

# CREDIT UNION HANDBOOK

## Contents

- **Introduction**
- **Glossary**
- **Legal Definitions**
- **Accounts and Audit**
- **Credit Union Services**
- **Anti-Money Laundering and Countering the Financing of Terrorism**
- **Borrowing**
- **Consumer Protection**
- **Fitness and Probity**
- **Governance**
- **Internal Audit**
- **Investments**
- **Lending**
- **Provisioning Guidelines for Credit Unions**
- **Liquidity**
- **Operational Risk**
- **Outsourcing**
- **Reserves**
- **Risk Management and Compliance**
- **Savings**
- **Strategic Plan**
- **Transfers of Engagements and Amalgamations**

**Appendix 1: Documentation required to be maintained pursuant to the 1997 Act**

**Appendix 2: Enforcement**

**Appendix 3: Appeals under the 1997 Act**

# INTRODUCTION

## Contents

<b>1. Introduction .....</b>	<b>2</b>
<b>2. Purpose of the Credit Union Handbook .....</b>	<b>3</b>
<b>3. New Regulatory Framework .....</b>	<b>3</b>
3.1 Introduction of new framework and Regulations .....	3
3.2 Governance arrangements.....	5
3.3 Nature, scale and complexity .....	5
<b>4. Scope of the Handbook .....</b>	<b>6</b>
<b>5. Structure of the Handbook .....</b>	<b>6</b>
<b>6. Contents of the Handbook .....</b>	<b>7</b>
6.1 Legislation .....	7
6.2 Central Bank Requirements.....	8
6.3 Guidance .....	8
<b>7. References to Legislation .....</b>	<b>8</b>
7.1 References to the 1997 Act and the 2012 Act.....	8
7.2 Highlighting changes to the 1997 Act made by the 2012 Act .....	9
7.3 Provisions of the 2012 Act not contained in the Handbook .....	9
<b>8. Clarifications .....</b>	<b>9</b>
<b>9. Contact details.....</b>	<b>10</b>

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	<ul style="list-style-type: none"> <li>• Re-ordered a number of sections and amended text to provide clarity.</li> <li>• Inserted Section 1 and Section 3.2.</li> </ul>
1.1	October 2013	<ul style="list-style-type: none"> <li>• Amended text in sections 1, 3.1, 6.2 and footnote 6 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.</li> </ul>
1.2	March 2014	<ul style="list-style-type: none"> <li>• Amended text in Section 1 and Section 3.1 and inserted footnotes 2 and 5 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) Order 2014.</li> </ul>
1.3	May 2015	<ul style="list-style-type: none"> <li>• Updated to reflect the new name for the Anti-Money Laundering and Countering the Financing of Terrorism chapter.</li> </ul>

Version	Date	Amendments
1.4	January 2016	<ul style="list-style-type: none"> <li>Amended text in Section 1 and Section 3.1 to reflect the introduction of Credit Union Act (Regulatory Requirements) Regulations 2016 and the commencement of the remaining sections of the Credit Union and Co-Operation with Overseas Regulators Act 2012.</li> <li>Amended text in Section 3.1 to reflect the Central Bank Reform Act 2010 (Sections 20 and 22 - Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015.</li> <li>Removed Section 6, New and Existing Requirements.</li> <li>Amended text in Section 6.2 to reflect the introduction of the Regulations.</li> </ul>
1.5	June 2018	<ul style="list-style-type: none"> <li>Amended text in Section 3.1 to reflect the introduction of additional Fitness and Probity requirements for credit unions with assets of at least €100 million</li> </ul>

## 1. Introduction

The Report of the Commission on Credit Unions,<sup>1</sup> published in April 2012, made a number of recommendations regarding the strengthening of the regulatory framework for credit unions, including more effective governance and regulatory requirements. The Commission on Credit Unions also recommended that Part 3 of the Central Bank Reform Act 2010 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.

On 24 September 2012, the Minister for Finance commenced Part 3 of the Central Bank Reform Act 2010 for credit unions. Following consultation, a new Fitness and Probity regime for credit unions came into effect on 1 August 2013 and will be fully implemented by 1 August 2016.

Many of the Commission on Credit Union's recommendations have been reflected in the Credit Union and Co-operation with Overseas Regulators Act 2012 ("the 2012 Act") which was enacted on 19 December 2012. The majority of sections of the 2012 Act have been commenced. The remaining sections of the 2012 Act commenced on 1 January 2016. These replace, amend or supplement a number of existing sections of the 1997 Act. The introduction of the new sections into the 1997 Act by the 2012 Act, in effect, removes some of the requirements (including limits) that currently exist in these sections and provide regulation making powers to the Central Bank. The new sections also contain a number of new requirements.

As some of the key prudential requirements (e.g. lending and savings limits) are removed from the 1997 Act by the commencement of the remaining sections of the 2012 Act, the Credit Union Act (Regulatory Requirements) Regulations 2016 ("the Regulations") introduced regulations at the same time as these sections of the 2012 Act were commenced

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

to ensure key prudential requirements for credit unions remained in place to continue the introduction of the strengthened regulatory framework for credit unions.

The main amendments to the 1997 Act arising from these commencements of sections of the 2012 Act are:

- section 27, relating to member savings, substituted into the 1997 Act;
- section 33, relating to borrowing, substituted into the 1997 Act;
- section 35, relating to lending, substituted into the 1997 Act;
- section 43, relating to investments, substituted into the 1997 Act;
- section 45, relating to the regulatory reserve requirement, substituted into the 1997 Act;
- section 85A and section 85B, relating to liquidity requirements, added to the 1997 Act.

The Regulations contain requirements in relation to the following areas:

- Reserves;
- Liquidity;
- Lending;
- Investments;
- Savings;
- Borrowing;
- Systems, Controls and Reporting Arrangements; and
- Services Exempt from Additional Services Requirements.

The Regulations commenced on 1 January 2016.

## **2. Purpose of the Credit Union Handbook**

In order to assist credit unions with the implementation of the new regulatory framework the Central Bank has developed a Credit Union Handbook (the "Handbook"). The purpose of the Handbook is to assist credit unions by bringing together in one place a number of legal and regulatory requirements and guidance that apply to credit unions.

## **3. New Regulatory Framework**

### **3.1 Introduction of new framework and Regulations**

The new regulatory framework combines requirements that came into effect in 2013 arising from the introduction of the Fitness and Probity regime for credit unions and the



commencement of the majority of the sections of the 2012 Act. The new regulatory framework, including the remaining sections of the 2012 Act and the Regulations, applies to all credit unions.

The main changes in the regulatory framework are:

**1 August 2013<sup>2</sup>**

- Introduction of Fitness and Probity requirements for credit unions with assets greater than €10 million – see Chapter on “Fitness and Probity”;
- Administrative Sanctions Procedure – see Appendix 2; and
- Appeals to IFSAT – see Appendix 3 (also relevant to Appendix 2 and the Chapter on “Fitness and Probity”).

**1 October 2013**

- Introduction of Revised ‘[Section 35 Regulatory Requirements for Credit Unions](#)’ (previously issued in November 2010).

**11 October 2013<sup>3</sup>**

- Majority of governance and prudential requirements inserted into the 1997 Act by the 2012 Act.

**3 March 2014<sup>4</sup>**

- New section 53, relating to the board of directors, substituted into the 1997 Act;
- Introduction of requirement for credit unions to submit an annual compliance statement to the Central Bank; and
- Requirement for board oversight committee to report to the members at the AGM.

**1 August 2015**

- Introduction of Fitness and Probity requirements for credit unions with total assets of €10 million or less – See Chapter on “Fitness and Probity”; and
- Introduction of Fitness and Probity requirements for credit unions also authorised as retail intermediaries for the part of the business that the credit union undertakes as a retail intermediary – See Chapter on “Fitness and Probity”.

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<sup>2</sup> The Commencement Order for provisions of the 2012 Act commenced on 1 August 2013 is available [here](#).

<sup>3</sup> The Commencement Order for provisions of the 2012 Act commenced on 11 October 2013 is available [here](#).

<sup>4</sup> The Commencement Order for provisions of the 2012 Act commenced on 3 March 2014 is available [here](#).

**1 January 2016<sup>5</sup>**

Commencement of the remaining sections of the 2012 Act and introduction of the Regulations in the following areas:

- Reserves;
- Liquidity;
- Lending;
- Investments;
- Savings;
- Borrowing;
- Systems, Controls and Reporting Arrangements; and
- Services Exempt from Additional Services Requirements.

**1 July 2018**

- Introduction of additional Fitness and Probity requirements for credit unions with assets of at least €100 million – see Chapter on “Fitness and Probity”.

**3.2 Governance arrangements**

The Handbook includes Chapters containing both governance and prudential requirements applying to credit unions. The Chapter on “Governance” sets out a framework to improve governance standards in credit unions with a particular focus at board of directors and management level. At the core of this framework is a separation between executive or operational roles and non-executive or governance roles. The executive or operational roles are performed by the manager, the management team, staff and voluntary assistants. The non-executive or governance roles are performed by the board of directors. The Chapter on “Governance” also deals with the governance arrangements, organisational structure and resources required to meet governance requirements.

**3.3 Nature, scale and complexity**

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

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<sup>5</sup>The Commencement Order for the remaining provisions of the 2012 Act is available [here](#).

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

- level of oversight;
- extent of skills and expertise; and
- details of policies and procedures, processes, practices, systems, controls and reporting arrangements required by credit unions in these areas.

## **4. Scope of the Handbook**

The scope of the Handbook includes legal and regulatory requirements<sup>6</sup> and guidance that apply to credit unions arising from their authorisation as credit unions. The Handbook makes reference to the following legislation:

- Credit Union Act, 1997;<sup>7</sup>
- Central Bank Reform Act 2010;
- Credit Union Act 1997 (Regulatory Requirements) Regulations 2016;
- European Communities (Consumer Credit Agreements) Regulations 2010;
- European Communities (Payment Services) Regulations 2009; and
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

This legislation applies to credit unions arising from their registration as credit unions, or by virtue of the nature of their business, where compliance with this legislation is supervised by the Central Bank. Legal and regulatory requirements and guidance that apply to credit unions arising out of any other authorisation (such as authorisation as a retail intermediary<sup>8</sup>) are not within the scope of the Handbook, with the exception of the Chapter on “Fitness and Probity” which contains details on the fitness and probity regime for credit unions that are also authorised as retail intermediaries for the part of the business that the credit union undertakes as a retail intermediary.

## **5. Structure of the Handbook**

The Handbook contains the following Chapters and appendices:

- Introduction
- Glossary
- Legal Definitions

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<sup>6</sup>“Legal and regulatory requirements” refers to requirements contained in primary Legislation and Regulations, compliance with which is supervised by the Central Bank, and requirements contained in Regulations, Codes or Standards issued by the Central Bank.

<sup>7</sup> Including the new regulatory requirements contained in the Credit Union Act, 1997 as amended by the 2012 Act.

<sup>8</sup> Credit unions authorised as retail intermediaries are credit unions that also hold an authorisation pursuant to the Investment Intermediaries Act, 1995 and/or the European Communities (Insurance Mediation) Regulations 2005.

- Accounts and Audit
- Additional Services
- Anti-Money Laundering
- Borrowing
- Consumer Protection
- Fitness and Probity
- Governance
- Internal Audit
- Investments
- Lending
- Liquidity
- Operational Risk
- Outsourcing
- Reserves
- Risk Management and Compliance
- Savings
- Strategic Plan
- Transfers of Engagements and Amalgamations

Appendix 1: Documentation required to be maintained pursuant to the 1997 Act

Appendix 2: Enforcement

Appendix 3: Appeals under the 1997 Act

## **6. Contents of the Handbook**

The Chapters in the Handbook contain legal and regulatory requirements, regulations and also include guidance, where appropriate.

### **6.1 Legislation**

Sections on Legislation contain:

- provisions of the 1997 Act;
- references to other primary legislation<sup>9</sup> supervised by the Central Bank that apply to credit unions and other regulated financial services providers; and
- references to Regulations<sup>10</sup> that apply to other entities in addition to credit unions, other than Regulations issued by the Central Bank.

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<sup>9</sup> The references to other primary legislation in the Handbook are references to the legislation as enacted and may have been amended since enactment. Credit unions should ensure that they are aware of, and comply with, legislation as amended since enactment.

<sup>10</sup> The references to Regulations in the Handbook are references to the Regulations as enacted and may have been amended since enactment. Credit unions should ensure that they are aware of, and comply with, Regulations as amended since enactment.

Provisions of the 1997 Act are set out in a shaded grey box.

## 6.2 Central Bank Requirements

Sections on Central Bank Requirements contain Regulations, Codes, Standards or requirements issued by the Central Bank that apply to credit unions. These include the Regulations which were introduced on 1 January 2016. The Regulations cover the following areas:

- Reserves;
- Liquidity;
- Lending;
- Investments;
- Savings;
- Borrowing;
- Systems, Controls and Reporting Arrangements; and
- Services Exempt from Additional Services Requirements.

## 6.3 Guidance

Sections on guidance contain guidance issued by the Central Bank.<sup>11</sup> The purpose of guidance is to assist credit unions by setting out the Central Bank's expectations on how credit unions should meet legal and regulatory requirements.

A glossary of terms used throughout the Handbook is provided in the Chapter entitled "Glossary" including terms used in this Chapter. This Chapter also contains an index of the legislative provisions referenced in the Handbook. The Chapter entitled "Legal Definitions" sets out the legal definitions contained in section 2 of the 1997 Act and regulation 3 of the Regulations and should be read in conjunction with the Chapters of the Handbook that contain legal and regulatory requirements from the 1997 Act and the Regulations.

The Chapters of the Handbook are set out in alphabetical order for ease of reference.

## 7. References to Legislation

### 7.1 References to the 1997 Act and the 2012 Act

The 2012 Act makes significant amendments to the 1997 Act. Part 2 of the 2012 Act inserts or substitutes a number of sections into the 1997 Act. Schedule 1 of the 2012 Act inserts,

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<sup>11</sup> The Chapter on "Anti-Money Laundering" refers to guidance issued by the Department of Finance.

substitutes or deletes certain sections/subsections of the 1997 Act. Where sections are set out in the shaded grey boxes of the Handbook, these relate to sections of the 1997 Act including sections or subsections as inserted or substituted by the 2012 Act.

## **7.2 Highlighting changes to the 1997 Act made by the 2012 Act**

Where a provision of the 1997 Act has been inserted or substituted by the 2012 Act, this has been specified in the Handbook as follows:

\* indicates that the provision has been inserted or substituted by Part 2 of the 2012 Act.

‡ indicates that the section/subsection has been inserted or substituted by Schedule 1 of the 2012 Act.

## **7.3 Provisions of the 2012 Act not contained in the Handbook**

Credit unions must also be aware of other provisions of the 2012 Act which are standalone provisions and do not amend the 1997 Act including, Parts 1 (Preliminary and General), 3 (Restructuring) and 4 (Stabilisation) of the 2012 Act. These provisions are outside the scope of the Handbook.

## **8. Clarifications**

The Handbook is not intended to be comprehensive nor to replace or override any legal and regulatory requirements. The Handbook should be read in conjunction with the 1997 Act and other financial services legislation<sup>12</sup> ("the Legislation") and any Regulation, Code or other legal instrument as the Central Bank may issue from time to time.

The information contained in the Handbook is derived from but does not replicate in full or replace the relevant legal and regulatory requirements of the Legislation.

Credit unions must ensure they comply with all requirements of the Legislation. In the event of a discrepancy between the Handbook and the Legislation, the Legislation will apply.

Credit unions should also be aware of other statutory obligations not included in the Handbook, for example, the Data Protection Act, 1988.

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<sup>12</sup> As defined in Section 2(1) of the 1997 Act.

**Introduction****Publication Date: June 2018**

The Handbook is for information purposes only. This document does not constitute legal advice and any guidance provided in the Handbook should not be construed as legal advice or legal interpretation. Guidance does not constitute secondary legislation and credit unions must always refer directly to the Legislation and any regulation, code or other legal instrument as the Central Bank may issue from time to time when ascertaining their statutory obligations. Guidance is not intended to be exhaustive or to set the limits for the steps to be taken to meet statutory obligations. It is a matter for credit unions to seek legal advice regarding the application of relevant legislation to their particular set of circumstances.

Where lists of matters to be covered by credit unions in meeting legal and regulatory requirements and guidance are provided in the Handbook, these lists represent the minimum matters to be covered and should not take the place of a credit union performing its own assessment of the manner in which it shall comply with its statutory obligations.

Where there is a reference to a "report" (including reports on deviations), "review" or "update" in the Handbook, these reports, reviews and updates should be documented in writing.

Nothing in the Handbook should be read as providing an express or implied assurance that the Central Bank would defer or refrain from using its enforcement powers where a suspected breach of legislation comes to its attention.

## **9. Contact details**

Where credit unions have queries relating to Chapters of the Handbook they should contact the Registry of Credit Unions at [rcu@centralbank.ie](mailto:rcu@centralbank.ie) unless the query relates to Anti Money Laundering or Consumer Protection.

Further information in relation to anti-money laundering and consumer protection can be found in the Chapter on "Anti-Money Laundering" and the Chapter on "Consumer Protection" respectively which include links to the relevant sections of the Central Bank website.

# GLOSSARY

## Contents

<b>1. Introduction .....</b>	<b>2</b>
<b>2. Abbreviation of Terms .....</b>	<b>2</b>
<b>3. Index of Legislative Provisions .....</b>	<b>3</b>

## Version History

<b>Version</b>	<b>Date</b>	<b>Amendments</b>
0.1	July 2013	Initial Version.
1.0	September 2013	Inserted index of legislative provisions.
1.1	January 2016	Updated to reflect the commencement of the remaining sections of the Credit Union and Co-operation with Overseas Regulators Act 2012 and the introduction of the Credit Union Act (Regulatory Requirements) 2016 Regulations.



## 1. Introduction

This Chapter contains the following sections:

- Abbreviation of terms
- Index of legislative provisions

## 2. Abbreviation of Terms

The following terms are used throughout the Credit Union Handbook. It is important that this glossary is distinguished from the list of legal definitions contained in the Chapter on "Legal Definitions".

- |                                |  |
|--------------------------------|--|
| • 1997 Act                     | Credit Union Act, 1997   |
| • 2012 Act                     | Credit Union and Co-operation with Overseas Regulators Act 2012                      |
| • The Regulations              | Credit Union Act 1997 (Regulatory Requirements) 2016 Regulations S.I. No. 1 of 2016. |
| • AGM                          | Annual General Meeting   |
| • Central Bank                 | Central Bank of Ireland  |
| • Handbook                     | Credit Union Handbook  |
| • IFSAT                        | Irish Financial Services Appeals Tribunal  |
| • Payment Services Regulations | European Communities (Payment Services) Regulations 2009 - S.I. No. 383 of 2009      |
| • RCU                          | Registry of Credit Unions  |
| • SGM                          | Special General Meeting  |

### 3. Index of Legislative Provisions

The index sets out the provisions of the 1997 Act, the 2012 Act and statutory instruments that are included in the Handbook along with the Chapters where each provision appears. Where a provision is re-produced in more than one Chapter, this is indicated in the Index, for example, section 66A is re-produced in both the Chapter on "Governance" and the Chapter on "Risk Management and Compliance"

#### Provisions of the 1997 Act

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 2	6	Legal Definitions	2
section 8(4)		Appendix 3 – Appeals under the 1997 Act	1
section 11(3)		Appendix 3 – Appeals under the 1997 Act	2
section 14(5A)		Appendix 3 – Appeals under the 1997 Act	2
section 27	8	Savings	2
section 27A	9	Governance	5
section 28	Schedule 1, Item 9	Savings	3
section 29		Savings	3
section 30	Schedule 1, Item 10	Savings	4
section 31	Schedule 1, Items 11 - 12	Savings	5
section 32	Schedule 1, Item 13	Savings	5

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 33	10	Borrowing	2
section 35	11	Lending	2
section 36	Schedule 1, Items 14 - 17	Lending	5
section 37	Schedule 1, Items 18 - 19	Lending	6
section 37A	Schedule 1, Item 20	Consumer Protection	2
section 37B	Schedule 1, Item 21	Consumer Protection	3
section 37C	Schedule 1, Items 22 - 24	Consumer Protection	4
section 37D	Schedule 1, Item 25	Consumer Protection	5
section 37E	Schedule 1, Item 26	Consumer Protection	6
section 38	Schedule 1, Item 28	Lending	6
section 43	12	Investments	2
section 44	Schedule 1, Item 31	Investments	4
section 45	13	Reserves	2
section 47	Schedule 1, Items 33 - 35	Operational Risk	2
section 48	Schedule 1, Items 36 - 40	Additional Services	2

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 49	Schedule 1, Items 41 – 43	Additional Services	4
section 50		Additional Services	6
section 51		Additional Services	7
section 52	14	Appendix 3 – Appeals under the 1997 Act	1
section 53	15(1)	Governance	15, 16, 19
section 54	16	Governance	30
section 55	17	Governance	20, 21, 22
section 55(8)		Internal Audit	3
section 55(1)(o)(v)&(vi)		Investments	5
section 55(1)(o)(i)		Lending	7
section 55(1)(o)(iii)&(xiii)		Liquidity	5
section 55(1)(o)(x) - (xii)		Operational Risk	8, 15, 22
section 55(i)(o)(xiv)		Outsourcing	6
section 55(1)(o)(iv)		Reserves	5
section 55(1)(l), 55(1)(o)(xv), 55(3), 55(1)(e)&(h) 55(1)(m)&(o)		Risk Management and Compliance	2, 11, 14, 17
section 55(1)(o)(ii)		Savings	7
section 55(1)(a) - (c)&(k)		Strategic Plan	3
section 55A	18	Governance	32, 34

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 56	Schedule 1, Item 44	Governance	54
section 56A	19	Governance	39, 41, 42, 43
section 56B	20	Governance	35, 36, 37, 39
section 57	Schedule 1, Items 45 – 46	Governance	57
section 63	Schedule 1, Items 48 – 51	Governance	31
section 63A	21	Governance	55
		Risk Management and Compliance	14
		Strategic Plan	3
section 65	22	Governance	29
section 66	23	Governance	53
section 66A	24	Governance	5
		Risk Management and Compliance	14
section 66B	24	Governance	6
section 66C	24	Governance	8
section 67	Schedule 1, Item 53	Governance	44
section 68	Schedule 1, Items 54 - 56	Governance	6
section 69	25	Governance	58, 59
section 70	Schedule 1, Item 57	Governance	62
section 71	Schedule 1, Items 58 – 60	Governance	63

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 72	Schedule 1, Items 61 - 62	Governance	18
section 74	Schedule 1, Items 64 - 67	Governance	64
section 75	Schedule 1, Items 68 - 70	Governance	65
section 76	Schedule 1, Item 71	Governance	67
section 76A	26	Strategic Plan	2
section 76B	26	Risk Management and Compliance	2, 15
section 76C	26	Risk Management and Compliance	11
section 76D	26	Risk Management and Compliance	17
section 76E	26	Operational Risk	2
section 76F	26	Operational Risk	13
section 76G	26	Operational Risk	16
section 76H	26	Operational Risk	18
section 76I	26	Operational Risk	7
section 76J	26	Outsourcing	2
section 76K	26	Internal Audit	2
section 76L	27	Governance	45
section 76M	27	Governance	46
section 76N	27	Governance	46

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 76O	27	Governance	48, 49
section 76P	27	Governance	50
section 76Q	27	Governance	50
section 76R	27	Governance	51
section 85	30, Schedule 1, Item 76	Liquidity Reserves	2 4
Section 85A	30	Liquidity	3
Section 85B	30	Liquidity	4
section 96(2)	Schedule 1, Item 93	Appendix 3 – Appeals under the 1997 Act	2
section 97(2) – 97(6)		Transfers of Engagements and Amalgamations	7
section 99		Appendix 3 – Appeals under the 1997 Act	2
section 107		Accounts and Audit	2
section 108	Schedule 1, Items 95 – 96	Accounts and Audit Operational Risk	2 11
section 109	Schedule 1, Item 97	Accounts and Audit Operational Risk	4 13
section 110	Schedule 1, Item 98	Accounts and Audit	4
section 111	Schedule 1, Items 99 – 101	Accounts and Audit	5
section 112		Accounts and Audit	7

<b>Section of the 1997 Act</b>	<b>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</b>	<b>Chapter</b>	<b>Page</b>
section 113		Accounts and Audit	7
section 114	Schedule 1, Items 102 - 105	Accounts and Audit	9
section 115		Accounts and Audit	10
section 116	32	Accounts and Audit	10
section 117		Accounts and Audit	11
section 118		Accounts and Audit	13
section 119		Accounts and Audit	14
section 120	Schedule 1, Items 106 - 107	Accounts and Audit	15
section 121		Accounts and Audit	17
section 122		Accounts and Audit	17
section 123	Schedule 1, Items 108 - 109	Accounts and Audit	19
section 124		Accounts and Audit	19
section 128		Transfers of Engagements and Amalgamations	2
section 129		Transfers of Engagements and Amalgamations	3
section 130	Schedule 1, Items 110 - 112	Transfers of Engagements and Amalgamations	4



<b><i>Section of the 1997 Act</i></b>	<b><i>Provision of the 2012 Act inserting or substituting sections or subsections of the 1997 Act</i></b>	<b><i>Chapter</i></b>	<b><i>Page</i></b>
section 131		Transfers of Engagements and Amalgamations	5
section 132		Transfers of Engagements and Amalgamations	7
section 136	Schedule 1, Item 116	Transfers of Engagements and Amalgamations	8
section 186	Schedule 1, Item 140	Operational Risk	14
Third Schedule	Schedule 1, Items 145 - 146	Governance	45
Fourth Schedule		Appendix 3 – Appeals under the 1997 Act	3

## Provisions of the 2012 Act

<b>Section of the 2012 Act</b>	<b>Chapter</b>	<b>Page</b>
section 15(2)	Governance	10 (footnote 5)
section 27(2)	Governance	46

## Statutory Instruments

### S.I. No. 1 of 2016 Credit Union 1997 (Regulatory Requirements) Regulations 2016

<b>Part of Regulations</b>	<b>Chapter</b>	<b>Page</b>
Part 1 (Regulation 2)	Legal Definitions	6
Part 2 (Regulation 3-6)	Reserves	5
Part 3 (Regulation 7-10)	Liquidity	5
Part 4 (Regulation 11-24)	Lending	7
Part 5 (Regulation 25-33)	Investments	6
Part 6 (Regulation 34-38)	Savings	8
Part 7 (Regulation 39-44)	Borrowing	3
Part 8 (Regulation 45)	Risk Management and Compliance	3
Part 8 (Regulation 46) and Schedule 1	Governance	24
Part 8 (Regulation 46) and Schedule 1	Operational Risk	19

<b><i>Part of Regulations</i></b>	<b><i>Chapter</i></b>	<b><i>Page</i></b>
Part 8 (Regulation 47)	Accounts and Audit	21
Part 9 (Regulation 48) and Schedule 2	Additional Services	7

# LEGAL DEFINITIONS

## Contents

<b>1.</b>	<b>Legislation .....</b>	<b>2</b>
<b>2.</b>	<b>Regulations.....</b>	<b>7</b>
<b>3.</b>	<b>Guidance.....</b>	<b>12</b>
3.1	Definitions provided in section 2 of the 1997 Act.....	13
3.2	Definitions provided in Part 1 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 .....	13

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Amended definition of 'savings' in the Credit Union Acts 1997-2012 to reflect Department of Finance Implementation Plan.
1.1	November 2015	Amended to reflect definitions contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.
1.2	January 2016	Updated to reflect definitions contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.
1.3	April 2024	Updated to reflect definitions contained in the Credit Union Act, 1997 and the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.
1.4	September 2024	Updated to reflect the definition of 'member' contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.

# 1. Legislation

## Section 2 – Interpretation\*

(1) In the *Credit Union Acts 1997 to 2012*—

'Act of 1966' means the Credit Union Act 1966;

'Act of 2014' means the Companies Act 2014;

'Advisory Committee' means the committee established under section 180;

'amendment', in relation to the rules of a credit union, includes a new rule, and a resolution rescinding a rule, of the credit union;

'annual accounts' has the meaning given by section 111(6);

'annual general meeting' has the meaning given by section 78(1);

'annual return' means the annual return which a credit union is required by section 124 to send to the Bank;

'Bank' means the Central Bank of Ireland;

'board of directors' means the body which has general control, direction and management of a credit union and to which section 53 relates;

'board oversight committee' has the meaning given by section 76L;

'books and documents' includes accounts and records made in any manner, and 'books or documents' shall be construed accordingly;

'business continuity' and 'business continuity plan' have the meanings given to them, respectively, by section 76I;

'chair' has the meaning given by section 55A(2);

'civil partner' has the same meaning as it has in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

'cohabitant' has the same meaning as it has in the Civil Partnership and Certain Rights

and Obligations of Cohabitants Act 2010;

'common bond' means a common bond falling within section 6(3);

'company' means a company formed and registered under the Act of 2014 or an existing company within the meaning of the Act;

'compliance officer' has the meaning given by section 76D;

'contravention' includes failure to comply;

'corporate credit union' means a credit union registered pursuant to section 6(6);

'Court' means the High Court;

'credit institution' means—

- (a) a recognised bank within the meaning of the Central Bank Acts 1942 to 2011,
- (b) a trustee savings bank,
- (c) the Post Office Savings Bank, or
- (d) a building society within the meaning of the Building Societies Act 1989;

'credit union' means a society registered as such under this Act, including a society deemed to be so registered by virtue of section 5(3);

'debentures' means any debentures, debenture stock or bonds of a credit union, whether constituting a charge on the assets of the credit union or not;

'financial services legislation', where applicable to credit unions acting under any authorisation from the Bank provided for by law, means—

- (a) the designated enactments within the meaning of section 2 of the Central Bank Act 1942,
- (b) the designated statutory instruments within the meaning of section 2 of the Central Bank Act 1942, and
- (c) the Central Bank Acts 1942 to 2011 together with the statutory instruments made under those Acts;

'general meeting' means an annual general meeting or a special general meeting;

'internal audit charter' has the meaning given by section 76K(2);

'internal audit function' has the meaning given by section 76K(1);

'internal audit plan' has the meaning given by section 76K(3);

'manager', in relation to a credit union, means the individual appointed to the role of manager of the credit union under section 63A;

'management team' has the meaning given by section 55(1)(i);

'meeting', includes, where the registered rules of a credit union so allow, a meeting of delegates appointed by members;

'member of the family', in relation to any person, means that person's father, mother, grandfather, grandmother, father-in-law, mother-in-law, spouse or civil partner, cohabitant, son, daughter, grandson, granddaughter, brother, sister, half-brother, half-sister, uncle, aunt, nephew, niece, first cousin, step-son, step-daughter, step-brother, step-sister, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

'Minister' means the Minister for Finance;

'nomination committee' has the meaning given by section 56B(1);

'non-qualifying member', in relation to a credit union, has the meaning given by section 17(4);

'officer', in relation to a credit union, includes—

(a) the chair, the secretary or any other member of the board of directors, a member of a principal Committee, a member of the board oversight committee, a member of the appellate body referred to in section 37, risk management officer, compliance officer, credit officer or credit control officer of the credit union,

(b) an employee of the credit union to whom paragraph (a) does not apply, and

(c) a voluntary assistant of the credit union,

but does not include an auditor appointed by the credit union in accordance with the requirements of this Act;

'operational risk' has the meaning given by section 76E(1);

'organisation meeting' has the meaning given by section 77(1);

'pass book' includes any type of written statement of account;

'persons claiming through a member' includes the executors or administrators and assignees of a member and, where nomination is allowed, the member's nominee;

'prescribe' means—

(a) in relation to the Minister, prescribed by regulations made by the Minister under section 182, and

(b) in relation to the Bank, prescribed by regulations made by the Bank under section 182A;

'principal Committee', in relation to a credit union, means a credit committee, credit control committee or membership committee;

'public body' means—

(a) a Department of State,

(b) an entity established by or under any enactment (other than the Act of 2014 or former enactment relating to companies within the meaning of section 5 of that Act),

(c) any other entity established (other than under the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act) or appointed by the Government or a Minister of the Government, including an entity established (other than under the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act) by a Minister of the Government under any scheme,

(d) a company a majority of the shares in which are held by or on behalf of a Minister of the Government,

(e) a subsidiary of a company to which paragraph (d) relates, or



(f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entry to which paragraph (b), (c), (d) or (e) relates;

'register' means the register maintained under section 8(5);

'registered' means for the time being entered in the register and 'registration' shall be construed accordingly;

'regulatory directions' has the meaning given by section 87(3);

'restructuring proposal' has the meaning given by *section 45(1) of the Credit Union and Co-operation with Overseas Regulators Act 2012*;

'risk management officer' has the meaning given by section 76C(1);

'risk management system' has the meaning given by section 76B(1);

'savings', in relation to a credit union, has the meaning given by section 27(1);

'share', in relation to a credit union, means each sum of one euro standing to the credit of a member of that credit union in respect of shares in the register of members required by this Act to be kept by that credit union;

'special general meeting' shall be construed in accordance with section 79;

'special resolution' means a resolution which is passed by a majority of not less than three quarters of such members of a credit union present and voting and who are for the time being entitled to vote in person at any general meeting of which notice, specifying the intention to propose the resolution, has been duly given according to the rules of the credit union;

'strategic objectives' has the meaning given by section 76A(1);

'strategic plan' has the meaning given by section 76A(1);

'subsidiary' has the same meaning as it has in the Act of 2014;

'voluntary assistant', in relation to a credit union, means a member of the credit union who, although not a remunerated employee of the credit union, is engaged in any way in

the operation of the credit union.

- (2) Any reference in this Act to a member present at a meeting means, in the case of a member which is not a natural person, being represented at the meeting by a representative, as mentioned in *section 82(4)*.
- (3) In this Act a reference to a Part, section or Schedule is to a Part, section or Schedule of or to this Act, unless it is indicated that reference to some other enactment is intended.
- (4) In this Act a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
- (5) In this Act a reference to an enactment includes a reference to that enactment as amended by or under any enactment, including this Act.

## 2. Regulations

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

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

#### **Interpretation**

2. (1) In these Regulations, unless the context otherwise requires: -

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

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

“assets” means the total assets referred to in section 85A of the Act;

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

to any other liability of that credit institution; "the Bank" means the Central Bank of Ireland;

"business day" means a day upon which a credit union is open to conduct all or part of its activities;

[...]

[...]

"business loan" means a loan other than a community loan, that is made to –

- (a) a member of the credit union that is an approved housing body, or
- (b) a member, or where there is more than one member, at least one of those members, that satisfies the following conditions:
  - (i) the loan is made for purposes of the person's trade, business or profession;
  - (ii) the person is a micro, small or medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC;
  - (iii) the loan is not made for the purpose of financing, in whole or in part, the purchase, construction or refinancing of buildings or the purchase or refinancing of land that the person intends to rent to a third party in order to generate income.

"Commission Recommendation 2003/361/EC" means the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises\*;

"community loan" means a loan to a community or voluntary organisation which is established for the express purpose of furthering the social, economic or environmental well-being of individuals within the common bond of the credit union in any of the following areas -

- (a) sport and recreation;
- (b) culture and heritage;
- (c) the arts (within the meaning of the Arts Act 2003);
- (d) health of the community;

(e) youth, welfare and amenities; and

(f) natural environment;

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

(a) a bond issued by a credit institution;

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

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

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

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

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

“EEA” means the European Economic Area;

“final repayment date” means the date on which the loan is due to expire, as indicated on the relevant credit agreement in accordance with section 37C(1)(j) of the Act or any subsequent date agreed between the credit union and the member to whom the loan has been made;

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

“house” means any building or part of a building that does not have a commercial use as its primary purpose and is used or suitable for use as a dwelling and any outhouse, yard, garden or other land appurtenant thereto or usually enjoyed therewith;

“house loan” means a loan made to a member secured by property for the purpose of enabling the member to:

- a) have a house constructed on the property as their principal residence;
- b) improve or renovate a house on the property that is already used as their principal residence,
- c) buy a house that is already constructed on the property for use as their principal residence, or
- d) refinance a loan previously provided for one of the purposes specified in (a), (b) or (c) for the same purpose;

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

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

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

“member” includes a person in respect of whom services are being offered or provided by a credit union –

(a) as part of an agreement referred to in section 35(2)(c) of the Act; or

(b) pursuant to the receipt of a referral from another credit union in accordance with section 51A of the Act;

“member of the family” means in relation to any person, that person’s father, mother, spouse or civil partner, cohabitant, son, daughter, brother, or sister;

“minimum reserve deposit account” means an account that a credit union must hold with the Bank in accordance with the minimum reserve requirement regulation;

“minimum reserve requirement regulation” means Regulation (EC) No. 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9)<sup>+++</sup>, as amended from time to time;

“personal loan” means a loan to a natural person, once the loan is for purposes unrelated to the person’s trade, business, profession or the purchase of

property;

"Personal Retirement Savings Account", "PRSA" and "PRSA Provider" each have the same meaning as in Part X of the Pensions Act 1990;

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

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

"related company" means companies related within the meaning of section 2(1) of the Companies Act 2014;

"related party" means -

- (a) a member of the board of directors or the management team of a credit union;
- (b) a member of the family of a member of the board of directors or the management team of a credit union; or
- (c) a business in which a member of the board of directors or the management team of a credit union has a significant shareholding;

"secured loan" means a loan that is secured by a mortgage, charge, assignment, pledge, lien, or other encumbrance in or over any asset or property, but shall not include unsecured guarantees by third parties;

"significant shareholding" means 10 per cent or more of the shares or voting rights in the business;

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

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

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

Bodies in Ireland;

“total realised reserves” means the regulatory reserves of the credit union held in accordance with, and for the purposes of, Part 2 of these Regulations and section 45 of the Act, plus any other realised reserves held by the credit union;

“total savings” means, in respect of a member, those savings referred to in section 27(1) of the Act and any other amounts held by a credit union;

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

“unattached savings” means those total savings which are not attached to loans or otherwise pledged as security and are withdrawable by members.

“unsecured loan” means a loan that is not a secured loan.

(2) A word or expression used in these Regulations and also used in the Act has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Act.

<sup>+</sup> OJ No. L124, 20.5.2003, p.36

<sup>++</sup> OJ No. L302, 17.11.2009, p. 1

<sup>+++</sup> Official Journal L 250, 02/10/2003 P. 0010 – 0016

<sup>++++</sup> OJ No. L302, 17.11.2009, p. 1

<sup>+++++</sup> OJ No. L302, 17.11.2009, p. 32

### 3. Guidance

This Chapter sets out the definitions of terms provided in:

- section 2 of the 1997 Act; and
- Part 1 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.

**3.1 Definitions provided in section 2 of the 1997 Act**

The definitions in section 2 of the 1997 Act apply to terms wherever they occur in the 1997 Act. In addition, such definitions also apply where they appear generally in the Credit Union Acts 1997 to 2012 (which encompasses the 2012 Act in addition to the 1997 Act) unless otherwise stated. While the majority of definitions contained in the 1997 Act are provided in section 2 of the 1997 Act, a definition that applies to a term used only in a specific section or Part of the 1997 Act may not be defined in section 2 of the 1997 Act but may be defined in the section or Part where it is used. For example, “systems and controls” is defined in section 76B(1) of the 1997 Act which relates to risk management systems and systems and control.

**3.2 Definitions provided in Part 1 of the Credit Union Act 1997  
(Regulatory Requirements) Regulations 2016**

The definitions in Part 1 of the Regulations apply to terms wherever they occur in the Regulations.



# ACCOUNTS AND AUDIT

## Contents

<b>1.</b>	<b>Legislation</b> .....	<b>2</b>
<b>2.</b>	<b>Regulations</b> .....	<b>21</b>
<b>3.</b>	<b>Guidance</b> .....	<b>23</b>
3.1	Accounting Policies.....	23
3.2	Valuation of Investments .....	24
3.3	Investment Income Recognition.....	24
3.4	Analysis of Investment Income in the Income and Expenditure Account.....	25
3.5	Reporting and Disclosures in the AnnualAccounts .....	25
3.6	Auditor Rotation .....	25

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	September 2014	<ul style="list-style-type: none"> <li>• Inserted 2014 year-end circulars for credit unions and credit union auditors and links to these circulars.</li> <li>• Amended text in section 114(1), in Section 1 of the Chapter, as item 102 of schedule 1 to the 2012 Act has not yet commenced.</li> </ul>
1.2	November 2015	<ul style="list-style-type: none"> <li>• Inserted regulations in Section 2.</li> <li>• Amended section 114 (1) to reflect the commencement of item 102 of schedule 1 of the 2012 Act.</li> </ul>
1.3	January 2016	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2.</li> </ul>
1.4	September 2016	<ul style="list-style-type: none"> <li>• Amended text in Section 3.5.</li> </ul>
1.5	April 2017	<ul style="list-style-type: none"> <li>• Added new Section 3.6.</li> </ul>
1.6	March 2018	<ul style="list-style-type: none"> <li>• Amended text in Section 3.6</li> </ul>
1.7	March 2019	<ul style="list-style-type: none"> <li>• Amended text in Section 3</li> </ul>
1.8	April 2024	<ul style="list-style-type: none"> <li>• Amended text in section 111(4)(c) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> </ul>

## 1. Legislation

### Section 107 – Financial year of a credit union

- (1) Subject to *subsections (2) and (3)*, the financial year of a credit union shall be the period of 12 months ending on the 30th day of September or such other date as the Bank may determine.
- (2) The initial financial year of a credit union shall be such period as begins on the date on which the credit union is registered and expires on the following 30th September or on such other date as the Bank may have determined before the 30th September.
- (3) The final financial year of a credit union shall be that period (of less than 12 months) which expires on the date to which the credit union makes up its final accounts and begins on the day following the end of the preceding financial year (as determined under *subsection (1) or subsection(2)*).

