



Banc Ceannais na hÉireann
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Eurosystem

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Corporate Governance Requirements for Credit Institutions 2015 - Frequently Asked Questions



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Introduction

The Corporate Governance Requirements for Credit Institutions 2015 ('the Requirements') set out the corporate governance obligations which apply to credit institutions with effect from 1 January 2016.

This Frequently Asked Questions ('FAQ') document takes effect from 11 January 2016 and is to be read in conjunction with the Requirements.

This document contains information which is provided for guidance purposes only. It reflects questions which have been raised in relation to the Requirements and may be updated by the Central Bank of Ireland ('the Central Bank') from time to time.

Financial Risks and Governance Policy Division
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1. Scope

1.1 Do the Requirements apply to the branches of a foreign credit institution based in Ireland?

The Requirements do not apply to a branch of a foreign entity authorised in the EEA passporting into Ireland. Such a branch is not a separate legal entity with its own authorisation or licence but instead avails of the passporting provisions. With a number of exceptions its activities are supervised by the Home State regulatory authority.

There are no passporting arrangements for non-EEA country credit institutions which have established a branch in Ireland and as such the corporate governance requirements as set out in the Policy Statement on the Authorisation of Branches of Non-EEA Credit Institutions under Section 9A of the Central Bank Act 1971 apply.

1.2 Do the Requirements apply to foreign branches of Irish credit institutions?

Yes. A branch is not a separate legal entity but is part of a credit institution licensed or authorised by the Central Bank and as such is subject to the Requirements.

1.3 What constitutes an annual report for the purposes of Section 1.3 of the Requirements?

The annual report is the report which is available to shareholders.

1.4 Does Section 1.3 regarding disclosure of the applicability of the Requirements apply to non-High Impact designated credit institutions?

Yes. Section 1.3 applies to non-High Impact designated credit institutions.

1.5 Do non-High Impact designated credit institutions need to disclose that they do not need to comply with the additional requirements for High impact designated credit institutions?

Yes. For clarity and transparency credit institutions should confirm whether or not they are subject to the requirements of Appendix 1. The Requirements encourage non-High Impact designated credit institutions to comply with the requirements for High Impact designated credit institutions. Where credit institutions decide to do so, this should be disclosed.

1.6 Can credit institutions that have entered run-off, seek an exemption from certain aspects of the Requirements, for example reducing the number of non-executive directors to one individual by applying appropriate proportionality?

The Central Bank will consider requests from companies in run-off to disapply parts of the Requirements on a case-by-case basis.

1.7 Will credit institutions that move from being non-High Impact designated credit institutions to High Impact designated credit institutions be given a period of grace to implement the additional requirements?

Generally, credit institutions will move from being non-High Impact designated credit institutions to High Impact designated credit institutions gradually and therefore the Central Bank will expect credit institutions to tailor their position to the nature, scale and complexity of the credit institution. Where it is anticipated that a credit institution will be re-designated as a High Impact designated credit institution that credit institution would be given an opportunity to make representations to the Central Bank, including in respect of the timelines for implementation.

1.8 How will the Corporate Governance Code for Collective Investment Schemes and Management Companies (‘Code for Funds’) interact with the Requirements?

The Corporate Governance Code for Collective Investment Schemes and Management Companies issued in December 2011 by Irish Funds shares many principles with the Requirements. However, the Corporate Governance Code for Collective Investment Schemes and Management Companies has been implemented on a voluntary basis.

2. Definitions

2.1 Does the definition of ‘credit institution’ refer only to those undertakings authorised by the Central Bank of Ireland?

Yes, this definition of ‘credit institution’ refers only to those credit institutions authorised by the Central Bank of Ireland.

2.2 Do the concepts outlined in the definition of a ‘non-executive director’ apply in cases where the parent group is a non-financial group?

Yes, these concepts apply to both financial and non-financial groups as described by Sections 7.2, 7.8 and 7.9 of the Requirements.

2.3 In the case of a non-executive director employed by another group company, would any form of intra-group service provision between that other group company and the credit institution for which the person is proposed as director be regarded as automatically compromising their independence?

Ultimately this depends on the facts of the case. In general terms any director who holds another directorship within the group could be described as a group director. The type of directorship held within the group might be an executive director, a non-executive director or an independent non-executive director (INED).

2.4 Is an internal director considered a group director?

The term internal director is not used in the Requirements.

2.5 Is a group director considered a non-executive director?

A group director is considered to be a non-executive director for the purposes of the provisions of the Requirements relating to non-executive directors.

2.6 Is there a monetary threshold in relation to the financial obligations an individual may have to the credit institution which could be considered for the purposes of assessing independence?

No, the Requirements do not apply a threshold. Each case will be determined on its own merits.

