



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2015

# Fitness and Probity Standards for Credit Unions

(Code issued under Section 50 of the Central  
Bank Reform Act 2010)



## Contents

1. Introduction	2
2. Fitness and Probity Standards	6
3. Conduct to be competent and capable	6
4. Conduct to be honest, ethical and to act with integrity	8
5. Financial Soundness	9

## 1. Introduction

### 1.1 Scope

On 24 September 2012, Part 3 of the Central Bank Reform Act 2010 was commenced for credit unions providing a statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions or pre-approval controlled functions in credit unions. This Code specifies the Standards of Fitness and Probity which persons performing controlled functions or pre-approval controlled functions in credit unions shall, at a minimum, comply with. This includes any persons performing controlled functions or pre-approval controlled functions in relation to the business undertaken by credit unions under their authorisation as a retail intermediary.

### 1.2 Legal Basis

This Code is issued by the Central Bank of Ireland pursuant to the powers set out in section 50 of the Central Bank Reform Act 2010.

This Code may be amended or supplemented by the Central Bank of Ireland from time to time. Failure by a person to comply, or satisfy the Central Bank of Ireland as to an ability to comply, with the Fitness and Probity Standards may *inter alia*:

- i. where the approval of the Central Bank is being sought to permit a person to perform a pre-approval controlled function, lead to approval being refused;
- ii. where a person is performing a controlled function<sup>1</sup>, lead to an investigation being conducted in relation to the fitness and probity of that person to perform the relevant function;
- iii. cause that person to be the subject of a prohibition notice under section 43 of the Central Bank Reform Act 2010.

A credit union shall not permit a person to perform a controlled function unless the credit union is satisfied on reasonable grounds that the person

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<sup>1</sup> See S.I. No. 171 of 2013 and S.I. No. 97 of 2015.

complies with this Code and the person has agreed to abide by the Standards of Fitness and Probity as set out in this Code.

### 1.3 Schedule of Changes

The following schedule details amendments that have been made to the previous version of the Fitness and Probity Standards for Credit Unions issued in 2013.

Section	Amendment
1.1 Scope	The scope has been extended to include the retail intermediary business of credit unions that are also authorised as retail intermediaries.
1.4 Definitions	Amendments to the definitions of 'Controlled Functions' and 'Pre-Approval Controlled Functions' and new definitions of '2015 Regulations' and 'Retail Intermediary'.
1.5 Commencement of application of the Standards	Amended to remove transitional arrangements for credit unions with total assets greater than €10 million that have expired and include transitional arrangements for credit unions with total assets of €10 million or less and credit unions that are also authorised as retail intermediaries.
1.6 Exclusion from the scope of the Standards	Amended to clarify that these Standards shall not apply to persons performing controlled functions with respect to a credit union where the function is outsourced to another financial service provider that is regulated for a similar business to the credit union.
4. Conduct to be Honest, Ethical and to Act with Integrity	Subsection 4.1 I) amended from "a credit union" to "the credit union".

## 1.4 Definitions

In this Code:

- a) "*the Act*" means the Central Bank Reform Act 2010;
- b) "*the Central Bank*" means the Central Bank of Ireland;
- c) "*Controlled Functions*" means those functions set out in Schedule 1 of the 2013 Regulations as they apply to credit unions and Schedule 1 of the 2015 Regulations as they apply to credit unions that are also authorised as retail intermediaries;
- d) "*Pre-Approval Controlled Functions*" means those functions set out in Schedule 2 of the 2013 Regulations as they apply to credit unions and Schedule 2 of the 2015 Regulations as they apply to credit unions that are also authorised as retail intermediaries;
- e) "*2013 Regulations*" means the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) Regulations 2013 (S.I. No. 171 of 2013);
- f) "*2015 Regulations*" means the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015 (S.I. No. 97 of 2015);
- g) "*Relevant Function*" means a function prescribed or declared as a controlled function or pre-approval controlled function under sections 20 and 22 of the Act;
- h) "*Retail Intermediary*" means an insurance intermediary as defined in the European Communities (Insurance Mediation) Regulations 2005 and/or an investment business firm as defined in the Investment Intermediaries Act, 1995.
- i) "*Standards*" means the Fitness and Probity Standards as set out in this Code;
- j) "*2011 Code*" means the Fitness and Probity Standards 2011 (issued under section 50 of the Central Bank Reform Act 2010).