### Section 108 – Accounting records etc.

- (1) Every credit union shall—
  - (a) cause proper accounting records, whether in the form of documents or otherwise, to be kept on a continuous and consistent basis, that is to say, the entries shall be made in a timely manner and be consistent from one year to the next, and
  - (b) establish and maintain systems of control of its business and records,in accordance with this section and *section 109*.
- (2) The accounting records of a credit union shall be such as—
  - (a) correctly to record and explain the transactions of the credit union;
  - (b) to disclose, with reasonable accuracy and promptness, the financial position of the credit union at any time;
  - (c) to enable the officers properly to discharge the duties imposed on them by or under this Act;

- (d) to enable the credit union properly to discharge the duties imposed on it by or under this Act; and
- (e) to enable the accounts of the credit union to be readily and properly audited.
- (3) Without prejudice to the generality of *subsections (1) and (2)*, accounting records kept pursuant to this section shall contain—
- (a) entries from day to day of all sums of money received and expended by the credit union and the matters in respect of which the receipt and expenditure take place;
- (b) a record of the assets and liabilities of the credit union and entries from day to day of every transaction entered into by the credit union which will or may give rise to liabilities or assets of the credit union; and
- (c) in respect of the provision of services, whether under *section 48* or otherwise, a record of the services provided and all transactions relating to them.
- (4) For the purposes of *subsection (1)* proper accounting records shall be deemed to be kept if they comply with *subsections (2) and (3)* and give a true and fair view of the state of affairs of the credit union and explain its transactions.
- (5) The accounting records of a credit union—
- (a) shall be kept at the registered office of the credit union or at such other place in the State as the board of directors think fit; and
- (b) † shall at all reasonable times be open to inspection by the members of the board of directors and the board oversight committee.
- (6) Every record required to be kept under this section shall be preserved by the credit union for not less than six years from the latest date to which it relates
- (7) † Where the accounting records of the credit union are kept at a place other than the registered office of the credit union, the chair shall have responsibility for ensuring that a written record of their location is kept.

- (8) Where a credit union conducts its business in more than one place, the board of directors shall ensure that such accounting records are kept and such systems of control are established and maintained for each of those places as will enable the credit union to comply with this section and *section 109*.
- (9) A credit union shall take adequate precautions to ensure the safe keeping of the accounting records of the credit union no matter what form they may take.

### **Section 109 – Systems of control and safe custody**

- (1) The systems of control which are to be established and maintained by a credit union pursuant to *section 108 (1)* are systems for the control of the conduct of its business as required by or under this Act and in accordance with the decisions of the board of directors and for the control of the accounting and other records of its business.
- (2) Without prejudice to the generality of *section 108 (1)*, the systems of control must be such as to secure that the credit union's business is so conducted and its records so kept that—
- (a) the information necessary to enable the officers, the credit union and the auditor to discharge their functions is sufficiently accurate, and is available with sufficient regularity and with sufficient promptness for those purposes, and
- (b) † the information obtained by or furnished to the Bank is sufficiently accurate for the purposes for which it is obtained or furnished and is available as and when required by the Bank.
- (3) Every credit union shall establish and maintain a system to ensure the safe custody of all documents of title belonging to the credit union.

### **Section 110 – Accounting principles**

- (1) Subject to *subsection (2)*, the amounts to be included in the accounts of a credit union in respect of items shown shall be determined in accordance with the following principles—
- (a) the credit union shall be presumed to be carrying on business as a going concern;

- (b) accounting policies shall be applied consistently from one financial year to the next;
- (c) the amount of any item in the accounts shall be determined on a prudent basis and in particular—
- (i) only surpluses realised at the balance sheet date shall be included in the income and expenditure account, and
  - (ii) all liabilities and losses which have arisen or are likely to arise in respect of the financial year to which the accounts relate, or the previous financial year, shall be taken into account, including those liabilities and losses which only become apparent between the balance sheet date and the date on which the accounts are signed in pursuance of *section 111*;
- (d) † all income and charges relating to the financial year to which the accounts relate shall be taken into account without regard to the date of receipt or payment;
- (e) † in determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately; and
- (f) † in determining how amounts are presented within items in the income and expenditure account and balance sheet, the directors of a credit union shall have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice.
- (2) If it appears to the directors of a credit union that there are special reasons for departing from any of the principles specified in *subsection (1)*, they may so depart, but particulars of the departure, the reasons for it and its effect on the balance sheet and income and expenditure account shall be stated in a note to the accounts, for the financial year concerned, of the credit union.

**Section 111 – Annual accounts**

- (1) † The directors of a credit union shall prepare or cause to be prepared, with respect to each financial year—

- (a) an income and expenditure account giving a true and fair view of the credit union's income and expenditure for that year,
- (b) a balance sheet giving a true and fair view of the state of its affairs as at the end of that year, and
- (c) any statement required by the body of accountants (referred to in *section 114 (1)(a)*) of which the auditor is a member to be included with the annual accounts so that the annual accounts together with the statement or statements give such a true and fair view as is referred to in *paragraph (a)* or, as the case may be, *paragraph (b)*,

and each of these shall be in such form and shall contain such particulars as the Bank may prescribe.

- (2) Unless the Bank otherwise allows, for each financial year, the income and expenditure account, the balance sheet and the statement or statements referred to in *subsection (1)(c)* shall, where applicable, include corresponding particulars for the preceding financial year.
- (3) The annual accounts shall also contain such supplementary information as is required by or under this Act.
- (4) A credit union shall not publish, for any financial year, any income and expenditure account, balance sheet or statement unless—
  - (a) it has been previously audited by the auditor last appointed to audit the annual accounts of the credit union, and
  - (b) it incorporates a report by the auditor stating whether in his opinion it complies with *paragraph (a)* or *paragraph (b)* of *subsection (1)*, whichever is applicable in that case, and
  - (c) ‡ it has been signed by the manager of the credit union and by a member of the board of directors acting on behalf of the board.
- (5) ‡ If, in relation to any income and expenditure account or balance sheet of a credit union for a financial year, a member of the board of directors fails to take all

reasonable steps to secure compliance with the provision of subsection (1) which is applicable in that case, the member shall be guilty of an offence and liable on summary conviction to a class C fine unless the member proves that there were reasonable grounds for the member to believe that a competent and reliable person was charged with the duty of seeing that the relevant provision was complied with, and was in a position to discharge that duty.

- (6) The accounts prepared with respect to a credit union's financial year under this section together with the notes to them are referred to in this Act as the "annual accounts".

### **Section 112 – Balance sheet to be available to members**

- (1) Every credit union shall keep available for inspection by its members at all reasonable times—
- (a) a copy of the latest audited balance sheet of the credit union; and
  - (b) a copy of the auditor's report on that balance sheet.
- (2) Every credit union shall cause to be displayed at all times in a conspicuous position at its registered office a notice informing members of the availability of the documents referred to in *subsection (1)*.
- (3) A credit union which fails to comply with the preceding provisions of this section shall be guilty of an offence.

### **Section 113 – Obligation to appoint auditors**

- (1) At each annual general meeting a credit union shall, by a majority vote of the members present and voting, elect an auditor to hold office from the conclusion of that meeting until the next annual general meeting.
- (2) Notwithstanding any agreement between the credit union and an auditor, and without prejudice to any rights of the auditor in relation to his removal under this Act, a credit union may by resolution at a general meeting remove an auditor before the term of his office expires and may elect in his place a person—
- (a) who has been duly nominated for election;
  - (b) who is qualified under this Act to be an auditor of a credit union; and

- (c) of whose nomination due notice has been given to the members of the credit union and the Bank.
- (3) The first auditor of a credit union may be appointed by the directors at any time before the first annual general meeting; but no person shall be so appointed unless he is qualified for election as an auditor of a credit union.
- (4) Where the directors fail to exercise their power under *subsection (3)*, the first auditor may be elected by a majority vote of the members present and voting at a general meeting of the credit union and thereupon the power of the directors under *subsection (3)* shall cease.
- (5) Where, at an annual general meeting, no auditor is elected, the Bank may appoint a person who is qualified under this Act to be an auditor of a credit union to fill the vacancy and the remuneration and expenses of an auditor so appointed shall be paid out of the funds of the credit union.
- (6) A credit union shall—
- (a) within one week of the Bank's powers under *subsection (5)* becoming exercisable, give the Bank notice of that fact; and
- (b) where a resolution removing an auditor is passed, give notice of that fact to the Bank in such form as may be required by the Bank within 14 days of the meeting at which the resolution removing the auditor was passed.
- (7) The directors of a credit union may fill any casual vacancy in the office of auditor with a person who is qualified to be elected an auditor of a credit union but, while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.
- (8) The election of a firm by the name of the firm to be the auditor of a credit union shall be deemed to be an election of those persons who from time to time during the period of appointment are the partners in that firm as from time to time constituted and are qualified to be auditors of a credit union.
- (9) Where the Bank is of the opinion that it would not be in the interest of the orderly and proper regulation of the business of a credit union or in its members' interests,



it may by notice in writing order the credit union not to elect or re-elect to the office of auditor, or the directors not to fill a casual vacancy in that office with, a named person.

- (10) Where the Bank makes an order under *subsection (9)*, the credit union may appeal against the order to the Court but, subject to any direction or decision of the Court, the credit union shall comply with the order.

#### **Section 114 – Qualification for appointment as auditor**

- (1) ‡ A person shall not be qualified for election as auditor of a credit union unless the person—
- (a) is a member of a recognised accountancy body within the meaning of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (S.I. No. 220 of 2010) and holds a valid practicing certificate, or
  - (b) is otherwise for the time being authorised by the Irish Auditing and Accounting Supervisory Authority under any provision of the Companies Acts to be appointed as a public auditor.
- (2) None of the following persons shall be qualified for election as auditor of a credit union—
- (a) ‡ a person who is or, at any time during the period of three years preceding the meeting at which the election is to be made, has been an officer of the credit union;
  - (b) ‡ a parent, spouse or civil partner, brother, sister or child of an officer of the credit union; or
  - (c) ‡ a person who is a partner of, or in the employment of, or who employs, an officer of the credit union.
- (3) Any election made by a credit union in contravention of *subsection (1)* or *subsection (2)* shall not be an effective election for the purposes of this Act.
- (4) A person shall not act as auditor of a credit union at a time when he is disqualified under this Act or the Companies Acts for election or appointment to that office and,

if an auditor of a credit union becomes so disqualified during his term of office, he shall—

- (a) thereupon vacate his office; and
- (b) give immediate notice in writing to the credit union and to the Bank that he has vacated his office by reason of the disqualification.

(5) A person who contravenes *subsection (4)* shall be guilty of an offence.

### **Section 115 — Eligibility of auditor for re-election**

(1) A person who was elected (or appointed) to audit the annual accounts of a credit union for a financial year and who continues to be qualified under this Act to be an auditor of a credit union shall be eligible for re-election (or election) as auditor of the credit union for the following financial year unless—

- (a) he has given to the credit union notice in writing of his unwillingness to be re-elected (or elected); or
- (b) he is ineligible for election as auditor of the credit union for that financial year; or
- (c) he has ceased to act as auditor of the credit union by reason of incapacity; or
- (d) the Bank has made an order under *section 113 (9)* prohibiting his election or re-election as auditor of the credit union.

(2) For the purposes of *subsection (1)*, a person is ineligible for election as auditor of a credit union for a particular financial year if, at the date of the general meeting at which an auditor would be elected for that financial year, he is, by virtue of *section 114 (2)*, disqualified for election in relation to that credit union.

### **Section 116 — Removal of auditor of credit union by Bank\***

(1) Where the Bank considers it necessary in the interest—

- (a) of the members or creditors of a credit union, or

- (b) of the orderly and proper regulation of the business of a credit union, the Bank may remove from office the auditor of the credit union.
- (2) Any auditor who has been removed from office under subsection (1) may apply to the Court for an order setting aside the removal.
- (3) On an application under subsection (2), the Court may make—
- (a) an order setting aside the removal,
  - (b) an order confirming the removal, or
  - (c) such other order as may appear to the Court to be necessary.
- (4) The Bank may apply to the Court for, and the Court may grant, an order confirming the removal.
- (5) The Court may by order revoke or vary an order made by it under this section.
- (6) If, in a case where an application has been made to the Court under this section, the Court is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of any proceedings under that provision may be heard otherwise than in public.
- (7) Unless an order has been made by the Court in respect of a removal, the

**Section 117 – Resolutions relating to appointment and removal of auditors**

- (1) Subject to *subsection (2)*, a resolution at a general meeting of a credit union—
- (a) nominating for election as auditor a person other than a retiring auditor,
  - (b) providing that a retiring auditor shall not be nominated for election,
  - (c) removing an auditor before the expiration of his term of office, or
  - (d) nominating for election as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy,

shall not be effective unless notice of the intention to move it has been given to the credit union and to the Bank not less than 28 days before the meeting at which it is to be moved.

- (2) Where, after notice of the intention to move such a resolution has been given to the credit union, a general meeting of the credit union is called for a date less than 28 days after the notice has been given, the notice, although not given within the time required by *subsection (1)* shall be deemed to have been properly given for the purpose of that subsection.
- (3) Subject to *subsection (4)*, a credit union shall give its members notice of any such intended resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, it shall give them notice, the period of which has been approved by the Bank, of the intended resolution by advertisement in at least two appropriate newspapers, within the meaning of *section 80 (5)(a)*, published in the State and circulating in the area in which the credit union's registered office is situated.
- (4) A notice under *subsection (3)* shall not be given within 7 days of the date of the receipt of notice of the intended resolution under *subsection (1)*.
- (5) On receipt of notice of an intended resolution under *subsection (1)*, the credit union shall forthwith—
  - (a) if the resolution is a resolution mentioned in *paragraph (a), paragraph (b)* or *paragraph (d)* of that subsection, send a copy thereof to the retiring auditor;
  - (b) if the resolution is a resolution mentioned in *paragraph (c)* of that subsection, send a copy thereof to the auditor proposed to be removed.
- (6) Where notice is given of such an intended resolution as is mentioned in any of *paragraphs (a), (b) and (c)* of *subsection (1)* and the retiring auditor or the auditor proposed to be removed, as the case may be, makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (8)*, (unless the representations are received by it too late for it to do so)—

- (a) in any notice of the intended resolution given to members of the credit union, state the fact of the representations having been made; and
  - (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).
- (7) Subject to *subsection (8)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (6)*, the auditor concerned may require that, without prejudice to his right to be heard orally, the representations made by him shall be read out at the meeting at which the intended resolution is to be moved.
- (8) *Subsections (6) and (7)* shall not apply if, on the application either of the credit union or of any other person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by it are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (9) An auditor of a credit union who has been removed shall be entitled—
- (a) to attend the annual general meeting of the credit union at which, but for his removal, his term of office as auditor of the credit union would have expired;
  - (b) to attend the general meeting of the credit union at which it is proposed to fill the vacancy occasioned by his removal;
  - (c) to receive all notices of, and other communications relating to, any such meeting which a member of the credit union entitled to notice of the meeting is entitled to receive; and
  - (d) to be heard at any such meeting or any part of the business of the meeting which concerns him as a former auditor of the credit union.

### **Section 118 — Resignation of auditors**

- (1) An auditor of a credit union may, by a notice in writing which complies with *subsection (3)*, is served on the credit union and states his intention to do so, resign from the office of auditor to the credit union, and the resignation shall take effect

on such date as may be specified in the notice, being not less than 28 days after the notice is served.

- (2) A copy of a notice under *subsection (1)* shall be sent by the auditor to the Bank at the same time as it is served on the credit union.
- (3) A notice under *subsection (1)* shall contain either—
  - (a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of the members or creditors of the credit union; or
  - (b) a statement of any such circumstances.
- (4) Subject to *subsection (5)*, where a notice under *subsection (1)* is served on a credit union and the notice contains a statement falling within *subsection (3) (b)*, the credit union shall, not later than 14 days after the date of that service, send a copy of the notice to every person who is entitled to notice of a general meeting of the credit union.
- (5) Copies of a notice served on a credit union under *subsection (1)* need not be sent to the persons specified in *subsection (4)* if, on the application of the credit union concerned or any other person who claims to be aggrieved, the Bank is satisfied that the sending of the notice would be likely to diminish substantially public confidence in the credit union or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

#### **Section 119 – Requisitioning of general meeting and circulation of statement by resigning auditor**

- (1) A notice served on a credit union under *section 118* by a resigning auditor which contains a statement falling within *subsection (3)(b)* of that section may also requisition the convening, by the directors of the credit union, of a general meeting of the credit union for the purpose of receiving and considering such account and explanation of the circumstances connected with his resignation from the office of auditor to the credit union as the auditor may wish to give to the meeting.
- (2) Where an auditor makes a requisition under *subsection (1)*, the directors of the credit union shall, within 14 days of the service on the credit union of the notice

containing the requisition, proceed duly to convene a general meeting of the credit union for a day not more than 28 days after the service of that notice.

(3) Subject to *subsection (4)*, where—

(a) a notice served on a credit union under *section 118* contains a statement falling within *subsection (3)(b)* of that section, and

(b) the auditor concerned requests the credit union to circulate to its members—

(i) before the general meeting at which, apart from the notice, his term of office would expire, or

(ii) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened pursuant to a requisition under *subsection (1)*,

a further statement in writing prepared by the auditor of the circumstances connected with the resignation that the auditor considers should be brought to the notice of members,

the credit union shall in any notice of the meeting given to its members state the fact of the statement having been made, and send a copy of the statement to every person who is entitled to notice of a general meeting of the credit union.

(4) *Subsection (3)* need not be complied with by the credit union concerned if, on the application of either the credit union or of any other person who claims to be aggrieved, the Bank is satisfied that the sending of the statement would be likely to diminish substantially public confidence in the credit union or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) A person who has resigned from the office of auditor of a credit union shall be permitted—

(a) to attend any such meeting of the credit union as is mentioned in *subsection (3)(b)*; and

(b) to be heard at any such meeting on any part of the business which concerns him as a former auditor of the credit union;

and the credit union shall send to such a person all notices of, and other communications relating to, any such meeting that a member of the credit union who is entitled to notice of the meeting is entitled to receive.

**Section 120 – Auditor's report, right of access and to be heard**

- (1) The auditor of a credit union shall make a report to the members on the accounts examined by him, and on the annual accounts which are to be laid before the credit union at the annual general meeting during his tenure of office; and the auditor's report—
  - (a) shall be read at the annual general meeting of the credit union, and
  - (b) shall be open to inspection by any member of the credit union.
- (2) † Before signing the auditor's report, the auditor of a credit union shall meet with and report to the directors of the credit union and the members of the board oversight committee on the annual accounts and any matter relating to those accounts which the auditor considers should be drawn to their attention.
- (3) The auditor's report shall state whether—
  - (a) he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purposes of his audit;
  - (b) he is of the opinion that proper accounting records have been kept by the credit union;
  - (c) the credit union's annual accounts are in agreement with the accounting records of the credit union;
  - (d) he is of the opinion that the credit union's annual accounts have been properly prepared so as to conform with any requirements made by or under this Act and give a true and fair view—
    - (i) in the case of the balance sheet, of the credit union's state of affairs as at the end of the financial year;



(ii) in the case of the income and expenditure account, of the income and expenditure of the credit union for the financial year; and

(e) the credit union's annual accounts contain any statement required under *section 111 (1)(c)* to be included by the body of accountants concerned.

(4) Without prejudice to *subsection (3)*, where the report of the auditor relates to any accounts other than the income and expenditure account for the financial year in respect of which he is appointed, that report shall state whether those accounts give a true and fair view of any matter to which they relate.

...

(6) † Every auditor of a credit union shall have a right of access at all reasonable times to the books and documents of the credit union, and shall be entitled to require from the officers of the credit union such information and explanations that are within their knowledge or can be procured by them, as he thinks necessary for the performance of his duty as auditor.

(7) The auditor of a credit union shall be entitled—

(a) to attend any general meeting of the credit union; and

(b) to be heard at any general meeting on any part of the business which concerns him as auditor of the credit union;

and the credit union shall give its auditor the same notice of, and any other communications relating to, a general meeting that a member of the credit union is entitled to receive.

### **Section 121 – Regulations relating to accounts and audit**

Regulations under section 182 may make provision with respect to the annual accounts of credit unions and to their audit and, in particular, any such regulations may do all or any of the following:

(a) add to the documents to be comprised in the annual accounts of a credit union prepared with respect to a financial year under section 111;

- (b) make further provision as to the matters to be included in any document comprised in a credit union's annual accounts;
- (c) make further provision in relation to accounting principles and rules for the preparation of annual accounts including, if the Minister considers it necessary or desirable, adherence to particular formats of presentation.<sup>1</sup>

### **Section 122 – Auditor's duty to report to Bank**

- (1) If at any time the auditor of a credit union—
- (a) has reason to believe that there exist circumstances which are likely to affect materially the credit union's ability to fulfil its obligations to its members or meet any of its obligations under this Act,
  - (b) has reason to believe that there are material defects in the accounting records, systems of control of the business and records of the credit union,
  - (c) has reason to believe that there are material inaccuracies in or omissions from any returns made by the credit union to the Bank,
  - (d) proposes to qualify any report which he is to provide under this Act,
  - (e) has reason to believe that there are material defects in the system for ensuring the safe custody of all documents of title, deeds and accounting records of the credit union, or
- ...
- the auditor shall forthwith report the matter to the Bank in writing.
- (2) The auditor of a credit union shall, if requested by the Bank, furnish to the Bank a report stating whether in his opinion and to the best of his knowledge the credit union has or has not complied with such requirements under this Act as the Bank may have requested the auditor to furnish a report on.
- (3) The auditor of a credit union shall send to it, forthwith, a copy of any report made by him to the Bank under *subsection (1)* or *subsection (2)*.

<sup>1</sup> The Minister has not yet prescribed Regulations under this subsection.

- (4) Whenever the Bank is of the opinion that the exercise of its functions under this Act or the protection of the interests of the members of a credit union so requires, it may require the auditor of the credit union to supply it with such information as it may specify in relation to the audit of the business of the credit union.
- (5) The Bank may require that, in supplying information for the purpose of *subsection (4)*, the auditor shall act independently of the credit union.
- (6) No duty to which the auditor of a credit union may be subject shall be regarded as contravened, and no liability to the credit union, its members, creditors or other interested parties shall attach to the auditor, by reason of his compliance with any obligation imposed on him by or under this section.

### **Section 123 — Penalty for false statements etc. to auditors**

- (1) † An officer of a credit union who knowingly or recklessly makes a statement to which this section applies that is misleading, false or deceptive in a material particular shall be guilty of an offence.
- (2) This section applies to any statement made to the auditor of a credit union (whether orally or in writing) which conveys, or purports to convey, any information or explanation which he requires under this Act, or is entitled so to require, as auditor of the credit union.
- (3) † An officer of a credit union who fails to provide to the auditor of the credit union, within five days of the making of the relevant requirement (not including a Saturday, Sunday or public holiday) any information or explanation that the auditor requires as auditor of the credit union and that is within the knowledge of, or can be procured by, the officer shall be guilty of an offence.
- (4) In a prosecution for an offence under this section it shall be a defence for the defendant to show—
  - (a) that it was not reasonably possible for him to comply with the requirement under *subsection (3)* to which the offence relates within the time specified in that subsection; and
  - (b) that he complied with that requirement as soon as was reasonably possible after the expiry of that time.

**Section 124 – Annual returns**

- (1) Subject to *subsection (3)*, every credit union shall, not later than 31st March in each year, send to the Bank a return relating to its affairs for the most recent complete financial year, together with the annual accounts and a copy of the report of the auditor on the credit union's annual accounts for that financial year.
- (2) A return required by this section shall contain, with respect to the financial year to which it relates—
  - (a) the income and expenditure account prepared in accordance with *section 111 (1)(a)*;
  - (b) the balance sheet as at the end of the financial year prepared in accordance with *section 111 (1)(b)*; and
  - (c) any statement prepared in accordance with *section 111 (1)(c)*.
- (3) If the Bank is of the opinion that special circumstances exist, it may by notice in writing allow a credit union to make a return under this section up to a date other than the end of a financial year and, in that case—
  - (a) *subsection (2)* shall apply subject to such modifications as may be specified in the notice;
  - (b) the return shall be sent to the Bank not later than three months after the date to which it is to be made up; and
  - (c) the period of the next return (if any) under this section shall begin immediately after that date and end at the end of the financial year in which that date falls;and, for the purposes of *subsection (2)*, such a return as is referred to in *paragraph (c)* shall be regarded as made in respect of the financial year referred to in that paragraph.
- (4) The last return under this section by a credit union which is being dissolved by an instrument of dissolution under *section 135* shall be made up to the date of the instrument of dissolution.
- (5) Every credit union shall supply free of charge to every member of the credit union who applies for it a copy of the latest return of the credit union under this section

and shall so supply with every such copy a copy of the report of the auditor on the accounts and balance sheet contained in the return.

(6) A credit union which fails to comply with this section shall be guilty of an offence.

The following provisions of the Central Bank Act 1997 also apply to the auditor of a credit union:

- section 27B of the Central Bank Act, 1997;
- section 27G of the Central Bank Act, 1997; and
- section 27H of the Central Bank Act, 1997.

## 2. Regulations

### **CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016**

**(S.I. No. 1 of 2016)**

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

#### **Interpretation**

In these Regulations, unless the context otherwise requires:-

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

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

“related party” means -

- (a) a member of the board of directors or the management team of a credit union;

- (b) a member of the family of a member of the board of directors or the management team of a credit union; or
- (c) a business in which a member of the board of directors or the management team of a credit union has a significant shareholding;

“the Act” means the Credit Union Act, 1997;

## **PART 8**

### **SYSTEMS, CONTROLS AND REPORTING ARRANGEMENTS**

#### **Reporting and Disclosure in the Annual Accounts**

47. (1) In addition to the information required under section 111 of the Act, a credit union shall ensure that the directors of a credit union shall prepare or cause to be prepared the following supplementary information to be contained in its annual accounts:
- (a) the regulatory reserve requirement, the credit union’s regulatory reserve expressed as a percentage of total assets, the additional reserves that the credit union holds in respect of operational risk expressed as a percentage of total assets, together with the credit union’s dividend and loan interest rebate policy; and
  - (b) the total amount of loans outstanding to related parties and the loans to such persons as a percentage of the total loans outstanding.
- (2) A credit union shall separately analyse investment income and investment gains in the income and expenditure account (or notes) of the annual accounts of the credit union, as follows:-
- (a) investment income and investment gains received by the credit union at the balance sheet date;
  - (b) investment income that will be received within 12 months of the balance sheet; and
  - (c) other investment income.

### 3. Guidance

The Central Bank has issued the following circulars in relation to annual accounts:

- [Circular re Credit Union Financial Year End 30 September 2018 – Year End Approach \(September 2018\)](#)

#### 3.1 Accounting Policies

The board of directors of each credit union should adopt accounting policies that are appropriate to its circumstances for the purposes of ensuring that its income and expenditure account and balance sheet give a true and fair view. The accounting policies should be consistent with the requirements of the 1997 Act and the Regulations and in compliance with Generally Accepted Accounting Principles.

The objectives against which the board of directors of a credit union should judge the appropriateness of accounting policies to its particular circumstances are the requirements of the 1997 Act in relation to consistency and prudence.

The objective of annual accounts is to provide information about a credit union's financial performance and financial position that is useful for assessing the stewardship of the board of directors and for making business/financial decisions. Appropriate accounting policies will ensure that the financial information being presented is relevant and reliable.

Financial information should be prudently prepared. This involves the application of a degree of caution in exercising judgement and making the necessary estimates. Often there is uncertainty, either about the existence of assets, liabilities, gains or losses, or about the amount at which they should be valued. The board of directors should consider whether market conditions could give rise to a risk of material misstatement.

Appropriate accounting policies should result in financial information being presented in a way that enables its significance to be understood by the users of accounts.

## **3.2 Valuation of Investments**

The accounting policy adopted by the board of directors of a credit union for the valuation of investments should comply with the relevant sections of the 1997 Act, in particular section 110. This section requires that the amount of any item in the accounts shall be determined on a prudent basis and in particular that all liabilities and losses which have arisen or are likely to arise in the financial year to which the accounts relate, or a previous financial year, shall be taken into account including those liabilities and losses which only become apparent between the balance sheet date and the date the accounts are signed.

It is recognised that under generally accepted accounting practice there are a number of different bases available for the valuation of investments. The Central Bank is of the view that for the majority of credit unions, having regard to the nature of their operations and the requirements of the 1997 Act, the lower of cost and net realisable value will usually be the most appropriate valuation method.

Under this method the amount to be included in the balance sheet in respect of investments should be the lower of their cost or net realisable value. The amount of any write-down provided should be clearly shown in the income and expenditure account.

Where the circumstances for which any write-down for diminution in value, made in accordance with the above, cease to apply, that provision should be written back to the extent that it is no longer necessary.

Where a credit union has adopted an accounting policy on valuation of investments other than the lower of cost and net realisable value, it should discuss its accounting policy with its professional advisors in the context of this guidance in order to determine the appropriate course of action for current and future accounting periods.

Full and detailed disclosure of the accounting policy adopted for valuation of investments should be disclosed in the annual accounts.

## **3.3 Investment Income Recognition**

The accounting policy adopted by the board of directors of a credit union for the recognition of investment income should be in compliance with the relevant sections of the 1997 Act and the Regulations.



Auditors are obliged to review the financial statements prepared by the board of directors and may express an adverse or qualified opinion if they disagree with the accounting policies, the method of their application or the adequacy of the disclosures selected<sup>2</sup>.

### **3.4 Analysis of Investment Income in the Income and Expenditure Account**

Any investment income, which does not fall within the criteria set out in Regulation 31(a) or (b) should not be distributed and should be transferred to a reserve, which is designated as not eligible for distribution, for so long as those amounts do not meet these criteria.

While amounts falling within these criteria may be considered as available for distribution, any decision by the board of directors of the credit union on the actual distribution level for a particular year must be considered in the context of whether it is prudent to do so. In particular, in making an assessment on the amount of any distribution of income falling within criteria set out in Regulation 31(b) any terms or conditions attaching to the receipt of this income, such as a requirement to hold the investment until maturity before a return crystallises, must be taken into account. Where the circumstances are such that the credit union may need to breach any of the terms or conditions attaching to the particular investment, no distributions of such income should be made until the income has been received.

### **3.5 Reporting and Disclosures in the Annual Accounts**

In addition to the information required under section 111 of the 1997 Act, credit unions are required under the Regulations to disclose additional information such as: the total amount of loans outstanding to related parties and the loans to such persons as a percentage of the total loans outstanding. These disclosures should be included in supplementary information to be contained in the annual accounts.

### **3.6 Auditor Rotation**

While the 1997 Act does not contain any requirements for rotation of credit union auditors, RCU is of the view that in order to enhance the independence and objectivity of the audit process consideration should be given to appropriate levels of audit partner and audit firm rotation. The standards and regulations referred to below can inform credit unions and their auditor in this regard.

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<sup>2</sup> International Standard on Auditing (UK and Ireland) 700 "the Auditor's Report on Financial Statements issued by the Auditing Practices Board.

In June 2016, two new Regulations came into force in Ireland which make reference to rotation of audit partners and audit firms. While credit unions are not within the scope of these regulations, they can inform credit unions and their auditors in relation to auditor rotation.

### **Regulations**

- **S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU and Regulation (EU) No. 537/2014) Regulations 2016.** Under this regulation, the key audit partner responsible for carrying out a statutory audit of a public interest entity shall cease his or her participation in the statutory audit of the entity not later than 5 years from the date of his or her first appointment to carry out such audit.
- **Regulation (EU) No. 537/2014 - on specific requirements regarding statutory audit of public-interest entities.** This regulation requires that “neither the initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of 10 years.”

### **Ethical Standards**

- In January 2017<sup>3</sup> the Irish Auditing and Accounting Supervisory Authority (IAASA) issued the **Ethical Standard for Auditors (Ireland)** (the Standard) <sup>4</sup>. Section 3 of the Standard provides auditors with requirements and guidance in relation to dealing with the risks to auditor independence which may occur from long association with audit engagements and with entities relevant to audit engagements including audit partner and audit firm rotation.

Please bring the above guidance to the attention of your external auditors.

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<sup>3</sup> The Ethical Standard for Auditors (Ireland) was revised in April 2017.

<sup>4</sup> [https://www.iaasa.ie/Publications/Auditing-standards/International-Standards-on-Auditing-for-use-in-Ire/Ethical-Standard-for-Auditors-\(Ireland\)-2017](https://www.iaasa.ie/Publications/Auditing-standards/International-Standards-on-Auditing-for-use-in-Ire/Ethical-Standard-for-Auditors-(Ireland)-2017)

# CREDIT UNION SERVICES

## Contents

<b>1.</b>	<b>Legislation.....</b>	<b>2</b>
<b>2.</b>	<b>Regulations .....</b>	<b>8</b>
<b>3.</b>	<b>Guidance .....</b>	<b>17</b>
3.1	Credit Union Services.....	18
3.2	Draws.....	18

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	November 2015	<ul style="list-style-type: none"> <li>Deleted section 182(1) paragraphs (a) to (f) to reflect the commencement of item 134 of schedule 1 of the 2012 Act.</li> <li>Deleted section 182(1) paragraphs (h) and (i) to reflect the commencement of item 135 of schedule 1 of the 2012 Act.</li> <li>Inserted new regulations in Section 2.</li> </ul>
1.2	January 2016	<ul style="list-style-type: none"> <li>Updated regulations in Section 2.</li> </ul>
1.3	February 2017	<ul style="list-style-type: none"> <li>Inserted Section 3.1 to provide guidance on draws.</li> </ul>
1.4	March 2018	<ul style="list-style-type: none"> <li>Updated Section 3.1 with Thematic Review Guidance.</li> </ul>
1.5	April 2024	<ul style="list-style-type: none"> <li>Amended text in section 48(4)(a) and 48(4)(b) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Deleted text in section 48(4)(c) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> </ul>
1.6	September 2024	<ul style="list-style-type: none"> <li>Inserted Section 51A to reflect the commencement of the relevant section of the Credit Union (Amendment) Act 2023.</li> <li>Updated to reflect the definition of 'member' contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.</li> <li>Inserted Section 3.1 to provide guidance on credit union services and updated the numbering of previous section 3.1 to 3.2.</li> <li>Updated the name of the Chapter from 'Additional Services' to 'Credit Union Services'.</li> </ul>

# 1. Legislation

## Section 48 – Power to provide additional services

- (1) ‡ Subject to the following provisions of this Part, a credit union may provide, as principal or agent, additional services of a description that appears to the credit union and to the Bank, to be of mutual benefit to its members.
- (2) ‡ In this section and the following provisions of this Part 'additional services', in relation to a credit union, means any services other than those—
- (a) for which provision is made by the preceding provisions of this Part, or
- (b) which are being prescribed for the purposes of this section as being services of a description that appears to the Bank to be of mutual benefit to its members,
- and regulations made by the Bank for the purposes of paragraph (b) may make the exclusion of any services from being additional services conditional on compliance with such conditions as may be prescribed by the Bank.
- (3) Nothing in this section or the following provisions of this Part affects the operation of any enactment which is not contained in this Act and which, in whole or in part, relates to the provision of financial or other services of any description.
- (4) In order to enable a credit union to provide additional services of any description—
- (a) ‡ the credit union must adopt a decision to provide additional services of that description by a resolution passed by not less than two-thirds of the members present and voting at an annual general meeting or at a special general meeting called for the purpose of considering the resolution, or the credit union must adopt a decision to provide additional services of that description by a resolution of the board of directors; and
- (b) the provision of the services must be approved by the Bank in accordance with *section 49* and the services must be provided in accordance with the terms and conditions of the approval.
- (c) [deleted]
- (5) Notice shall be given of a resolution under *subsection (4)(a)* in accordance with the rules of the credit union or, if the rules do not make special provision as to notice of such a resolution, the like notice shall be given as is required by the rules for a

resolution to amend the rules; and notice of the resolution shall contain or be accompanied by a statement giving—

- (a) a description of the services which it is proposed to provide;
- (b) an assessment of the financial and other implications for the credit union of the provision of those services; and
- (c) details of such other matters as the Bank may by notice in writing require to be brought to the attention of the members of the credit union concerned.

(6) Before giving notice of a resolution as mentioned in *subsection (5)*, a credit union shall consult the Bank and the Bank shall give a preliminary view as to whether and to what extent the provision of the service would be likely to be approved by it; but the giving of such a preliminary view shall not prejudice the decision of the Bank under *section 49(3)*.

(7) † The Bank may specify in writing such requirements as it considers necessary for credit unions providing additional services; and different requirements may be so specified in relation to different descriptions of additional services and apply to different classes of credit unions.

(8) † A credit union shall not be able or, as the case may be, shall cease to be able to provide additional services of a description to which requirements under subsection (7) apply if—

- (a) the credit union does not satisfy those requirements, or
- (b) within the period of 12 months beginning on the date on which approval for the provision of the services is given under section 49, the credit union does not begin to provide those services;

but, if a credit union ceases to comply with any of those requirements, the cessation shall not, of itself, impose an obligation on the credit union to dispose of any property or right acquired in connection with the provision of the additional services concerned.

#### **Section 49 – The Bank’s approval of provision of additional service**

(1) An application by a credit union for the approval of the provision of additional services of any description (in this section referred to as an "approval application")

shall be made to the Bank in such manner as it may by rules direct, and shall be accompanied by such information as may be so specified.

(2) Without prejudice to the generality of the powers of the Bank under *subsection (1)*, an approval application shall include information about—

(a) the protection of members for whom the services are to be provided from conflicts of interest that might otherwise arise in connection with the provision of the services;

(b) the provision proposed for securing that adequate compensation is available to those members in respect of negligence, fraud or other dishonesty on the part of officers of the credit union in connection with the provision of the services;

(c) the extent to which and the manner in which the provision of the services will require the involvement of persons with particular qualifications or experience;

(d) the cost of providing the services;

(e) the income expected to accrue from any charges made for the services; and

(f) the credit union's proposed principal, in a case where the approval application relates to the provision of services by the credit union as agent for another;

and, where an approval application relates to the provision of additional services of more than one description, the information referred to above shall be given separately in respect of each description of services.

(3) Having considered an approval application (which complies with *subsections (1)* and *(2)*), the Bank shall give notice, either—

(a) granting approval;

(b) refusing to grant approval; or

(c) granting approval subject to whatever conditions (including restrictions or exclusions) it considers appropriate;

and the Bank shall not grant an approval application in respect of any description of additional services unless it is satisfied that the resolution required by *section 48(4)(a)* in relation to services of that description has been passed.

- (4) In making its decision on an approval application, the Bank shall have regard to the interests of the public and of the members and creditors of the credit union, to the orderly and proper regulation of the business of the credit union and to such other considerations as it thinks proper.
- (5) Subject to *subsection (6)*, within four months of the date on which it receives an approval application, the Bank shall either notify the credit union of its decision on the application or require the credit union to supply to it such additional information as it considers necessary to enable it to reach a decision and, where the Bank requires the provision of such additional information, it shall notify the credit union of its decision on the approval application not later than four months from the date of its receipt of that additional information.
- (6) Where an approval application relates to the provision of services by the credit union as agent (and not also as principal), *subsection (5)* shall have effect with the substitution for any reference to four months of a reference to two months.
- (7) Without prejudice to the generality of *subsection (3)(c)*, the conditions which the Bank may impose in granting an approval application may, in particular, include provisions about—
  - (a) the amount of funds that may be applied by the credit union to the services;
  - (b) whether the credit union may act as principal or agent in providing the services;
  - (c) the period during which the services may be provided;
  - (d) limits on any guarantees, bonds, contracts of suretyship or indemnities given or entered into by the credit union;
  - (e) whether and to what extent the approval of the Bank is to be obtained in respect of particular proposals;
  - (f) † the qualifications required to be held by officers of the credit union providing the services;

(g) the avoidance of conflicts of interest;

(h) the charges to be made in relation to the provision of any services;

(i) the preparation of accounts in respect of services being provided;

and different conditions may be so imposed in relation to different descriptions of additional services.

