

# GOVERNANCE

## Contents

<b>1. Introduction .....</b>	<b>3</b>
1.1 Governance arrangements and organisational structure .....	3
1.2 Resources required.....	4
<b>2. General Governance Requirements.....</b>	<b>5</b>
2.1 Protection of members' savings .....	5
2.2 Governance arrangements .....	5
2.3 Remuneration .....	6
2.4 Reporting to the Central Bank (annual compliance statement).....	8
<b>3. Board of Directors .....</b>	<b>15</b>
3.1 Requirement to have a board of directors / size of board of directors .....	15
3.2 Sufficient time / election of board of directors .....	15
3.3 Exclusions from membership of the board of directors .....	16
3.4 Term limits and casual vacancies .....	19
3.5 Functions of the board of directors .....	20
3.6 Regulations.....	24
3.7 Operation of the board of directors .....	30
3.8 Principal posts .....	31
<b>4. Chair of Board of Directors .....</b>	<b>32</b>
<b>5. Nomination Committee .....</b>	<b>34</b>
<b>6. Board Committee.....</b>	<b>40</b>
<b>7. Other Committees.....</b>	<b>45</b>
<b>8. Board Oversight Committee.....</b>	<b>46</b>
8.1 Directors: suspension and removal .....	55
<b>9. Manager of Credit Union .....</b>	<b>57</b>
<b>10. Additional Governance Provisions .....</b>	<b>59</b>
10.1 Directors: supplemental provisions .....	59
10.2 Conflicts of interest .....	60
10.3 Required signatories.....	64
10.4 Confidentiality of information .....	65
10.5 Duty to account.....	66
10.6 Register of members .....	67
10.7 Inspection of books.....	69

**11. Guidance on Documents Required under Section 55(1)(o) of the 1997 Act. 71**

11.1 Standards of conduct and ethical behaviour of officers .....	71
11.2 Succession plan .....	72

**Version History**

<b>Version</b>	<b>Date</b>	<b>Amendments</b>
0.1	July 2013	Initial Version.
1.0	September 2013	<ul style="list-style-type: none"> <li>• Inserted text in Section 1 on composition of committees.</li> <li>• Inserted Section 1.2.</li> <li>• Deleted text of section 53(6)(b) from Section 3.2 as date of commencement not specified in Department of Finance Implementation Plan.</li> </ul>
1.1	October 2013	<ul style="list-style-type: none"> <li>• Inserted text of section 53(6)(b) in Section 3.2 as this provision will commence on 3 March 2014.</li> <li>• Amended text of section 57(4) as item 46 of Schedule 1 will commence on 3 March 2014.</li> <li>• Amended text in sections 2.4, 3.1, 3.3, 3.4, 4 and 8 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.</li> </ul>
1.2	March 2014	<ul style="list-style-type: none"> <li>• Deleted text of section 53 in Section 3.1 that was in place until 3 March 2014.</li> <li>• Amended text in Section 3.1 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) Order 2014.</li> </ul>
1.3	June 2014	<ul style="list-style-type: none"> <li>• Inserted text in Section 2.4 to include guidance in relation to the annual compliance statement.</li> </ul>
1.4	December 2014	<ul style="list-style-type: none"> <li>• Amended text in section 57(4)(a) to reflect an amendment made by the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) Order 2014.</li> </ul>
1.5	October 2015	<ul style="list-style-type: none"> <li>• Updated guidance for Annual Compliance Statement</li> </ul>
1.6	November 2015	<ul style="list-style-type: none"> <li>• Amended section 68(4) to reflect the commencement of item 56 of schedule 1 of the 2012 Act.</li> <li>• Inserted regulations in Section 3.6.</li> </ul>
1.7	January 2016	<ul style="list-style-type: none"> <li>• Updated regulations in Section 3.6</li> </ul>

## 1. Introduction

The Report of the Commission on Credit Unions<sup>1</sup> recognised that the issue of governance of credit unions is at the core of strengthening the regulatory framework and set out detailed governance requirements for credit unions. The 1997 Act, as amended by the 2012 Act, sets out comprehensive governance requirements for credit unions that are designed to provide a framework to improve governance standards in credit unions with a particular focus at board of directors and management level.

The governance requirements emphasise the importance of, and provide a framework to implement in practice, a separation between the two distinct sets of roles in a credit union, i.e. the executive or operational roles, and the non-executive or governance roles. This separation allows the respective roles to be clearly defined and for their responsibilities to be distinct. The executive or operational roles are performed by the manager, the management team, staff and voluntary assistants. The non-executive or governance roles are performed by the board of directors. The governance requirements also require a credit union to have a board oversight committee, an internal audit function, a risk management officer and a compliance officer.

The manager serves as the main link between the board of directors and the executive. Separating the board of directors and management ensures that there is clarity as to which individuals are responsible for the management of the credit union and its ongoing operations and which individuals are responsible for the governance and oversight of the credit union. Allowing any overlap between these roles would create a risk of conflicts of interest, and would increase the potential for failures in governance. The clear distinction of roles is fundamental to the governance requirements and is essential to ensure that a workable governance structure can be created in all credit unions, regardless of nature, scale and complexity, and to ensure the safeguarding of members' funds.

The composition of credit union committees should reflect the separation of executive and non-executive roles. Section 56A of the 1997 Act, set out in Section 6 of this Chapter, sets out requirements relating to board committees. Section 67 of the 1997 Act, set out in Section 7 of this Chapter, deals with the credit, credit control and membership committees which are no longer required under the Third Schedule to include a director.

### 1.1 Governance arrangements and organisational structure

Section 66A of the 1997 Act requires that a credit union's governance arrangements include a clear organisational structure with well defined, transparent and consistent

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<sup>1</sup> *Report of the Commission on Credit Unions* (March 2012), available at the following [link](#).

reporting lines. Additionally the 1997 Act sets out a number of reporting lines and oversight arrangements which shall be implemented by credit unions. For example, the 1997 Act protects the independence of the internal audit function and requires a reporting line to the board of directors. However, having ensured that these statutory reporting lines and oversight arrangements are in place, it is a matter for the board of directors of each credit union to decide on the most appropriate administrative structures and reporting relationships for all officers of their credit union. In the case of the internal audit function this could include a reporting line to the manager or a member of the management team for matters of an administrative nature. Additionally, in the case of the risk management officer and compliance officer, this could include a reporting relationship to the manager.

## **1.2 Resources required**

As outlined above the governance requirements set out a number of new functions and roles that a credit union must put in place including a risk management officer, a compliance officer and an internal audit function. It is a matter for the board of directors to determine whether functions should be performed in-house, through a sharing arrangement between credit unions or outsourced to a third party service provider. In considering resourcing arrangements credit unions should have regard to the nature, scale, complexity and risk profile of the credit union and ensure that at a minimum:

- all functions of the role can be effectively carried out by the proposed resourcing arrangements;
- any potential conflicts are identified and managed;
- where independence of functions is required that this is maintained; and
- all legal and regulatory requirements are met, including those relating to outsourcing.

The board of directors of each credit union remains responsible for the general control, direction and management of the credit union and will need to ensure they have adequate and appropriate systems and resources in place to meet their legal and regulatory requirements and ensure that they have effective governance arrangements including risk management systems and internal audit functions.

## 2. General Governance Requirements

### 2.1 Protection of members' savings

#### **Section 27A – Protection of members' savings\***

- (1) In addition to its reporting functions under the *Credit Union Acts 1997 to 2012* and complying with any matter prescribed under those Acts, a credit union shall maintain appropriate oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements to ensure the protection of members' savings and that it complies with requirements imposed under the financial services legislation.
- (2) Without prejudice to the generality of subsection (1), the Bank may make regulations prescribing—
- (a) certain oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements which the credit union is required to maintain where the Bank considers this is appropriate in the interest of protecting members' savings or otherwise appropriate to ensure compliance with the requirements imposed under financial services legislation;
  - (b) requirements in relation to the oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements required to be maintained under this section.

### 2.2 Governance arrangements

#### **Section 66A – Governance arrangements in credit unions\***

- (1) A credit union shall have governance arrangements which shall—
- (a) be such as to ensure that there is effective oversight of the activities of the credit union, taking into consideration the nature, scale and complexity of the business being conducted,
  - (b) include a clear organisational structure with well-defined, transparent and consistent reporting lines,
  - (c) be documented and set out the roles, responsibilities and accountabilities of the officers clearly in writing,

(d) be communicated in writing to all officers in the credit union, and

(e) be subject to regular internal review by the board of directors on, at a minimum, an annual basis.

(2) A credit union shall have in place the oversight, policies, procedures, practices, systems, controls, skills, expertise and reporting arrangements to ensure compliance with the requirements set out in this Part.

### Guidance

Credit unions should take the nature, scale and complexity of the business being conducted by the credit union into consideration when establishing governance arrangements, including arrangements in relation to the board of directors, the chair of the board of directors, the nomination committee, other (board) committees, the manager, the management team, the board oversight committee, risk management systems, systems and control, the risk management officer, the compliance officer and the internal audit function.

The nature, scale and complexity of the business being conducted by a credit union will impact on the:

- level of oversight;
- extent of skills and expertise; and
- details of policies and procedures, processes, practices, systems, controls and reporting arrangements

required by credit unions in these areas.

## 2.3 Remuneration

### Section 66B – Remuneration policies and practices\*

A credit union shall put in place remuneration policies and practices which shall be consistent with and promote sound and effective risk management.

### Section 68 – Limitation of remuneration

(1) ‡ A credit union shall not pay any remuneration, directly or indirectly, to-

(a) a director of the credit union, or

(b) a member of the board oversight committee or a principal Committee of the credit union,

for any service performed by that person in that capacity.

(2) Nothing in *subsection (1)* shall be regarded as prohibiting the payment (or reimbursement) of expenses–

(a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the credit union; and

(b) which are approved by a majority of the directors voting at a meeting of the board.

(3) † Nothing in *subsection (1)* shall be regarded as prohibiting any officer of a credit union, acting not as such but in his professional capacity, from tendering for the supply of, and if successful supplying, goods or services to the credit union.

### Guidance

The remuneration policy of a credit union should be consistent with the credit union's risk profile and promote sound and effective risk management in line with the credit union's risk tolerance and strategic plan, as required under section 76A of the 1997 Act.<sup>2</sup> It should not encourage excessive risk taking.

A remuneration policy should cover the following at a minimum:

- objectives of the remuneration policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in determining remuneration;
- the credit union's procedure for determining remuneration;
- safeguards to ensure that remuneration practices will not generate conflicts of interest e.g. officers in non-control positions should not have undue influence over the remuneration of officers in control positions such as the compliance officer and internal audit function;
- provisions that those involved in control positions are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the functions they control;
- provisions to ensure that remuneration is not solely based on financial performance metrics and performance metrics include adherence to effective risk management and compliance;

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<sup>2</sup> See the Chapter on "Strategic Plan".

- provision that payments related to early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors (or remuneration committee where one exists); and
- the process and timelines for the approval, review and update of the remuneration policy by the board of directors (or remuneration committee where one exists).

Credit unions should ensure that any significant deviations from the remuneration policy, the reasons for these deviations and proposed action to address the deviations are communicated to the board of directors (or the remuneration committee where one exists) in accordance with the reporting arrangements set out in the remuneration policy.

## 2.4 Reporting to the Central Bank (annual compliance statement)

### Section 66C – Reporting to Bank\*

- (1) A credit union shall submit an annual compliance statement to the Bank certifying its compliance with the requirements of this Part and any other regulations prescribed under it by the Bank including regulations setting out the form and content of that statement.
- (2) The annual compliance statement referred to in subsection (1) shall be submitted by a credit union to the Bank within 2 months of the end of each financial year of the credit union, or with such other frequency as the Bank may notify to the credit union from time to time.

### Guidance

All credit unions are required to submit an annual compliance statement to the Central Bank within two months of the end of the financial year of the credit union.

