



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2011

**Corporate Governance Code for Captive
Insurance and Captive Reinsurance Undertakings
– Guidelines on the Annual Compliance Statement
in accordance with Section 18**



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Introduction

The following guidelines are provided to assist captives and directors in preparing the Annual Compliance Statement which is required by section 18 of the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings (“the Code”). The guidelines are non-exhaustive and should be read in conjunction with the guidance which the Central Bank has published on its website (on 16 August 2011) in relation to Frequently Asked Questions on the Code¹.

The Central Bank has developed a Statement of Compliance and an overview of the board and sub-committees (if any) - attached as Appendix 1 - which captives must, at a minimum, complete in order to comply with their obligation under Section 18.

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

Governance, Accounting and Auditing Policy Division
October 2011

¹ The Frequently Asked Questions Guidance on the Code is available at the following link:

<http://www.centralbank.ie/regulation/consultation-papers/Documents/CP53%20-%20Corporate%20Governance%20Code%20for%20captive%20Insurance%20and%20captive%20Reinsurance%20Undertakings/Code%20for%20Captives%20-%20Frequently%20Asked%20Questions.pdf>

1. Scope of the Annual Compliance Statement

Sections 4.3 and 18 of the Code refer to the obligation on captives to make an Annual Compliance Statement in relation to the Code. The following is relevant when making such statements:

- (a) The scope of the Annual Compliance Statement relates to reporting on compliance with the obligations set out in the Code;
- (b) The Annual Compliance Statement should include reports of any material deviations from the Code together with details of the background to that deviation and the remedial action taken or proposed to be taken by the captive;
- (c) The Annual Compliance Statement should include details of any ad hoc reports of material deviations which a captive 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 Annual Compliance Statement

The Annual Compliance Statement should be signed by all directors and submitted to the captive's supervisory team in the first instance.

3. Operation of transitional periods and timing of section 18 Annual Compliance Statements

The Code is effective from 1 September 2011 and allows a transitional period by which captives must become compliant with the Code, namely, to 31 May 2012 to implement changes to systems and structures in order to ensure compliance with the Code.

Where a captive no longer complies with the definition of a captive, the Code will cease to apply and the Corporate Governance Code for Credit Institutions and Insurance Undertakings will apply.

The first Annual Compliance Statement is for the period from 31 May 2012, or an earlier date that a captive has complied with the Code and has notified this date to the Central Bank, until the period ended 31 December 2012 and shall be submitted by 31 January 2013.

Subsequent statements shall be in respect of each financial year-end and are required to be filed annually with the Central Bank together with the captive's annual return.

Under section 18 of the Code, the Central Bank may require more frequent reports from a captive. If this is the case, it will notify a captive accordingly.

4. Material deviations from the Code

Where a captive 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 captive.

5. Auditor input

Under the Code external auditors are not required to express an opinion on a captive's compliance with the Code in the Annual Compliance Statement.

6. Disclosure requirements under the Code

Captives are required to publicly state in their annual report (i.e. the report which is available to shareholders) that they are subject to the Code.

7. Use of information by the Central Bank

Where a captive reports a material breach of the Code to the Central Bank pursuant to section 18 of the Code (or any other section of the Code), the Central Bank may use that information for any of its regulatory functions, including those referred to in section 3.7 of the Code.² This may expose the captive and/or the persons concerned in its management to, inter alia, financial penalties and other sanctions.³

² Including pursuant to Part III C of the Central Bank Act 1942 and Part 3 of the Central Bank Reform Act 2010.

³ Failure to report a material breach to the Central Bank in the first instance also constitutes a breach of the Code.

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

8. Confidentiality of the Annual Compliance Statement

The Central Bank does not require the Annual Compliance Statement to be published in the captive's annual report. The Annual Compliance Statement is confidential when submitted to the Central Bank. However, where a statement contains reports of material non-compliance in respect of which the Central Bank subsequently takes enforcement action (against an individual or captive), 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 Code is material. Whether a deviation is material or not will depend upon the facts of each case. The Central Bank views all areas of the Code to be equally important.

10. Monitoring compliance

The Code allows captives to adopt policies and procedures developed at group level. The captive shall satisfy itself that such policies and procedures meet all the requirements of the Code (for example in relation to risk management, internal control, internal audit, potential conflicts of interest, reporting material non-compliance with the Code 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 Annual Compliance Statements with existing compliance statements' requirements.

The requirement under the Code to provide the Annual Compliance Statement operates in addition to any other existing reporting requirements to the Central Bank. Therefore, the Central Bank requires a

separate compliance statement relating to the Code. Where a captive is required to confirm compliance to the Central Bank with any other supervisory requirement(s) e.g. existing Directors' Compliance Certificate, the compliance reports may be submitted at the same time but the Annual Compliance Statement should be separate.

12. International developments

The Code sets out the Central Bank's requirements for captives to understand the risks to which they are exposed and to establish and monitor compliance with a documented risk appetite. The Central Bank shall review the Code in light of future relevant EU developments.

13. Retention of supporting documentation

Directors are required to undertake reasonable enquiries to satisfy themselves as to whether the captive has complied with the Code.

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 captive 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 Code.

(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 and expertise 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 Code 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 for non-group directors;
 - Their role on the board and on sub-committees, if any;
 - 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 captive) 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 captive's financial statements); and
 - Contact details.

(c) The captive's corporate governance policies and procedures

- The captive's strategies, goals and objectives.
- The captive's and the board's succession plan.
- Procedures for:
 - Monitoring compliance with the Code;
 - Considering reports of suspected material deviations from the Code and policies for identifying and taking remedial action; and
 - Reporting material deviations to the Central Bank.
- Corporate Governance policy and procedures including:
 - Structures put in place;
 - Lines of responsibility of board, sub-committees (if any) and senior management (and within the group);
 - Method of monitoring compliance;
 - Internal control mechanisms;

- Administrative and Accounting procedures;
 - IT systems and controls; 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 captive's policy on identifying, preventing and managing potential conflicts of interest.

(d) Sub-committees (if any)

- 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 captive.

(e) Meetings

- Documentation relating to board meetings and meetings of sub-committees (if any) 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 case of sub-committees (if any), details of the method of managing cross membership; and
 - Reports to the board and sub-committees (if any); 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 13.1 of the Code.
- 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 that the board receives timely, accurate and sufficiently detailed information.

14. Availability to the Central Bank

The Code requires 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.

Appendix 1**Annual Compliance Statement in Accordance with Section 18 of the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings (“the Code”).****Statement of compliance**

Name of Captive Insurance Undertaking or Captive Reinsurance Undertaking:

Reporting Period:

We, the Directors of [CAPTIVE], confirm that to the best of our knowledge:

- (i) the captive has materially complied with all of its obligations and requirements under the Code; or
- (ii) the captive has failed to materially comply with the Code 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

DATED: _____

Overview of board and sub-committees (if any)

Directors:

Name	Status on board ⁴	Membership and status on Sub-Committees	Length of Tenure on Board and sub-committees	No. & nature of other Directorships held

Sub-Committees established:

Audit	Risk	Remuneration	Nomination	Other

Meetings:

Type of meeting ⁵	Number of meetings required	Total Number held	Frequency of meetings	Attendance ⁶

⁴ For example, Chairman, CEO, Independent Non-Executive Director, Executive Director, Advisor.

⁵ Board meeting or sub-committee meeting.

⁶ Members who attended each meeting.

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