#### **Section 50 – Supplementary provisions as to Bank's functions**

1) In the exercise of its powers under *sections 48 and 49* and this section, the Bank may at any time consult the Advisory Committee and such other bodies as appear to it to be expert or knowledgeable in matters relating to credit unions.

2) Without prejudice to the generality of *subsection (1)*, the Bank may commission an independent assessment of the capacity of a credit union to provide any or each description of the additional services in respect of which it has made an approval application; and, if the Bank so directs, the credit union shall defray the costs of such an assessment.

3) If it appears to it appropriate to do so, the Bank may at any time by notice—

(a) withdraw an approval granted under *section 49*;

(b) revoke or vary any conditions imposed on such an approval; or

(c) impose new conditions on such an approval;

but any such action by the Bank shall not require the disposal of any property or right already acquired.

4) In this section "approval application" has the same meaning as in *section 49*.



**Section 51 – Requirements applicable to credit unions providing additional services**

- (1) A credit union shall not make or offer to make a loan to a member subject to a condition that any additional services which the member may require (whether or not in connection with the loan) shall be provided by (or through the agency or assistance of) the credit union.
- (2) Where, in connection with a loan by a credit union, any additional services are made available by a credit union, the credit union shall not make those services available except on terms which distinguish the consideration applicable to each service which is so made available.

**Section 51A – Referral to another credit union**

- (1) Where the rules of a credit union so provide, the credit union may refer a member of the credit union (in this section referred to as the 'referring credit union') to another credit union (in this section referred to as the 'receiving credit union') for the purpose of the provision by the receiving credit union of a service to the member of the referring credit union.
- (2) Where a member of a referring credit union is referred in accordance with subsection (1) —
  - (a) the receiving credit union may provide the service in respect of which the referral is made to the member concerned, and
  - (b) the member concerned shall be deemed, for the purpose only of the provision of the service concerned, to be a member of the receiving credit union for the period during which the service is provided.

## 2. Regulations

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

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Interpretation**

In these Regulations, unless the context otherwise requires:-

“the Bank” means the Central Bank of Ireland;

“member” includes a person in respect of whom services are being offered or provided by a credit union –

(a) as part of an agreement referred to in section 35(2)(c) of the Act; or

(b) pursuant to the receipt of a referral from another credit union in accordance with section 51A of the Act;

“Personal Retirement Savings Account”, “PRSA” and “PRSA Provider” each have the same meaning as in Part X of the Pensions Act 1990;

“the Act” means the Credit Union Act, 1997;

#### **Part 9**

#### **SERVICES EXEMPT FROM ADDITIONAL SERVICES REQUIREMENTS**

##### **Performing Services**

48. (1) The services set out in Schedule 2 to these Regulations are services prescribed by the Bank for the purposes of section 48(2)(b) of the Act.
- (2) A credit union shall not perform the services specified in Schedule 2 to these Regulations unless the appropriate conditions specified in that Schedule are fulfilled.

**SCHEDULE 2****Telephone, internet and fax access to the credit union by the member.**1. (1) **Access by telephone,**

- (a) that is to say any service by which the credit union member may by telephone using a unique number or password allocated by the credit union to the member,
  - (i) obtain information on the member's credit union accounts, including the balance of the member's share, deposit and loan accounts with that credit union,
  - (ii) transfer funds between accounts,
  - (iii) request a withdrawal from share and deposit accounts,
  - (iv) apply for a loan and calculate loan repayments,
- (b) conditions to be fulfilled -
  - (i) the relevant registration form in relation to such access must be completed by the parties concerned prior to the commencement of such a service,
  - (ii) loan approval is subject to the relevant loan application forms and other necessary documentation in relation to such transactions being completed by the parties concerned.

(2) **Access by internet,**

- (a) that is to say any service by which a credit union member may by internet using a unique number or password allocated by the credit union to the member,
  - (i) obtain information on the member's credit union accounts, including the balance of the member's share, deposit and loan accounts with that credit union,
  - (ii) transfer funds between accounts,
  - (iii) request a withdrawal from share and deposit accounts,
  - (iv) apply for loans and calculate loan repayments,
- (b) conditions to be fulfilled -

(i) the relevant registration form in relation to such access must be completed by the parties concerned prior to the commencement of such a service,

(ii) loan approval is subject to the relevant loan application forms and other necessary documentation in relation to such transactions being completed by the parties concerned.

(3) **Loan applications by fax,**

(a) that is to say any service by which credit union members may submit details necessary for loan applications in the form of a fax,

(b) condition to be fulfilled -

loan approval is subject to the relevant loan application forms and other necessary documentation in relation to such transactions being completed by the parties concerned.

2. **Third Party Payments,**

that is to say any service whereby a credit union member may arrange to have transferred to or from the member's account third party payments by way of electronic funds transfer or otherwise.

3. **Automated teller machine services (ATMs),**

(a) that is to say a service which enables a credit union member to withdraw funds from the member's credit union account by means of a credit union branded ATM card,

(b) conditions to be fulfilled -

(i) terms and conditions of use of such a card must be agreed by the credit union and the member,

(ii) the member must complete the relevant registration form prior to the issue of the card.

4. **Insurance services,**

(a) that is to say any service the credit union may provide to its members in respect of each of the following categories:

(i) loan protection and life savings insurance (including related riders);

(ii) travel insurance;

- (iii) home insurance;
- (iv) motor insurance;
- (v) repayment protection insurance.

(b) condition to be fulfilled -

these services must be provided on an agency basis and the insurer must be authorised by the Bank.

5. **Group health insurance schemes,**

that is to say a service by which a credit union may provide to its members a discount scheme with an undertaking which is registered in the Register of Health Benefits Undertakings within the meaning of the Health Insurance Acts 1994-2013. The subscription to such a scheme may, at the credit union member's request, be discharged from the member's account.

6. **Discount for goods and services,**

(a) that is to say a service by which the credit union may negotiate, on behalf of its members, discounts for the supply of goods and services to be purchased by those members,

(b) condition to be fulfilled -

any such contract must be between the supplier of the goods and services and the credit union member and the credit union must not be a party to such contracts.

7. **Budget account scheme,**

(a) that is to say a service by which the credit union may agree to provide members with a budget account, on which a credit facility may be offered, and charges (including a participation fee) may be made, into which members pay agreed regular sums and from which the credit union will discharge, on the members' behalf, a list of bills agreed with each member as and when they fall due.

(b) condition to be fulfilled -

the credit union must account separately in its books for all such transactions.

8. **Bill payment services,**

that is to say a service by which a credit union member may have a utility or other household bill paid by the credit union, either by debiting the member's account or by using cash supplied by the credit union member.

**9. Euro drafts and bureau de change**

(a) that is to say a service the credit union may provide to its members whereby a credit union member may-

- (i) purchase euro drafts,
- (ii) purchase foreign currency drafts, travellers cheques and travel money cards,
- (iii) purchase or sell foreign currency,

(b) conditions to be fulfilled -

- (i) these services must be provided on an agency basis and the principal must be licensed to provide such services,
- (ii) the credit union must be indemnified for the provision of these services under an insurance policy in accordance with section 47 of the Act ,
- (iii) the credit union must charge the members any expenses incurred for the provision of these services and may in addition retain its own commission,
- (iv) the credit union must account in its books for all such transactions.

**10. Money transfers,**

(a) that is to say a money transmission service the credit union may provide to its members,

(b) conditions to be fulfilled -

- (i) this service must be provided on an agency basis,
- (ii) the credit union must be indemnified for the provision of these services under an insurance policy in accordance with section 47 of the Act,
- (iii) the credit union must charge the members any expenses incurred for the provision of these services and may in addition retain its own commission,
- (iv) the credit union must account in its books for all such transactions.

**11. Money Advice and Budgeting Service,**

that is to say any service provided by a credit union to its members under the Money Advice and Budgeting Service which is funded and supported by the Citizens Information Board.

**12. Service centres,**

(a) that is to say a service a credit union may provide its members for photocopying, fax and computer facilities to be made available on the credit union premises,

(b) condition to be fulfilled –

the credit union may charge a fee for this service.

**13. Draws,**

(a) the credit union may carry out regular draws for which members are eligible to enter on payment of a regular subscription,

(b) condition to be fulfilled –

such draws must be conducted on a break-even basis.

**14. Standing orders,**

that is to say a service which may be provided by a credit union whereby a member may instruct the member's credit union to debit the member's accounts, and pay a fixed sum at regular intervals to a specified payee. Credit unions may charge members for the provision of this service.

**15. Direct debits,**

that is to say a service whereby the credit union may make payments to a payee designated by the credit union member on specified dates. Such payments may vary and the account of the member shall be debited accordingly on each occasion. Credit unions may charge members for the provision of this service.

**16. Financial Counselling,**

(a) that is to say a service by which a credit union member may receive, free of charge, advice on the use and management of the member's funds in the credit union,

(b) condition to be fulfilled -

the credit union must be indemnified for the provision of this service under an insurance policy in accordance with section 47 of the Act.

**17. Will making,**

- (a) that is to say a service arranged by the credit union by which a solicitor is available in the credit union from time to time, to take instructions and draw up wills and other testamentary documents for credit union members,
- (b) conditions to be fulfilled -
  - (i) the solicitor concerned must be a practising solicitor within the meaning of the Solicitors Acts 1954 to 2008,
  - (ii) the solicitor concerned must be one in respect of whom a policy of professional indemnity insurance under the Solicitors Acts 1954 to 2008 is in force in relation to that solicitor as respects the service referred to in paragraph (a).

**18. Gift cheques,**

that is to say a service by which a credit union member may purchase a cheque made payable to a third party in return for payment of that amount. Credit unions may charge members for the provision of this service.

**19. Electricity budget meter cards or tokens,**

that is to say a service by which a credit union member may purchase electricity budget meter cards or tokens from the member's credit union to facilitate payment of the member's electricity expenses.

**20. Savings Stamps,**

- (a) that is to say a service by which a credit union member may purchase savings stamps issued by the credit union,
- (b) condition to be fulfilled -

the credit union must account in its books for all such transactions with individual members.

**21. PRSA**

- (1) Any service ("service") whereby -
  - (a) a credit union member may be introduced to a PRSA Provider by the member's credit union for advice on the provision of a PRSA, or
  - (b) when such an introduction takes place, a credit union may make facilities available to a PRSA Provider to enable it provide such advice.



- (2) Conditions to be fulfilled where a credit union wishes the service to be offered or provided to its members:
- (a) the service shall be on an introduction basis only, where the credit union introduces the member to a PRSA Provider, and the credit union may not provide any advice to a member in relation to a PRSA;
  - (b) a credit union which intends to enter into an arrangement with a PRSA Provider is required to notify the Registrar of Credit Unions in writing of such intention not less than 7 days before entering into such an arrangement;
  - (c) the credit union may only have such an arrangement with one PRSA Provider at any one time in relation to the service;
  - (d) the credit union holds any authorisation required under the Investment Intermediaries Act 1995 and/or the European Communities (Insurance Mediation) Regulations 2005 in respect of the service;
  - (e) the credit union is required to enter into a written agreement with the PRSA Provider referred to in subparagraph (c) ("contracting PRSA Provider") under which the contracting PRSA Provider is responsible for any act or omission of the credit union concerned in respect of any matter pertaining to a PRSA offered or provided by the contracting PRSA Provider;
  - (f) any contract arising from the service is required to be between the contracting PRSA Provider and a credit union member and the credit union concerned may not be a party to any such contract;
  - (g) the credit union may not permit any premises which the credit union uses to be used for the purposes of arranging or offering to arrange the provision of a PRSA to a member of the credit union by a PRSA Provider other than the contracting PRSA Provider;
  - (h) a clear distinction shall be drawn between the business of the credit union and that of the contracting PRSA Provider and this shall extend to all signage, stationary or other branding of whatever kind;
  - (i) the credit union is required to state on letter headings and business forms which are used for the purposes of the service referred to in

paragraph 1(a) that the credit union acts as an introducer solely for the contracting PRSA Provider;

- (j) an officer or staff member of the credit union may not receive remuneration directly or indirectly from the PRSA Provider in respect of the service;
- (k) the credit union shall account separately in its books for any fees or commissions received in relation to the provision of the service.

## 22. **Insurance Services on an introduction basis**

- (1) Any service whereby a credit union member may be introduced to an insurance intermediary, with the appropriate authorisation under the European Communities (Insurance Mediation) Regulations 2005 or Investment Intermediaries Act 1995, or an insurance undertaking, authorised pursuant to Directive 2009/138/EC (hereinafter either intermediary or undertaking shall be referred to as "regulated entity"), by the member's credit union for the purpose of obtaining "insurance services".
- (2) Conditions to be fulfilled where a credit union offers the service referred to in paragraph (1) to its members and the credit union receives remuneration:
  - (a) The credit union shall have the appropriate authorisations to act as a retail intermediary – "Retail Intermediary" means 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;
  - (b) The credit union shall ensure that the regulated entity has the necessary authorisations to provide the insurance services;
  - (c) Prior to introducing a credit union member to a regulated entity for the purpose of obtaining insurance services, the credit union shall have undertaken an assessment of the financial and other implications for the credit union of the provision of the insurance services and shall have, on the basis of that assessment, determined that there is no undue risk to members' savings;
  - (d) The credit union shall ensure that adequate compensation is available to those members in respect of negligence, fraud or other dishonesty

on the part of officers of the credit union in connection with the provision of the insurance services;

- (e) The credit union shall account separately in its books for any fees or commissions received in relation to the provision of the insurance services;
- (f) The credit union shall ensure that an officer or staff member of the credit union does not receive remuneration directly or indirectly in respect of the insurance service;
- (g) The credit union shall ensure that the insurance service is on an introduction basis only, where the credit union introduces the member to the regulated entity and the credit union does not provide any advice to a member in relation to the insurance service;
- (h) The credit union shall ensure that a clear distinction exists, between the business of the credit union and that of the regulated entity. The credit union shall ensure that any marketing material relating to the insurance service should clearly identify the regulated entity providing the insurance service to the member and this shall extend to all signage, stationary or other branding of whatever kind relating to the insurance service;
- (i) The credit union shall enter into a written agreement with the regulated entity under which that undertaking is responsible for any act or omission of the credit union concerned in respect of any matter pertaining to the insurance service offered or provided by the regulated entity;
- (j) The credit union shall ensure that any contract arising from the insurance service is between the regulated entity and a credit union member and that the credit union is not party to any such contract.

### 3. Guidance

Further guidance and forms in relation to additional services may be found on the Central Bank [website](#).

### 3.1 Credit Union Services

Credit unions provide savings and loans under Part III of the 1997 Act – these are generally considered the core services of a credit union. Generally, other services are categorised as ‘additional services’ and require approval from the Central Bank under the additional services provisions – sections 48-52 - of the 1997 Act. However, in accordance with section 48(2) of the 1997 Act, the Central Bank can, by regulations, prescribe services as being excluded from being additional services and may make such exclusion conditional on compliance with such conditions as may be prescribed by the Central Bank; these prescribed services are generally referred to as ‘exempt services’. Under Regulation 48 of the Regulations, the Central Bank has prescribed a list of such exempt services; these exempt services and associated conditions are set out in Schedule 2 of the Regulations.

### 3.2 Draws

The Central Bank’s expectation is that, where a credit union is operating a draw for its members, it will be done in a clear and transparent manner with appropriate systems and controls in place. In this regard, we draw attention to a number of requirements of section 108 of the 1997 Act that relate to accounting records:

- section 108(2)(a) of the 1997 Act requires that the accounting records of a credit union must correctly record and explain the transactions of the credit union;
- section 108(3)(a) requires that accounting records contain “entries from day to day of all sums of money received and expended by the credit union and the matters in respect of which the receipt and expenditure take place”;
- section 108(3)(c) requires that in respect of the provision of services the accounting records of a credit union contain a record of services provided and all transactions relating to them.

The credit union should ensure that:

- members are only included in draws where they have given their written consent for inclusion; and
- clear terms and conditions are documented and provided to participating members. Such terms and conditions would be expected to include items such as:
  - eligibility criteria for entry into the draw and the process for entering the draw (it should be clear whether or not volunteers and/or staff are eligible to enter);
  - how the draw fee will be collected;
  - information on when and where draws will take place;
  - how winners will be advised of their win;
  - how any surplus funds arising from the draw will be dealt with;
  - how members participating in the draw will be recorded; and

- how the draw will be accounted for and audited (e.g. by internal and external audit).

#### Recommendations on Conducting a Prize Draw on a Break-even Basis:

- The board should review the operation of the prize draw regularly to ensure that it complies with the condition set out in the 2016 Regulations to be conducted on a 'break-even basis'.
- All subscriptions collected from members should only be used to pay for prizes and operating costs of the draw.
- An annual budget should be prepared forecasting the income and expenditure for the draw, allowing prizes to be adjusted to ensure the draw is operated on a break-even basis. This could be either on a financial year basis (30 September) or calendar year basis (31 December).
- Regular reconciliations on the prize draw should be prepared, signed by the preparer, independently reviewed, and presented to the Board at least annually.

#### Recommendations of the Prize Draws in Credit Unions – Thematic Review Findings:

##### *Governance*

- There should be a policy in place setting out the principles governing the draw, and this should be reviewed by the board on an annual basis.
- Any changes to operational procedures should be reviewed and approved by senior management.
- The procedure document should be reviewed and updated on a regular basis, and this should be recorded to ensure that the most recent version is used.
- Introductions of prize draws in a credit union should be approved by the Board.
- All decisions taken by a board should be recorded in the minutes, and retained securely.

##### *Member Participation*

- Written consent should be obtained from each member to commence deductions for entry fees into a prize draw, and a record of this should be maintained by the credit union.
- The terms and conditions provided to members should clearly state the requirements for participation in the prize draw.
- All written instructions from members in relation to participation in the prize draw should be retained securely by the credit union.
- Detailed records should be maintained on which members are included in each draw.
- The terms and conditions should clarify whether staff, board and volunteers can participate in the prize draw. Boards should also consider whether related parties should participate.

*Operation of Prize Draws*

- The steps involved in the operation of the prize draw should be clearly documented.
- All draws should be conducted in line with the terms and conditions which have been communicated to members.
- To avoid reputational risk, and ensure independence and impartiality, all staff and volunteers directly involved in the operation of the prize draw should be excluded from participating in the prize draw.
- All draws should be attended by an independent observer, and draw results signed by the person operating the draw and by the independent observer.
- Winning members should be notified via written communication, with a copy kept on file, to ensure an audit trail of the communication.
- Details of all the winners should be made available to all members (with their consent and in compliance with Data Protection legislation) using methods such as:
  - Credit union website and social media and in any newsletters to members
  - Credit union public office
  - AGM booklet
- To ensure an audit trail, where possible, all cash prizes should be lodged directly to a member's account.
- Where prizes are not paid directly to a member's account, a signed record of receipt of the prize by the member should be maintained on file as an audit trail.
- A written record of the selection should be retained on file where a member has a choice of prize e.g. cash alternative in lieu of car prize.

*Recording of Financial Transactions*

- Prize draws should be regularly reviewed by both internal and external audit to ensure that systems and controls in place are operating as expected. Observations from internal and external audit must be implemented.
- There should be a segregation of duties between staff processing transactions and those reconciling / reviewing those transactions.
- A periodic reconciliation of the prize draw account should be completed. The reconciliation should be prepared at an appropriate level and reviewed and approved by senior management.
- All bank account reconciliations for prize draws should be reviewed and approved by a person independent of the preparer.
- Transactions in the prize draw should be reviewed on an annual basis by the external auditor, and prize draw transactions and balances should be reported separately in the annual accounts.

# ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM

## Contents

<b>1. Introduction</b> .....	<b>2</b>
<b>2. Legislation</b> .....	<b>2</b>
<b>3. Guidelines issued by the Department of Finance</b> .....	<b>2</b>
<b>4. Central Bank Publications</b> .....	<b>3</b>
<b>5. Further information</b> .....	<b>4</b>

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Inserted link to guidelines issued by the Department of Finance on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing issued 10 February 2012.
1.1	May 2015	<ul style="list-style-type: none"> <li>• Name of chapter updated</li> <li>• Inserted new section on Central Bank communications and publications to assist credit unions in complying with the Criminal Justice Act 2010.</li> <li>• Updated legislative references to refer to the Criminal Justice Act 2013 and the Criminal Justice (Terrorist Offences) Act 2005</li> </ul>

## 1. Introduction

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "CJA 2010") commenced on 15 July 2010.

The CJA 2010, as amended by Part 2 of the Criminal Justice Act 2013, transposes the Third Money Laundering Directive (2005/60/EC) and its Implementing Directive (2006/70/EC) into Irish Law, bringing Ireland into line with EU requirements and the recommendations of the Financial Action Task Force. Designated persons under the CJA 2010, including all credit and financial institutions (as defined in the CJA 2010) are required to comply with their obligations under the CJA 2010. The definition of terrorist financing is contained in the Criminal Justice (Terrorist Offences) Act 2005.

The CJA 2010:

- defines broadly the offence of money laundering;
- requires designated persons to identify non-domestic politically exposed persons (PEPs);
- requires identification of the beneficial owners of legal entities, such as companies and trusts;
- requires designated persons to focus on the level of risk of money laundering and terrorist financing in meeting their obligations under the CJA 2010; and
- requires the Central Bank to effectively monitor credit and financial institutions (as defined in the CJA 2010) with regard to their obligations under the CJA 2010, and to take measures that are reasonably necessary to secure their compliance.

## 2. Legislation

- The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
- The Criminal Justice Act 2013
- Criminal Justice (Terrorist Offences ) Act 2005

## 3. Guidelines issued by the Department of Finance

On 10 February 2012, the Department of Finance issued the following guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing:



- [Guidelines On the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Part 1 \(February 2012\)](#)

These guidelines contain core guidance which provides generic guidance that is applicable to all financial services designated persons.

On 6 February 2013, the Department of Finance issued the following sectoral guidance note for credit unions:

- [Guidance Notes on compliance with the Criminal Justice \(Money Laundering and Terrorist Financing\) Act, 2010 Part II Sectoral Guidance Note for Credit Unions \(January 2013\)](#)

These guidelines have not been approved under section 107 of the CJA 2010 which is a matter for the Department of Justice and Equality and the Department of Finance.

The Central Bank, as per the guidelines, "will have regard to these guidelines in assessing compliance by designated persons with the CJA 2010." As noted in the guidelines, "the guidelines are designed to guide designated persons on the application of the relevant provisions of the CJA 2010. The guidelines do not constitute secondary legislation and designated persons must always refer directly to the CJA 2010 when ascertaining their statutory obligations. The guidelines are subordinate to the CJA 2010."

Credit unions must ensure that they are in a position to demonstrate to the Central Bank that they are meeting the requirements as specified in the CJA 2010, as amended by the Criminal Justice Act 2013.

#### **4. Central Bank Publications**

The Central Bank has issued a number of communications and publications which may assist credit unions in achieving compliance with the CJA 2010. The most recent publication is the Central Bank's May 2015 '*Report on Anti-Money Laundering (AML), Countering the Financing of Terrorism (CFT) and Financial Sanctions (FS) Compliance in the Irish Credit Union Sector*', which can be found at the following [link](#).

The Central Bank expects all credit unions to carefully consider the issues raised in the Report and to use the Report to inform the development of their AML/CFT and FS frameworks.

Other publications and items of correspondence which credit unions may find helpful in developing their AML/CFT and FS compliance frameworks include:

- [Report on Anti-Money Laundering Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Banking Sector - Feb 2015](#)
- [Letter to industry - Customer due diligence requirements - Oct 2014](#)
- [Dear CEO Letter - Compliance with the CJA 2010 - Oct 2012](#)

## **5. Further information**

Further information on anti-money laundering is available on the Anti-Money Laundering section of the Central Bank website at the following [link](#).

# BORROWING

## Contents

<b>1. Legislation</b> .....	<b>2</b>
<b>2. Regulations</b> .....	<b>3</b>
<b>3. Guidance</b> .....	<b>4</b>

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	November 2015	<ul style="list-style-type: none"> <li>• Amended section 33 to reflect the commencement of section 10 of the 2012 Act.</li> <li>• Inserted regulations in Section 2.</li> <li>• Inserted guidance in Section 3.</li> </ul>
1.2	January 2016	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2.</li> </ul>
1.3	April 2024	<ul style="list-style-type: none"> <li>• Amended text in section 33(2)(a) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> </ul>
1.4	September 2024	<ul style="list-style-type: none"> <li>• Amended text in Regulation 43 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 to reflect the change made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2024.</li> </ul>

# 1. Legislation

## Section 33 – Power to borrow\*

- (1) For the purpose of its objects as referred to in section 6 a credit union may borrow money, on security or otherwise, and may issue debentures accordingly.
- (2) For the adequate protection of the savings of members of credit unions, the Bank may prescribe—
  - (a) the maximum amount of money a credit union may borrow at any one time, and
  - (b) the notice to be given to the Bank by a credit union in specified circumstances where the credit union proposes to borrow certain amounts of money (expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount) in respect of those circumstances.
- (3) Where the Bank considers it is necessary in the interests of the proper regulation of a credit union or credit unions generally, or the protection of members' savings, it may do either or both of the following:
  - (a) permit a credit union to borrow moneys in excess of the amount prescribed in accordance with subsection (2);
  - (b) waive any notice requirement prescribed in accordance with subsection (2).
- (4) A person dealing with a credit union shall not be obliged to be satisfied or to enquire into whether the limit imposed on the credit union by virtue of subsection (2) (or such limit as may be duly affected under subsection (3)) has been or is being observed; but if a person who lends money to a credit union or takes security in connection with such a loan has, at the time the loan is made or the security is taken, actual notice of the fact that that limit has been or is thereby exceeded, the credit union's debt or, as the case may be, the security shall be unenforceable.
- (5) Subject to subsection (4), a transaction with a credit union shall not be invalid or ineffectual by reason of the fact that the limit on borrowing prescribed by the Bank under subsection (2) (or such limit as may be duly affected under subsection (3)) has been or is by the transaction exceeded.
- (6) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are

effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

## 2. Regulations

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

#### PART 7

#### BORROWING

##### Interpretation – Part 7

39. In this Part the word “borrow” or any word which is a variant, derivative or translation of, or is analogous to that word shall not include the issue of shares, or the acceptance of deposits from members of the credit union in accordance with the Act.

##### Borrowing Limit

40. A credit union may borrow money, on security or otherwise, so long as the total amount outstanding in respect of monies so borrowed does not at any time exceed 25 per cent of the total savings of the credit union.

##### Borrowing Requirement – Notice to Bank

41. Where a credit union proposes to borrow in accordance with Regulation 40, the credit union shall provide at least 28 days’ notice in writing to the Bank of its intention to undertake the proposed borrowing.

##### Borrowing Requirement - Calculation

42. For the purposes of Regulation 40, when calculating the total amount outstanding in respect of moneys borrowed by a credit union at any time, an overdraft received from its banker shall be disregarded.

##### Borrowing Policy

43. A credit union shall establish and maintain a written policy in relation to borrowing.

The board of directors of the credit union shall, at least every 3 years, review, update and approve this policy.

**Transitional Arrangements**

44. Where, at the commencement of these Regulations, a credit union has borrowings made in accordance with or under the Act which exceed the requirements in this Part, the credit union shall:
- (a) reduce those borrowings in order to ensure compliance with this Part;
    - (i) as soon as possible without incurring a loss; and
    - (ii) in any event not later than the second anniversary of the commencement of these Regulations or such later date as the Bank may permit, and
  - (b) only borrow where such borrowing would not cause the credit union to either fail to comply or exacerbate a failure to comply with any of the requirements in this Part.

**3. Guidance**

Credit unions may include their borrowing policy within the asset and liability management policy or it may be maintained as a separate policy. Guidance on the asset and liability management policy is provided in the Chapter on "Liquidity".

# CONSUMER PROTECTION

## Contents

<b>1. Introduction .....</b>	<b>2</b>
<b>2. Consumer credit agreements .....</b>	<b>2</b>
2.1 Legislation .....	2
<b>3. Conduct of business requirements under the Payment Services Regulations</b>	<b>6</b>
3.1 Legislation .....	6
<b>4. Minimum Competency Code 2017 and Minimum Competency Regulations 2017 .....</b>	<b>7</b>
4.1 Legislation .....	7
<b>5. Further information .....</b>	<b>7</b>

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	May 2018	Section 3.1 amended to reflect introduction of European Union (Payment Services) Regulations 2018.
1.2	April 2024	Amended text in section 37B(2)(a) to reflect the commencement of the Credit Union (Amendment) Act 2023.
1.3	September 2024	<ul style="list-style-type: none"> <li>- Updated section 1 to refer to the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017.</li> <li>- Added a new section 4.1 to reflect the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Minimum Competency) (Amendment) Regulations 2023 and the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023.</li> <li>- Updated the 'Further information' section (now section 5) to include a link to the Central Bank webpages for information on the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017.</li> </ul>

## 1. Introduction

This Chapter relates to certain consumer protection requirements that apply to credit unions arising from their authorisation as credit unions. This Chapter does not relate to consumer protection requirements under the Consumer Protection Code that apply to credit unions authorised as retail intermediaries.

The Chapter refers to consumer protection requirements on:

- consumer credit agreements;
- conduct of business requirements under the Payment Services Regulations; and
- the Minimum Competency Code 2017 and Minimum Competency Regulations 2017.

## 2. Consumer credit agreements

### 2.1 Legislation

The following apply where a credit union provides a loan **between €200 and €75,000**:

- sections 37A and 37B of the 1997 Act; and
- the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. 281/2010).

The following applies where a credit union provides a loan **in excess of €75,000**:

- section 37A to section 37E of the 1997 Act.

#### **Section 37A – Member to receive written notice of loan approval**

(1) On approving a loan in accordance with section 36 or 37, a credit union shall, in writing, notify the member who applied for the loan of the approval and of any time limit within which the approval will expire.

(2) † A notice under subsection (1) may be in a form that, when endorsed by the member on accepting a loan offered by the credit union, constitutes a credit agreement for the purposes of—

(a) sections 37B and 37C, or



(b) where the loan is for an amount between €200 and €75,000, the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010).

### **Section 37B – Credit agreement in respect of loans exceeding €200**

(1) If the amount of a loan approved by a credit union exceeds €200, the credit union shall ensure that—

(a) a credit agreement is entered into in writing and signed by the member concerned and by or on behalf of all other parties to the agreement, and

(b) a copy of the agreement—

(i) is handed personally to the member immediately after the agreement is entered into, or

(ii) is delivered or sent to the member within 10 days after the agreement is entered into, and

(c) any contract of guarantee relating to the loan is in writing and signed by the guarantor and by or on behalf of all other parties to the agreement, and a copy of the guarantee and the agreement—

(i) is handed personally to the guarantor immediately after the contract is entered into, or

(ii) is delivered or sent to the guarantor within 10 days after the contract is entered into.

(2) † For the purposes of this section, a contract of guarantee—

(a) includes, where the member is not of full age, an indemnity provided by a parent or guardian of the member or by another person approved by the credit union, and

(b) may form part of the relevant agreement or may be in a separate document.

(3) A credit union that makes a loan without having complied with subsection (1) commits an offence.

- (4) If a credit union is found guilty of an offence against subsection (3), the following provisions apply:
- (a) the credit union is taken to have waived all interest agreed to be paid by the member in respect of the loan;
  - (b) the member, or the member's personal representative, is entitled to recover as a debt, by proceedings brought in a court of competent jurisdiction, any interest paid in respect of the loan.

**Section 37C – Contents of credit agreements<sup>1</sup>**

- (1) When entering into a credit agreement with a member, a credit union shall ensure that it contains a statement setting out the following particulars:
- (a) the name and address of each party to the agreement;
  - (b) the amount of the loan provided under the agreement and the total amount payable in respect of the loan;
  - (c) details of the security (if any) given in respect of the loan;
  - (d) the date or dates on which the loan is to be provided (unless unascertainable at the time of the agreement);
  - (e) the number of repayment instalments under the agreement and amount of each of those instalments;
  - (f) the date, or the method of determining the date, on which each repayment instalment is payable;
  - (g) the rate of interest charged in respect of the loan and the relevant APR;
  - (h) the circumstances in which that APR may be amended;
  - (i) any charges that, although not included in the calculation of the APR, must be paid by the member in specified circumstances;

<sup>1</sup> Section 37C(3) of the 1997 Act has been deleted by the 2012 Act.

- (j)* the date on which the loan expires;
  - (k)* the manner in which the member can terminate the agreement before the final repayment instalment is payable and the cost to the member of terminating the agreement;
  - (l)* any cost or penalty that the member may incur for failing to comply with the agreement.
- (2) † The credit union shall also ensure that the agreement specifies a cooling-off period under which the member has a right to withdraw from the agreement without penalty if the member gives to the credit union a written notice to that effect within 14 days after—
  - (a)* the day on which the credit agreement was concluded, or
  - (b)* the day on which the member receives contractual terms and conditions and information in accordance with sections 37C and 37D if that date is later than the date referred to in paragraph *(a)*.
- (4) A credit union that fails to comply with subsection (1) or (2) commits an offence.
- (5) † This section does not apply to credit agreements covered by the European Communities (Consumer Credit Agreements) Regulations 2010.

#### **Section 37D – Notice of important information to be included in credit agreements**

- (1) A credit union shall not enter into a credit agreement with a member, unless the agreement and the notice referred to in section 37A (1) display prominently on their respective front pages, in a form approved by the Bank, the following information:
  - (a)* the amount of the loan;
  - (b)* the period of the agreement;
  - (c)* the number of repayment instalments;
  - (d)* the total amount repayable to the credit union;

(e) the cost of the loan to the member;

(f) the APR in respect of the loan;

(g) particulars of the cooling-off period.

(2) A credit union that contravenes subsection (1) commits an offence.

(3) † This section does not apply to credit agreements covered by the European Communities (Consumer Credit Agreements) Regulations 2010.

**Section 37E – Definition and calculation of “APR” for the purposes of section 37C and 37D †**

(1) For the purposes of sections 37C and 37D ‘annual percentage rate of charge’, in relation to a credit agreement entered into between a credit union and a member, means the annual percentage rate of charge as defined under Regulation 6 of the European Communities (Consumer Credit Agreements) Regulations 2010.

(2) The annual percentage rate of charge specified in a credit agreement shall be in accordance with Part 5 of the European Communities (Consumer Credit Agreements) Regulations 2010.

### **3. Conduct of business requirements under the Payment Services Regulations**

#### **3.1 Legislation**

Where a credit union provides payment services under the European Communities (Payment Services) Regulations 2018 (S.I. No. 6 of 2018), the following provisions of the Payment Services Regulations apply, from a conduct of business perspective:

- Part 3 - Transparency of Conditions and Information Requirements for Payment Services; and
- Part 4 - Rights and Obligations in Relation to the Provision and Use of Payment Services.

## 4. Minimum Competency Code 2017 and Minimum Competency Regulations 2017

### 4.1 Legislation

In relation to the application of the Minimum Competency Code 2017 (MCC) and the Minimum Competency Regulations 2017 (MCR) (together the Minimum Competency Standards) to all credit union activities that fall within scope of the MCC, the Central Bank published two sets of Regulations namely, the [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\)\) \(Minimum Competency\) \(Amendment\) Regulations 2023](#) (S.I. No. 453 of 2023) and [the Central Bank Reform Act 2010 \(Sections 20 and 22 – Credit Unions\) \(Amendment\) Regulations 2023](#) (S.I. No. 454 of 2023).

With effect from 1 October 2024, the Minimum Competency Standards apply to credit union staff and volunteers who are exercising a controlled function, the exercise of which includes one of the activities listed in section 1.2 or section 2.1 of the MCC.

## 5. Further information

Further information on consumer protection is available on the Consumer Protection section of the Central Bank website at the following [link](#), and further information on the requirements that apply to credit unions under the Minimum Competency Standards is available on the Minimum Competency section of the Central Bank website at the following [link](#).

# FITNESS AND PROBITY

## Contents

<b>1. Introduction .....</b>	<b>3</b>
1.1 Regulations .....	4
1.2 Fitness and probity standards for credit unions .....	8
1.3 Guidance on the Fitness and Probity regime for credit unions .....	8
<b>2. Legislation .....</b>	<b>9</b>
<b>3. Central Bank Requirements .....</b>	<b>9</b>
<b>4. Guidance .....</b>	<b>9</b>

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	<ul style="list-style-type: none"> <li>• Inserted details on in-situ PCF's in section 1.1.</li> <li>• Guidance on Fitness and Probity for Credit Unions (2013) reflects updated guidance effective from 1 October 2013.</li> </ul>
1.1	October 2013	<ul style="list-style-type: none"> <li>• Guidance on Fitness and Probity for Credit Unions reflects the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.</li> </ul>
1.2	June 2014	<ul style="list-style-type: none"> <li>• Guidance on Fitness and Probity for Credit Unions (2014) reflects legislative amendments to section 23 of the Central Bank Reform Act 2010.</li> </ul>
1.3	March 2015	<ul style="list-style-type: none"> <li>• Inserted details of introduction of additional fitness and probity requirements for credit unions that are also authorised as retail intermediaries in section 1, 1.1, 1.2 and 1.3.</li> <li>• Inserted Central Bank Reform Act 2010 (sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015 (S.I. No. 97 of 2015) in section 3.</li> <li>• The Fitness and Probity Standards for Credit Unions and Guidance on Fitness and Probity for Credit Unions have been updated to reflect new requirements from 1 August 2015 for:               <ul style="list-style-type: none"> <li>○ credit unions with total assets of €10m or less; and</li> <li>○ credit unions that are also authorised as retail intermediaries.</li> </ul> </li> </ul>
1.4	January 2016	<ul style="list-style-type: none"> <li>• Updated to reflect the introduction of the Fitness and Probity regime on 1 August 2015 for:               <ul style="list-style-type: none"> <li>○ credit unions with total assets of €10m or less; and</li> <li>○ credit unions that are also authorised as retail intermediaries.</li> </ul> </li> </ul>
1.5	July 2018	<ul style="list-style-type: none"> <li>• Updated to reflect the introduction from 1 July 2018 of 3 additional PCFs for credit unions with total assets of at least €100 million.</li> </ul>

1.6	September 2024	<ul style="list-style-type: none"> <li>• Updated section 1 to reflect the enhancements to the Fitness and Probity regime on foot of the Central Bank (Individual Accountability Framework) Act 2023 - to include the Certification Regulations prescribed pursuant to the Central Bank Reform Act 2010 (Section 21(6)) Regulations 2024 (S.I. No. 2 of 2024).</li> <li>• Updated section 1 to reflect the introduction on 1 October 2024 of six additional CFs linked to the application of the Minimum Competency Code 2017 ("MCC") and the Minimum Competency Regulations 2017 for all credit union activities that fall within scope of the MCC, together with the revocation of the Central Bank Reform Act 2010 (sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015 (S.I. No. 97 of 2015).</li> <li>• Inserted details of the six new CFs in section 1.1, together with the CFs and PCFs that came within the scope of the Fitness and Probity regime for credit unions also authorised as retail intermediaries which have been retained in the Central Bank Reform Act 2010 (sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023 (S.I. No. 454 of 2023).</li> <li>• Updated text in section 1.2 to reflect enhancements to the Fitness and Probity regime on foot of the Certification Regulations prescribed pursuant to the Central Bank Reform Act 2010 (Section 21(6)) Regulations 2024 (S.I. No. 2 of 2024).</li> <li>• Updated text and links in section 1.3.</li> <li>• Updated the list of Regulations in section 3 together with the links.</li> <li>• Updated the link in section 4.</li> </ul>
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## 1. Introduction

On 24 September 2012, Part 3 of the Central Bank Reform Act 2010 ("the Act") was commenced for credit unions providing a statutory system for the regulation by the Central Bank of individuals performing Controlled Functions ("CFs") and Pre-Approval Controlled Functions ("PCFs") in credit unions.

A Fitness and Probity regime for credit unions came into effect on 1 August 2013 and was fully implemented by 1 August 2016. The Fitness and Probity regime for credit unions was introduced on a phased basis as follows:

- the first phase commenced on 1 August 2013, and introduced Fitness and Probity requirements for credit unions with total assets, per their latest audited balance sheet, 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.

Since 1 August 2015, credit unions that are also authorised as retail intermediaries are subject to additional Fitness and Probity requirements for the part of the business that the credit union undertakes as a retail intermediary.

Since 1 July 2018, for credit unions that have total assets of at least €100 million, according to the credit union's latest audited balance sheet, three additional roles are designated PCFs.

In March 2023, the Central Bank (Individual Accountability Framework) Act 2023 ("the IAF") amended and replaced section 21 of the Act to provide that a regulated financial service provider (which includes credit unions) shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider in accordance with section 21 of the Act, is in force in relation to the person. This amended provision of the Act came into operation on 29 December 2023.

On 8 January 2024, and further to the IAF, the Certification Regulations came into effect. The Certification Regulations apply to all regulated financial service providers and certain holding companies to which Part 3 of the Act applies.