The annual compliance statement confirms whether the credit union has:

- acted in compliance with; or
- failed to comply with

the requirements of Part IV of the 1997 Act and any other regulations prescribed under Part IV of the 1997 Act (“the Requirements”).<sup>3</sup>

<sup>3</sup> The Central Bank has not yet prescribed regulations under this Part.



**Materiality**

It is the responsibility of the credit union to ensure that it complies with all legal and regulatory requirements on an ongoing basis.

Where a credit union has failed to comply with the Requirements this non-compliance may be material or non-material.

The Board is responsible for determining if non-compliance is material. Whether a deviation is material or not will depend upon the facts of each case including the frequency, duration and impact of non-compliance. The Central Bank recommends that the board of directors should ensure a materiality statement is developed, setting out the credit union's definition of what constitutes material non-compliance and documenting the factors that will be used to assess materiality. This can then be referred to by the credit union to assist it in determining if non-compliance is material in a particular case. The materiality statement should be reviewed and updated at least annually by the board of directors and could be included as part of the credit union's compliance policy.

Some factors that a credit union should consider when assessing materiality include:

- the frequency and duration of non-compliance – for example a one-off instance of non-compliance that is immediately rectified may not be material, while repeated non-compliance or non-compliance of considerable duration may be material;
- the extent to which non-compliance departs from the required standard – for example a minor deviation from the standard may be less material than a significant deviation;
- the impact of the non-compliance on the credit union – for example consideration should be given to the impact of non-compliance on:
  - the governance of the credit union;
  - the financial position of the credit union;
  - the reputation of the credit union; and
  - the members of the credit union including protection of members' savings and access to services;
- consideration should also be given to whether non-compliance indicates serious or systemic weakness of management systems or internal controls;
- it is also important to consider non-compliance collectively – for example, a number of issues that appear non-material individually may collectively be considered to be material and may be indicative of weaknesses in risk management, compliance, internal audit and/or systems and controls.

All of these factors are relevant when assessing whether non-compliance with the Requirements is material.

In addition, where a report, such as a compliance report, an internal audit report, a risk management report, a board oversight committee report or any other internal or external report on governance or compliance, raises concerns in relation to compliance with the Requirements, this should be included in the factors considered when assessing materiality.

In the event of material non-compliance with the Requirements being identified, a Report of Material Non-Compliance will be submitted with the annual compliance statement. The Report of Material Non-Compliance provides details of the background to any material deviation, along with the date and extent of the deviation, potential consequences and the remedial action taken or proposed to be taken by the credit union.

### ***Timing***

The annual compliance statement will cover the period from 1 October to 30 September each year and will be required to be submitted by 30 November each year. The annual compliance statement will cover the relevant obligations that a credit union was required to comply with from the date that the relevant obligation came into force.

### ***Annual compliance statement requirements***

The table below sets out the provisions contained in Part IV of the 1997 Act and provides a guide to the location of the provisions of Part IV of the 1997 Act in the Credit Union Handbook<sup>4</sup>.

<b>Section of the 1997 Act</b>	<b>Title of Section of Part IV of the 1997 Act</b>	<b>Section of Credit Union Handbook</b>
53	Board of directors	Governance Chapter, Section 3
54	Operation of board of directors	Governance Chapter, Section 3.6
55	Functions of board of directors	Governance Chapter, Section 3.5
55A	Chair of board of directors, etc.	Governance Chapter, Section 4
56	Removal of director from office	Governance Chapter, Section

<sup>4</sup> This table is for information purposes only and should be read in conjunction with the 1997 Act. Credit unions must ensure they comply with all requirements of relevant legislation.

		8.1
56A	Board committees	Governance Chapter, Section 6
56B	Nomination committee	Governance Chapter, Section 5
57	Directors: supplemental provisions	Governance Chapter, Section 10.1
63	Officers: principal posts	Governance Chapter, Section 3.7
63A	Manager of credit union	Governance Chapter, Section 9
65	Credit officer and credit control officer	Governance Chapter, Section 3.5
66	Directors: suspension and removal by board oversight committee	Governance Chapter, Section 8.1
66A	Governance arrangements in credit unions	Governance Chapter, Section 2.2
66B	Remuneration policies and practices	Governance Chapter, Section 2.3
66C	Reporting to Bank	Governance Chapter, Section 2.4
67	Credit, credit control and membership committees	Governance Chapter, Section 7
68	Limitation of remuneration	Governance Chapter, Section 2.3
69	Conflicts of interest	Governance Chapter, Section 10.2
70	Required signatories etc.	Governance Chapter, Section 10.3
71	Confidentiality of information	Governance Chapter, Section 10.4
72	Persons disqualified from acting	Governance Chapter, Section 3.3
74	Duty to account	Governance Chapter, Section 10.5
75	Register of members and officers	Governance Chapter, Section 10.6
76	Inspection of books	Governance Chapter, Section 10.7
76A	Strategic plan	Strategic Plan Chapter
76B	Risk management systems and systems and control	Risk Management and Compliance Chapter, Section 1 (See <i>Credit Union Act, 1997</i> for full provision)
76C	Risk management officer	Risk Management and Compliance Chapter, Section 2
76D	Compliance officer	Risk Management and Compliance Chapter, Section 4
76E	Operational risk	Operational Risk Chapter, Section 1

76F	Records management	Operational Risk Chapter, Section 3
76G	Information systems	Operational Risk Chapter, Section 4
76H	Management information	Operational Risk Chapter, Section 5
76I	Business continuity plan	Operational Risk Chapter, Section 2
76J	Outsourcing	Outsourcing Chapter
76K	Internal audit	Internal Audit Chapter

### ***Monitoring compliance***

The 1997 Act requires credit unions to implement a compliance programme that allows it to evaluate compliance with all legal and regulatory requirements, including obligations under Part IV of the 1997 Act. Section 66A(2) of the 1997 Act requires a credit union to have in place the oversight, policies, procedures, practices, systems, controls, skills, expertise and reporting arrangements to ensure compliance with the requirements set out in Part IV of the 1997 Act.

Policies and procedures should be properly documented and reviews of compliance should be carried out regularly and where non-compliance is identified acted upon promptly by the credit union. The individuals responsible for establishing and monitoring compliance must be clearly identified in writing and their roles and responsibilities must be documented. Guidance on the role of the compliance officer and the compliance programme is provided in the Chapter on "Risk Management and Compliance".

### ***Preparing the Annual Compliance Statement***

As set out above, compliance with the Requirements must be monitored on an ongoing basis. This ongoing assessment and review will form the basis of the annual compliance statement.

When preparing the annual compliance statement credit unions should assess each requirement and determine if the credit union has complied with the Requirements. Credit unions should record the basis for their assessment including the basis for determining whether non-compliance is material or non-material.

Where a credit union has determined that it has complied with all the Requirements they must submit an annual compliance statement to the Central Bank confirming compliance with the Requirements.

Where a credit union identifies breaches of the Requirements they must submit an annual compliance statement confirming that the credit union has failed to act in compliance with the Requirements.

Where a credit union has identified material non-compliance with the Requirements, as well as submitting an annual compliance statement confirming that it has failed to act in compliance with the Requirements, the credit union will also be required to submit to the Central Bank a Report of Material Non-Compliance. This report should provide details of the background to any material deviation along with the date and extent of the deviation, potential consequences and the remedial action taken or proposed to be taken by the credit union.

A credit union should inform the Central Bank as soon as it becomes aware of instances of material non-compliance with the Requirements and should not wait until it submits the annual compliance statement to notify the Central Bank of these instances.

Credit unions should maintain and update details of all breaches of the Requirements, both material and non-material, including any remedial action taken.

#### ***Retention of supporting documents***

Credit unions should retain any documentation used during the preparation of the annual compliance statement, including documentation outlining the process undertaken and documentation demonstrating compliance with the Requirements. For example, under section 55(4) the board is required to carry out at least annually a comprehensive review of its overall performance, the documents for these reviews should be retained by the board of directors so that they are available to the Central Bank if required.

Further examples of some of the types of documentation that may assist credit unions in demonstrating compliance include the documents required under Part IV of the 1997 Act. Appendix 1 provides a list of documentation required to be maintained pursuant to the 1997 Act.

#### ***Submission of Annual Compliance Statement***

Credit unions should submit the annual compliance statement electronically to the Central Bank using the Online Reporting System. A document entitled 'Submission of the Annual Compliance Statement Guidance Notes (for Credit Unions)' is available on the Online Reporting System.

#### ***Approval of the board of directors***

The annual compliance statement and any Report of Material Non-compliance, where relevant, should be approved by the board of directors at a board meeting before being submitted to the Central Bank.

The annual compliance statement must be signed by the chair of the credit union and two other directors of the credit union on behalf of the board of directors of the credit union.

***Use of information by the Central Bank***

Where a credit union reports a breach of the Requirements, the Central Bank may use that information for any of its regulatory functions, including, but not limited to the imposition of administrative sanctions under Part IIIC of the Central Bank Act, 1942 or any other of its supervisory functions.

***Auditor Input***

Auditors are not required to express an opinion on a credit union's compliance in the annual compliance statement.

***Publication of the annual compliance statement***

The Central Bank does not require the annual compliance statement to be published in the credit union's annual report. Where a statement contains reports of non-compliance in respect of which the Central Bank subsequently takes enforcement action (against an individual or credit union), publication of such non-compliance may be required as part of that enforcement action.

### 3. Board of Directors

#### 3.1 Requirement to have a board of directors / size of board of directors

<b>Section 53 – Board of directors*</b>
<p>(1) A credit union shall have a board of directors which shall have responsibility for the general control, direction and management of the credit union.</p> <p>(2) The board of directors of a credit union shall be of sufficient number and expertise to adequately oversee the operations of the credit union.</p> <p>(3) Except in the circumstances set out in subsection (4), the number of directors shall be specified in the registered rules as set out in section 13 and shall be–</p> <p style="padding-left: 40px;">(a) not less than 7,</p> <p style="padding-left: 40px;">(b) not more than 11, and</p> <p style="padding-left: 40px;">(c) an odd number.</p> <p>(4) The number of directors of a credit union may be more than 11 or may be an even number if an additional director is appointed under section 95A.</p> <p>...</p>

#### 3.2 Sufficient time / election of board of directors

<b>Section 53 – Board of directors*</b>
<p>...</p> <p>(5) Each director of a credit union shall ensure that he or she has sufficient time to devote to the role of director and the responsibilities associated with that role as indicated by the nomination committee under section 56B(4)(g).</p> <p>(6) The board of directors of a credit union shall be elected–</p> <p style="padding-left: 40px;">(a) where the organisation meeting occurs after the commencement of this provision (as amended by <i>section 15 of the Credit Union and Co-operation with Overseas Regulators Act 2012</i>), by secret ballot at the organisation meeting and, subject to subsection (15) and section 57, subsequent vacancies on the board of directors shall be filled by secret ballot at an annual general meeting, and</p>

(b) in any other case, by secret ballot at the annual general meeting first occurring after the commencement of this provision (as amended by *section 15 of the Credit Union and Co-operation with Overseas Regulators Act 2012*) or, if earlier than that annual general meeting, at a special general meeting called for the purpose of such ballot and, subject to subsection (15) and section 57, subsequent vacancies on the board of directors shall be filled by secret ballot at an annual general meeting.

(7) The term of office of a director of a credit union—

(a) shall begin at the conclusion of the general meeting at which the director is elected,

(b) shall not extend beyond the third subsequent annual general meeting after his or her election, and

(c) subject to paragraph (b), subsections (8) and (12) and all other applicable requirements of financial services legislation, shall be determined in accordance with the registered rules,

but, except where this Act or any other applicable requirement of financial services legislation or the registered rules otherwise provides, a retiring director shall be eligible for re-election.

(8) At each annual general meeting of a credit union the number of directors whose term of office expires shall, as near as possible, be the same.

