each financial year the on-going time commitment expected from that director.
- 7.5 The number of directorships held by directors of captives shall be:
- (a) Limited by the amount of time required to properly carry out the role and functions of a director in that particular captive; and

- (b) Subject to an overall limit of 25 directorships (regardless of whether the directorship is held in a captive company or a company which is not a captive).

7.6 In calculating the number of directorships held, the Central Bank shall exclude:

- (a) Directorships in group companies. This includes directorships in non-financial services groups of companies; and
- (b) Directorships held on a pro bono and voluntary basis subject always to the proviso that such directorships shall only be excluded where they shall not interfere with the director's ability to fulfil properly his or her role and functions as a director of a captive.

7.7 In proposing to appoint directors who otherwise have fulltime jobs, the captive is also required to take fully into account the time constraints upon the proposed director including time constraints associated with any part time or full time job held by the director.

7.8 In considering and/or proposing director appointments, the board shall assess and document its consideration of possible conflicts of interest among its members, including, but not limited to personal relationships, business relationships and common directorships among its members or proposed members.

- 7.9 Appointments shall not proceed where possible conflicts of interest may emerge which are significant to the overall work of the board.
- 7.10 Directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists.
- 7.11 Captives shall review board membership at least once every three years. Captives 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.

8.0 Chairman

- 8.1 There shall be a Chairman appointed to the board of every captive.
- 8.2 The Chairman shall lead the board meeting, encourage critical discussion and challenge mind-set. In addition, the Chairman shall promote effective communication between the board and the captive manager or CEO.
- 8.3 The Chairman shall have relevant financial services expertise, qualifications and background or be required to undertake relevant and timely comprehensive training. The relevant financial services background or training shall ensure that the Chairman has the necessary knowledge, skills and experience and/or training required to comprehend each of the following:
- the nature of the captive's business, activities and related risks;
 - his or her individual direct and indirect responsibilities and the board's responsibilities; and
 - the captive's financial statements.
- 8.4 The Chairman shall have the necessary personal qualities, professionalism and integrity to carry out his or her obligations.
- 8.5 The Chairman shall attend and chair board meetings and there shall be no rotating Chairmanship.
- 8.6 The Chairman of the board shall be proposed for election or reappointment on an annual basis.

- 8.7 The Chairman shall not be a director or an employee of the captive manager.

9.0 Chief Executive Officer

- 9.1 Where a captive appoints a Chief Executive Officer (“the CEO”) he or she is the top executive responsible for the captive with ultimate executive responsibility for the institution’s operations, compliance and performance. The definition of a CEO includes a general manager or any such executive responsible for the performance of such function notwithstanding the title used by that person.
- 9.2 The CEO shall have relevant financial services expertise, qualifications and background or be required to undertake relevant and timely comprehensive training. The relevant financial services background or training shall ensure that the CEO has the necessary knowledge, skills and experience and/or training required to comprehend fully each of the following:
- The nature of the captive’s business, activities and related risks;
 - His or her individual direct and indirect responsibilities and the board’s responsibilities; and
 - The captive’s financial statements.
- 9.3 The CEO shall have the necessary personal qualities, professionalism and integrity to carry out his or her obligations.
- 9.4 The renewal of the CEO contract shall be reviewed at least every 5 years.

10.0 Directors

- 10.1 The role of the directors, under the Chairman's leadership, is:
- (a) To ensure that there is effective management of the captive;
 - (b) To participate actively in constructively challenging and developing strategies;
 - (c) To participate actively in the board's decision-making process;
 - (d) To participate actively in board committees (where established);
 - (e) To exercise appropriate oversight over execution of the agreed strategies, goals and objectives and to monitor reporting of performance.
- 10.2 The directors shall propose strategies to the Board and following challenging board scrutiny, execute the agreed strategies to the highest possible standards.
- 10.3 The directors shall have a knowledge and understanding of the business, risks and material activities of the captive to enable them to contribute effectively.
- 10.4 The directors shall comprise individuals with relevant skills, experience and knowledge (such as accounting, auditing and risk management knowledge) who shall provide a challenge in the context of the discussions of the board.
- 10.5 The board shall ensure that relevant support is available to directors on any matter requiring additional and/or separate advice to that available in the normal board process.

11. Role of the Board

11.1 The board of each captive is responsible for:

- (a) the effective, prudent and ethical oversight of the captive;
- (b) setting the business strategy for the captive; and
- (c) ensuring that risk and compliance are properly managed in the captive.

11.2 The role and responsibilities of the board shall be clearly documented.

11.3 The board shall have:

- (a) the necessary knowledge, skills, experience, expertise, competencies, professionalism, fitness, probity and integrity to carry out their duties;
- (b) a full understanding of the nature of the captive's business, activities and related risks;
- (c) a full understanding of their individual direct and indirect responsibilities and collective responsibilities; and
- (d) an understanding of the captive's financial statements.