Since 1 October 2024, and linked to the application of the Minimum Competency Code ("MCC") and the Minimum Competency Regulations 2017 ("MCR") (together the "Minimum



Competency Standards”) to credit unions for all activities which are within scope of the MCC, six new CF roles were introduced for credit unions.

## **1.1 Regulations**

Since 2013, four sets of regulations have prescribed CFs and PCFs pursuant to sections 20 and 22 of the Act respectively. S. I. no. 171 of 2013 (the “2013 Regulations”) is effective from 1 August 2013 and applies to all credit unions. S. I. No. 97 of 2015 (the “2015 Regulations”) was effective from 1 August 2015 and applied to credit unions also authorised as retail intermediaries.<sup>1</sup> S. I. no. 187 of 2018 (the “2018 Regulations”) is effective from 1 July 2018 and applies to credit unions with total assets of at least €100 million. S.I. no. 454 of 2023 (the “2023 Regulations”) is effective from 1 October 2024 and gives effect to the application of the Minimum Competency Standards to credit union services which fall within scope of the MCC. Both the 2018 Regulations and the 2023 Regulations amended the 2013 Regulations.

### 2013 Regulations

The 2013 Regulations identify those CFs and PCFs that come within the scope of the Fitness and Probity regime for credit unions. The 2013 Regulations have been amended by the 2018 Regulations and the 2023 Regulations.

Two CFs were prescribed in the original 2013 Regulations:

- CUCF-1: 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; and
- CUCF-2: 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.

Credit unions are not required to seek the prior approval of an individual before their appointment to a CF role.

Two PCFs were also prescribed in the original 2013 Regulations:

- CUPCF-1: the office of chair of the board of the credit union; and

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<sup>1</sup> The 2015 Regulations prescribed two PCFs in respect of credit unions that are also authorised as retail intermediaries. These are both the same as the PCFs prescribed in the 2013 Regulations in respect of credit unions. The 2015 Regulations also prescribed eleven CFs in respect of credit unions that are also authorised as retail intermediaries, two of which are prescribed in respect of credit unions in the 2013 Regulations. On 1 October 2024 the 2015 Regulations were revoked. The 2023 Regulations which commenced on 1 October 2024 prescribed the same two PCFs and eleven CFs which were previously prescribed in the 2015 Regulations in respect of credit unions that are also authorised as retail intermediaries.

- CUPCF-2: the office of manager of the credit union.

PCFs are a subset of CFs and the prior approval of the Central Bank is required before an individual can be appointed to a PCF role. The individual must complete an online Individual Questionnaire which is endorsed by the proposing credit union and then submitted electronically to the Central Bank for assessment.

A credit union must not appoint an individual to perform a PCF until the Central Bank has approved the appointment in writing.

In situ PCFs are persons who held the role of chair or manager at the time of commencement of the 2013 Regulations and the 2015 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 e.g. when a chair is subject to re-election.

#### 2018 Regulations

The 2018 Regulations amended the 2013 Regulations by prescribing an additional three PCFs for credit unions with total assets of at least €100 million, as determined by the credit union's latest audited balance sheet. The 2018 Regulations are effective from 1 July 2018, and specify three additional PCFs for such credit unions:

- CUPCF-3: Risk Management Officer,
- CUPCF-4: Head of Internal Audit, and
- CUPCF-5: Head of Finance.

Similar to the role of Chair (CUPCF-1) and Manager (CUPCF-2), the prior approval of the Central Bank is required before an individual can be appointed to one of the above listed PCF roles. The individual must complete an online Individual Questionnaire which is endorsed by the proposing credit union and then submitted electronically to the Central Bank for assessment.

A credit union must not appoint an individual to perform a PCF until the Central Bank has approved the appointment in writing.

In situ PCFs are persons who hold PCF roles at the time of their introduction in the respective credit union. These persons do not have to apply for pre-approval from the Central Bank unless they are being re-appointed to the role.

The 2023 Regulations also amended the 2013 Regulations and prescribe eight CFs in respect of credit unions, two of which were first prescribed in the 2013 Regulations and six of which are newly introduced. The 2023 Regulations are effective from 1 October 2024 and introduce these additional CFs for credit unions which are required as a consequence of the extension of the MCC to all credit union activities that fall within scope of the MCC with effect from 1 October 2024. These new CFs are as follows:

- CUCF3-8: A function in relation to the provision of a financial service which is likely to involve the person responsible for its performance in the provision of a financial service by a credit union in one or more of the following ways:
  - (a) CUCF-3: Giving of advice to a member of a credit union, in the course of providing, or in relation to the provision of, the financial service;
  - (b) CUCF-4: Arranging, or offering to arrange, a financial service for a member of a credit union;
  - (c) CUCF-5: Assisting a member of a credit union in the making of a claim under a contract of insurance or reinsurance;
  - (d) CUCF-6: Determining the outcome of a claim arising under a contract of insurance or reinsurance;
  - (e) CUCF-7: Acting in the direct management or supervision of those persons who act for a credit union in providing the services referred to in subparagraphs (a) to (d);  
or
  - (f) CUCF-8: Adjudicating on any complaint communicated to a credit union by a member in relation to the provision of a financial service.

Furthermore, on 1 October 2024 the 2023 Regulations revoked the 2015 Regulations<sup>2</sup>, and amend the 2013 Regulations to retain the CFs and PCFs that came within the scope of the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries for the part of the business that the credit union undertakes as a retail intermediary.

The 2013 Regulations now contain the following PCFs and CFs for credit unions who are also authorised as retail intermediaries:

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<sup>2</sup> The 2015 Regulations originally prescribed two PCFs and eleven CFs in respect of credit unions also authorised as retail intermediaries. For further information refer to footnote 1.

- CURIPCF-1: the office of chair of the board of the credit union; and
- CURIPCF-2: the office of manager of the credit union.
  
- CURICF-1: 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 that is also authorised as a retail intermediary.
- CURICF-2: a function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a credit union that is also authorised as a retail intermediary with its relevant obligations.
  
- CURICF3 – 8: A function in relation to the provision of a financial service which is likely to involve the person responsible for its performance in the provision of a financial service by a credit union that is also authorised as a retail intermediary in one or more of the following ways:
  - (a) CURICF-3: 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; or
  - (b) CURICF-4: arranging, or offering to arrange, a financial service for a member of the credit union under its authorisation as a retail intermediary; or
  - (c) CURICF-5: assisting a member in the making of a claim under a contract of insurance or reinsurance; or
  - (d) CURICF-6: determining the outcome of a claim arising under a contract of insurance or reinsurance; or
  - (e) CURICF-7: 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 (a) to (d); or
  - (f) CURICF-8: 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; or
  
- CURICF-9: in respect of a person involved in insurance or reinsurance distribution as defined in the European Union (Insurance Distribution) Regulations 2018, the function of being involved in insurance or reinsurance distribution.
  
- CURICF10 – 11: A function in relation to the provision of a financial service which is likely to involve the person responsible for its performance in the provision of a

financial service by a credit union that is also authorised as a retail intermediary in one or more of the following ways:

- (a) CURICF-10: dealing in or having control over property of a member of the credit union that is also authorised as a retail intermediary to whom a financial service is provided or to be provided, whether that property is held in the name of the member or some other person; or
- (b) CURICF-11: dealing in or with property on behalf of the credit union that is also authorised as a retail intermediary, or providing instructions or directions in relation to such dealing.

## **1.2 Fitness and probity standards for credit unions**

The Fitness and Probity Standards for Credit Unions (the “Standards”) provide that a person performing a CF or PCF is required to be:

- competent and capable;
- honest, ethical and to act with integrity; and
- financially sound.

A credit union must not permit a person to perform a CF role or PCF role unless it is satisfied on reasonable grounds, and certifies, that the person complies with the Standards and has obtained confirmation that the person has agreed to comply with the Standards. Credit unions are responsible for ensuring that staff performing CFs or PCFs meet the Standards, both on appointment to such functions and on an on-going basis.

## **1.3 Guidance on the Fitness and Probity regime for credit unions**

The Central Bank of Ireland has published guidance to assist credit unions, including those authorised as retail intermediaries, in complying with their obligations under the Act in relation to Fitness and Probity (the “Guidance”). The Guidance outlines the steps which the Central Bank expects credit unions to take in order to satisfy themselves on reasonable grounds that individuals performing CFs, including PCFs, are in compliance with the Standards. It also includes guidance on other issues including transitional arrangements, the MCC and operational considerations for credit unions in implementing the Fitness and Probity regime.

Links to the original 2013 Regulations, the 2018 Regulations, the 2023 Regulations, the Certification Regulations, the Standards and the Guidance are contained below. Further information on the Fitness and Probity regime for credit unions, including Frequently Asked Questions, the Individual Questionnaire and the ‘Fitness and Probity Individual

Questionnaire, Application and PCF Roles Guidance' can be found on the Fitness and Probity for credit unions section of the Central Bank website at the following [link](#).

## **2. Legislation**

- Central Bank Reform Act 2010

## **3. Central Bank Requirements**

- [Central Bank Reform Act 2010 \(sections 20 and 22 – Credit Unions\) Regulations 2013 \(S.I. No. 171 of 2013\)](#)
- [Central Bank Reform Act 2010 \(sections 20 and 22 – Credit Unions\) \(Amendment\) Regulations 2018 \(S.I. No. 187 of 2018\)](#)
- [Central Bank Reform Act 2010 \(sections 20 and 22 – Credit Unions\) \(Amendment\) Regulations 2023 \(S.I. No. 454 of 2023\)](#)
- [Central Bank Reform Act 2010 \(section 21\(6\)\) Regulations 2024 \(S.I. No. 2 of 2024\)](#)
- [Fitness and Probity Standards for Credit Unions \(Code issued under section 50 of the Central Bank Reform Act 2010\)](#)

## **4. Guidance**

- [Guidance on Fitness and Probity for Credit Unions](#)

# GOVERNANCE

## Contents

<b>1. Introduction .....</b>	<b>4</b>
1.1 Governance arrangements and organisational structure .....	4
1.2 Resources required.....	5
<b>2. General Governance Requirements.....</b>	<b>5</b>
2.1 Protection of members' savings .....	5
2.2 Governance arrangements .....	6
2.3 Remuneration .....	7
2.4 Reporting to the Central Bank (annual compliance statement).....	8
<b>3. Board of Directors .....</b>	<b>15</b>
3.1 Requirement to have a board of directors / size of board of directors .....	15
3.2 Sufficient time / election of board of directors .....	15
3.3 Exclusions from membership of the board of directors .....	16
3.4 Term limits and casual vacancies .....	19
3.5 Functions of the board of directors.....	20
3.6 Regulations.....	24
3.7 Operation of the board of directors .....	29
3.8 Principal posts.....	31
<b>4. Chair of Board of Directors .....</b>	<b>32</b>
<b>5. Nomination Committee .....</b>	<b>34</b>
<b>6. Board Committee.....</b>	<b>39</b>
<b>7. Other Committees.....</b>	<b>44</b>
<b>8. Board Oversight Committee.....</b>	<b>45</b>
8.1 Directors: suspension and removal .....	52
<b>9. Manager of Credit Union .....</b>	<b>55</b>
<b>10. Additional Governance Provisions .....</b>	<b>57</b>
10.1 Directors: supplemental provisions .....	57
10.2 Conflicts of interest .....	57
10.3 Required signatories.....	62
10.4 Confidentiality of information .....	63
10.5 Duty to account.....	64
10.6 Register of members .....	65
10.7 Inspection of books.....	67

**11.Guidance on Documents Required under Section 55(1)(o) of the 1997 Act. 68**

11.1 Standards of conduct and ethical behaviour of officers .....	68
11.2 Succession plan .....	69

**Version History**

<b>Version</b>	<b>Date</b>	<b>Amendments</b>
0.1	July 2013	Initial Version.
1.0	September 2013	<ul style="list-style-type: none"> <li>Inserted text in Section 1 on composition of committees.</li> <li>Inserted Section 1.2.</li> <li>Deleted text of section 53(6)(b) from Section 3.2 as date of commencement not specified in Department of Finance Implementation Plan.</li> </ul>
1.1	October 2013	<ul style="list-style-type: none"> <li>Inserted text of section 53(6)(b) in Section 3.2 as this provision will commence on 3 March 2014.</li> <li>Amended text of section 57(4) as item 46 of Schedule 1 will commence on 3 March 2014.</li> <li>Amended text in sections 2.4, 3.1, 3.3, 3.4, 4 and 8 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.</li> </ul>
1.2	March 2014	<ul style="list-style-type: none"> <li>Deleted text of section 53 in Section 3.1 that was in place until 3 March 2014.</li> <li>Amended text in Section 3.1 to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) Order 2014.</li> </ul>
1.3	June 2014	<ul style="list-style-type: none"> <li>Inserted text in Section 2.4 to include guidance in relation to the annual compliance statement.</li> </ul>
1.4	December 2014	<ul style="list-style-type: none"> <li>Amended text in section 57(4)(a) to reflect an amendment made by the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) Order 2014.</li> </ul>
1.5	October 2015	<ul style="list-style-type: none"> <li>Updated guidance for Annual Compliance Statement</li> </ul>
1.6	November 2015	<ul style="list-style-type: none"> <li>Amended section 68(4) to reflect the commencement of item 56 of schedule 1 of the 2012 Act.</li> <li>Inserted regulations in Section 3.6.</li> </ul>
1.7	January 2016	<ul style="list-style-type: none"> <li>Updated regulations in Section 3.6</li> </ul>
1.8	April 2024	<ul style="list-style-type: none"> <li>Amended text in section 53(6), 53(10)(a), 53(14), 54(1)(a), 54(1)(b), 56B(2), 56B(3), 56B(4)(j), 56B(7), 57(2), 57(4), 63(1), 63(3), 66(1), 66(2), 66C(1), 67(1)(c), 68(1)(b), 68(2)(b), 72(1), 76N(1)(a), 76N(1)(b), 76N(4)(l), 76O(1)(a), 76O(2) and 76O(4) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Inserted text in section 63(4A), 63A(6), 63A(7) and 66C(1A) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Deleted text in section 65(2), 67(3) and 76(2) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Guidance updated in section 1 of this Chapter to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Guidance updated in section 2.4 of this Chapter to include reference to the Central Bank of Ireland Portal.</li> </ul>
1.9	September 2024	<ul style="list-style-type: none"> <li>Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>New guidance included in Section 3.5 Functions of the Board on section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>Amended text in Regulation 46(2) of the Credit Union Act 1997</li> </ul>



		<p>(Regulatory Requirements) Regulation 2016 to reflect the changes made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2024.</p> <ul style="list-style-type: none"><li>• Inserted text in guidance table in Section 3 Board of Directors to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li><li>• Updated guidance in Section 6 Board Committee in respect of Remuneration Committee to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li><li>• Updated guidance in Section 11.2 Succession plan to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li></ul>
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## 1. Introduction

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

The executive or operational roles in a credit union are performed by the manager, the management team, staff and voluntary assistants. The non-executive or governance roles in a credit union are performed by the board of directors. The governance requirements also require a credit union to have a board oversight committee, an internal audit function, a risk management officer and a compliance officer.

The manager serves as the main link between the board of directors and the executive.

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

### 1.1 Governance arrangements and organisational structure

Section 66A of the 1997 Act requires that a credit union's governance arrangements include a clear organisational structure with well defined, transparent and consistent reporting lines. Additionally the 1997 Act sets out a number of reporting lines and oversight arrangements which shall be implemented by credit unions. For example, the 1997 Act protects the independence of the internal audit function and requires a reporting line to the board of directors. However, having ensured that these statutory reporting lines and oversight arrangements are in place, it is a matter for the board of directors of each credit union to decide on the most appropriate administrative structures and reporting relationships for all officers of their credit union. In the case of the internal audit function this could include a reporting line to the manager or a member of the management team for matters of an administrative nature. Additionally, in the case of the risk management officer and compliance officer, this could include a reporting relationship to the manager.

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

## 1.2 Resources required

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

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

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

## 2. General Governance Requirements

### 2.1 Protection of members' savings

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

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

protecting members' savings or otherwise appropriate to ensure compliance with the requirements imposed under financial services legislation;

- (b) requirements in relation to the oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements required to be maintained under this section.

## 2.2 Governance arrangements

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

- (1) A credit union shall have governance arrangements which shall-
- (a) be such as to ensure that there is effective oversight of the activities of the credit union, taking into consideration the nature, scale and complexity of the business being conducted,
  - (b) include a clear organisational structure with well-defined, transparent and consistent reporting lines,
  - (c) be documented and set out the roles, responsibilities and accountabilities of the officers clearly in writing,
  - (d) be communicated in writing to all officers in the credit union, and
  - (e) be subject to regular internal review by the board of directors on, at a minimum, an annual basis.
- (2) A credit union shall have in place the oversight, policies, procedures, practices, systems, controls, skills, expertise and reporting arrangements to ensure compliance with the requirements set out in this Part.

### Guidance

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

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

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

required by credit unions in these areas.

## 2.3 Remuneration

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

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

### Section 68 – Limitation of remuneration

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

- (a) a director of the credit union, or
- (b) a member of the board oversight committee of the credit union,

for any service performed by that person in that capacity.

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

- (a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the credit union; and
- (b) which are approved by at least 2 directors (not including the director whose expenses are being approved) .

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

### Guidance

The remuneration policy of a credit union should be consistent with the credit union's risk profile and promote sound and effective risk management in line with the credit union's

risk tolerance and strategic plan, as required under section 76A of the 1997 Act.<sup>2</sup> It should not encourage excessive risk taking.

A remuneration policy should cover the following at a minimum:

- objectives of the remuneration policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in determining remuneration;
- the credit union’s procedure for determining remuneration;
- safeguards to ensure that remuneration practices will not generate conflicts of interest e.g. officers in non-control positions should not have undue influence over the remuneration of officers in control positions such as the compliance officer and internal audit function;
- provisions that those involved in control positions are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the functions they control;
- provisions to ensure that remuneration is not solely based on financial performance metrics and performance metrics include adherence to effective risk management and compliance;
- provision that payments related to early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors (or remuneration committee where one exists); and
- the process and timelines for the approval, review and update of the remuneration policy by the board of directors (or remuneration committee where one exists).

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

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

<b>Section 66C – Reporting to Bank*</b>
(1) A credit union shall submit an annual compliance statement to the Bank certifying its compliance with the requirements of this Part and the regulations, if any, made in respect of a matter to be prescribed under this Part by the Bank.
(1A) The Bank may prescribe the form and content of the annual compliance statement

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

referred to in subsection (1).

(2) The annual compliance statement referred to in subsection (1) shall be submitted by a credit union to the Bank within 2 months of the end of each financial year of the credit union, or with such other frequency as the Bank may notify to the credit union from time to time.

### **Guidance**

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

The annual compliance statement confirms whether the credit union has:

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

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

### **Materiality**

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

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

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

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

- the frequency and duration of non-compliance – for example a one-off instance of non-compliance that is immediately rectified may not be material,

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

- while repeated non-compliance or non-compliance of considerable duration may be material;
- the extent to which non-compliance departs from the required standard – for example a minor deviation from the standard may be less material than a significant deviation;
  - the impact of the non-compliance on the credit union – for example consideration should be given to the impact of non-compliance on:
    - the governance of the credit union;
    - the financial position of the credit union;
    - the reputation of the credit union; and
    - the members of the credit union including protection of members' savings and access to services;
  - consideration should also be given to whether non-compliance indicates serious or systemic weakness of management systems or internal controls;
  - it is also important to consider non-compliance collectively – for example, a number of issues that appear non-material individually may collectively be considered to be material and may be indicative of weaknesses in risk management, compliance, internal audit and/or systems and controls.

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

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

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

### ***Timing***

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



**Annual compliance statement requirements**

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

<b>Section of the 1997 Act</b>	<b>Title of Section of Part IV of the 1997 Act</b>	<b>Section of Credit Union Handbook</b>
53	Board of directors	Governance Chapter, Section 3
54	Operation of board of directors	Governance Chapter, Section 3.6
55	Functions of board of directors	Governance Chapter, Section 3.5
55A	Chair of board of directors, etc.	Governance Chapter, Section 4
56	Removal of director from office	Governance Chapter, Section 8.1
56A	Board committees	Governance Chapter, Section 6
56B	Nomination committee	Governance Chapter, Section 5
57	Directors: supplemental provisions	Governance Chapter, Section 10.1
63	Officers: principal posts	Governance Chapter, Section 3.7
63A	Manager of credit union	Governance Chapter, Section 9
65	Credit officer and credit control officer	Governance Chapter, Section 3.5
66	Directors: suspension and removal by board oversight committee	Governance Chapter, Section 8.1
66A	Governance arrangements in credit unions	Governance Chapter, Section 2.2
66B	Remuneration policies and practices	Governance Chapter, Section 2.3
66C	Reporting to Bank	Governance Chapter, Section 2.4
67	Credit, credit control and membership committees	Governance Chapter, Section 7
68	Limitation of remuneration	Governance Chapter, Section 2.3
69	Conflicts of interest	Governance Chapter, Section 10.2
70	Required signatories etc.	Governance Chapter, Section 10.3

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

71	Confidentiality of information	Governance Chapter, Section 10.4
72	Persons disqualified from acting	Governance Chapter, Section 3.3
74	Duty to account	Governance Chapter, Section 10.5
75	Register of members and officers	Governance Chapter, Section 10.6
76	Inspection of books	Governance Chapter, Section 10.7
76A	Strategic plan	Strategic Plan Chapter
76B	Risk management systems and systems and control	Risk Management and Compliance Chapter, Section 1 (See <i>Credit Union Act, 1997</i> for full provision)
76C	Risk management officer	Risk Management and Compliance Chapter, Section 2
76D	Compliance officer	Risk Management and Compliance Chapter, Section 4
76E	Operational risk	Operational Risk Chapter, Section 1
76F	Records management	Operational Risk Chapter, Section 3
76G	Information systems	Operational Risk Chapter, Section 4
76H	Management information	Operational Risk Chapter, Section 5
76I	Business continuity plan	Operational Risk Chapter, Section 2
76J	Outsourcing	Outsourcing Chapter
76K	Internal audit	Internal Audit Chapter

### **Monitoring compliance**

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

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

***Preparing the Annual Compliance Statement***

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

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

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

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

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

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

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

***Retention of supporting documents***

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

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

***Submission of Annual Compliance Statement***

Credit unions should submit the annual compliance statement electronically to the Central Bank on the Central Bank of Ireland Portal.

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

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

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

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

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

***Auditor Input***

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

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

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

### 3. Board of Directors

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

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

- (1) A credit union shall have a board of directors which shall have responsibility for the general control, direction and management of the credit union.
- (2) The board of directors of a credit union shall be of sufficient number and expertise to adequately oversee the operations of the credit union.
- (3) Except in the circumstances set out in subsection (4), the number of directors shall be specified in the registered rules as set out in section 13 and shall be—
- (a) not less than 7,
- (b) not more than 11, and
- (c) an odd number.
- (4) The number of directors of a credit union may be more than 11 or may be an even number if an additional director is appointed under section 95A.
- ...

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

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

- ...
- (5) Each director of a credit union shall ensure that he or she has sufficient time to devote to the role of director and the responsibilities associated with that role as indicated by the nomination committee under section 56B(4)(g).
- (6) Subject to section 63A(6), the board of directors of a credit union shall be elected—
- (a) where the organisation meeting occurs after the commencement of this provision (as amended by *section 15 of the Credit Union and Co-operation with Overseas Regulators Act 2012*), by secret ballot at the organisation meeting and, subject to subsection (15) and section 57, subsequent vacancies on the board of directors shall be filled by secret ballot at an annual general meeting, and

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

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

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

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

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

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

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

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

...

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

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

...

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

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

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

- (b) a member of the board oversight committee of the credit union;
  - (c) a director of any other credit union;
  - (d) an employee of a representative body of which the credit union is a member, where that employee's role could expose them to a potential conflict of interest;
  - (e) a public servant (within the meaning of the Financial Emergency Measures in the Public Interest Act 2009) assigned to the Department of Finance and involved in advising the Minister on credit union issues or in the examination of credit union issues;
  - (f) a member of the Commission of the Bank;
  - (g) an officer (within the meaning of section 2 of the Central Bank Act 1942) or other employee of the Bank and who is involved in the regulation of credit unions;
  - (h) the Financial Services Ombudsman (within the meaning of section 2 of the Central Bank Act 1942) or a Bureau staff member (within the meaning of section 57BA of that Act);
  - (i) a member of the Irish Financial Services Appeals Tribunal or a member of its staff (including the Registrar of the Appeals Tribunal appointed under section 57J of the Central Bank Act 1942);
  - (j) the chief executive of the National Consumer Agency, an authorised officer of that Agency (within the meaning of section 2 of the Consumer Protection Act 2007) or any other member of its staff;
  - (k) the auditor of the credit union or a person employed or engaged by that auditor;
  - (l) a solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
  - (m) a person who is a spouse or civil partner, parent, sibling or child of a director, board oversight committee member or employee of that credit union.
- (11) A person shall resign from being a director of a credit union if and when he or she becomes a person to whom any provision of subsection (10) relates.

...

**Section 72 – Persons disqualified from acting**

- (1) † A person who has been adjudicated bankrupt and whose bankruptcy still subsists or who, in the previous 10 years, has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty shall not–
- (a) sign an application form for the registration of a society as a credit union,
  - (b) be qualified to be appointed or to act as an officer, auditor, receiver or liquidator of a credit union,
  - (c) directly or indirectly take part in or be concerned in the management or operation of a credit union, or
  - (d) permit his or her name to be put forward for election or appointment to any of the positions referred to in paragraph (b).
- (2) If a person who is a member of–
- (a) the board of directors,
  - (b) the board oversight committee, or
  - (c) a principal Committee,
- of a credit union is adjudicated bankrupt or convicted of such an offence as is referred to in subsection (1), then such person shall forthwith cease to hold office and the vacancy thereby created shall be deemed to be a casual vacancy and be filled accordingly.
- (3) A decision of the board of directors of a credit union shall not be affected by the presence at a meeting of the board of a person who, by virtue of this section, is disqualified from being a director; but any vote which such a person purports to cast shall be disregarded.
- (4) Any person who, in relation to a credit union, purports to act in a manner or capacity which, by virtue of his being disqualified under this section, he is prohibited from doing shall be guilty of an offence.



### 3.4 Term limits and casual vacancies

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

...

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

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

...

#### Guidance

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

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

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

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

...

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

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

(16) A director appointed under subsection (15) shall hold office from the date of the

appointment to the next following annual general meeting of the credit union or, if it is earlier, the next special general meeting at which an election is held for directors of the board of directors.

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

### 3.5 Functions of the board of directors

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

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

- (a) setting the strategy for the credit union by preparing, including active participation and examination of strategies being developed or proposed by the manager, management team or others and preparing and adopting a strategic plan;
  - (b) monitoring the implementation of the strategic plan by the credit union, reviewing the performance of the credit union against the measurements defined in the strategic plan and assessing, on a regular basis but at least annually, how the strategic objectives of the credit union are being achieved;
  - (c) reviewing the credit union's strategic plan on a regular basis, but at least annually, to ensure that it remains relevant and up to date and modifying or revising the strategic plan to incorporate any changes required as a result of the review;
- ...

#### Guidance

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

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

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

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

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

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

- ...
- (e) the appointment of a manager, risk management officer and compliance officer and the approval of the appointment of any other member of the management team;
  - (f) ensuring that there is an effective management team in place;
  - (g) reviewing the performance of the manager on an annual basis and monitoring on an ongoing basis his or her continued appropriateness to be the manager;
  - (h) ensuring that the performance of every other employee and voluntary assistant, is reviewed and monitored on an ongoing basis to ensure his or her continued appropriateness for his or her role in the credit union;
  - (i) identifying, in consultation with the manager, other officer positions within the credit union that–
    - (i) are essential to the proper management of the credit union,
    - (ii) are likely to enable the person holding the position to exercise significant influence on the conduct of the affairs of the credit union,and which, together with the manager and risk management officer of the credit union are referred to in this Act as the ‘management team’;
  - (j) ensuring there is an appropriate succession plan in place in respect of each of the positions that constitute the management team;
- ...

**Guidance**

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

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

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

**Guidance**

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

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

- ...
- (n) the removal from office of an officer of the credit union, except directors or members of the board oversight committee, where the board of directors has duly determined that there has been a failure by the person concerned to perform duties or responsibilities;
  - (o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:
    - (i) lending policies including lending limits;
    - (ii) policies in relation to members’ shares and deposits including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit;

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

- (iii) liquidity management policies;
- (iv) reserve management policies;
- (v) investment policies;
- (vi) the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union;
- (vii) standards of conduct and ethical behaviour for officers;
- (viii) remuneration policies and practices;
- (ix) compliance plan and policies;
- (x) records management policies;
- (xi) information systems and management information policies;
- (xii) business continuity plan;
- (xiii) asset and liability management policies;
- (xiv) outsourcing policies;
- (xv) risk management policy;
- (xvi) conflicts of interest policy;
- (xvii) environmental, social and governance policy;
- (xviii) such other matters as the Bank may prescribe;<sup>8</sup>
- ...

### Guidance

On the section 55(1)(o) board of directors function of approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, this requirement was updated following the commencement of section 29(a) of the Credit Union (Amendment) Act 2023 on 30 September 2024. It should be noted that this

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

is a minimum requirement under the 1997 Act and does not impact on other legal or regulatory obligations, or expectations, of credit unions or the boards of directors. For example, the Central Bank's expectation that the board of directors reviews and approves the credit union's AML/CFT Business Risk Assessment at least on an annual basis and that it should have a clearly defined process in place for the formal review at least annually of the credit union's AML/CFT policies, procedures and controls is not impacted by the change.<sup>9</sup> Without prejudice to the minimum requirement under section 55(1)(o) of the 1997 Act, the board of directors should approve, review, and update all plans and policies as often as may be appropriate to fulfil its responsibilities effectively and prudently and reflecting the nature, scale and complexity of the credit union.

### 3.6 Regulations

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

**PART 8**

**SYSTEMS, CONTROLS AND REPORTING ARRANGEMENTS**

**Plans, Policies and Procedures**

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

<sup>9</sup> See the Central Bank's '[Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector \(Revised 23 June 2021\)](#)'.

systems and management information policies which include:

- (a) a management information policy;
- (b) an information security policy;
- (c) an information systems change management policy; and
- (d) an information systems asset management policy.

**SCHEDULE 1**

1. The systems of control of its business and records required under section 108(1)(b) of the Act,
2. A succession plan for the board of directors and the management team which shall detail the key skills and competencies required for members of the board of directors and management team,
3. The annual review of overall performance carried out by the board of directors as required under section 55(4) of the Act,
4. The annual compliance statement, together with supporting documentation used in the preparation of the compliance statement.

**Guidance**

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

a) lending policies including lending limits	Chapter on "Lending"
b) policies in relation to members' shares and deposits including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit	Chapter on "Savings"
c) liquidity management policies	Chapter on "Liquidity"
d) reserve management policies	Chapter on "Reserves"
e) investment policies	Chapter on "Investments"

f) the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union	Chapter on "Investments"
g) standards of conduct and ethical behaviour for officers	Section of this Chapter on "Guidance on Documents required under section 55(1)(o) of the 1997 Act"
h) remuneration policies and practices	Section of this Chapter on "Remuneration"
i) compliance plan and policies	Chapter on "Risk Management and Compliance"
j) records management policies	Chapter on "Operational Risk"
k) information systems and management information policies	Chapter on "Operational Risk"
l) business continuity plan	Chapter on "Operational Risk"
m) asset and liability management policies	Chapter on "Liquidity"
n) outsourcing policies	Chapter on "Outsourcing"
o) risk management policy	Chapter on "Risk Management and Compliance"
p) conflicts of interest policy	Section of this Chapter on "Additional Governance Provisions"
q) environmental, social and governance policy	None

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



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

- ...
- (p) the recommendation to members, for approval, of dividends to members;
  - (q) ensuring the accounts of the credit union are submitted for audit;
  - (r) reporting to the members of the credit union at the annual general meeting, including nominating a member of the board to present the annual accounts at the annual general meeting;
  - (s) reviewing and considering any update of financial statements provided to the board by the manager under section 63A(4)(c).
- ...

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

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

**Guidance**

Further requirements in relation to risk management systems and systems and control are set out in section 76B of the 1997 Act.<sup>10</sup>

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

- ...
- (4) The board of directors shall carry out at least annually a comprehensive review of its overall performance, relative to its objectives and implement any necessary changes or improvements.
  - (5) The review carried out by the board of directors under subsection (4) shall be documented in writing.

<sup>10</sup> See the Chapter on "Risk Management and Compliance".

- (6) In respect of the exercise of functions by the board of directors of a credit union, the board shall set out in writing a register of matters or categories of matters that require the board's approval and which cannot be assigned by the board to other persons for performance on the board's behalf. The register shall be used to record all such approvals by the board of directors.
- (7) Where the board of directors causes any matter relating to its functions to be performed or carried out on its behalf, it shall continue to have responsibility for the matter.
- (8) The board shall regularly review, but at least annually, the performance and effectiveness of the internal audit function, including reviewing and approving the internal audit charter and the internal audit plan and reviewing and approving any modifications to them, ensuring they are updated and that any issues identified in the review are managed and rectified in a timely manner.

### Guidance

Further requirements in relation to the internal audit function are contained in section 76K of the 1997 Act.<sup>11</sup>

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

- (1) The board of directors may–
- (a) approve the appointment of a person by the manager, other than a member of the board, a member of the credit control committee or a credit control officer, as a credit officer to work under the supervision of the credit committee, and
  - (b) assign to the credit officer the power to approve credit on its behalf –
    - (i) that is fully secured by the shareholding of the borrowing member or to an amount in excess of that shareholding, or
    - (ii) that qualifies as emergency credit within such definitions and limitations as to amount, the terms of repayment and security required for emergency credit as may be established in writing by the board of directors,
- and the amount of the excess referred to in paragraph (b)(i), shall be determined from time to time by the board of directors.
- (2) [deleted]

<sup>11</sup> See the Chapter on "Internal Audit".

- (3) Where the board of directors has assigned the power to approve credit under subsection (1)(b), a credit officer shall enquire into the character and financial circumstances of an applicant for credit and the security offered, if any, in order to–
- (a) ascertain the applicant’s ability to repay a loan in accordance with its terms, and
  - (b) ensure that the provision of credit does not involve undue risk to members’ savings.
- (4) The Board may approve the appointment of a person by the manager, other than a member of the board, a member of the credit committee or a credit officer, as a credit control officer to assist the credit control committee and work under its supervision and control.

### 3.7 Operation of the board of directors

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

- (1) The board of directors of a credit union shall meet as often as may be appropriate to fulfil its responsibilities effectively and prudently and reflecting the nature, scale and complexity of the credit union, but in any event–
- (a) the board of directors shall hold at least 6 meetings in any year, and
  - (b) the interval between any 2 meetings of the board of directors shall not be greater than 10 weeks.
- (2) Meetings of the board of directors of a credit union shall be chaired by the chair or, in his or her absence, by the vice-chair or, in the absence of the chair and the vice-chair, in a manner prescribed by the Bank or, if no manner is so prescribed, in a manner provided for in the rules of the credit union.<sup>12</sup>
- (3) The secretary of a credit union shall keep minutes of all meetings of the board of directors.
- (4) Subject to subsection (10), the chair shall cause a detailed agenda of items for consideration and discussion to be prepared by the secretary of the credit union for each meeting of the board of directors.
- (5) The secretary of the credit union shall cause the detailed agenda and proposed

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<sup>12</sup> The Central Bank has not yet prescribed Regulations under this subsection.

minutes of the previous meeting of the board of directors to be circulated sufficiently in advance of each board of directors meeting to allow all directors adequate time to consider them. Where necessary, sufficient and clear supporting information and papers shall also be so circulated.

- (6) Nothing in subsection (4) or (5) shall be read as preventing discussion or consideration of any matter urgently arising that is not included in the detailed agenda but any such matter shall, without prejudice to subsection (7), be recorded in the minutes of the meeting concerned and, where appropriate or the board of the credit union so directs, clear supporting information and papers relating to the matter so arising shall be circulated as soon as practicable in the circumstances.
- (7) Minutes of all meetings of the board of directors shall—
- (a) be prepared with all decisions, discussions and points for further action being documented,
  - (b) record all dissensions or minority votes in terms acceptable to the dissenting person or minority voter, and
  - (c) provide sufficient detail to identify the nature and extent of the discussion on any matter and the decision or other outcome.
- (8) All discussions at board of directors meetings relating to conflicts of interest (whether of board members or otherwise) shall be recorded in sufficient detail in the minutes of the meeting concerned, together with a record of any action taken or proposed to be taken.
- (9) The minutes of each meeting of the board of directors shall be motioned for agreement and approval at the next subsequent meeting of the board of directors. Those minutes shall be so approved or approved subject to such qualifications and modifications as may be made to them at that subsequent meeting. Any such modification or qualification shall also be minuted in the minutes of that subsequent meeting.
- (10) In causing the agenda for a meeting of directors of a credit union to be prepared, the chair shall endeavour to ensure that adequate and sufficient time is provisionally allocated to all material relevant matters for discussion.

- (11) Directors of the board of directors shall attend every meeting of the board of directors unless they are unable to attend due to circumstances beyond their control.
- (12) The extent of the attendance of each board member at meetings of the board of directors shall be recorded in the minutes for the meeting concerned.

### 3.8 Principal posts

#### Section 63 – Officers: principal posts

- (1) † At a meeting of the board of directors of a credit union—
- (a) which is held immediately after the organisation meeting, an annual general meeting or special general meeting at which an election is held for members of the board of directors, and
- (b) which is—
- (i) in the case of a credit union other than a corporate credit union, chaired by a member of the board oversight committee, and
- (ii) in the case of a corporate credit union, chaired by a member of the board of directors,
- the board of directors shall, subject to subsection (4A), elect by secret ballot directors to fill such of the principal posts in the credit union as are then vacant; and, for the purposes of this section, the principal posts in a credit union are the posts of chair, vice-chair and secretary.
- (2) [deleted]
- (3) In the event of a casual vacancy in a principal post, the board of directors, may, subject to subsection (4A), by secret ballot elect a director to hold that post until the next meeting at which, in accordance with *subsection (1)*, an election should be held to fill any vacancy in the principal posts.
- (4) Without prejudice to *subsection (3)*, if a principal post falls vacant or for any other reason there is no holder of a principal post, anything that is required or authorised to be done by the holder of that post may be done by a director authorised in that behalf by the board of directors.
- (4A) A manager appointed as a director pursuant to section 63A(6) shall not be eligible

for election under subsection (1) or (3) or authorisation under subsection (4).

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

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

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

## 4. Chair of Board of Directors

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

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

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

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

(a) ensuring that meetings of the board of directors operate in an efficient and effective manner;

(b) encouraging constructive discussions and debate at board of directors meetings;

(c) promoting effective communications between members of the board of directors and between the board of directors and the management team of the credit union;

(d) causing the agenda to be set by the secretary, attending and chairing board of directors meetings;

(e) ensuring that the responsibilities of the nomination committee, as set out in section 56B(4), are performed by that committee;

(f) conducting a performance evaluation of each member of the board of directors on an annual basis to ensure that each director is complying with the obligations under financial services legislation and the board of directors' objectives as set

out in the credit union's strategic plan;

(g) facilitating the work of the board oversight committee through providing it with all reasonable assistance to enable that committee to carry out its functions;

(h) ensuring that conflicts of interest are appropriately managed by the board of directors, and by each of them, in accordance with section 69.

(4) A director of the credit union shall not be eligible to be elected as chair if the director had, at any time during the 5 years preceding the election, been–

(a) an employee of that credit union, or

(b) a person who acted in any management capacity (whether voluntary or paid) in that credit union,

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

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

...

### Guidance

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

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

...

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

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

(b) where such other director has served for less than one year, after 2 or more

directors have served as chair for the equivalent of at least one complete term,

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

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

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

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

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

## 5. Nomination Committee

### Guidance

Part 3 of the Central Bank Reform Act 2010 sets out the legislative framework that provides the basis for the Fitness and Probity regime for all regulated financial service providers and the Central Bank Reform Act 2010 (Application of Part 3 to Credit Unions) Order 2012 (S.I. No. 378/2012) specifically applied this regime to credit unions from 24 September 2012. The Chapter on “Fitness and Probity” contains the Fitness and Probity Regulations, Standards and Guidance for credit unions.<sup>13</sup> The nomination committee should have regard to the Chapter on “Fitness and Probity” in carrying out its functions under this section, in particular functions under section 56B(4)(e) and (f) and 56B(6) of the 1997 Act.

### Section 56B – Nomination committee\*

(1) The board of directors of a credit union shall establish a committee (in this Act referred to as the ‘nomination Committee’) whose members shall be elected in accordance with subsection (13).

(2) The nomination committee shall comprise 3 members or 5 members.

(3) Only members of the board of directors of a credit union other than a member of the board of directors who is also the manager of a credit union are eligible to serve on a nomination committee of the credit union.

