



Banc Ceannais na hÉireann  
Central Bank of Ireland

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Eurosystem

# Guidance on Fitness and Probity for Credit Unions

## June 2018

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## Version History

Version	Date	Amendments
1	June 2013	Initial guidance
2	August 2013	<ul style="list-style-type: none"> <li>Updated to reflect commencement dates for provisions of the Credit Union and Co-operation with Overseas Regulators Act 2012 referred to in the Department of Finance's implementation plan published on 1 July 2013</li> <li>Updated list of documents in Appendix 3</li> </ul>
3	October 2013	<ul style="list-style-type: none"> <li>Updated to reflect Credit Union Act, 1997 as at 1 October 2013 and removed references in footnotes to provisions commenced on 1 August and 1 October 2013</li> <li>Updated to include references to the guidance on the PCF In situ Return in section 3.4 and Appendix 3</li> </ul>
4	October 2013	<ul style="list-style-type: none"> <li>Updated to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.</li> </ul>
5	June 2014	<ul style="list-style-type: none"> <li>Updated Section 6.4 to reflect the legislative amendment to section 23 of the Central Bank Reform Act 2010</li> <li>Updated Section 8.3 to include reference to returning the IQ in circumstances where no AGM is scheduled.</li> </ul>
6	March 2015	<ul style="list-style-type: none"> <li>Updated as set out in Explanatory Note below arising from fitness and probity requirements introduced from 1 August 2015 for: <ul style="list-style-type: none"> <li>credit unions with total assets of €10 million or less; and</li> <li>credit unions that are also authorised as retail intermediaries.</li> </ul> </li> </ul>
7	January 2016	<ul style="list-style-type: none"> <li>Minor updates to reflect the commencement of the second phase of the Fitness and Probity regime for credit unions from 1 August 2015.</li> </ul>
8	May 2016	<ul style="list-style-type: none"> <li>Updated Section 9 to reflect PRISM impact category changes.</li> </ul>
9	November 2016	<ul style="list-style-type: none"> <li>Updated to reflect: <ul style="list-style-type: none"> <li>the completion of the implementation of the Fitness and Probity regime for credit unions; and</li> <li>the introduction of the Annual PCF Confirmation return.</li> </ul> </li> </ul>
10	June 2018	<ul style="list-style-type: none"> <li>Updated to reflect the introduction from 1 July 2018 of three additional PCFs for credit unions with total assets of at least €100 million: <ul style="list-style-type: none"> <li>Risk Management Officer (CUPCF-3)</li> <li>Head of Internal Audit (CUPCF-4)</li> <li>Head of Finance (CUPCF-5)</li> </ul> </li> <li>Also added reference to GDPR considerations regarding the retention of records in section 10.5.</li> </ul>

## Explanatory Note on Changes to Guidance in June 2018

Following a review of the Fitness and Probity regime for credit unions, the Central Bank of Ireland ("the Central Bank") published Consultation Paper CP113 Consultation on Potential Amendments to the Fitness and Probity Regime for Credit Unions (CP113) on 8 September 2017.

CP113 set out the Central Bank's view that a tailored regime remains appropriate for credit unions and that no additional Controlled Functions (CFs) should be introduced at this time. CP113 also set out the Central Bank's proposals for the introduction of three new Pre-approval Controlled Functions (PCFs) for credit unions with total assets of at least €100 million. The three new PCF roles were:

- (i) Risk Management Officer (CUPCF-3);
- (ii) Head of Internal Audit (CUPCF-4); and
- (iii) Head of Finance (CUPCF-5).

The feedback received was broadly supportive of the proposals set out in CP113. The three additional PCFs listed were introduced to credit unions with total assets of at least €100 million from 1 July 2018.

This Guidance has been updated to reflect the relevant changes.

## Section 1: Background

- 1.1 The Report of the Commission on Credit Unions (“the Report”), published on 18 April 2012, recommended that Part 3 of the Central Bank Reform Act 2010 (“the Act”) be commenced for credit unions providing the Central Bank with the powers to set out the Regulations and Standards of Fitness and Probity for credit unions. The Report also recommended that a phased approach should be adopted for the implementation of a Fitness and Probity regime for credit unions and made further recommendations regarding the Controlled Functions and Pre-approval Controlled Functions that should be introduced in the initial phase.
- 1.2 On 24 September 2012, the Minister for Finance commenced Part 3 of the Act for credit unions.
- 1.3 Part 3 of the Act provides that a person performing a Controlled Function (“CF”) must have a level of fitness and probity appropriate to the performance of that particular function.

The Central Bank also has the power to prescribe a sub-set of CFs as functions for which the prior approval of the Central Bank is required before a person can be appointed. These functions are called Pre-approval Controlled Functions (“PCFs”)<sup>1</sup>.

Following consultation<sup>2</sup>, the Central Bank published S.I. No. 171 of 2013<sup>3</sup> on 18 June 2013 prescribing particular functions as CFs and PCFs for credit unions (“the 2013 Regulations”). The 2013 Regulations apply to all credit unions with total assets of greater than €10 million since 1 August 2013 and all credit unions since 1 August 2015.

Following a second consultation<sup>4</sup> in relation to fitness and probity for credit unions that are also authorised as retail intermediaries, the Central Bank published S.I. No. 97 of 2015 (“the 2015 Regulations”). The 2015 Regulations apply to credit unions that are also authorised as retail intermediaries. The 2015 Regulations prescribe the same PCFs and CFs as the 2013 Regulations, and also prescribe additional CFs that only apply to credit unions that are also authorised as retail intermediaries.

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<sup>1</sup> Any reference in this document to requirements for CFs also relates to PCFs.

<sup>2</sup> Consultation Paper 62: Fitness and Probity Regime for Credit Unions, available at [www.centralbank.ie](http://www.centralbank.ie).

<sup>3</sup> The Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) Regulations 2013.

<sup>4</sup> See [Consultation Paper 83: Fitness and Probity regime for Credit Unions that are also authorised as Retail Intermediaries](#) and [Feedback Statement on CP83](#).

See Section 12 of this Guidance for further information on the additional fitness and probity requirements that apply to credit unions that are also authorised as retail intermediaries.

Following a third consultation<sup>5</sup>, the Central Bank published S.I. No. 187 of 2018, The Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2018 (“the 2018 Regulations”) prescribing three additional PCFs for credit unions with total assets of at least €100 million, as determined by the credit union's latest audited balance sheet.

- 1.4 Section 50 of the Act permits the Central Bank to issue a code setting out standards of fitness and probity for the purposes of Part 3 of the Act. On 18 June 2013, the Central Bank published a code setting out fitness and probity standards for credit unions (“the Standards”) pursuant to section 50 of the Act. On 31 March 2015, the Central Bank published updated Standards pursuant to section 50 of the Act. See Section 3 of this guidance for further information on who the Standards apply to, and the phased implementation of the Standards.
- 1.5 In general, the Standards require that a person(s) must:
  - (a) be competent and capable;
  - (b) act honestly, ethically and with integrity; and
  - (c) be financially sound.
- 1.6 The Standards are available on the Central Bank website at [www.centralbank.ie](http://www.centralbank.ie).
- 1.7 For all credit unions, all proposed appointments to CFs which are prescribed as PCFs, require the prior written approval of the Central Bank in accordance with section 23 of the Act.

Since 1 August 2015, where a credit union is also authorised as a retail intermediary, all appointments to PCFs will be subject to the Standards for their business both as a credit union and as a retail intermediary.

Details regarding this approval process are set out in Section 6.

- 1.8 Section 21 of the Act provides that a regulated financial service provider shall not permit a person to perform a CF unless:

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<sup>5</sup> See [Consultation Paper 113: Consultation on Potential Amendments to the Fitness and Probity Regime for Credit Unions](#).

- (i) the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to section 50 of the Act (i.e. the Standards); and
- (ii) the person has agreed to abide by any such Standard.

1.9 Failure to comply with section 21 of the Act is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act, 1942.<sup>6</sup>

1.10 The Central Bank has a range of powers available to it to investigate, suspend, remove or prohibit persons from performing CFs in the financial services industry where concerns arise about their fitness and probity. Those powers are set out in Part 3, Chapters 3 and 4 of the Act.

1.11 Details of the primary documents issued by the Central Bank for credit unions in relation to Fitness and Probity are available in Appendix 3.

1.12 Full details of the Fitness and Probity regime for credit unions, including those also authorised as retail intermediaries, are available on the Central Bank website.

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<sup>6</sup> Part IIIC of the Central Bank Act, 1942 was commenced for credit unions on 1 August 2013.



## Section 2: Purpose and Effect of this Guidance

- 2.1 In 2012, the Central Bank issued a consultation paper on the Fitness and Probity regime for credit unions (“CP62”), and asked stakeholders and interested parties if the Central Bank should publish guidance in relation to the Fitness and Probity regime for credit unions. The responses to the consultation paper (as detailed in the feedback statement on CP62) were in favour of guidance and this document has been prepared for that purpose.
- 2.2 In 2014, the Central Bank issued a second consultation paper proposing a revised approach for the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries (“CP83”). The responses to the consultation paper were in favour of the revised approach and the Feedback Statement published on CP83 indicated that the Central Bank intended to proceed as outlined in CP83. This guidance document has been amended to incorporate the revised approach.
- 2.3 In 2018, the Central Bank issued a third consultation paper which proposed the introduction of three additional PCFs for credit unions with total assets of at least €100 million (“CP113”). The responses to the consultation paper were broadly in favour of the proposed amendments and the Feedback Statement published on CP113 indicated that the Central Bank intended to proceed as outlined in CP113. This guidance document has been amended to incorporate the changes outlined in CP113.
- 2.4 The primary purpose of this guidance is to assist credit unions in complying with their obligations under section 21 of the Act in relation to the Standards, by setting out the steps which the Central Bank would expect a credit union to take in order to satisfy itself on reasonable grounds that persons performing CFs or PCFs are compliant with the Standards. Guidance has also been included on other issues including, for example, approval by the Central Bank of appointments to PCFs, phasing and transitional arrangements and operational considerations for credit unions, including those also authorised as retail intermediaries, in implementing the Fitness and Probity regime.
- 2.5 It should be noted that where the Central Bank approves a proposed appointment to a PCF that, in itself, is not a certification of the person’s compliance with the Standards. The credit union is obliged pursuant to section 21 of the Act to satisfy itself on reasonable grounds that the person is compliant with the Standards. See Section 7 for further information on the nature of the obligations imposed.

- 2.6 Nothing in this guidance may be construed so as to constrain the Central Bank from taking action, where it deems it to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.
- 2.7 This guidance is not intended to be comprehensive nor to replace or override any legislative provisions or binding code. It should be read in conjunction with Part 3 of the Act and any regulation, code or other legal instrument as the Central Bank may issue from time to time.
- 2.8 The Central Bank may update or amend this guidance from time to time, as appropriate.
- 2.9 Sections 1 – 11 of this guidance apply to all credit unions.
- 2.10 Section 12 of this guidance applies to credit unions that are also authorised as retail intermediaries.

