



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Fitness and Probity Regime for Credit Unions

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Note: These slides constitute a summary only of the topics presented upon. Reference should be made to the original materials in all cases.



Background

- **December 2011** - Fitness and Probity regime introduced for all other financial services providers
 - **March 2012** - Commission on Credit Unions recommends introduction of Fitness and Probity for credit unions
 - **September 2012** - Minister for Finance commences of Part 3 of the Central Bank Reform Act 2010 for credit unions
 - **December 2012 - March 2013** - Consultation on Fitness and Probity regime for credit unions
 - **June 2013** – Publication of Fitness and Probity Regulations and Standards for credit unions
 - **August 2013** – Introduction of Fitness and Probity Regime for Credit Unions
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What is Fitness and Probity? - Overview

- Collective description of *minimum standards* applicable to *individuals* holding certain positions in credit unions

- ***Fitness*** relates to an individual's competence and capability

- ***Probity*** relates to
 - (1) an individual's behaviour, act with honesty, integrity, fairness, ethical behaviour

 - (2) Financial Soundness – ability to manage affairs in a sound and prudent manner



What is Fitness and Probity? - Purpose

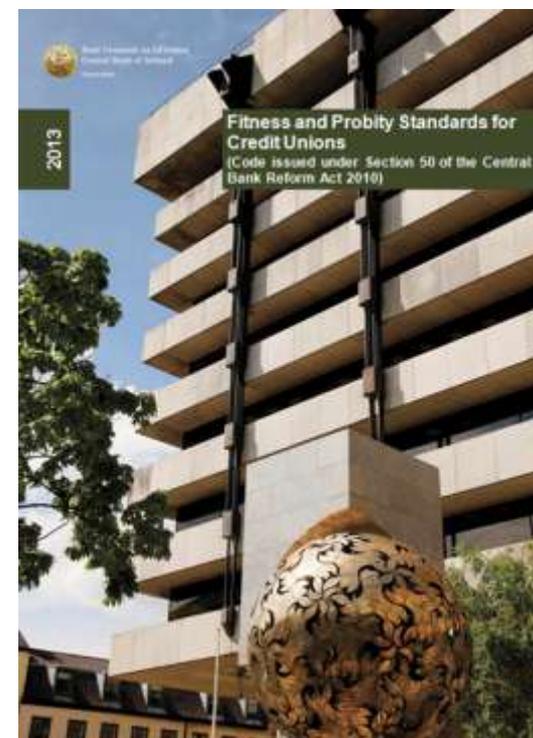
- ***Improve governance standards in the credit union sector and support the protection of members' savings***
- Fitness and Probity requires credit unions to ensure that
 - ***individuals in positions of significant influence and control are fit and proper to fulfil their roles and responsibilities***
- ***Complements the new governance framework*** inserted into the Credit Union Act, 1997 by the Credit Union and Co-Operation with Overseas Regulators Act 2012



What is Fitness and Probity? – Elements

- Part 3 of the Central Bank Reform Act, 2010
- **Regulations 2013** (S.I. No. 171 of 2013)
- Fitness and Probity **Standards** for Credit Unions
- **Guidance** on Fitness and Probity for Credit Unions
- **Individual Questionnaire** for Credit Unions
- Frequently Asked Questions
- Additional supporting materials

- Available on Central Bank website
 - [Fitness and Probity – Credit Unions](#)





What is Fitness and Probity? - Legal Framework

- Prescribe Controlled Functions and Pre-approval Controlled Functions by Regulation
- Issue a code setting out Fitness and Probity Standards
- Investigate and enforce
 - Refuse appointment to a 'pre-approval controlled function'
 - Suspend person performing controlled function pending investigation
 - Compel evidence for fitness and probity investigation
 - Seek to prohibit persons from carrying out controlled function(s)
 - Impose administrative sanctions for contravention of the new regime
 - Prosecute for criminal offences (e.g. failure to provide information)
- Refusal to approve PCF appointment - Appealable Decision



Who does it apply to?