(9) Only a natural person of full age<sup>5</sup> may be a director of a credit union.

...

### 3.3 Exclusions from membership of the board of directors

#### Section 53 – Board of directors\*

...

(10) The following persons are not eligible to become a director of a credit union:

(a) an employee or voluntary assistant of the credit union or an employee of any other credit union;

<sup>5</sup> This is defined in Part 2 of the Schedule to the Interpretation Act 2005 as follows: “full age”, in relation to a person, means the time when the person attains the age of 18 years or sooner marries, or any time after either event.”



- (b) a member of the board oversight committee of the credit union;
- (c) a director of any other credit union;
- (d) an employee of a representative body of which the credit union is a member, where that employee's role could expose them to a potential conflict of interest;
- (e) a public servant (within the meaning of the Financial Emergency Measures in the Public Interest Act 2009) assigned to the Department of Finance and involved in advising the Minister on credit union issues or in the examination of credit union issues;
- (f) a member of the Commission of the Bank;
- (g) an officer (within the meaning of section 2 of the Central Bank Act 1942) or other employee of the Bank and who is involved in the regulation of credit unions;
- (h) the Financial Services Ombudsman (within the meaning of section 2 of the Central Bank Act 1942) or a Bureau staff member (within the meaning of section 57BA of that Act);
- (i) a member of the Irish Financial Services Appeals Tribunal or a member of its staff (including the Registrar of the Appeals Tribunal appointed under section 57J of the Central Bank Act 1942);
- (j) the chief executive of the National Consumer Agency, an authorised officer of that Agency (within the meaning of section 2 of the Consumer Protection Act 2007) or any other member of its staff;
- (k) the auditor of the credit union or a person employed or engaged by that auditor;
- (l) a solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
- (m) a person who is a spouse or civil partner, parent, sibling or child of a director, board oversight committee member or employee of that credit union.

(11) A person shall resign from being a director of a credit union if and when he or she becomes a person to whom any provision of subsection (10) relates.

...

### **Section 72 – Persons disqualified from acting**

(1) † A person who has been adjudicated bankrupt and whose bankruptcy still subsists or who has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty shall not–

(a) sign an application form for the registration of a society as a credit union,

(b) be qualified to be appointed or to act as an officer, auditor, receiver or liquidator of a credit union,

(c) directly or indirectly take part in or be concerned in the management or operation of a credit union, or

(d) permit his or her name to be put forward for election or appointment to any of the positions referred to in paragraph (b).

(2) If a person who is a member of–

(a) the board of directors,

(b) the board oversight committee, or

(c) a principal Committee,

of a credit union is adjudicated bankrupt or convicted of such an offence as is referred to in subsection (1), then such person shall forthwith cease to hold office and the vacancy thereby created shall be deemed to be a casual vacancy and be filled accordingly.

(3) A decision of the board of directors of a credit union shall not be affected by the presence at a meeting of the board of a person who, by virtue of this section, is disqualified from being a director; but any vote which such a person purports to cast shall be disregarded.

(4) Any person who, in relation to a credit union, purports to act in a manner or capacity which, by virtue of his being disqualified under this section, he is prohibited from

doing shall be guilty of an offence.

### 3.4 Term limits and casual vacancies

#### Section 53 – Board of directors\*

...

(12) A member of a credit union may not be appointed or elected to the board of directors if he or she has served for more than 12 years in aggregate in the previous 15 years on either the board of directors or the board oversight committee of the credit union.

(13) For directors of a credit union or members of the board oversight committee who were already directors or members of the board oversight committee on the date of the commencement of this section in respect of such credit union, the 12 year period set out in subsection (12) commences on the date this subsection so commences.

...

#### Guidance

For the purposes of section 53(12), any time served as a director or a member of the board oversight committee from 3 March 2014 will contribute towards the calculation of the aggregate 12 years' service in the previous 15 years.

Example - If, after 3 March 2014, a person serves:

- 12 consecutive years on the board of directors; or
  - 12 consecutive years on the board oversight committee; or
  - 12 consecutive years on either, the board of directors or board oversight committee,
- then that person may not serve on the board of directors for the next three years.

#### Section 53 – Board of directors\*

...

(14) Directors of a credit union may not serve more than 3 consecutive years in any one principal post (as referred to in section 63) and a person who has been the holder of such a principal post shall not be eligible for re-election thereto until after the expiry of one year since he or she last held it.

(15) Subject to the requirements set out in this section and all other applicable requirements of financial services legislation, the board of directors may at any time and from time to time appoint a member of the credit union (including a former director) to be a director to fill a casual vacancy.

(16) A director appointed under subsection (15) shall hold office from the date of the appointment to the next following annual general meeting of the credit union or, if it is earlier, the next special general meeting at which an election is held for directors of the board of directors.

(17) Where all the directors of a credit union intend to resign on the same date, the secretary shall give written notice of the directors' intention to the Bank and the board oversight committee.

### 3.5 Functions of the board of directors

#### Section 55 – Functions of board of directors\*

(1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:

(a) setting the strategy for the credit union by preparing, including active participation and examination of strategies being developed or proposed by the manager, management team or others and preparing and adopting a strategic plan;

(b) monitoring the implementation of the strategic plan by the credit union, reviewing the performance of the credit union against the measurements defined in the strategic plan and assessing, on a regular basis but at least annually, how the strategic objectives of the credit union are being achieved;

(c) reviewing the credit union's strategic plan on a regular basis, but at least annually, to ensure that it remains relevant and up to date and modifying or revising the strategic plan to incorporate any changes required as a result of the review;

...

#### Guidance

Further requirements in relation to the strategic plan are set out in section 76A of the 1997 Act.<sup>6</sup>

#### Section 55(1) – Functions of board of directors\*

...

<sup>6</sup> See the Chapter on "Strategic Plan".

(d) operating a comprehensive decision-making process, considering all matters it considers to be of material relevance to the credit union and documenting the reasons for its decisions;

...

### Guidance

The board of directors should ensure that they can explain their decisions and document decisions made along with a detailed rationale to support their decisions.

### Section 55(1) – Functions of board of directors\*

...

(e) the appointment of a manager, risk management officer and compliance officer and the approval of the appointment of any other member of the management team;

(f) ensuring that there is an effective management team in place;

(g) reviewing the performance of the manager on an annual basis and monitoring on an ongoing basis his or her continued appropriateness to be the manager;

(h) ensuring that the performance of every other employee and voluntary assistant, is reviewed and monitored on an ongoing basis to ensure his or her continued appropriateness for his or her role in the credit union;

(i) identifying, in consultation with the manager, other officer positions within the credit union that–

(i) are essential to the proper management of the credit union,

(ii) are likely to enable the person holding the position to exercise significant influence on the conduct of the affairs of the credit union,

and which, together with the manager and risk management officer of the credit union are referred to in this Act as the 'management team';

(j) ensuring there is an appropriate succession plan in place in respect of each of the positions that constitute the management team;

...

### Guidance

Guidance on the succession plan for the board of directors and the management team is provided in the Section of this Chapter on "Guidance on Documents required under section 55(1)(o) of the 1997 Act".

#### **Section 55(1) – Functions of board of directors\***

- ...
- (k) exercising appropriate oversight over execution by the management team of the agreed strategies, goals and objectives;
  - (l) reviewing and approving all elements of the risk management system on a regular basis, but at least annually and, in particular–
    - (i) assessing the appropriateness of the risk management system,
    - (ii) taking account of any changes to the strategic plan including the credit union's resources or the external environment, and
    - (iii) taking measures necessary to address any deficiencies identified in the risk management system;
  - (m) ensuring compliance with all requirements imposed on the credit union by or under the *Credit Union Acts 1997 to 2012* or any other financial services legislation;
- ...

#### **Guidance**

Further requirements in relation to risk management systems and systems and control are set out in section 76B of the 1997 Act.<sup>7</sup>

#### **Section 55(1) – Functions of board of directors\***

- ...
- (n) the removal from office of an officer of the credit union, except directors or members of the board oversight committee, where the board of directors has duly determined that there has been a failure by the person concerned to perform duties or responsibilities;
  - (o) approving, reviewing, and updating, where necessary, but at least annually, all plans, policies and procedures of the credit union, including the following:
    - (i) lending policies including lending limits;

<sup>7</sup> See the Chapter on "Risk Management and Compliance".

- (ii) policies in relation to members' shares and deposits including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit;
- (iii) liquidity management policies;
- (iv) reserve management policies;
- (v) investment policies;
- (vi) the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union;
- (vii) standards of conduct and ethical behaviour for officers;
- (viii) remuneration policies and practices;
- (ix) compliance plan and policies;
- (x) records management policies;
- (xi) information systems and management information policies;
- (xii) business continuity plan;
- (xiii) asset and liability management policies;
- (xiv) outsourcing policies;
- (xv) risk management policy;
- (xvi) conflicts of interest policy;
- (xvii) such other matters as the Bank may prescribe;<sup>8</sup>
- ...

---

<sup>8</sup> The Central Bank has not yet prescribed Regulations under this subsection.

## 3.6 Regulations

### CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016 (S.I. No. 1 of 2016)

#### PART 8

#### SYSTEMS, CONTROLS AND REPORTING ARRANGEMENTS

##### Plans, Policies and Procedures

46. (1) A credit union shall establish and maintain, in writing, all policies specified in section 55(1)(o) of the Act.
- (2) A credit union shall ensure that the matters specified below shall be communicated to all officers in the credit union following any updates made, including the review, approval and update by the board of directors required at least annually of:
- (a) the risk management policy;
  - (b) the business continuity plan;
  - (c) the conflicts of interest policy; and
  - (d) the standards of conduct and ethical behaviour of officers.
- (3) A credit union shall document, approve and update, at least annually, the matters specified in Schedule 1 to these Regulations.
- (4) A credit union shall, at a minimum, establish and maintain information systems and management information policies which include:
- (a) a management information policy;
  - (b) an information security policy;
  - (c) an information systems change management policy; and
  - (d) an information systems asset management policy.

#### SCHEDULE 1

1. The systems of control of its business and records required under section 108(1)(b) of the Act,



2. A succession plan for the board of directors and the management team which shall detail the key skills and competencies required for members of the board of directors and management team,
3. The annual review of overall performance carried out by the board of directors as required under section 55(4) of the Act,
4. The annual compliance statement, together with supporting documentation used in the preparation of the compliance statement.

**Guidance**

Guidance on a number of the documents set out above is provided in the relevant Chapters of the Handbook. Guidance on the remaining documents is provided in the Section of this Chapter on "Guidance on Documents required under section 55(1)(o) of the 1997 Act". The table below sets out where guidance on each document is provided:

a) lending policies including lending limits	Chapter on "Lending"
b) policies in relation to members' shares and deposits including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit	Chapter on "Savings"
c) liquidity management policies	Chapter on "Liquidity"
d) reserve management policies	Chapter on "Reserves"
e) investment policies	Chapter on "Investments"
f) the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union	Chapter on "Investments"
g) standards of conduct and ethical behaviour for officers	Section of this Chapter on "Guidance on Documents required under section 55(1)(o) of the 1997 Act"

h) remuneration policies and practices	Section of this Chapter on "Remuneration"
i) compliance plan and policies	Chapter on "Risk Management and Compliance"
j) records management policies	Chapter on "Operational Risk"
k) information systems and management information policies	Chapter on "Operational Risk"
l) business continuity plan	Chapter on "Operational Risk"
m) asset and liability management policies	Chapter on "Liquidity"
n) outsourcing policies	Chapter on "Outsourcing"
o) risk management policy	Chapter on "Risk Management and Compliance"
p) conflicts of interest policy	Section of this Chapter on "Additional Governance Provisions"

These documents should be communicated to the relevant officers of the credit union.