<sup>13</sup> Available at the “Fitness and Probity – Credit Unions” section of the Central Bank website at the following [link](#).



- (4) The nomination committee shall be responsible for the following:
- (a) identifying candidates to be nominated for appointment to the board of directors;
  - (b) accepting nominations of candidates proposed to be appointed to the board of directors;
  - (c) proposing –
    - (i) candidates, for election by a general meeting, to be members of the board, and
    - (ii) if prescribed by the Bank for the purposes of section 53(15), at least such and so many candidates as may be required for consideration for appointment to fill vacancies on the board of directors;<sup>14</sup>
  - (d) proposing an additional person to be a director of the credit union pursuant to section 95A(1);
  - (e) assisting the credit union in performing any obligations of the credit union under section 23 of the Central Bank Reform Act 2010 in relation to any candidates proposed to perform pre-approval controlled functions (as construed in accordance with section 22 of that Act);
  - (f) assisting the credit union in carrying out any checks which the credit union is undertaking to enable it to comply with its obligations under section 21 of the Central Bank Reform Act 2010;
  - (g) informing each prospective candidate by notice in writing, before he or she is proposed as a candidate in accordance with paragraph (c), of the time commitment expected from him or her in respect of his or her role as a director;
  - (h) ensuring that there is an appropriate succession plan in place for the board of directors;
- ...

---

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

**Guidance**

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

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

...

- (i) ensuring that each director is given adequate induction to his or her role on the board of directors so as to ensure he or she has sufficient appreciation of, and appropriate training about, the strategy, operations and performance of the credit union;
- (j) ensuring that the induction process and training referred to in paragraph (i) occurs as soon as is practicable and in any event by no later than 6 months following a director's initial appointment to the board of directors;
- (k) arranging additional training, either individually or collectively, for the members of the board of directors during their respective terms of appointment to the extent that the nomination committee considers it necessary in order for the board of directors to make informed decisions;
- (l) maintaining a record in writing of the periods of time during which a person has served as a member of the board of directors of the credit union.

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

...

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

consider the balance of gender, skills, experience and knowledge on the current board of directors and any review undertaken under subsection (11).

...

### Guidance

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

### Section 56B – Nomination committee\*

...

(8) In considering the proposing of candidates under paragraph (4)(c), the nomination committee shall have regard to–

(a) the number of directors on the board of directors and the number of vacancies to be filled,

(b) whether potential conflicts of interest could arise from the appointment to the board of directors of a person if such person were duly nominated and appointed to the board, and

(c) any other matter that the Bank may prescribe.<sup>15</sup>

(9) Any potential conflict referred to in subsection (8) shall be brought to the attention of–

(a) where subsection (4)(c)(i) is relevant, the members of the credit union at the general meeting concerned, and

(b) where subsection (4)(c)(ii) is relevant, the directors of the board of directors of the credit union at the meeting of the board concerned.

(10) The nomination committee shall not propose appointments to the board of directors or allow appointments to proceed where conflicts of interest exist or could arise in a way which in its opinion could significantly affect the ability of the board of directors to operate in accordance with section 69(1).

---

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

(11) The nomination committee shall review the composition of the board of directors at least once a year for the purpose of identifying any deficiencies in the composition of the board. The review shall include determining whether or not there are any deficiencies in the balance of skills amongst the members of the board of directors and considering other matters relating to deficiencies that may be prescribed by the Bank.<sup>16</sup>

(12) The nomination committee shall–

- (a) formally review the membership of any person who is a member of the board of directors for more than the 12 years in aggregate permitted under this Part, and
- (b) shall document the rationale for the continuance of such membership of that person.

...

### Guidance

In considering the rationale for the continuation of the membership of a person who has been a director for more than 12 years, the nomination committee should consider the balance of gender, experience and independence sought on the board of directors. The nomination committee of the credit union should ensure that the credit union retains a balance between ongoing renewal of the board of directors, to ensure it remains independent, and ensuring that adequate expertise and experience is retained so that continuity of the board of directors is maintained.

### Section 56B – Nomination committee\*

...

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

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

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

- (b) In the event of a casual vacancy on the nomination committee, the board of directors may by secret ballot elect a director to fill that vacancy until the next

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

meeting at which, in accordance with paragraph (a), an election should be held to fill any vacancy in the nomination committee.

## 6. Board Committee

### Section 56A – Board committees\*

- (1) Subject to the other provisions of the *Credit Union Acts 1997 to 2012* and any matter prescribed by the Bank, the board of directors of a credit union may cause any matter relating to its functions to be performed or carried out on its behalf by a committee, comprised entirely of directors or of a majority of directors, to act on behalf of the board of directors in respect of matters to be performed or carried out.
- (2) A decision of the board of directors to cause any matter relating to its functions to be performed or carried out on its behalf under subsection (1) shall be taken at a meeting of the board.
- (3) The Bank may prescribe that credit unions generally or any category or categories of credit union establish one or more of the following committees, all members of which shall be directors of the credit union:
- (a) an audit committee;
  - (b) a risk committee;
  - (c) a remuneration committee.<sup>17</sup>
- (4) Where a credit union is not required to establish a committee to which subsection (3) relates, the credit union–
- (a) if such a committee is already in place when this section is first commenced, shall as soon as practicable thereafter decide whether or not the committee shall continue, or
  - (b) at any time after such commencement, it may decide voluntarily to establish such a committee if it considers it appropriate and proportionate to do so,
- and the provisions of this section shall apply to the credit union, in respect of the committee so continued or established as if that committee were required to be

<sup>17</sup> The Central Bank has not yet prescribed Regulations under this subsection.

established under subsection (3).

...

### Guidance

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

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

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

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

- assessing the performance of the auditor at least annually to determine the auditor's independence, effectiveness and compliance with requirements under the 1997 Act;
- ensuring that the internal audit function, required under section 76K of the 1997 Act, is independent and has a reporting line and unfettered access to the audit committee;<sup>18</sup>
- reviewing the internal audit charter and internal audit plan, required under section 76K of the 1997 Act, on a regular basis;<sup>19</sup>
- reviewing reports of the internal audit function and taking appropriate action in relation to any recommendations issued by the internal audit function;
- reporting to the board of directors on a regular basis;
- monitoring the financial reporting process;
- monitoring the effectiveness of the credit union's internal audit function; and
- reviewing the integrity of the credit union's financial statements and ensuring that they give a "true and fair" view.

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

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

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

<sup>19</sup> See the Chapter on "Internal Audit".

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

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

**Section 56A – Board committees\***

...

(5) A decision by the board of directors under subsection (1) shall be documented in writing by the board, which documentation shall include–

(a) the terms of reference for the committee including–

- (i) identifying the subject matter of the area concerned and respective responsibilities of both the board of directors and the committee,
- (ii) identifying the matters that may be decided by the committee and those that require the approval of the board,
- (iii) a schedule of matters reserved for the board of directors that would otherwise be performed or carried out by the committee,

and

(b) the procedures for monitoring and documenting in writing the exercise of the matters to be carried out on behalf of the board.

...

**Guidance**

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

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

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

**Section 56A – Board committees\***

...

- (6) The board of directors shall appoint the members of each committee to which subsection (1) relates.
- (7) A person appointed to a committee–
- (a) shall hold office until the next general meeting at which an election is held for the board of directors, or such shorter period as may be specified at the time the person is appointed to the committee, and
  - (b) may be removed from the committee by a decision of the board of directors.
- (8) When appointing members of a committee to which subsection (1) relates, the board of directors of a credit union shall ensure that–
- (a) each committee has an appropriate balance and sufficiency of skills and expertise available to it to carry out the matters delegated to it, and
  - (b) where necessary, some or all of the members of the committee are prepared to undertake relevant training to enhance their skills and experience for the purpose of carrying out functions in the context of paragraph (a).
- (9) For the purposes of a committee to which subsection (1) relates, the board of directors or, failing them, the committee concerned in consultation with the secretary of the credit union, shall appoint a secretary to the committee. The secretary to a committee shall perform the same functions to the committee as does the secretary to the credit union perform under subsections (3), (5), (7) and (8) of section 54.
- (10) The members of a committee to which subsection (1) relates shall perform their functions as such members in a manner consistent with the exercise of functions by members of the board of the credit union, both collectively and individually, as if the committee were the board and accordingly, the provisions of section 54, other than subsection (1), that relate to the board shall, subject to any necessary modifications, apply to the committee.
- (11) A committee to which subsection (1) relates shall be chaired in such manner as its terms of reference provide or, where not so provided, as the committee shall decide.



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

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

(b) shall have such other committees (if any) as may be prescribed by the Bank.<sup>20</sup>

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

...

### Guidance

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

### Section 56A – Board committees\*

...

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

### Guidance

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

Each committee should, at a minimum:

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

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

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

## 7. Other Committees

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

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

- (a) a credit committee, which shall decide on applications for credit;
- (b) a credit control committee, which shall seek to ensure the repayment of loans by members of the credit union in accordance with their loan agreements; and
- (c) a membership committee which shall determine applications for membership of the credit union that have been rejected under a process referred to in section 17(9);

and the Third Schedule shall apply to the committees.

(2) The record of applications for credit furnished by a credit officer under *section 65(2)* shall be considered by the credit committee at its next following meeting and become part of the records of the credit union.

(3) [deleted]

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

2. A credit committee, credit control committee and membership committee shall –

- (a) meet as often as necessary to carry out their functions;
- (b) submit a written report to the board of directors at each meeting of the board; and
- (c) comply with any instruction of the board of directors.

3. A credit committee shall have not less than three members and a member of the credit control committee, the credit control officer or a credit officer shall not be

eligible for membership.

4. A credit control committee shall have not less than three members and a member of the credit committee, the credit control officer or a credit officer shall not be eligible for membership.
5. A membership committee shall have not less than one member.

## 8. Board Oversight Committee

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

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

- (a) consist of 3 or 5 members elected in accordance with section 76N, and
- (b) exercise the functions assigned to it by this Part.

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

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

- (a) Part IV, this Part and any regulations made for the purposes of Part IV or this Part, and
- (b) any other matter prescribed by the Bank in respect of which they are to have regard to in relation to the board of directors.

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

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

- (a) where the organisation meeting occurs after the commencement of this provision, from among the members, by secret ballot at the organisation meeting and, subject to section 76R(4), subsequent vacancies on the board oversight committee shall be filled, from among the members, by secret ballot at an annual general meeting,
- (b) in any other case, from among the members, by secret ballot at the annual general meeting first occurring after the commencement of this provision or, if

earlier than that annual general meeting, at a special general meeting called for the purpose of such ballot and, subject to section 76R(4), subsequent vacancies on the board oversight committee shall be filled, from among the members, by secret ballot at an annual general meeting.

- (2) If a casual vacancy arises in the membership of a board oversight committee, then—
- (a) within one month of the vacancy arising, the Committee shall appoint a person (who may, if the Committee thinks fit, be a former member of the Committee) other than a person to whom subsection (4), (5) or (6) relates to fill the vacancy, and
  - (b) the person so appointed shall hold office until the next general meeting at which an election is held for members of the board oversight committee.
- (3) Where the secretary of the board oversight committee becomes aware that all the members of the committee intend to resign on the same date, the secretary shall give written notice of their intention to the Bank and the board of directors of the credit union.
- (4) A credit union shall not elect under subsection (1) any of the following persons to be a member of its board oversight committee:
- (a) an employee or voluntary assistant of the credit union or an employee of any other credit union;
  - (b) a member of the board oversight committee of any other credit union;
  - (c) an employee of a representative body of which the credit union is a member, where that employee's role could expose them to a potential conflict of interest;
  - (d) a public servant (within the meaning of the Financial Emergency Measures in the Public Interest Act 2009) assigned to the Department of Finance and involved in advising the Minister on credit union issues or in the examination of credit union issues;
  - (e) a member of the Commission of the Bank;
  - (f) an officer (within the meaning of section 2 of the Central Bank Act 1942) or other employee of the Bank and involved in the regulation of credit unions;

- (g) Financial Services Ombudsman (within the meaning of section 2 of the Central Bank Act 1942) or a Bureau staff member (within the meaning of section 57BA of that Act);
  - (h) a member of the Irish Financial Services Appeals Tribunal or a member of its staff (including the Registrar);
  - (i) the chief executive of the National Consumer Agency, an authorised officer of that Agency (within the meaning of section 2 of the Consumer Protection Act 2007) or any other member of its staff;
  - (j) the auditor of the credit union or a person employed or engaged by that auditor;
  - (k) a solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
  - (l) a person who is a spouse or civil partner, cohabitant, parent, sibling or child, of a director, board oversight committee member or employee of that credit union;
  - (m) a body corporate;
  - (n) a person who is not of full age;
  - (o) a director of the credit union.
- (5) A person shall resign from being a member of the board oversight committee of a credit union if and when he or she becomes a person to whom any of the provisions of subsection (4) relates.
- (6) A board oversight committee member may not be appointed or reappointed to the board oversight committee if he or she has served for more than 12 years in the previous 15 years whether on the board of directors or the board oversight committee.
- (7) The board oversight committee shall appoint one of their number as secretary of the committee.

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

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

- (1) The board oversight committee of a credit union shall hold –
- (a) at least one meeting in in every 2 months, and
  - (b) meetings with the board of directors at least 4 times in every year to facilitate it in carrying out the assessment under subsection (2),
- and the board oversight committee shall keep minutes of every meeting held by it under paragraphs (a) and (b).
- (2) The board oversight committee shall submit, within 2 weeks of any meeting referred to in subsection (1)(b), a written report to the board of directors on their assessment of whether the board of directors has operated in accordance with Part IV and this Part and any regulations relating to Part IV or this Part.
- ...

**Guidance**

The report required under section 76O(2) of the 1997 Act should state whether or not the board of directors has acted in compliance with Part IV, Part IVA or any other matter prescribed by the Central Bank relating to Part IV or Part IVA of the 1997 Act.<sup>21</sup> The board oversight committee is responsible for determining whether a deviation from the Requirements is material. Whether a deviation is material or not will depend upon the facts of each case. Where there has been a material deviation from any of the Requirements, the board oversight committee should include in its report the reasons and the background to that deviation and the remedial action taken or proposed to be taken by the credit union.

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

- ...
- (3) The board oversight committee shall have access, at all times, to the books and documents (including draft documents) of the credit union to enable it to carry out its functions under the Act.

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

- (4) Members of the board oversight committee shall have the right to attend all meetings of—
- (a) the board of directors, and
  - (b) a committee acting on behalf of the board of directors under section 56A(1).
- (5) The board oversight committee shall ensure at least one of its members attends every meeting of the board of directors.
- (6) The board oversight committee may notify the Bank of any concern it has, that the board of directors has not complied with any of the requirements set out in this Part or Part IV, or regulations made thereunder, following a unanimous vote at a meeting of the committee called for the purpose of considering such a notification.
- (7) The board oversight committee shall report to the members at the annual general meeting and, if it thinks fit, at a special general meeting, on whether the board of directors has operated in accordance with Part IV and this Part.

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

- (1) The term of office of a member of the board oversight committee—
- (a) shall begin at the conclusion of the general meeting at which the member is elected,
  - (b) shall not extend beyond the third subsequent annual general meeting after being so elected, and
  - (c) subject to the provisions of this Act and all other applicable legal requirements, shall be determined in accordance with the registered rules,
- but, except where this Act or any other applicable legal requirement or the registered rules otherwise provides, a retiring member of the committee shall be eligible for re-election.
- (2) The rules for retirement from the board oversight committee shall be as follows:
- (a) where the committee consists of 3 members, one shall retire at each annual general meeting;

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

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

- (1) Subject to subsection (2), a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a member of the board oversight committee from office.
- (2) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in subsection (1), give written notice of that meeting to the member concerned.
- (3) Where notice is given of a resolution mentioned in subsection (1) and the member of the board oversight committee concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to subsection (5), (unless the representations are received by it too late to do so) –
- (a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made, and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent.
- (4) Subject to subsection (5), and whether or not copies of any representations made under subsection (3) have been sent in accordance with that subsection, the member of the board oversight committee concerned may require that, without prejudice to that member's right to be heard orally, the representations made by that member shall be read out at the special general meeting.
- (5) Subsections (3) and (4) shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that



compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by those subsections are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.

- (6) A vacancy arising from the removal of a member of a board oversight committee under this section shall be filled in accordance with section 76N(2).

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

(1) A register of the members of the board oversight committee shall be kept by the secretary of the credit union and shall be signed by each member of the board oversight committee after an annual general meeting or, in the case of a member appointed to fill a casual vacancy, after such member's appointment.

(2) In the event that the number of members of the board oversight committee falls to less than half the number specified in the registered rules, the secretary of the committee shall forthwith notify the Bank and the board of directors.

(3) The acts of a member of the board oversight committee of a credit union shall be valid notwithstanding any defect in the election or appointment of the member which may subsequently be discovered.

(4) Where any of the following events occur –

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

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

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

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

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

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

## Transitional arrangements

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

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

## 8.1 Directors: suspension and removal

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

- (1) If the board oversight committee of a credit union considers that a member of the board of directors has taken any action or decision which, in the opinion of the committee, given in writing to the director concerned, is not in accordance with the requirements of this Part, then, after notifying the Bank, the committee may either –
- (a) suspend, with immediate effect, the director by a unanimous vote of all the members of the committee taken at a meeting of the committee called for the purpose of considering the director's suspension, or
  - (b) convene a special general meeting of the credit union to consider whether to remove the director in light of the action or decision taken by that director,
- but no steps shall be taken under this subsection without the director concerned being given an opportunity to be heard by the members of the board oversight committee.
- (2) Where a director of a credit union has—
- (a) been suspended by the board oversight committee in accordance with subsection (1), and
  - (b) within 7 days of that suspension, notified the board oversight committee, in writing, that he or she is aggrieved by the suspension,

the board oversight committee shall ensure that the secretary of the credit union issues, within 14 days of that notification, a notice of a special general meeting—

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

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

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

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

(b) rescind the suspension of that director, or

(c) remove that director from office,

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

(4) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in subsection (3), give written notice of that meeting to the director concerned.

(5) Where notice is given of an intended resolution to remove a director under this section and the director concerned makes in relation to it representations (not exceeding a reasonable length) in writing to the credit union and requests their notification to the members of the credit union then, unless the representations are received by it too late for it to do so, the credit union shall, subject to subsection (7)

—

(a) in any notice of the resolution given to members of the credit union, state the fact of the representations having been made, and

(b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent.

(6) Subject to subsection (7), and whether or not copies of any representations made by

it have been sent as mentioned in subsection (5), the director concerned may require that, without prejudice to his or her right to be heard orally, the representations made by him or her shall be read out at the special general meeting.

- (7) Subsections (5) and (6) shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by those sections are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (8) Where a director of a credit union is removed from office at a special general meeting pursuant to this section, the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.

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

- (1) Subject to *subsection (2)*, a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a director from office.
- (2) The secretary shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in *subsection (1)*, give written notice of the meeting to the director concerned.
- (3) Where notice is given of such a resolution as is mentioned in *subsection (1)* and the director concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (5)*, (unless the representations are received by it too late to do so)-
- (a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).
- (4) Subject to *subsection (5)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (3)*, the director concerned may require that, without prejudice to his right to be heard orally, the representations

made by him shall be read out at the special general meeting.

- (5) *Subsections (3) and (4)* shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Bank is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by them are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.
- (6) ‡ A vacancy arising from the removal of a director under this section shall be filled in accordance with section 53 (15).

## 9. Manager of Credit Union

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

- (1) The board of directors of a credit union shall appoint an individual to the role of manager of the credit union.
- (2) The manager of a credit union shall be the chief executive officer of the credit union having responsibility for the day-to-day management of the credit union's operations, compliance and performance and shall be responsible to the board of directors for the performance of his or her functions.
- (3) Subject to the *Credit Union Acts 1997 to 2012*, any matters which the Bank may prescribe and other financial services legislation, the respective functions of, and the division of responsibilities between, the board of directors and the manager of a credit union shall be clearly established, formally documented in writing and approved by the board of directors.<sup>22</sup>
- (4) The functions of the manager of a credit union include the following:
- (a) without prejudice to the exercise by the board of directors of its functions under subsection (1)(a) of section 55, preparing and proposing to the board of directors for debate, scrutiny and approval, strategies for the strategic plan that the board of directors are required to prepare and approve under that subsection;
- (b) implementing the strategies agreed by the board of directors to the standards set out in the strategic plan or as otherwise required by the board of directors;

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

- (c) updating the board of directors on the financial position of the credit union, including submitting to the board of directors on a monthly basis unaudited financial statements that set out the financial position of the credit union;
  - (d) appointing or causing to be appointed such and so many persons as employees or as voluntary assistants as the manager considers appropriate after consulting with the management team of the credit union;
  - (e) preparing or causing to be prepared such financial reports and returns as may be required by the auditor of the credit union;
  - (f) implementing the proper systems of internal control which the board of directors have approved;
  - (g) ensure that all cash is deposited in accordance with the instructions of the board of directors;
  - (h) such other matters as may be duly assigned to the manager by the board of directors.
- (5) In appointing a person as manager of a credit union, its board of directors shall ensure that the person complies with all legal requirements (including requirements which the Bank may prescribe) to be appointed.<sup>23</sup>
- (6) Subject to subsection (7), the board of directors of a credit union may appoint the manager of the credit union to be a member of the board of directors for such term as they determine.
- (7) Where a person appointed under subsection (6) ceases to be a manager of the credit union concerned, that person shall immediately upon such cessation cease to be a member of the board of directors of that credit union.

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

## 10. Additional Governance Provisions

### 10.1 Directors: supplemental provisions

#### Section 57 – Directors: supplemental provisions

- (1) A register of directors shall be kept by the secretary of the credit union and signed by all the directors of a credit union each year after the annual general meeting of a credit union or, in the case of a director appointed to fill a casual vacancy, after his appointment.
- (2) ‡ In the event that the number of directors of a credit union falls to less than half the number specified in the registered rules, the secretary of the credit union shall forthwith notify the Bank and in the case of a credit union other than a corporate credit union, the board oversight committee of the credit union.
- (3) The acts of a director of a credit union shall be valid notwithstanding any defect in the appointment of the director which may be subsequently discovered.
- (4) Where any of the following events occurs –
- (a) the secretary of the credit union has given notice under section 53(17) that all the directors of the credit union intend to resign on the same date,
  - (b) all the directors have been removed or suspended in accordance with section 96 (1), or
  - (c) there is no board of directors,
- then, in the case of a credit union other than a corporate credit union, the secretary shall convene a special general meeting of the credit union, within one month of the occurrence of the event in question, to elect a board of directors.
- (5) If the special general meeting referred to in *subsection (4)* is not convened in accordance with the provisions of that subsection, the Bank may convene such a special general meeting under *section 92(1)(b)*.

### 10.2 Conflicts of interest

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

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

in a manner free from conflicts of interest.

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

...

### Guidance

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

- objectives of the conflicts of interest policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in identifying, managing and resolving conflicts of interest;
- circumstances which constitute or may give rise to a conflict of interest including matters identified by the board of directors where the nature of the interest should be declared in accordance with section 69(6) of the 1997 Act;
- procedures and controls to manage conflicts of interest including procedures for:
  - identifying and declaring interests;
  - ensuring officers do not participate in matters set out in section 69(4) of the 1997 Act;
  - managing conflicts of interest including ensuring that the appropriate action is taken in the event of a conflict of interest arising;
  - recording in the minutes of the board of directors, board committees and other relevant meetings details of each conflict identified or discussed and the action taken or proposed to be taken to avoid or manage that conflict;
  - dealing with recurring conflicts of interest;
  - maintaining the conflicts of interest register;
  - the disclosure of potential conflicts of interests by all persons nominated for election onto the board of directors and board oversight committee or other board committees;
  - notifying members at the annual general meeting or directors at a meeting of the board of directors held to elect a director to fill a casual vacancy, of any potential conflicts of interest of a candidate for election to the board of directors;
  - ensuring transactions with connected bodies are made on an arm's length basis;
- action to be taken if the conflicts of interest policy is breached;
- reporting arrangements on conflicts of interest, including the frequency form and content of reporting to the board of directors; and
- the process and timelines for the approval, review and update of the conflicts of interest policy by the board of directors.



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

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

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

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

...

- (3) Every officer of a credit union shall identify all potential conflicts between his or her own interests and the interests of the credit union and shall take all necessary steps to ensure his or her role in the credit union is not influenced by any other interest.
- (4) An officer of a credit union shall not, in any manner, directly or indirectly, participate in the consideration or determination of any matter which he or she, or a body with which he or she is connected, has a pecuniary interest or other conflict of interest or where a reasonably perceived conflict of interest exists and, accordingly, an officer shall withdraw from any meeting or part of the meeting during which such a matter is to be considered or determined.
- (5) If, apart from this section, the withdrawal of an officer from a meeting in pursuance of subsection (4) would cause the meeting to become inquorate, the remaining members shall be treated as constituting a quorum while the matter in question is being considered or determined.
- (6) An officer of a credit union who is or becomes interested, directly or indirectly, in–
- (a) a contract that is made or proposed to be made by the credit union or proposed to be amended by the credit union,
  - (b) any matter prescribed by the Bank for the purposes of this section, or<sup>24</sup>

<sup>24</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- (c) any other matter identified by the board of directors for the purpose of this section,

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

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

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

(7) In the case of a declaration under subsection (6) by a member of the board of directors–

- (a) where the contract or matter concerned comes before a meeting of the board, the declaration shall also be made in person by the member (if present) at the meeting at which the contract or matter is to be considered, and
- (b) in every other case, the secretary shall read the declaration made in writing under paragraph (i) or (ii) (as the case may be) of subsection (6) at the next meeting of the board of directors held after service of that declaration.

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

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

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

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

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

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

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

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

(10) For the purposes of this section—

(a) this section applies in relation to a transaction, arrangement or proposal in the same manner as it applies in relation to a contract, and

(b) an officer of a credit union shall be regarded as connected with a particular body if the officer has an interest in the body, whether directly or indirectly and whether as a member, director, employee, shareholder or otherwise.

(11) Within 3 working days after a declaration or notice under this section is made or given, the secretary or manager (as the case may be) of the credit union concerned shall cause a copy of the declaration or notice to be entered in a register kept for that purpose, and that register shall—

- (a) be open for inspection without charge by any officer, auditor or member of the credit union or the internal audit function, and
- (b) be available at every general meeting of the credit union and, if adequate notice in advance is given to the secretary by any director, at any meeting of the board of directors.
- (12) In the case of a member of the board of directors of a credit union, where recurring or ongoing conflicts of interest arise for the member, then–
- (a) where the member concerned is the chair, seek formal or informal guidance from some or all of the other directors, and
- (b) where the member concerned is not the chair, seek formal or informal guidance from the chair,
- as to whether it is appropriate to resign and, following the consideration of such guidance by the member concerned, he or she shall resign as a member of the board of the credit union if he or she considers it appropriate to do so in the circumstances.

### 10.3 Required signatories

#### Section 70 – Required signatories etc.

- (1) None of the documents specified in *subsection (2)* shall be effective in law to bind a credit union unless signed by at least two officers of the credit union, one of whom shall be a member of the board of directors.
- (2) † The documents to which subsection (1) applies are any of the following, so far as not required by law to be under the seal of a credit union–
- (a) a conveyance or transfer of property of any description by a credit union; and
- (b) any other document which does not fall within section 55(1)(o)(vi) but by which a credit union enters into an obligation of any description.
- (3) If the rules of a credit union make provision as to the officers by whom documents to which *subsection (1)* applies are to be signed, a document which purports to be signed as required by that subsection shall not be invalid by reason of any failure to comply with any such provision of the rules.

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

## 10.4 Confidentiality of information

### Section 71 – Confidentiality of information

- (1) † Subject to *subsection (2)*, during his term of office or at any time thereafter, an officer of a credit union shall not disclose or permit to be disclosed any information which concerns an account or transaction of a member with, or any other business of, the credit union.
- (2) † *Subsection (1)* does not apply to a disclosure of information–
- (a) if or to the extent that it is necessary for the proper conduct of the business of the credit union; or
  - (b) which is required by a court in connection with any proceedings; or
  - (c) which is made with the consent of the person to whom the information relates and, where not the same person, of the person from whom the information was obtained; or
  - (d) which, in a case where the credit union is acting or has acted as agent for a person, is made to that person in respect of that capacity; or
  - (e) where the information is in the form of a summary or collection of information and is so framed as not to enable information relating to a particular member to be ascertained from it; or
  - (f) which, in the opinion of the Bank, is necessary for the protection of the funds of shareholders in or depositors with the credit union or to safeguard the interests of the credit union; or
  - (g) which is made to the Bank for the purposes of its functions in relation to credit unions; or
  - (h) which is made to the Credit Union Restructuring Board for the purposes of its functions under the *Credit Union and Cooperation with Overseas Regulators Act 2012*.

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

## 10.5 Duty to account

### Section 74 – Duty to account

- (1) † Whenever required to do so in accordance with *subsection (2)*, every officer of a credit union who has the receipt or charge of money on behalf of the credit union shall-
- (a) render such an account as may be required by the credit union or its board of directors;
  - (b) pay over all such money and deliver all such property of the credit union for the time being under his custody or control to such person as the credit union or its board of directors may appoint.
- (2) Either or both of the requirements in *subsection (1)* shall arise –
- (a) on demand; or

- (b) ‡ on the service on the officer of a notice in writing imposing the requirement or, as the case may be, both of the requirements;  
and the requirement in *paragraph (a)* of that subsection shall also arise at such times as may be determined under the rules of the credit union.
- (3) ‡ After the death of an officer of a credit union, references in *subsections (1) and (2)* to the officer shall be taken to include references to his personal representatives.
- (4) ‡ If any person fails to comply with a requirement under subsection (1), the Circuit Court, on the application to it of the credit union, may make an order requiring that person to comply with the requirement.
- (5) The jurisdiction of the Circuit Court under *subsection (4)* shall be exercised by the judge for the time being assigned to the circuit in which the registered office of the credit union is situated.

## 10.6 Register of members

### Section 75 – Register of members and officers

- (1) Every credit union shall keep at its registered office a register in which shall be entered–
- (a) the membership numbers, names and addresses of its members;
- (b) a statement of the number of shares and amount of deposits held by each member and, if the shares are distinguished by numbers, the numbers of the shares so held;
- (c) a statement of other property in the credit union, whether in loans or otherwise, held by each member;
- (d) the date at which the name of any person was entered in the register as a member;
- (e) the date at which any person ceased to be a member; and
- (f) ‡ the membership numbers, names and addresses of the officers of the credit union (excluding any person who is an officer solely by virtue of being an employee or a voluntary assistant), with the offices held by them respectively, the dates on which they assumed office and, where applicable, on which they

ceased to hold office.

- (2) The register may be kept either by making entries in bound books or by recording the matters in question in any other manner; but, where the register is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against, and facilitating the discovery of, any falsification.
- (3) Every credit union shall either—
- (a) keep at its registered office, for the purposes of inspection under *section 76*, an abbreviated register, containing the particulars in the register kept under *subsection (1)*, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection; or
  - (b) so construct the register kept under *subsection (1)* that it is possible to open to inspection the particulars in the register, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection and without exposing the particulars so entered.
- (4) Where a credit union keeps a register pursuant to *subsection (1)* by recording the matters in question in any manner other than by making entries in bound books, the credit union shall keep at a place other than its registered office a duplicate register containing the particulars in the register kept under *subsection (1)*.
- (5) ‡ The Bank or a person acting on its behalf may at all reasonable hours inspect any particulars in any register or duplicate register kept under this section.
- (6) A credit union's register or duplicate register kept under this section, or any other register or list of members or shares kept by the credit union shall be *prima facie* evidence of any of the following particulars entered therein, that is to say—
- (a) the membership numbers, names and addresses of members;
  - (b) the number of shares and the amount of deposits respectively held by the members, and the distinguishing numbers of those shares if they are distinguished by numbers;
  - (c) the date at which the name of any person was entered in the register as a member; and



(d) the date at which any person ceased to be a member.

- (7) A credit union shall ensure that a register or duplicate register kept under this section is up to date and, in particular, shall ensure that, if an event occurs which gives rise to the need for the making of an entry in, a change to or a deletion from, the register, that entry, change or deletion is made within 28 days of the event in question.

## 10.7 Inspection of books

### Section 76 – Inspection of books

- (1) Notwithstanding anything in the rules of a credit union, except as provided by this Act or any other enactment, no-one (whether a member of the credit union or not) shall have the right to inspect the books of a credit union.
- (2) [deleted]
- (3) The rules of a credit union may make provision for the disclosure of its books and documents for the purpose of enabling it to enter into contracts for the benefit of the credit union.
- (4) Subject to *subsection (5)*, on the application of thirty members of a credit union, the Bank may appoint an accountant to inspect and report on the books and documents of the credit union.
- (5) An application under *subsection (4)* shall contain such particulars as the Bank may require and shall not be valid unless–
- (a) each of the members making the application has been a member throughout the whole of the twelve months immediately preceding the date of the application; and
- (b) the members making the application deposit with the Bank as security for the costs of the proposed inspection such sum as the Bank may reasonably require.
- (6) An accountant appointed under *subsection (4)* may make copies of, and take extracts from, any books or documents of the credit union at all reasonable hours at the credit union’s registered office or at any other place where those books or documents are kept.

- (7) All expenses of and incidental to an inspection by an accountant appointed under *subsection (4)* shall be defrayed in such proportions as the Bank may direct—
- (a) by the members making the application;
  - (b) out of the funds of the credit union; and
  - (c) ‡ by the members or officers (other than any person who is an officer solely by virtue of being a voluntary assistant) or former members or officers (other than any person who was an officer solely by virtue of being a former voluntary assistant) of the credit union.
- (8) The Bank shall make known the results of an inspection by an accountant appointed under *subsection (4)* to the members who made the application and to the credit union.

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

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

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

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

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

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

## **11.2 Succession plan**

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

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

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

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

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

# INTERNAL AUDIT

## Contents

- 1. Legislation ..... 2**
- 2. Guidance ..... 3**
  - 2.1 Internal audit function ..... 3
  - 2.2 Outsourcing and sharing arrangements ..... 5
  - 2.3 Relationship with the auditor ..... 5
  - 2.4 Internal audit charter ..... 6
  - 2.5 Internal audit plan ..... 6
  - 2.6 Independence of the internal audit function ..... 7
  - 2.7 Internal audit reporting ..... 7
  - 2.8 Review by the board of directors ..... 8

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	April 2024	Amended text in section 76K(2) to reflect the commencement of the Credit Union (Amendment) Act 2023.

# 1. Legislation

## Section 76K – Internal audit\*

(1) 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.

(2) The internal audit function shall prepare, implement and maintain a document (in this Act referred to as the “internal audit charter”) which shall define-

(a) the activities of the internal audit function within the credit union, and

(b) the scope of those activities,

and, relevant to the performance of its audits, shall authorise the access by the internal audit function to records, personnel and physical properties of the credit union. The internal audit charter shall be reviewed and modified in accordance with section 55(8).

(3) There shall be prepared by the internal audit function and approved by the board of a credit union or, where an audit committee exists for the credit union, by the audit committee with the agreement of that board, a written plan (in this Act referred to as an “internal audit plan”) detailing the scope and objectives of audits, setting priorities as regards areas to be audited and determine the necessary resources required to implement the plan. The internal audit plan shall be reviewed and modified in accordance with section 55(8).

(4) 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.

(5) The internal audit function shall report the results of its evaluations and recommendations to the audit committee, where one exists, or otherwise to the board of directors, on a regular basis, and at least quarterly.

(6) (a) The Bank may prescribe the form and content of the internal audit charter and

internal audit plan, and related matters.<sup>1</sup>

(b) Without prejudice to the generality of paragraph (a), regulations may prescribe–

(i) the frequency and timing at which an examination of the records of the credit union is to be undertaken by the internal audit function, and

(ii) the nature of the records to be inspected for the purposes of subparagraph (i).

(7) The internal audit function shall have access, at all times, to the books and documents (including draft documents) of the credit union to enable it to carry out its functions under the Act.

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

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

...

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

## **2. Guidance**

### **2.1 Internal audit function**

The internal audit function should cover the following at a minimum in its evaluation of the effectiveness of the credit union’s risk management, internal controls and governance processes:

- evaluating whether the risk management system required to be maintained by a credit union under section 76B of the 1997 Act<sup>2</sup> identifies and assesses significant risks in the credit union including the identification of operational risks, as required under section 76E of the 1997 Act;<sup>3</sup>
- ensuring appropriate risk controls are selected that manage risks within the credit union’s risk tolerance;

<sup>1</sup> The Central Bank has not yet prescribed Regulations under this subsection.

<sup>2</sup> See the Chapter on “Risk Management and Compliance”.

<sup>3</sup> See the Chapter on “Operational Risk”.

**Internal Audit****Publication Date: April 2024**

- ensuring that relevant risk information is captured and communicated in a timely manner across the credit union, enabling officers of the credit union to carry out their responsibilities;
- evaluating the effectiveness of the credit union's information systems required under section 76G of the 1997 Act;<sup>4</sup>
- evaluating the accuracy, consistency, comprehensiveness, accessibility, timeliness, and security of management information required to be produced under section 76H of the 1997 Act;<sup>5</sup>
- reviewing methods employed by the credit union to safeguard assets (including inspection and verification of cash, passbooks or statements, bank reconciliations, securities, cash accounts and all records relating to loans and investments);
- assessing the effectiveness of the compliance programme required under section 76B of the 1997 Act in ensuring compliance with legal and regulatory requirements and guidance;<sup>6</sup> and
- evaluating the effectiveness of the credit union's governance arrangements required under section 66A of the 1997 Act.<sup>7</sup>

Arising from the above, the internal audit function should make recommendations to the board of directors (or the audit committee where one exists) on improving the effectiveness of the risk management, internal controls and governance processes. The internal audit function should follow up on recommendations made, to ensure that effective remedial action, agreed by the board of directors (or audit committee where one exists), is taken. Recommendations should be ranked and should include proposed timelines for implementation. An overall opinion of the internal audit function on the effectiveness of the credit union's risk management, internal controls and governance processes should also be provided to the board of directors (or the audit committee where one exists).

The board of directors of the credit union should encourage the internal audit function to adhere to internal audit professional standards and benchmarks relating to internal audit. An example of such standards is the standards established by the Institute of Internal Auditors.<sup>8</sup>

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<sup>4</sup> See the Chapter on "Operational Risk".

<sup>5</sup> See the Chapter on "Operational Risk".

<sup>6</sup> See the Chapter on "Risk Management and Compliance".

<sup>7</sup> See the Chapter on "Governance".

<sup>8</sup> The Institute of Internal Auditors (January 2013), *International Standards for the Professional Practice of Internal Auditing (Standards)*, available at <https://na.theiia.org/standards-guidance/Public%20Documents/IPPF%202013%20English.pdf>



The internal audit function should have adequate time and resources to carry out its functions under this section having regard to the nature, scale, complexity and risk profile of the credit union.

## **2.2 Outsourcing and sharing arrangements**

It is a matter for the board of directors to determine whether the internal audit function is to be performed in-house, through a sharing arrangement between credit unions, or outsourced to a third party service provider having regard to the nature, scale, complexity and risk profile of the credit union. Whether performed in-house, through a sharing arrangement or through an outsourcing arrangement, the board of directors retains responsibility for the oversight of the internal audit function and for ensuring that the credit union complies with all requirements relating to the internal audit function.

Credit unions are required to comply with section 76J of the 1997 Act<sup>9</sup> where outsourcing the internal audit function to a third party service provider and should also be aware of the fitness and probity requirements surrounding outsourcing.<sup>10</sup> When assessing whether to outsource the internal audit function, the credit union should also consider the independence and objectivity of the third party service provider.

Where the internal audit function is outsourced, credit unions should demonstrate the following at a minimum:

- evidence of review by the credit union, at least annually, to ensure that circumstances have not changed within the credit union to merit the credit union establishing its own internal audit function;
- regular contact between the outsourced internal audit function and the credit union; and
- follow-up on the implementation of audit recommendations.

## **2.3 Relationship with the auditor**

The board of directors should not outsource internal audit activities to the credit union's existing auditors as this may impact on the independence of the auditor.

The internal audit function should maintain open communication with the auditor. This should include a clear delineation of responsibilities, plans and procedures for co-operation to ensure effective audit coverage and to minimise duplication of effort.

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<sup>9</sup> See the Chapter on "Outsourcing".

<sup>10</sup> See the Chapter on "Fitness and Probity".

## 2.4 Internal audit charter

The internal audit charter should cover the following at a minimum:

- objectives of the internal audit charter;
- organisational arrangements setting out the roles and responsibilities in relation to internal audit;
- activities and the scope of activities of the internal audit function which should be as wide as possible to cover every activity of the credit union;
- basis for the preparation of the internal audit plan, including processes used to assess areas of significant risk;
- safeguards in place to ensure the independence and objectivity of the internal audit function;
- authority of the internal audit function and the procedures and safeguards in place to ensure unrestricted access by the internal audit function to the records, personnel and physical properties of the credit union;
- procedures for the coordination between the internal audit function and the auditor to ensure effective audit coverage and to minimise duplication of effort;
- reporting arrangements for the internal audit function, including the frequency, form and content of reporting to the board of directors (or audit committee where one exists);
- process and timelines for the review of the internal audit function; and
- process and timelines for the review and approval of the internal audit charter by the board of directors and for ensuring the internal audit charter is updated.

