

INVESTMENTS

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Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	January 2014	Inserted circular and link to circular issued on 19 December 2013 in relation to Investment in State Securities (other than Irish State Securities).
1.2	November 2015	<ul style="list-style-type: none"> • Amended section 43 to reflect the commencement of section 12 of the 2012 Act. • Amended section 44(4) to reflect item 31 of schedule 1 of the 2012 Act. • Inserted regulations in Section 2. • Removed reference to the Trustee (Authorised Investments) Order 1998.
1.3	January 2016	<ul style="list-style-type: none"> • Updated regulations in Section 2.
1.4	March 2018	<ul style="list-style-type: none"> • Updated regulations in Section 2. • Updated information on MiFID II.
1.5	September 2020	<ul style="list-style-type: none"> • Updated regulations in Section 2 to include definition for "credit institution".
1.6	September 2021	<ul style="list-style-type: none"> • Updated regulations in Section 2 to reflect amendments made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2020 (S.I. No. 675 of 2020).

1. Legislation

Section 43- Investments*

- (1) A credit union shall manage its investments to ensure that those investments do not (taking account of the nature, scale, complexity and risk profile of the credit union) involve undue risk to members' savings and, for that purpose, before making an investment a credit union shall assess the potential impact on the credit union, including the impact on the liquidity and financial position of the credit union.
- (2) A credit union may invest any of its funds, which are surplus to its operating requirements and are not immediately required for the purposes of the credit union, in any one or more of the following:
- (a) the shares of, or deposits with (other than deposits to which subsection (6) relates) or loans to, another credit union as the Bank may prescribe;
 - (b) the shares of a society registered under the Industrial and Provident Societies Acts 1893 to 1978 as the Bank may prescribe;
 - (c) such other investments as may be prescribed for that purpose by the Bank under subsection (3).
- (3) For the purposes of subsection (2)(c) the Bank may prescribe investments in which a credit union may invest its funds. In prescribing matters for the purposes of subsection (2) and having regard to the need to avoid undue risk to members' savings, the Bank may also prescribe other matters in relation to prescribed investments, including any of the following:
- (a) the classes of investments, including, where appropriate, any investment project of a public nature the credit union may invest in;
 - (b) the quality of investments and quality of counterparties that the credit union may invest in;
 - (c) the maximum, including percentage, amount (by reference to a credit union's surplus funds to which subsection (2) relates or otherwise) of a class of investments that may be invested in;

- (d) the term to maturity of a class of investments;
 - (e) the currency of a class of investments;
 - (f) limits for investment, whether by reference to maturity, currency, counterparty, sector, instrument or otherwise;
 - (g) any other matters that the Bank may consider necessary in the circumstances.
- (4) The Bank may prescribe matters for the purposes of any distribution policy to be applied by a credit union in respect of investment income.
- (5) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.
- (6) In so far as any funds of a credit union that are surplus to its operating requirements—
- (a) are not immediately required for the purposes of the credit union,
 - (b) are not invested in accordance with subsection (2), or
 - (c) are not kept in cash in the custody of officers of the credit union,
- those funds shall be kept by the credit union on current account with a credit institution.
- (7) Where any funds of a credit union are on current account with, or on loan to, an institution which ceases to be a credit institution, the credit union shall take all practicable steps to call in and realise the loan within the period of 3 months from the time when the institution so ceased or, if that is not possible, as soon after the end of that period as possible.