**Section 55(1) – Functions of board of directors\***

- ...
- (p) the recommendation to members, for approval, of dividends to members;
  - (q) ensuring the accounts of the credit union are submitted for audit;
  - (r) reporting to the members of the credit union at the annual general meeting, including nominating a member of the board to present the annual accounts at the annual general meeting;

- (s) reviewing and considering any update of financial statements provided to the board by the manager under section 63A(4)(c).

...

#### **Section 55 – Functions of board of directors\***

...

- (2) In deciding on the roles, responsibilities and administrative structures and reporting relationships of all officers, the board of directors of a credit union shall ensure that no single person is responsible for making all of the material decisions of the credit union or has effective control over the business of the credit union.
- (3) The board of directors shall implement a risk management process that ensures that all significant risks are identified and mitigated to a level consistent with the risk tolerance of the credit union.

...

#### **Guidance**

Further requirements in relation to risk management systems and systems and control are set out in section 76B of the 1997 Act.<sup>9</sup>

#### **Section 55 – Functions of board of directors\***

...

- (4) The board of directors shall carry out at least annually a comprehensive review of its overall performance, relative to its objectives and implement any necessary changes or improvements.
- (5) The review carried out by the board of directors under subsection (4) shall be documented in writing.
- (6) In respect of the exercise of functions by the board of directors of a credit union, the board shall set out in writing a register of matters or categories of matters that require the board's approval and which cannot be assigned by the board to other persons for performance on the board's behalf. The register shall be used to record all such approvals by the board of directors.
- (7) Where the board of directors causes any matter relating to its functions to be

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<sup>9</sup> See the Chapter on "Risk Management and Compliance".

performed or carried out on its behalf, it shall continue to have responsibility for the matter.

- (8) The board shall regularly review, but at least annually, the performance and effectiveness of the internal audit function, including reviewing and approving the internal audit charter and the internal audit plan and reviewing and approving any modifications to them, ensuring they are updated and that any issues identified in the review are managed and rectified in a timely manner.

**Guidance**

Further requirements in relation to the internal audit function are contained in section 76K of the 1997 Act.<sup>10</sup>

**Section 65 - Credit officer and credit control officer\***

(1) The board of directors may–

(a) approve the appointment of a person by the manager, other than a member of the board, a member of the credit control committee or a credit control officer, as a credit officer to work under the supervision of the credit committee, and

(b) assign to the credit officer the power to approve credit on its behalf –

(i) that is fully secured by the shareholding of the borrowing member or to an amount in excess of that shareholding, or

(ii) that qualifies as emergency credit within such definitions and limitations as to amount, the terms of repayment and security required for emergency credit as may be established in writing by the board of directors,

and the amount of the excess referred to in paragraph (b)(i), shall be determined from time to time by the board of directors.

(2) A record of each application for credit which has or has not been approved shall be furnished by the credit officer to the credit committee not later than 7 days of receipt of the application.

(3) Where the board of directors has assigned the power to approve credit under subsection (1)(b), a credit officer shall enquire into the character and financial circumstances of an applicant for credit and the security offered, if any, in order to–

(a) ascertain the applicant's ability to repay a loan in accordance with its terms, and

(b) ensure that the provision of credit does not involve undue risk to members' savings.

(4) The Board may approve the appointment of a person by the manager, other than a member of the board, a member of the credit committee or a credit officer, as a credit control officer to assist the credit control committee and work under its supervision and control.

<sup>10</sup> See the Chapter on "Internal Audit".

### 3.7 Operation of the board of directors

#### Section 54 – Operation of board of directors\*

- (1) The board of directors of a credit union shall meet as often as may be appropriate to fulfil its responsibilities effectively and prudently and reflecting the nature, scale and complexity of the credit union, but in any event–
  - (a) the board of directors shall hold at least 10 meetings in any year, and
  - (b) the interval between any 2 meetings of the board of directors shall not be greater than 6 weeks.
- (2) Meetings of the board of directors of a credit union shall be chaired by the chair or, in his or her absence, by the vice-chair or, in the absence of the chair and the vice-chair, in a manner prescribed by the Bank or, if no manner is so prescribed, in a manner provided for in the rules of the credit union.<sup>11</sup>
- (3) The secretary of a credit union shall keep minutes of all meetings of the board of directors.
- (4) Subject to subsection (10), the chair shall cause a detailed agenda of items for consideration and discussion to be prepared by the secretary of the credit union for each meeting of the board of directors.
- (5) The secretary of the credit union shall cause the detailed agenda and proposed minutes of the previous meeting of the board of directors to be circulated sufficiently in advance of each board of directors meeting to allow all directors adequate time to consider them. Where necessary, sufficient and clear supporting information and papers shall also be so circulated.
- (6) Nothing in subsection (4) or (5) shall be read as preventing discussion or consideration of any matter urgently arising that is not included in the detailed agenda but any such matter shall, without prejudice to subsection (7), be recorded in the minutes of the meeting concerned and, where appropriate or the board of the credit union so directs, clear supporting information and papers relating to the matter so arising shall be circulated as soon as practicable in the circumstances.

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<sup>11</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- (7) Minutes of all meetings of the board of directors shall–
- (a) be prepared with all decisions, discussions and points for further action being documented,
  - (b) record all dissensions or minority votes in terms acceptable to the dissenting person or minority voter, and
  - (c) provide sufficient detail to identify the nature and extent of the discussion on any matter and the decision or other outcome.
- (8) All discussions at board of directors meetings relating to conflicts of interest (whether of board members or otherwise) shall be recorded in sufficient detail in the minutes of the meeting concerned, together with a record of any action taken or proposed to be taken.
- (9) The minutes of each meeting of the board of directors shall be motioned for agreement and approval at the next subsequent meeting of the board of directors. Those minutes shall be so approved or approved subject to such qualifications and modifications as may be made to them at that subsequent meeting. Any such modification or qualification shall also be minuted in the minutes of that subsequent meeting.
- (10) In causing the agenda for a meeting of directors of a credit union to be prepared, the chair shall endeavour to ensure that adequate and sufficient time is provisionally allocated to all material relevant matters for discussion.
- (11) Directors of the board of directors shall attend every meeting of the board of directors unless they are unable to attend due to circumstances beyond their control.
- (12) The extent of the attendance of each board member at meetings of the board of directors shall be recorded in the minutes for the meeting concerned.

### 3.8 Principal posts

#### Section 63 – Officers: principal posts

- (1) ‡ At a meeting of the board of directors of a credit union–
- (a) which is held immediately after the organisation meeting, an annual general

meeting or special general meeting at which an election is held for members of the board of directors, and

(b) which is chaired by a member of the board oversight committee,

the board of directors shall elect by secret ballot directors to fill such of the principal posts in the credit union as are then vacant; and, for the purposes of this section, the principal posts in a credit union are the posts of chair, vice-chair and secretary.

(3) In the event of a casual vacancy in a principal post, the board of directors may by secret ballot elect a director to hold that post until the next meeting at which, in accordance with *subsection (1)*, an election should be held to fill any vacancy in the principal posts.

(4) Without prejudice to *subsection (3)*, if a principal post falls vacant or for any other reason there is no holder of a principal post, anything that is required or authorised to be done by the holder of that post may be done by a director authorised in that behalf by the board of directors.

(5) † The chair or secretary of a credit union shall notify the Bank in writing of the election, appointment, retirement, removal or resignation from office of a chair, vice-chair, director, secretary, or committee member and the notification shall—

(a) be made within 14 days of the election, appointment, retirement, removal or resignation, and

(b) state the full name and address of the officer concerned.

## 4. Chair of Board of Directors

### Section 55A – Chair of board of directors, etc.\*

(1) The board of directors of a credit union shall elect one of its number to be the chair of the board, subject to that person being eligible to be chair of a board of directors.

(2) The chair of the board of directors of a credit union may be referred to by whatever title the rules of the credit union provide.

(3) The functions of the chair of a credit union include the following:



- (a) ensuring that meetings of the board of directors operate in an efficient and effective manner;
  - (b) encouraging constructive discussions and debate at board of directors meetings;
  - (c) promoting effective communications between members of the board of directors and between the board of directors and the management team of the credit union;
  - (d) causing the agenda to be set by the secretary, attending and chairing board of directors meetings;
  - (e) ensuring that the responsibilities of the nomination committee, as set out in section 56B(4), are performed by that committee;
  - (f) conducting a performance evaluation of each member of the board of directors on an annual basis to ensure that each director is complying with the obligations under financial services legislation and the board of directors' objectives as set out in the credit union's strategic plan;
  - (g) facilitating the work of the board oversight committee through providing it with all reasonable assistance to enable that committee to carry out its functions;
  - (h) ensuring that conflicts of interest are appropriately managed by the board of directors, and by each of them, in accordance with section 69.
- (4) A director of the credit union shall not be eligible to be elected as chair if the director had, at any time during the 5 years preceding the election, been—
- (a) an employee of that credit union, or
  - (b) a person who acted in any management capacity (whether voluntary or paid) in that credit union,

and, for the purposes of this subsection, 'acted in any management capacity' includes performing a role where the person was in a position to exercise a significant influence on the conduct of the credit union's affairs but does not include acting as a member of the board of directors or as a member of the board oversight committee.

(5) Subject to subsection (7)(a), the term of office of a chair of a board of directors shall be for the period of one year.

...

### Guidance

The one year term limit for the chair comes into effect when the position of chair becomes vacant following commencement of section 55A(5) of the 1997 Act on 11 October 2013, i.e. when the chair completes his / her term of office or otherwise ceases to hold that office.

### Section 55A – Chair of board of directors, etc.\*

...

(6) A chair of a board of directors shall not serve more than 4 consecutive terms in that position and, having so served, shall not be eligible to be chair until–

(a) after another director has served at least one term as chair, or

(b) where such other director has served for less than one year, after 2 or more directors have served as chair for the equivalent of at least one complete term,

but nothing in this section shall prevent a former chair of the board of directors from being selected under section 54(2) from chairing a meeting of the board in the absence of the chair and, where relevant, the vice-chair.

(7) A person shall cease being chair of a board of directors if–

(a) the person ceases being a director for any reason, or

(b) the person resigns from being chair in accordance with subsection (8).

(8) A director may resign from being chair of the board of directors by sending his or her resignation in writing to the secretary of the credit union.

## 5. Nomination Committee

### Guidance

Part 3 of the Central Bank Reform Act 2010 sets out the legislative framework that provides the basis for the Fitness and Probity regime for all regulated financial service providers and the Central Bank Reform Act 2010 (Application of Part 3 to Credit Unions)

Order 2012 (S.I. No. 378/2012) specifically applied this regime to credit unions from 24 September 2012. The Chapter on "Fitness and Probity" contains the Fitness and Probity Regulations, Standards and Guidance for credit unions.<sup>12</sup> The nomination committee should have regard to the Chapter on "Fitness and Probity" in carrying out its functions under this section, in particular functions under section 56B(4)(e) and (f) and 56B(6) of the 1997 Act.

**Section 56B – Nomination committee\***

- (1) The board of directors of a credit union shall establish a committee (in this Act referred to as the 'nomination Committee') whose members shall be elected in accordance with subsection (13).
- (2) The nomination committee shall comprise not less than 3 members and not more than 5 members.
- (3) Only members of the board of directors of a credit union are eligible to serve on a nomination committee of the credit union.
- (4) The nomination committee shall be responsible for the following:
  - (a) identifying candidates to be nominated for appointment to the board of directors;
  - (b) accepting nominations of candidates proposed to be appointed to the board of directors;
  - (c) proposing –
    - (i) candidates, for election by a general meeting, to be members of the board, and
    - (ii) if prescribed by the Bank for the purposes of section 53(15), at least such and so many candidates as may be required for consideration for appointment to fill vacancies on the board of directors;<sup>13</sup>
  - (d) proposing an additional person to be a director of the credit union pursuant to section 95A(1);
  - (e) assisting the credit union in performing any obligations of the credit union under

<sup>12</sup> Available at the "Fitness and Probity – Credit Unions" section of the Central Bank website at the following [link](#).