Unless the contrary intention appears, a word or expression used in this Code which is also used in the Act shall have the same meaning in this Code as in the Act.

## 1.5 Commencement of application of the Standards

These Standards commenced on 1 August 2013 for credit unions with total assets of greater than €10 million and have applied to all controlled functions in these credit unions since 1 August 2014.

The following arrangements apply to:

- credit unions with total assets of €10 million<sup>2</sup> or less; and
- credit unions that are also authorised as retail intermediaries, **for the part of the business that the credit union undertakes as a retail intermediary:**
  - a) From 1 August 2015, these Standards shall apply to persons performing controlled functions which are also prescribed as pre-approval controlled functions, whether the person is already performing such functions or is proposed to perform such functions.
  - b) These Standards will apply to persons appointed to controlled functions (other than pre-approval controlled functions) after 1 November 2015 from the date that such appointment takes effect. This is to include new offers of employment and internal transfers / promotions which may involve a controlled function after that date.
  - c) The Standards will apply to all persons occupying controlled functions from 1 August 2016.

## 1.6 Exclusion from the Scope of the Standards

These Standards shall not apply to persons performing controlled functions with respect to a credit union under the following conditions:

- a) there is in place a written agreement between the credit union and a separate financial service provider for the carrying on of that function by that other person on behalf of the credit union; and
- b) that other financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) is

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<sup>2</sup> Figures will be according to the credit union's latest audited balance sheet.

regulated for a similar business to that conducted by the credit union<sup>3</sup> concerned either:

- i. by the Central Bank; or
- ii. by an authority that performs functions in an European Economic Area (EEA) country that are comparable to the functions performed by the Central Bank; or
- iii. by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

## **2. Fitness and Probity Standards**

**2.1** A person to whom this Code applies shall comply with these Standards at all times.

**2.2** In order to comply with section 2.1, a person is required to be:

- a) competent and capable;
- b) honest, ethical and to act with integrity; and
- c) financially sound.

**2.3** Any information provided by an individual pursuant to this Code to the Central Bank and / or a credit union shall be candid and truthful and shall be full, fair and accurate in all respects and not misleading to the best of his or her knowledge.

**2.4** In determining whether an individual has complied with this Code, a credit union or the Central Bank, as the case may be, shall have regard to any applicable guidance issued by the Central Bank.

## **3. Conduct to be Competent and Capable**

**3.1** A person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.

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<sup>3</sup> This includes credit unions that are also authorised as retail intermediaries.

**3.2** Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she:

- a) has professional or other qualifications and capability appropriate to the relevant function;
- b) has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment or voluntary context;
- c) has shown the competence and proficiency to undertake the relevant function through (i) the performance of previous functions which if carried out at present would be subject to this Code or the 2011 Code, or (ii) the performance of current controlled functions, or (iii) the performance by the person of any role similar or equivalent to the functions that are covered by this Code or the 2011 Code.

If the person performed a function in a credit union or another regulated financial service provider, which if performed at present would be subject to this Code or the 2011 Code, and that credit union or the other regulated financial service provider received State or credit union sector financial support or was subject to any action under the Central Bank and Credit Institutions (Resolution) Act 2011 or any regulatory action under the Credit Union Act, 1997, consideration shall be given to the competence and skills demonstrated by that person in that function and to the extent, if any, to which the performance of his or her function may have contributed to the necessity for such financial support or action;

- d) has a sound knowledge of the business of the credit union as a whole, and the specific responsibilities that are to be undertaken in the relevant function;
- e) has a clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function;
- f) shall not allow the conduct of concurrent responsibilities to impair his or her ability to discharge the duties of the relevant function or otherwise allow personal conflicts of interest to arise in carrying out his or her pre-approval controlled functions or controlled functions; and
- g) is compliant with any applicable Minimum Competency Code issued by the Central Bank<sup>4</sup>.