## 2.5 Internal audit plan

In advance of preparing the internal audit plan the internal audit function should undertake a risk assessment to identify key risks within the credit union. Activities that are determined to be higher risk should be audited in more depth and more frequently than activities that are determined to be lower risk. However, the internal audit plan should provide for all areas of the credit union's business to be covered over a set period. The internal audit plan should also take account of the audit plans of the auditor.

The internal audit plan should be based on the risk assessment carried out by the internal audit function and should cover the following at a minimum:

- the objectives and scope of the internal audit plan;
- organisational arrangements setting out the roles and responsibilities of key personnel involved in implementing the internal audit plan;
- a detailed work programme including priority areas to be audited and timelines for completion of the work;

- how the work is to be performed, including audit procedures and tests to be performed; and
- the process and timelines for review and approval of the internal audit plan by the board of directors and for ensuring the plan is updated.

The internal audit plan should be dynamic and flexible to allow for changes throughout the year. The internal audit function should communicate any significant deviations from the internal audit plan, the reasons for these deviations and proposed action to address the deviations to the board of directors (or the audit committee where one exists).

## **2.6 Independence of the internal audit function**

In order to ensure that the internal audit function operates with independence, the board of directors should, at a minimum, ensure that the internal audit function:

- is appointed at a senior level to ensure that the internal audit function has appropriate standing and authority within the credit union;
- is separate from other functions and does not engage in any other activity of the credit union, avoids conflicts of interests and is capable of operating independently of management and without undue influence over its activities;
- has unrestricted and timely access to records, personnel and physical property of the credit union;
- is free to report its findings and assessment through clear reporting lines to the board of directors (or audit committee where one exists) and has access to the board of directors (or audit committee where one exists); and
- is not remunerated on the basis of the financial performance of the credit union but on its performance in carrying out its functions.

Notwithstanding the above, the internal audit function may report to the manager/management team as appropriate, for example in relation to administrative issues such as human resource administration.

## **2.7 Internal audit reporting**

The report to be provided by the internal audit function to the board of directors (or audit committee where one exists) should provide objective assurance to the board of directors (or audit committee where one exists) on the effectiveness of the credit union's risk management, internal control and governance processes and should be accurate, objective, clear, concise, constructive, complete and timely. The report should cover the following at a minimum:

- the internal audit objectives, scope and work undertaken;

- an overall opinion on the effectiveness of the credit union's risk management, internal controls and governance processes;
- internal audit findings including any weaknesses identified and the causes of such weaknesses;
- recommendations, ranked by priority, to address identified weaknesses;
- proposed action plans, including timelines, to implement recommendations; and
- an update on the implementation of action plans previously agreed by the board of directors (or audit committee where one exists) including the status of open items.

The board of directors (or audit committee where one exists) should consider and review internal audit reports, ensure due consideration is given to recommendations of the internal audit function and ensure that there is appropriate follow-up on all weaknesses identified.

The internal audit function should establish and maintain a system to monitor the implementation of actions agreed by the board of directors (or audit committee where one exists) which should include a follow-up process to ensure that agreed actions have been effectively implemented.

Where a significant issue is identified in the course of the work of the internal audit function, this should be brought to the attention of the board of directors (or audit committee where one exists) immediately. The board of directors should ensure that any issue identified is addressed in a timely manner.

## **2.8 Review by the board of directors**

The board of directors should give consideration to the requirements and guidance contained in this Chapter when reviewing the performance of the internal audit function.

As part of the review, the board of directors should ensure the internal audit charter and the internal audit plan are updated to reflect any material changes to the following at a minimum:

- the risk management system;
- systems and controls;
- governance arrangements;
- legal and regulatory requirements and guidance; and
- the credit union's strategic plan. This should include any proposals in relation to new products and services, material modifications to existing products and services, outsourcing to service providers and major management initiatives, such as transfers of engagements or amalgamations.

# INVESTMENTS

## Contents

<b>1.</b>	<b>Legislation .....</b>	<b>2</b>
<b>2.</b>	<b>Regulations .....</b>	<b>6</b>
<b>3.</b>	<b>Guidance.....</b>	<b>13</b>
	3.1 Investment policy .....	13
	3.2 Accounting for Investments.....	15
	3.3 Assessing Investments .....	15
	3.4 Definitions of "approved housing body" and "Tier 3 Approved Housing Body" ....	16

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	January 2014	Inserted circular and link to circular issued on 19 December 2013 in relation to Investment in State Securities (other than Irish State Securities).
1.2	November 2015	<ul style="list-style-type: none"> <li>• Amended section 43 to reflect the commencement of section 12 of the 2012 Act.</li> <li>• Amended section 44(4) to reflect item 31 of schedule 1 of the 2012 Act.</li> <li>• Inserted regulations in Section 2.</li> <li>• Removed reference to the Trustee (Authorised Investments) Order 1998.</li> </ul>
1.3	January 2016	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2.</li> </ul>
1.4	March 2018	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2.</li> <li>• Updated information on MiFID II.</li> </ul>
1.5	September 2020	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2 to include definition for "credit institution".</li> </ul>
1.6	September 2021	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2 to reflect amendments made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2020 (S.I. No. 675 of 2020).</li> </ul>
1.7	April 2023	<ul style="list-style-type: none"> <li>• Guidance included on the definitions of "approved housing body" and "Tier 3 Approved Housing Body" under the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.</li> </ul>
1.8	September 2024	<ul style="list-style-type: none"> <li>• Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> </ul>

# 1. Legislation

## Section 43- Investments\*

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

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

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

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



(7) If at any time—

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

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

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

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(v) investment policies;

(vi) the designating of depositories for the funds of the credit union and signatories to cheques, drafts or similar documents drawn on the credit union;

...

## 2. Regulations

### **CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016**

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

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

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

#### **Interpretation**

In these Regulations, unless the context otherwise requires:-

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

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

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

“the Bank” means the Central Bank of Ireland;

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

(a) a bond issued by a credit institution;

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

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

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

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

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

“EEA” means the European Economic Area;

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

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

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

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

“recognised rating agency” means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009<sup>2</sup> on credit rating agencies;

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

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

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

“UCITS” means an undertaking authorised as an undertaking for collective investment in transferable securities by the Bank or by a competent authority of another EEA State pursuant to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009<sup>3</sup> on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

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<sup>1</sup> OJ No. L302, 17.11.2009, p. 1

<sup>2</sup> OJ No. L302, 17.11.2009, p. 1

<sup>3</sup> OJ NO. L302, 17.11.2009, p. 32

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

## **PART 5**

### **INVESTMENTS**

#### **Classes of Investments**

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

- (a) Irish and EEA State Securities;
- (b) supranational bonds;
- (c) accounts in credit institutions;
- (d) bank bonds;
- (e) corporate bonds;
- (f) regulated investment vehicles where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies;
- (g) UCITS;
- (h) shares of, and deposits with, other credit unions;
- (i) shares of a society registered under the Industrial and Provident Societies Act 1893 to 1978, provided the society is not an approved housing body.

(2) For the purposes of Regulation 25(1)(f), the underlying investments of a regulated investment vehicle in a Tier 3 Approved Housing Body shall consist exclusively of loans or other forms of debt financing provided by the regulated investment vehicle to the Tier 3 Approved Housing Body.

(3) A credit union may invest in a UCITS only where –

- (a) the underlying investments of the UCITS are composed of instruments specified in Regulation 25(1)(a), (b), (c), (d) or (e) (or any combination of such instruments),
- (b) the UCITS has total assets with a value of at least €150 million, and

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

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

### **Counterparty Limits**

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

### **Concentration Limits**

27. (1) A credit union shall not make an investment in Irish and EEA State Securities, either directly or through a UCITS, which would cause the credit union's combined investments in Irish and EEA State Securities and supranational bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (2) A credit union shall not make an investment in supranational bonds, either directly or through a UCITS, which would cause the credit union's combined investments in Irish and EEA State Securities and supranational bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (3) A credit union shall not make an investment in bank bonds, either directly or through a UCITS, which would cause the credit union's investments in bank bonds, held directly or through a UCITS, to exceed 70 per cent of the total value of the credit union's investments.
- (4) A credit union shall not make an investment in corporate bonds, either directly or through a UCITS, which would cause the credit union's investments in corporate bonds, held directly or through a UCITS, to exceed 50 per cent of the credit union's regulatory reserve.

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

**Maturity Limits**

28. (1) Subject to paragraph (1A), with the exception of an investment in a regulated investment vehicle referred to in Regulation 25(1)(f), a credit union shall not make an investment, either directly or through a UCITS, which has a maturity date which exceeds 10 years from the date of the investment.
- (1A) In the case of an investment made, directly or through a UCITS, in either Irish and EEA State Securities referred to in Regulation 25(1)(a) or supranational bonds referred to in Regulation 25(1)(b), the maturity date shall not exceed 10 years and 6 months from the date of the investment.
- (2) A credit union shall not make an investment in a regulated investment vehicle where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies where those underlying investments have a maturity date which exceeds 25 years from the date of the investment.
- (3) A credit union shall not make an investment which would cause the credit union to have more than 30 per cent of its investments maturing after 7 years.

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

### **Minimum Rating Requirements**

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

- (a) Irish and EEA State Securities, or
- (b) supranational bonds,

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

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

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

- (a) Irish and EEA State Securities,
- (b) supranational bonds, or
- (c) corporate bonds,

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

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

### **Holding of Investments**

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

### **Investment Practices – Distribution of Investment Income/ Investment Gain**

31. A credit union shall not distribute from its annual operating surplus, investment income or an investment gain to members or transfer investment income or an

investment gain to a reserve set aside to provide for dividends, unless the investment income or investment gain falls within the following:

- (a) investment income or an investment gain received by the credit union at the balance sheet date;
- (b) investment income that will be received by the credit union within 12 months of the balance sheet date.

### **Investment Practices – Concentration Risk**

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

### **Transitional Arrangements**

33. (1) Where, on 1 March 2018, a credit union has investments made in accordance with legislative requirements applicable at the time of the investment which do not comply with the requirements in this Part, the credit union shall (subject to paragraph (4)) –

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

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

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



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

the credit union shall comply with paragraph (3).

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

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

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

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

(5) In this Regulation “relevant event” means when Title V of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013<sup>4</sup> (or other Union law concerning the freedom of establishment or the freedom to provide services with respect to banking) ceases to apply to a person with whom an investment is made as a direct consequence of the United Kingdom withdrawing from the European Union.

## 3. Guidance

### 3.1 Investment policy

The investment policy should cover the following at a minimum:

- objectives of the credit union's investment activities;
- organisational arrangements setting out the roles and responsibilities of officers involved in the credit union's investments;

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

**Investments****Publication Date: September 2024**

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

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

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

## **3.2 Accounting for Investments**

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

## **3.3 Assessing Investments**

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

### **Capital Protection**

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

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

### **Investment Advisors**

Where credit unions are dealing with an investment adviser, they need to ensure that the adviser has adequately explained why an investment is suitable for the credit union and that they understand the risk. Credit unions need to understand the risks of the investments they undertake - they cannot outsource that judgement to an external party such as an investment adviser. Credit unions are expected to have their own sound investment criteria and investment decision processes in place.

The Market in Financial Instruments Directive II (MiFID II) is effective since 3 January 2018. Enhancements introduced from MiFID I are aimed at strengthening investor protection and improving the functioning of financial markets by making them more efficient, resilient and transparent. Changes include enhancements to conflicts of interest provisions that an investor has when engaging with clients and the banning of commission for the provision of independent advice and portfolio management services. MiFID II imposes certain obligations on investment firms and credit institutions when providing

investment services to their clients, including credit unions. MiFID II categorises the clients of investment firms and credit institutions into two categories, Retail Clients and Professional Clients. While credit unions are automatically categorised as Professional Clients under MiFID II, they may opt to be treated as Retail Clients. Credit unions should give careful consideration to whether they should opt to be treated as Retail Clients for MiFID II purposes, taking account of all of the implications of their chosen categorisation, including the higher duty of care owed to Retail Clients.

### **3.4 Definitions of “approved housing body” and “Tier 3 Approved Housing Body”**

Since the changes to the investment regulations in March 2018, credit unions are permitted to invest in *“regulated investment vehicles where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies”*. The 2016 Regulations define *“approved housing body”* and *“Tier 3 Approved Housing Body”*, as follows:

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

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

There have been significant developments in the registration and regulation of AHBs in recent years. In February 2021, the Approved Housing Body Regulatory Authority (AHBRA) was established under the Housing (Regulation of Approved Housing Bodies) Act 2019 (the 2019 Act), with responsibility for, among other things, the registration and regulation of AHBs. AHBs no longer hold approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992. From 1 January 2022, AHBRA is responsible for establishing and maintaining the register of AHBs and for registering organisations as AHBs. Pursuant to section 34 of the 2019 Act all organisations that had Approved Housing Body status and were listed on the register previously maintained by the Department of Housing, Local Government and Heritage were deemed to be registered with AHBRA and have a specific timeframe to make a formal application to become registered as an Approved Housing Body with AHBRA. In addition, the Voluntary Regulation Code for Approved Housing Bodies in Ireland (the Code), with which AHBs coming within the Tier 1, Tier 2 or Tier 3 classification criteria previously voluntarily complied, ceased as of 31 December 2021.

**Investments****Publication Date: September 2024**

Euro denominated investments in *“regulated investment vehicles where the underlying investments of the regulated investment vehicle are investments in Tier 3 Approved Housing Bodies”* continue to be a permitted class of credit union investment.

As AHBs are no longer housing bodies *“granted approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992”*, for the period until the definitions of *“approved housing body”* and *“Tier 3 Approved Housing Body”* in the 2016 Regulations are amended, the references to approved housing body in the Regulations can be read as being a reference to the AHB being registered (or deemed registered) as an approved housing body with AHBRA under the 2019 Act. In addition, the reference in the definition of *“Tier 3 Approved Housing Body”* to an AHB being *“classified as Tier 3 under the Voluntary Regulation Code for Approved Housing Bodies in Ireland”* should be read consistent with how Tier 3 AHBs were classified under the Code, specifically:

- All AHBs with more than 300 units; or
- Tier 2 AHBs with sizable development plans or other AHBs with development plans in place to provide more units (taken to mean development plans to reach more than 300 units).<sup>5</sup>

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<sup>5</sup> The Code described Tier 3 AHBs as including *“those larger bodies with more than 300 units and any Tier 2 organisations whose development plans are particularly sizable”*. Tier 2 AHBs were classified under the Code as *“AHBs with between 50 and 300 units and/or with development plans in place to provide more units”*. The Code described Tier 2 AHBs as having *“portfolios of between 50 - 300 units and/or have plans to develop new housing as part of their strategy in future in addition to the existing housing they manage. Tier 2 AHBs will also include those AHBs with less than 300 units that are applying for, or are in receipt of loans from the Housing Finance Agency, private finance or from other sources”*.

# LENDING

## Contents

<b>1. Legislation</b> .....	<b>3</b>
<b>2. Regulations</b> .....	<b>9</b>
<b>3. Guidance</b> .....	<b>19</b>
3.1 Lending policies .....	19
3.1.1 <i>Credit policy</i> .....	19
3.1.2 <i>Credit control policy</i> .....	21
3.1.3 <i>Provisioning policy</i> .....	21
3.2 Business loans .....	22
3.2.1 <i>Definition of "approved housing body"</i> .....	23
3.3 House loans.....	23
3.4 Single or lump sum repayment loans .....	24
3.5 Interest rates on higher risk loans .....	24
3.6 Security for loans .....	24
3.6.1 <i>Security for loans</i> .....	24
3.6.2 <i>Security for large or complex loans</i> .....	25
3.6.3 <i>Secured and unsecured loans</i> .....	25
3.6.4 <i>Security for house loans</i> .....	26
3.6.5 <i>Home improvement loans</i> .....	26
3.6.6 <i>Attached shares</i> .....	27
3.6.7 <i>Guarantors</i> .....	27
3.6.8 <i>Valuation of immovable property</i> .....	27
3.7 Credit assessment .....	28
3.7.1 <i>Creditworthiness assessments for business loans</i> .....	29
3.7.2 <i>Stress tests for house loans</i> .....	30
3.8 Credit committee and credit control committee .....	30
3.9 Lending concentration limits .....	30
3.9.1 <i>Combined concentration limits for house and business loans</i> .....	30
3.9.2 <i>Combined 10 per cent limit for house and business loans</i> .....	31
3.9.3 <i>Notification to avail of the 10 per cent limit</i> .....	32
3.9.4 <i>Notification that the credit union no longer meets the qualifying criteria for the 10 per cent limit</i> .....	32
3.9.5 <i>Combined 15 per cent limit for house and business loans</i> .....	33
3.9.6 <i>Notification that the credit union no longer meets the qualifying criterion to apply for the 15 per cent limit or the conditions of its approval</i> .....	33

3.9.7	Monitoring compliance with concentration limits .....	34
3.10	Related party lending .....	34
3.11	Large exposures.....	35
3.11.1	Connected borrowers.....	35
3.11.2	Limits on large exposures.....	36
3.11.3	Monitoring and reporting on large exposures .....	37
3.12	Lending practices for rescheduled loans .....	37
3.13	Systems, controls and reporting for rescheduled loans .....	38

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Link to Section 35 Regulatory Requirements for Credit Unions reflects updated requirements effective from 1 October 2013.
1.1	October 2013	Inserted footnote 1 to reflect deletion of section 60 from the 1997 Act.
1.2	November 2015	<ul style="list-style-type: none"> <li>Amended section 35 to reflect the commencement of section 11 of the 2012 Act.</li> <li>Inserted regulations in Section 2.</li> </ul>
1.3	January 2016	Updated regulations in Section 2.
1.4	December 2016	Updated Section 4.11 and 4.12 to provide additional guidance.
1.5	April 2018	Removed Section 4.9 on Provisioning to reflect introduction of stand-alone Provisioning Guidelines for Credit Unions.
1.6	May 2019	Updated table of contents.
1.7	March 2020	<ul style="list-style-type: none"> <li>Updates to the Regulations reflecting changes made by the Credit Union Act 1997 (Regulatory Requirements)(Amendment) Regulations 2019.</li> <li>Removal of the Section 35 Regulatory Requirements for Credit Unions following their rescission, as of 1 January 2020.</li> <li>Updated guidance to reflect changes to the lending framework for credit unions made by the Credit Union Act 1997 (Regulatory Requirements)(Amendment) Regulations 2019.</li> </ul>
1.8	April 2023	<ul style="list-style-type: none"> <li>Guidance included on the definition of "approved housing body" under the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.</li> </ul>
1.9	April 2024	<ul style="list-style-type: none"> <li>Amended text in section 35(8), 36(2), 36(2)(c), 37(1), and 38(1)(a) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Inserted text in section 36(2)(d), 38(3), 38(4) and 38(5) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Deleted text in section 36(3), 36(4), 36(5), 37(2), 37(3), 38(1)(b) and 38(1)(c) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Updated guidance to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> <li>Updated guidance to reflect changes in the Mortgage Measures.</li> <li>Updated guidance to reflect updated method of submitting notifications and applications to the Central Bank in respect of the 10 per cent and 15 per cent combined concentration limits for house and business lending.</li> </ul>
1.10	September 2024	<ul style="list-style-type: none"> <li>Amended text in section 35 and section 55(1)(o) of the 1997 Act to reflect the commencement of changes to these sections of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>Updated to reflect the definition of 'member' contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.</li> </ul>

## 1. Legislation

### Section 35- Making of loans\*

(1) (a) In this section 'large exposure', in relation to loans of a credit union to a borrower or a group of borrowers who are connected, means the total exposure (including contingent liabilities) of the credit union where the total exposure to such borrower or group of borrowers would be greater than an amount (whether expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount) prescribed by the Bank.

(b) For the purposes of this subsection—

'control' has the meaning assigned to it by section 432 of the Taxes Consolidation Act 1997 and the other relevant provisions of Part 13 of that Act;

'group of borrowers who are connected' means 2 or more persons—

(i) who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other person or persons (not being individuals); or

(ii) between whom there is no relationship of control as set out in subparagraph (i), but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other person or some or all of the other persons would be likely to encounter repayment difficulties.

(2) A credit union may-

(a) make a loan to a member of the credit union,

(b) enter into an agreement with one or more other credit unions in accordance with which the credit union agrees to participate in a loan to a member of one of those other credit unions (in this paragraph referred to as 'the originating lender') by the originating lender, or

(c) enter into an agreement between—

(i) the credit union and one or more other credit unions, and



(ii) one or more members of —

(I) the credit union, or

(II) one of those other credit unions,

in accordance with which each credit union that is a party to the agreement provides a loan to the member or those members, as the case may be,

for such purpose as the credit union considers appropriate and upon such security (or without security) and terms as the rules of the credit union may provide.

(2A) The ability of the loan applicant to repay a loan shall be the primary consideration in the underwriting process of the credit union making the loan or participating in the loan, as the case may be.

(3) A credit union shall manage and control lending to ensure the making of loans does not involve undue risk to members' savings taking into account the nature, scale, complexity and risk profile of the credit union.

(4) Every application to a credit union for a loan shall be in writing and shall state the purpose for which the loan is required and the security (if any) offered for it.

(5) A credit union shall not accept from an officer of the credit union a guarantee for a loan to another member unless that other member is the officer's spouse or civil partner, child or parent.

(6) Where the rules of a credit union so provide, the credit union may determine in accordance with those rules the total, including percentage, amount of loans (if any) that it may grant to non-qualifying members.

(7) In relation to loans to which this section relates and for the adequate protection of the savings of members of credit unions, the Bank may prescribe one or more of the following:

(a) the classes of lending a credit union may engage in whether by reference to any common characteristic of the credit unions or loans concerned, or otherwise;

- (b) the limits on the total, including percentage, amount of loans generally, or unsecured loans or class or classes of loans, that may be lent by credit unions, having regard to period or periods of time for which loans concerned are made;
  - (c) the matters relating to large exposures of credit unions and limits relating to such exposures;
  - (d) the limits on the concentration of lending, including concentration limits on loan classes, including concentration limits on loans to a member of a credit union;
  - (e) any other limit that the Bank considers appropriate.
- (8) For the adequate protection of the savings of members of credit unions the Bank may prescribe such other requirements, applicable to loans to which this section relates, as it considers necessary in relation to any one or more of the following matters:
- (a) the lending practices of credit unions, including —
    - (i) loan application assessments,
    - (ii) the making of provision for specified matters,
    - (iii) reviews to assess the adequacy of provisions,
    - (iv) maintaining policies for the holding of provisions, for credit and for credit control,
    - (v) the types of security that may be accepted;
  - (b) reporting loans to the Bank;
  - (c) the holding by credit unions of provisions, reserves or capital against loans or specified classes or types of loans.
- (9) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

(10) A credit union shall ensure that it has appropriate processes, procedures, systems, controls and reporting arrangements to monitor compliance with the requirements of this section and any requirement imposed under this section.

(11) Subject to its rules, in respect of a loan, a credit union may accept, in addition to other forms of security—

(a) a guarantee by a member, or

(b) a pledge by a member of shares in or deposits with the credit union,

and, where such a guarantee or pledge is accepted, it shall be deemed to be a security for the loan.

### **Section 36 – Approval of loans**

(1) A credit union shall not make a loan to a member unless it is approved in accordance with this section.

(2) A loan must be approved according as the rules of the credit union require—

(a) by such number of members of the board of directors voting by secret ballot at a meeting of the board at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the members of the board as a whole; or

(b) by such number of members of the credit committee present at a meeting of that committee at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the committee members as a whole; or

(c) by a credit officer; or

(d) in accordance with a loan approval process which has been approved by the board of directors.

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

### Section 37 – Appeal against non-approval of loan

(1) If an application for a loan which was considered—

(a) by the credit committee,

(b) by a credit officer, or

(c) in accordance with a loan approval process referred to in section 36(2)(d),

was not approved under section 36, the applicant may appeal to an appellate body which, by a decision of such members of the body present at the meeting at which the appeal is considered as represents at least two-thirds of those present and a majority of the body as a whole, may give approval to the loan, overriding the decision of the credit committee, of the credit officer or that made in accordance with the approval process, as the case may be.

(2) [deleted]

(3) [deleted]

### Section 38 – Interest on loans

(1) A credit union may charge interest on loans made to its members under *section 35* subject to the following conditions—

(a) the interest on a loan shall not at any time exceed the rate, specified in the order made under subsection (3) applicable to—

(i) the credit agreement under which the loan is made, or

(ii) where there is no credit agreement, the loan; ;

(b) [deleted]

(c) [deleted]

(2) † If a credit union knowingly charges or accepts interest on a loan at a rate greater than that permitted under this section—

(a) all the interest agreed to be paid by the member shall be deemed to have been waived by the credit union; and

- (b) any interest paid on the loan shall be recoverable summarily by the member (or his personal representative) as a simple contract debt.
- (3) The Minister may, after consultation with the Advisory Committee and such other body as the Minister considers appropriate in the circumstances, by order specify a rate of interest for the purpose of subsection (1)(a).
- (4) An order made under subsection (3) shall apply to credit agreement entered into, or, where there is no credit agreement, a loan made—
- (a) after the date on which the order comes into operation, and
- (b) before the date, if any, on which the order next made under subsection (3) comes into operation.
- (5) The Minister shall have regard to the following when making an order under subsection (3):
- (a) the interest rates charged in respect of loans by credit institutions and other providers of credit;
- (b) the interest rates payable by credit unions on deposit accounts and in respect of other sources of funding for loans;
- (c) the need to avoid distortions in competition between credit unions, credit institutions and other providers of credit;
- (d) the financial stability and well-being of credit unions generally.

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

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

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

...

- (o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

- (i) lending policies including lending limits;

...

## 2. Regulations

### **CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016**

**(S.I. No. 1 of 2016)**

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Interpretation**

In these Regulations, unless the context otherwise required:-

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

“the Bank” means the Central Bank of Ireland;

“business loan” means a loan other than a community loan, that is made to-

- (a) a member of the credit union that is an approved housing body, or
- (b) a member, or where there is more than one member, at least one of those members, that satisfies the following conditions:
  - (i) the loan is made for purposes of the person’s trade, business or profession;
  - (ii) the person is a micro, small or medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC;
  - (iii) the loan is not made for the purpose of financing, in whole or in part, the purchase, construction or refinancing of buildings or the purchase or refinancing of land that the person intends to rent to a third party in order to generate income;

"Commission Recommendation 2003/361/EC" means the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>1</sup>;

"community loan" means a loan to a community or voluntary organisation which is established for the express purpose of furthering the social, economic or environmental well-being of individuals within the common bond of the credit union in any of the following areas -

- (a) sport and recreation;
- (b) culture and heritage;
- (c) the arts (within the meaning of the Arts Act 2003);
- (d) health of the community;
- (e) youth, welfare and amenities; and
- (f) natural environment;

"final repayment date" means the date on which the loan is due to expire, as indicated on the relevant credit agreement in accordance with section 37C(1)(j) of the Act or any subsequent date agreed between the credit union and the member to whom the loan has been made;

"house" means any building or part of a building that does not have a commercial use as its primary purpose and is used or suitable for use as a dwelling and any outhouse, yard, garden or other land appurtenant thereto or usually enjoyed therewith;

"house loan" means a loan made to a member secured by property for the purpose of enabling the member to:

- (a) have a house constructed on the property as their principal residence;
- (b) improve or renovate a house on the property that is already used as their principal residence,
- (c) buy a house that is already constructed on the property for use as their principal residence, or

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<sup>1</sup> OJ No. L124, 20.5.2003, p.36.

(d) refinance a loan previously provided for one of the purposes specified in (a), (b) or (c) for the same purpose;

“member” includes a person in respect of whom services are being offered or provided by a credit union –

- (a) as part of an agreement referred to in section 35(2)(c) of the Act; or
- (b) pursuant to the receipt of a referral from another credit union in accordance with section 51A of the Act;

“member of the family” means in relation to any person, that person’s father, mother, spouse or civil partner, cohabitant, son, daughter, brother, or sister;

“personal loan” means a loan to a natural person, once the loan is for purposes unrelated to the person’s trade, business, profession or the purchase of property;

“related company” means companies related within the meaning of section 2(1) of the Companies Act 2014;

“related party” means -

- (a) a member of the board of directors or the management team of a credit union;
- (b) a member of the family of a member of the board of directors or the management team of a credit union; or
- (c) a business in which a member of the board of directors or the management team of a credit union has a significant shareholding;

“secured loan” means a loan that is secured by a mortgage, charge, assignment, pledge, lien, or other encumbrance in or over any asset or property, but shall not include unsecured guarantees by third parties;

“significant shareholding” means 10 per cent or more of the shares or voting rights in the business;

“the Act” means the Credit Union Act, 1997;

“unattached savings” means those total savings which are not attached to loans or otherwise pledged as security and are withdrawable by members;

“unsecured loan” means a loan that is not a secured loan.



**PART 4****LENDING****Categories of Lending**

11. (1) A credit union shall only make loans that fall within the following categories:
- (a) personal loans;
  - (b) business loans;
  - (c) community loans;
  - (d) house loans;
  - (e) loans to other credit unions.

**Concentration Limits**

12. (1) A credit union shall not make –
- (a) a community loan, where such a loan would cause the total amount of outstanding community loans of the credit union to exceed 25 per cent of the credit union's regulatory reserve, or
  - (b) a loan to another credit union, where such a loan would cause the total amount of outstanding loans of the credit union to other credit unions to exceed 12.5 per cent of the credit union's regulatory reserves.
- (2) Subject to paragraph (3), a credit union shall not make a house loan or a business loan where such loan would cause the combined total gross amount outstanding in relation to house loans and business loans to exceed 7.5 per cent of the assets of the credit union.
- (3) A credit union that satisfies all of the requirements in paragraph (4) can increase its combined total gross amount outstanding in relation to house loans and business loans to 10 per cent of the assets of the credit union.
- (4) The requirements referred to in paragraph (3) are the following:
- (a) the credit union has maintained, for 2 or more consecutive quarters immediately preceding the date on which the notification referred to in subparagraph (b) is made –

- (i) a minimum asset size of €50,000,000, and
  - (ii) regulatory reserves of at least 12.5 per cent of the assets of the credit union;
- (b) the credit union has provided the Bank with at least one month's prior notification in writing that the credit union –
  - (i) is satisfied that it is compliant with the criteria in paragraph (a) at the time of the notification, and
  - (ii) intends to increase lending in respect of house loans and business loans in accordance with paragraph (3).
- (5) A credit union that is subject to the limits set out in paragraph (2) or paragraph (3) shall not make a business loan where such a loan would cause the total gross amount outstanding in relation to business loans to exceed 5 per cent of the assets of the credit union.
- (6) A credit union that has made a notification to the Bank under paragraph (4)(b) but no longer complies with the criteria in paragraph (4)(a), shall –
  - (a) notify the Bank in writing without delay, and
  - (b) cease making new house loans or new business loans in breach of paragraph (2) except where the credit union has already entered into a legally binding agreement with a member to advance a new house loan or a new business loan."

#### **Approval for increasing Combined Lending Capacity to 15 per cent**

12A. (1) A credit union may apply to the Bank for approval to increase its combined total gross amount outstanding in relation to house loans and business loans to 15 per cent of the assets of the credit union.

- (2) The Bank may grant an approval referred to in paragraph (1) where –
  - (a) the credit union had assets of at least €100,000,000 for 2 or more consecutive quarters immediately preceding the date on which the application was submitted under paragraph (1), and

- (b) the Bank is satisfied that the credit union has demonstrated that the approval would be -
- (i) consistent with the adequate protection of the savings of the members of that credit union, and
  - (ii) effective and proportionate, having regard to the nature, scale and complexity of the credit union.
- (3) For the purpose of paragraph (2)(b), the Bank shall consider the following:
- (a) the total realised reserve position of the credit union;
  - (b) such other matters that the Bank may specify from time to time.
- (4) Where the Bank grants an approval under paragraph (2), it may, at that time or at any other time, make the approval subject to conditions with which the credit union shall comply.
- (5) A credit union that is approved by the Bank pursuant to paragraph (2) shall notify the Bank in writing without delay where it no longer complies with any of the requirements in paragraph (2) or any condition imposed on the approval under paragraph (4).
- (6) Subject to paragraph (7), a credit union that has made a notification pursuant to paragraph (5) shall -
- (a) not make new house loans or new business loans that would cause the combined total gross amount outstanding in relation to house loans and business loans to exceed -
    - (i) 10 per cent of the assets of the credit union if the credit union complied with the requirements of Regulation 12(4)(a)(i) and (ii) for 2 or more consecutive quarters immediately prior to the date that the notification referred to in paragraph (5) is made, or
    - (ii) 7.5 per cent of the assets of the credit union in all other cases,and
  - (b) not make new business loans that would cause the total gross amount outstanding in relation to business loans to exceed 5 per cent of the assets of the credit union.

- (7) Paragraph (6) shall not apply where the credit union has already entered into a legally binding agreement with a member to advance a new house loan or a new business loan.

### **Large Exposure Limit**

13. (1) A credit union shall not make a loan to a borrower or a group of borrowers who are connected which would cause the credit union to have a total exposure to the borrower or group of borrowers who are connected of greater than €39,000 or 10 per cent of the regulatory reserve of the credit union.

- (2) Where an exposure to a borrower or group of borrowers who are connected exceeds the limit set out in paragraph (1), the credit union must hold the amount of the exposure that is in excess of the limit in a realised reserve, separate from the regulatory reserve of the credit union.

- (3) The requirement specified in paragraph (2) shall not apply, to exposures existing at the time of commencement of these Regulations, for a period of 2 years from the commencement of these Regulations.

### **Maximum Loan Terms**

14. (1) Subject to paragraph (2), a credit union shall not make -

(a) an unsecured loan to a member where the period from the date on which the loan is made until the final repayment date exceeds 10 years, or

(b) a secured loan to a member where the period from the date on which the loan is made to the final repayment date exceeds 35 years.

- (2) With respect to a loan made to a member, a credit union may, with the consent of the member or of a person acting under the member's written authority, alter the repayment conditions to extend the term of the loan beyond the limit set down in paragraph (1) in either of the following circumstances:

(a) the loan is in arrears at the time the repayment conditions are altered;

(b) the loan would fall into arrears if the repayment conditions were not altered because the terms of the original loan agreement would no longer be met.

### **Requirement for House Loans**

15. A credit union shall only make a house loan-

(a) for one or more of the purposes specified in subparagraph (a) or (c) of the definition of 'house loan', or

(b) to refinance a loan previously provided for one or more of the purposes specified in subparagraph (a) or (c) of the definition of 'house loan',

where that loan will be secured as a first legal charge on the property.

### **Lending Practices for Specific Categories of Lending**

16. (1) A credit union shall only grant a business loan, a community loan or a loan to another credit union where a comprehensive business plan and detailed financial projections (supported by evidence-based assumptions), appropriate for the scale and complexity of the loan, have been provided to it before it grants the relevant loan.

(2) A credit union shall report on the performance of loans, in writing, to the board of directors of the credit union on a monthly basis, and such report shall include details on the performance of business loans, community loans, house loans and loans to other credit unions.

(3) This Regulation does not apply to a business loan granted by a credit union where the total amount of business loans granted to a borrower, or group of borrowers who are connected, is less than €25,000.

### **General Lending Practices**

17. (1) A credit union shall permit a member to repay a loan on any day that the credit union is open for business (including opening hours of branch or otherwise available for business).

(2) A credit union shall establish and maintain the matters specified below in writing:

(a) limits in respect of credit concentration and loan portfolio diversification including the maximum amount of business lending, community lending and lending to other credit unions; and

(b) processes which the credit union will follow in relation to arrears management and rescheduling.

- (3) A credit union shall ensure that its credit assessment process is based on coherent and clearly defined criteria and that the process of approving loans and amending loans is clearly established and documented in its credit policy.

#### **Related Parties-General**

18. (1) A credit union shall not make a loan to a related party which would provide that party with more favourable terms than a loan by the credit union to non-related parties (including, without limitation, terms as to credit assessment, duration, interest rates, amortisation schedules, collateral requirements).

- (2) A credit union shall not manage a loan to a related party on more favourable terms than a loan by the credit union to non-related parties (including but not limited to varying the terms of a loan, permitting rescheduling, interest roll-up, granting a grace period for payment, loan write-off in whole or in part, provisioning against a loan, decisions to take or not to take enforcement action).

#### **Related Parties-Specific**

19. (1) Subject to Regulation 18, a credit union shall ensure that the making of a loan to a related party is subject to individual prior approval in writing by the credit committee and that actions in relation to the management of a loan are subject to individual prior approval in writing by the credit committee or the credit control committee of the credit union as appropriate.

- (2) A credit union shall exclude individuals on the credit committee or the credit control committee with conflicts of interest in relation to matters specified in paragraph (1).

#### **Related Parties-Exempt Exposures**

20. (1) Regulations 19 and 21 do not apply where the total credit union exposure to the related party is not greater than €2,000.

- (2) In relation to exempt exposures referred to in paragraph (1), a credit union shall ensure that:-

- (a) the credit union monitors these loans to ensure that the limit imposed is not exceeded;

(b) a register of these loans recording how it has complied with this requirement is maintained by the credit union; and

(c) a report on these loans is reviewed and approved by the board of directors of the credit union on a quarterly basis.

#### **Related Parties- Recording and Monitoring Requirements**

21. (1) A credit union shall record and monitor loans made to related parties and report, in writing, to the board of directors on related party loans on a monthly basis. Such a report shall include details of loans advanced to related parties during the month, total loans outstanding to related parties, the performance of loans to related parties and actions in respect of the management of loans to related parties.

(2) A credit union shall ensure that the internal audit function assesses, at least annually, the compliance or otherwise by a credit union with Regulation 19 and paragraph (1) of this Regulation and, after each assessment, submit a written report to the board of directors indicating their findings and conclusions and, where appropriate, making recommendations on any changes required.

#### **Related Parties- Credit Policy**

22. A credit union shall include the process in relation to lending to a related party in its Credit Policy.

#### **Lending Policies**

23. (1) A credit union shall, at a minimum, establish and maintain the following written lending policies:

(a) a credit policy;

(b) a credit control policy;

(c) a provisioning policy.

(2) A credit union shall assess the adequacy of its provisioning for bad and doubtful debts on a quarterly basis, having regard to its provisioning policy.

(3) A credit union shall, without delay, make any adjustments to its provisioning for bad or doubtful debts deemed necessary as a result of a review provided for by paragraph (2).

**Transitional Arrangements**

24. (1) Nothing in these Regulations shall render unlawful any loan that conflicts with these Regulations but was made or restructured by a credit union in accordance with the legislative requirements applicable at the time the loan was made or restructured, and the credit union may continue to hold such loan until it has been paid or discharged in full.

- (2) Where, at the commencement of these Regulations, a credit union is failing to comply with the requirements in this Part, that credit union shall only make a loan where the making of such a loan would not cause the credit union to either fail to comply or exacerbate a failure to comply with any of the requirements in this Part.

### 3. Guidance

#### 3.1 Lending policies

Credit unions are required to maintain written lending policies including the following:

- a credit policy;
- a credit control policy; and
- a provisioning policy.

A credit union's lending policies should be aligned to its risk appetite statement and its strategic goals, as set out in its Strategic Plan.

##### **3.1.1 Credit policy**

The credit policy should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in lending including credit officers and the credit committee;
- the lending authorisation limits of the credit committee and credit officers including clear limits on the total funds available for the granting of loans;
- the classes of loans that the credit union may offer;
- the maximum repayment period appropriate to different classes of loans;
- the interest rates applicable to loans;
- the maximum number of top-up loans and additional loans that the credit union may provide to a member;
- processes on lending to related persons which shall:



- prevent members of staff of the credit union making a loan to a related party which would provide that party with more favourable terms than a loan by the credit union to non-related parties;
- prevent persons related to the borrower from being part of the process of granting and managing a loan to such a borrower;
- prevent members of staff of the credit union managing a loan to a related party on more favourable terms than a loan by the credit union to non-related parties;
- arrangements for the on-going reporting and monitoring of loans to related parties and for the review of the related party policies;
- arrangements for monthly written reports to the board of directors; and
- arrangements for annual internal audit assessment of compliance with related party lending requirements.
- circumstances in which loans with atypical repayment arrangements, for example, single or lump sum repayment loans, will be considered and particular approval conditions, including security conditions, attaching to such loans;
- policy regarding curtailment of loans to members in arrears;
- circumstances in which security (including guarantors) for loans must be obtained and the differing type and level of security required depending on the size and/or risk profile of the loan;
- the types of security which may be accepted for loans and the valuation method for each type of security;
- approach to categorisation of loans as “secured loan” and “unsecured loan” for the purpose of the maximum loan term limits set out in the Regulations;
- internal limits in respect of credit concentration and loan portfolio diversification including the maximum amount of personal loans, business loans, community loans, house loans and loans to other credit unions;
- the application, assessment and decision-making process for the approval of loans including the lending criteria to establish capacity to repay for all types of borrowers;
- exceptions reporting;
- policy regarding the determination of income of loan applicants;
- specific procedures for evaluating house loans, business loans, community loans and loans to other credit unions;
- procedures to prevent conflicts of interest and ensure segregation of duties between the approval and payment of loans;
- systems of control to ensure a credit union does not breach any limits including concentration limits, large exposure limits, maximum loan terms and loan-to-income and loan-to-value limits;
- procedures for retention of loan documentation, including loan application forms / credit agreements, security and ability to repay documentation;

- reporting arrangements, including the frequency, form and content of reporting by the credit committee to the board of directors;
- the process for the approval, review and update of the credit policy by the board of directors; and
- the factors to be taken into account in the review of the policy including:
  - the appropriateness of the prevailing interest rates on the various classes of loans depending on current or likely future economic conditions; and
  - the effect of any interest rate increase on borrowers' ability to meet their repayment obligations.