<sup>13</sup> The Central Bank has not yet prescribed Regulations under this subsection.

section 23 of the Central Bank Reform Act 2010 in relation to any candidates proposed to perform pre-approval controlled functions (as construed in accordance with section 22 of that Act);

(f) assisting the credit union in carrying out any checks which the credit union is undertaking to enable it to comply with its obligations under section 21 of the Central Bank Reform Act 2010;

(g) informing each prospective candidate by notice in writing, before he or she is proposed as a candidate in accordance with paragraph (c), of the time commitment expected from him or her in respect of his or her role as a director;

(h) ensuring that there is an appropriate succession plan in place for the board of directors;

...

### Guidance

Guidance on succession plans is provided in the Section of this Chapter on "Guidance on Documents required under section 55(1)(o) of the 1997 Act".

### Section 56B(4) – Nomination committee\*

...

(i) ensuring that each director is given adequate induction to his or her role on the board of directors so as to ensure he or she has sufficient appreciation of, and appropriate training about, the strategy, operations and performance of the credit union;

(j) ensuring that the induction process and training referred to in paragraph (i) occurs as soon as is practicable and in any event by no later than 6 months following a director's appointment to the board of directors;

(k) arranging additional training, either individually or collectively, for the members of the board of directors during their respective terms of appointment to the extent that the nomination committee considers it necessary in order for the board of directors to make informed decisions;

(l) maintaining a record in writing of the periods of time during which a person has served as a member of the board of directors of the credit union.



**Section 56B – Nomination committee\***

...

- (5) Every candidate to be nominated for appointment as a member of the board of directors of a credit union shall be proposed through the nomination committee of the credit union. No person shall otherwise be put forward for election or seek election at an annual general meeting or special general meeting of the credit union at which an election is held for members of the board of directors.
- (6) The nomination committee shall ensure it receives nominations for appointment of persons as members of the board of directors of a credit union in time prior to any annual general meeting, or special general meeting at which an election is held for such members, so as to enable any requirements by or under Part 3 of the Central Bank Reform Act 2010 to be met in advance of those persons being nominated for appointment.
- (7) In identifying prospective candidates under subsection (4)(a) and considering the proposing of candidates under subsection (4)(c), the nomination committee shall consider the balance of skills, experience and knowledge on the current board of directors and any review undertaken under subsection (11).

...

**Guidance**

The work of the nomination committee should be ongoing throughout the year and should have regard to the strategic plan of the credit union and the board of directors' responsibilities, to ensure that the board of directors has the qualifications, experience, competencies and capacity required to carry out its functions under section 55 of the 1997 Act while also ensuring continuity of the board of directors.

**Section 56B – Nomination committee\***

...

- (8) In considering the proposing of candidates under paragraph (4)(c), the nomination committee shall have regard to–
- (a) the number of directors on the board of directors and the number of vacancies to be filled,
- (b) whether potential conflicts of interest could arise from the appointment to the board of directors of a person if such person were duly nominated and appointed to the board, and

- (c) any other matter that the Bank may prescribe.<sup>14</sup>
- (9) Any potential conflict referred to in subsection (8) shall be brought to the attention of-
- (a) where subsection (4)(c)(i) is relevant, the members of the credit union at the general meeting concerned, and
- (b) where subsection (4)(c)(ii) is relevant, the directors of the board of directors of the credit union at the meeting of the board concerned.
- (10) The nomination committee shall not propose appointments to the board of directors or allow appointments to proceed where conflicts of interest exist or could arise in a way which in its opinion could significantly affect the ability of the board of directors to operate in accordance with section 69(1).
- (11) The nomination committee shall review the composition of the board of directors at least once a year for the purpose of identifying any deficiencies in the composition of the board. The review shall include determining whether or not there are any deficiencies in the balance of skills amongst the members of the board of directors and considering other matters relating to deficiencies that may be prescribed by the Bank.<sup>15</sup>
- (12) The nomination committee shall-
- (a) formally review the membership of any person who is a member of the board of directors for more than the 12 years in aggregate permitted under this Part, and
- (b) shall document the rationale for the continuance of such membership of that person.
- ...

### Guidance

In considering the rationale for the continuation of the membership of a person who has been a director for more than 12 years, the nomination committee should consider the balance of experience and independence sought on the board of directors. The

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<sup>14</sup> The Central Bank has not yet prescribed Regulations under this subsection.

<sup>15</sup> The Central Bank has not yet prescribed Regulations under this subsection.

nomination committee of the credit union should ensure that the credit union retains a balance between ongoing renewal of the board of directors, to ensure it remains independent, and ensuring that adequate expertise and experience is retained so that continuity of the board of directors is maintained.

#### **Section 56B – Nomination committee\***

...

(13) (a) At a meeting of the board of directors of a credit union –

- (i) which is held immediately after the organisation meeting, an annual general meeting or special general meeting at which an election is held for members of the board of directors, and
- (ii) which is chaired by a member of the board oversight committee,

the board shall elect by secret ballot directors to fill such positions as are then vacant on the nomination committee.

- (b) In the event of a casual vacancy on the nomination committee, the board of directors may by secret ballot elect a director to fill that vacancy until the next meeting at which, in accordance with paragraph (a), an election should be held to fill any vacancy in the nomination committee.

## **6. Board Committee**

#### **Section 56A – Board committees\***

(1) Subject to the other provisions of the *Credit Union Acts 1997 to 2012* and any matter prescribed by the Bank, the board of directors of a credit union may cause any matter relating to its functions to be performed or carried out on its behalf by a committee, comprised entirely of directors or of a majority of directors, to act on behalf of the board of directors in respect of matters to be performed or carried out.

(2) A decision of the board of directors to cause any matter relating to its functions to be performed or carried out on its behalf under subsection (1) shall be taken at a meeting of the board.

(3) The Bank may prescribe that credit unions generally or any category or categories of credit union establish one or more of the following committees, all members of which shall be directors of the credit union:

- (a) an audit committee;



(b) a risk committee;

(c) a remuneration committee.<sup>16</sup>

(4) Where a credit union is not required to establish a committee to which subsection (3) relates, the credit union–

(a) if such a committee is already in place when this section is first commenced, shall as soon as practicable thereafter decide whether or not the committee shall continue, or

(b) at any time after such commencement, it may decide voluntarily to establish such a committee if it considers it appropriate and proportionate to do so,

and the provisions of this section shall apply to the credit union, in respect of the committee so continued or established as if that committee were required to be established under subsection (3).

...

### Guidance

The board of directors should consider whether it would be appropriate to establish the following committees:

- an audit committee;
- a risk committee; and
- a remuneration committee

taking into account the nature, scale, complexity and risk profile of the credit union.

**Audit committee** - Where the board of directors of a credit union has established an audit committee, the audit committee should be responsible for the following at a minimum:

- assessing the performance of the auditor at least annually to determine the auditor's independence, effectiveness and compliance with requirements under the 1997 Act;
- ensuring that the internal audit function, required under section 76K of the 1997 Act, is independent and has a reporting line and unfettered access to the audit committee;<sup>17</sup>

<sup>16</sup> The Central Bank has not yet prescribed Regulations under this subsection.

<sup>17</sup> See the Chapter on "Internal Audit".

- reviewing the internal audit charter and internal audit plan, required under section 76K of the 1997 Act, on a regular basis;<sup>18</sup>
- reviewing reports of the internal audit function and taking appropriate action in relation to any recommendations issued by the internal audit function;
- reporting to the board of directors on a regular basis;
- monitoring the financial reporting process;
- monitoring the effectiveness of the credit union’s internal audit function; and
- reviewing the integrity of the credit union’s financial statements and ensuring that they give a “true and fair” view.

**Risk committee** - Where the board of directors of a credit union has established a risk committee, the risk committee should be responsible for the following at a minimum:

- overseeing and advising the board of directors on the risk management system including assessing the appropriateness of the risk management system;
- assisting the board of directors in setting risk tolerance and ensuring that significant risks are mitigated to a level consistent with the risk tolerance of the credit union; and
- ensuring the risk management system is reviewed and that any deficiencies identified are addressed.

**Remuneration committee** - Where the board of directors of a credit union has established a remuneration committee, the remuneration committee should be responsible for the following at a minimum:

- developing and putting in place the remuneration policies and practices;
- conducting regular reviews of, making recommendations to the board of directors on, and updating the remuneration policies and practices; and
- making annual recommendations to the board of directors on the remuneration of the persons covered by the remuneration policy.

<b>Section 56A – Board committees*</b>
<p>...</p> <p>(5) A decision by the board of directors under subsection (1) shall be documented in writing by the board, which documentation shall include–</p> <p style="padding-left: 20px;">(a) the terms of reference for the committee including–</p> <p style="padding-left: 40px;">(i) identifying the subject matter of the area concerned and respective responsibilities of both the board of directors and the committee,</p> <p style="padding-left: 40px;">(ii) identifying the matters that may be decided by the committee and those</p>

<sup>18</sup> See the Chapter on “Internal Audit”.

<p>that require the approval of the board,</p> <p>(iii) a schedule of matters reserved for the board of directors that would otherwise be performed or carried out by the committee,</p> <p>and</p> <p>(b) the procedures for monitoring and documenting in writing the exercise of the matters to be carried out on behalf of the board.</p> <p>...</p>
--

### Guidance

In addition to the requirements under section 56A(5) of the 1997 Act, the terms of reference for board committees should cover the following at a minimum:

- membership;
- reporting arrangements;
- meeting frequency;
- voting rights;
- quorums; and
- method and frequency of review of terms of reference.

Terms of reference should be reviewed regularly, at least annually, by the board of directors and updated to ensure their continuing appropriateness.

### Section 56A – Board committees\*

<p>...</p> <p>(6) The board of directors shall appoint the members of each committee to which subsection (1) relates.</p> <p>(7) A person appointed to a committee–</p> <p>(a) shall hold office until the next general meeting at which an election is held for the board of directors, or such shorter period as may be specified at the time the person is appointed to the committee, and</p> <p>(b) may be removed from the committee by a decision of the board of directors.</p> <p>(8) When appointing members of a committee to which subsection (1) relates, the board of directors of a credit union shall ensure that–</p> <p>(a) each committee has an appropriate balance and sufficiency of skills and</p>
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expertise available to it to carry out the matters delegated to it, and

(b) where necessary, some or all of the members of the committee are prepared to undertake relevant training to enhance their skills and experience for the purpose of carrying out functions in the context of paragraph (a).

(9) For the purposes of a committee to which subsection (1) relates, the board of directors or, failing them, the committee concerned in consultation with the secretary of the credit union, shall appoint a secretary to the committee. The secretary to a committee shall perform the same functions to the committee as does the secretary to the credit union perform under subsections (3), (5), (7) and (8) of section 54.

(10) The members of a committee to which subsection (1) relates shall perform their functions as such members in a manner consistent with the exercise of functions by members of the board of the credit union, both collectively and individually, as if the committee were the board and accordingly, the provisions of section 54, other than subsection (1), that relate to the board shall, subject to any necessary modifications, apply to the committee.

(11) A committee to which subsection (1) relates shall be chaired in such manner as its terms of reference provide or, where not so provided, as the committee shall decide.

(12) The board of directors of a credit union –

(a) may establish such other committees as the directors consider appropriate, and

(b) shall have such other committees (if any) as may be prescribed by the Bank.<sup>19</sup>

(13) In composing the membership of any committee under this section, the board of directors of a credit union shall endeavour to ensure that no one individual director is in a position to exercise excessive influence or control, in respect of the business affairs of the credit union, through membership of committees.

...

**Guidance**

The chair of the board of directors should not act as chair of a board committee.

**Section 56A – Board committees\***

...

<sup>19</sup> The Central Bank has not yet prescribed Regulations under this subsection.

(14) Each committee shall, at least quarterly in every year, prepare and submit in writing to the board of directors a formal report on its activities and deliberations.