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<sup>4</sup> The Minimum Competency Code 2011 currently applies to credit unions when they are performing functions relating to their authorisation as a retail intermediary.

## 4. Conduct to be Honest, Ethical and to Act with Integrity

**4.1** Without limiting the generality of subsection 2.2 (b), a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree where one or more of the following may be applicable:

- a) the person is or was a sole trader or a director or partner in a legal entity, which has, in any jurisdiction, been refused, prohibited, restricted or suspended from the right to carry on any trade, business or profession for which a licence, registration or other authorisation is required by the law in that jurisdiction, or has had any such registration, authorisation, membership or licence revoked, otherwise than on a voluntary basis;
- b) the person has been the subject of any complaint made to the Central Bank, the Financial Services Ombudsman or any equivalent body, reasonably and in good faith, relating to activities regulated by the Central Bank or regulated by an equivalent authority in any jurisdiction. In considering whether the complaint adversely affects the person's ability to carry out a relevant function, consideration shall be given to the outcome of any inquiry or investigation or any similar process into that complaint if same has been concluded;
- c) the person is or has been, in any jurisdiction, subject to any disciplinary proceedings or has been issued a warning, reprimand or other administrative sanction or its equivalent, by the Central Bank, or an equivalent measure issued by any other regulatory authority, (including any previous regulator), any clearing house and exchanges, any professional body, government body or agency;
- d) the person has been, in any jurisdiction, dismissed, or asked to resign and did resign, from any profession, vocation, office or employment or from any position of trust or fiduciary appointment, whether or not remunerated;
- e) the person has, in any jurisdiction, been a director of a company that was struck off the register of companies (or its equivalent) by the Registrar of Companies (or its equivalent) on an involuntary basis;

- f) the person has been disqualified or restricted from acting as a director in any jurisdiction or has been disqualified from acting in any managerial capacity;
- g) the person has, in any jurisdiction:
  - i. been convicted of an offence either of money laundering or terrorist financing (or their equivalents);
  - ii. been convicted of an offence which could be relevant to that person's ability to perform the relevant function; or
  - iii. had a finding, judgment or order made against him / her involving fraud, misrepresentation, dishonesty or breach of trust or where the person is subject to any current proceedings for fraud, misrepresentation, dishonesty or breach of trust.
- h) the person has been the subject of any civil penalty enforcement action taken by a regulatory authority under any law in any jurisdiction;
- i) the person has been untruthful or provided false or misleading information to the Central Bank or has been uncooperative in any dealings with the Central Bank;
- j) the person, or any business with which the person held a position of responsibility or influence, has been or is being, in any jurisdiction, investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal or any similar body, whether publicly or privately;
- k) the person has, in any jurisdiction, been found by the Central Bank or any other regulatory authority to have perpetrated or participated in any negligent, deceitful or otherwise discreditable business or professional practice; or
- l) the person has held in the past year or currently holds a loan with the credit union which has been or is in arrears for a period of greater than 90 days.

## 5. Financial Soundness

**5.1** A person shall manage his or her affairs in a sound and prudent manner.

**5.2** Without prejudice to the generality of paragraph 5.1, a person must be able to demonstrate that his or her role in a relevant function is not adversely affected to a material degree by the fact that one or more of the following may be applicable:

- a) the person has defaulted upon any payment due arising from a compromise or scheme of arrangement with his or her creditors or made an assignment for the benefit of his or her creditors;
- b) the person is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in the State or elsewhere;
- c) the person is or has been the subject of a bankruptcy petition, whether in the State or elsewhere;
- d) the person has been adjudicated a bankrupt and the bankruptcy is undischarged, whether in the State or elsewhere; or
- e) a person was a director of an entity which has been the subject of insolvency.

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