Section 44 – Special fund for social, cultural etc. purposes

- (1) By a resolution passed by a majority of its members present and voting at a general meeting, a credit union may establish a special fund to be used by the credit union for such social, cultural or charitable purposes (including community development) as have been approved, either generally or specifically, by a similar resolution; and any such special fund shall be maintained separately from the rest of the credit union's finances.
- (2) Subject to *subsection (4)*, moneys may be paid into a special fund established by a credit union under this section only out of the annual operating surplus of the credit union; and no moneys may be so paid unless the directors are satisfied—
 - (a) that adequate provision has been made out of the surplus in question to cover all current and contingent liabilities and to maintain proper reserves; and
 - (b) that the payment of the moneys into the special fund will not affect the financial stability of the credit union.
- (3) Subject to *subsection (5)*, the amount of moneys which may be paid as mentioned in *subsection (2)* out of the annual operating surplus of any year shall not exceed 0.5 per cent. of the value of the credit union's assets as shown in the accounts for the most recent financial year ending before the date of the payment.
- (4) † In respect of the financial year in which the special fund is established, there may be paid into the special fund (in addition to any amount paid as mentioned in *subsection (2)*) an amount not exceeding 2.5 per cent. of the accumulated reserves of the credit union, excluding the requirement for the reserves required to be held under section 45.
- (5) If, by a resolution passed by not less than two-thirds of the members of the credit union present and voting at a general meeting called for the purpose, a credit union resolves to increase the percentage applicable to it under *subsection (3)* to a percentage to which the Bank has consented in writing, that subsection shall have effect accordingly.
- (6) Where a credit union has established a special fund under this section, the social, cultural or charitable purposes for which it is to be used may be varied by a further resolution passed as mentioned in *subsection (1)*.

(7) If at any time—

(a) the board of directors make a recommendation in writing to the members of a credit union that it is appropriate to wind up a special fund established under this section, and

(b) a resolution for winding up the special fund is passed by a majority of the members of the credit union present and voting at a general meeting,

the moneys standing to the credit of the special fund shall be transferred to the general funds of the credit union and the special fund shall cease to exist.

Section 55 – Functions of board of directors*

(This Chapter has not reproduced the entirety of section 55 – please consult the Credit Union Act, 1997 for the full provision.)

(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:

...

(o) approving, reviewing, and updating, where necessary, but at least annually, all plans, policies and procedures of the credit union, including the following:

...

(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;

...

2. Regulations

CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016

(S.I. No. 1 of 2016)(as amended by S.I. No. 32 of 2018, S.I. No. 642 of 2019 and S.I. No. 675 of 2020)

(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016, the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2018, the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019 and the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2020 for the full provisions.)

PART 1

PRELIMINARY AND GENERAL

Interpretation

In these Regulations, unless the context otherwise requires:-

“accounts in credit institutions” means interest bearing deposit accounts (or instruments with similar characteristics) in a credit institution;

“approved housing body” means a housing body granted approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992;

“bank bonds” a senior bond issued by a credit institution and traded on a regulated market where the capital amount invested is guaranteed by the issuer and, for the avoidance of doubt, does not include any bond that is subordinated to any other liability of that credit institution;

“the Bank” means the Central Bank of Ireland;

“corporate bond” means a bond issued by a company and traded on a regulated market excluding the following:

(a) a bond issued by a credit institution;

(b) a bond issued by a holding company of a credit institution;

“counterparty” means any person that a credit union has made investments with. Where a counterparty is a company, the definition also includes a related company;

“credit institution” means a person authorised as same pursuant to Directive 2013/36/EU;

“credit rating” has the same meaning as it has in Article 3(1)(a) of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009¹ on credit rating agencies;

“deposit protection account” means the amount a credit union must maintain under the Deposit Guarantee Scheme;

“EEA” means the European Economic Area;

“holding company” means a company whose business consists wholly or mainly of the holding of shares or securities of other companies;

“investment gain” means an increase in the value of an investment, made as provided for under section 43 of the Act, on the balance sheet of a credit union, other than income receivable;

“investment income” means income received or receivable from an investment made as provided for under section 43 of the Act;

“Irish and EEA State Securities” means transferable securities issued by the Irish State and other EEA States and traded on a regulated market;

“recognised rating agency” means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009² on credit rating agencies;

“regulated market” means a multilateral system as defined in Article 4 of Directive 2004/39/EC;

“supranational bond” means a bond issued by a supranational institution, being an institution formed by two or more central governments with the purpose of promoting economic development for the member countries;

“Tier 3 Approved Housing Body” means a housing body granted approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992 and classified as Tier 3 under the Voluntary Regulation Code for Approved Housing Bodies in Ireland;