### Guidance

The Central Bank expects that the chair of each board committee should report to the board of directors on its proceedings after each meeting, and at least quarterly, on all matters within its duties and responsibilities. Each committee should make whatever recommendations to the board of directors it deems appropriate on any area within its remit where action or improvement is needed.

Each committee should, at a minimum:

- have access to sufficient resources in order to carry out its duties;
- be provided with appropriate and timely training, both in the form of an induction programme for new members of the committee and on an ongoing basis for all members of the committee; and
- arrange for periodic reviews of its own performance and, at least annually, review its terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the board of directors for approval.

In deciding on the composition of each committee the board of directors should have regard to the need to ensure that no one individual director has effective control over the business of the credit union.

## 7. Other Committees

### Section 67 – Credit, credit control and membership committees

(1) † Without prejudice to section 56A, the board of directors shall appoint–

- (a) a credit committee, which shall decide on applications for credit;
- (b) a credit control committee, which shall seek to ensure the repayment of loans by members of the credit union in accordance with their loan agreements; and
- (c) a membership committee which shall consider applications for membership of the credit union;

and the Third Schedule shall apply to the committees.

- (2) The record of applications for credit furnished by a credit officer under *section 65(2)* shall be considered by the credit committee at its next following meeting and become part of the records of the credit union.
- (3) The membership committee shall—
- (a) at least once in every month notify the board of directors of the new members whose applications they have approved; and
  - (b) where there is a doubt in respect of an applicant’s qualification for membership of the credit union, submit the application for membership to the board of directors for a decision.

### **Third Schedule – Credit committee, credit control committee and membership committee**

2. A credit committee, credit control committee and membership committee shall –
- (a) meet as often as necessary to carry out their functions;
  - (b) submit a written report to the board of directors at each meeting of the board; and
  - (c) comply with any instruction of the board of directors.
3. A credit committee shall have not less than three members and a member of the credit control committee, the credit control officer or a credit officer shall not be eligible for membership.
4. A credit control committee shall have not less than three members and a member of the credit committee, the credit control officer or a credit officer shall not be eligible for membership.
5. A membership committee shall have not less than one member.

## **8. Board Oversight Committee**

### **Section 76L – Board oversight committee\***

Every credit union shall have a committee (in this Act referred to as a 'board oversight committee') which shall–

(a) consist of 3 or 5 members elected in accordance with section 76N, and

(b) exercise the functions assigned to it by this Part.

**Section 76M – Functions of board oversight committee.\***

A board oversight committee of a credit union shall assess whether the board of directors has operated in accordance with–

(a) Part IV, this Part and any regulations made for the purposes of Part IV or this Part, and

(b) any other matter prescribed by the Bank in respect of which they are to have regard to in relation to the board of directors.

**Section 76N – Election of board oversight committee, etc.\***

(1) The board oversight committee of a credit union shall be elected–

(a) where the organisation meeting occurs after the commencement of this provision, by secret ballot at the organisation meeting and, subject to section 76R(4), subsequent vacancies on the board oversight committee shall be filled by secret ballot at an annual general meeting,

(b) in any other case, by secret ballot at the annual general meeting first occurring after the commencement of this provision or, if earlier than that annual general meeting, at a special general meeting called for the purpose of such ballot and, subject to section 76R(4), subsequent vacancies on the board oversight committee shall be filled by secret ballot at an annual general meeting.

(2) If a casual vacancy arises in the membership of a board oversight committee, then–

(a) within one month of the vacancy arising, the Committee shall appoint a person (who may, if the Committee thinks fit, be a former member of the Committee) other than a person to whom subsection (4), (5) or (6) relates to fill the vacancy, and

(b) the person so appointed shall hold office until the next general meeting at which

an election is held for members of the board oversight committee.

- (3) Where the secretary of the board oversight committee becomes aware that all the members of the committee intend to resign on the same date, the secretary shall give written notice of their intention to the Bank and the board of directors of the credit union.
- (4) A credit union shall not elect under subsection (1) any of the following persons to be a member of its board oversight committee:
- (a) an employee or voluntary assistant of the credit union or an employee of any other credit union;
  - (b) a member of the board oversight committee of any other credit union;
  - (c) an employee of a representative body of which the credit union is a member, where that employee's role could expose them to a potential conflict of interest;
  - (d) a public servant (within the meaning of the Financial Emergency Measures in the Public Interest Act 2009) assigned to the Department of Finance and involved in advising the Minister on credit union issues or in the examination of credit union issues;
  - (e) a member of the Commission of the Bank;
  - (f) an officer (within the meaning of section 2 of the Central Bank Act 1942) or other employee of the Bank and involved in the regulation of credit unions;
  - (g) Financial Services Ombudsman (within the meaning of section 2 of the Central Bank Act 1942) or a Bureau staff member (within the meaning of section 57BA of that Act);
  - (h) a member of the Irish Financial Services Appeals Tribunal or a member of its staff (including the Registrar);
  - (i) the chief executive of the National Consumer Agency, an authorised officer of that Agency (within the meaning of section 2 of the Consumer Protection Act 2007) or any other member of its staff;



- (j) the auditor of the credit union or a person employed or engaged by that auditor;
  - (k) a solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
  - (l) a person who is a spouse or civil partner, cohabitant, parent or child, of a director, board oversight committee member or employee of that credit union;
  - (m) a body corporate;
  - (n) a person who is not of full age;
  - (o) a director of the credit union.
- (5) A person shall resign from being a member of the board oversight committee of a credit union if and when he or she becomes a person to whom any of the provisions of subsection (4) relates.
- (6) A board oversight committee member may not be appointed or reappointed to the board oversight committee if he or she has served for more than 12 years in the previous 15 years whether on the board of directors or the board oversight committee.
- (7) The board oversight committee shall appoint one of their number as secretary of the committee.

### Guidance

For the purposes of section 76N(6) time served on the Supervisory Committee prior to 11 October 2013 is not counted. However, time served on the board of directors prior to 11 October 2013 is counted for the purposes of section 76N(6).

### Section 76O – Board oversight committee: procedural provisions\*

- (1) The board oversight committee of a credit union shall hold –
- (a) at least one meeting in every month, and
  - (b) meetings with the board of directors at least 4 times in every year to facilitate it in carrying out the assessment under subsection (2),
- and the board oversight committee shall keep minutes of every meeting held by it under

paragraphs (a) and (b).

- (2) The board oversight committee shall submit, within 2 weeks of any meeting referred to in subsection (1)(a), a written report to the board of directors on their assessment of whether the board of directors has operated in accordance with Part IV and this Part and any regulations relating to Part IV or this Part.

...

### Guidance

The report required under section 76O(2) of the 1997 Act should state whether or not the board of directors has acted in compliance with Part IV, Part IVA or any other matter prescribed by the Central Bank relating to Part IV or Part IVA of the 1997 Act.<sup>20</sup> The board oversight committee is responsible for determining whether a deviation from the Requirements is material. Whether a deviation is material or not will depend upon the facts of each case. Where there has been a material deviation from any of the Requirements, the board oversight committee should include in its report the reasons and the background to that deviation and the remedial action taken or proposed to be taken by the credit union.

### Section 76O - Board oversight committee: procedural provisions\*

...

- (3) The board oversight committee shall have access, at all times, to the books and documents (including draft documents) of the credit union to enable it to carry out its functions under the Act.
- (4) Members of the board oversight committee shall have the right to attend all meetings of the board of directors and all meetings of committees of the credit union.
- (5) The board oversight committee shall ensure at least one of its members attends every meeting of the board of directors.
- (6) The board oversight committee may notify the Bank of any concern it has, that the board of directors has not complied with any of the requirements set out in this Part or Part IV, or regulations made thereunder, following a unanimous vote at a meeting of the committee called for the purpose of considering such a notification.
- (7) The board oversight committee shall report to the members at the annual general

<sup>20</sup> The Central Bank has not yet prescribed Regulations under this Part.

meeting and, if it thinks fit, at a special general meeting, on whether the board of directors has operated in accordance with Part IV and this Part.

**Section 76P - Board oversight committee: term of office and retirement\***

(1) The term of office of a member of the board oversight committee—

- (a) shall begin at the conclusion of the general meeting at which the member is elected,
- (b) shall not extend beyond the third subsequent annual general meeting after being so elected, and
- (c) subject to the provisions of this Act and all other applicable legal requirements, shall be determined in accordance with the registered rules,

but, except where this Act or any other applicable legal requirement or the registered rules otherwise provides, a retiring member of the committee shall be eligible for re-election.

(2) The rules for retirement from the board oversight committee shall be as follows:

- (a) where the committee consists of 3 members, one shall retire at each annual general meeting;
- (b) where the committee consists of 5 members, 2 shall retire at each annual general meeting;
- (c) subject to paragraph (d), the members to retire at any time shall be those who have served longest since they were last elected;
- (d) as between members who were last elected on the same day, the member (or members) to retire shall be determined by agreement or, in default of agreement, by the drawing of lots.

**Section 76Q - Board oversight committee: removal from office\***

(1) Subject to subsection (2), a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a member of the board oversight committee from office.

(2) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in subsection (1), give written notice of that meeting to the member concerned.

- (3) Where notice is given of a resolution mentioned in subsection (1) and the member of the board oversight committee concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to subsection (5), (unless the representations are received by it too late to do so) –
- (a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent.
- (4) Subject to subsection (5), and whether or not copies of any representations made under subsection (3) have been sent in accordance with that subsection, the member of the board oversight committee concerned may require that, without prejudice to that member's right to be heard orally, the representations made by that member shall be read out at the special general meeting.
- (5) Subsections (3) and (4) shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by those subsections are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (6) A vacancy arising from the removal of a member of a board oversight committee under this section shall be filled in accordance with section 76N(2).

**Section 76R – Board oversight committee: supplementary provision\***

- (1) A register of the members of the board oversight committee shall be kept by the secretary of the credit union and shall be signed by each member of the board oversight committee after an annual general meeting or, in the case of a member appointed to fill a casual vacancy, after such member's appointment.
- (2) In the event that the number of members of the board oversight committee falls to less than half the number specified in the registered rules, the secretary of the committee shall forthwith notify the Bank and the board of directors.
- (3) The acts of a member of the board oversight committee of a credit union shall be

valid notwithstanding any defect in the election or appointment of the member which may subsequently be discovered.

(4) Where any of the following events occur –

(a) the secretary of the board oversight committee has given notice under section 76N(3) that all the members of the committee intend to resign on the same date,

(b) all the members of the board oversight committee have been removed or suspended in accordance with section 96(1), or

(c) there are no members of the board oversight committee,

then the board of directors shall convene a special general meeting of the credit union, within one month of the occurrence of the event in question, to elect a board oversight committee.

(5) If the special general meeting referred to in subsection (4) is not convened in accordance with that subsection, the Bank may convene such a special general meeting under section 92(1)(b).

(6) A credit union shall meet all such expenses as may be reasonably incurred by its board oversight committee in carrying out its function.

### **Transitional arrangements**

#### **Section 27 of the Credit Union and Co-operation with Overseas Regulators Act 2012 – Board oversight committee**

...

(2) Notwithstanding the repeal by this Act of the provisions of the Principal Act relating to Supervisory Committees, each member of the Supervisory Committee of a credit union shall, unless he or she resigns or otherwise ceases to be a member of that committee, be deemed to have been duly elected a member of the board oversight committee of the credit union for the remainder of the term that he or she would have been a member of the Supervisory Committee had this section not been enacted.

## 8.1 Directors: suspension and removal

### Section 66 – Directors: Suspension and removal by board oversight committee\*

(1) If the board oversight committee of a credit union considers that a member of the board of directors has taken any action or decision which, in the opinion of the committee, given in writing to the director concerned, is not in accordance with the requirements of this Part, then, after consulting the Bank, the committee may either –

(a) suspend, with immediate effect, the director by a unanimous vote of all the members of the committee taken at a meeting of the committee called for the purpose of considering the director's suspension, or

(b) convene a special general meeting of the credit union to consider whether to remove the director in light of the action or decision taken by that director,

but no steps shall be taken under this subsection without the director concerned being given an opportunity to be heard by the members of the board oversight committee.

