



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2014

**Fitness and Probity Standards
(Code issued under Section 50 of the
Central Bank Reform Act 2010)**



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1. INTRODUCTION

1.1 Scope

On 1st October 2010, Part 3 of the Central Bank Reform Act, 2010 created for the first time in Irish law a harmonised statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions or pre-approval controlled functions in regulated financial service providers, with the exception of credit unions. This Code specifies the Standards of Fitness and Probity which all persons performing controlled functions or pre-approval controlled functions (except where those functions are performed in and on behalf of 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 function¹, 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 regulated financial service provider shall not permit a person to perform a controlled function unless the regulated financial service provider 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 regulated financial service providers;
- d) *'Pre-Approval Controlled Functions'* means those functions set out in Schedule 2 of the Regulations;
- e) *'Regulations'* means the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations, 2011 (S.I. No. 437 of 2011);

¹ Please see Regulation 11B of SI No 437 of 2011 (as amended).

- 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.

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 Commencement of application of the Standards

- i. From 1 December, 2011, these Standards will apply to persons performing those controlled functions which are also prescribed as pre approval controlled functions, whether the person is already performing such functions or is proposed to perform such functions.
- ii. These Standards will apply to persons appointed to Controlled Functions (other than Pre-Approval Controlled Functions) after 1 March 2012. This is to include new offers of employment and internal transfers/promotions which may involve a Controlled Function role after that date.
- iii. The Standards will apply to all persons occupying Controlled Functions from 1 December 2012.

1.5 Exclusion from the Scope of the Standards.

1. These Standards shall not apply to a person whose function is solely concerned with acting in accordance with a written set of instructions in the form of a script providing for that person to give a prescribed reply or follow a prescribed course of action in the event of a particular matter being raised with respect to a range of routine matters arising in the course of providing, or in relation to the provision, of the financial service.
2. These standards shall not apply to persons performing functions with respect to a regulated financial service provider 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 regulated financial service provider and the other person for the carrying on of that function by that other person on behalf of the regulated financial service provider; and
 - (b) the other person is a financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act 1995) who is regulated for a similar business to that conducted by the regulated financial service provider concerned, 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.
3. These standards shall not apply to persons in regulated financial service providers which are authorised, licensed or registered by the competent authority of another EEA country which provides cross border services into the State.
4. These standards shall not apply to persons in branches established in the State of regulated financial service providers authorised, licensed or registered by the competent authority of another EEA country.
5. These standards shall not apply to persons in a separate legal entity in a group structure of companies (whether such an entity is a regulated financial service provider or otherwise) who may exercise a significant influence over a person performing a CF or a PCF in a regulated financial service provider within that group which is authorised, licensed or registered by the Central Bank.

1.6 Application of Union Standards in the context of the Single Supervisory Mechanism

1. As of 27 February 2013 and 01 January 2014 respectively the standards contained in the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders and the Capital Requirements Directive 2013/36/EU (the “the Union Standards”) apply, in addition to these standards, to persons occupying controlled functions in credit institutions and to all applications to perform pre-approval controlled functions in credit institutions, subject to what is said below. For notifications made by a regulated financial service provider to the Central Bank for the purposes of seeking approval from the Central Bank to appoint a person to perform a pre-approval controlled function where that function is part of the management body of a significant institution as defined in Article 3 Capital Requirements Directive 2013/36/EU and Article 6 SSM Regulation, and therefore falling within the exclusive competence of the European Central Bank as set out in Article 4 of the SSM Regulation, the Union Standards shall apply.

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 regulated financial service provider 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 regulated financial service provider 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 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 current controlled functions, or performance by the person of any role similar or equivalent to the functions that are covered by this Code. If the person performed a function in a regulated financial service provider, which if performed at present would be subject to this Code, and that regulated financial service provider received State financial support, 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 State financial support;

(d) has a sound knowledge of the business of the regulated financial service provider 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 the applicable Minimum Competency Code issued by the Central Bank.

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 any such 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.

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.

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