“UCITS” means an undertaking authorised as an undertaking for collective investment in transferable securities by the Bank or by a competent authority of another EEA State pursuant to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009³ on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

¹ OJ No. L302, 17.11.2009, p. 1

² OJ No. L302, 17.11.2009, p. 1

³ OJ NO. L302, 17.11.2009, p. 32

"the Act" means the Credit Union Act, 1997;

PART 5

INVESTMENTS

Classes of Investments

25. (1) A credit union may only invest in euro denominated investments in the following:

- (a) Irish and EEA State Securities;
 - (b) supranational bonds;
 - (c) accounts in credit institutions;
 - (d) bank bonds;
 - (e) corporate bonds;
 - (f) regulated investment vehicles where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies;
 - (g) UCITS;
 - (h) shares of, and deposits with, other credit unions;
 - (i) shares of a society registered under the Industrial and Provident Societies Act 1893 to 1978, provided the society is not an approved housing body.
- (2) For the purposes of Regulation 25(1)(f), the underlying investments of a regulated investment vehicle in a Tier 3 Approved Housing Body shall consist exclusively of loans or other forms of debt financing provided by the regulated investment vehicle to the Tier 3 Approved Housing Body.
- (3) A credit union may invest in a UCITS only where –
- (a) the underlying investments of the UCITS are composed of instruments specified in Regulation 25(1)(a), (b), (c), (d) or (e) (or any combination of such instruments),
 - (b) the UCITS has total assets with a value of at least €150 million, and

(c) the making of such an investment would not cause a credit union to fail to comply with this Part.

- (4) The Bank may prescribe from time to time, in accordance with section 43 of the Act, further classes of investments in which a credit union may invest its funds which may include investments in projects of a public nature. Investments in projects of a public nature include, but are not limited to, investments in social housing projects.

Counterparty Limits

26. (1) A credit union shall not make an investment with a counterparty which, were that investment to be made, would cause the credit union's investments with that counterparty to exceed 20 per cent of the credit union's total value of investments.
- (2) A credit union shall not make a direct investment in corporate bonds issued by a particular counterparty which, were that investment to be made, would cause the credit union's direct investments in corporate bonds issued by that counterparty to exceed 5 per cent of the total value of the credit union's regulatory reserve.

Concentration Limits

27. (1) A credit union shall not make an investment in Irish and EEA State Securities, either directly or through a UCITS, which would cause the credit union's combined investments in Irish and EEA State Securities and supranational bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (2) A credit union shall not make an investment in supranational bonds, either directly or through a UCITS, which would cause the credit union's combined investments in Irish and EEA State Securities and supranational bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (3) A credit union shall not make an investment in bank bonds, either directly or through a UCITS, which would cause the credit union's investments in bank bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (4) A credit union shall not make an investment in corporate bonds, either directly or through a UCITS, which would cause the credit union's investments in corporate

bonds, held directly or through a UCITS, to exceed 50 per cent of the credit union's regulatory reserve.

- (5) A credit union shall not make an investment in a regulated investment vehicle, where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies which would cause the credit union's investments in such regulated investment vehicles to exceed –
- (a) 50 per cent of the credit union's regulatory reserve, where the credit union has assets of at least €100 million, or
 - (b) 25 per cent of the credit union's regulatory reserve, where the credit union has assets of less than €100 million.
- (6) A credit union shall not make an investment in another credit union which would cause the credit union's investments in other credit unions to exceed 12.5 per cent of the credit union's regulatory reserve.
- (7) A credit union shall not make an investment in the shares of a society referred to in Regulation 25(1)(i) which would cause the credit union's investments in shares in societies referred to in Regulation 25(1)(i) to exceed 12.5 per cent of the credit union's regulatory reserve.

Maturity Limits

28. (1) Subject to paragraph (1A), with the exception of an investment in a regulated investment vehicle referred to in Regulation 25(1)(f), a credit union shall not make an investment, either directly or through a UCITS, which has a maturity date which exceeds 10 years from the date of the investment.
- (1A) In the case of an investment made, directly or through a UCITS, in either Irish and EEA State Securities referred to in Regulation 25(1)(a) or supranational bonds referred to in Regulation 25(1)(b), the maturity date shall not exceed 10 years and 6 months from the date of the investment.
- (2) A credit union shall not make an investment in a regulated investment vehicle where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies where those underlying investments have a maturity date which exceeds 25 years from the date of the investment.