## Section 3: Implementation Approach

### 3.1 Phasing the Fitness and Probity regime

- 3.1.1 The Fitness and Probity regime was implemented in two phases for credit unions. The first phase commenced on 1 August 2013 and introduced fitness and probity requirements for those credit unions with total assets of greater than €10 million. The second phase commenced on 1 August 2015 when all remaining credit unions were brought within the scope of the regime. Transitional arrangements applied for the implementation of each phase of the regime.
- 3.1.2 Since 1 August 2015, credit unions that are also authorised as retail intermediaries<sup>7</sup> are subject to additional fitness and probity requirements.
- 3.1.3 On 1 July 2018, three additional PCFs were introduced for credit unions with total assets of at least €100 million.

### 3.2 The Regulations

- 3.2.1 There are three sets of regulations prescribing CFs and PCFs pursuant to sections 20 and 22 of the Act respectively. The 2013 Regulations apply to all credit unions and are effective since 1 August 2013 for credit unions with total assets greater than €10 million and since 1 August 2015 for all credit unions (including credit unions with total assets of €10 million or less). The 2015 Regulations are effective since 1 August 2015 and apply to credit unions that are also authorised as retail intermediaries. For further information on the 2015 Regulations see Section 12. The 2018 Regulations are effective from 1 July 2018 and apply to credit unions with total assets of at least €100 million.
- 3.2.2 There are two CFs prescribed in the 2013 Regulations and the 2015 Regulations:
- (i) A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a credit union (CUCF-1);
  - (ii) A function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a credit union with its relevant obligations (CUCF-2).

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<sup>7</sup> 'Retail Intermediary' includes an insurance intermediary as described in the European Communities (Insurance Mediation) Regulations 2005 and/or an investment business firm as described in the Investment Intermediaries Act 1995.

3.2.3 For credit unions that are also authorised as retail intermediaries, there are nine additional CFs prescribed in the 2015 Regulations. See Section 12 for further details on these additional CFs.

3.2.4 There are also two PCFs prescribed in the 2013 Regulations and the 2015 Regulations for all credit unions:

- (i) the office of chair of the board of the credit union (CUPCF-1), and
- (ii) the office of manager of the credit union (CUPCF-2)

and three PCFs prescribed in the 2018 Regulations for credit unions with total assets of at least €100 million:

- (iii) Risk Management Officer (CUPCF-3),
- (iv) Head of Internal Audit (CUPCF-4), and
- (v) Head of Finance (CUPCF-5).

### 3.3 The Standards

3.3.1 The Standards apply to all CFs in credit unions.

3.3.2 The Standards do not apply to persons performing functions in respect of credit unions 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 regulated for a similar business to that conducted by the credit union<sup>8</sup> concerned either:
  - (i) by the Central Bank; or
  - (ii) by an authority that performs functions in a European Economic Area (EEA)<sup>9</sup> 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.

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<sup>8</sup> This includes credit unions that are also authorised as retail intermediaries.

<sup>9</sup> The EEA comprises of the member states of the European Union ("EU") together with the following countries: Iceland, Liechtenstein and Norway.

- 3.3.3 This exemption typically applies to outsourced functions. Please refer to Section 11 in this guidance for further information on outsourcing.
- 3.3.4 It is important to note that where a CF or a PCF benefits from the exemption to the application of the Standards, s/he will remain subject to Part 3 of the Act and any Code or Order issued thereunder, including the Minimum Competency Code (“MCC”), as amended from time to time (as applicable).

#### 3.4 Ongoing compliance for Controlled Functions

- 3.4.1 The Central Bank requires each credit union to identify and maintain a record, on an ongoing basis, of persons who are performing CFs (including in situ CFs) from the date of application of the Standards to those persons, together with a record of due diligence undertaken in respect of those persons.
- 3.4.2 Credit unions are not required to submit this list to the Central Bank unless requested to do so. The list of persons performing CFs must be made available to Central Bank staff on request.
- 3.4.3 Please see Section 10: Ongoing Compliance for further information.

## Section 4: Controlled Functions

### 4.1 What is a Controlled Function?

- 4.1.1 A Controlled Function (“CF”) is a function in relation to the provision of a financial service which is prescribed by the 2013 Regulations or the 2015 Regulations as a CF.
- 4.1.2 The Central Bank has prescribed CF roles for credit unions in Schedule 1 of the 2013 Regulations and the 2015 Regulations as:
- (i) A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a credit union (CUCF-1);
  - (ii) A function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a credit union with its relevant obligations (CUCF-2).
- 4.1.3 The Central Bank has also prescribed additional CF roles for credit unions that are also authorised as retail intermediaries in Schedule 1 of the 2015 Regulations. Further details on these additional CF roles are contained in Section 12 of this guidance.

### 4.2 How does a credit union know if a person is performing a CF?

- 4.2.1 In determining whether a person is performing a CF, a credit union should assess the role and functions of each person in line with the definitions prescribed in the 2013 Regulations and, for credit unions that are also authorised as retail intermediaries, in the 2015 Regulations. The credit union should consider the responsibilities of the specific function and determine the specific competencies expected of a person performing that specific CF. PCFs are a sub-set of CFs, i.e. PCFs are by definition also CFs.
- 4.2.2 In relation to CUCF-1 and CUCF-2, it is a matter for a credit union to determine the roles that fall within CUCF-1 and CUCF-2. However, it is anticipated that at a minimum, the roles in a credit union that would fall within the scope of CUCF-1 would include the board of directors, the chair, the manager, the risk management officer, the credit committee, the credit control committee, the membership committee, the nomination committee, the management team and any other person whose role may exercise a significant influence on the conduct of the affairs of a credit union.

- 4.2.3 The Central Bank expects that the following roles would fall within the scope of CUCF-2 - the board oversight committee, the compliance officer, the money laundering reporting officer, the internal audit function, and any other person whose role relates to ensuring, controlling or monitoring compliance by the credit union<sup>10</sup>.
- 4.2.4 The roles listed above are not exhaustive. It is a matter for the credit union to determine any additional roles in the credit union that fall within CUCF-1 and CUCF-2. For example, a credit officer may fall within the scope of CUCF-1 if they are likely to exercise a significant influence on the conduct of the affairs of the credit union in the performance of their role.

### 4.3 What standard of fitness and probity is appropriate to the particular CF?

- 4.3.1 Section 21 of the Act requires that a credit union satisfies itself on reasonable grounds that a person complies with any code setting out standards of fitness and probity issued by the Central Bank under section 50 of the Act (e.g. the Standards). The person in a CF is also required to agree to abide by any standards of fitness and probity issued under section 50 of the Act.
- 4.3.2 Where a person performing a CF does not comply with the Standards, the credit union cannot permit that person to perform the CF.
- 4.3.3 In complying with section 21 of the Act, the Central Bank expects credit unions to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the credit union.

Role descriptions could assist credit unions in determining the specific competencies, experience, qualifications, capacity and level of probity that are required to carry out the responsibilities of CF and PCF roles.

- 4.3.4 When considering compliance with section 21 of the Act, the Central Bank will assess both the credit union's analysis of what specific competencies and level of probity are required for the performance of a relevant function or functions, and the steps that the credit union has taken to satisfy itself that the person performing the relevant CF is competent, and has the requisite level of probity to be fit and proper to perform that CF.

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<sup>10</sup> The roles listed in this section are roles that are required in a credit union under legislation.

- 4.3.5 Matters such as scale, complexity, risk profile, organisation structure, target market and so on are unlikely to be exactly the same within any two credit unions. Different functions will entail different responsibilities and different levels of knowledge and expertise. For this reason, this guidance cannot point to conclusive knowledge or expertise that is required for a particular function. The credit union, using its own unique knowledge of the CF, and taking into account all relevant matters (including those listed above) can make the assessment as to what makes a person fit and proper to perform the specific CF in that credit union. This guidance sets out due diligence that the Central Bank expects would be undertaken by credit unions in particular cases when assessing compliance with the Standards. In all cases, it is for the credit union itself to assess the information and exercise judgement to determine whether a person is fit and proper to carry out a particular CF.
- 4.3.6 Irrespective of the title of the function, the credit union should consider the activities constituting the function in order to assess the type of CF, and the specific competencies and level of probity that should apply to that CF.
- 4.3.7 Where a person performs more than one CF, and more than one set of specific competencies and level of probity applies in respect of the exercise of those multiple CFs, the higher standard is the relevant standard for the purposes of due diligence.
- 4.3.8 If a credit union has insufficient information available to enable it to conclude on reasonable grounds that the Standards are being complied with, particularly if due to lack of co-operation by the person, the Standards may not be met. The credit union should bring this to the attention of the person and allow them an opportunity to provide the required information in a timely manner.
- 4.3.9 See Section 7: Due Diligence for further guidance.

#### 4.4 Obligations on a CF with respect to those persons captured by the definition of a CF

- 4.4.1 If a person is performing functions which fall within the definition of one or more of the CFs, that person is subject to the Central Bank's powers under fitness and probity.
- 4.4.2 The obligations on the CF include that the person:
- (i) must comply with the Standards (as applicable);
  - (ii) must agree in writing to abide by the Standards issued under section 50 of the Act;
  - (iii) must provide the credit union with the required information to enable it to conduct the appropriate due diligence e.g. if relevant to the



performance of the function, then a transcript of a specific qualification should be provided where requested;

- (iv) may be the subject of an investigation pursuant to section 25 of the Act where the Deputy Governor (Prudential Regulation) has reason to suspect that person's fitness and probity to perform the relevant CF, and decides in the circumstances that an investigation is merited;
- (v) may be required to comply with an evidentiary notice;
- (vi) may be the subject of a suspension notice or a prohibition notice issued under Part 3 of the Act.

4.4.3 A person performing a CF (which is not a PCF) is not required to submit an Individual Questionnaire ("IQ") to the Central Bank in relation to the performance of that CF.

#### 4.5 Obligations on the credit union with respect to those persons captured by the definition of a CF

4.5.1 If a person is performing functions which fall within the definition of one or more of the CFs, obligations for the credit union include:

- (i) The credit union must satisfy itself on reasonable grounds that the person complies with the Standards. To this effect the credit union is expected to conduct due diligence on the person's compliance with the Standards;
- (ii) The credit union must get written confirmation from those persons performing CFs that they will comply with the Standards;
- (iii) The credit union cannot permit a person to perform a CF unless satisfied on reasonable grounds that the person is compliant with the Standards;
- (iv) Where the CF is or has been the subject of an investigation<sup>11</sup> by the Central Bank, the credit union may have to:
  - comply with a suspension notice (see section 27 of the Act);
  - comply with an evidentiary notice; or
  - comply with a prohibition notice.

#### 4.6 What happens if a person is promoted into a CF role or if a person changes role in the credit union?

4.6.1 If a credit union has determined that the role in question is a CF, the credit union must satisfy itself on reasonable grounds that the person fulfilling that new or changed role complies with the Standards. The credit union should consider the responsibilities of the specific role and should determine the specific

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<sup>11</sup> [Guidance on Investigations](#) under Part 3 of the Central Bank Reform Act 2010 is available on the Central Bank website.

competencies and level of probity that should be expected of a person performing that specific CF.