### **3.1.2 Credit control policy**

The credit control policy should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in credit control including the credit control committee and credit control officers;
- procedures for the recording and monitoring of loans;
- processes in relation to arrears management and rescheduling;
- the standard time after which the credit control procedure is to be first activated in respect of loans in arrears;
- description of the various stages of the credit control procedure from first contact with members in arrears to the legal recovery process and / or enforcement of security;
- the criteria and procedure, including approval procedure and authorisation required, for rescheduling of loans and for transferring members share balances against loan arrears;
- the criteria and procedure, including approval procedure and authorisation required, for writing off bad debts;
- procedure for review and follow up of bad debts written off;
- procedures for the recording and monitoring of loans in arrears;
- procedures for communication with members in relation to loan arrears and for changing the terms of the loan agreement;
- reporting arrangements, including the frequency, form and content of reporting by the credit control committee to the board of directors; and
- the process for the approval, review and update of the credit control policy by the board of directors.

### **3.1.3 Provisioning policy**

For guidance on provisioning, please see section 3 of the Provisioning Guidelines for Credit Unions located in Chapter 13A of the Credit Union Handbook.

### 3.2 Business loans

The Regulations prescribe business loans as a category of lending that credit unions are permitted to provide. A credit union should only engage in lending within the business loan category of lending where it is consistent with its Strategic Plan. In December 2017, the Central Bank issued [“Long Term Lending – Guidance for Credit Unions”](#). This document sets out the Central Bank’s guidance, including its expectations, which credit union boards seeking to develop their business models are expected to consider and address in assessing long term lending products and services. From a credit union perspective, long term lending typically includes business and house loans, as well as some personal loans.

The Regulations set out a definition of “business loan” and specific requirements in relation to business loans, including a combined concentration limit for house loan and business loan lending, expressed as a percentage of the assets of the credit union.

Where a credit union is considering granting a business loan for €25,000 or more, a comprehensive business plan and detailed financial projections appropriate for the scale and complexity of the loan, must have been provided to the credit union before it grants the relevant loan. The business plan and financial projections should both be supported by evidence-based assumptions. For these higher value business loans, this practice should enable the credit union to ensure that it is satisfied the borrowing business has the capacity to generate sufficient income to repay the loan.

A comprehensive business plan should include the following at a minimum:

- an executive summary;
- a description of the business;
- market analysis;
- current sector/market position;
- staffing and operations; and
- financial projections including;
  - key assumptions;
  - profit and loss accounts;
  - balance sheets; and
  - cashflow projections for 3 years.

The Central Bank’s expectation is that credit unions obtain more comprehensive business plans and detailed financial projections from members for more complex and larger scale business loans. Credit unions are expected to exercise their judgement on the level of information they require from members in order to enable the credit union to adequately assess the business loan application in question.

### **3.2.1 Definition of "approved housing body"**

The definition of "business loan" specifically includes a loan other than a community loan, that is made to a member of the credit union that is an approved housing body.

The 2016 Regulations define an "*approved housing body*" as a housing body granted approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992. However, there have been significant developments in the registration and regulation of Approved Housing Bodies (AHBs) in recent years. In February 2021, the Approved Housing Body Regulatory Authority (AHBRA) was established under the Housing (Regulation of Approved Housing Bodies) Act 2019 (the 2019 Act), with responsibility for, among other things, the registration and regulation of AHBs. AHBs no longer hold approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992. From 1 January 2022, AHBRA is responsible for establishing and maintaining the register of AHBs and for registering organisations as AHBs. Pursuant to section 34 of the 2019 Act all organisations that had Approved Housing Body status and were listed on the register previously maintained by the Department of Housing, Local Government and Heritage were deemed to be registered with AHBRA and have a specific timeframe to make a formal application to become registered as an Approved Housing Body with AHBRA.

As AHBs are no longer housing bodies "*granted approval status under section 6 of the Housing (Miscellaneous Provisions) Act, 1992*", for the period until the definition of "*approved housing body*" in the 2016 Regulations is amended, the references to approved housing body in the Regulations can be read as being a reference to the AHB being registered (or deemed registered) as an approved housing body with AHBRA under the 2019 Act.

## **3.3 House loans**

The Regulations also identify house loans as a category of lending that credit unions may engage in and provide a definition of "house loan" for this purpose. The Regulations set out specific requirements for house loans, including a combined concentration limit for house loan and business loan lending, expressed as a percentage of the assets of the credit union.

A credit union should only engage in lending within the house loan category of lending where it is consistent with its Strategic Plan. For some credit unions, this may mean that they offer a range of house loans, e.g. to purchase, construct or improve a principal private residence. Others may decide not to offer house loans within their product offering or decide to provide a narrower range of house loans, e.g. to improve a principal private residence (loans for home improvements are discussed further below at 3.6.5).

Holiday homes and buy to let loans do not come within any of the permitted categories of lending that credit unions may undertake under the Regulations. As set out above, the definition of “business loan” specifically includes a loan made to a member of the credit union that is an approved housing body. Lending by credit unions to approved housing bodies is therefore not impacted by the general prohibition on buy to let lending.

Where a credit union provides a house loan, this loan falls within the definition of a “housing loan” as set out in the [Central Bank \(Supervision and Enforcement\) Act 2013 \(Section 48\(1\)\) \(Housing Loan Requirements\) Regulations 2022](#) (the “Mortgage Measures”). Credit unions must also comply with the requirements set out in the Mortgage Measures. Credit unions should ensure that requirements set out in the Mortgage Measures are reflected in their credit policy, including a policy on how the credit union determines the income of loan applicants for the purpose of complying with the loan to income requirements of the Mortgage Measures.

Further information on the Mortgage Measures can be found on the Macroprudential Policy section of the Central Bank’s website available at this [link](#).

### **3.4 Single or lump sum repayment loans**

Single or lump sum repayment loans are those loans for which repayment takes the form of a single payment or where the repayment schedule is less frequent than on a monthly basis. The financial impact of default associated with these loans can be significant.

Lump sum repayment loans should only be granted in line with prudent approval criteria laid down in the credit policy.

### **3.5 Interest rates on higher risk loans**

When considering the interest rates to be applied to different classes of loans, the board of directors should take account of the level of risk involved in such loans, subject to the limit on loan interest rates specified by order by the Minister for Finance under section 38 of the 1997 Act.

### **3.6 Security for loans**

#### ***3.6.1 Security for loans***

Security is an important component of lending and may protect the credit union from a loss in the event of loan default. Where security is taken, the credit union should require sufficient security to protect against the associated risk and to ensure that loans are in line with the credit union’s risk appetite.

The 1997 Act provides that a credit union can make a loan to a member for such purpose as the credit union considers appropriate, upon such security and terms as the rules of the credit union may provide. The same section clarifies that the ability of the loan applicant to repay must be the primary consideration in the underwriting process of the credit union. While security is therefore a key consideration for a credit decision, the credit union should make credit decisions based on the ability of the loan applicant to repay.

Many credit unions typically take security over members' savings. In such cases, credit unions should take the necessary steps to clarify the legal status of any assignment of savings/shares as security against loans granted by them.

The level of security required in respect of individual loans should reflect the borrower's ability to repay, the size and risk profile of the proposed loan, the quality of the security being pledged (including the enforceability of the security) and the credit union's obligations to protect members savings under sections 27A and 35 of the 1997 Act. Approved types of security and the circumstances in which security should be taken, should be clearly set out in the credit policy and reflect the fact that different types of security will provide different levels of protection to the credit union. In all cases, the term of a loan should reflect the loan purpose. Where security is being taken for a loan, the credit union should also consider the anticipated useful life of the secured asset/s which is determined by the type and expected use of the assets in question, e.g., there is limited protection in a credit union taking security over an asset with a relatively short useful life compared to the term of the loan.

### **3.6.2 Security for large or complex loans**

Professional legal advice should be obtained when taking security for large or complex loans, e.g. bridging loans, business loans, house loans, property-related loans coming within the categories of lending permitted under the Regulations, to ensure that legal title is properly perfected and enforceable in the event of default. Security documentation should be securely and efficiently maintained.

### **3.6.3 Secured and unsecured loans**

The Regulations prescribe a maximum loan term of 10 years for unsecured loans. For secured loans, the maximum loan term is 35 years.

For the purpose of the maximum loan term limits set out in the Regulations, the Regulations include definitions for 'secured loan' and 'unsecured loan'. A 'secured loan' includes '*a loan that is secured by a mortgage, charge, assignment, pledge, lien, or other encumbrance in or over any asset or property, but shall not include unsecured guarantees by third parties*'. An 'unsecured loan' means a loan that is not a secured loan.

In determining whether a loan should be considered a 'secured loan' or 'unsecured loan' for the purpose of the maximum loan term limits under the Regulations, in the first instance, this determination should be made in accordance with a reasoned and prudentially justified approach, as documented in the credit union's credit policy. The credit union should take into account the underlying quality and value of the security being pledged. A credit union should only consider a loan to be secured where it is secured by a readily-realizable asset for which market value is ascertainable and verifiable. In the context of credit union lending, such assets could, for example, include shares or deposits in the credit union or immovable property such as a house or business premises.

On the level of the security, in order to comply with the maximum loan term limits set out in the Regulations, a credit union will not necessarily be required to have security in place in respect of the full amount provided under a loan in order for it to be considered a 'secured loan'. There may be circumstances where the Central Bank would expect the credit union to take a high level of security for a loan in order for it to come within the meaning of a 'secured loan', e.g. where the loan involves a higher degree of risk.

#### **3.6.4 Security for house loans**

Under the Regulations, a first legal charge is required on the property in respect of which a house loan is to be provided, except where the loan is to improve or renovate the member's principal residence (or a loan provided for the purpose of refinancing such a loan) – see 3.6.5 below for more information on home improvement loans. In line with the practice of other mortgage lenders, credit unions should require not only a first legal charge over the property, but also require the borrower to have mortgage protection insurance in place, with the policy assigned to the credit union, as well as buildings insurance for the full re-instatement value of the property with the credit union's interest noted on the policy.

#### **3.6.5 Home improvement loans**

Under the Regulations, where a credit union is providing home improvement loans these may be provided as either-

- A house loan, where the loan is secured over the property (but not necessarily by way of a first legal charge); or
- A personal loan, where the loan is not secured over the property, i.e. an unsecured personal loan or a secured personal loan where the loan is secured over other assets, e.g. the member's shares in the credit union.

As set out in 3.6.4, where a home improvement loan is provided as a house loan, the credit union is not required to hold the first legal charge on the property. In practice, where a house loan is provided for the purpose of home improvements, the credit union may accept a second or subsequent legal charge over the property. Credit unions should of course take

into account the underlying quality and value of the security in accordance with their credit policy.

Where a home improvement loan is provided as a personal loan for a term of 10 years or less, there is no requirement to hold security for the loan. Where the term exceeds 10 years, the loan must be a secured loan.

### **3.6.6 Attached shares**

While a member may have savings up to (or in excess) of the loan they have applied for, it is important to note that a member's savings are not attached to a member's loan unless the savings are attached or pledged as part of the credit agreement with the member at the time of issuing of the loan.

Under section 32(3)(a) of the 1997 Act, a member can withdraw any savings that are not attached to a loan and any attached savings, if the withdrawal of such attached savings is approved by the credit committee or a credit officer.

### **3.6.7 Guarantors**

Prior to approving a loan application, the credit committee or credit officer should take appropriate steps to satisfy themselves that potential guarantors are of sufficient standing and have the financial capacity to repay a loan in the event that the guarantee is called upon.

At the time of signing any loan guarantee documents, guarantors should be made aware of the implications of providing a guarantee for a loan. Lending limits in relation to a group of borrowers who are connected may have an impact on the guarantor's ability to apply for credit in their own name. Unless savings are pledged by the guarantor under a specific legal assignment, the normal procedures regarding access to a guarantor's own savings should apply. As set out above, the credit union should take the necessary steps to clarify the legal status of any assignment of savings/shares as security against loans granted by them.

Where a credit union is seeking a guarantee for a business loan, it should have regard to the specific requirements it must comply with in this regard under the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (the SME Lending Regulations). A general overview of the SME Lending Regulations is included in this [guide](#) published on the Central Bank's website.

### **3.6.8 Valuation of immovable property**

In 2012, the Central Bank issued "Valuation Processes in the Banking Crisis – Lessons Learned – Guiding the Future" in order to provide guidance to credit institutions on



valuation standards for commercial property and to set out best practice in relation to the timing and frequency of valuations of immovable property collateral. Given the legal and supervisory requirements applying to banks for the valuation of immovable property collateral had been revised considerably, the Central Bank withdrew its guidance in August 2019. In the Central Bank's notification to banks of the withdrawal, it suggested that they should ensure their collateral management practices are in line with all relevant and applicable regulations but also that consideration should continue to be given to ensuring a number of "lessons learned". A copy of the Central Bank's notification is available [here](#). Credit unions should have regard to the lessons learned in drawing up their credit policies and collateral management practices.

### 3.7 Credit assessment

A credit union is required to ensure that the ability of the loan applicant to repay is the primary consideration in the underwriting process of the credit union. All applications for credit should be appropriately assessed to ensure that the applicant's financial position, including commitments to other financial institutions, is fully disclosed.

As referenced in 3.6.1 above, while security is a key consideration for a credit decision, the credit union should make credit decisions based on the ability of the loan applicant to repay. Specifically in relation to attached savings, while attached savings may be a factor in assessing the ability of a loan applicant to repay a loan, it is appropriate that a broader creditworthiness assessment is undertaken. This needs to be supported by evidence, which could include previous repayment history on loans.

An important factor in determining creditworthiness is whether a member is already in difficulty in repaying an existing debt. Therefore when assessing applications for new loans and/or for topping up existing loan facilities, the Central Bank expects that a credit union be fully satisfied as to a member's creditworthiness and ability to service all debts before advancing any new credit or top up credit facilities, especially where the borrower is in arrears on their mortgage or is in a non-permanent forbearance, i.e. forbearance other than capitalisation of arrears, split mortgage or term extension of the mortgage.

The European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No 281 of 2010) were transposed into Irish law on 11 June 2010. These regulations give effect to the provisions of Directive 2008/48/EC on Credit Agreements for Consumers (the "CCD") and the scope includes credit agreements where the loan amounts are between €200 and €75,000.

Specifically, Part 2, Regulation 11 of these regulations titled “Part 2 Information and practices preliminary to conclusion of credit agreements. Obligation to assess creditworthiness of consumers” states:

- (1) Before concluding a credit agreement with a consumer, a creditor shall assess the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.
- (2) If a creditor and a consumer agree to change the total amount of credit after a credit agreement is concluded, the creditor—
  - a. Shall update the financial information at the creditor’s disposal concerning the consumer, and
  - b. Shall assess the consumer’s creditworthiness before agreeing to any significant increase in the total amount of credit.
- (3) A creditor or credit intermediary that contravenes a provision of this Regulation commits an offence.

Credit unions must consult the Central Credit Register, in accordance with the Credit Reporting Act 2013, where the amount of the loan is €2,000 or more. More generally, in assessing a borrower’s creditworthiness, the Central Bank expects credit unions to:

- (a) Apply prudent lending standards to the granting of all new loans or top-ups of existing loans;
- (b) Have systems in place to ensure that loan applications are fully assessed to confirm the borrower’s ability to repay the loan. In this regard, credit unions must satisfy themselves that they are fully appraised of the borrower’s financial position before granting a loan.

The borrower should be required to provide supporting documentation required to assess creditworthiness (e.g. proof of income, current account and credit card statements, as appropriate).

The Central Bank expects that all additional credit applications will be supported by adequate evidence to illustrate that appropriate credit assessment has taken place and that such evidence will be retained on file and be available to the Central Bank in the event of an inspection.

### **3.7.1 Creditworthiness assessments for business loans**

When assessing applications for business loans, credit unions are reminded that they must comply with the SME Lending Regulations.

### **3.7.2 Stress tests for house loans**

In the context of prudent lending standards and creditworthiness assessments for house loans, the Central Bank expects credit unions, prior to offering, recommending, arranging or providing a house loan, to carry out an assessment of affordability to ascertain the ability of the loan applicant to repay the loan over the duration of the agreement. Such an assessment should include consideration of the results of a stress test on a loan applicant's ability to repay the instalments, over the duration of the agreement, on the basis of a 2% interest rate increase, at a minimum, above the interest rate offered to the borrower. This test is not relevant to house loans where the interest rate is fixed for a period of five years or more. In addition, credit unions should have regard to the maximum interest rate they may charge on loans as specified by order by the Minister for Finance under section 38 of the 1997 Act.

## **3.8 Credit committee and credit control committee**

The credit and credit control committees should meet as often as necessary to carry out their functions, to comply with any instruction of the board of directors and to submit written reports on their activities to the board of directors at each meeting of the board.

The written reports submitted by each committee to the board of directors should contain sufficient financial and other information to enable the board to assess compliance with legal and regulatory requirements and guidance and the credit union's written policies so as to ensure proper oversight of the credit and credit control functions.

Those credit unions that do not currently have a credit officer and a credit control officer should actively consider making such appointments or put in place other arrangements to assist the respective committees in the proper discharge of their functions.

It is important to note that, while the board of directors can delegate authority for certain credit and credit control functions, it cannot delegate responsibility or accountability in relation to these functions.

## **3.9 Lending concentration limits**

### **3.9.1 Combined concentration limits for house and business loans**

The table below sets out the 3 combined concentration limits for house and business lending, the qualifying criteria a credit union must meet in order to avail of the limits and the features of the limits.

Limit as % of assets	Available to:	Features
<b>7.5% limit</b>	All credit unions.	<p>A combined concentration limit for house and business lending available to all credit unions, calculated as a percentage of total assets.</p> <p>Entire limit may be utilised by the credit union for house lending.</p> <p>Up to a maximum of 5% of total assets may be in business loans.</p>
<b>10% limit</b>	Credit unions meeting objective asset size criteria (minimum total asset size of €50 million) and holding regulatory reserves of 12.5% or greater.	<p>A conditional combined concentration limit for house and business lending, calculated as a percentage of total assets.</p> <p>Credit union must notify the Central Bank at least one month in advance.</p> <p>Entire limit may be utilised by the credit union for house lending.</p> <p>Up to a maximum of 5% of total assets may be in business loans.</p>
<b>15% limit</b>	Credit unions with assets of at least €100 million.	<p>An increased combined concentration limit for house and business lending, calculated as a percentage of total assets.</p> <p>Subject to an application and approval process.</p> <p>The entire limit may be utilised by the credit union for either house or business lending, subject to any conditions attaching to a Central Bank approval.</p>

In calculating whether a proposed house or business loan would cause the combined total gross amount outstanding in relation to house loans and business loans of the credit union to exceed 7.5 per cent, 10 per cent or 15 per cent of the assets of the credit union, a credit union should take account of all outstanding house and business loans (gross of attached shares) and the proposed house or business loan. Similarly, for the inner 5 per cent limit for business loans that applies to the 7.5 per cent and 10 per cent limits, a credit union should take account of all outstanding business loans (gross of attached shares) and the proposed business loan.

### **3.9.2 Combined 10 per cent limit for house and business loans**

Qualifying credit unions are eligible to avail of a higher combined concentration limit for house and business loans of 10 per cent of total assets. As with the combined 7.5 per cent limit, within the 10 per cent limit, no more than 5 per cent of total assets may be in business loans.

In order to avail of the 10 per cent limit, a credit union must, for two or more consecutive quarters immediately prior to making a notification to the Central Bank, maintain minimum total assets of at least €50m and a regulatory reserve of at least 12.5 per cent. For the purpose of the 12.5 per cent regulatory reserve criterion, this does not include any operational risk reserve or other reserves held by the credit union. For the purpose of both the size and reserves criteria, the credit union may rely upon the two quarterly Prudential Returns it submitted to the Central Bank immediately before making the notification.<sup>2</sup> It is the credit union's ongoing responsibility to satisfy itself that it continues to meet the relevant criteria.

### **3.9.3 Notification to avail of the 10 per cent limit**

On the required notification, the credit union must notify the Central Bank at least one month before availing of any additional lending capacity the 10 per cent limit would provide.

Information on submitting a notification to the Central Bank to avail of the 10 per cent limit is available in the [Frequently Asked Questions](#) document on the Implementation of the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019 for Credit Unions on the Central Bank website.

### **3.9.4 Notification that the credit union no longer meets the qualifying criteria for the 10 per cent limit**

A credit union that no longer meets the criteria to avail of the 10 per cent limit must notify the Central Bank in writing without delay and, except for any new house or business loan in respect of which the credit union has already entered into a legally binding agreement with a member, immediately stop making any new house or business loans above the 7.5 per cent limit. For the purpose of the requirements to notify the Central Bank and stop making new house and business loans, the Central Bank will consider that a credit union no longer complies with the criteria where it does not meet the criteria for two consecutive quarters in accordance with the information submitted in its Prudential Return.<sup>3</sup>

Information on submitting a notification to the Central Bank that the credit union no longer satisfies the qualifying criteria to avail of the 10 per cent limit is available in the [Frequently Asked Questions](#) document on the Implementation of the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019 for Credit Unions on the Central Bank website.

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<sup>2</sup> Provided that the credit union has submitted its quarterly Prudential Returns to the Central Bank and that the information submitted is correct.

<sup>3</sup> Provided that the credit union has submitted its quarterly Prudential Returns to the Central Bank and that the information is correct.

A credit union that has notified the Central Bank that it no longer satisfies the criteria to avail of the 10 per cent limit will be required to notify the Central Bank where it subsequently satisfies the criteria and intends to provide additional loans within the 10 per cent limit.

### ***3.9.5 Combined 15 per cent limit for house and business loans***

Credit unions with total assets of at least €100m for two or more consecutive quarters (immediately prior to making an application for approval) are eligible to apply to the Central Bank to avail of a combined concentration limit for house and business loans of 15 per cent of the credit union's total assets. In order to avail of the 15 per cent limit, a credit union must make an application to the Central Bank. The Central Bank will assess any application received and will grant approval to the credit union where it is satisfied that the credit union has demonstrated that the approval would be consistent with the adequate protection of the savings of the members of that credit union and effective and proportionate, having regard to the nature, scale and complexity of the credit union.

Information on submitting an application to the Central Bank to avail of the 15 per cent limit is available in the [Frequently Asked Questions](#) document on the Implementation of the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019 for Credit Unions on the Central Bank website.

A credit union that no longer meets the €100m total assets criterion to apply for the increased 15 per cent limit or fails to meet the Central Bank's conditions of approval will no longer be entitled to avail of the limit. Such a credit union must notify the Central Bank in writing without delay. In addition, except for any house or business loan in respect of which the credit union has already entered into a legally binding agreement with a member, the credit union must immediately stop making any new house or business loans above the 7.5 per cent limit, or the 10 per cent limit where the credit unions meets the relevant qualifying criteria for the 10 per cent limit.

### ***3.9.6 Notification that the credit union no longer meets the qualifying criterion to apply for the 15 per cent limit or the conditions of its approval***

It is the credit union's ongoing responsibility to satisfy itself that it continues to meet the asset size criterion to apply for the 15 per cent limit and any conditions of approval imposed on it by the Central Bank. For the purpose of the requirements to notify the Central Bank and stop making new house and business loans, the Central Bank will consider that a credit union no longer complies with the asset size criterion to apply for the 15 per cent limit where it does not meet it for two consecutive quarters. The credit union may rely on the

information it has submitted in its quarterly Prudential Returns to determine its asset size for the relevant quarter.<sup>4</sup>

Information on submitting a notification to the Central Bank where the credit union no longer meets the criterion to avail of the increased 15% limit or where it is no longer in adherence with conditions of approval is available in the [Frequently Asked Questions](#) document on the Implementation of the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019 for Credit Unions on the Central Bank website.

### **3.9.7 Monitoring compliance with concentration limits**

Credit unions should ensure they have the appropriate processes, procedures, systems, controls and reporting arrangements in place to monitor compliance with the lending concentration limits in place under the Regulations, including the types of loans that a credit union may provide, the concentration limits, the large exposures limit and maximum loan maturity.

## **3.10 Related party lending**

The objective of the requirements for related party lending set out in the Regulations is to ensure that related parties do not receive more favourable treatment than other credit union members and that there is appropriate oversight of such loans. The Regulations contain an explicit requirement that related parties do not receive more favourable treatment than non-related parties.

Credit unions should have processes in place to ensure that they can comply with requirements relating to related party lending. Section 3.1.1 of this guidance sets out a number of the areas that these processes should cover. Regulation 21 of the Regulations requires that each credit union record, monitor and report data on related party lending.

The Central Bank does not supervise compliance with data protection law; in Ireland, this is the role of the Data Protection Commission. A credit union is the controller of the personal data of its members, officers and staff and each credit union must ensure that all personal data is processed in accordance with data protection law. The processing of personal data on related party lending by a credit union for the purposes of compliance with the Regulations has a lawful basis for the purposes of data protection law by virtue of Article 6 of the General Data Protection Regulation (the GDPR) as it is necessary for compliance with a legal obligation to which the controller is subject, i.e. the Credit Union Act, 1997 and the Regulations. When processing personal data, credit unions must comply with

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<sup>4</sup> Provided that the credit union has submitted its quarterly Prudential Returns to the Central Bank and that the information submitted is correct.

(among other things) the principles relating to processing of personal data set out in Article 5 of the GDPR. This includes the obligations imposed by:

- Article 5(1)(b) which states that personal data shall be '*collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ... ('purpose limitation')*';
- Article 5(1)(c) which states that personal data shall be '*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')*'; and
- Article 5(1)(f) which requires that personal data is '*processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')*'.

These obligations may mean that a credit union has to limit internal access to certain data on related party lending. Guidance on the requirements of data protection law is available on the website of the Data Protection Commission.

### **3.11 Large exposures**

The Regulations set a *maximum* large exposure limit in respect of the total permitted exposure to a borrower or a group of borrowers who are connected. The Regulations do not define an individual large exposure. Guidance is provided on these in Section 3.11.2 below. The Central Bank considers it important that credit unions assess their exposures and diversify their exposures appropriately. This will reduce the risk of credit unions incurring large losses as a result of the failure of an individual borrower or group of connected borrowers due to the occurrence of unforeseen events. This risk can be mitigated by avoiding the concentration of exposure to an individual borrower or a group of connected borrowers.

#### **3.11.1 Connected borrowers**

The Regulations contain requirements in relation to credit unions identifying groups of borrowers who are connected. A group of borrowers who are connected refers to credit union borrowers who are connected to other credit union borrowers and not to "related parties" who are borrowers that have a relationship or connection to the credit union or its officers (see 3.10 for information on related party lending).

The purpose of identifying groups of borrowers who are connected is to identify if it is likely that the financial problems of one borrower would cause difficulties for other borrowers in terms of full and timely repayment of a loan and as such whether those borrowers present



a single or common risk to the credit union. Single or common risk will generally occur where the credit union considers there is **material** financial interdependence between borrowers (such economic dependence may be mutual or one way). In practice, the Central Bank expects that connected borrowers would be identified during the standard underwriting process for a loan. The following is a non-exhaustive list of examples of potential connected borrowers. It is a matter for each credit union to determine, taking account of all of the individual circumstances, if such borrowers are connected:

- A group of borrowers who are borrowing for a common purpose and who are dependent on a single income source to repay their individual loans;
- The borrower and his/her spouse/partner if by **contractual arrangements** both are liable and the loan is **significant for both – in terms of potential impact on the ability of the spouse/partner to repay (it should be noted all spouses/partners would not automatically be presumed to be connected borrowers)**; or
- A borrower and guarantor, where the guarantee is so substantial for the guarantor that his/her ability to service their other liabilities with the credit union will be affected if the guarantee is claimed by the credit union.

It is important that a credit union identifies groups of borrowers who are connected to enable the credit union to monitor concentration risks in its loan portfolios. Each credit union needs to determine its exposure to groups of borrowers who are connected based on all the information available to the credit union, including (but not limited to) information provided by members in support of their loan application and any information provided in response to specific questions from the credit union to the borrower to enable it to identify groups of borrowers who are connected. Whether or not borrowers constitute a group of borrowers who are connected is a matter to be determined by the credit union in each case. The assessment undertaken by the credit union to determine whether or not borrowers constitute a group of borrowers who are connected should be documented in writing.

Establishing whether borrowers are connected will involve the necessary processing of personal data in the normal course of credit union business and a credit union should ensure that there is no illegal disclosure of personal data. A credit union is the controller of the personal data of its members, officers and staff and each credit union must ensure that this data is processed in accordance with data protection law.

### **3.11.2 Limits on large exposures**

The Central Bank considers it appropriate that a credit union should consider any exposure greater than 2.5% of the regulatory reserve to be an individual large exposure.

The relationship between the large exposure limit (as defined in the Regulations) and an individual large exposure is best illustrated by way of example -

In a credit union with total assets of €50 million and regulatory reserves of €5 million (10% Regulatory Reserve Ratio):

- The maximum large exposure to a borrower or group of connected borrowers permitted under the Regulations would be €0.5 million (maximum of 10% of regulatory reserves or €39,000, whichever is the greater); and
- An individual large exposure would be defined as €0.125 million (2.5% of regulatory reserves).

In a credit union with total assets of €3 million and regulatory reserves of €300,000 (10% regulatory reserve ratio):

- The maximum large exposure to a borrower or group of connected borrowers permitted under the Regulations would be €39,000 (maximum of 10% of regulatory reserves or €39,000, whichever is the greater); and
- An individual large exposure would be defined as €7,500 (2.5% of Regulatory Reserves).

### **3.11.3 Monitoring and reporting on large exposures**

A credit union is required to report to the board on the performance of its business loans (with some exceptions), community loans, house loans and loans to other credit unions on a monthly basis. In the context of credit unions better managing and monitoring borrower concentration risk, the Central Bank expects that as a matter of good governance and risk management, credit unions would incorporate an element of reporting on large exposures to the board, bearing in mind the nature, scale, complexity and risk profile of the credit union. On reporting on large exposures to the board, it is a matter for an individual credit union to determine what reporting is appropriate for their credit union.

## **3.12 Lending practices for rescheduled loans**

Rescheduled loans are those loans where the repayment conditions have been altered by the credit union so that:

- the duration of the loan is extended; or
- the repayment amounts have been reduced for 4 or more consecutive months within the period of the loan; and
- the loan was in arrears at the time of the repayment conditions being altered, or the loan would have fallen into arrears if the repayment conditions were not altered because the terms of the original loan agreement would no longer be met.

Loans should only be rescheduled following a thorough credit assessment, supported by sufficient evidence, where the credit union has clearly established the ability of the member to repay in accordance with the revised terms of the loan.

The credit union should require a borrower to submit an application to reschedule a loan. The application should be accompanied by the member's written consent to reschedule the loan and evidence of the change in the member's circumstances.

Loans should only be rescheduled with the agreement of the member and where relevant, the guarantor. A new credit agreement<sup>5</sup> should be drawn up and the member should be made aware of any changes to the information contained in the original credit agreement, including changes to the cost of credit.

The new repayment schedule put in place for all rescheduled loans should not be less frequent than quarterly.

A credit union should not approve further agreements for additional credit where an existing loan has been rescheduled. However, where a member's ability to repay all credit owed and the proposed additional credit has been clearly established, the credit union may determine it prudent to grant additional credit to a member with a rescheduled loan where that rescheduled loan has performed in accordance with the new terms for an appropriate period.

Where additional credit is sought by a member but the member's rescheduled loan has not yet performed in accordance with the new terms for an appropriate period, any additional credit to be granted to the member should only be approved where a member's ability to repay all credit owed and the proposed additional credit has been clearly established. Any additional credit granted in these circumstances should be approved by the board and the rationale for extending such credit clearly documented.

### **3.13 Systems, controls and reporting for rescheduled loans**

Credit unions should enter full details of all rescheduled loans in a Register of Loan Amendments. Rescheduled loans should be clearly designated and identifiable in the records of the credit union and should be capable of being audited. It should be possible to generate detailed reports on all rescheduled loans from these records for inspection by the Central Bank.

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<sup>5</sup> Which complies with all legal requirements including European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010). This includes Regulation 11 which contains obligations on creditworthiness assessment.

Credit unions should report on rescheduled loans to the board of directors of the credit union at each monthly board meeting.

Credit unions should also undertake a full review of the bad debt provisions, including the provisions held against rescheduled loans, as part of the year-end annual accounts preparation and audit process.



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

# Central Bank of Ireland Provisioning Guidelines for Credit Unions

## October 2024

# Table of Contents

<b>1. Introduction.....</b>	<b>3</b>
1.1. Context of these Guidelines .....	3
1.2. Accounting Standards.....	3
1.3. Scope of these Guidelines.....	4
<b>2. Responsibility in relation to Provisioning in Credit Unions.....</b>	<b>5</b>
2.1. Overview .....	5
2.2. Board of Directors Responsibilities.....	5
2.3. Credit Union Manager Responsibilities .....	6
2.4. Internal Audit Function Testing.....	6
<b>3. Provisioning Policy .....</b>	<b>8</b>
3.1. Objectives of the Provisioning Policy .....	8
3.2. Frequency .....	8
3.3. Organisational Arrangements .....	8
3.4. Resourcing.....	8
3.5. Loan Classification.....	9
3.6. Reporting Arrangements .....	9
3.7. Accounting Policy .....	9
3.8. Provisioning Methodology and Estimation Tools .....	10
3.9. Accounting for Provisioning Movements.....	10
3.10. Loan Default .....	10
3.11. Loan Write Offs and Write Backs .....	11
3.12. Income Recognition.....	11
3.13. Collateral .....	11
3.14. Review of Provisioning Policy .....	12
<b>4. Guidelines for Assessing Impairment .....</b>	<b>13</b>
4.1. Assessment of impairment.....	13
<b>5. Guidelines for Calculating Impairment Provisions.....</b>	<b>16</b>
5.1. Methodology for Calculating Impairment.....	16
5.2. Approach to using either Individual or Collective assessment .....	16
5.3. Miscellaneous Considerations .....	18
<b>6. Supervisory Expectations.....</b>	<b>20</b>
6.1. Performing Loans .....	20
6.2. Non-Performing Loans .....	20
6.3. Defaulted Loans.....	21
6.4. Rescheduled Loans .....	21
6.5. Top Up Loans .....	22
6.6. Cured Loans .....	22
<b>7. Loan Write Offs.....</b>	<b>23</b>

**8. Supporting Documentation .....24**

**Appendix A: Extract from Section 11 of FRS 102 outlining the main requirements in relation to Provisioning  
25**

# 1. Introduction

## 1.1. Context of these Guidelines

This document sets out the Central Bank of Ireland's (the Central Bank) guidelines regarding the policies and procedures which credit unions should adopt to support the development and implementation of an appropriate provisioning framework.<sup>1</sup>

An appropriate provisioning framework is essential for:

- the recognition of loan losses as early as possible within the context of accounting standards;
- the adoption of a sufficiently conservative and comparable approach to the measurement and recognition of provisions in the loan book; and
- appropriate disclosures to support members' understanding of the performance of the loan book and the credit union's credit risk management practices.

Appropriate procedures for assessing and measuring credit risk will provide relevant information for a credit union board to make judgements about the credit risk of its lending exposures and will facilitate the recognition of losses within the loan book as early as possible.

The Central Bank's expectation on provisioning in credit unions is outlined throughout these guidelines and credit unions should give due consideration to these guidelines when developing and implementing their provisioning frameworks and when assessing the adequacy of provisions held for loans. In particular, section 6 outlines the Central Bank's expectations on specific categories of loans in credit unions.

## 1.2. Accounting Standards

Financial Reporting Standard 102 (FRS 102) is the applicable accounting standard for credit unions. FRS 102 adopts an incurred loss approach to provisioning. Section 11 of this accounting standard outlines requirements in relation to the assessment of impairment and the calculation, measurement and recognition of provisions. FRS 102 requires that, at the end of each reporting period, an entity must assess whether there is objective evidence of impairment of any financial assets which are measured at cost or amortised cost. Where it is deemed that there is objective evidence of impairment, the entity shall recognise a provision in the income statement immediately.

Appendix A contains an extract from FRS 102 which outlines the main requirements in relation to provisioning.

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<sup>1</sup> These guidelines were originally published in April 2018 and were updated and re-published in October 2024 to reflect changes made to section 55(1)(o) of the Credit Union Act, 1997 on 30 September 2024 by the Credit Union (Amendment) Act 2023.



### 1.3. Scope of these Guidelines

Section 84 of the Credit Union Act, 1997 (the Act) provides the Central Bank with the power to administer the system of regulation and supervision of credit unions with a view to the protection by each credit union of the funds of its members and the maintenance of the financial stability and well-being of credit unions generally.

This document applies to all credit unions and while it has the status of 'guidance', the Central Bank considers that the guidelines contained herein represent an appropriate basis for the development and application of a provisioning framework for credit unions.

The Central Bank deems these guidelines to be best practice and accordingly strongly encourages all credit unions to apply them.

These guidelines are designed to assist credit unions in developing and implementing an appropriate provisioning framework which reflects the nature, scale, complexity and risk profile of the credit union and ensuring that the level of provisions held for loans is adequate. Credit unions must ensure that they comply with all relevant accounting standards and should discuss the credit union's approach to provisioning with their auditors.

These guidelines are not intended to act as a sole source of guidance on provisioning for credit unions.

These guidelines are not intended to replace or over-ride the requirements of FRS 102. Credit unions remain subject to the requirements of FRS 102 when preparing year-end financial statements.

## 2. Responsibility in relation to Provisioning in Credit Unions

### 2.1. Overview

Section 108 of the Act requires that a credit union shall cause proper accounting records, whether in the form of documents or otherwise, to be kept on a continuous basis. A robust provisioning framework is important to ensure the adequacy and accuracy of the provisioning figure in the financial statements. The Board of Directors (the board) and management of a credit union have responsibility to ensure that an appropriate provisioning framework is in place and operating effectively in the credit union. They should ensure that the credit union has effective risk management practices in place to determine adequate provisions in accordance with stated policies and procedures, applicable accounting standards and regulatory guidance.

Overall responsibility in relation to ensuring the adequacy and accuracy of the provisioning figure in the financial statements rests with the board. The Central Bank expects directors of credit unions to apply a conservative and comparable approach in the measurement of provisions. In addition, directors should take into consideration the level of risk inherent in the loan book, being mindful of the current economic and financial environment.

The manager of a credit union is required to update the board on the financial position of the credit union, including submitting to them on a monthly basis unaudited financial statements that set out the financial position. This responsibility requires the manager to ensure that the provisioning figure in the credit union's accounts is calculated and recognised in the credit union's accounts in accordance with the credit union's approved provisioning policy.

The sections below set out the relevant requirements of both the board and the manager of a credit union in relation to provisioning.

### 2.2. Board of Directors Responsibilities

In accordance with section 27A of the Act, a credit union shall maintain appropriate oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements to ensure the protection of members' savings. In order to ensure an appropriate provisioning framework is in place in the credit union, the board are expected at a minimum to:

- set the credit union's appetite for credit risks;
- understand and determine the nature and level of credit risk in the credit union;
- adequately resource the credit and credit control functions with suitably qualified personnel;
- appoint a credit committee;
- ensure that the sophistication of the risk management process is appropriate in light of the credit union's risk profile and business plan;

- ensure that an impairment review of the loan book is carried out at least quarterly and that any resulting adjustments to provisions are incorporated into the management accounts submitted to the board;
- review the adequacy of provisions and loan amounts written off on a quarterly basis;
- review and approve the methodology on an annual basis contained in the provisioning policy for the calculation of provisions;
- review the provisioning policy at least every 3 years to ensure that it remains appropriate to the nature, scale and complexity of the credit union; and
- ensure that adequate supporting documentation is maintained in relation to the provisioning reviews conducted and signed off on.