(3) A credit union shall not make an investment which would cause the credit union to have more than 30 per cent of its investments maturing after 7 years.

(4) A credit union shall not make an investment which would cause the credit union to have more than 50 per cent of its investments maturing after 5 years.

Minimum Rating Requirements

29. (1) A credit union may invest directly in –

(a) Irish and EEA State Securities, or

(b) supranational bonds,

only where at least two recognised rating agencies have assigned to those investments a credit rating of investment grade or higher.

(2) A credit union may invest in corporate bonds directly only where at least two recognised rating agencies have assigned to each such investment a credit rating that is at least equivalent to an A3 rating on the rating scale issued by Moody's Investor Service.

(3) A credit union may invest in UCITS where the underlying investments of the UCITS are composed of –

(a) Irish and EEA State Securities,

(b) supranational bonds, or

(c) corporate bonds,

only where at least one recognised rating agency has assigned to each such underlying investment of the UCITS a credit rating of investment grade or higher.

(4) Subject to Regulation 33(4), where an investment made by a credit union no longer complies with the minimum rating requirements specified in paragraph (1), (2) or (3), a credit union shall divest itself of that investment as soon as possible.

Holding of Investments

30. A credit union shall ensure that any investments made remain in compliance with the investment requirements in this Part.

Investment Practices – Distribution of Investment Income/ Investment Gain

31. A credit union shall not distribute from its annual operating surplus, investment income or an investment gain to members or transfer investment income or an investment gain to a reserve set aside to provide for dividends, unless the investment income or investment gain falls within the following:
- (a) investment income or an investment gain received by the credit union at the balance sheet date;
 - (b) investment income that will be received by the credit union within 12 months of the balance sheet date.

Investment Practices – Concentration Risk

32. A credit union shall establish and maintain a written strategy having regard to section 43 of the Act to manage concentration risk which can result from dealing with a single counterparty or holding investments with similar characteristics like maturities and to ensure investments remain within the limits contained in these Regulations.

Transitional Arrangements

33. (1) Where, on 1 March 2018, a credit union has investments made in accordance with legislative requirements applicable at the time of the investment which do not comply with the requirements in this Part, the credit union shall (subject to paragraph (4)) –
- (a) take such actions as are necessary in relation to those investments in order to ensure compliance with this Part –
 - (i) as soon as possible without incurring a loss, and
 - (ii) in any event not later than 1 March 2020 or such later date as the Bank may permit;
 - (b) only make an investment where the making of such an investment would not cause the credit union to either –
 - (i) fail to comply with any of the requirements in this Part, or
 - (ii) exacerbate a failure existing on 1 March 2018 to comply with any of the requirements in this Part.

(2) Where a credit union has made an investment of a class referred to in Regulation 25(1) (c) or (d), and where that investment –

(a) does not comply with this Part as a result of the occurrence of the relevant event, and

(b) was in compliance with this Part immediately before the occurrence of the relevant event,

the credit union shall comply with paragraph (3).

(3) Subject to paragraph (4), a credit union shall take such actions as are necessary in relation to the investments referred to in paragraph (2) in order to ensure compliance with this Part –

(a) (i) as soon as possible without incurring a loss, and
(ii) in any event not later than 2 years from the day on which the relevant event occurred or such later date as the Bank may permit;

(b) only make an investment where the making of such an investment would not cause the credit union to fail to comply with any of the requirements in this Part.

(4) Where an investment held by a credit union is a fixed term investment to which paragraph (1) or (2) applies, the credit union may hold that investment to maturity provided that it was made in accordance with legislative requirements applicable at the time of the investment.

(5) In this Regulation “relevant event” means when Title V of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013⁴ (or other Union law concerning the freedom of establishment or the freedom to provide services with respect to banking) ceases to apply to a person with whom an investment is made as a direct consequence of the United Kingdom withdrawing from the European Union.

