



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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



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Introduction

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

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

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

Financial Risks and Governance Policy Division
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1. Scope of the Compliance Statement

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

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

2. Submission of the Compliance Statement

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

3. Frequency of section 26 Compliance Statements

The Compliance Statement is required to be filed annually with the Central Bank together with the credit institution's annual report.

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

4. Material Deviations from the Code

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

5. Auditor input

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

6. Disclosure requirements under the Requirements

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

7. Use of information by the Central Bank

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

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

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

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

8. Confidentiality of the Compliance Statement

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

9. Materiality

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

10. Monitoring compliance

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

11. Combining Compliance Statements with existing reporting requirements.

The requirement to provide the Compliance Statement operates in addition to any other existing reporting requirements to the Central Bank. Where a credit institution is required to confirm compliance to the Central Bank with any other supervisory requirement(s), the compliance reports may be submitted together. The Central Bank has no objection to one composite compliance statement being submitted by credit institutions provided that it covers all of the existing requirements.

12. Dis-application of certain obligations under the Requirements

The Requirements have adopted a proportionate approach to imposing corporate governance obligations on credit institutions based on their nature, scale and complexity. This has resulted in a separate approach being applied to High Impact designated credit institutions and to non-High impact designated credit institutions.

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

13. Retention of supporting documentation

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

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

(a) The board

- Terms of reference for the board might include, for example:
 - Matters reserved to the board;
 - Authority of the board and details of powers which have been delegated by the board;
 - The board's functions;
 - Membership;
 - Reporting lines;
 - Meeting frequency;
 - Voting rights;
 - Quorums; and
 - Method and frequency of review of terms of reference.
- Details of method of assessment of appropriateness of size, expertise and independence of board membership.

- Process for review of the individual members and the board's overall performance.

(b) Directors

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

(c) The credit institution's corporate governance policies and procedures

- The credit institution's strategies, goals and objectives.
- The credit institution's and the board's succession plan.
- Procedures for:
 - Monitoring compliance with the Requirements;
 - Considering reports of suspected material deviations from the Requirements and policies for identifying and taking remedial action; and
 - Reporting material deviations to the Central Bank.
- Corporate governance policies and procedures including:
 - Structures put in place;
 - Lines of responsibility of board, sub-committees and senior management (and where applicable within the group);
 - Method of monitoring compliance;

- Internal control mechanisms;
- Administrative and accounting procedures;
- IT systems and controls;
- Remuneration policies and practices; and
- Confirmation of how corporate governance policy and procedures have been communicated to all appropriate staff.
- Policy for documenting responsibilities of senior management and delegated powers.
- The credit institution's policy on identifying, preventing and managing potential conflicts of interest.

(d) Sub-committees

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

(e) Meetings

- Documentation relating to board meetings and meetings of sub-committees including:
 - Agendas (including resolutions proposed and by whom);
 - Board papers;
 - Minutes of board meetings or sub-committee minutes showing:
 - Date and time of meeting;
 - Location held;
 - Members' attendance;
 - Key items discussed and who proposed them;

- Resolutions passed and decisions taken;
 - Members' input in such resolutions and decisions (including dissenting views and challenges raised);
 - In the cases of sub-committees, details of the method of managing cross membership; and
- Reports to the board and sub-committees; and
- Documentation relating to matters agreed and decisions taken by the board bilaterally.

(f) Risk Appetite

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

14. Availability to the Central Bank

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

15. Role of advisors to committees

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

16. Sub-committees

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

Appendix 1

Compliance Statement in Accordance with Section 26 of the Corporate Governance Requirements for Credit Institutions (“the Requirements”).

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

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

[Delete as appropriate]

SIGNED:

_____ DIRECTOR
DIRECTOR _____ DIRECTOR

_____ DIRECTOR
DIRECTOR _____ DIRECTOR

_____ DIRECTOR
DIRECTOR _____ DIRECTOR

DATED: _____

Overview of board and sub-committees

Directors:

Name	Status on board³	Membership and status on Sub-Committees	Length of Tenure on board and sub-committees	No. & nature of other Directorships held⁴

Sub-Committees established:

Audit	Risk	Remuneration	Nomination	Other

Meetings:

Type of meeting⁵	Number of meetings required	Total Number held	Frequency of meetings	Attendance⁶

³ For example, Chairman, CEO, Independent Non-Executive Director, Executive Director, Advisor.

⁴ E.g. number of financial directorships and non-financial directorships.

⁵ Board meeting or sub-committee meeting.

⁶ Members who attended each meeting.

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