(2) Where a director of a credit union has been suspended by the board oversight committee in accordance with subsection (1), the board oversight committee shall, within 7 days of that suspension, convene a special general meeting–

(a) for the purpose of reviewing the suspension, and

(b) to consider whether to remove the director having regard to the action or decision taken by that director.

(3) Where the board oversight committee convenes a special general meeting for the purposes of this section the credit union may, by resolution of a majority of the members present and voting at that special general meeting–

(a) ratify the suspension of the director concerned and remove that director from office,

(b) rescind the suspension of that director, or

(c) remove that director from office,

but no director shall be so removed from office without being given an opportunity to be heard by the members present at the meeting.

- (4) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in subsection (3), give written notice of that meeting to the director concerned.
- (5) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation to it representations (not exceeding a reasonable length) in writing to the credit union and requests their notification to the members of the credit union then, unless the representations are received by it too late for it to do so, the credit union shall, subject to subsection (7) –
- (a) in any notice of the resolution given to members of the credit union, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent.
- (6) Subject to subsection (7), and whether or not copies of any representations made by it have been sent as mentioned in subsection (5), the director concerned may require that, without prejudice to his or her right to be heard orally, the representations made by him or her shall be read out at the special general meeting.
- (7) Subsections (5) and (6) shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by those sections are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (8) Where a director of a credit union is removed from office at a special general meeting pursuant to this section, the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.

**Section 56 – Removal of director from office**

- (1) Subject to *subsection (2)*, a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a director from office.
- (2) The secretary shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in *subsection (1)*,



give written notice of the meeting to the director concerned.

- (3) Where notice is given of such a resolution as is mentioned in *subsection (1)* and the director concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (5)*, (unless the representations are received by it too late to do so)-
- (a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).
- (4) Subject to *subsection (5)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (3)*, the director concerned may require that, without prejudice to his right to be heard orally, the representations made by him shall be read out at the special general meeting.
- (5) *Subsections (3) and (4)* shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by them are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (6) † A vacancy arising from the removal of a director under this section shall be filled in accordance with section 53 (15).

## 9. Manager of Credit Union

### Section 63A – Manager of credit union\*

- (1) The board of directors of a credit union shall appoint an individual to the role of manager of the credit union.
- (2) The manager of a credit union shall be the chief executive officer of the credit union having responsibility for the day-to-day management of the credit union's operations, compliance and performance and shall be responsible to the board of

directors for the performance of his or her functions.

- (3) Subject to the *Credit Union Acts 1997 to 2012*, any matters which the Bank may prescribe and other financial services legislation, the respective functions of, and the division of responsibilities between, the board of directors and the manager of a credit union shall be clearly established, formally documented in writing and approved by the board of directors.<sup>21</sup>
- (4) The functions of the manager of a credit union include the following:
- (a) without prejudice to the exercise by the board of directors of its functions under subsection (1)(a) of section 55, preparing and proposing to the board of directors for debate, scrutiny and approval, strategies for the strategic plan that the board of directors are required to prepare and approve under that subsection;
  - (b) implementing the strategies agreed by the board of directors to the standards set out in the strategic plan or as otherwise required by the board of directors;
  - (c) updating the board of directors on the financial position of the credit union, including submitting to the board of directors on a monthly basis unaudited financial statements that set out the financial position of the credit union;
  - (d) appointing or causing to be appointed such and so many persons as employees or as voluntary assistants as the manager considers appropriate after consulting with the management team of the credit union;
  - (e) preparing or causing to be prepared such financial reports and returns as may be required by the auditor of the credit union;
  - (f) implementing the proper systems of internal control which the board of directors have approved;
  - (g) ensure that all cash is deposited in accordance with the instructions of the board of directors;
  - (h) such other matters as may be duly assigned to the manager by the board of directors.

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<sup>21</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- (5) In appointing a person as manager of a credit union, its board of directors shall ensure that the person complies with all legal requirements (including requirements which the Bank may prescribe) to be appointed.<sup>22</sup>

## 10. Additional Governance Provisions

### 10.1 Directors: supplemental provisions

#### Section 57 – Directors: supplemental provisions

- (1) A register of directors shall be kept by the secretary of the credit union and signed by all the directors of a credit union each year after the annual general meeting of a credit union or, in the case of a director appointed to fill a casual vacancy, after his appointment.
- (2) † In the event that the number of directors of a credit union falls to less than half the number specified in the registered rules, the secretary of the credit union shall forthwith notify the Bank and the board oversight committee of the credit union.
- (3) The acts of a director of a credit union shall be valid notwithstanding any defect in the appointment of the director which may be subsequently discovered.
- (4) Where any of the following events occurs –
- (a) the secretary of the credit union has given notice under section 53(17) that all the directors of the credit union intend to resign on the same date,
  - (b) all the directors have been removed or suspended in accordance with section 96 (1), or
  - (c) there is no board of directors,
- then the board oversight committee shall convene a special general meeting of the credit union, within one month of the occurrence of the event in question, to elect a board of directors.
- (5) If the special general meeting referred to in *subsection (4)* is not convened in

<sup>22</sup> The Central Bank has not yet prescribed Regulations under this subsection.

accordance with the provisions of that subsection, the Bank may convene such a special general meeting under *section 92(1)(b)*.

## 10.2 Conflicts of interest

### Section 69 – Conflicts of interest\*

(1) Officers of a credit union, including the members of its board of directors, shall at all times ensure that individually, and collectively when acting in that capacity, they act in a manner free from conflicts of interest.

(2) The board of directors of a credit union shall approve and document in writing a policy for identifying, managing and resolving conflicts of interest and which policy will apply to all officers of a credit union.

...

### Guidance

The conflicts of interest policy should cover the following at a minimum:

- objectives of the conflicts of interest policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in identifying, managing and resolving conflicts of interest;
- circumstances which constitute or may give rise to a conflict of interest including matters identified by the board of directors where the nature of the interest should be declared in accordance with section 69(6) of the 1997 Act;
- procedures and controls to manage conflicts of interest including procedures for:
  - identifying and declaring interests;
  - ensuring officers do not participate in matters set out in section 69(4) of the 1997 Act;
  - managing conflicts of interest including ensuring that the appropriate action is taken in the event of a conflict of interest arising;
  - recording in the minutes of the board of directors, board committees and other relevant meetings details of each conflict identified or discussed and the action taken or proposed to be taken to avoid or manage that conflict;
  - dealing with recurring conflicts of interest;
  - maintaining the conflicts of interest register;
  - the disclosure of potential conflicts of interests by all persons nominated for election onto the board of directors and board oversight committee or other board committees;

- notifying members at the annual general meeting or directors at a meeting of the board of directors held to elect a director to fill a casual vacancy, of any potential conflicts of interest of a candidate for election to the board of directors;
- ensuring transactions with connected bodies are made on an arm's length basis;
- action to be taken if the conflicts of interest policy is breached;
- reporting arrangements on conflicts of interest, including the frequency form and content of reporting to the board of directors; and
- the process and timelines for the approval, review and update of the conflicts of interest policy by the board of directors.

Credit unions should ensure that any significant deviations from the conflicts of interest policy, the reasons for these deviations and proposed action to address the deviations are communicated to the board of directors in accordance with the reporting arrangements set out in the policy.

In identifying the circumstances which constitute or may give rise to a conflict of interest, credit unions should ensure that the following are taken into account at a minimum:

- whether an officer is likely to make a financial gain, or avoid a loss as a result of their position in the credit union;
- any interest that the officer may have in the outcome of a contract, transaction, and/or arrangement;
- the business or body that the officer is involved in or connected with and whether conflicts of interest may arise from that involvement; and
- the receipt of any inducement by the officer.

#### **Section 69 – Conflicts of interest\***

...

- (3) Every officer of a credit union shall identify all potential conflicts between his or her own interests and the interests of the credit union and shall take all necessary steps to ensure his or her role in the credit union is not influenced by any other interest.
- (4) An officer of a credit union shall not, in any manner, directly or indirectly, participate in the consideration or determination of any matter which he or she, or a body with which he or she is connected, has a pecuniary interest or other conflict of interest or where a reasonably perceived conflict of interest exists and, accordingly, an officer shall withdraw from any meeting or part of the meeting during which such a matter is to be considered or determined.
- (5) If, apart from this section, the withdrawal of an officer from a meeting in pursuance

of subsection (4) would cause the meeting to become inquorate, the remaining members shall be treated as constituting a quorum while the matter in question is being considered or determined.

- (6) An officer of a credit union who is or becomes interested, directly or indirectly, in—
- (a) a contract that is made or proposed to be made by the credit union or proposed to be amended by the credit union,
  - (b) any matter prescribed by the Bank for the purposes of this section, or<sup>23</sup>
  - (c) any other matter identified by the board of directors for the purpose of this section,

then the officer shall declare the nature of his or her interest—

- (i) where that officer is the chair of the board of directors, in writing to the board of directors and served on the secretary,
- (ii) where that officer is the secretary, in writing to the board of directors and served on the chair,
- (iii) where that officer is any other member of the board of directors, in writing to the board of directors and served on the secretary and the chair,
- (iv) where that officer is the manager, in writing to the board of directors and served on the secretary, or
- (v) in any other case, in writing to the board of directors and the manager and served on the secretary,

as soon as possible after the contract is so made or proposed to be made or so proposed to be amended or, as the case may be, after he or she becomes so interested.

- (7) In the case of a declaration under subsection (6) by a member of the board of directors—
- (a) where the contract or matter concerned comes before a meeting of the board,

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<sup>23</sup> The Central Bank has not yet prescribed Regulations under this subsection.

the declaration shall also be made in person by the member (if present) at the meeting at which the contract or matter is to be considered, and

(b) in every other case, the secretary shall read the declaration made in writing under paragraph (i) or (ii) (as the case may be) of subsection (6) at the next meeting of the board of directors held after service of that declaration.

(8) Subject to subsection (9), for the purposes of this section, a general notice in writing which is served by an officer of the credit union on the appropriate person to whom paragraph (i), (ii), (iii), (iv) or (v) of subsection (6) would relate if a declaration were served under that subsection and which is to the effect that—

(a) the officer is connected (whether as member, director, employee or otherwise) with a specified body and is regarded as interested in any contract, or other matter to which subsection (6) relates, which, after the date of the notice, may be made with or relate to that body; or

(b) the officer is to be regarded as interested in any contract, or other matter to which subsection (6) relates, which, after the date of the notice, may be made with or relate to a specified person who is connected with him or her,

shall be deemed to be a sufficient declaration of interest in relation to any such contract or other matter.

(9) In the case of a general notice under subsection (8) and to which paragraph (i), (ii) or (iii) of subsection (6) relates, notice under subsection (8) may be given—

(a) by the director concerned in person at a meeting of the board of directors, or

(b) where the director concerned is the chair, in accordance with paragraph (i) of subsection (6) or where the director concerned is the secretary, in accordance with paragraph (ii) of that subsection, or, where the director concerned is any other director, in accordance with paragraph (iii) of that subsection,

and where a notice is given as mentioned in paragraph (b), the secretary shall read the notice at the next meeting of the board of directors.