⁴ Official Journal, L 176, 27/06/2013, p. 338–436.

3. Guidance

3.1 Investment policy

The investment policy should cover the following at a minimum:

- objectives of the credit union's investment activities;
- organisational arrangements setting out the roles and responsibilities of officers involved in the credit union's investments;
- the investment authorisation limits of those involved in investing, including the investment committee;
- the strategy to manage investments to ensure that those investments do not (taking account of the nature, scale, complexity and risk profile of the credit union) involve undue risk to members' savings. This should cover the following at a minimum:
 - the knowledge and expertise required to manage the credit union's investments;
 - the credit union's risk tolerance;
 - the characteristics of the investments the credit union may make including quality, counterparty and maturity;
 - how the credit union will manage market risk including specifically listing institutions, issuers and counterparties that may be used, or criteria for their selection, and limits on the amounts that may be invested with each;
- the process for assessing the potential impact on the credit union, including the impact on the liquidity and financial position of the credit union before making an investment;
- how potential conflicts in relation to investments will be managed in line with the policy on conflicts of interest as required under section 55(1)(o)(xvi) of the 1997 Act;
- procedures for monitoring the value and investment returns of investments;
- the accounting treatment adopted for the valuation of investments and income recognition;
- the approach to the distribution of income;
- the process for confirming compliance with the investment policy;
- how the credit union will handle an investment that, after purchase, falls outside the investment policy or a legal or regulatory requirement or guidance;
- the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union as required under section 55(1)(o)(vi) of the 1997 Act;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors; and
- the process for the approval, review and update of the investment policy by the board of directors.

The written strategy required under Regulation 32 Investment Practices – Concentration Risk may be documented separately or may be contained in the investment policy.

Credit unions should ensure that any significant deviations from the investment 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 investment policy.

3.2 Accounting for Investments

Guidance in relation to accounting for investments is provided in sections 3.3, 3.4 and 3.5 of the Chapter on “Accounts and Audit”.

3.3 Assessing Investments

In ensuring that any investments they make do not involve undue risk to members’ savings, credit unions should ensure that detailed analysis and careful consideration is undertaken before making an investment. Investments should be in line with the investment policy and risk appetite of the credit union and the rationale for investment decisions should be documented. Credit unions need to understand the risks of the investments they undertake.

Capital Protection

In relation to capital protection, when considering making an investment, credit unions should ensure that they understand the level of capital protection provided by the investment and that all potential risks to the repayment of capital are taken into account, including circumstances where repayment of capital may be dependent on events in institutions other than the issuing counterparty.

The definition of a bank bond set out in the Regulations refers to senior bonds traded on a regulated market where the capital amount invested is guaranteed by the issuer. Therefore credit unions can only invest in investment products structured as bank bonds where the capital amount invested is guaranteed by the issuer.

Investment Advisors

Where credit unions are dealing with an investment adviser, they need to ensure that the adviser has adequately explained why an investment is suitable for the credit union and that they understand the risk. Credit unions need to understand the risks of the investments they undertake - they cannot outsource that judgement to an external party

such as an investment adviser. Credit unions are expected to have their own sound investment criteria and investment decision processes in place.

The Market in Financial Instruments Directive II (MiFID II) is effective since 3 January 2018. Enhancements introduced from MiFID I are aimed at strengthening investor protection and improving the functioning of financial markets by making them more efficient, resilient and transparent. Changes include enhancements to conflicts of interest provisions that an investor has when engaging with clients and the banning of commission for the provision of independent advice and portfolio management services. MiFID II imposes certain obligations on investment firms and credit institutions when providing investment services to their clients, including credit unions. MiFID II categorises the clients of investment firms and credit institutions into two categories, Retail Clients and Professional Clients. While credit unions are automatically categorised as Professional Clients under MiFID II, they may opt to be treated as Retail Clients. Credit unions should give careful consideration to whether they should opt to be treated as Retail Clients for MiFID II purposes, taking account of all of the implications of their chosen categorisation, including the higher duty of care owed to Retail Clients.