#### 4.7 Person(s) seeking to hold multiple CF roles

- 4.7.1 Where an individual seeks to hold more than one CF role in a credit union, including those authorised as retail intermediaries, that individual must display the competence required for each role. For example, if an individual was to perform the role of Compliance Officer and Money Laundering Reporting Officer, they must display the competencies required for both of these roles.

## Section 5: Pre-approval Controlled Functions

### 5.1 What is a Pre-approval Controlled Function?

5.1.1 A function is a PCF if it is prescribed as such in Regulations made pursuant to section 22(2) of the Act.

5.1.2 PCFs are a sub-set of CFs which by virtue of the nature of the roles requires the pre-approval of the Central Bank. Therefore PCFs are, by definition, also CFs. The Central Bank prescribed PCF roles for all credit unions in Schedule 2 of the 2013 Regulations and the 2015 Regulations as follows:

- (i) The office of chair of the board of the credit union (CUPCF-1); and
- (ii) The office of manager of the credit union (CUPCF-2).

The Central Bank has also prescribed three additional PCFs, for credit unions with total assets of at least €100 million, in Schedule 3 of the 2013 Regulations (as inserted by the 2018 Regulations) as follows:

- (iii) Risk Management Officer (CUPCF-3),
- (iv) Head of Internal Audit (CUPCF-4),
- (v) Head of Finance (CUPCF-5).

5.1.3 As stated, a person performing a PCF role must be pre-approved by the Central Bank in order to take up that role. The approval process for PCFs is outlined in Section 6 of this guidance.

5.1.4 Under the Credit Union Act, 1997, a credit union is required to appoint a chair and manager. Therefore, it is expected that each credit union will hold both these PCF roles.

5.1.5 Since 1 August 2015, where a credit union is also authorised as a retail intermediary, all appointments to the roles of chair and manager are also subject to the Standards for the part of the business that the credit union undertakes as a retail intermediary.

5.1.6 Under the Credit Union Act, 1997, a credit union is required to have a risk management officer and an internal audit function. Therefore it is expected that each credit union with total assets of at least €100 million will hold both of these PCF roles. While there is no statutory requirement to have a head of finance,

supervisory experience of the Central Bank has indicated that a large number of credit unions with total assets of at least €100 million have a dedicated finance function in place.

## 5.2 In situ PCFs

5.2.1 In situ PCFs are persons who hold a PCF role at the time of commencement of that PCF role, i.e. at the time of commencement of the relevant regulations. These persons do not have to apply for pre-approval from the Central Bank unless they are seeking re-election or being re-appointed to the role.

5.2.2 A credit union is, however, required to conduct due diligence on the in situ PCFs and confirm to the Central Bank that the due diligence has been undertaken. See Section 6 for further guidance on in situ PCFs.

## 5.3 Person(s) seeking to hold multiple PCF roles

5.3.1 A person cannot hold the position of chair and manager concurrently. A person could hold multiple PCF roles in a number of regulated financial service providers at the same time, provided they were either in situ at the time of commencement of the existing Fitness and Probity regime or if they have received approval from the Central Bank for that PCF role.

5.3.2 Where a person wishes to apply for additional PCFs in different regulated financial service providers, however, s/he must submit an application for each PCF role.

5.3.3 A person may hold more than one PCF role concurrently, provided that it is appropriate and permitted under legislation<sup>12</sup> e.g. manager and head of finance. Where a person wishes to apply for an additional PCF role, whether in the same credit union or in a different credit union or regulated financial service provider, s/he must seek pre-approval for **each** PCF role.

5.3.4 Where a person wishes to apply for multiple PCF roles in a single credit union at the same time, this may be facilitated through a single IQ application by selecting the relevant multiple PCF roles.

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<sup>12</sup> Refer to the Credit Union Act, 1997 for restrictions on concurrent roles and responsibilities.

#### 5.4 PCF roles in credit unions that undergo transfers of engagements

- 5.4.1 Where a person holds a PCF role in a credit union that undergoes a transfer of engagements, no further pre-approval is required to remain in that PCF role.

#### 5.5 PCF roles in credit unions that undergo amalgamations

- 5.5.1 Where a person holds a PCF role in a credit union that undergoes an amalgamation, then the person holding that role will have to seek pre-approval for the new PCF role in the amalgamated credit union prior to the amalgamation taking place, as the amalgamation involves the establishment of a new credit union.

#### 5.6 Persons performing PCF roles on a temporary basis (including acting and/or interim appointments)

- 5.6.1 Regulation 10 of the 2013 Regulations<sup>13</sup> and Regulation 11 of the 2015 Regulations provides that: "A person (the "temporary officer") shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the credit union appointing a person to perform such pre-approval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Central Bank in advance of the person in question assuming such responsibility as a temporary officer".
- 5.6.2 If the function enables the person to exercise a significant influence on the conduct of the affairs of the credit union, even for a relatively short period, it is likely that the Central Bank will require the credit union to progress with the full PCF application process.
- 5.6.3 Where a credit union wishes to extend for a further period an appointment to exercise a PCF in a temporary capacity, the credit union must obtain the prior agreement in writing of the Central Bank. The credit union should contact a member of the supervisory team assigned to that credit union for that purpose in the first instance.
- 5.6.4 If the Central Bank agrees in writing that a person may perform a PCF in a temporary capacity pursuant to the 2013 Regulations and/or 2015 Regulations,

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<sup>13</sup> This section relating to temporary officers is also applicable to the PCFs prescribed in the 2018 Regulations as these regulations amended the 2013 Regulations.

the credit union must be satisfied on reasonable grounds that the person complies with the Standards, and has agreed to abide by the Standards.

- 5.6.5 The Central Bank expects that Regulation 10 of the 2013 Regulations and Regulation 11 of the 2015 Regulations will only be used in the most exceptional of circumstances, e.g. in the event of the death of a person performing a pre-approval controlled function. The Central Bank does not envisage that these regulations could be invoked for circumstances which can, in the normal course, be planned for, e.g. maternity cover, cover for career breaks, etc.

## Section 6: Approval Process for PCFs

### 6.1 Approval process for PCFs

- 6.1.1 As referred to previously, before a credit union can appoint a person to a PCF, the Central Bank must have approved the appointment in writing.
- 6.1.2 The Central Bank expects a credit union to have conducted its own due diligence before proposing a person for appointment to a PCF. The Central Bank expects that, at a minimum, the credit union undertakes the due diligence set out in Section 7 of this guidance.
- 6.1.3 The approval process will require the submission of an Individual Questionnaire specific to credit unions. In the case of elected PCF roles, credit unions and PCF applicants should be mindful of the fact that approval should be sought and received from the Central Bank in advance of the Annual General Meeting (“AGM”)<sup>14</sup> being held as a PCF cannot be elected to the position of chair if they have not been preapproved by the Central Bank. Please refer to Section 8: Process for Electing CFs / PCFs.
- 6.1.4 Credit unions will be provided with User Accounts, allowing them to log on to the online system. Individual accounts for PCF applicants can then be created by credit unions, enabling PCF applicants to complete their Individual Questionnaires online. The system includes:
- (i) an online Individual Questionnaire form, to be completed by the PCF applicant (including pre-formatted curriculum vitae sections within the Individual Questionnaire form itself);
  - (ii) ability for the PCF applicant to attach additional documentation to support an application where necessary<sup>15</sup>;
  - (iii) option/ability for the PCF applicant to export core data once completed online which can later be imported by the PCF applicant for a subsequent application;
  - (iv) an online declaration by PCF applicant as to the accuracy and veracity of the information provided;
  - (v) an online declaration by an appropriate officer (chair of the board of directors, manager or chair of the nomination committee) from the

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<sup>14</sup> Or Special General Meeting (“SGM”) as appropriate. Any reference to AGMs in this document also relates to SGMs.

<sup>15</sup> The additional information can be submitted in word, excel, PDF or JPG file. The Online Reporting System currently supports documents submitted in MS Excel .xls, .xlsx, MS Word .doc, .docx, TIF .tif, .tiff, JPEG .jpg, .jpeg, PDF .pdf. The maximum file size is 8MB per file uploaded.

proposing credit union confirming the checks of the PCF applicant were undertaken by the credit union (e.g. appropriate due diligence regarding qualifications and experience, previous employer reference checks etc.), and confirming that the credit union is satisfied that the PCF applicant is fit and proper.

6.1.5 Further information on the submission of the Individual Questionnaire is contained in the Fitness and Probity Individual Questionnaire Application Guidance for Credit Unions which is available on the Central Bank website. The Fitness and Probity Service Standards, which outline target turnaround times for processing Individual Questionnaires in respect of persons proposed to hold PCF roles within regulated financial service providers, are also available on the Central Bank website (see Appendix 3).

6.1.6 For the most part, the Central Bank expects that the approval process will be based on the Individual Questionnaire, reference checks, and in some cases requests for further information. Where the Central Bank considers it necessary, it may conduct an interview with proposed holders of PCFs before deciding on whether or not to approve an application.

#### Timing for submission of Individual Questionnaires

6.1.7 Where a person wishes to seek election to the role of chair, the person and the credit union need to allow sufficient time in advance of an AGM for the PCF applicant, the credit union and the Central Bank to process the person(s) application for the PCF role.

6.1.8 Credit unions should not however submit an Individual Questionnaire to the Central Bank where an AGM has not been scheduled. If the Individual Questionnaire is submitted to the Central Bank before an AGM has been scheduled by the credit union or more than two months before an AGM is scheduled to take place, the Individual Questionnaire will be returned to the credit union to ensure the assessment of Fitness and Probity is based on the most current information.

6.1.9 In considering the timing of submitting an application for a PCF role, the applicant and the credit union should also bear in mind the possibility that the applicant may be called for an interview as part of the application process. Please refer to Section 9 for further information on interviews for PCFs.

6.1.10 The PCF applicant is responsible for all information given to the credit union and/or the Central Bank.



## 6.2 PCFs subject to re-election or re-appointment (including in situ PCFs)

6.2.1 A person performing the role of chair or manager on

- 1 August 2013 for credit unions with total assets greater than €10 million; or
- 1 August 2015 for credit unions with total assets of €10 million or less,

and

a person performing the role of risk management officer, or head of internal audit or head of finance on

- 1 July 2018 for credit unions with total assets of at least €100 million,

is an in situ PCF and will not be required to apply for approval to continue the performance of that PCF, unless their role is subject to re-election or re-appointment.

6.2.2 If an in situ PCF changes to a 'new' PCF role within the same credit union, or to the same PCF role in a different credit union or regulated financial service provider, s/he will be required to seek the Central Bank's prior approval to that appointment in writing.

6.2.3 Where an in situ PCF at the time of the introduction of fitness and probity requirements for their credit union is subject to re-election/re-appointment, then that person will be required to receive approval from the Central Bank through the submission of an Individual Questionnaire. This is because re-election/re-appointment of a person constitutes a "break in service". This is in accordance with the law as set out in section 23 of the Act.

6.2.4 Once a person has been approved to a role that is subject to re-election/re-appointment provisions, it is the intention of the Central Bank that the approval given shall state that s/he shall not be required to undergo the approval process again as long as s/he remains in that role. The credit union however will be required to confirm to the Central Bank upon re-election/re-appointment that his/her circumstances have not changed since pre-approval was granted.

6.2.5 For example, persons who were in situ in a PCF role such as chair, who are subject to re-election, will be subject to the process set out above.

6.2.6 The above process also applies in instances where a PCF role has been outsourced to an unregulated entity. Further information on the outsourcing of PCF roles to an unregulated entity is given in section 11.5 of this guidance document.

### 6.3 In situ PCFs who are subject to employment contract renewals

6.3.1 Persons who are in situ in PCF roles who are subject to employment contract renewals may also be subject to the approval process. There may be situations where contracts contain certain provisions which mean a contract renewal is not a re-appointment as such. Ultimately it will be for the credit union to determine, based on the terms of contracts, in conjunction with legal advice if appropriate, whether they need to comply with the obligations of section 23 of the Act in this regard or not. It is the intention of the Central Bank that after the initial approval, that this approval would cover any subsequent contract renewals. However, the credit union will be required to confirm to the Central Bank, that the person's circumstances have not changed for contract renewals subsequent to the initial submission of the Individual Questionnaire and the Central Bank's initial approval.

### 6.4 Offers of appointment to manager/risk management officer/head of internal audit/head of finance

6.4.1 Section 23 of the Act requires that a credit union shall not appoint a person to perform a PCF unless the Central Bank has approved in writing the appointment of the person to perform that function.

6.4.2 The Central Bank is satisfied that a credit union can inform a person of an intention to offer the person a position as manager, and in the case of credit unions with total assets of at least €100 million, a position as risk management officer, head of internal audit or head of finance, if it is made clear that the actual offer is subject to receiving the Central Bank's prior approval in writing of the appointment of the person to perform the function. The statement of intention made by the credit union should include the following paragraph: *"This shall not be taken to be an offer for the purposes of section 23 of the Central Bank Reform Act 2010 unless and until approval is granted by the Central Bank of Ireland"*.

6.4.3 As a practical matter, the inclusion of a statement of intention could have the same operational implications as making an offer subject to obtaining satisfactory references or a medical report, for example.

## 6.5 Approval for persons with equivalent EEA approvals<sup>16</sup>

- 6.5.1 Where a person is currently approved for a specific PCF role in another EEA country and wishes to take up a similar role in Ireland, the Central Bank will expedite the application as follows:
- (i) The applicant must still complete an Individual Questionnaire but will omit Section 5 of the Individual Questionnaire;
  - (ii) The applicant must obtain confirmation from the relevant regulatory authority that s/he is entitled under the laws of that EEA country to conduct those functions in that jurisdiction;
  - (iii) The applicant must certify that they comply with the Standards and will abide by them.
- 6.5.2 Where the PCF role applied for is materially different to the PCF role previously performed in another EEA country, the reduced regime set out in Section 6.5.1 above will not apply and the approval process set out in Section 6.1 will apply in full.
- 6.5.3 Where a person is subject to overseas fitness and probity requirements, the Central Bank will not consider whether those requirements are equivalent to the Fitness and Probity regime for credit unions. The person performing the function must comply with both.

## 6.6 Appeals Process

- 6.6.1 Section 23(7) of the Act provides that a decision of the Central Bank to refuse to grant prior written approval for an appointment to a PCF is an appealable decision that may be appealed to the Irish Financial Services Appeals Tribunal (“IFSAT”) pursuant to Part VIIA of the Central Bank Act, 1942.

An appeal may be made by an “affected person”, defined in section 57A of the Central Bank Act, 1942 as “a person whose interests are directly or indirectly affected by an appealable decision.”

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<sup>16</sup> This would include for example approvals as chair or manager of a credit union under the PRA Senior Manager and Certification Regime.

## Section 7: Due Diligence

### 7.1 How do credit unions conduct due diligence?

- 7.1.1 Section 21 of the Act requires that a credit union satisfies itself on reasonable grounds that a person complies with the Standards. The person in a CF role is also required to sign a written confirmation that they agree to abide by the Standards and submit this confirmation to the credit union.
- 7.1.2 For CFs, this confirmation does not have to be a paper based process. Electronic communication whereby a person submits confirmation that they will abide by the Standards is sufficient.
- 7.1.3 In complying with section 21 of the Act, the Central Bank expects credit unions to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the credit union.
- 7.1.4 A credit union cannot rely on another credit union's or regulated financial service provider's due diligence and assessment that a person complies with the Standards. The credit union must take appropriate steps to satisfy itself on reasonable grounds that the person complies with the Standards.
- 7.1.5 There are three main areas in the Standards under which a person's fitness and probity is assessed. These are:
- (a) conduct to be competent and capable;
  - (b) conduct to be honest, ethical and act with integrity; and
  - (c) financial soundness.
- 7.1.6 The credit union should consider each of these when assessing whether a person is fit and proper to perform a CF. As part of this assessment, the credit union should perform due diligence on person(s) holding or proposing to hold CF roles.
- 7.1.7 The CFs in the 2013 Regulations that apply to all credit unions are CUCF-1 and CUCF-2. The CFs in the 2015 Regulations that apply to credit unions that are also authorised as retail intermediaries are CUCF-1 to CUCF-11. See Section 12 for details of the additional CUCF-3 to CUCF-11.
- 7.1.8 The level of due diligence which is required from a credit union in fulfilling its obligations under section 21 of the Act may differ depending on the categorisation of the CF. CUCF-1 and CUCF-2 will attract higher levels of due

diligence than CUCF-3 to CUCF-11. Please refer to Section 7.7 of this guidance on the additional due diligence required for CUCF-1 and CUCF-2.

- 7.1.9 For illustration purposes, there is a table at Appendix 1 which sets out examples of due diligence to be undertaken by credit unions for assessing a person's compliance with the Standards.

## 7.2 Determining the standard of fitness that is appropriate to the particular CF

- 7.2.1 The credit union should be well placed to determine the particular demands of a CF, i.e. what qualifications, experience, knowledge and other relevant factors will make a person fit for the performance of that function.
- 7.2.2 The requirements of the CF may also be dictated by the roles undertaken by persons in other CFs in the credit union. For example, where a credit union employs both a money laundering reporting officer and a compliance officer, while the compliance officer will be expected to have a general understanding of anti-money laundering legislation, s/he may not be required to have the in-depth knowledge required of a specific money laundering reporting officer.
- 7.2.3 It is recognised that a person considered fit for a particular CF within a credit union may not be considered fit for another CF with different responsibilities or for a similar CF within another institution, and conversely, a person considered unfit for a particular CF in a particular credit union may be considered fit in different circumstances, e.g. in a different CF.

## 7.3 Fitness – due diligence to be undertaken by a credit union to assess a person's fitness to perform a CF(s)

- 7.3.1 Section 3 of the Standards requires a person to be competent and capable. Section 3.1 provides that a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.
- 7.3.2 Section 3.2 of the Standards sets out some of the areas that a credit union may take into consideration when assessing a person's competency and capability.

In relation to Standard 3.2(c), competency and proficiency shown in the performance of previous functions may relate to functions that either:

- (a) would now be subject to fitness and probity requirements (in a credit union or another regulated financial services provider); or
- (b) are similar to those roles covered by fitness and probity requirements.

7.3.3 The Central Bank expects credit unions to undertake the following due diligence when assessing a person's competence and capability:

- (i) **Record of previous experience:** where a person demonstrates skills and experience gained through a current or previous role (for example, through the applicant's CV, or the credit union's interview process), the credit union should assess and document how the person's performance in that role equips that person with the expertise and experience necessary for the performance of the current function.
- (ii) **Record of interview/application:** where the credit union uses the interview process to assess competence and capability (such as skills and experience) it should maintain written notes of the interview to evidence this. Similarly where a written application was submitted for the particular CF this should be maintained on file.
- (iii) **Evidence of professional qualification(s):** where the CF requires a specific professional qualification, the credit union should satisfy itself that the person has that specific qualification(s) (e.g. qualification as an accountant) by obtaining a copy of the certificate / transcript / record evidencing the qualification. Where the person is required to be registered with a professional body, the credit union should require and maintain a copy of the person's licence or certificate to practice (howsoever described) and where that licence / certificate is renewed on an annual (or more or less frequent) basis should require a copy of the most recent renewal.

The Central Bank expects credit unions to obtain copies of qualifications only where the credit union has determined that those qualifications are relevant to the exercise of the CF, e.g. where a job specification requires that a person has five years post-qualification experience as an accountant, the Central Bank expects the credit union to obtain evidence of the professional accountancy qualification.

- (iv) **References:** the Central Bank expects credit unions to make all reasonable efforts to obtain references from former employers or other relevant persons. The Central Bank expects credit unions to maintain evidence of this correspondence.

Where the credit union is unable to obtain a reference(s) for whatever reason, it must record the steps which it has taken to obtain the reference(s). The credit union must also record how, in the absence of the

reference, it has satisfied itself that the person is competent to perform the CF.

- (v) **Evidence of CPD (where relevant):** where maintenance of a qualification is dependent on completing continuing professional development (“CPD”), the credit union should require the person to self-certify that s/he is compliant with the particular CPD requirements.

Where a person must maintain up-to-date CPD in order to renew his/her practising certificate, evidence of the renewal of that practising certification will be regarded as sufficient to evidence CPD for the purposes of these Standards.

- (vi) **Evidence of compliance with the MCC (where relevant):** where a person is performing or proposes to perform a CF(s), the performance of which is subject to the MCC, that person can be taken to have the appropriate qualifications or competence to conduct that CF where compliant with the MCC. The credit union should satisfy itself that the person has the recognised qualification(s) by obtaining a copy of the certificate/transcript/records evidencing the qualification. The records to be retained in relation to grandfathered persons are set out in the MCC. The MCC also contains requirements concerning the monitoring of compliance with ongoing CPD requirements.

- (vii) **Record of experience gained outside the State:** where some or all of the experience gained is outside of the State, the credit union should consider the extent to which the person can demonstrate competency that relates specifically to the function within the State, i.e. does the person have a clear full understanding of the regulatory and legal environment appropriate to the relevant function? The credit union should maintain a record of this consideration.

(viii) **Concurrent Responsibilities:**

- (a) **Directors:** Section 53(5) of the Credit Union Act, 1997 requires that each director of a credit union shall ensure that s/he has sufficient time to devote to the role of director and the responsibilities associated with that role.
- (b) **Other:** The credit union should ensure that the person performing the CF does not have other employment or time commitments which interfere with, or create conflicts in relation to, the exercise of the CF. The credit union should require the person to self-certify in writing that the person is capable of conducting the

relevant function, including that the person has adequate time to perform those functions having regard to those other potential concurrent responsibilities.

## 7.4 Competence required for CFs in credit unions

7.4.1 In assessing competence, the Central Bank expects credit unions to consider the responsibilities of the specific CF and to determine the specific competencies that should be expected of a person performing that specific CF in the credit union.

### 7.4.2 Roles required by legislation:

Where the functions of a CF are set out in legislation, then the individual's competence to perform these functions should be included in the assessment of competence. For example, the functions of the board of directors are set out in section 55 of the Credit Union Act, 1997.

Competencies that are relevant for a member of a board of directors include the following at a minimum:

- (i) knowledge in relation to the credit union business model and operating environment;
- (ii) understanding of the legislative and regulatory framework and requirements for credit unions;
- (iii) interpreting the financial statements of the credit union, including identifying key issues based on this information and appropriate controls and measures;

In addition, the following competencies would be relevant for some members of the board, including the chair:

- (iv) strategic planning and understanding of the credit union's business strategy;
- (v) risk management, including identifying, assessing, monitoring, controlling and mitigating the main types of risks for the credit union;
- (vi) effective governance, oversight and control of the credit union.

7.4.3 It should be noted that the above is not an exhaustive list of the required competencies for the role of member of the board of directors, but rather is a high level overview of the minimum areas that should be considered when assessing competence.



- 7.4.4 In assessing competence, the credit union should consider what previous experience, training, qualifications, knowledge and skills the person has that demonstrate their competence to perform the role.
- 7.4.5 Any qualifications a person has undertaken should be assessed to determine the extent to which the qualification supports the competencies required to undertake the role. For example, the extent to which the qualification assists the director in understanding the credit union business model, the legal and regulatory environment or interpreting the financial statements of the credit union.

### 7.5 Probity – determining the standard of probity

- 7.5.1 Persons proposed for CFs or PCFs must be honest, diligent and independent-minded and must act ethically and with integrity.
- 7.5.2 Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to a lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF.
- 7.5.3 Probity may also include persons ensuring that they act without conflicts of interest.

### 7.6 Probity – Due diligence to be undertaken by a credit union to assess a person's probity to perform a CF(s)

- 7.6.1 Sections 4.1 and 5.2 of the Standards relate to the assessment of probity. Much of an assessment of a person's character, in terms of their probity, can only be undertaken in the case of exceptions, i.e. it is only when evidence is available to suggest that a person might not comply with the standard of probity required of him/her that a credit union must investigate thoroughly. Prior to there being any indication of a failure to meet the Standards, there is a limit to the due diligence that an employer, or a prospective employer, can reasonably carry out.
- 7.6.2 In relation to the Financial Soundness Standard, the Standards require individuals to manage their affairs in a sound and prudent manner. A person must be able to demonstrate that his/her role in a relevant function is not adversely affected to a material degree by any of the factors listed (e.g. a bankruptcy petition or judgment debt).

7.6.3 The seriousness of, and surrounding circumstances of the set of facts and in particular, the relevance of that set of facts should be considered with reference to the CF/PCF to be performed.

The Central Bank expects credit unions to undertake the following due diligence when assessing a person's probity:

- (i) The credit union should seek and obtain signed written confirmation from the person performing or proposing to perform a CF as to whether or not any of the circumstances set out in Section 4.1 (a) – (l) and Section 5.2 (a) – (e) inclusive of the Standards, apply to that person. Questions 5.1 – 5.23 set out in the Individual Questionnaire for proposed appointments to PCF(s) require information in relation to these issues and credit unions may wish to use these questions as a template.
- (ii) Where the person confirms that one or more of the circumstances set out in Section 4.1 (a) – (l) or Section 5.2 (a) – (e) apply, the person must be in a position to demonstrate that his or her ability to perform the CF(s) is not adversely affected to a material degree by that matter(s).
- (iii) The credit union should require that the person concerned submit to the credit union underlying documents relevant to the matter (for example, a final decision or report and/or key correspondence). The credit union should inform the person concerned that failure to provide information requested by the credit union and which is relevant to the matter may result in the credit union being unable to satisfy itself that the person complies with the Standards.
- (iv) The credit union should make an assessment based on all of the information received as to whether the matter is material to the performance of the CF. Where it is decided that it is not material, and the credit union has satisfied itself that the person complies with the Standards, the matter rests here. The credit union should document this assessment.
- (v) If it is considered that the matter is material, the credit union should make all reasonable enquiries arising on foot of the information provided by the person, such as, where relevant, contacting third parties for further information, e.g. former employers, regulatory authorities, etc.
- (vi) A credit union is not required to remove or suspend a person from acting in a CF solely on the basis that one or more of the matters listed in Section 4.1 or Section 5.2 of the Standards may have occurred.

- (vii) For example, in 4.1 (c) of the Standards, the fact that a person has been the subject of disciplinary proceedings will not automatically mean that the person fails to meet the level of probity required for the performance of the CF. In assessing the impact of the proceedings on that person's probity, issues for consideration include the subject matter of the proceedings, the circumstances surrounding the disciplinary proceedings, the length of time passed since the proceedings, the explanation offered by the person and the relevance of the proceedings to the proposed role. The Central Bank publishes details of sanctions imposed on regulated financial service providers (RFSPs) and/or individuals concerned in the management of those RFSPs under the Administrative Sanctions Procedure.
- (viii) It is for the person who is subject to Sections 4.1 and 5.2 of the Standards to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree by any of the factors in Section 4.1 (a) – (l), or Section 5.2 (a) – (e).
- (ix) The question of what is material to a particular CF, however, is a matter for the credit union. Where a matter may be relevant (for example, where the disciplinary proceedings are in respect of a serious matter), the credit union may consider it in conjunction with other relevant matters in assessing whether the person is fit and proper to perform the current or proposed function including:
- (a) the seriousness of, and surrounding circumstances of the particular set of facts;
  - (b) the relevance of those to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by that person;
  - (c) repetition and duration of the behaviour;
  - (d) the passage of time since the matter under consideration; and
  - (e) evidence of rehabilitation.
- (x) When assessing a person's fitness and probity, a credit union need not make enquiries about a matter that is unlikely to be material. The credit union should document why s/he considers that the issue is not likely to be material.
- (xi) A series of matters used to assess fitness and probity may be significant when taken together, even if each matter in isolation might not be significant. The cumulative effect of such matters might determine whether the regulated person or approved person is fit and proper to perform the CF.

- (xii) Where the credit union has made reasonable efforts to contact third parties and has received no response or a response which is insufficiently detailed to allow the credit union to make a decision, the credit union should revert to the person concerned in an effort to identify other possible avenues of inquiry.
- (xiii) If the credit union is unable to obtain information which is sufficiently detailed to allow the credit union to make a decision, the credit union may therefore, be unable to satisfy itself that the person complies with the Standards.

## 7.7 Probity – Additional due diligence for PCFs, CUCF-1 and CUCF-2

- 7.7.1 In relation to the following sections of the Standards, the Central Bank expects credit unions to undertake the additional due diligence as set out in paragraphs 7.7.2 to 7.7.5 in relation to persons conducting PCFs, CUCF-1 and CUCF-2.
- 7.7.2 In relation to Section 4.1(c) of the Standards, the credit union should refer to the Central Bank website and those of other regulatory authorities (where available) to confirm for its own records that the person has not been the subject of sanction, or other regulatory action.
- 7.7.3 In relation to Section 4.1(f) of the Standards, the credit union should check the Companies Registration Office records for restrictions or disqualifications from acting as a Company Director.
- 7.7.4 In relation to Section 4.1(j) of the Standards, the credit union should require those performing CFs to confirm whether, to the best of their knowledge, the circumstances set out in Section 4.1(j) have arisen in relation to matters which may have occurred during the time in which that person held that position of responsibility or influence.
- 7.7.5 In relation to Section 5.2(b) of the Standards, the credit union should check against publicly available sources whether a judgment debt has been registered against a person. Publicly available resources may include, for example, Experian All Ireland Gazette or Stubbs Gazette. Where the person has lived outside the State for more than six months in the previous five years, the credit union should request that the person provide a check from a publicly available source in relation to judgment debts from that other jurisdiction(s).
- 7.7.6 For illustration purposes, there is a table at Appendix 1 which sets out examples of due diligence required.

## 7.8 Due diligence for criminal offences (including minor offences)

- 7.8.1 Pursuant to Section 4.1(g) of the Standards, a conviction for a criminal offence will not automatically mean that the person fails to meet the Standards. The credit union must ensure that it is satisfied that a person is fit and proper having regard to any conviction for an offence, “...which could be relevant to that person’s ability to perform the relevant function”.
- 7.8.2 Convictions which could be considered relevant in this regard include, but are not limited to, offences involving dishonesty, fraud, financial crime or offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking or any other financial service, insolvency, consumer credit, insurance, consumer protection, market manipulation, insider dealing or revenue law. The offences may be relevant whether the person was convicted in the State or in some other jurisdiction. See Section 7.9 below which refers to persons prohibited from holding roles in a credit union under the Credit Union Act, 1997.
- 7.8.3 Convictions which may not be relevant in particular circumstances might be road traffic offences where a custodial sentence was not imposed, or minor public order offences.
- 7.8.4 In assessing the impact of a conviction on a person’s probity, issues for consideration include the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person, the relevance of the offence to the proposed role and any evidence of the person’s rehabilitation.

## 7.9 Persons prohibited from holding roles in a credit union under the Credit Union Act, 1997

- 7.9.1 Notwithstanding Section 7.7 above, section 72 of the Credit Union Act, 1997 states that:
- (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.*

7.9.2 Therefore, in accordance with section 72 of the Credit Union Act, 1997, any person who has been declared bankrupt and where the bankruptcy still subsists, or who has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty, either within the State or any other jurisdiction, may not hold a CF within a credit union.

## 7.10 Ongoing compliance with the Standards

7.10.1 Where a credit union suspects that a CF holder may not be fit and proper, the Central Bank would expect the credit union to take a practical approach and investigate such matters, and take action as appropriate without delay. The credit union should notify the Central Bank without delay when its investigation is complete if it is not satisfied on reasonable grounds that the person performing the CF role is compliant with the Standards.

7.10.2 Credit unions should inform persons performing CFs that they are obliged to notify the credit union of any material changes in respect of the initial due diligence carried out and that they should inform the credit union without delay if for any reason they no longer comply with the Standards. Credit unions should bring the Standards and this guidance for credit unions to the attention of every

person performing a CF on its behalf. Please refer to Section 10: Ongoing Compliance for further information.

## 7.11 CFs undergoing a disciplinary process

7.11.1 A disciplinary process is a matter between the credit union and the credit union officer. The fact that a person has been the subject of a disciplinary process will not, of itself, indicate that s/he is not “fit and proper” to perform a CF in compliance with the Standards. The credit union should consider the outcome of the disciplinary process in terms of its relevance to the CF. Where, in light of the outcome of the disciplinary process, the credit union is not satisfied on reasonable grounds that the person performing the CF is compliant with the Standards, section 21 of the Act provides that the credit union cannot permit the person to continue to perform the CF. Nothing in this guidance affects the contractual rights or obligations of the credit union and the persons performing the CF.

## Section 8: Process for Electing CFs/PCFs

### 8.1 Who in the credit union is responsible for conducting due diligence?

8.1.1 The Board of Directors: Under section 56B of the Credit Union Act, 1997, the nomination committee is responsible for assisting the credit union in performing any obligations of the credit union under section 23 of the Act in relation to any candidates proposed to perform CFs or PCFs.

Specifically, section 56B (4) (e) and (f) of the Credit Union Act, 1997 state that the nomination committee is responsible for:

(4)(e) *assisting the credit union in performing any obligations of the credit union under 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);*

(4)(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;*

and section 56B (6) states that:

*“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.”*

8.1.2 In addition section 56B (5) states that:

*“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.”*

The nomination committee should therefore have responsibility for conducting due diligence on members of the board of directors.



8.1.3 The Board Oversight Committee: The nomination committee and the board oversight committee should have joint responsibility for conducting due diligence on the members of the board oversight committee.

8.1.4 The Manager: Section 63A (5) states that:

*"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."*

It would therefore be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the manager.

8.1.5 Risk Management Officer: Section 76C (1) states that:

*"The board of directors of a credit union shall appoint a person (in this Act referred to as a 'risk management officer') with the necessary authority and resources to manage the risk management function within the credit union."*

While the credit union management team is likely to provide input into the process of selecting a suitable risk management officer, it would be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the risk management officer.

8.1.6 Head of Internal Audit: Section 76K (1) states that:

*"The board of a credit union shall appoint a person (in this Act referred to as the 'internal audit function') -*  
*(a) to provide for independent internal oversight, and*  
*(b) to evaluate and improve the effectiveness, of the credit union's risk management, internal controls and governance processes."*

Furthermore, Section 76K (4) states that:

*"The internal audit function shall be separate from other functions and activities of the credit union, and be capable of operating independently of management and without undue influence over its activities."*

It would therefore be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the head of internal audit.

8.1.7 Other Controlled Functions: It is a matter for the credit union to determine who should conduct due diligence for other CF and PCF roles, while ensuring that any potential conflicts of interest are managed.

## 8.2 CF elected roles

8.2.1 Where a CF is subject to an election process, credit unions need to allow sufficient time in advance of the election for the credit union to conduct due diligence on a person that is proposed to hold that CF.

8.2.2 For a CF, the credit union should take the following steps in advance of the AGM:

- (i) The credit union identifies potential candidates to stand for election for a specific CF(s) at the AGM;
- (ii) The credit union conducts a due diligence assessment on each person, to assess the fitness and probity of the person relative to the CF(s) and to ensure that the person would comply with the Standards;
- (iii) The person will then be required to confirm in writing to the credit union in advance of the election that s/he agrees to abide by the Standards;
- (iv) The credit union notifies the person whether they are satisfied the person is fit and proper and therefore eligible to stand for election at the AGM;
- (v) If a credit union does not deem the person to be fit and proper they must inform the person that they are not eligible to stand for election at the AGM.

### Persons ineligible to become a director or member of the board oversight committee

8.2.3 Section 53(10) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a director (a role that would fall within CUCF-1) of a credit union. Section 76N(4) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a member of the board oversight committee (a role that would fall within CUCF-2) of a credit union. The categories of persons not eligible to become a director of a credit union or a member of the board oversight committee of a credit union include:

- 1) An employee of any credit union;
- 2) A voluntary assistant or member of the board oversight committee (director restriction) of the credit union;
- 3) A director of any other credit union;

- 4) The auditor of the credit union or a person employed or engaged by that auditor;
- 5) A solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
- 6) A person who is a spouse or civil partner, parent or child of a director, board oversight committee member or employee of that credit union<sup>17</sup>.

This list is not exhaustive and credit unions should refer to sections 53(10) and 76N(4) of the Credit Union Act, 1997 for the full list of persons ineligible to become a director or member of the board oversight committee.

When carrying out due diligence for proposed directors (CUCF-1), including proposed chairs, or proposed members of the board oversight committee (CUCF-2), credit unions should ensure that the proposed candidate does not fall within the list of ineligible persons. Please refer to Section 7 for further information on conducting due diligence.

### 8.3 PCF elected roles – the chair of the board of directors

- 8.3.1 Under section 63 of the Credit Union Act, 1997, the chair of the board of directors is elected at a meeting of the board of directors which is held immediately after an AGM that was held to elect the board of directors.
- 8.3.2 Any person, other than an existing chair that has previously been pre-approved, that must stand for election to the position of chair of the board of directors should be pre-approved by the Central Bank before they can be elected to the role of chair.

#### Persons ineligible for the role of chair

- 8.3.3 Since 11 October 2013 the following requirements apply in relation to persons not eligible to seek election to the position of chair:
  - a) Under section 55A(4) of the Credit Union Act, 1997, any person that has served as an employee or acted in a management capacity in the credit union in the previous five years is not eligible for election to the position of chair. For the avoidance of doubt, acting in a management capacity does not include being a member of the board of directors or the board oversight committee.

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<sup>17</sup> Siblings are also included in the persons not eligible to become a director in section 53(10)(m).

- b) Under section 55A(6) of the Credit Union Act, 1997, any person that has served four consecutive terms as chair is not eligible to be chair.

When carrying out due diligence for the proposed chair (CUPCF-1), credit unions should ensure that the proposed candidate is eligible to seek election for the role of chair.

The time referred to in sections 55A(4) and 55A(6) includes time served before 11 October 2013. Credit unions should ensure that an applicant is not ineligible to be chair under these requirements, or any other legal requirements, prior to submitting an Individual Questionnaire to the Central Bank.

Please refer to Section 7 for further information on conducting due diligence.

8.3.4 The PCF applicant(s) and the credit union should take the following steps in advance of the election for the role of chair:

- (i) The nomination committee identifies potential candidate(s) to stand for election for the position of chair;
- (ii) The credit union conducts a due diligence assessment on the person(s) to assess the fitness and probity of the person(s) relative to the PCF role to ensure that the person would comply with the Standards;
- (iii) The credit union notifies the person(s) whether they are satisfied the person is fit and proper and whether the person may seek pre-approval from the Central Bank;
- (iv) If the credit union does not deem the person(s) to be fit and proper, they may not seek pre-approval from the Central Bank or stand for election for the role of chair at the meeting of the board which is held immediately after the AGM;
- (v) If the credit union deems the person(s) to be fit and proper, pre-approval must be sought from the Central Bank prior to the person(s) standing for election;
- (vi) The person(s) completes an Individual Questionnaire for submission to the Central Bank for pre-approval;
- (vii) The credit union reviews the Individual Questionnaire. The proposer within the credit union should then complete the declaration in Section 12 of the Individual Questionnaire proposing the persons(s) PCF application and submit it to the Central Bank on behalf of the person;

- (viii) The Central Bank receives the Individual Questionnaire and processes the application. The Central Bank aims to complete its assessment of Individual Questionnaires within 15 business days<sup>18</sup>;
- (ix) As part of its review of the application, the Central Bank may request further information from the person through the credit union or may request the person to attend an interview;
- (x) The Central Bank will then notify the credit union of the decision regarding pre-approval and the credit union should then notify the individual applicant(s);
- (xi) If approved by the Central Bank, the applicant(s) may be considered for election for the PCF role(s) for which they have been pre-approved, at a meeting of the board which is held immediately after the AGM. The person(s) may not be considered for election to any other PCF role other than the PCF role for which they have been pre-approved.

8.3.5 It should be noted that a person is pre-approved for a particular PCF role in a credit union. If the person is not elected at the AGM then they are no longer pre-approved and will have to re-apply for pre-approval for any future PCF roles.

8.3.6 A person who has not been pre-approved by the Central Bank is not eligible to be elected to the role of chair by the board, until such time as they have received pre-approval from the Central Bank.

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<sup>18</sup> This applies to applications that are fully completed with no issues arising. Incomplete applications or applications with issues will take longer to process. Please refer to the Fitness and Probity Service Standards on the Central Bank website for further information.

## Section 9: Interviewing PCFs

- 9.1 A risk based approach will be adopted in deciding whether persons in PCF roles are called for interview by the Central Bank. The Central Bank has developed the Probability Risk and Impact System (“PRISM”) to assess both the impact and probability risk of a credit union. The Central Bank will use a credit union’s impact ratings derived from PRISM to inform its decisions as to who should be called for interview.
- 9.2 The “impact” of credit unions refers to the impact of failure on the Irish financial system. Credit unions can currently be categorised as medium low or low impact. The measurement of impact is based on impact metrics.
- 9.3 Probability risk defines the risk or likelihood that a particular credit union will fail.
- 9.4 The Central Bank anticipates interviewing applicants for PCF roles at any medium low impact credit unions as a matter of routine.
- 9.5 The Central Bank may also decide, at its discretion, to call any PCF applicant for interview irrespective of the impact rating of the credit union.
- 9.6 It is likely that the Central Bank will wish to interview a higher proportion of PCF applicants from a credit union which it assesses as having a higher risk profile than another credit union.
- 9.7 The Central Bank’s Regulatory Transactions Division will liaise with the Registry of Credit Unions in coming to a decision as to who should be called to interview.
- 9.8 The PCF applicant will be informed of the Central Bank’s decision to interview within 15 business days of receipt of a completed PCF application.
- 9.9 The interview panel is likely to be comprised of members of the Registry of Credit Unions, supplemented as appropriate with representatives from other divisions of the Central Bank.

## Section 10: Ongoing Compliance

### 10.1 Register and documents to be retained by the credit union

- 10.1.1 As referred to in Section 10.5 herein, credit unions must identify and maintain a record of persons performing CFs and PCFs.
- 10.1.2 Credit unions are required to document and record all due diligence undertaken in relation to persons performing CFs together with any documentation provided by the person including any responses given and signed by the person in relation to the Standards. The Central Bank may require to see any such records or due diligence either in the context of an investigation of a credit union's compliance with section 21 of the Act, or an investigation in relation to a person's fitness and probity to perform a CF.
- 10.1.3 These records should be made available for review by the Central Bank at its request.
- 10.1.4 Credit unions should have regard to their obligations under Data Protection law in holding the information referred to in this Section including ensuring that the information is held securely and in an appropriate manner. Credit unions should also ensure that access to such information is restricted and only provided to the relevant credit union officers.

### 10.2 The continuing nature of the obligation imposed on credit unions in Section 21 of the Act

- 10.2.1 Section 21 of the Act, which states that credit unions shall not permit a person to perform a CF unless the credit union is satisfied on reasonable grounds that the person complies with the Standards and that the person has agreed to abide by any such Standards, is a continuing obligation on credit unions. It is not a one-off on commencement of the regime, or in relation to an initial appointment to a CF or a PCF. The Central Bank suggests that credit unions require persons performing CFs to undertake to notify the credit union of any material changes in respect of initial due diligence carried out. Suggested wording in this regard is included in the agreement to abide by the Standards at Appendix 2.
- 10.2.2 The Central Bank recommends that credit unions carry out an audit of persons performing CFs and PCFs on an annual basis by asking persons in CFs and PCFs to confirm whether they are aware of any material developments in relation to their compliance with the Standards of which the credit union ought to be aware.

10.2.3 Where a credit union becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF, the Central Bank expects the credit union to investigate such concerns and take action as appropriate without delay.

10.2.4 The credit union should notify the Central Bank of any action referred to in Section 10.2.3 without delay.

### 10.3 Agreement to abide by the Standards

10.3.1 Section 21(1)(b) of the Act provides that a credit union shall not permit a person to perform a CF unless the person has agreed to abide by the Standards.

10.3.2 A credit union must bring the Standards to the attention of every person performing a CF on its behalf, and obtain a signed copy of the template agreement at Appendix 2 for each such person.

10.3.3 As part of ongoing performance monitoring, the credit union should ask persons performing CFs to certify that they are aware of the Standards and agree to continue to abide by those Standards on an annual basis at a minimum.

### 10.4 Internal controls

10.4.1 The Central Bank expects credit unions to implement procedures to manage the credit union's compliance obligations with section 21 of the Act.

### 10.5 Maintenance of Records

10.5.1 The Central Bank expects credit unions to maintain all information collected in compliance with its obligations under section 21 of the Act for the duration during which the person performs the CF or PCF.

10.5.2 The appropriate retention period is a matter for the credit union to determine in order to ensure its compliance with the General Data Protection Regulation ("GDPR"). Article 5(1)(e) of the GDPR provides that personal data processed for any purpose(s) shall not be kept for longer than is necessary for that purpose(s).



## 10.6 Administrative Sanctions under Part IIIC of the Central Bank Act, 1942

- 10.6.1 Breach of section 21 of the Act may result in the imposition of sanctions on the regulated financial service provider pursuant to Part IIIC of the Central Bank Act, 1942.
- 10.6.2 A decision by the Central Bank to impose sanctions under Part IIIC of the Central Bank Act, 1942 for breach of section 21 of the Act may be appealed to IFSAT.

## 10.7 Updating PCF Information following election / appointment / resignation

### Election / Appointment

- 10.7.1 Following approval by the Central Bank of an applicant(s) for a PCF role(s), the proposing credit union should notify the Central Bank via the Online Reporting System (“ONR”) of the date that the PCF holder(s) have taken up their role - the effective start date (in the case of a manager/risk management officer/head of internal audit/head of finance) or the election date (in the case of a chair).
- 10.7.2 The ONR must also be updated to confirm where an applicant will not take up the role once this becomes clear to the credit union (i.e. where a person approved for the role of chair by the Central Bank is subsequently not elected at the AGM).
- 10.7.3 Further information on how this information can be updated is provided in the [PCF Information Guidance / Instructions](#).

### Resignations

- 10.7.4 Credit unions must also notify the Central Bank without delay of the resignation of an individual who has been approved as a PCF. Resignation notifications for individuals approved as PCFs must be submitted through the ONR.
- 10.7.5 Further information on how to submit a PCF resignation notice is provided in the [PCF Resignation Process Guidance / Instructions](#).
- 10.7.6 Under section 63(5) of the Credit Union Act, 1997, the chair or secretary of the credit union is obliged to notify the Central Bank in writing of the election, appointment, retirement, removal or resignation of the chair within 14 days of the election, appointment, retirement, removal or resignation.

# Section 11: Outsourcing

## 11.1 General

11.1.1 In this guidance, outsourcing means a written arrangement of any kind between a credit union and a service provider who is a natural or legal person (whether regulated or unregulated) whereby the service provider performs a CF or PCF which would otherwise be performed by the credit union itself.

11.1.2 It should be noted that not every provision of a function or service to a credit union by a service provider will fall within the definition of outsourcing. Hiring a specialist consultant, for example, to provide one-off technical advice or one-off support for compliance, internal audit, accounting, risk management or actuarial functions does not normally constitute outsourcing. However, it may become outsourcing if the credit union subsequently relies on that consultant to manage an internal function or service when it is installed or becomes fully operational.

## 11.2 Outsourcing to another regulated entity<sup>19</sup>

11.2.1 Section 1.6 of the Standards provides that the Standards do not apply to a person performing a CF under the following conditions:

- (a) where 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 regulated for similar business to that conducted by the credit union<sup>20</sup> concerned either:
  - (i) by the Central Bank; or
  - (ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank; or
  - (i) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

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<sup>19</sup> Other than a “certified person” within the meaning of section 55 of the Investment Intermediaries Act, 1995.

<sup>20</sup> This includes credit unions that are also authorised as retail intermediaries.

11.2.2 The exemption from the Standards as outlined above does not equate to an exemption from the Fitness and Probity requirements for a CF or PCF benefitting from the outsourcing exemption in full. Part 3 of the Act applies, and any other Code issued under section 50 may also apply, other than where an express exclusion is possible. Additional features include that the CF:

- (i) may be the subject of an investigation pursuant to section 25 of the Act where the Head of Regulation has reason to suspect that the person's fitness and probity to perform the relevant CF, and in the circumstances an investigation is merited;
- (ii) may be required to comply with an evidentiary notice; and
- (iii) may be the subject of a suspension notice or a prohibition notice issued under Part 3 of the Act.

### 11.3 Obligations on a credit union where CFs are outsourced to a regulated entity

11.3.1 Subject to the conditions set out in Section 1.6 of the Standards being met, persons who will perform CFs under the written agreement which governs the outsourcing arrangement are excluded from the scope of the Standards. Accordingly, in respect of those CFs, the credit union will not have compliance obligations under section 21 of the Act.

### 11.4 Outsourcing to an unregulated entity

11.4.1 Where the CF(s) is outsourced to an "unregulated entity", the unregulated entity performing the outsourced activities must be able to identify the persons who will perform the CFs, and assess whether those persons are compliant with the Standards. The entity must also obtain those persons' agreement to abide by the Standards.

11.4.2 While it is not necessary to identify and list in writing each person performing the CF in the written agreement which governs the outsourcing arrangement itself, the Central Bank expects that unregulated entities who propose themselves for the performance of outsourced activities on behalf of a credit union would include compliance with the Standards and Part 3 of the Act generally as a critical part of their Human Resources procedures.

11.4.3 Section 21 of the Act requires that a credit union must satisfy itself on "reasonable grounds" that persons performing CFs comply with the Standards and those persons have agreed to abide by the Standards.

- 11.4.4 Notwithstanding that a credit union has entered into an outsourcing arrangement with an unregulated entity for the performance of a CF the credit union remains responsible for compliance with its obligations under section 21 of the Act.
- 11.4.5 The outsourced service provider should provide written confirmation to the credit union that those persons performing CFs are compliant with the Standards and have agreed to abide by them. In addition to this written confirmation, the outsourced service provider should furnish the credit union with sample documentation as to how compliance with the Standards is adhered to.
- 11.4.6 In this subsection “unregulated entity” means an entity (including a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) that is not regulated either:
- (a) by the Central Bank; or
  - (b) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank; or
  - (c) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

## 11.5 Obligations on a credit union where PCFs are outsourced to an unregulated entity

- 11.5.1 The Central Bank would expect that in the majority of cases, where roles are outsourced, they will be outsourced to unregulated entities. Where this occurs, the outsourcing agreement between the credit union and the entity will be required to specify the individual within the entity who will be responsible for carrying out the PCF role.
- 11.5.2 The credit union will be required to seek pre-approval from the Central Bank prior to appointing the individual to the PCF role and the individual will be required to comply with the Standards of Fitness and Probity.
- 11.5.3 Where more than one individual from an unregulated outsourced service provider conducts the PCF role in a credit union, pre-approval must be obtained for the individual who has ultimate responsibility for, and who ultimately signs off on reports submitted to the credit union.
- 11.5.4 A pre-approval is only valid for the PCF role being applied for, in the institution that sought the pre-approval. Where an individual who has already obtained

pre-approval for a specific PCF in a specific credit union is proposed to hold the same PCF role in a different credit union, a separate application for pre-approval must be made in order for the Central Bank to assess the applicant. The assessment will be based on the most up to date information, and on the individual's ability to conduct the PCF role in that specific credit union based on its nature, scale and complexity, and on their ability to conduct the PCF role in an increased number of credit unions.

- 11.5.5 It is the responsibility of each credit union to undertake due diligence to ensure that an individual is fit and proper to perform the role, taking account of the nature, scale and complexity of the credit union, irrespective of whether the role is outsourced or not. A credit union cannot rely on another credit union's or regulated financial service provider's due diligence and assessment that a person complies with the Standards. The credit union must take appropriate steps to satisfy itself on reasonable grounds that the person complies with the Standards.

## Section 12: Additional Information for Credit Unions that are also authorised as Retail Intermediaries

### 12.1 Credit unions that are also authorised as retail intermediaries

12.1.1 Credit unions that are also authorised as retail intermediaries became subject to additional fitness and probity requirements on 1 August 2015. Fitness and probity was introduced on a phased basis and applies to all credit unions that are also authorised as retail intermediaries since 1 August 2016.

12.1.2 Individuals performing CFs (including PCFs) in such credit unions are also subject to fitness and probity requirements for the part of the business that the credit union undertakes as a retail intermediary. The 2015 Regulations prescribe additional CFs (CUCFs 3 – 11) for such credit unions. These additional CFs include functions relating to giving advice to a member and arranging a financial service for a member for the part of the business that the credit union undertakes as a retail intermediary (see Section 12.3 for further details).

12.1.3 Credit unions also authorised as retail intermediaries should refer to the Central Bank website for the 2015 Regulations and a full list of the CFs and PCFs that apply to the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries.

12.1.4 Credit unions also authorised as retail intermediaries, and whose total assets are at least €100 million, should also refer to the 2018 Regulations for the list of additional PCFs that apply to such credit unions.

### 12.2 The 2015 Regulations

12.2.1 The 2015 Regulations are effective since 1 August 2015 and apply to credit unions that are also authorised as retail intermediaries. The 2015 Regulations specify the PCFs and CFs that are subject to fitness and probity requirements for the part of the business that the credit union conducts as a retail intermediary. These include the PCF (CUPCF-1 and CUPCF-2) and CF (CUCF-1 and CUCF-2) roles in the Fitness and Probity regime for credit unions. Additional CFs are also prescribed as follows:

- (a) CUCF3-9: Member facing functions which are likely to involve one or more of the following tasks:

- i) giving of advice to a member of the credit union under its authorisation as a retail intermediary, in the course of providing, or in relation to the provision of, the financial service (CUCF-3); or
  - ii) arranging, or offering to arrange, a financial service for a member of the credit union under its authorisation as a retail intermediary (CUCF-4); or
  - iii) assisting a member in the making of a claim under a contract of insurance or reinsurance (CUCF-5); or
  - iv) determining the outcome of a claim arising under a contract of insurance or reinsurance (CUCF-6); or
  - v) acting in the direct management or supervision of those persons who act for a credit union under its authorisation as a retail intermediary in providing the services referred to in subparagraphs (i) to (iv) (CUCF-7); or
  - vi) adjudicating on any complaint communicated to a credit union by a member in relation to the provision of a financial service under its authorisation as a retail intermediary (CUCF-8).
  - vii) in respect of a person referred to in paragraph (a) or (b) of Regulation 15(1) of the European Communities (Insurance Mediation) Regulations 2005, the function of a person described in that Regulation (CUCF-9).
- (b) CUCF10-11: Dealing in property functions under its authorisation as a retail intermediary.