➤ CFs - Controlled Functions (Schedule 1 – Regulations)

CUCF-1 : Significant influence function

CUCF-2 : Ensuring, controlling or monitoring compliance function

CUCF-1 Examples

- Board of directors
- Chair
- Manager and Management Team
- Risk management officer
- Committees: Credit, Credit Control, Membership, Nomination
- Other significant influence functions

CUCF-2 Examples

- Board oversight committee
- Compliance officer
- Money laundering reporting officer
- Internal audit function
- Other functions involved in compliance

➤ Credit union identifies CF roles





Who does it apply to?

➤ PCFs - Pre-Approval Controlled Functions (Schedule 2 – Regulations)

CUPCF-1: Chair of the board of the credit union

CUPCF-2: Manager of the credit union

➤ Subset of Controlled Functions (CFs)

➤ Cannot be appointed to role without pre approval by Central Bank

➤ Individual Questionnaire – Regulatory Transactions Division





When does it come into effect?

- **From 1 August 2013** - credit unions with total assets > €10m

1 August 2013	Regulations commenced Standards apply to all persons performing PCF roles in credit unions
1 November 2013	Standards apply to all newly appointed CF roles in credit unions (includes new offers of employment and internal transfers/promotions)
1 December 2013	Credit unions required to supply list of persons performing PCF roles to the Central Bank and confirm due diligence has been conducted
1 August 2014	Standards apply to all CF roles and credit unions required to have conducted due diligence on all CF roles

- **From 1 August 2015** - extended to all credit unions
 - Existing Fitness and Probity regime introduced for credit unions also authorised as retail intermediaries
 - Similar transitional arrangements



What obligations arise for those within scope?

Credit Union

- Shall not permit a person to perform a CF unless
 - satisfied on **reasonable grounds** that the person complies with the Standards, and
 - has obtained confirmation that the person has agreed to abide by the Standards (section 21)

 - Shall not offer to appoint a person to perform a PCF unless the Bank has **approved in writing** the appointment (section 23)
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What obligations arise for those within the scope?

Individual

An individual performing a CF role must be in compliance with the Standards.

A person to whom the Standards applies is required to be:

- a) Competent and Capable;**
- b) Honest, Ethical and to act with Integrity; and**
- c) Financially Sound**





What obligations arise for those within scope?

Individual

Competent and Capable

- The individual must be able to demonstrate that s/he has the experience and capability, qualifications, training, competence and capacity appropriate to the relevant function
 - The individual must also demonstrate a sound knowledge of the business of the credit union and a clear understanding of the regulatory and legal environment appropriate to the relevant function
 - See Section 3 of the Standards
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What obligations arise for those within scope?

Individual

Conduct to be Honest, Ethical, with Integrity

- Identifies issues which if they exist require individuals to demonstrate that their ability to perform a function is not adversely affected to a material degree
 - Includes track record in relation to
 - Complaints to Central Bank or equivalent authority
 - Disciplinary proceedings
 - Convictions
 - See Section 4 of the Standards
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What obligations arise for those within scope?

Individual

Financial Soundness

- To manage affairs in a sound and prudent manner
- Identifies issues which must not adversely affect ability to perform the CF to a material degree
 - Default from agreed payments arising from a compromise or scheme of arrangements
 - Unsatisfied judgments
 - Bankruptcy
- See Section 5 of the Standards



What obligations arise for those within scope?

Credit Union

- Initially, be satisfied on reasonable grounds that CFs and PCFs comply with the Standards on appointment; and
- On an on-going basis, ensure officers comply with and have agreed to comply with the Standards;
- Carry out the appropriate level of due diligence (section 8 of the Guidance)
 - PCFs – Pre-approval required but credit union has to be satisfied with own due diligence
 - CFs – Credit union conducts due diligence across range of CFs
- Establish systems and controls to comply with their obligations and retain supporting documentation (section 10 of the Guidance)

Individual

- Agree to comply with the Standards
- Subject to the Central Bank's powers of investigation, suspension and prohibition



How should Fitness and Probity be assessed?