- 11.4 The board shall approve and oversee the management of all renewal processes, including signing off on inwards reinsurance and outwards reinsurance as necessary.
- 11.5 The board shall be responsible for ensuring there are proper documented contract and service level agreements for all outsourced activities.
- 11.6 The board shall review the service level agreements on an on-going basis with a formal review annually.
- 11.7 The board may delegate authority to sub-committees to act on behalf of the board in respect of certain matters but, where the board does so, it shall have mechanisms in place for documenting the delegation and monitoring the exercise of delegated functions. The board cannot abrogate its responsibility for functions delegated - in particular it must retain overall responsibility for internal control, internal audit and risk management.
- 11.8 Where a captive 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 captive.
- 11.9 Where a captive, being part of a larger group, applies group policies or uses group functions, the board shall satisfy itself as to the appropriateness of these policies and functions for the captive and in particular that these policies and functions take full account of

Irish laws and regulations and the supervisory requirements of the Central Bank.

11.10 The board shall be able to explain its decisions to the Central Bank.

12.0 Appointments

- 12.1 The board shall be responsible for appointing a captive manager or CEO with appropriate integrity and adequate knowledge, experience, skill and competence for their roles.
- 12.2 The board shall be responsible for endorsing the appointment of persons who may have a material impact on the risk profile of the captive and monitoring on an on-going basis their appropriateness for the role.
- 12.3 The board shall be responsible for either the appointment of directors or, where appropriate, identifying and proposing the appointment of directors to shareholders and the board shall ensure that directors are given adequate training about the operations and performance of the captive. The board shall routinely update the training as necessary to ensure that they make informed decisions.
- 12.4 The board shall define and document the responsibilities of the board of directors and board committees (where established) to ensure that no single person has unfettered control of the business.
- 12.5 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.
- 12.6 The board shall ensure that there is an appropriate succession plan in place.

- 12.7 The removal from office of the head of a Control Function shall be subject to prior board approval. Any decision to remove the head of a Control Function shall be reported within 5 business days to the Central Bank with clear articulation of the underlying rationale for the removal. A captive shall not enter into any agreement with the head of a Control Function that would purport to preclude, or would disincentivise, the provision of information to the Central Bank by the head of a Control Function.

13.0 Risk Appetite

- 13.1 The board is required to understand the risks to which the captive is exposed and shall establish a documented risk appetite for the captive. 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. acceptable stress losses, economic capital measures). It shall be subject to annual review by the board.
- 13.2 The risk appetite definition shall be comprehensive and clear to all stakeholders.
- 13.3 The board shall ensure that the risk management framework and internal controls reflect the risk appetite and that there are adequate arrangements in place to ensure that there is regular reporting to the board on compliance with the risk appetite.
- 13.4 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 deviation.
- 13.5 The board shall satisfy itself that all key Control Functions such as internal audit, compliance and risk management are operating effectively.

- 13.6 The board shall ensure that it receives from the captive manager or CEO timely, accurate and sufficiently detailed information relating to risk and Control Functions.

14.0 Meetings

- 14.1 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 captive. In any event, the board shall meet at least twice annually.
- 14.2 A detailed agenda of items for consideration at each board meeting together with minutes of the previous board meeting shall be circulated in advance of the meeting to allow all directors adequate time to consider the material. Sufficient and clear supporting information and papers shall also be circulated.
- 14.3 Detailed minutes of all board meetings shall be prepared with all decisions, discussions and points for further actions being documented. Dissensions or negative votes shall be documented in terms acceptable to the dissenting person or negative voter. The minutes of meetings shall provide sufficient detail to evidence appropriate board attention, the substance of discussions and their outcome and shall be agreed at the subsequent board meeting. The minutes shall also document the attendance or non-attendance of members of the board.
- 14.4 The board shall establish a documented 'conflict of interest' policy for its members and where conflict of interests arise the board shall ensure that they are noted in the minutes.
- 14.5 If on-going conflicts of interest arise, consideration shall be given to changing the membership of the board.

15.0 Reserved Powers

- 15.1 The board shall establish a formal schedule of matters specifically reserved to it for decision. This schedule shall be documented and updated in a timely manner.

16.0 Consolidated Supervision

16.1 The board shall exercise adequate control and oversight over the activities of its subsidiaries whether incorporated in Ireland or overseas.

17.0 Committees of the Board

- 17.1 Where the board establishes sub-committees, the board is responsible for oversight of each of those sub-committees.
- 17.2 In deciding whether or not to establish board sub-committees, the board shall ensure that in the absence of establishing a sub-committee it continues to have appropriate time available to it to adequately discharge its responsibilities.
- 17.3 Where appropriate, the board may consider the appointment of a Risk Committee.

18.0 Compliance Statement

- 18.1 A captive shall submit to the Central Bank a compliance statement specifying, in accordance with any relevant guideline issued by the Central Bank, whether the captive 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 captive from time to time.
- 18.2 The first compliance statement will cover the period from 31 May 2012, or an earlier date that a captive has complied with the Code and has notified this date to the Central Bank, until the period ended 31 December 2012 and shall be submitted within one month of this date. Subsequent statements shall be in respect of each financial year and shall be submitted with the captive's annual return. In the event of the captive deviating materially from the Code, the compliance statement shall include a report on any material deviations, advising of the background to the breach and the actual or proposed remedial action.

T +353 1 224 4109 www.centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland**