



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2012

Consultation Paper 62: Fitness and Probity Regime for Credit Unions



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Section 1: Introduction

On 1 December 2011 a Fitness and Probity regime (the “existing Fitness and Probity regime”) was introduced for all regulated financial service providers other than credit unions.

The Central Bank of Ireland (the “Central Bank”) is of the view that it is appropriate that a Fitness and Probity regime should apply to credit unions. In applying a Fitness and Probity regime to credit unions, the Central Bank’s aim is to improve governance standards at board and management level within the credit union sector by ensuring that individuals who exercise significant influence and control in a credit union are capable, competent and financially sound individuals with the appropriate skills, experience, knowledge and integrity to manage and govern the credit union for the benefit of all stakeholders.

The Commission on Credit Unions (the “CCU”) also made recommendations in relation to the introduction of fitness and probity for credit unions. The Final Report of the CCU (the “Report”), published on 18 April 2012, recommended that Part 3 of the Central Bank Reform Act 2010 be commenced for credit unions providing the Central Bank with the powers to set out the Regulations and Standards of Fitness and Probity for credit unions. The Report also recommended that a phased approach should be adopted for the implementation of a Fitness and Probity regime for credit unions and made further recommendations regarding the Controlled Functions and Pre-approval Controlled Functions that should be introduced in the initial phase.

On 24 September 2012, the Minister for Finance commenced Part 3 of the Central Bank Reform Act 2010 for credit unions.

Arising from this, it is the Central Bank’s intention, following consultation, to introduce a tailored Fitness and Probity regime for credit unions (the “Fitness and Probity regime for credit unions”) on a phased basis taking account of the recommendations of the Report. In addition, it is the Central Bank’s intention to apply the existing Fitness and Probity regime to those credit unions that also have authorisation as a retail intermediary¹.

Objectives of the Fitness and Probity regime for credit unions

Credit union members should have confidence that those individuals holding senior positions in credit unions can demonstrate that they are competent and capable, act honestly, ethically and with integrity and are financially sound.

¹For the purpose of this consultation paper, these are credit unions that also hold an authorisation pursuant to the Investment Intermediaries Act 1995 and/or the European Communities (Insurance Mediation) Regulations 2005.

As referred to above, the Central Bank is seeking to improve governance standards in credit unions at board and management level. The Credit Union and Co-operation with Overseas Regulators Bill 2012, as passed by the Houses of the Oireachtas, sets out comprehensive governance requirements for credit unions that are designed to provide a framework to improve governance standards in credit unions with a particular focus at board and management level. The introduction of a Fitness and Probity regime for credit unions will complement this governance framework by requiring that credit unions ensure that individuals who take up key board and management positions are fit and proper.

Section 2: Central Bank Reform Act 2010

The legal basis for a Fitness and Probity regime for credit unions is provided for in Part 3 of the Central Bank Reform Act 2010 (the “Act”). Part 3 of the Act was commenced for credit unions on 24 September 2012. The Act refers to regulated financial service providers (“RFSPs”) which includes credit unions. The Fitness and Probity framework set out in Part 3 of the Act includes the following:

1. (a) The Central Bank can designate particular functions as Controlled Functions (“CFs”) (Section 20).

(b) A CF is a function prescribed by the Central Bank if, and only if, the function is a function in relation to the provision of a financial service, and it

- is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of the RFSP, or
- relates to ensuring, controlling or monitoring compliance by a RFSP with its relevant functions, or
- involves the person responsible for its performance in the provision of a financial service by a RFSP in one or more of the following ways:
 - (i) the giving of advice or assistance to a customer of the RFSP in the course of providing, or in relation to the provision of, the financial service;
 - (ii) dealing in or having control over property of a customer of the RFSP to whom a financial service is provided or to be provided, whether that property is held in the name of the customer or some other person;
 - (iii) dealing in or with property on behalf of the RFSP, or providing instructions or directions in relation to such dealing.

(c) A RFSP shall not permit a person to perform a CF unless the RFSP is satisfied that the person meets any Standards of Fitness and Probity issued by the Central Bank in a code issued under Section 50 of the Act and that the person has agreed to comply with the Standards on an on-going basis (Section 21).

2. (a) The Central Bank may designate particular CFs as Pre-approval Controlled Functions (“PCFs”) if the function is one by which a person may exercise a significant influence on the conduct of a RFSP’s affairs (Section 22).

(b) The Central Bank may examine any proposed appointments of persons to a PCF in RFSPs (Section 23), so as to ensure that the persons proposed are fit and proper to discharge their responsibilities. In the event that the Central Bank is not satisfied, the proposed appointment can be refused.

- (c) A RFSP shall not offer to appoint a person to perform a PCF role unless the RFSP has received the Central Bank's prior written approval for that appointment (Section 23). Before proposing a person to perform a PCF, the Central Bank would expect the credit union to have conducted its own due diligence and to have satisfied itself that the person is compliant with the Standards of Fitness and Probity. See Section 9 of this paper for further information on seeking pre-approval from the Central Bank.
3. The Central Bank may set statutory Standards of Fitness and Probity (Section 50) which persons who are subject to those Standards must meet and which, if breached, may result in regulatory action being taken including:
 - (i) refusal to appoint a person to a PCF; or
 - (ii) suspension or prohibition of a person from carrying out a CF or PCF.
 4. The Central Bank may require the production of specified information and documentation from persons applying for PCF positions or from regulated RFSPs and compel attendance before the Central Bank for interview prior to making such an appointment so that the Central Bank can investigate fully any concerns which may arise (Section 23).
 5. RFSPs should take all necessary steps to ensure that they:
 - (i) only propose suitable persons to be appointed to a PCF; and
 - (ii) monitor persons carrying out CFs².
 6. The Central Bank may take enforcement action under the Administrative Sanctions Procedure³ under Part IIIC of the Central Bank Act 1942 for prescribed contraventions of Part 3 of the Act. In addition, the Act strengthens the Central Bank's ability to obtain accurate, relevant information from persons and RFSPs concerning fitness and probity by creating certain criminal offences including providing false or misleading information to the Central Bank or the Head of Financial Regulation.
 7. The Act provides for an appeals mechanism whereby a decision of the Central Bank to refuse to grant prior written approval for an appointment to a PCF may be appealed to the Irish Financial Services Appeals Tribunal ("IFSAT") pursuant to Part VIIA of the Central Bank Act 1942⁴.

² This includes PCFs as PCFs are a subset of CFs.

³ The administrative sanctions procedure does not currently apply to credit unions. The Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) contains an amendment to apply the administrative sanctions procedure to credit unions.

⁴ Part VIIA of the Central Bank Act 1942 does not currently apply to credit unions. The Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) contains an amendment to apply Part VIIA of the Central Bank Act 1942 to credit unions.

Section 3: Purpose of this consultation

As outlined in the Consultation Protocol for Credit Unions (issued on 27 November 2012)⁵ the Central Bank has committed to consult on proposed new regulations, which in its view, will have a significant impact on the business of credit unions. To this end, the Central Bank is seeking views on the proposed implementation approach for the Fitness and Probity regime for credit unions as set out in this consultation paper. This consultation relates to the following:

- The draft Fitness and Probity Regulations for credit unions which designate positions in credit unions as CFs and PCFs;
- The draft Standards of Fitness and Probity for credit unions;
- The provision of non-statutory guidance for the Fitness and Probity regime for credit unions;
- The implementation timeframe for the application of the existing Fitness and Probity regime to credit unions that are also authorised as retail intermediaries; and
- The phasing and transitional arrangements for the implementation of the Fitness and Probity regime for credit unions.

The Central Bank has undertaken a Regulatory Impact Analysis (“RIA”) to consider the impact of the Fitness and Probity regime for credit unions. See Section 10 for further details on the RIA.

⁵ <http://www.centralbank.ie/regulation/industry-sectors/credit-unions/Documents/Consultation%20Protocol%20for%20Credit%20Unions.pdf>

Section 4: Overview of the Fitness and Probity regime for credit unions

Introduction of a Fitness and Probity regime for credit unions

It is the Central Bank's intention to implement, on a phased basis, a tailored Fitness and Probity regime for credit unions.

Implementation approach

The implementation approach will focus on improving governance standards at board and management level within credit unions by ensuring that individuals who exercise significant influence and control in a credit union are capable, competent and financially sound individuals with the appropriate skills, experience, knowledge and integrity to manage and govern the credit union for the benefit of all stakeholders.

Controlled Functions and Pre-approval Controlled Functions

The existing Fitness and Probity regime contains 11 CFs and 41 PCFs which apply, where relevant, to other RFSPs. It is proposed that the Fitness and Probity regime for credit unions will initially prescribe 2 CFs and 2 PCFs for credit unions as follows:

CFs

- (i) A function that exercises significant influence on the conduct of the affairs of the credit union (CUCF-1); and
- (ii) A function related to ensuring, controlling or monitoring compliance by a credit union with its relevant obligations (CUCF-2).

While it is a matter for credit unions to determine the roles that fall within CUCF-1 and CUCF-2, it is anticipated that at a minimum these CFs would include the board of directors, the supervisory committee⁶, the risk management officer, the compliance officer, the money laundering reporting officer and the internal audit function.

PCFs

- (i) Chairman⁷ of the board of the credit union (CUPCF-1); and
- (ii) Manager of the credit union (CUPCF-2).

⁶ The Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) removes the supervisory committee and introduces the board oversight committee.

⁷ The Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) renames the Chairman as Chair. The draft Regulations will be amended to reflect this following commencement of the relevant provisions.

Appendix A contains the draft Regulations which set out those functions and positions which will be prescribed as CFs and PCFs.

Due diligence and monitoring for Controlled Functions and Pre-approval Controlled Functions

Credit unions who wish to appoint CFs and PCFs will be required to conduct appropriate due diligence to assess the fitness and probity of proposed individuals to ensure that they meet the Standards of Fitness and Probity for credit unions and have agreed to abide by them on an ongoing basis. A credit union shall not permit a person to perform a CF or PCF unless the credit union is satisfied on reasonable grounds that the person complies with the Standards of Fitness and Probity and the person has agreed to abide by the Standards.

Pre-approval for Pre-approval Controlled Functions

In addition to conducting due diligence, credit unions will be required to ensure that any individual wishing to take up a PCF position has been approved by the Central Bank in advance of taking up the position. Therefore pre-approval will be required before an individual may take up the position of chairman or manager in a credit union. The Central Bank would expect that the credit union's nomination committee will be involved in ensuring that any requirements under Part 3 of the Act are met in advance of nominations being made for election.

Phased Implementation of a Fitness and Probity regime for credit unions

The first phase of the regime is planned to begin on 1 July 2013 and will introduce fitness and probity requirements for those credit unions with total assets of greater than €10 million⁸. The second phase will commence two years later when all remaining credit unions will be brought within the scope of the regime.

Transitional arrangements will apply for the implementation of each phase of the regime. All individuals holding PCF positions in credit unions at the commencement of each phase of the regime will be deemed in-situ and can continue in those positions for the remainder of their term of appointment without applying for pre-approval from the Central Bank. See Section 8 of this paper for further details on phasing and transitional arrangements.

⁸ Figures will be according to the credit union's latest audited balance sheet.

In developing the implementation approach both the recommendations of the CCU and feedback received from an information request⁹ sent to various stakeholders have been taken into account.

Post Implementation Review

Following implementation of the two phases of the regime, the Central Bank will conduct a review of the Fitness and Probity regime for credit unions taking account of the new regulatory framework for credit unions and the restructuring of the credit union sector. Consideration will be given at this point to the designation of additional CFs, such as customer facing CFs, and additional PCFs, which may include all board members, the risk management officer, the compliance officer, the money laundering reporting officer and the internal audit function, with a view to aligning the Fitness and Probity regime for credit unions with the existing Fitness and Probity regime applying to all other RFSPs.

The Central Bank is seeking views on the following:

- (i) Do you agree with the tailored approach to the designation of CFs and PCFs for credit unions in the draft Regulations? Do you think that any additional CFs or PCFs should be designated? If you have other suggestions please provide them along with the supporting rationale. It should be noted that the Act is prescriptive in setting the relevant criteria applying to functions and positions which may constitute CFs and PCFs.**

- (ii) Do you agree with the phased approach for the implementation of the Fitness and Probity regime for credit unions? If you have other suggestions please provide them along with the supporting rationale.**

⁹ The information request sought information on the impact a fitness and probity regime would have on credit unions, and was sent to the following stakeholder bodies: the Irish League of Credit Unions, the Credit Union Managers' Association, the Credit Union Development Association, the National Supervisors Forum and a sample of credit unions.

Section 5: Standards of Fitness and Probity for credit unions

Section 21 of the Act, requires that a credit union shall not permit a person to perform a CF unless they are satisfied that the person meets any Standards of Fitness and Probity issued by the Central Bank in a code issued under Section 50 of the Act and has agreed to comply with them on an ongoing basis.

Appendix B contains the draft Standards of Fitness and Probity for credit unions (the “Standards”) which will be issued under Section 50 of the Act. The draft Standards are based broadly on the Standards for all other RFSPs and have been tailored to take account of matters relevant for credit unions, for example the inclusion of experience gained in a voluntary context in addition to that gained in an employment context. These Standards will be the benchmark for credit unions and the Central Bank when considering the fitness and probity of individuals appointed to CFs and PCFs within credit unions and may be the basis for refusing to pre-approve the appointment of an individual to a PCF, or for removing or prohibiting someone from carrying out a CF if they do not meet these Standards.

Overview of the draft Standards

There are three main areas in the Standards under which an individual’s fitness and probity is assessed:

- (i) Competence and Capability;
- (ii) Honest, Ethical and Acting with Integrity; and
- (iii) Financial Soundness.

Competence and Capability

An individual is required to have the competence necessary to perform the CF or PCF which he or she is proposed to carry out. This is normally tested with regard to the relevant experience of the individual and/or relevant qualifications. Where the Minimum Competency Code¹⁰ applies to individuals in credit unions, the credit union shall ensure that the proposed individual fulfils the requirements.

When considering the competence and capability of an individual proposed for appointment to a CF or PCF, the credit union should take into account all relevant considerations including:

- Activities and size of the credit union;

¹⁰ The Minimum Competency Code 2011 applies, where relevant, to individuals in credit unions authorised as retail intermediaries in relation to the business the credit union undertakes as a retail intermediary.

- The responsibilities of the position;
- Whether the individual has a sound knowledge of the business and the responsibilities he/she will be required to undertake including regulatory and legal requirements;
- Whether the individual has shown the capacity in a previous or current position to undertake similar responsibilities of the position;
- The existing responsibilities of the individual including, but not limited to, the number of existing positions held by the individual.

Honest, Ethical and Acting with Integrity

All individuals proposed for CFs or PCFs should be honest, diligent and independent-minded and should act ethically and with integrity and fairness. This may also include ensuring that individuals operate without conflicts of interest.

When assessing the above, it is a matter for credit unions to assess whether the individual's ability to perform the function is adversely affected to a material degree by any of the circumstances set out in the Standards.

Financial Soundness

Financial soundness relates to whether an individual manages his or her affairs in a sound and prudent manner. An individual must be able to demonstrate that his or her role in a relevant function is not adversely affected to a material degree by the fact that they, for example,

- have defaulted upon any payment due arising from a compromise or scheme of arrangement with his or her creditors or made an assignment for the benefit of his or her creditors;
- are subject to a judgment debt which is unsatisfied, either in whole or in part, whether in the State or elsewhere;
- have been the subject of a bankruptcy petition, whether in the State or elsewhere;
- have been adjudicated a bankrupt and the bankruptcy is undischarged, whether in the State or elsewhere; or
- were a director of an entity which has been the subject of insolvency.

It should be noted that the occurrence of a single event in relation to financial soundness does not necessarily render an individual ineligible for the purposes of fitness and probity.

The Central Bank is seeking views on the Standards as follows:

(iii) Do you think the draft Standards cover all relevant matters for credit unions? If you have other suggestions, please provide them along with the supporting rationale.

Section 6: Guidance on Fitness and Probity for credit unions

The Central Bank is considering the benefit of providing tailored guidance on the Fitness and Probity regime for credit unions. The intention of this guidance would be to assist credit unions by setting out the Central Bank's expectations, where appropriate, on the implementation of the Fitness and Probity regime for credit unions. Such guidance would be provided on a non-statutory basis and would take into account responses received from this consultation. It is proposed that the guidance will cover the following areas of the Fitness and Probity regime for credit unions:

- (i) Implementation approach including phasing and transitional arrangements;
- (ii) CFs;
- (iii) PCFs;
- (iv) Applying for pre-approval;
- (v) Due diligence for CFs and PCFs;
- (vi) On-going compliance requirements;
- (vii) The Individual Questionnaire;
- (viii) Outsourcing requirements.

Comments are invited in response to the following questions:

(iv) Do you think that the Central Bank should issue guidance on the Fitness and Probity regime for credit unions?

(v) Are there any additional areas of the Fitness and Probity regime for credit unions which the guidance should cover? If you have other suggestions please provide details along with the supporting rationale.

Section 7: Credit unions authorised as retail intermediaries

The existing Fitness and Probity regime was introduced for all RFSPs other than credit unions on 1 December 2011. This includes all retail intermediaries other than credit unions that also hold an authorisation as retail intermediaries. It is the intention that the existing Fitness and Probity regime will be applied consistently to all RFSPs holding an authorisation as a retail intermediary, therefore it will be applied to credit unions holding such an authorisation.

It is proposed that credit unions that are authorised as retail intermediaries will also become subject to the existing fitness and probity requirements from 1 July 2015. This will allow credit unions that intend to continue operating as retail intermediaries time to put in place the necessary arrangements to comply with the existing Fitness and Probity regime. This will also allow those credit unions that do not wish to continue operating as retail intermediaries time to wind down this aspect of their business. There are currently 248 credit unions that also hold an authorisation as a retail intermediary.

By bringing those credit unions that are also authorised as retail intermediaries within the scope of the existing regime they will be subject to the Fitness and Probity Regulations as outlined in S.I. No. 437 of 2011 and S.I. No. 615 of 2011¹¹. Appendix C contains a list of the CFs and PCFs in the existing Fitness and Probity regime. Additional CFs that would apply to credit unions include functions relating to giving advice to a member and arranging a financial service for a member. Additional PCFs that would apply to credit unions include all board members, the money laundering reporting officer, the risk management officer, the compliance officer and the internal audit function. Transitional arrangements, similar to those provided on the introduction of the existing Fitness and Probity regime, will also be provided.

Comments are invited in response to the following question:

(vi) Do you agree with the implementation timeframe for the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries? If you have other suggestions please provide them along with supporting rationale.

¹¹ S.I. No. 437 of 2011:

<http://www.centralbank.ie/regulation/processes/fandp/Documents/SI%20No%20437%20of%202011.pdf>

S.I. No. 615 of 2011:

<http://www.centralbank.ie/regulation/processes/fandp/Documents/Fitness%20and%20Probity%20Regulations%20SI%20615%20%2030%20November%202011.pdf>

Section 8: Phasing and Transitional Arrangements

Phasing and transitional arrangements will apply for the implementation of each phase of the Fitness and Probity regime for credit unions. This will ensure that credit unions have sufficient time to prepare for the introduction of the regime. The timeline for the implementation of the phases is outlined below.

Phasing

The Regulations will be commenced for credit unions as follows:

- (i) From 1 July 2013, all credit unions with total assets greater than €10 million, as per the credit union's latest audited balance sheet, will be subject to the Fitness and Probity regime for credit unions.
- (ii) From 1 July 2015, all credit unions will be subject to the Fitness and Probity regime for credit unions.
- (iii) From 1 July 2015, all credit unions authorised as retail intermediaries will be subject to the existing Fitness and Probity regime.

Transitional arrangements

Controlled Functions

Within 3 months of the Regulations being commenced for credit unions the Standards will apply to all new appointments to CFs. From this date credit unions will be required to conduct due diligence on all newly proposed CFs prior to appointment.

Within 1 year of commencement of the Regulations, the Standards will apply to all individuals performing CFs in credit unions. Credit unions will be required to have conducted due diligence on all individuals performing CF functions in credit unions by this date.

Pre-Approval Controlled Functions

On introduction of the Fitness and Probity regime for credit unions, all individuals who hold positions as PCFs as at that date can continue in those positions for the remainder of their term of appointment without applying for approval from the Central Bank. These positions will be known as in-situ PCFs.

Credit unions will be required to perform due diligence on all individuals holding in-situ PCFs. Within 4 months of the Regulations being applied, credit unions will be required to submit electronically a list of all in-situ PCFs in the credit union confirming that the individuals are fit and proper according to the Standards issued under Section 50 of the Act and they have agreed to abide by the Standards.

On commencement of the Regulations for credit unions, all new proposed appointments to PCF positions in credit unions will be required to seek pre-approval from the Central Bank prior to appointment. Credit unions will be required to conduct due diligence on all proposed PCFs prior to seeking pre-approval from the Central Bank.

Due diligence process for all Controlled Functions and Pre-approval Controlled Functions

In undertaking due diligence for all CFs and PCFs, credit unions must satisfy themselves that the individual complies with the Standards and must receive written confirmation from the individual that they agree to abide by the Standards on an on-going basis. A credit union shall not permit a person to perform a CF or PCF unless the credit union is satisfied on reasonable grounds that the person complies with the Standards of Fitness and Probity and the person has agreed to abide by the Standards.

The table below illustrates the timeline for the phasing and transitional arrangements for the introduction of the Fitness and Probity regime for credit unions and the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries.

	<u>First Phase</u>	<u>Second Phase</u>	
Transitional Arrangements	Fitness and Probity regime for credit unions (credit unions with total assets > €10m)	Fitness and Probity regime for credit unions (all credit unions)	Existing Fitness and Probity regime (for credit unions authorised as retail intermediaries)
Standards of Fitness and Probity will apply to all individuals performing PCF roles in credit unions (in-situ PCFs).	1 July 2013	1 July 2015	1 July 2015
All new PCF roles will be required to apply for pre-approval in advance of appointment to PCF role.	1 July 2013	1 July 2015	1 July 2015
Standards of Fitness and Probity will apply to all newly appointed CF roles in credit unions.	1 October 2013	1 October 2015	1 October 2015
Credit unions will be required to supply a list of all individuals performing PCF roles to the Central Bank and confirm that they have conducted appropriate due diligence on those individuals.	1 November 2013	1 November 2015	1 November 2015
Standards of Fitness and Probity apply to all CF roles within credit unions. Credit unions will be required to have conducted due diligence on all CF roles by this date.	1 July 2014	1 July 2016	1 July 2016

Section 9: Processing Fitness and Probity applications

An Individual Questionnaire must be completed as part of the application process for individuals seeking pre-approval from the Central Bank. The credit union Individual Questionnaire will be broadly based on the existing Individual Questionnaire for all other RFSPs but will be tailored to reflect some specific characteristics of credit unions.

The Individual Questionnaire will be accessible via the Central Bank Online Reporting System and credit unions will be provided with 'User Accounts', allowing them to log on to the online system. The system will include:

- An online Individual Questionnaire form, to be completed by the proposed holder of the PCF;
- An online declaration by the applicant as to the accuracy and veracity of the information provided;
- An online declaration from the proposing credit union, confirming that checks of the individual have been undertaken by the credit union (e.g. appropriate due diligence) and confirming that the credit union is satisfied that the proposed holder of the PCF is fit and proper and complies with the Standards of Fitness and Probity.

Where the Central Bank considers it necessary, we may conduct an interview with proposed PCFs before deciding on whether or not to approve an application.

One of the aims of the application process will be to ensure that applications received from the proposing credit unions will be validated at the point of submission to the Central Bank, thus ensuring that only fully completed applications will be accepted. For example, validation will ensure that:

- Only valid credit union PCFs can be applied for;
- Appropriate credit union and application details are provided;
- Minimum Competency Code requirements, where relevant, have been met for credit unions authorised as retail intermediaries;
- Any gaps are explained;
- All mandatory entry fields are completed and formats of data entered are appropriate.

The Central Bank will aim to process all standard Individual Questionnaire applications¹² for credit unions in line with the service standards for the existing Fitness and Probity regime. The current turnaround time for processing applications is 15 working days for complete

¹² This excludes incomplete Individual Questionnaire applications, applications that are subject to interview or those which form part of a registration.

applications with no issues and 12 working days where the individual has been previously approved by the Central Bank. The service standards for the existing Fitness and Probity regime are contained in Appendix D.

Section 10: Regulatory Impact Analysis

In accordance with the Consultation Protocol for Credit Unions, issued on 27 November 2012, the Central Bank has conducted a Regulatory Impact Analysis (“RIA”). The purpose of the RIA is to examine the impact of the different policy options for the implementation of a Fitness and Probity regime on credit unions and to identify the most appropriate option. The RIA also examines the costs, benefits and impacts associated with each option.

The three policy options examined were:

Option 1: Do nothing

Option 2: Introduce the Fitness and Probity regime for credit unions set out in CP 62

Option 3: Introduce the existing Fitness and Probity regime for credit unions

Having considered the costs, benefits and impacts of each option, ‘Option 2 - Introduce the Fitness and Probity regime for credit unions set out in CP 62’ has been identified as the most appropriate option for credit unions. This option takes account of the recommendations made by the CCU.

Option 2 will improve governance standards within the credit union sector by requiring individuals in key governance and management positions in credit unions to be competent and capable people of integrity. This will provide members with confidence that their credit unions are appropriately managed and governed and will support the protection of members’ savings.

This option also provides a proportionate and pragmatic implementation approach that takes account of the potential cost implications for credit unions as option 2 proposes that the Fitness and Probity regime for credit unions would have 2 CFs and 2 PCFs and would be introduced on a phased basis to allow smaller credit unions time to enhance their processes, systems and controls. In addition, credit unions that are authorised as retail intermediaries would be provided with time to comply with the existing Fitness and Probity regime that applies to all other retail intermediaries.

Full details on costs, benefits and impacts of each option are contained in Appendix E.

Section 11: Summary of key questions to consider

As outlined in the preceding sections of this document, the Central Bank is seeking to obtain feedback on the following questions in relation to the Fitness and Probity regime for credit unions.

Section 4: Overview of the Fitness and Probity Regime for credit unions

- (i) Do you agree with the tailored approach to the designation of CFs and PCFs for credit unions in the draft Regulations? Do you think any additional CFs or PCFs should be designated? If you have other suggestions please provide them along with the supporting rationale. It should be noted that the Act is prescriptive in setting the relevant criteria applying to functions and positions which may constitute CFs and PCFs.
- (ii) Do you agree with the phased approach for the implementation of the Fitness and Probity regime for credit unions? If you have other suggestions please provide them along with the supporting rationale.

Section 5: Standards of Fitness and Probity for credit unions

- (iii) Do you think the draft Standards cover all relevant matters for credit unions? If you have other suggestions, please provide them along with the supporting rationale.

Section 6: Guidance on Fitness and Probity for credit unions

- (iv) Do you think that the Central Bank should issue guidance on the Fitness and Probity regime for credit unions?
- (v) Are there any additional areas of the Fitness and Probity regime for credit unions which the guidance should cover? If you have other suggestions please provide details along with the supporting rationale.

Section 7: Credit unions authorised as retail intermediaries

- (vi) Do you agree with the implementation timeframe for the application of the existing Fitness and Probity regime to those credit unions also authorised as retail intermediaries? If you have other suggestions please provide them along with supporting rationale.

Section 12: Making submissions

Please make your submissions in writing, if possible electronically as a word document or a .pdf document by email, on or before Friday 1 March 2013.

The Central Bank intends to make all submissions available on the Central Bank website. Information deemed to be potentially libellous or defamatory will not be published.

Submissions should be marked “Fitness and Probity regime for credit unions” and sent by email to rcuconsultation@centralbank.ie.

In the event that you are unable to send your response electronically, please forward it by post before Friday 1 March 2013 to:

Registry of Credit Unions
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

The date of 1 March 2013 is the final date for receipt of submission of responses.

Registry of Credit Unions
18 December 2012

Appendix A: Draft Regulations for the Fitness and Probity Regime for credit unions

S.I. No. **X** of [2013]

**CENTRAL BANK REFORM ACT 2010
(SECTIONS 20 AND 22 – CREDIT UNIONS)
REGULATIONS 2013**

S.I. No. X of [2013]

**CENTRAL BANK REFORM ACT 2010
(SECTIONS 20 AND 22 – CREDIT UNIONS)
REGULATIONS 2013**

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 20(1) and section 22(2) of the Central Bank Reform Act 2010 the Bank hereby makes the following regulations:

1. These Regulations may be cited as the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) Regulations 2013.
2. These Regulations apply to and in relation to regulated financial service providers that are credit unions within the meaning of the Credit Union Act 1997 as follows:
 - a) In the case of a credit union the total assets of which, after deducting any provisions for bad and doubtful debts, exceed €10 million according to the credit union’s latest audited balance sheet, from 1 July 2013; and
 - b) In the case of a credit union other than a credit union specified in paragraph (a), from 1 July 2015.
3. Subject to Regulations 5 to 9, the functions in Schedule 1 of these Regulations are prescribed as controlled functions.
4. Subject to Regulations 5 to 13, the controlled functions in Schedule 2 of these Regulations are prescribed as pre-approval controlled functions.
5. References in these Regulations to a controlled function shall be taken to include a part of a controlled function unless the context otherwise requires.

6. References to a title commonly used for a person who performs a function shall be taken to refer to the functions commonly performed by a person of such title.
7. A person who performs a function shall be taken to be responsible for the performance of such function notwithstanding that the person in question does not have the title commonly used by a person who performs such function.
8. A person who performs a function of the holder of an office or position shall be taken to be responsible for the performance of such function notwithstanding that the person in question is not the holder of such office or position.
9. (i) A person shall be taken to perform a function where the credit union or a person or persons in the credit union are, with respect to that function, accustomed to act in accordance with the directions or instruction of the person in question.
(ii) Paragraph (i) shall not be taken to include a person in accordance with whose instruction a person is accustomed to act by reason only that such person does so on advice given by the person in question in a professional capacity.
10. A person (the “temporary officer”) shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the credit union appointing a person to perform such pre-approval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Bank in advance of the person in question assuming such responsibility as a temporary officer.
11. A function shall not be taken to be a pre-approval controlled function with respect to a credit union where that function is carried on by another person (the “other person”) and the following conditions are satisfied:

- a) there is in place a written agreement between the credit union and the other person for the carrying on of that function by that other person on behalf of the credit union; and
- b) the other person is a regulated financial service provider whose business is subject to regulation by either:
 - (i) the Bank; or
 - (ii) an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
 - (iii) an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

12. A function is and shall remain prescribed as a controlled function notwithstanding that such function, or part thereof, is comprised within a function, or part thereof, prescribed as a pre-approval controlled function.

13. Where the Bank approves the appointment of a person to perform a pre-approval controlled function then, unless expressly stated otherwise in the approval in writing, the person shall be so approved to perform the function in or on behalf of the credit union or credit unions named in the application for approval and not in or on behalf of any other credit union or any other regulated financial service provider.

Signed for and on behalf of the

CENTRAL BANK OF IRELAND

on this the [] day of []

Matthew Elderfield

Deputy Governor

Schedule 1

Controlled Functions in respect of credit unions

The following functions are controlled functions for the purposes of these regulations:

1. A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a credit union. (CUCF-1)
2. A function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a credit union with its relevant obligations. (CUCF-2)

Schedule 2

Pre-Approval Controlled Functions in respect of credit unions

A person who holds or performs the duties of any of the following positions or offices in the credit union:

- a) the office of chairman¹³ of the board of the credit union (CUPCF-1),
- b) the office of manager of the credit union (CUPCF-2).

¹³ The Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) renames the Chairman as Chair. The draft Regulations will be amended to reflect this following commencement of the relevant provisions.

Appendix B: Draft Standards of Fitness and Probity for credit unions

Fitness and Probity Standards for credit unions

(Code issued under Section 50 of the Central Bank Reform Act 2010)

1. INTRODUCTION

1.1. Scope

On 24 September 2012, Part 3 of the Central Bank Reform Act 2010 was commenced for credit unions providing a statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions or pre-approval controlled functions in credit unions. This Code specifies the Standards of Fitness and Probity which persons performing controlled functions or pre-approval controlled functions in credit unions shall, at a minimum, comply with.

1.2. Legal Basis

This Code is issued by the Central Bank of Ireland pursuant to the powers set out in section 50 of the Central Bank Reform Act 2010.

This Code may be amended or supplemented by the Central Bank of Ireland from time to time. Failure by a person to comply, or satisfy the Central Bank as to an ability to comply, with the Fitness and Probity Standards may inter alia:

- (i) Where the approval of the Central Bank is being sought to permit a person to perform a pre-approval controlled function, lead to approval being refused;
- (ii) Where a person is performing a controlled function, lead to an investigation being conducted in relation to the fitness and probity of that person to perform the relevant function;
- (iii) Cause that person to be the subject of a prohibition notice under Section 43 of the Act.

A credit union shall not permit a person to perform a controlled function unless the credit union is satisfied on reasonable grounds that the person complies with this Code and the person has agreed to abide by the Standards of Fitness and Probity (the Standards).

1.3. Definitions

In this Code:

- a) *'the Act'* means the Central Bank Reform Act 2010;
- b) *'the Central Bank'* means the Central Bank of Ireland;
- c) *'Controlled Functions'* means those functions set out in Schedule 1 of the Regulations as they apply to credit unions ;
- d) *'Pre-Approval Controlled Functions'* means those functions set out in Schedule 2 of the Regulations as they apply to credit unions;
- e) *'Regulations'* means the Central Bank Reform Act 2010 (Sections 20 and 22 - Credit Unions) Regulations, 2013 (S.I. No. X of 2013);
- f) *'Relevant Function'* means a function prescribed or declared as a controlled function or pre-approval controlled function under sections 20 and 22 of the Act;
- g) *'Standards'* means these Fitness and Probity Standards
- h) *'2011 Code'* means the Fitness and Probity Standards 2011 (issued under Section 50 of the Central Bank Reform Act 2010)

Unless the contrary intention appears, a word or expression used in this Code which is also used in the Act shall have the same meaning in this Code as in the Act.

1.4. Exclusion from the Scope of the Standards

These standards shall not apply to persons performing functions with respect to a credit union where that function is carried on by another person (the "other person") and all of the following conditions are satisfied:

- a) there is in place a written agreement between the credit union and the other person for the carrying on of that function by that other person on behalf of the credit union; and
- b) the other person is a financial service provider who is regulated either:
 - (i) by the Bank; or
 - (ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank; or
 - (iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Bank.

2. FITNESS AND PROBITY STANDARDS

- 2.1. A person to whom this Code applies shall comply with these Standards at all times.
- 2.2. In order to comply with section 2.1, a person is required to be:
- a) competent and capable;
 - b) honest, ethical and to act with integrity; and
 - c) financially sound.
- 2.3. Any information provided by an individual pursuant to this Code to the Central Bank and / or a credit union shall be candid and truthful and shall be full, fair and accurate in all respects and not misleading to the best of his or her knowledge.
- 2.4. In determining whether an individual has complied with this Code, a credit union or the Central Bank, as the case may be, shall have regard to any applicable guidance issued by the Central Bank.

3. CONDUCT TO BE COMPETENT AND CAPABLE

- 3.1. A person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.
- 3.2. Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she:
- a) has professional or other qualifications and capability appropriate to the relevant function;
 - b) has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment or voluntary context;
 - c) has shown the competence and proficiency to undertake the relevant function through the performance of previous functions which if carried out at present would be subject to this Code or the 2011 Code, or current controlled functions, or performance by the person of any role similar or equivalent to the functions that are covered by this Code or the 2011 Code. If the person performed a function in a

credit union or another regulated financial service provider, which if performed at present would be subject to this Code or the 2011 Code, and that credit union or the other regulated financial service provider received State or credit union sector financial support or was subject to any action under the Central Bank and Credit Institutions (Resolution) Act 2011 or any regulatory action under the Credit Union Act 1997¹⁴, consideration shall be given to the competence and skills demonstrated by that person in that function and to the extent, if any, to which the performance of his or her function may have contributed to the necessity for such financial support or action;

- d) has a sound knowledge of the business of the credit union as a whole, and the specific responsibilities that are to be undertaken in the relevant function;
- e) has a clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function;
- f) shall not allow the conduct of concurrent responsibilities to impair his or her ability to discharge the duties of the relevant function or otherwise allow personal conflicts of interest to arise in carrying out his or her pre-approval controlled functions or controlled functions; and
- g) is compliant with any applicable Minimum Competency Code issued by the Central Bank¹⁵.

4. CONDUCT TO BE HONEST, ETHICAL AND TO ACT WITH INTEGRITY

4.1. Without limiting the generality of subsection 2.2 (b), a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree where one or more of the following may be applicable:

- a) the person is or was a sole trader or a director or partner in a legal entity, which has in any jurisdiction, been refused, prohibited, restricted or suspended from the right to carry on any trade, business or profession for which a licence, registration or other authorisation is required by the law, in that jurisdiction or has had had any such

¹⁴This will be further updated on enactment of the Credit Union and Co-operation with Overseas Regulators Bill 2012 (as passed by the Houses of the Oireachtas) and the Central Bank (Supervision and Enforcement) Bill 2011.

¹⁵The Minimum Competency Code currently applies to credit unions when they are performing functions relating to their authorisation as a retail intermediary.

registration, authorisation, membership or licence revoked, otherwise than on a voluntary basis;

- b) the person has been the subject of any complaint made to the Central Bank, the Financial Services Ombudsman or any equivalent body, reasonably and in good faith, relating to activities regulated by the Central Bank or regulated by an equivalent authority in any jurisdiction. In considering whether the complaint adversely affects the person's ability to carry out a Relevant Function, consideration shall be given to the outcome of any inquiry or investigation or any similar process into that complaint if same has been concluded;
- c) the person is or has been, in any jurisdiction, subject to any disciplinary proceedings or has been issued a warning, reprimand or other administrative sanction or its equivalent, by the Central Bank, or an equivalent measure issued by any other regulatory authority, (including any previous regulator), any clearing house and exchanges, any professional body, government body or agency;
- d) the person has been, in any jurisdiction, dismissed, or asked to resign and did resign, from any profession, vocation, office or employment or from any position of trust or fiduciary appointment, whether or not remunerated;
- e) the person has, in any jurisdiction, been a director, of a company that was struck off the register of companies (or its equivalent) by the Registrar of Companies (or its equivalent) on an involuntary basis;
- f) the person has been disqualified or restricted from acting as a director in any jurisdiction or has been disqualified from acting in any managerial capacity;
- g) the person has, in any jurisdiction:
 - (i) been convicted of an offence either of money laundering or terrorist financing (or their equivalents);
 - (ii) been convicted of an offence which could be relevant to that person's ability to perform the relevant function; or
 - (iii) had a finding, judgment or order made against him/her involving fraud, misrepresentation, dishonesty or breach of trust or where the person is subject to any current proceedings for fraud, misrepresentation, dishonesty or breach of trust.
- h) the person has been the subject of any civil penalty enforcement action taken by a regulatory authority under any law in any jurisdiction;

- i) the person has been untruthful or provided false or misleading information to the Central Bank or been uncooperative in any dealings with the Central Bank;
- j) the person, or any business with which the person held a position of responsibility or influence has been or is being, in any jurisdiction, investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal or any similar body, whether publicly or privately; or
- k) the person has, in any jurisdiction, been found by the Central Bank or any other regulatory authority to have perpetrated or participated in any negligent, deceitful or otherwise discreditable business or professional practice.
- l) the person has held in the past 5 years or currently holds a loan with the credit union which has been or is in arrears for a period of greater than 9 weeks.

5. FINANCIAL SOUNDNESS

5.1. A person shall manage his or her affairs in a sound and prudent manner.

5.2. Without prejudice to the generality of paragraph 5.1, a person must be able to demonstrate that his or her role in a relevant function is not adversely affected to a material degree by the fact that one or more of the following may be applicable:

- a) the person has defaulted upon any payment due arising from a compromise or scheme of arrangement with his or her creditors or made an assignment for the benefit of his or her creditors;
- b) the person is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in the State or elsewhere;
- c) the person is or has been the subject of a bankruptcy petition, whether in the State or elsewhere;
- d) the person has been adjudicated a bankrupt and the bankruptcy is undischarged, whether in the State or elsewhere; or
- e) a person was a director of an entity which has been the subject of insolvency.

Appendix C: Existing Fitness and Probity regime – CFs and PCFs

Outlined below are the CFs and PCFs which are required under the existing Fitness and Probity regime¹⁶.

List of Controlled Functions	
CF1	Ability to exercise a significant influence on the conduct of the affairs of a regulated financial service provider
CF2	Ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations
CF3	Giving of advice to a customer of the regulated financial service provider
CF4	Arranging a financial service for a customer of the regulated financial service provider
CF5	Assisting a customer in the making of a claim under a contract of insurance or reinsurance
CF6	Determining the outcome of a claim arising under a contract of insurance or reinsurance
CF7	Management or supervision of those persons undertaking CF3 to CF6 roles
CF8	Adjudicating on any complaint communicated to a regulated financial service provider by a customer
CF9	Insurance and reinsurance intermediaries who direct and manage the undertaking or are directly involved in insurance or reinsurance mediation
CF10	Dealing in or having control over property of a customer of the regulated financial service provider
CF11	Dealing in or with property on behalf of the regulated financial service provider

¹⁶ CFs: <http://www.centralbank.ie/regulation/processes/fandp/Documents/cf.pdf>

PCFs: <http://www.centralbank.ie/regulation/processes/fandp/Documents/PCFs.pdf>

List of Pre-approval Controlled Functions	
General	
PCF 1	Executive Director
PCF 2	Non executive director
PCF 3	Chairman of the board
PCF 4	Chairman of the audit committee
PCF 5	Chairman of the risk committee
PCF 6	Chairman of the remuneration committee
PCF 7	Chairman of the nomination committee
PCF 8	Chief executive
PCF 9	Member of partnership
PCF 10	Sole trader
PCF 11	Head of Finance
PCF 12	Head of Compliance
PCF 13	Head of Internal Audit
PCF 14	Head of Risk
PCF 15	Head of compliance with responsibility for Anti Money Laundering and Counter Terrorist Financing Legislation
PCF 16	Branch Manager of branches in other EEA countries
PCF 17	Head of Retail Sales
Insurance	
PCF 18	Head of Underwriting
PCF 19	Head of Investments
PCF 20	Chief Actuary
Banking	
PCF 21	Head of Treasury
PCF 22	Head of Credit
PCF 23	Head of Asset and Liability Management
Stock exchange	
PCF 24	Head of traded markets
PCF 25	Head of International Primary Markets
PCF 26	Head of Markets Supervision
PCF 27	Head of Operations
Investment Firms	
PCF 28	Branch Managers in Ireland
PCF 29	Head of Trading
PCF 30	Chief Investment Officer
PCF 31	Head of Investment

Investment Intermediaries/Collective Investment Schemes	
PCF 32	Branch Managers in Ireland
PCF 33	Head of Transfer Agency
PCF 34	Head of Accounting (Valuations)
PCF 35	Head of Trustee Services
PCF 36	Head of Custody Services
UCITS Self-Managed Investment Company/Management Company	
PCF 37	Head of Transfer Agency
PCF 38	Head of Accounting Valuations
PCF 39	Designated person to whom a director of a UCITS Self-Managed Investment Company or Non UCITS Self-Managed Investment Company or Management Company may delegate the performance of the management functions
Payment Institutions	
PCF 40	Branch Managers within the State
Financial Service Providers established outside Ireland	
PCF 41	Manager of a branch in Ireland of a regulated financial service provider established in a country that is not an EEA country

Appendix D: Fitness and Probity Service Standards

Target turnaround times for processing Individual Questionnaires in respect of persons proposed for Pre-Approval Controlled Functions (PCFs)

1. Summary Targets

Category	Turnaround Time (Business Days)
Incomplete Individual Questionnaire Response	5
Qualifying Investor Fund Individual Questionnaire	5
Central Bank of Ireland Previously Approved Individual	12
EEA Previously Approved Individual	12
Standard Individual Questionnaire	15
These turnaround times do not apply to applications: <ol style="list-style-type: none"> where another regulator has to be contacted; which are subject to interview; form part of an authorisation; form part of an acquiring transaction; or are in respect of qualifying shareholders. 	

Effective 1 December 2011, the Central Bank of Ireland (the “Central Bank”) implemented a new fitness and probity regime for, *inter alia*, persons proposed to hold pre-approval controlled functions (directors and senior managers) within regulated financial service providers.

In accordance with the Central Bank Reform Act 2010, it is the responsibility of regulated financial service providers to satisfy themselves on reasonable grounds that the proposed person complies with the Fitness and Probity Standards and that the person has agreed to abide by the Standards before seeking the approval of the Central Bank for the appointment.

As part of the pre-approval process the Central Bank undertakes its own due diligence in respect of proposed approved persons. A record of the due diligence undertaken by regulated financial service providers may be requested by the Central Bank.

Regulated financial service providers must ensure that the proposed person has fully and accurately completed the Individual Questionnaire; and that the firm has endorsed the declaration in the online Individual Questionnaire confirming that it is satisfied to make the appointment. The online Individual Questionnaire must be submitted through the Online Reporting System (ONR). The fitness and probity section of www.centralbank.ie contains guidance and a procedural manual on how to submit applications. The Central Bank wishes to stress the importance of attaching the appropriate documentation with the Individual Questionnaire, as this will reduce the probability of the Individual Questionnaire being returned – see table below:

Reasons why Individual Questionnaire may be returned	
Section of Individual Questionnaire	Reason
1	Incorrectly answering yes to questions 1.4 and 1.5 and not completing Reputation and Character Section.
4	Incomplete documentation relating to compliance with the Minimum Competency Code, such as evidence of qualifications, grandfathering status, new entrant status, and / or continuing professional development.
5	Lack of documentation to demonstrate that an issue disclosed in Reputation and Character section does not have a material impact on the person’s ability to perform the role.
6	For persons performing a PCF outside Ireland, who are proposed to perform a similar PCF role within the same industry sector in Ireland: <ul style="list-style-type: none"> • Lack of documentation to demonstrate that the person is entitled under the laws of an EEA / EU member state to perform the equivalent to the PCF function.
11 & 12	Individual Questionnaire completed by and / or submitted by a person whose name does not match the name of the applicant or the name of the proposer.
12	The proposer is not an approved person within the entity with the authority to submit the Individual Questionnaire, namely: PCF 1 Executive Director, PCF 2 Non-Executive Director, PCF 3 Chairman, PCF 9 Partner, PCF 12 Head of Compliance, PCF 39 Designated person in a Self-Managed Investment Company.
13	Data Protection Disclosure issued by an Garda Síochána has not been attached.

2. Targets

1. Confirmation of the receipt of applications is communicated via the ONR system. Where applications are incomplete, the application will be returned to the proposing entity together with the reasons why, within 5 business days.
2. The Central Bank aims to complete its assessment of Individual Questionnaires within 5 business days for applications from persons who are proposed as PCFs for Qualifying Investor Funds.
3. The Central Bank aims to complete its assessment of Individual Questionnaires within 12 business days for applications received from persons who are currently approved for a PCF role in Ireland and who wish to take up a similar role within the same sector in Ireland.
4. The Central Bank aims to complete its assessment of Individual Questionnaires within 12 business days for applications received from persons who are currently approved for a PCF role within a specific sector in another EEA country and who wish to take up a similar role within the same sector in Ireland.
5. In all other cases, where a complete application has been received, the Central Bank aims to complete its assessment of Individual Questionnaires within 15 business days.
6. Where an applicant is requested to attend for interview, this will be communicated to the proposing entity and the applicant within 15 business days.
7. Requests for further information will be issued within 15 business days.
8. Where approvals are sought as part of the authorisation of a new entity, they will be treated as part of the authorisation process and approval will be linked to authorisation. Therefore the targets outlined above do not apply.
9. Where approvals are sought as a qualifying shareholder, or as part of an acquiring transaction, they will be treated as part of that approval process. Therefore the targets outlined above do not apply.
10. In cases where responses are awaited from third parties, it may not be possible to meet the targets outlined above. This is particularly the case where overseas regulators are contacted. In those cases, we would recommend that proposed appointees notify their

home regulator of their application to the Central Bank and that the Central Bank may make enquiries with the regulator.

It should be noted that the measurement of the target turnaround times will commence once the Central Bank has received an application completed in accordance with the procedural manual referred to above.

In the interests of our stakeholders it is vital that we make the right regulatory decisions and sometimes this will mean that the assessment of applications may take longer than our target timescales.

The Central Bank aims to meet these targets 85 per cent of the time and will publish metrics on a half yearly basis, commencing in January 2013 (for the period July – December 2012).

Appendix E: Regulatory Impact Analysis



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Fitness and Probity Regime for Credit Unions - Regulatory Impact Analysis



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1. Introduction

On 1 December 2011 a Fitness and Probity regime (the “existing Fitness and Probity regime”) was introduced for all regulated financial service providers other than credit unions.

On 24 September 2012, the Minister for Finance commenced Part 3 of the Central Bank Reform Act 2010 for credit unions, providing the Central Bank of Ireland (the “Central Bank”) with the powers to introduce a Fitness and Probity regime for the credit union sector.

The Central Bank is carrying out a consultation on the proposed Fitness and Probity regime for credit unions, ‘Consultation Paper 62 – Fitness and Probity Regime for Credit Unions’ (“CP 62”).

The ‘Consultation Protocol for Credit Unions’, issued on 27 November 2012, states that a regulatory impact analysis (“RIA”), which will contain an examination of the impacts of the new regulations and consideration of alternative options, will be carried out by the Central Bank, where practicable, when consulting on new regulations.

As part of the development of the proposed Fitness and Probity regime for credit unions the Central Bank undertook a RIA, set out below, to examine the impact of the different policy options for the implementation of Fitness and Probity on credit unions and to identify the most appropriate option.

2. Policy context and objective

There are currently 399 credit unions registered in the Republic of Ireland with total members reported to be in the region of 3.1 million. Total assets in the credit union sector amount to €13.7 billion, of which €8.6 billion relates to investments and €5.0 billion represents loans to members. Total members’ savings amount to €11.6 billion and total realised reserves amount to €2.0 billion¹⁷.

The Strategic Review of the credit union sector (the “Strategic Review”) completed by Grant Thornton in January 2011 and the on-going supervisory work of the Central Bank have highlighted significant deficiencies in standards of governance in the credit union sector. The Strategic Review found that decision making was shared between the boards of credit unions and paid management in a poorly defined way with evidence of dominant management or dominant individual board members exerting a disproportionate influence on policy formation and decision making in some credit unions. Concerns were also raised

¹⁷ As reported by credit unions on the Prudential Return for 30 September 2012.

around the levels of financial competence among office holders in the sector. The Strategic Review recommended that, as standards of governance and competency vary greatly and are a significant influence on financial performance and prudential soundness of credit unions, fitness and probity tests should apply to all credit unions to ensure there is an adequate level of competency in individual credit unions to understand and mitigate the risks they face.

The Report of the Commission on Credit Unions published in April 2012 (the “Report”) also referred to the subject of governance in credit unions and recognised that the issue of governance in credit unions is at the core of strengthening the regulatory framework and setting out a strategy for the future evolution of the credit union sector. The Report stated that ‘reforming and strengthening the governance of credit unions will not only be crucial to addressing the issues that currently exist in the sector but also for providing for a healthy and stable sector into the future.’ The Report recommended that Part 3 of the Central Bank Reform Act 2010 be commenced for credit unions providing the Central Bank with the powers to set out the Regulations and Standards of Fitness and Probity for the credit union sector and that the fitness and probity regime for the credit union sector should initially focus on individuals that hold board and management responsibilities within credit unions.

In light of the concerns around governance standards in the credit union sector, the Central Bank’s policy objective is to introduce an appropriate fitness and probity regime for the credit union sector that will improve governance standards in credit unions and support the protection of members’ savings by requiring that key individuals in credit unions are competent, capable, honest, ethical, act with integrity and are financially sound.

3. Identification of policy options

The following policy options have been considered for the implementation of an appropriate Fitness and Probity regime for the credit union sector:

Option 1	Do nothing
Option 2	Introduce the Fitness and Probity regime for credit unions set out in CP 62
Option 3	Introduce the existing Fitness and Probity regime for credit unions

4. Analysis of costs, benefits and other impacts for each option

The costs, benefits and impacts for credit unions, their members, the credit union sector and the Central Bank were considered in the analysis of the three options. Information requested and received by the Central Bank from a number of stakeholders (see section 4.1) also informed the analysis.

4.1 Information received from stakeholders

As part of the RIA assessment, an information request was sent to a number of stakeholders including the Irish League of Credit Unions, the Credit Union Development Association, the Credit Union Managers' Association, the National Supervisors Forum and a representative sample of credit unions. The information request sought input on the impact the introduction of a Fitness and Probity regime would have on individual credit unions, credit union members and the credit union sector and sought feedback on the proposed Individual Questionnaire to be completed for positions requiring pre-approval. The information request was based on the Fitness and Probity recommendations contained in the Report of the Commission on Credit Unions.

We are grateful to the credit unions and other stakeholders that responded to this information request. The responses received have informed the preparation of the RIA and have also influenced the development of the proposed Fitness and Probity regime for credit unions.

Further to the information request, the proposed Fitness and Probity regime for credit unions has been developed to take account of the responses to the information request, the introduction of the second phase of the regime and the regime that will apply to credit unions that also have an authorisation as a retail intermediary.

4.2 Option 1 - Do nothing

This would involve no change to the current position. The existing Fitness and Probity regime would continue to apply to all regulated financial service providers except credit unions.

4.2.1 Costs

Option 1 would involve no additional operational costs for credit unions, their members or the Central Bank. However, option 1 would not address the governance issues in the credit union sector and where poor governance resulted in financial difficulties in credit unions or confidence issues in the credit union sector, this could ultimately result in significant cost implications for individual credit unions, their members and the credit union sector.

4.2.2 Benefits

While it could be considered that the lack of change proposed in option 1 is a potential benefit for credit unions, any potential benefit is counterbalanced by the increased risk of additional costs for credit unions and the credit union sector as a whole that could arise from failures that may occur as a result of poor governance. There are no additional benefits for credit union members arising from option 1.

4.2.3 Impact

The existing governance issues that have been identified in credit unions, including concerns regarding competence, would not be addressed and the weaknesses that have been identified in the existing regulatory framework in relation to fitness and probity would persist. The risk of credit unions failing as a result of poor governance would not be mitigated.

The ability of credit unions to develop their business models and expand their services to members in a prudent manner is dependent on the existence of sound governance and financial structures. The absence of an appropriate Fitness and Probity regime for credit unions could hinder this development.

The current position whereby fitness and probity requirements would be in place for all regulated financial service providers except credit unions would continue. Therefore credit union members would still not be afforded the same level of protection as customers of other regulated financial service providers that are required to ensure the fitness and probity of individuals in key positions.

4.3 Option 2 - Introduce the Fitness and Probity Regime for Credit Unions set out in CP 62

The Fitness and Probity regime for credit unions set out in CP 62 would apply to credit unions. This regime introduces 2 Controlled Functions and 2 Pre-approval Controlled Functions for credit unions with phasing for smaller credit unions. The regime also provides additional time for credit unions that are also authorised as retail intermediaries to comply with the existing Fitness and Probity regime. In addition, the regime contains transitional arrangements for all credit unions. See Sections 4 – 9 of CP 62 for further details.

4.3.1 Costs

Credit unions may incur some incremental costs arising from the implementation of option 2 in the areas of training, due diligence and pre-approval (see below). It is difficult to assess the likely cost impact as the costs will depend on level of training and due diligence already undertaken by individual credit unions to ensure the people they appoint are capable, competent people of integrity. The cost impact will also be dependent on the nature, scale and complexity of the business model and organisational structure of each credit union. The

difficulty in estimating these costs was also reflected in the responses to the information request received from stakeholders on the impact of a fitness and probity regime on credit unions (the “Responses”). Most Responses did not provide an estimate of costs and where costs were identified it was recognised that these costs overlap with costs that are already being incurred by credit unions. Responses also indicated that where credit unions have been proactive in education and training, any incremental costs will be substantially reduced.

Training

During 2011, credit unions invested over €2m in training, as reported on the Credit Union Annual Return for 2011. In addition, the Responses indicated that since 2008 over 2,000 credit union officers have undertaken an accredited training programme. Given the significant investment in training that is already being made by credit unions, it is anticipated that for many credit unions the incremental training costs are not likely to be significant. In addition it is to be expected that any well governed and managed credit union would ensure that any training that may be required to ensure officers are competent and capable to carry out their function would be undertaken in the normal course of business.

Due Diligence and Pre-approval

Credit unions will be required to undertake due diligence on individuals within the credit union that perform Controlled Functions on an on-going basis to ensure the individuals are fit and proper to carry out their function. Credit unions will also be required to seek approval from the Central Bank for the Controlled Functions that require pre-approval.

It is anticipated that any additional costs that could arise from the requirement to undertake due diligence on Controlled Functions are not likely to be substantial as we would expect that credit unions would, in the normal course of business, be ensuring that individuals that carry out functions in the credit union are honest, competent and capable.

There may be some incremental cost arising from the requirement to seek pre-approval from the Central Bank. However, any additional cost is considered proportionate as this will only apply to two positions within the credit union, the chairman of the board of directors and the manager. Transitional arrangements will also be provided so that individuals that are in these positions when the regime commences will not be required to seek pre-approval to remain in their position for the remainder of their term of appointment. In addition smaller credit unions will be given additional time to comply with the new requirements.

Credit unions that also have an authorisation as a retail intermediary will be required to seek pre-approval for additional positions, as is required under the existing Fitness and Probity regime for all other retail intermediaries. Credit unions that have such an authorisation and

wish to continue operating as a retail intermediary will be given additional time to put the necessary arrangements in place.

Option 2 will give rise to some additional system and resource cost implications for the Central Bank. However, it is anticipated that these will not be substantial initially given that the regime is being introduced on a phased basis. These costs will increase when the existing Fitness and Probity regime is extended to credit unions authorised as retail intermediaries. Credit unions are required to pay an annual regulatory levy to the Central Bank based on the resources required by the Central Bank to discharge its legal responsibilities. Therefore, any increase in the Central Bank's costs arising from the introduction of a Fitness and Probity regime for credit unions will have a related impact for credit unions.

4.3.2 Benefits

Credit unions depend on the confidence of their members and member confidence is a key support to the financial stability of the credit union sector. The introduction of option 2 will assist in maintaining members' confidence in the credit union sector, as credit unions will be required to ensure that individuals that exercise significant influence and control in a credit union are capable, competent and financially sound persons with the appropriate skills, experience, knowledge and integrity to manage and govern the credit union for the benefit of all stakeholders.

Option 2 will play a role in mitigating the risk of cost to credit unions, members and the credit union sector arising from the failure of credit unions by implementing a framework which requires that those entrusted with safeguarding members' savings are skilled, experienced and people of integrity. Option 2 will also address a significant gap in the regulatory framework for credit unions and will enhance the regulatory framework in line with the recommendations of the Commission on Credit Unions.

Governance standards for credit unions will improve under option 2 with requirements for individuals in key roles to have knowledge, competencies and skills to carry out their specific functions and this is likely to result in the attraction of more skilled and qualified volunteers to the sector. The expected improvement in governance standards arising from the introduction of a Fitness and Probity regime for credit unions is also likely to offer opportunities for the credit union sector to develop.

Members of credit unions will now be afforded similar protection to customers of other regulated financial services providers as credit unions will be required to ensure that key individuals at board and management level are skilled, competent and capable people of integrity.

The responses received from stakeholders also referred to the potential benefits arising from the introduction of Fitness and Probity regime for credit unions including:

- Members should be able to rest easy knowing that their credit union is operating on a fit and proper basis;
- Individuals in positions of significant influence will discharge their roles and responsibilities more appropriately;
- May be attractive for individuals of a high calibre to join the credit union in a leadership capacity;
- Will assist succession planning and volunteer development programme;
- Individuals should see a benefit as there will be a more structured approach to their own continuing and professional development;
- Better run credit unions resulting in better returns and increased dividends for members; and
- Financial entities that are financially stable and better able to meet the evolving needs of their members.

4.3.3 Impact

This section seeks to identify any impacts option 2 could have on credit unions in addition to the costs and benefits set out previously.

Volunteers

A number of the Responses suggested that the introduction of a Fitness and Probity regime for credit unions might result in a decrease in the number of individuals willing to volunteer to hold positions in credit unions as they may be 'put off' by the fitness and probity requirements. Given the average current board size is 12 (significantly in excess of the minimum required number of 7) and taking into account the strong volunteer culture within the credit union sector, we consider such an outcome unlikely. We would also support the view expressed in the Responses that the introduction of fitness and probity could prove attractive for individuals of a high calibre to join the credit union and could assist succession planning and volunteer development.

One of the Responses suggested that as the board of directors must meet fitness and probity requirements before they can be appointed to the board, members may feel this takes away from the democratic nature of the election process. In relation to the election process, the introduction of a Fitness and Probity regime for credit unions does not preclude any member from being elected and appointed to the board once they are capable and competent people of integrity.

Phasing and Transitional Arrangements

Option 2 provides a phased implementation approach with additional time provided for smaller credit unions. Credit unions authorised as retail intermediaries will also be provided with extra time to meet the requirements of the existing Fitness and Probity regime. In addition transitional arrangements will be in place for all credit unions. This phased approach and transitional arrangements will ensure that the impact of the introduction of a Fitness and Probity regime for credit unions is proportionate and will allow credit unions time to ensure they have the necessary arrangements in place to comply with the fitness and probity requirements.

Overall Impact

Taking into account the costs and benefits previously outlined, it is anticipated that the overall impact of option 2 will be to improve governance standards within the credit union sector by requiring individuals in key governance and management positions in credit unions to be competent and capable people of integrity. This will provide members with confidence that their credit unions are appropriately managed and governed and will support the protection of members' savings.

4.4 Option 3 - Introduce the existing Fitness and Probity Regime for Credit Unions

Under option 3, the existing Fitness and Probity regime would apply to credit unions. This regime would introduce the same fitness and probity framework (regulations, standards, guidance etc.) for credit unions as provided for in option 2 but would involve additional Controlled Functions and Pre-approval Controlled Functions. This regime has 11 Controlled Functions and 41 Pre-approval Controlled Functions (17 of which apply to all regulated financial service providers).

Further details are available at the following link:

www.centralbank.ie/regulation/processes/fandp/Pages/IntroductiontoFitnessandProbity.aspx

4.4.1 Costs

Given the additional number of Controlled Functions and Pre-approval Controlled Functions that would apply to credit unions, any costs identified in option 2 in relation to training, due diligence and pre-approval would apply to a wider range of functions in the credit union and the related costs would increase correspondingly. For example, where a credit union incurs a cost arising from the requirement for pre-approval these costs would increase as all appointments to the board of directors would require pre-approval.

4.4.2 Benefits

The benefits identified in option 2 would similarly apply for option 3.

4.4.3 Impacts

All credit unions would have to comply with the existing Fitness and Probity regime and would be subject to the same fitness and probity requirements as all other regulated financial services providers. The scope of the regime would be more extensive arising from the additional Controlled Functions and Pre-approval Controlled Functions, as set out above. Most of the impacts referred to in option 2 would also relate to option 3. While transitional arrangements would be provided for credit unions on the introduction of the regime, phased introduction for smaller credit unions or retail intermediaries would not apply.

5. Preferred Option

Having considered the costs, benefits and impacts of each option, 'Option 2 - Introduce the Fitness and Probity regime for credit unions set out in CP 62' has been identified as the most appropriate option for credit unions. This option takes account of the recommendations made by the Commission on Credit Unions.

This option will improve governance standards within the credit union sector by requiring the individuals in key governance and management positions in credit unions to be competent and capable people of integrity. This will provide members with confidence that their credit unions are appropriately managed and governed and will support the protection of members' savings.

This option also provides a proportionate and pragmatic implementation approach that takes account of the potential cost implications for credit unions as option 2 proposes that the Fitness and Probity regime for credit unions would have 2 Controlled Functions and 2 Pre-approval Controlled Functions and would be introduced on a phased basis to allow smaller credit union time credit unions to enhance their processes, systems and controls. In addition credit unions that are authorised as retail intermediaries would be provided with time to comply with the existing Fitness and Probity regime that applies to all other retail intermediaries.

6. Consultation

As outlined in the Consultation Protocol for Credit Unions issued on 27 November 2012, the Central Bank has committed to consult on proposed new regulations, which in the Central Bank's view, will have a significant impact on the business of credit unions.

Consultation on the proposed Fitness and Probity regime for credit unions is contained within CP 62. This RIA is included as an Appendix within the consultation paper.

7. Enforcement and Compliance

The responsibility for enforcing and ensuring compliance with the Fitness and Probity regime for credit unions will rest with the Central Bank.

8. Review

As set out in CP 62, the Central Bank will conduct a review of the regime following the implementation of option 2. This review will assess the appropriateness of the Fitness and Probity regime for credit unions taking account of the new regulatory framework and the restructuring of the sector. Consideration will be given at this point to the designation of additional Controlled Functions and Pre-approval Controlled Functions with a view to aligning the Fitness and Probity regime for credit unions with the existing Fitness and Probity regime applying to all other regulated financial services provider.

9. Publication

The RIA will be published as part of CP 62 which is available at www.centralbank.ie

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