- The **Guidance** sets out the steps a credit union would be expected to undertake to satisfy itself on **reasonable grounds** that a person performing a CF is compliant with the **Standards**
- Consider the responsibilities of the specific CF and determine the **specific competencies** and **level of probity** that should be expected of a person performing that specific CF in the credit union
- Functions of a CF that are set out in legislation (e.g. board of directors / manager) should be considered when identifying **specific competencies**
- Guidance provided on determining
 - **competencies**, includes guidance on **competencies for board of directors** and
 - the standard of **fitness** and **probity** and **due diligence** to be undertaken for CFs
- In addition to Fitness and Probity requirements, **restrictions** on persons in relation to bankruptcy and offences **contained in section 72 of the Credit Union Act, 1997**



How should Fitness and Probity be assessed?

Fitness – Due Diligence

- In assessing a person's competence and capability a credit union should consider the following:
 - Record of previous experience
 - Record of interview/application
 - References
 - Evidence of professional qualification(s) (where relevant)
 - Evidence of CPD/MCC (where relevant)
 - Concurrent responsibilities (self-certification)

- References not required for in situ CFs that have been in situ for more than a year at 1 August 2013





How should Fitness and Probity be assessed?

Probity - Due Diligence

- In assessing a person's probity, a credit union should undertake the following:
 - Obtain written confirmation on whether or not any of the circumstances in 4.1(a)-(l) ['Honest, Ethical, Integrity'] and 5.2(a)-(e) ['Financial Soundness'] of the Standards apply
 - Useful Template for written confirmation: Section 5 of Individual Questionnaire
 - Where one or more of the circumstances apply, the individual must be in a position to demonstrate that his or her ability to perform the CF is not adversely affected to a **material degree**
 - For certain standards, see Section 7.6 of the Guidance, consult publicly available sources – e.g.
 - 4.1(f) – Companies Registration Office check (Restrictions and Disqualifications)
 - 5.2(b) – Experian All Ireland Gazette, Stubbs Gazette (Judgment Debt)



What is the pre-approval process for PCFs?

- Identify PCF applicant for position of chair / manager
 - Conduct due diligence to ensure satisfied on reasonable grounds that PCF applicant complies with the Standards and agrees to comply by the Standards
 - Submit Individual Questionnaire application to Central Bank in advance of election / appointment
 - Interview of PCF applicant may be required as part of pre-approval
 - Further information in Sections 6, 8 and 9 of Guidance
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When is pre-approval required for in situ PCFs?

- In situ PCFs **do not require the approval** of the Central Bank to continue to perform that PCF **for the remainder of the term of their appointment**
- If an in situ PCF is **subject to re-election/re-appointment** then that person **will be required to receive approval** from the Central Bank prior to re-election/re-appointment
- **Once approval** has been **received**, intention that approval will state that person **not required to seek approval again as long as they remain in that role**
- **Will be required to confirm** upon re-election/re-appointment that **circumstances have not changed**
- **If in situ chair is required to seek re-election**, e.g. because their 3 year term under the 1997 Act has ended or annual re-election is required under the credit union rules, **approval will be required prior to re-election**



What are the ongoing requirements?

- Section 21 is a **continuing obligation**
 - *shall not permit a person to perform a CF unless satisfied on reasonable grounds that the person complies with any standard of fitness and probity and has obtained confirmation that the person has agreed to abide by the standards*
 - Identify and maintain a record of CFs on an on-going basis
 - Maintain relevant documentation and ensure security of information
 - Also recommend:
 - Require person to notify credit union of any material changes in respect of initial due diligence (Appendix 2 of Guidance)
 - Carry out annual audit asking CFs to confirm aware of and compliance with Standards
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Information on Fitness and Probity

➤ 'Fitness and Probity - Credit Unions' section on Central Bank Website

- Fitness and Probity **Regulations** for Credit Unions (S.I. No. 171 of 2013)
- Fitness and Probity **Standards** for Credit Unions
- **Guidance** on Fitness and Probity for Credit Unions
- **Frequently Asked Questions**
- **Individual Questionnaire** for Credit Unions
- **Individual Questionnaire Application Guidance** for Credit Unions
- Other material including

- Videos
- Presentations
- Bulletins

➤ Available at: [Fitness and Probity – Credit Unions](#)