2.7 Would a former partner of the credit institution's external audit firm be considered independent?

This will depend on the facts of the case. The Central Bank will consider for example:

- the nature of the services provided by the external audit firm;
- the time that has passed since those services were provided; and
- the potential for any conflict of interest which might reasonably arise.

2.8 What period is considered to be 'the recent past' e.g. is it up to two years or three years?

This will depend on the facts of the case – the more directly that an individual was involved in a credit institution's business the longer the period might be. In general, the Central Bank considers that the expiration of two years might be sufficient for a partner who was not responsible for audit and three years might be sufficient for one who was responsible for audit. However, ultimately the Central Bank must be satisfied as to whether a director meets the criteria for independence.

3. Legal Basis

3.1 How should credit institutions prepare the Compliance Statement to be submitted to the Central Bank under section 26 of the Requirements?

For the purpose of providing the Compliance Statement required under Section 26 of the Requirements credit institutions should continue to have regard to the ‘Corporate Governance Requirements for Credit Institutions – Guidelines on the Annual Compliance Statement in accordance with Section 26’.

3.2 Will there be a protocol or time frame issued around response times of the Central Bank for requests made by credit institutions for deviations or exceptions from certain provisions of the Requirements?

The Central Bank will respond as expeditiously as possible. Speed of response will depend upon the detail, quality and adequacy of information provided by the credit institution.

3.3 If a provision of the Requirements is in conflict with another corporate governance obligation, which obligation should the credit institution apply?

If a conflict arises between the Requirements and another corporate governance obligation or standard, the stricter of the obligations or standards should be met so as to ensure compliance with both sets of obligations.

3.4 If a Central Bank authorisation imposes more onerous obligations than the Requirements, do the licence conditions take precedence over the Requirements?

Yes, the Requirements are imposed in addition to, and shall not affect, any other corporate governance obligations and standards or license condition which a credit institution is subject to.

3.5 How will the governance requirements in CRD IV [S.I. 158 of 2014] interact with the Requirements?

As outlined in Section 3.3, the stricter of the obligations or standards should be met in order to ensure compliance with both sets of obligations. Specifically, CRD IV sets out additional obligations for credit institutions deemed significant for the purposes of the Directive. The additional corporate governance obligations imposed by CRD IV on significant institutions will substitute the relevant provisions in the Requirements, as set out in Appendix 2 of the Requirements.

4. Reporting to the Central Bank

4.1 Is there any guidance as to what the Central Bank views as a ‘material deviation’?

The board is responsible for determining (in the first instance) whether a breach is material based on the particular facts.

4.2 Can the importance of the sections in this regard be weighted?

The Central Bank considers compliance with all sections of the Requirements to be equally important.

4.3 What is the process for reporting material deviations to the Central Bank?

The credit institution shall report the material deviation within five business days of it coming to the attention of the credit institution. The credit institution shall take a practical approach to reporting such deviations to the Central Bank. However, the board is ultimately responsible for reporting such matters.

5. General Requirements

5.1 How would Section 6.7 work in practice?

Section 6.3 of the Requirements requires the board to have robust governance procedures in place. If, on notifying the board, a director has a material concern which is not addressed within five business days then he or she must report it to the Central Bank.

5.2 Does the board have to convene for an ad-hoc meeting within the five-day period referenced in Section 6.7?

It may not be necessary for the board to convene to address such concerns. This will depend on the facts of the case and the procedures adopted by the board to consider reported concerns, investigate them, establish whether they are justified, and merit making a report to the Central Bank, and what, if any, remedial action is required.

5.3 Can the scope of the reporting referred to in Section 6.7 be clarified?

The scope of the report will depend on the facts of the case, but the Central Bank expects that at a minimum it will include details of the nature, extent and date of the deviation, potential consequences and remedial action taken or proposed to be taken.

5.4 Credit institutions consider this would be challenging in five days, in particular determining the appropriate action, as it could take five days and more to identify the scale of the deviation. Would an action plan to address the deviation be adequate?

Yes, an action plan might be adequate depending on the facts of case. The Central Bank would be concerned if a credit institution delayed unnecessarily in identifying and implementing remedial action.

5.5 Can the Central Bank please confirm that all existing high level governance policies (e.g. Compliance, Whistle Blowing, Anti-Money Laundering, Anti-Fraud, Conflicts of Interest) meet this section of the Requirements?

No, this is for credit institutions to satisfy themselves. Where high level policies already exist at group level, the credit institution must ensure that they comply with all aspects of the Requirements.

6. Composition of the Board

6.1 How do the requirements for board composition apply to subsidiaries?

The majority of the board of a subsidiary may be INEDs, group directors or a combination of group directors and INEDs provided that there are at least two INEDs on the board.

6.2 For example, would the following composition be acceptable: one executive director, two group directors, and two INEDs?

Yes, on the basis that there are two INEDs and a majority of group directors and INEDs.

6.3 Could a non-executive director in a group company qualify as an INED in a subsidiary?

A non-executive director in a group company is very unlikely to be an INED in a subsidiary when the test of independence set out in the Requirements is applied.

6.4 Could an INED in a group company qualify as an INED in a subsidiary?

It is possible that an INED in a group company may be an INED in a subsidiary provided that they can meet the criteria for independence.

6.5 Does the word ‘may’ in Section 7.2 have any significance? Could it be inferred that, as long as a credit institution has at least two INEDs, it may choose to have as many group directors as seen fit /appropriate?

Section 7.2 allows for a subsidiary of a non-High Impact designated credit institution to have a majority of group non-executive directors as opposed to a majority of INEDs provided it has two INEDs¹.

6.6 Where an INED is also a non-executive director for a group entity, for the purposes of meeting the minimum requirement to have at least two INED’s on the board of the foreign subsidiary entities, would this disqualify the INED in question from being considered an INED as defined under the Requirements (assuming other independence criteria could be satisfied)?

The Central Bank will consider whether the director can meet the criteria for independence. An INED in a group company may meet that criteria, however, if a director is a non-executive director in another group company rather than an INED, it is unlikely that they will be considered independent.

6.7 If a credit institution avails of the condition in Section 7.2 of the Requirements for subsidiaries of groups to use group directors to make up the majority of the board, does this also apply to the creation of majorities at sub-committee level?

As stated in the Requirements, ‘in the case of credit institutions that are subsidiaries of groups the majority of the board may be group directors’. Where a credit institution applies this at board level it will translate to committee level also.

¹ Three INEDs are required in the case of a High Impact designated credit institution.

6.8 Company law permits alternate directors to act as a director where the director is unavailable. Does the attendance of an alternate fulfil the requirement of Section 7.4 of the Requirements regarding directors' attendance at board meetings?

The Requirements do not provide for attendance by an alternate director and the Central Bank is not disposed to the use of alternate directors. However, attendance by an alternate director shall be considered to fulfil this requirement only in exceptional circumstances.

6.9 All companies currently have a quorum of at least two directors. How does this interact with Section 7.4 regarding directors' attendance at all board meetings (where possible)?

The Requirements apply in addition to all applicable governance obligations.

6.10 What constitutes 'short notice' for the purposes of Section 7.6? Would 24 hours suffice?

The meaning of short notice will depend on the facts of the particular case, and would be influenced, for example, by the urgency of the issue, and the reasonable travel time required by the directors.

6.11 Where directors are based overseas or have international travel commitments as part of their remit, does the reference to 'reasonably available' in Section 7.6 include participation via telephone, videoconference or internet?

The Central Bank will consider the facts of the particular case, and depending on the urgency of the issue, and the travel time needed by directors, contact by telephone or video conference may suffice.

6.12 Does the reference to directors being ‘reasonably available’ in Section 7.6 mean ‘resident in the EU’?

No, the use of the term ‘reasonably available’ does not mean directors are required to be ‘resident in the EU’.

6.13 Where letters of appointment currently exist, should these be updated to include time commitments before the end of the time of appointment?

Yes, credit institutions will be expected to update/amend directors’ letters of appointment.

6.14 Can the Central Bank provide any guidelines about the time commitments it expects?

This is a matter for the credit institution to establish taking into consideration the director’s duties and functions.

6.15 What is a possible outcome if the Central Bank disagrees with the time commitment set out in the letter of appointment? Can it direct boards to increase this?

Yes, the Central Bank would consider using its regulatory and supervisory powers to ensure that the time commitment is sufficient.

6.16 How do the limits on directorships operate? Are they cumulative?

For a non-High designated credit institution, a director can hold the following directorships:

- up to five financial directorships (i.e. directorships in companies or groups of companies which are credit institutions or insurance undertakings); and
- up to eight non-financial directorships (i.e. any other type of company which is not a credit institution or an insurance undertaking).

For High Impact designated credit institutions a director can hold the following directorships:

- up to three financial directorships; and
- up to five non-financial directorships.

Please see Appendix 2 of the Requirements in relation to directorship limits that apply to credit institutions designated as 'significant' under CRD IV.

6.17 Is there any scope to exceed these limits?

In relation to non-High Impact designated credit institutions, where a credit institution proposes to appoint a director who already holds five financial directorships, there is some scope for the credit institution to seek the Central Bank's prior approval to appoint that director to the board of an additional credit institution or insurance undertaking. However, there is no scope to do so where a director is a director of a High Impact designated credit institution (per Section 7.8 in Appendix 1).

In relation to the ability to appoint a director who has exceeded the maximum number of non-financial directorships, credit institutions may apply to the Central Bank for its prior approval as provided for in both Section 7.9 of the Requirements and Section 7.9 of Appendix 1 of the Requirements.

6.18 How does the group exemption operate?

All directorships held within the group regardless of whether they are financial or non-financial companies shall be counted as one directorship.

6.19 Where an individual holds more than one directorship, does the responsibility for notification rest with the individual, with one of the financial institutions (if so, which one), or all financial institutions?

It is a matter between the director and the financial institution to keep the financial institution fully informed about the number of directorships which a director holds.

Any financial institution proposing to appoint a director who exceeds the maximum number of directorships under the Requirements shall be responsible for notifying the Central Bank to seek prior approval to appoint the director. Financial institutions are required to satisfy themselves of compliance both on appointment of the director and on a continuing basis.

6.20 Where an individual holds directorships in a variety of operations including captive (re)insurers, do the latter fall into either of these restrictions on permissible number of positions?

Directorships in captive insurance undertakings or captive reinsurance undertakings fall within the category of non-financial directorships for the purposes of calculating the directorships held.

6.21 Are directorships held in funds or trustees included in the count for ‘non-financial directorships’?

Yes, directorships held in funds or trustees are included in the count for ‘non-financial directorships’.

6.22 Are the limits on the number of financial directorships which can be held restricted to financial institutions regulated by the Central Bank or can they be financial institutions anywhere in the world?

The limits imposed are not limited to financial institutions regulated by the Central Bank only. When considering proposed appointments, the Central Bank will look at directorships beyond Ireland.

6.23 Does Section 7.8 apply to institutions in run-off?

The limit on the number of directorships for INEDs in run-off institutions will be reviewed on request by the Central Bank and will be considered on a case-by-case basis.

6.24 How does the exclusion for directorships held in the public interest on a voluntary and pro bono basis referred to in Section 7.10 operate?

Directorships held on a pro bono basis or held in the public interest are excluded from the limits imposed under Section 7.8 and Section 7.9 of the Requirements and Appendix 1 provided that such directorships do not interfere with the director's ability to properly fulfil their role and functions as a director of a financial institution. Any such directorships should be notified to the Central Bank for the purposes of seeking to avail of the exclusion.

6.25 Does the exclusion for directorships held in the public interest on a voluntary and pro bono basis include personal not for profit directorships, such as trade associations and industry sector bodies? Although these are not necessarily in the public interest, they would be unremunerated and non-executive.

Such unpaid directorships would be excluded for the purposes of Section 7.10 but only if they do not interfere with the director's ability to properly fulfil his or her role and functions as a director of a financial institution. Any such directorships should be notified to the Central Bank for the purposes of seeking to avail of the exclusion.

6.26 Does the exclusion for directorships held in the public interest on a voluntary and pro bono basis include personal not for profit directorships, such as parish development boards, school boards, resident's boards, cultural festivals and other such directorships?

Such unpaid directorships would be excluded for the purposes of Section 7.10 if they do not interfere with the director's ability to properly fulfil his or her role and functions as a director of a financial institution. Any such directorships should be notified to the Central Bank for the purposes of seeking to avail of the exclusion.

6.27 Does Section 7.14 regarding the review of board membership apply to all directors (executive directors, non-executive directors and INEDs)?

Yes, it applies to all members of the board.

6.28 What factors should be taken into account when carrying out the review of board membership?

Examples of factors which should be taken into account when carrying out board membership reviews include attendance, level of contribution, expertise relative to the credit institution's needs/strategy, independence, conflicts of interest and compliance with the obligations of the Requirements.

6.29 Does the board itself carry out the review of board membership?

The board is responsible for carrying out the reviews of board membership.

6.30 In relation to the frequency with which board membership is renewed, does the three-year review refer to the overall board composition relative to skills required, or is it to review an individual board member's position for a further three years?

It requires an overall review of both individual board members and the composition of the board.

6.31 Is there a conflict with Section 14.6?

No, Section 14.6 refers to reviewing the board's performance, whereas Section 7.14 refers to a review of board membership.

6.32 For the nine-year review referred to in Section 7.15, is it open to credit institutions to automatically renew the contract of any INED who has successfully passed the review, providing the Central Bank has been advised?

Reviews should be comprehensive and not lead to automatic renewal. For example, credit institutions will have to satisfy themselves as to whether INEDs still meet the criteria for independence. Reviews should be carried out annually where INEDs have been members of the board for more than nine years. The requirement to carry out a review after nine years only applies to INEDs. Credit institutions should discuss these reviews with the Central Bank prior to renewing the contract of an INED.

6.33 If there is an INED on the board for a period of greater than nine years presumably the Central Bank can use this section to remove the INED status and reassign as non-executive director, and therefore require the credit institution to appoint another INED to the board?

It is up to the credit institution to satisfy itself that it is in compliance with the Requirements, and whether its board members satisfy the relevant independence criteria.

7. Chairman

7.1 In the event that the permanent Chairman is absent from a meeting (due to illness or another genuine reason) does the Central Bank have any objection to the CEO chairing a one-off meeting?

Section 8.7 of the Requirements provides for a Deputy Chairman who is an INED or a group director to be appointed if required. If a Deputy Chairman is not appointed, then the meeting should be chaired by an INED and not by the CEO.

7.2 Can a group director (who is an executive elsewhere within the group) be appointed as Chairman?

Yes, provided that he or she has sufficient time available to discharge their obligations as Chairman and director.

7.3 If a Chairman wishes to take on a new directorship, when is he required to seek the prior approval of the Central Bank?

A Chairman should seek the Central Bank's prior approval before accepting any appointment.

7.4 If a proposed directorship would take the Chairman's number of directorships to four (which is still below the five/eight limit) should the Chairman gain the prior approval of the Central Bank regardless of whether the number of directorships would still fall below these limits?

Yes. Given the importance of the role of Chairman, the Central Bank's prior approval is required before taking up any other directorships (other than within the group), notwithstanding the fact that the Chairman may hold less than the maximum number of directorships permitted.

7.5 Who should a credit institution/Chairman contact to seek approval of new directorship(s)?

In the first instance the credit institution should contact its supervisory team within the Central Bank.

7.6 Is there any further guidance on the type of specific information which should be submitted with each application in addition to that in Sections 7.8 and 7.9 of the Requirements?

The relevant information will depend on the facts of each case. Applications for prior approval may use the guidance provided in Section 7.8 and 7.9 and Appendix 1. The key issue shall be the rationale as to why and on what basis the credit institution and Chairman are satisfied that the additional directorship shall not adversely affect the time commitment required to carry out the Chairman's role.

7.7 Is there any flexibility in the application of Section 8.10 regarding the advancement of members of the executive to the role of Chairman?

The Requirements do not permit advancement by the CEO to the role of Chairman.

7.8 If an individual holds the position of Deputy Chairman or Deputy CEO in another financial institution should this be taken into account for the purposes of Section 8.11?

While the Requirements do not explicitly prohibit a Chairman from holding a Deputy Chairman role or Deputy CEO role in another financial institution, it would be inappropriate to hold both positions where potentially an individual could end up either chairing two boards or acting as CEO on one board and chairing another.

8. Chief Executive Officer

8.1 Is it mandatory to have a CEO?

Yes, all credit institutions must have a CEO.

8.2 Where credit institutions are currently headed by a General Manager, do the CEO requirements extend to the General Manager?

Yes, the person responsible for carrying out the role and responsibilities of the CEO must comply with the requirements as CEO in addition to any additional requirements as General Manager. The Central Bank expects individuals and credit institutions to comply with the spirit and letter of the Requirements.

8.3 Can a CEO take up other CEO positions in a financial institution authorised outside the State?

No, other CEO positions may only be held in Irish financial institutions which are designated as Medium-Low or Low Impact. The amendment to this requirement does not extend to institutions authorised outside of the State.

8.4 Does Section 9.5 of the Requirements apply to contracts of employment such as permanent contracts, given that there may be legal issues surrounding the continued employment of the CEO under this provision?

Credit institutions are expected to adhere to the Requirements irrespective of existing contractual arrangements.

9. Non-Executive Directors and Executive Directors

9.1 What guidance is available on what constitutes ‘highest possible standards’ referred to in Section 11.2 regarding execution of agreed strategies?

Credit institutions should take a common-sense approach to this requirement. The board will have adopted the strategies and should therefore identify the appropriate standards.

9.2 Can the Central Bank indicate how it expects credit institutions to comply with Section 11.5 regarding the provision of support to directors?

This will depend on the particular requirements of members of the board and at a minimum should enable them to obtain such support as is necessary to enable them to fulfil their obligations as members of the board and its sub-committees. It might include training, administrative support, access to information from the executives, or the use of any third party professional advisors.

10. Chief Risk Officer

10.1 Can the role of the Chief Risk Officer ('CRO') be performed at the group level?

Credit institutions are required to have a CRO at the local level. However, in certain circumstances and depending on the nature, scale and complexity of a credit institution there may be scope for a credit institution to apply to the Central Bank for approval to allow an individual at group level to act as CRO for the subsidiary. This should only be in limited circumstances and will be assessed on a case-by-case basis.

10.2 Section 12.1 of the Requirements permits non-High Impact designated credit institutions to allow another PCF to fulfil the role of the CRO simultaneously. What type of PCF roles does the Central Bank envisage as being acceptable in this regard?

The Central Bank considers the independence of the CRO to be imperative. The role of the CRO is a key line of defence and should be distinct from other executive functions and business line responsibilities, whose activities and exposures he/she has the responsibility to review and form independent judgements on. However, as set out in Section 12.1 of the Requirements, a non-High Impact designated credit institution may apply to the Central Bank for approval to permit another PCF to fulfil the role of the CRO simultaneously. In such circumstances it is envisaged that the role of the CRO should only be combined with similar control and oversight type roles which would not present any conflict of duties. Such individuals must also be able to display a competence and capacity to assume the duties of the CRO role in addition to their other PCF role.

In exceptional circumstances the Central Bank may permit the role of the CRO to be shared with other roles that have responsibility for executive business functions. The prior approval of the Central Bank shall be obtained before any arrangement is put in place.

11. Role of the Board

11.1 Can the Central Bank please expand upon what it is meant by ‘ethical’ as referred to in Section 13.1?

Credit institutions should apply a common usage and common sense approach to the meaning of ‘ethical’.

11.2 Is there any guidance as to what type of documentation is required by Section 13.2?

Guidance on supporting documentation is provided in Section 13 of the Central Bank’s publication ‘Guidelines on the Compliance Statement in accordance with Section 26’.

12. Appointments

12.1 Will the format of the performance review referred to in Section 14.6 be at the credit institution's discretion?

Yes, credit institutions may use discretion in deciding on the format of the performance review.

12.2 Does the succession plan relate specifically to the board or should a separate succession plan be in place for senior management?

Succession plans should be in place for both the board and senior management.

13. Risk Appetite

13.1 Section 15.4 implies that the credit institution specifies a single risk appetite measure against which they judge any deviation for the purposes of reporting under the Requirements. Is this interpretation correct?

No, Section 15.1 requires the board to understand the risks to which the credit institution is exposed and to establish a documented risk appetite. This section also states that the appetite shall be expressed in qualitative terms and also include quantitative metrics to allow tracking of performance and compliance with agreed strategy (e.g. Value at Risk, leverage ratio, range of tolerance for bad debts, acceptable stress losses, economic capital measures).

13.2 Will the Central Bank give guidance on the format/content of the risk appetite statement?

The Central Bank does not wish to recommend a prescriptive approach on what should or should not be in a risk appetite statement. It is the responsibility of the board of directors to express the credit institution's risk appetite and understand how it relates to the credit institution's strategy. However, some high level characteristics of an appropriate Risk Appetite Statement have been outlined by the Central Bank within the [Risk Appetite Discussion Paper](#).

13.3 For the purposes of Section 15.5, how is 'independent' to be interpreted, for example, independence of tasks or independence of reporting structure/lines?

Independence can be assessed on a number of factors including independence of tasks, independence of reporting structures/lines and funding/finance independence. The primary rule is that no influence should be brought to bear on these control functions as a result of any connection.

14. Meetings

14.1 Are credit institutions expected to hold all board meetings within the State?

The Central Bank expects credit institutions to demonstrate that the ‘heart and mind’ and decision making organs of the credit institution are located in the State. The convening of board meetings outside the State would contradict this principle.

14.2 In relation to documenting ‘dissentions or negative votes’ at board meetings, is it expected that challenges from directors are also captured by this?

Yes. While ‘challenge’ may not result in ‘dissentions or negative votes’ it is important that the minutes document all relevant matters arising during the meeting.

15. Committees of the Board

15.1 Can the Central Bank clarify that when the board is acting as the audit committee then the presence of the Chair or CEO is by invitation only (in-line with best practice for audit committees and Section 22.5)?

Where the board comprises only five members, the full board including the CEO and Chairman, may act as the audit committee provided that the Chairman of the audit committee is an INED.

15.2 Would the Central Bank be amenable to applications for a credit institution having more than five directors using its entire board to sit as an audit committee?

The Central Bank will consider such applications on the facts of the case.

15.3 Where a credit institution which is part of a group chooses to rely on the group audit committee should it notify the Central Bank prior to doing so?

Yes, such credit institutions should discuss this option in advance with their supervisory team in the Central Bank.

15.4 Can it be assumed that the requirement in Section 19.4 for INEDs to play a leading role applies only to the audit and risk committees or does it apply to each board committee established?

The role of an INED with respect to board committees is detailed in the relevant sections of the Requirements (Sections 22.2, 22.3, 23.3, 24.2 and 25.1).

15.5 How will cross committee membership apply when a credit institution relies on a group committee?

A member of the board of directors of the subsidiary credit institution will be required to sit on the relevant group sub-committee(s).

16. General Requirements of Committees

16.1 For the purposes of Section 20.1 (d), what constitutes ‘regularly’? Does it mean, for example, attendance at a minimum of three of every four meetings?

This will depend on the facts of the case and will relate, for example, to the nature, scale and complexity of the credit institution, the terms of reference of the committee and the manner in which it carries out its responsibilities.

16.2 Does the same requirement to attend board meetings apply in respect of sub-committees of the board?

Section 20.1 (d) of the Requirements provides that committee members must attend ‘regularly’ therefore there is no obligation to attend every sub-committee meeting.

16.3 What does an appropriate frequency of renewal of committee membership mean in Section 20.1 (g)? Will every three years suffice, as per review of board membership?

What constitutes appropriate frequency will depend upon the facts of the case, including where there have been changes to the committee structure, business strategies etc. Thus these may be more frequent than three years, for example, in line with Section 20.1 (d).

16.4 Can it be assumed that if a director's membership of the board is reviewed and renewed as above for the purposes of Section 7.14, that their membership of a committee can be reviewed and renewed at the same time and with the same frequency?

Any such review would depend upon the circumstances and should not be restricted to the fixed terms proposed in Section 7.14. The credit institution should consider the role of the directors and whether, for example, they continue to meet the criteria for that role.

16.5 Can credit institutions rely on sub-committees established by holding companies within a group?

No, this is not permissible under the Requirements.

17. Terms of Reference of Committees of the Board

17.1 What does the Central Bank mean by the reporting lines of the committees? Do the Requirements apply to all persons reporting into the committees?

This means the reporting lines both into the committees and from the committees and any relevant individual reporting lines therein.

18. Audit Committee

18.1 Where the board of a subsidiary company acts as the audit committee would this overrule the requirements of Sections 22.2, 22.3 and 22.5 of the Requirements?

Where the board chooses to carry out the functions of the audit committee Sections 22.3 and 22.5 will apply, while Section 22.2 will not.

18.2 Section 23.1 of the Requirements permits credit institutions to seek Central Bank approval to allow the board to act as the risk committee. Is this similarly permitted for audit committees?

No. The Requirements do not permit the board to act as the audit committee. However, the board may act as the audit committee in instances where Section 19.1 is applicable and the board comprises of only five members.

18.3 What does the requirement in Section 22.4 for the audit committee to have financial experience ‘as a whole’ mean in practice?

This does not mean that every board member must have financial experience rather the committee collectively should have relevant financial experience.

18.4 In a situation where an INED is both the Chairman of the board and a member of the audit committee and the audit committee only allows for non-executive directors to be formal participants of the audit committee, is the credit institution required to make all five members of the board active participants of the audit committee?

No, the credit institution is not required to make all five members of the board active participants of the audit committee.

18.5 Does the requirement in Section 22.6 for audit committee meetings to be held ‘at regular intervals and, where appropriate, to coincide with important financial reporting dates’ imply that an annual meeting held at the time of sign-off on the statutory returns (i.e. one audit committee meeting per annum) would suffice as it is held at the same time each year?

No, the reference to ‘at regular intervals’ means that audit committee meetings should take place more than once per annum.

18.6 Generally, do the provisions regarding audit committees take precedence over the provisions on audit committees of public-interest bodies (which includes credit institutions and insurance undertakings) in the Statutory Audits Regulations SI 2010/220 and will the Requirements also supersede the provisions on audit committees in Section 205B of the Companies Act 1990 (as inserted by Section 42 of the Companies (Auditing and Accounting) Act 2003)?

The Requirements are imposed in addition to, and shall not affect any other corporate governance obligations and standards which a credit institution is subject to. In the event of a conflict arising between the Requirements and any other corporate governance requirements, the stricter of the requirements shall apply to ensure compliance with both sets of obligations. Any concerns that such compliance cannot be achieved due to identified conflicts should be notified promptly to the Central Bank.

19. Risk Committee

19.1 Section 23.1 permits credit institutions to propose to the Central Bank that the board itself carries out the functions which would otherwise be delegated to a risk committee. However, Section 19.1 appears to restrict the provisions of Section 23.1 to cases where the board comprises only five members. Can a non-High Impact designated credit institution with more than five board members apply for this?

Yes, non-High Impact designated credit institutions with more than five board members may apply to the Central Bank for permission to allow the board itself to carry out the functions which would otherwise be delegated to a risk committee.

20. Compliance Statement

20.1 How will the compliance statement interact with the Companies Acts Compliance Statements?

The Requirements must be observed in their own right, in addition to any other relevant codes or requirements.

20.2 If a director has resigned before the Compliance Statement has been submitted, are they still required to sign the Statement?

A director who resigns at any stage before the Compliance Statement has been submitted is not required to sign the statement.

20.3 If a director commences their role on the board at any stage during the reporting year are they still required to sign the Statement?

Yes, any director who is in-situ at the end of the reporting year for which the Compliance Statement applies and at the time of submitting the Compliance Statement is required to sign the statement, regardless of when each individual director commenced their role on the board.

20.4 If a director commences their role on the board after the reporting year but before the Compliance Statement has been submitted are they still required to sign the Statement?

No, only the signatures of directors in-situ at the end of the reporting year for which the Compliance Statement applies are required to sign the statement.

20.5 Is it compulsory for all in-situ directors to sign the Compliance Statement?

All in-situ directors are required to sign the Compliance Statement.

20.6 If changes have been made to board or sub-committee structures after the financial year end but before the deadline for submitting the Annual Compliance Statement, should these changes be documented in the Annual Compliance Statement?

The Annual Compliance Statement should report on the period of its financial year. Therefore, any changes that occurred following the financial year end but before the deadline to submit the Annual Compliance Statement will be captured in the following year's Annual Compliance Statement.

20.7 Should a credit institution disclose all board sub-committees on the Annual Compliance Statement?

Yes, all board sub-committees (including sub-committees entirely composed of executive directors) should be disclosed on the Annual Compliance Statement.

20.8 Where a credit institution has applied for an exemption from the Requirements in advance of submitting the Annual Compliance Statement, and where the rejection of the application for the exemption would result in non-compliance with the Requirements, should the credit institution disclose this potential breach in the Annual Compliance Statement?

Yes, any outstanding applications for exemptions, which if denied would result in non-compliance with the Requirements, should be disclosed.

20.9 Can the list of directors signing the Annual Compliance Statement transverse more than one page?

Yes, the list of signatures of all directors can transverse more than one page.

21. Appendix 1 Additional obligations on High Impact designated credit institutions

21.1 Does Section 7.1 (Appendix 1) mean that High Impact designated credit institutions must have at least two executive directors?

The Requirements do not prescribe how many executive directors there should be on any board. However, the provisions at Section 7.1 and 7.2 (in both the Requirements and Appendix 1) and at Sections 6.5, 11.2, 11.4, and 24.2, are all relevant in satisfying the requirements regarding board composition.

21.2 For the purposes of Section 7.9 (Appendix 1) is the limit of five non-financial institution directorships intended to be in addition to the limit of three financial directorships where one is a High Impact designated credit institutions?

Yes, these operate so that the maximum number of directorships which can be held by a director of a High Impact designated credit institution is eight (three financial and five non-financial) subject to the provisions concerning group directorships, pro bono directorships, and the ability to apply under Section 7.9 for the Central Bank's consent to hold additional directorships in companies which are not institutions as defined by the Requirements.

21.3 Is there a distinction between the terms 'other' directorships and multiple directorships referred to in Section 7.8 of the Requirements and Section 7.8 in Appendix 1?

There is no intended distinction between the terms 'other' and 'multiple' directorships.

21.4 For the purposes of Section 14.6, who is considered suitable as an external evaluator? Would the external auditor or group auditor for a subsidiary be acceptable?

An external auditor or an external group auditor would be acceptable. The board must satisfy itself that the evaluator has the appropriate knowledge, experience and resources to undertake this review.

22. Appendix 2 Additional corporate governance obligations on credit institutions which are deemed significant for the purposes of the Capital Requirements Directive

22.1 Article 91(6) of CRD IV [Regulation 79(10) and 79(11) of S.I. 158/2014] permits the Central Bank to authorise directors of significant institutions to hold one additional non-executive directorship. How will credit institutions apply for this approval and in what context will applications be assessed?

Credit institutions should submit applications to their supervisory team. Applications will be assessed on a number of factors including time commitments, conflicts of interest, current roles and the continuing ability of the individual to fulfil their duties as director of the credit institution.

22.2 Where a credit institution is deemed significant under CRD IV (and therefore must apply the additional corporate governance obligations in relation to having risk, remuneration and nomination committees composed entirely of non-executive directors), is that credit institution required to have independent non-executive director present on these committees also?

The additional corporate governance obligations imposed by CRD IV on significant institutions will substitute the relevant provisions in the Requirements, as set out in Appendix 2 of the Requirements. The CRD IV obligations will therefore be the sole applicable obligations. In relation to the obligations outlining the composition of the risk, remuneration and nomination committees, they should be composed entirely of non-executive directors. However, independent non-executive directors are viewed as a subset of non-executive directors and in the interest of best practice the Central Bank would expect to see INEDs present on these committees.

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