(10) For the purposes of this section—

- (a) this section applies in relation to a transaction, arrangement or proposal in the same manner as it applies in relation to a contract, and
- (b) an officer of a credit union shall be regarded as connected with a particular body if the officer has an interest in the body, whether directly or indirectly and whether as a member, director, employee, shareholder or otherwise.
- (11) Within 3 working days after a declaration or notice under this section is made or given, the secretary or manager (as the case may be) of the credit union concerned shall cause a copy of the declaration or notice to be entered in a register kept for that purpose, and that register shall–
- (a) be open for inspection without charge by any officer, auditor or member of the credit union or the internal audit function, and
- (b) be available at every general meeting of the credit union and, if adequate notice in advance is given to the secretary by any director, at any meeting of the board of directors.
- (12) In the case of a member of the board of directors of a credit union, where recurring or ongoing conflicts of interest arise for the member, then–
- (a) where the member concerned is the chair, seek formal or informal guidance from some or all of the other directors, and
- (b) where the member concerned is not the chair, seek formal or informal guidance from the chair,
- as to whether it is appropriate to resign and, following the consideration of such guidance by the member concerned, he or she shall resign as a member of the board of the credit union if he or she considers it appropriate to do so in the circumstances.

### 10.3 Required signatories

#### Section 70 – Required signatories etc.

- (1) None of the documents specified in *subsection (2)* shall be effective in law to bind a credit union unless signed by at least two officers of the credit union, one of whom shall be a member of the board of directors.
- (2) ‡ The documents to which subsection (1) applies are any of the following, so far as



not required by law to be under the seal of a credit union-

(a) a conveyance or transfer of property of any description by a credit union; and

(b) any other document which does not fall within section 55(1)(o)(vi) but by which a credit union enters into an obligation of any description.

(3) If the rules of a credit union make provision as to the officers by whom documents to which *subsection (1)* applies are to be signed, a document which purports to be signed as required by that subsection shall not be invalid by reason of any failure to comply with any such provision of the rules.

(4) The provisions of this section are without prejudice to any additional provisions as to signatures imposed by the Bank by way of condition under *section 49*.

## 10.4 Confidentiality of information

### Section 71 – Confidentiality of information

(1) † Subject to *subsection (2)*, during his term of office or at any time thereafter, an officer of a credit union shall not disclose or permit to be disclosed any information which concerns an account or transaction of a member with, or any other business of, the credit union.

(2) † *Subsection (1)* does not apply to a disclosure of information-

(a) if or to the extent that it is necessary for the proper conduct of the business of the credit union; or

(b) which is required by a court in connection with any proceedings; or

(c) which is made with the consent of the person to whom the information relates and, where not the same person, of the person from whom the information was obtained; or

(d) which, in a case where the credit union is acting or has acted as agent for a person, is made to that person in respect of that capacity; or

(e) where the information is in the form of a summary or collection of information and is so framed as not to enable information relating to a particular member to be ascertained from it; or

- (f) which, in the opinion of the Bank, is necessary for the protection of the funds of shareholders in or depositors with the credit union or to safeguard the interests of the credit union; or
- (g) which is made to the Bank for the purposes of its functions in relation to credit unions; or
- (h) which is made to the Credit Union Restructuring Board for the purposes of its functions under the *Credit Union and Cooperation with Overseas Regulators Act 2012*.
- (3) † As soon as practicable after the beginning of his term of office or, in the case of any person whose term of office began before the commencement of this section, after that commencement, every officer of a credit union shall, in such manner as the Bank may determine –
- (a) be informed by the credit union of his obligations under this section; and
- (b) in writing acknowledge that he has been so informed and understands his obligations.
- (4) Any reference in the preceding provisions of this section to a term of office means-
- (a) in relation to an officer who is an employee, the period of his employment; and
- (b) in relation to a voluntary assistant, the period during which he is engaged in the operation of the credit union.
- (5) A person who contravenes *subsection (1)* shall be guilty of an offence.
- (6) In any proceedings for an offence under this section, the onus of proving that any of the *paragraphs of subsection (2)* excludes a disclosure from *subsection (1)* shall lie on the person who made or permitted the disclosure.

## 10.5 Duty to account

### Section 74 – Duty to account

- (1) † Whenever required to do so in accordance with *subsection (2)*, every officer of a credit union who has the receipt or charge of money on behalf of the credit union

shall–

(a) render such an account as may be required by the credit union or its board of directors;

(b) pay over all such money and deliver all such property of the credit union for the time being under his custody or control to such person as the credit union or its board of directors may appoint.

(2) Either or both of the requirements in *subsection (1)* shall arise –

(a) on demand; or

(b) ‡ on the service on the officer of a notice in writing imposing the requirement or, as the case may be, both of the requirements;

and the requirement in *paragraph (a)* of that subsection shall also arise at such times as may be determined under the rules of the credit union.

(3) ‡ After the death of an officer of a credit union, references in *subsections (1)* and *(2)* to the officer shall be taken to include references to his personal representatives.

(4) ‡ If any person fails to comply with a requirement under subsection (1), the Circuit Court, on the application to it of the credit union, may make an order requiring that person to comply with the requirement.

(5) The jurisdiction of the Circuit Court under *subsection (4)* shall be exercised by the judge for the time being assigned to the circuit in which the registered office of the credit union is situated.

## 10.6 Register of members

### Section 75 – Register of members and officers

(1) Every credit union shall keep at its registered office a register in which shall be entered–

(a) the membership numbers, names and addresses of its members;

(b) a statement of the number of shares and amount of deposits held by each member and, if the shares are distinguished by numbers, the numbers of the

- shares so held;
- (c) a statement of other property in the credit union, whether in loans or otherwise, held by each member;
  - (d) the date at which the name of any person was entered in the register as a member;
  - (e) the date at which any person ceased to be a member; and
  - (f) ‡ the membership numbers, names and addresses of the officers of the credit union (excluding any person who is an officer solely by virtue of being an employee or a voluntary assistant), with the offices held by them respectively, the dates on which they assumed office and, where applicable, on which they ceased to hold office.
- (2) The register may be kept either by making entries in bound books or by recording the matters in question in any other manner; but, where the register is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against, and facilitating the discovery of, any falsification.
- (3) Every credit union shall either–
- (a) keep at its registered office, for the purposes of inspection under *section 76*, an abbreviated register, containing the particulars in the register kept under *subsection (1)*, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection; or
  - (b) so construct the register kept under *subsection (1)* that it is possible to open to inspection the particulars in the register, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection and without exposing the particulars so entered.
- (4) Where a credit union keeps a register pursuant to *subsection (1)* by recording the matters in question in any manner other than by making entries in bound books, the credit union shall keep at a place other than its registered office a duplicate register containing the particulars in the register kept under *subsection (1)*.
- (5) ‡ The Bank or a person acting on its behalf may at all reasonable hours inspect any

particulars in any register or duplicate register kept under this section.

- (6) A credit union's register or duplicate register kept under this section, or any other register or list of members or shares kept by the credit union shall be *prima facie* evidence of any of the following particulars entered therein, that is to say—
- (a) the membership numbers, names and addresses of members;
  - (b) the number of shares and the amount of deposits respectively held by the members, and the distinguishing numbers of those shares if they are distinguished by numbers;
  - (c) the date at which the name of any person was entered in the register as a member; and
  - (d) the date at which any person ceased to be a member.
- (7) A credit union shall ensure that a register or duplicate register kept under this section is up to date and, in particular, shall ensure that, if an event occurs which gives rise to the need for the making of an entry in, a change to or a deletion from, the register, that entry, change or deletion is made within 28 days of the event in question.

## 10.7 Inspection of books

### Section 76 – Inspection of books

- (1) Notwithstanding anything in the rules of a credit union, except as provided by this Act or any other enactment, no-one (whether a member of the credit union or not) shall have the right to inspect the books of a credit union.
- (2) Any member of a credit union or any other person having an interest in the funds of a credit union may, at any reasonable hour, inspect at the registered office of the credit union or at any other place where they may be kept—
- (a) the register kept under *section 75*, excluding the particulars entered therein under *paragraph (b)* or *paragraph (c)* of *subsection (1)* of that section; and
  - (b) his own account with the credit union;

but the right of inspection conferred by this subsection shall be exercisable subject to such conditions as to time and manner as may from time to time be determined by the board of directors.

(3) The rules of a credit union may make provision for the disclosure of its books and documents for the purpose of enabling it to enter into contracts for the benefit of the credit union.

(4) Subject to *subsection (5)*, on the application of thirty members of a credit union, the Bank may appoint an accountant to inspect and report on the books and documents of the credit union.

(5) An application under *subsection (4)* shall contain such particulars as the Bank may require and shall not be valid unless—

(a) each of the members making the application has been a member throughout the whole of the twelve months immediately preceding the date of the application; and

(b) the members making the application deposit with the Bank as security for the costs of the proposed inspection such sum as the Bank may reasonably require.

(6) An accountant appointed under *subsection (4)* may make copies of, and take extracts from, any books or documents of the credit union at all reasonable hours at the credit union's registered office or at any other place where those books or documents are kept.

(7) All expenses of and incidental to an inspection by an accountant appointed under *subsection (4)* shall be defrayed in such proportions as the Bank may direct—

(a) by the members making the application;

(b) out of the funds of the credit union; and

(c) ‡ by the members or officers (other than any person who is an officer solely by virtue of being a voluntary assistant) or former members or officers (other than any person who was an officer solely by virtue of being a former voluntary assistant) of the credit union.

(8) The Bank shall make known the results of an inspection by an accountant appointed under *subsection (4)* to the members who made the application and to the credit union.

## **11. Guidance on Documents Required under Section 55(1)(o) of the 1997 Act**

### **11.1 Standards of conduct and ethical behaviour of officers**

The standards of conduct and ethical behaviour of officers should cover the following at a minimum:

- objectives of the standards of conduct and ethical behaviour of officers;
- organisational arrangements setting out the roles and responsibilities of officers in the credit union responsible for standards of conduct and ethical behaviour;
- general standard of care of officers;
- requirements on officers when interacting with colleagues, members and the wider public;
- requirements on officers to act with integrity and honesty, avoid conflicts of interest and act in compliance with applicable legal and regulatory requirements and guidance such as health and safety and confidentiality requirements;
- types of unethical conduct and unauthorised activities such as abuse of personal privileges, accepting gifts, nepotism, discrimination or harassment;
- consequences of breaches and derogations;
- reporting lines and whistleblowing procedures;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors; and
- the process and timelines for the approval, review and update of the standards of conduct and ethical behaviour of officers by the board of directors.

The board of directors should ensure that the standards of conduct and ethical behaviour of officers are communicated to all officers of the credit union. The standards of conduct and ethical behaviour of officers should also contain a declaration that should be signed by all officers confirming that they have read the standards of conduct and ethical behaviour of officers, understand its contents, and agree to abide by its terms.

Credit unions should ensure that any significant deviations from the standards of conduct and ethical behaviour of officers, the reasons for these deviations and proposed action to address the deviations are communicated to the board of directors in accordance with the

reporting arrangements set out in the standards of conduct and ethical behaviour of officers.

## 11.2 Succession plan

The succession plan for the board of directors and the management team should cover the following at a minimum:

- objectives and scope of the succession plan;
- organisational arrangements setting out the roles and responsibilities of officers involved in succession planning;
- key skills and competencies required for members of the board of directors and management team;
- demographics of the board of directors and management team including expected retirement dates / completion of contract dates;
- risks to the credit union arising from the permanent or temporary departure of a director or person on the management team and procedures to minimise those risks;
- procedures for:
  - in the case of departures of members of the board of directors or the management team, identification and development of individuals to ensure adequate cover;
  - identification and evaluation of prospective candidates to fill vacancies and preparation of development plans for such candidates;
  - ensuring that the credit union governance arrangements avoid over reliance on certain individuals providing for sharing responsibilities by introducing revolving roles or work shadowing;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors; and
- the process and timelines for the approval, review and update of the succession plan by the nomination committee and board of directors, as appropriate.

The succession plan should be dynamic and flexible to allow for changes throughout the year.

The nomination committee should review the elements of the succession plan that relate to the board of directors on a regular basis, at least annually. The results of any such review should be documented by the nomination committee.

The board of directors should review the elements of the succession plan that relate to the management team on a regular basis, at least annually. The results of any such review should be documented by the board of directors.