### 12.3 Further information on the additional CFs: CUCF-3 to CUCF-11

12.3.1 This section should be read in conjunction with Section 4 'Controlled Functions'.

12.3.2 As set out in Section 4.2.1 of this guidance, a credit union should assess the role and functions of each person in line with the definitions prescribed in the 2015 Regulations. The credit union should consider the responsibilities of the specific function and determine the specific competencies expected of a person performing that specific CF.

12.3.3 Roles within a credit union that fall within CUCF-3 to CUCF-9 are also subject to the MCC.

12.3.4 However, as CUCF-3 to CUCF-9 apply to member facing roles rather than consumer<sup>21</sup> facing roles they are not limited to the scope of the MCC. If an individual is captured by the MCC, s/he will be captured by CUCF-3 to CUCF-9. However, not all individuals captured by CUCF-3 to CUCF-9 will be subject to the MCC. The scope of CUCF-3 to CUCF-9 is thus broader than the MCC.

12.3.5 Please refer to Section 12.4 for further information on the MCC.

12.3.6 If a credit union does not carry out business relating to certain CF roles, then these roles will not apply for a credit union. For example, if the credit union's retail intermediary business does not involve determining the outcome of claims arising under contracts of insurance / reinsurance, then CUCF-6 will not apply to any individuals in the credit union.

#### CUCF-10 and CUCF-11

12.3.7 In order for a function to fall within the definition of CUCF-10 and CUCF-11, the function must be a function in relation to the provision of a financial service. CUCF-11 does not include the performance of functions in relation to physically housing staff of the credit union e.g. building maintenance.

12.3.8 'Property' in CUCF-10 is 'property of the member', whether the property is held in the name of the member or some other person. 'Property' includes any money that is dealt with as part of the retail intermediary business of the credit union.

12.3.9 Where credit unions that are also authorised as retail intermediaries do not deal in members' property for the retail intermediary part of the credit union's business then CUCF-10 and CUCF-11 would not apply.

## 12.4 [Minimum Competency Code 2017](#)

12.4.1 The Minimum Competency Code 2017 ("MCC 2017") applies to persons in **credit unions authorised as retail intermediaries** in relation to the part of the business that the credit union undertakes as a retail intermediary. The core

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<sup>21</sup> As defined in the Minimum Competency Code 2011 '*consumer*' means any of the following:

a) a *person* or group of *persons*, but not an incorporated body with an annual turnover in excess of three million euro (for the avoidance of doubt, a group of *persons* includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or  
b) incorporated bodies having an annual turnover of three million euro or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said three million euro);  
and includes, where appropriate, a potential '*consumer*' (within the meaning above).



lending activities of a credit union and the operation by a credit union of share and deposit accounts are not subject to MCC requirements.

- 12.4.2 The Central Bank introduced the Minimum Competency Requirements (“MCR”) in January 2007. The MCR was implemented to establish minimum professional standards for financial service providers, particularly when dealing with consumers. The MCR was introduced to ensure that consumers obtain a minimum acceptable level of competence from persons acting for or on behalf of regulated firms in the provision of advice and associated activities in connection with retail financial products.
- 12.4.3 The Minimum Competency Code 2011 (“MCC 2011”) replaced the MCR with effect from 1 December 2011. The MCC 2011 preserves the core substantive requirements of the MCR, while updating those requirements in light of experience, market developments and the new powers granted under the Act. The MCC 2017 and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) Minimum Competency Regulations 2017 (Minimum Competency Regulations 2017)) together replaced the MCC 2011 with effect from 3 January 2018.
- 12.4.4 The MCC 2017 is issued as a set of standards pursuant to section 50 of the Act and is imposed directly on the person performing the function to which the MCC 2017 applies. The Minimum Competency Regulations 2017 impose obligations on the financial service provider. The MCC 2017 and the Standards are closely linked. Section 3.2 (g) of the Standards provides that:
- “Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she ..... is compliant with any applicable Minimum Competency Code issued by the Central Bank”.*
- 12.4.5 Accordingly, where a person is non-compliant with his/her obligations under the MCC 2017, s/he is also likely to be non-compliant with the Standards.
- 12.4.6 It is worth noting, however, that the MCC 2017 applies to persons exercising a CF on a professional basis, the exercise of which includes the following:
- (i) providing advice to consumers on retail financial products;
  - (ii) arranging or offering to arrange retail financial products for consumers, including any amendments to insurance cover and the restructuring or rescheduling of loans; or

(iii) the exercise of a specified function<sup>22</sup>.

12.4.7 Since 3 January 2018, the MCC 2017 also applies to those persons in credit unions when devising or creating mortgage credit products, advising on or arranging or offering to arrange mortgage credit products or carrying out a specified function in respect of such products.

Where a credit union acts as a mortgage credit intermediary, the MCC 2017 applies to the members of the board where the mortgage credit intermediary is established as a legal person or to a natural person performing equivalent tasks within a mortgage credit intermediary which is a legal person but does not have a board.

12.4.8 Where the MCC 2017 applies to persons in a credit union, the credit union shall ensure that the proposed person fulfils the requirements.

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<sup>22</sup> As set out in Appendix 2 of the MCC.

# Appendix 1

Examples of due diligence to be undertaken by credit unions for assessing a person's compliance with the Standards:

Standard	Supporting documents obtained from a third party	PCF	CUCF-1 & CUCF-2	CUCF-3 to CUCF-11
Competent and Capable	Provision of a copy of the relevant transcripts	Y	Y	Y
	Professional Body Check	Y	Y	-
	Employer's References	Y	Y	Y
	Minimum Competency Code 2017	I/A	I/A	SC/Y
	Conflicts	SC	SC	SC
Honest, ethical and acts with integrity	Garda Check/Convictions	SC	SC	SC
	Regulator Check <sup>23</sup>	Y	Y	SC
Financial Soundness	Judgments Search <sup>24</sup>	Y	Y	SC

Y = Checks undertaken by the credit union

SC = Self Certify

I/A = If Applicable

<sup>23</sup> Please refer to Section 7 of this guidance for further information on the Regulator Check.

<sup>24</sup> Please refer to Section 7 of this guidance for further information on the Judgments Search.

## Appendix 2

Agreement pursuant to section 21(b) of the Central Bank Reform Act 2010 (“the Act”).

Section 21 of the Act provides as follows:

- (1) *A regulated financial service provider shall not permit a person to perform a controlled function unless –*
- (a) *the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity in a code issued under section 50, and*
  - (b) *the person has agreed to abide by any such standard.*

I confirm that I have read the code setting out Standards of Fitness and Probity for credit unions and the Guidance for credit unions issued by the Central Bank of Ireland pursuant to Section 50 of the Act (the “Standards”) and I confirm that I comply with those Standards.

I agree to abide by the Standards.

I agree to notify the credit union without delay if for any reason I no longer comply with the Standards.

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Signature

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Date

## Appendix 3

### Documentation issued by the Central Bank relevant to the Fitness and Probity regime for credit unions

The Central Bank has published the following Statutory Instruments:

- [“The Central Bank Reform Act 2010 \(Sections 20 and 22 – Credit Unions\) Regulations 2013”](#) prescribing controlled functions and pre-approval controlled functions for credit unions by regulation (S.I. No. 171 of 2013);
- [“The Central Bank Reform Act 2010 \(Sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries\) Regulations 2015”](#) prescribing controlled functions and pre-approval controlled functions for credit unions by regulation (S.I. No. 97 of 2015); and
- [“The Central Bank Reform Act 2010 \(Sections 20 and 22 – Credit Unions\) \(Amendment\) Regulations 2018”](#) prescribing three additional pre-approval controlled functions for credit unions with total assets of at least €100 million by regulation (S.I. No. 187 of 2018).
- [“The Central Bank Reform Act 2010 \(Procedures Governing the Conduct of Investigations\) Regulations 2012”](#) (S.I. No. 56 of 2012).

The Central Bank has issued a code under section 50 of the Act setting out the [“Standards of Fitness and Probity for Credit Unions”](#).

For guidance purposes the Central Bank has issued the following non statutory guidance documents in relation to Part 3 of the Act:

- “Guidance on the Fitness and Probity for Credit Unions”; and
- [“Guidance on Investigations under Part 3 of the Act”](#).

The Central Bank has also published the [“Fitness and Probity Service Standards”](#) which outline target turnaround times for processing Individual Questionnaires in respect of persons proposed to hold PCFs within regulated financial service providers.

A [“Frequently Asked Questions”](#) document is also available to address commonly asked questions in relation to the operation of the Fitness and Probity regime for credit unions. This document is available on the [web page](#) which is dedicated to fitness and probity for credit unions on the Central Bank website.

Please refer to the Central Bank website for further information and supporting documentation on:

- [Completing and Submitting an Individual Questionnaire;](#)
- [On-going Compliance with Fitness and Probity Requirements.](#)

The Central Bank publishes the “Regulatory Service Standards Performance Report”, which is available on the Central Bank website. In addition the Central Bank has a dedicated web page to fitness and probity for credit unions on the Central Bank website available [here](#).

### Contact Information

For policy queries on this guidance please contact [rcu@centralbank.ie](mailto:rcu@centralbank.ie).

For queries on the submission process of Individual Questionnaires please contact [fitnessandprobity@centralbank.ie](mailto:fitnessandprobity@centralbank.ie).

For MCC specific queries please contact [competency@centralbank.ie](mailto:competency@centralbank.ie).

# Appendix 4

## Updated sections of the Guidance – June 2018

Sub-section reference	New / Amended / Deleted
Explanatory Note	Amended
1.3	Amended
2.3	New
2.4	Renumbered (formerly 2.3)
2.5	Renumbered (formerly 2.4)
2.6	Renumbered (formerly 2.5)
2.7	Renumbered (formerly 2.6)
2.8	Renumbered (formerly 2.7)
2.9	Renumbered (formerly 2.8)
2.10	Renumbered (formerly 2.9)
3.1.3	New
3.2.1	Amended
3.2.4	Amended
4.2.2	Amended
4.4.2	Amended
5.1.2	Amended
5.1.5	Amended
5.1.6	New
5.2.1	Amended
5.3.3	New
<b>5.3.4</b>	New
5.6.1	Amended
6.2.1	Amended
<b>6.2.6</b>	New
6.4	Amended
6.4.2	Amended
6.5	Amended

8.1.5	New
8.1.6	New
8.1.7	Renumbered (formerly 8.1.5)
9.4	Amended
10.5	Amended
10.7.1	Amended
11.5	New
12.4	Amended
12.4.6	New
12.4.7	Renumbered (formerly 12.4.6)
Appendix 1	Amended (reference to MCC 2017)
Appendix 3	Amended





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