## 2.3. Credit Union Manager Responsibilities

In accordance with section 63A of the Act, the manager of the credit union has responsibility for updating the board of directors on the financial position of the credit union, including submitting to the board of directors on a monthly basis unaudited financial statements that set out the financial position of the credit union. In the context of provisioning this includes, but is not limited to:

- establishing a provisioning policy document for credit risk management processes, to be approved by the board;
- establishing the methodology for determining provisions on loans to be approved by the board;
- reviewing on a regular basis, at least annually, the processes and systems in place (as outlined in the provisioning policy document) to monitor and manage the quality of the credit portfolio in a timely manner, and the methodology for determining provisions to ensure that it remains appropriate for the circumstances of the credit union;
- ensuring that the credit exposures are appropriately valued, with a suitable level of provisions for impairment made or uncollectable amounts written off;
- establishing a programme to periodically monitor and analyse security that is held on loans, which should be valued on a prudent basis and ensuring that such security is legally enforceable by the credit union. This is particularly important for house loans that are relying on the value of collateral in assessing whether an impairment provision is required;
- providing the board with regular reports on the adequacy of loan provisions and amounts written off; and
- providing appropriate disclosures to the Central Bank through the submission of the quarterly Prudential Return and other regulatory returns.

## 2.4. Internal Audit Function Testing

In accordance with section 76K of the Act, the board of a credit union shall appoint an internal audit function to provide for independent internal oversight and to evaluate and improve the effectiveness of the credit union's risk management, internal controls and governance processes. While it is not the responsibility of the internal audit function to assess the adequacy of the provisions in the credit union or to ensure compliance with the

requirements of accounting standards, it is expected that the internal audit function would perform regular testing to ensure that the provisioning framework in the credit union is operating as required. This testing should ensure that:

- the provisioning policy is comprehensive and includes all necessary elements to ensure its effectiveness;
- the provisioning policy as approved by the board is appropriately implemented by all those with responsibility in relation to provisioning;
- the provisioning policy is regularly reviewed and updated as required with material updates being approved by the board;
- there is regular reporting to the board of the results of impairment reviews including evidence of challenge and consideration of the same by the board; and provisions are appropriately signed off by the board.

## 3. Provisioning Policy

Regulation 23 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 requires that a credit union establish and maintain a provisioning policy. This section provides detail and guidance on what should be included, at a minimum, in the provisioning policy and sets out the Central Bank's expectations in certain areas.

### 3.1. Objectives of the Provisioning Policy

The objectives which are to be achieved from implementation of the provisioning policy should be clearly documented.

### 3.2. Frequency

The provisioning policy should outline the frequency with which loan impairment reviews will be conducted.

FRS 102 requires that loan impairment reviews are conducted at the end of each reporting period. The Central Bank expects that credit unions undertake a loan impairment review on at least a quarterly basis (as part of preparation of the management accounts and quarterly prudential return) to help to ensure the recognition by credit unions of loan losses as early as possible within the context of accounting standards. This should ensure that a gradual approach to provisioning is taken throughout the year reflective of changing circumstances and should ensure that any additional provision required is recognised and accrued in a timely manner.

### 3.3. Organisational Arrangements

The provisioning policy should clearly state the roles, responsible persons and their related responsibilities in relation to provisioning within the credit union for those who are tasked with development, implementation and execution of the provisioning policy.

It is expected that there be a clear segregation of duties between the person responsible for undertaking loan impairment reviews and the person responsible for reviewing the results of loan impairment reviews and the related provision amounts (before presentation for sign off to the board). It is also expected that there is a clear segregation of duties between those persons involved in the credit function and those persons involved in loan impairment reviews.

### 3.4. Resourcing

Credit unions should ensure that the persons tasked with responsibility for performing loan impairment reviews and for analysing and signing off on the results of same, are suitably qualified and experienced individuals.

Detail on the minimum expected competency of persons involved in loan impairment reviews should be included in the provisioning policy. The Central Bank accepts that this minimum expected competency may vary depending on the nature, scale and complexity of the credit union and the methodology used to undertake loan impairment reviews.

### 3.5. Loan Classification

The provisioning policy should outline the classification of loans used by the credit union in the loan portfolio as determined by the underlying performance of the loans. The characteristics of loans which are performing, performing in arrears, in arrears and in default should be clearly outlined. The criteria, rationale and parameters for the determination of these specific loan classifications should be clearly documented in the provisioning policy. Further detail on common loan classifications is set out in section 6.

### 3.6. Reporting Arrangements

The provisioning policy should outline the frequency and form of reporting the results of loan impairment reviews and the related provisioning amounts to the board.

It is expected that a report on the results of loan impairment reviews and the movement in the overall provisions figure is presented to the board on at least a quarterly basis for review and sign off. The report provided at a minimum should include a breakdown of the provision amount attributable to each of the different loan classes, split by (i) loans which are performing, (ii) loans which are performing but in arrears and (iii) loans which are in arrears or have defaulted.

### 3.7. Accounting Policy

A credit union's accounting policy for provisioning should ensure consistency with the requirements of applicable accounting standards. Credit unions are required to report their annual accounts under FRS 102.

The accounting policy should outline the following at a minimum:

- (a) the method of measurement applied to loans e.g. amortised cost;
- (b) detail on what is considered by the credit union to be an event which would necessitate a review of loans to assess for potential impairment;
- (c) detail on what is considered by the credit union to be a loss event i.e. an event which has occurred which may have an adverse impact on future cashflows;
- (d) the estimation techniques used by the credit union to assess and measure loan loss impairment; and
- (e) the principal assumptions used in the estimation techniques used to assess and measure loan loss impairment.

The stated accounting policy contained within the credit union's provisioning policy should be consistent with the accounting policy for provisions disclosed in the annual audited financial statements.

### 3.8. Provisioning Methodology and Estimation Tools

All credit unions should have in place an appropriate methodology for provisioning which incorporates an impairment assessment tool to accurately estimate loan losses. Where necessary, this should be compatible with the credit union's IT software and loan system.

The provisioning policy should outline what categories of loans are to be assessed on an individual basis. This may be loans which are individually significant or which the credit union deem represent a specific risk due to the characteristics of those loans. Detail should also be included in the provisioning policy on how loans are assessed for impairment on a collective basis (where such assessment is undertaken) and what methodology is employed to achieve this. Further detail on assessing loans on an individual and collective basis is outlined in Section 5.

### 3.9. Accounting for Provisioning Movements

The provisioning policy should set out how changes in provision amounts are to be accounted for. This should ensure consistency with the requirements of FRS 102 which specifies that:

- where there is objective evidence of an impairment loss, credit unions are required to recognise an impairment loss in the income statement immediately;
- where, in a subsequent period, the amount of an impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognised, credit unions are required to reverse the previously recognised impairment loss directly or by adjusting an allowance account.

### 3.10. Loan Default

The provisioning policy should outline when the credit union considers that an event is deemed to have occurred which indicates that there may be no reasonable expectation that any amounts owing will be received on the loan and that the full amount of the outstanding loan may require write off i.e. the loan is in default.

It is considered that where a loan is in arrears for >180 days that this is strongly indicative that there may be no reasonable expectation that any amounts owing will be received on the loan. Where this is identified, it is expected that a 100% provision of the net value of the loan should be recognised by the credit union.

### 3.11. Loan Write Offs and Write Backs

The provisioning policy should outline the credit union's approach to loan write offs. Consideration should be given by the credit union on what is a reasonable time period for a loan to remain on the balance sheet after it has defaulted and before it is written off. This time period should allow the credit union sufficient time to engage with the borrower with a view to securing full or part recovery of the defaulted loan.

It is acknowledged that what is considered 'reasonable time' will depend on the loan category, to an extent the individual circumstances of each loan and other factors including whether or not there is collateral attached to the loan. The Central Bank expects, where a loan is in arrears of 53 weeks or more, that serious consideration should be given to writing off that loan from the credit union's balance sheet (i.e. thereby removing it from the balance sheet). Notwithstanding that a loan is written off, a credit union may of course continue to pursue recovery of that loan from a borrower in line with its credit control policy.

### 3.12. Income Recognition

The provisioning policy should outline clearly how income is to be recognised on loans which are in default or have been written off.

#### Income recognition where a loan is in default:

It should be clearly outlined in the provisioning policy how any income received on loans, which are deemed to be in default but which remain on the balance sheet, should be recognised. It is expected that any income received on such loans would be accounted for as a bad debt recovery through the income statement.

#### Income recognition where a loan has been written off:

It should be clearly outlined in the provisioning policy how any income received on a loan which has been written off should be recognised. It is expected that any income received on such loans would be accounted for as a bad debt recovery through the income statement.

### 3.13. Collateral

The provisioning policy should outline the credit union's approach to realising collateral which is held against loans which have defaulted. This should articulate the circumstances in which collateral will be realised. The credit union's approach to collateral contained in the provisioning policy should be consistent with the approach to collateral documented in the credit union's credit policy. This will be of particular significance in relation to house loans.

Credit unions should take the collateral held on a loan into consideration only where the collateral is held via a first legal charge and where the credit union has demonstrable evidence that it can affect the security. The provisioning policy should outline clearly the approach to be taken to the valuation of collateral which is held



against an impaired loan. Generally, the collateral should be valued on the basis of market value being the estimated amount for which the collateral could be exchanged on a valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where such parties had each acted knowledgeably, prudently and without compulsion. The valuation should take account of all costs associated with realising the collateral including legal and selling costs. In addition, the Central Bank expects that credit unions would give consideration to applying a discount to collateral held in order to ensure a sufficiently conservative approach when valuing collateral attached to loans which are in default. Valuations of collateral held against loans should be updated on a frequent basis. It is expected that where a loan is in default that any collateral held against that loan would be valued immediately at the time the loan goes into default and that updated valuations would be undertaken on at least an annual basis thereafter.

### 3.14. Review of Provisioning Policy

The provisioning policy should outline the frequency with which a review should be undertaken to ensure that the provisioning policy remains appropriate to the circumstances of the credit union. In line with the requirements of section 55(1)(o) of the Act, it is required that the provisioning policy be reviewed every three years at a minimum. Responsibilities in relation to undertaking a review of the policy should be outlined. The provisioning policy should also document who has authority to approve amendments to the provisioning policy and the level of authority required for both significant and minor amendments.

It should be clearly documented within the policy when the last review was undertaken and who undertook and signed off on such review. The Central Bank would also expect that the provisioning policy is updated more frequently than every three years if events in the credit union indicate that an early review may be required.

## 4. Guidelines for Assessing Impairment

The current accounting standard applicable to credit unions (FRS 102) requires the use of an incurred loss approach to the calculation of impairment provisions on loans. The core principle with respect to impairment is that there must be objective evidence of impairment before a provision is recognised.

Section 11.21 of FRS 102 requires that at the end of each reporting period a credit union is required to assess for objective evidence of impairment. Where it is deemed that there is objective evidence of impairment, the credit union shall recognise a provision in profit or loss immediately. In accordance with section 11.25 of FRS 102, the provision should be the difference between the carrying amount of the loan and the present value of the estimated future cash flows discounted at the loan's original effective interest rate.

Section 11.22 (e) permits that a provision may be required on a group of loans where there is observable data which indicates that there has been a measurable decrease in the estimated future cash flows on the group of loans since their initial recognition, even though the decrease cannot yet be identified with the individual loans in the group. This element of a credit union's overall provision is commonly known as incurred but not reported (IBNR).

Outlined below are guidelines in relation to assessing loans for impairment which may be of assistance to credit unions in informing their approach.

### 4.1. Assessment of Impairment

#### 4.1.1. Frequency of Assessment for Impairment

The Central Bank expects that a credit union should assess, on at least a quarterly basis, whether there is objective evidence of impairment on all loans in their loan book. In accordance with FRS 102, assessment may be performed on either an individual or collective basis as appropriate and determined by the credit union.

#### 4.1.2. Indication of Impairment

Impairment on a loan is generally deemed to have occurred where:

- (i) one or more objective events (impairment triggers) have occurred; and
- (ii) these triggers are likely to have a negative impact on the estimated future cash flows on the loan and indicate that a loss event has occurred.

##### (i) Impairment Triggers

Credit unions should assess all loans for objective evidence of impairment based on all available information including current information and events at the date of assessment. Certain information and events can be seen as impairment triggers that may affect the likelihood of loss events occurring, and therefore the appropriate levels of provisions for loans.

Examples of such impairment triggers include, but are not limited to:

- macroeconomic triggers
- national or local economic conditions that indicate a measureable decrease in estimated future cash flows of the loan asset class
- an increase in the unemployment rate
- a decrease in property prices for mortgages
- an adverse change in industry conditions
- general triggers
- significant financial difficulties of the borrower
- a breach of contract, such as default or delinquency in repayments (capital and/or interest amounts)
- it becoming probable that the borrower will enter bankruptcy or other financial reorganisation
- personal lending triggers
- any forbearance measure by the borrower including requests for payment holidays or restructuring/rescheduling of loans
- requests for multiple top-ups on loans
- share/loan transfers to cover repayments
- commercial or community lending triggers
- trading losses
- a material decrease in turnover or the loss of a major customer
- a default or breach of contract

Detail and examples of what is viewed to be an impairment trigger should be set out in the credit union's provisioning policy. Credit unions should review and revise their impairment triggers for each loan group to ensure that triggers identify potential loss events as early as possible.

Impairment triggers should also reflect localised factors which are specific to the individual credit union and which have the potential to impact on the repayment of loans in the credit union. An example of this may be where a large number of borrowers in the credit union rely on one local employer and should an adverse event occur with that employer, this may potentially impact on the loan servicing ability of the borrowers. Local specific impairment triggers should be documented, reviewed regularly and updated as necessary.

The following factors should also be taken into account when assessing an individual loan for impairment:

- the debt service capacity of the borrower;
- the financial performance of the borrower; and
- the prospects for support from any financially responsible guarantors and any collateral provided based on its current value.

## (ii) Occurrence of Impairment

Where an impairment trigger indicates that a loss event may have occurred, the credit union should assess whether this is likely to have a negative effect on the estimated future repayments on a loan. Where it is established that this is the case then a loss event is deemed to have occurred and accordingly a provision should be made against the loan.

### 4.1.3. Calculating an impairment loss

As stated in FRS 102, an impairment loss should be calculated by reference to the difference between a loan's carrying amount and the present value of the estimated future cash flows discounted at the loan's original effective interest rate. The Central Bank expects that factors such as the time, costs and difficulties in recovering the loan and any security or collateral held on the loan would be taken into consideration when undertaking an estimate of the future cash flows on the loan. The value of collateral held against a loan should be arrived at after application of an appropriate discount to the market value of the loan. The cash outflows incurred during collateral execution and the sales process should include all legal costs, selling costs, taxes and other expenses and any additional maintenance costs to be incurred in relation to the repossession and disposal of collateral. A credit union should take a conservative and realistic approach in assessing these matters. The methodology for assessing loan impairment on an individual or collective basis and the calculation of the amount of the impairment provision is outlined in section 5.

## 5. Guidelines for Calculating Impairment Provisions

### 5.1. Methodology for Calculating Impairment

As set out in section 4, a credit union's provisioning policy should outline the methodology to be applied when assessing loans for objective evidence of impairment and should specify how impairment provisions are to be calculated and recognised. This is aimed at ensuring that a consistent approach is taken to the appropriate measurement and recognition of impairment provisions.

The following are two common and acceptable methodologies which may be employed when assessing loans for impairment.

#### (i) Individual assessment of loans:

This involves examining the loan files of specific loans on an individual basis to ascertain if loan losses have occurred on each individual loan.

#### (ii) Collective assessment of loans:

This involves examining specific groups within the loan portfolio which have common characteristics on a collective basis, using previous experience of losses in that specific group of loans, to estimate the expected future cash flows on that specific group of loans with a view to establishing the amount of losses in that specific group of the loan book.

### 5.2. Approach to using either Individual or Collective Assessment

The Central Bank expects that where collective assessment of the loan book is performed, analysis should also be performed on specific individual loans as identified by the credit union to assess for impairment. At a minimum, the loans selected for individual assessment by the credit union should be those which represent a significant exposure for the credit union. Where a loan is assessed in the first instance on an individual basis and it is deemed that no provision is necessary, this loan should be re-assessed for impairment as part of any collective assessment undertaken. The provisioning policy should specify those loans which are to be assessed on an individual basis. It is acceptable for a credit union to assess all loans for impairment on an individual basis if this is practicable.

#### 5.2.1. Individual Assessment

Individual assessment may be performed on certain loans which are deemed to represent individually significant exposures for the credit union. A credit union may assess all loans on an individual basis if it is considered practical to do so. Credit unions should give consideration to the definition of an individually significant exposure, taking into account the nature, scale, complexity and risk profile of the credit union. The definition of what is deemed to be an individually significant exposure should be outlined in the credit union's provisioning policy.

Credit unions may also individually assess certain loans, that do not represent a significant exposure, due to specific risk characteristics of these loans. Examples of such categories may include, but are not limited to:

- top 100 loans;
- rescheduled loans;
- top up loans;
- loans to officers;
- interest-only loans;
- loans with atypical repayment schedules (including single or lump sum repayment loans); and
- loans where there have been share to loan transfers within a specified timeframe.

The specifics on what loans the credit union deems are necessary to be individually assessed for impairment should be outlined in the provisioning policy.

Where a credit union assesses a loan for impairment individually and deems that it is impaired and requires a provision, it should recognise a provision for this loan in the income statement immediately.

### 5.2.2. Collective Assessment

In general, due to their homogenous nature, a large proportion of credit union loans may be grouped together and assessed on a collective basis e.g. those loans which have similar credit risk characteristics that are indicative of a member's ability to repay according to the credit agreement. The following characteristics may be taken into consideration when grouping exposures:

- loan Category;
- geographical location;
- date of origination;
- security type;
- size of loans;
- other forbearance indicators including rescheduled loans; and
- past due status.

Where loans have been individually assessed and it is not deemed that they are impaired they should be included within the group of loans which are to be assessed on a collective basis.

An element of the overall impairment provision arrived at as a result of a collective assessment of the loan book will relate to the loans within the collective assessment pool which are currently performing based on the probability of these loans moving from the performing pool into the non-performing pool. This element of the overall provision is commonly referred to as IBNR.

Outlined below is an example of how a credit union could approach a collective assessment of its loan book.

The calculation of provisions for the collective assessment of loans may be done in a number of ways. One such way is for it to be based on analysis of 'days in arrears' payment performance. Similar loans are grouped (i.e. car loans, term loans, house loans) and split between arrears categories - each arrears category referring to the number of days in arrears (usually up until 90 days or an equivalent default event). Subsequently the behaviour of loans from a given arrears category is assessed (in terms of movement towards the 'default event'), over a defined length of time - normally designed to reflect an appropriate emergence period.

Careful attention must be given to the effect of any loan re-aging, forbearance or restructuring practices on both the categorisation of arrears and default identification, with appropriate adjustments made as necessary (for instance forbearance loans may need to be treated separately, considered as an indicator of default etc.). In addition, recoveries from the default event are accounted for - with a recovery rate estimated to reflect all cash flows post default (collateral related or otherwise); with cashflows discounted to reflect their inherent risk as well as the time value of money. The costs involved in making recoveries must also be taken into account.

Historical loss experience should be adjusted to reflect the effects of current economic conditions that did not impact the period that the historical loss experience covers, and historical conditions that do not currently exist.

The methodology and assumptions used for estimating cash flows should be reviewed regularly to minimise any differences between loss estimates and actual loss experience.

## 5.3. Miscellaneous Considerations

### 5.3.1. Concentration Risk

As part of the measurement of loan portfolio provisions, credit unions should be cognisant of large exposures and connected borrowers. This may help to reduce the risk of credit unions incurring large losses as a result of the failure of an individual borrower or group of connected borrowers, due to the occurrence of unforeseen events (see the Lending Chapter of the Credit Union Handbook for further guidance on large exposures and connected borrowers). Certain loans, while not individually significant, could represent in aggregate a concentration risk resulting from a shared characteristic across the loans. When assessing loans for impairment, loans which credit unions deem to represent a concentration risk should be assessed in conjunction with one another.

### 5.3.2. Post Balance Sheet Events

Where credit unions have prepared their year-end accounts and presented a balance sheet at the reporting date, they need to remain aware up to the date that the financial statements are authorised for issue, of circumstances which may have an impact on the amounts which are presented in the financial statements. Section 32 of FRS 102 outlines that the receipt of information after the end of the reporting period indicating that an asset was impaired at the end of the reporting period, or that the amount of a previously recognised impairment loss for that asset needs to be adjusted, is deemed to be an adjusting event after the end of the reporting period. Where

such circumstances arise this would require a credit union to adjust the provisioning amount in its financial statements including making amendments to any related disclosures.



## 6. Supervisory Expectations

The Central Bank expects:

- credit unions to have in place a comprehensive provisioning framework which results in the recognition of loan losses as early as possible;
- that there is a clear understanding of the respective responsibilities of the board, management and internal audit with regard to provisioning in the credit union;
- that there is a 'fit for purpose' approved provisioning policy implemented by the credit union which will result in an adequate level of provisions being recognised on impaired loans;
- that there is appropriate oversight and approval of provisioning practices and the results of the same at board level; and
- that credit unions maintain a comprehensive understanding of the underlying risk profile of the loan book and be capable of identifying specific loans or group of loans which represent an increased credit risk for the credit union.

It is considered that the ageing of arrears and the number of repayments in arrears are key indicators of asset quality and are fundamental inputs into the assessment of loan impairments. It is important that credit unions are capable of accurately segmenting and reporting on their loan book in such a manner.

Specific categories of loans which should be carefully considered by credit unions and the Central Bank's expectations of an acceptable approach to provisioning on these loans are outlined below.

### 6.1. Performing Loans

A loan may be categorised as performing where the loan is not past due and does not present a risk of not being paid back to the credit union in full. The assessment of impairment on these loans should be based on the probability of such loans moving from the performing pool into the non-performing pool over a defined period. This provision is referred to as IBNR provision.

#### Performing Loans in Arrears

A loan which is up to 9 weeks past due may be categorised by a credit union as performing but in arrears. The likelihood of full recovery on a loan which is up to 9 weeks past due is less than that of a fully performing loan and as a result it is expected that the level of provisions for this category of loans should be higher than that for loans which are classified as fully performing.

### 6.2. Non-Performing Loans

The Central Bank considers that a loan which is greater than 9 weeks in arrears should be classified by the credit union as non-performing. The likelihood of these loans become fully recovered is less than that for a performing

loan or a loan which is performing but in arrears and accordingly it is expected that the level of provisions on such loans would be higher.

### 6.3. Defaulted Loans

Where a loan is in arrears for  $\geq 180$  days it is viewed that this is strongly indicative that all amounts owing on the loan may not be received. The Central Bank would expect that such loans would have a 100% provision based on the net exposure (i.e. after security/collateral)<sup>2</sup> of the loan.

Where there is a deviation from this 100% provisioning expectation by a credit union, it is expected that the credit union can demonstrate with acceptable objective evidence, that a 100% provisioning amount is not warranted. Where such an explanation provided by a credit union is not deemed sufficient, the Central Bank may require the credit union to:

- (i) increase the level of provision held on the loan, provided that such an increase is permissible within the context of FRS 102; and/or
- (ii) hold the amount of the additional provision required to reach 100% provision as a non distributable reserve.

### 6.4. Rescheduled Loans

Rescheduled loans are those loans where the repayment conditions have been altered by the credit union so that:

- (i) the duration of the loan is extended; or
- (ii) the repayment amounts have been reduced for 4 or more consecutive months within the period of the loan; and
- (iii) the loan was in arrears at the time of the repayment conditions being altered, or the loan would have fallen into arrears if the repayment conditions were not altered because the terms of the original loan agreement would no longer be met.

Where a loan is rescheduled this may be indicative of objective evidence of impairment having occurred and accordingly all rescheduled loans should be reviewed for impairment on an individual basis at the time that the loan is being rescheduled. Where it is assessed that the loan is not impaired at the time of this review, the loan should be collectively assessed within a pool of loans with similar credit characteristics. Where a loan is deemed to be impaired, a provision should be made.

It is expected that rescheduled loans are closely monitored for impairment by credit unions given that such loans are likely to represent an increased credit risk for the credit union.

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<sup>2</sup> The value of security/collateral should be arrived at based on the open market value of the property after application of an appropriate discount and taking account of all costs likely to be incurred during collateral execution including legal costs, selling costs/taxes/expenses and any additional maintenance costs to be incurred in relation to the repossession and disposal of the collateral.

Rescheduling should not interrupt the ageing of arrears of a rescheduled loan unless the borrower repays all amounts which were in arrears without new financing provided by the credit union for such purposes.

## 6.5. Top Up Loans

A top up loan can be defined as further credit granted to an existing borrower. Credit unions should remain cognisant of the potential increased credit risk which is posed by such loans.

Where a borrower requests a top up loan, the credit union should undertake an individual impairment assessment of the borrower's existing loans, to assess whether or not they are impaired and if a provision is required. Where impairment is not evident on the borrowers existing loans, the credit union should assess whether they could potentially become impaired should the top up loan not be granted and make any provision which is considered necessary following this assessment. The Central Bank would expect that top up loans are only granted to borrowers where it is assessed that there no specific concerns with regards the borrowers repayment capacity in relation to the initial and any subsequent loans granted.

## 6.6. Cured Loans

A cured loan can be defined as a loan which was once non-performing but simultaneously the financial situation of the borrower has improved to the extent that full repayment of the loan is likely to be made and the borrower no longer has any amount in arrears on the loan.

Credit unions should retain a cautious approach on such loans when assessing loan books for impairment as they are likely to represent an increased credit risk as a borrower who has a cured loan is more likely to re-default than a borrower who has loans which have never been classified as non-performing.

The Central Bank would not expect to see any reversal of a provision on a loan, which was previously classified as non-performing but is now classified as cured, until such time that there is demonstrable evidence that the loan is performing in line with the terms and conditions of the credit agreement and should continue to perform in such a way. An appropriate time period for assessing such performance should be contained in the provisioning policy of the credit union.

## 7. Loan Write Offs

As detailed in section 3, a credit union's provisioning policy should state when loans, which are considered to be in default, should be written off.

When assessing the recoverability of a loan credit unions should pay particular attention to those loans which have prolonged arrears. In general, where a loan is in arrears for 53 weeks or more this is strongly indicative that the loan should be written off and removed from the credit union's balance sheet. In certain instances, a partial write off may be warranted where there is reasonable financial evidence to demonstrate an inability on the borrower's behalf to fully repay all amounts outstanding on the loan.

Loans deemed irrecoverable should be presented to the board for review and approval. These should be written off as they arise during the year and not left to the financial year end for write off.

Where a loan has prolonged arrears for a period of greater than 53 weeks and following an assessment for write off, a decision is made that the loan should remain on the credit union's balance sheet, this should be supported by appropriate evidence. A list of all such loans and the supporting evidence should also be presented to the board for approval. All such loans should be re-reviewed at regular intervals to ensure that it remains appropriate for them to be kept on the balance sheet.

The provisioning policy should clearly document how any monies subsequently received on loans previously written off should be accounted for in the credit union's accounts. It is expected that these should be accounted for as bad debt recoveries through the income statement.

## 8. Supporting Documentation

Credit unions should maintain supporting documentation on each individual loan or group of loans, including:

- documentation of the rationale for determining whether an exposure should be assessed individually or collectively for impairment;
- documentation of the rationale for determining appropriate groupings of exposures, including observable data supporting the conclusion that the exposures in each grouping have similar attributes or characteristics. This data must be assessed periodically as circumstances change or as new data that is more relevant and more directly representative of loss becomes available; and
- if there is objective evidence of impairment, the credit union should document the type of objective evidence existing. If no objective evidence of impairment exists, the credit union should document the steps taken in arriving at this conclusion.

In addition to the supporting documentation required above, the following supporting documentation should be maintained on files (particularly loan files) in relation to the calculation of the impairment provision:

- the method and result of the impairment provision calculation for each individually measured exposure, including where relevant how the most appropriate technique for measurement was determined;
- when using the discounted future cash flows method:
  - the amount and timing of cash flows;
  - the effective interest rate used to discount the cash flows; and
  - the basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions;
- for collectively assessed exposures, the supporting rationale for adjustments made to the historical loss experience of each group, and the quantity of the adjustment; and
- documentation supporting the opinion that the credit union's estimates have an economic relationship to, and are representative of, impairment of a group of exposures.

## Appendix A: Extract from Section 11 of FRS 102 outlining the main requirements in relation to Provisioning

The below represents an extract from FRS 102 only. Please revert to FRS 102 in its entirety for the full accounting requirements in relation to provisioning.

### Impairment of financial instruments measured at cost or amortised cost

#### Recognition

11.21 At the end of each reporting period, an entity shall assess whether there is objective evidence of impairment of any financial assets that are measured at cost or amortised cost. If there is objective evidence of impairment, the entity shall recognise an impairment loss in profit or loss immediately.

11.22 Objective evidence that a financial asset or group of assets is impaired includes observable data that come to the attention of the holder of the asset about the following loss events:

- (a) significant financial difficulty of the issuer or obligor;
- (b) a breach of contract, such as a default or delinquency in interest or principal payments;
- (c) the creditor, for economic or legal reasons relating to the debtor's financial difficulty, granting to the debtor a concession that the creditor would not otherwise consider;
- (d) it has become probable that the debtor will enter bankruptcy or other financial reorganisation; and
- (e) observable data indicating that there has been a measurable decrease in the estimated future cash flows from a group of financial assets since the initial recognition of those assets, even though the decrease cannot yet be identified with the individual financial assets in the group, such as adverse national or local economic conditions or adverse changes in industry conditions.

11.23 Other factors may also be evidence of impairment, including significant changes with an adverse effect that have taken place in the technological, market, economic or legal environment in which the issuer operates.

11.24 An entity shall assess the following financial assets individually for impairment:

- (a) all equity instruments regardless of significance; and
- (b) other financial assets that are individually significant.

An entity shall assess other financial assets for impairment either individually or grouped on the basis of similar credit risk characteristics.

## Measurement

11.25 An entity shall measure an impairment loss on the following instruments measured at cost or amortised cost as follows:

- (a) For an instrument measured at amortised cost in accordance with paragraph 11.14(a), the impairment loss is the difference between the asset's carrying amount and the present value of estimated cash flows discounted at the asset's original effective interest rate. If such a financial instrument has a variable interest rate, the discount rate for measuring any impairment loss is the current effective interest rate determined under the contract.
- (b) For an instrument measured at cost less impairment in accordance with paragraph 11.14(c) and (d)(ii) the impairment loss is the difference between the asset's carrying amount and the best estimate (which will necessarily be an approximation) of the amount (which might be zero) that the entity would receive for the asset if it were to be sold at the reporting date.

## Reversal

11.26 If, in a subsequent period, the amount of an impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognised (such as an improvement in the debtor's credit rating), the entity shall reverse the previously recognised impairment loss either directly or by adjusting an allowance account. The reversal shall not result in a carrying amount of the financial asset (net of any allowance account) that exceeds what the carrying amount would have been had the impairment not previously been recognised. The entity shall recognise the amount of the reversal in profit or loss immediately.



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## Contents

<b>1. Legislation .....</b>	<b>2</b>
<b>2. Regulations .....</b>	<b>5</b>
<b>3. Guidance .....</b>	<b>8</b>
3.1 Liquidity management policy .....	8
3.2 Asset and liability management policy .....	9
3.3 Definition of liquid assets .....	10
3.4 Reporting requirements .....	11

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Link to Section 35 Regulatory Requirements for credit unions reflects updated requirements effective from 1 October 2013.
1.1	November 2015	<ul style="list-style-type: none"> <li>• Inserted sections 85A and 85B to reflect the commencement of section 30 of the 2012 Act.</li> <li>• Amended section 85(5) to reflect the commencement of item 76 of schedule 1 of the 2012 Act.</li> <li>• Inserted regulations in Section 2.</li> </ul>
1.2	January 2016	Updated regulations in Section 2.
1.3	March 2018	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2.</li> <li>• Updated guidance on relevant liquid assets.</li> </ul>
1.4	March 2020	Removal of the Section 35 Regulatory Requirements for Credit Unions following their rescission, as of 1 January 2020.
1.5	August 2020	Updates to the Regulations reflecting changes made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2019.
1.6	July 2022	Updates to the Regulations and guidance on relevant liquid assets reflecting changes made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2020.
1.7	September 2024	Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.

## 1. Legislation

### Section 85 – Assets and liabilities

- (1) A credit union shall at all times keep a proportion of its total assets in liquid form (hereinafter referred to as "liquid assets"), being such a proportion and having such a composition as to enable the credit union to meet its liabilities as they arise.
- (2) For the purpose of complying with *subsection (1)*, a credit union shall have regard to the range and scale of its business and the composition of its assets and liabilities; but nothing in this Act shall be taken to prevent a credit union keeping liquid assets in addition to those required for complying with *subsection (1)*.
- (3) The Bank may from time to time by notice in writing require a credit union to maintain, between its assets and its liabilities—
  - (a) a ratio specified in the requirement,
  - (b) a ratio which does not exceed a ratio so specified, or
  - (c) a ratio which is not less than a ratio so specified,and a ratio may be so specified as a percentage of the assets or liabilities concerned.
- (4) A requirement of the Bank under *subsection (3)* may be expressed to apply in one or, more of the following ways—
  - (a) in relation to all credit unions or to credit unions of a category or categories specified in the requirement;
  - (b) in relation to the total assets or total liabilities of the credit unions concerned or in relation to such assets or kinds of assets or such liabilities or kinds of liabilities as may be specified in the requirement;
  - (c) in relation to such time or times or during such period or periods as may be so specified.
- (5) ≠ The Bank may, from time to time, by notice in writing specify, as respects a credit union, requirements as to the composition of its assets or, subject to regulations made under section 27(2), the composition of its liabilities.

(6) In this section—

(a) "liabilities" include such contingent liabilities as the Bank may from time to time specify by notice in writing for the purposes of this section; and

(b) "liquid assets" mean such assets as the Bank may from time to time specify by notice in writing for the purposes of this section;

and, until the Bank specifies assets as mentioned in *paragraph (b)*, "liquid assets" include assets held in a form provided for by *section 43*.

(7) Where, under the preceding provisions of this section, the Bank by notice in writing imposes a requirement or specifies any matter, and the requirement is to apply or the matter is specified otherwise than in relation to a particular credit union, the power to give the notice shall be exercisable by rules.

#### **Section 85A - Liquidity\***

(1) In this section—

'liquid assets' means the assets held by a credit union to enable it to meet its obligations as they arise;

'maturity mismatch' means the ongoing or possible future divergence between a credit union's assets and liabilities because non liquid assets of the credit union have not or, at the appropriate time, will not have matured;

'total assets' means all the assets of a credit union having due regard to the accounting principles in section 110 after deducting provisions for bad and doubtful debts.

(2) A credit union shall at all times keep a proportion of its total assets in liquid form (in this section referred to as 'liquid assets') so as to enable the credit union to meet its obligations as they arise. The proportion of assets kept in liquid form shall take into account the nature, scale and complexity of the credit union, and the composition and maturity of its assets and liabilities.

(3) The Bank may prescribe the liquidity requirements that a credit union is required to maintain at a minimum as well as conditions on the application of the liquidity requirements. Regulations made by the Bank for the purpose of this section may deal with other matters related to minimum liquidity requirements, including—

- (a) the proportion and nature of assets to be held in liquid form,
  - (b) the holding of liquid assets based on the duration of loans,
  - (c) in relation to maturity mismatches, and
  - (d) the liquid assets to be held as a safeguard on the basis of stressed conditions that may arise.
- (4) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

**Section 85B - Supplemental provisions to Sections 85 and 85A\***

(1) In this section—

'liquid assets' has the meaning given by section 85 or 85A, as appropriate in the circumstances;

'maturity mismatch' has the meaning given by section 85A(1);

'stress test', in relation to a credit union, means the analysis of its cash flows under various headings and the placing of such cash flows in pre-determined time periods subject to specified conditions, including monetary limits where appropriate, to estimate the extent to which a credit union may have a maturity mismatch in respect of its assets and liabilities.

(2) (a) Pending the prescribing by the Bank of minimum liquidity requirements for the purposes of section 85A in respect of a category of credit unions, the liquidity requirements applicable to credit unions under section 85 shall continue to apply to such category of credit unions in respect of matters so prescribed.

(b) Where minimum liquidity requirements have been prescribed by the Bank for the purposes of section 85A in respect of a category of credit unions, then section 85 shall cease to apply to that category of credit unions in respect of the matters so prescribed.

(3) The Bank may, from time to time, require any credit union or credit unions (either generally or a particular category of credit union) to undertake stress tests into what would be the consequences for its liquidity if one or more scenarios were to arise.

The terms of the stress test shall be laid down by the Bank including without limitation requirements on the frequency of stress tests, reporting arrangements for stress test results and requirements to develop contingency plans.

- (4) In requiring a credit union to undertake any matter for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements are effective and proportionate having regard to the nature, scale and complexity of the credit union.

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

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

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

...

- (o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

- (iii) liquidity management policies;

...

- (xiii) asset and liability management policies;

...

## **2. Regulations**

### **CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) (AMENDMENT) REGULATIONS 2018 (S.I. No. 32 of 2018)**

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

#### **PART 1 PRELIMINARY AND GENERAL**

**Interpretation**

In these Regulations, unless the context otherwise required:-

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

“minimum reserve deposit account” means an account that a credit union must hold with the Bank in accordance with the minimum reserve requirement regulation;

“minimum reserve requirement regulation” means Regulation (EC) No. 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9)<sup>1</sup>, as amended from time to time;

“the Bank” means the Central Bank of Ireland;

“the Act” means the Credit Union Act, 1997;

“unattached savings” means those total savings which are not attached to loans or otherwise pledged as security and are withdrawable by members;

**PART 3****LIQUIDITY****Interpretation – Part 3**

7. (1) In this Part “relevant liquid assets” means, subject to paragraph (1A), the following unencumbered assets only:

(a) cash;

(b) investments with a maturity of less than 3 months, excluding any amount held in the credit union’s–

(i) minimum reserve deposit account for the purpose of complying with its reserve requirement under the minimum reserve requirement regulation;

(ii) deposit protection account;

(c) Irish and EEA State Securities, bank bonds and supranational bonds with a maturity of greater than 3 months, held either directly or through a UCITS, provided that all such Irish and EEA State Securities and

<sup>1</sup> Official Journal L 250, 02/10/2003 P. 0010 - 0016

supranational bonds comply with the minimum rating requirements specified in Regulation 29(1) or 29(3).

(1A) If a credit union maintains on each day during a maintenance period, as defined in the minimum reserve requirement regulation, a balance in its minimum reserve deposit account that is equal to the average daily balance that would be required to satisfy that credit union's reserve requirement for that maintenance period, any balance in the account in excess of that amount may be included in relevant liquid assets.

(2) For the purposes of calculating the minimum liquidity ratio specified in Regulation 8, the following discounts shall be applied in valuing the relevant liquid assets specified in paragraph (1)(c):

(a) where such investments have a maturity of greater than three months and less than one year, a 10 per cent discount shall be applied to the market value of such investments;

(b) where such investments have a maturity of at least one year but less than 5 years, a 30 per cent discount shall be applied to the market value of such investments;

(c) where such investments have a maturity of 5 years or more, a 50 per cent discount shall be applied to the market value of such investments.

### **Liquidity Requirements**

8. (1) Subject to paragraph (2), a credit union shall establish and maintain a liquidity ratio of at least 20 per cent.

(2) A credit union shall establish and maintain a liquidity ratio of –

(a) at least 25 per cent, where the total gross loan amount outstanding to that credit union with more than 5 years to the final repayment date exceeds 20 per cent but is less than 25 per cent of the total gross amount outstanding in relation to all loans,

(b) greater than 25 per cent, where the total gross loan amount outstanding to that credit union with more than 5 years to the final repayment date is equal to or exceeds 25 per cent but is less than 29 per cent of the total gross amount outstanding in relation to all loans, or

(c) at least 30 per cent, where the total gross loan amount outstanding to that credit union with more than 5 years to the final repayment date is equal to or exceeds 29 per cent of the total gross amount outstanding in relation to all loans.

(3) Where a credit union fails to comply with paragraph (2), it shall not make any new loan with more than 5 years to the final repayment date unless it has obtained the Bank's prior approval in writing to make such a loan.

(4) A credit union shall ensure that relevant liquid assets held in compliance with this Regulation shall have the following composition:

(a) at least 2.5 per cent of unattached savings shall comprise cash and investments with a maturity of less than 8 days;

(b) no more than 10 per cent of unattached savings shall comprise the relevant liquid assets specified in Regulation 7(1)(c), after application of the applicable discounts specified in Regulation 7(2).

(5) In this Regulation, 'liquidity ratio' means relevant liquid assets as a percentage of unattached savings.

### **Reporting Requirements**

9. (1) A credit union shall monitor its liquidity ratio on a continuous basis to ensure compliance with the liquidity requirements in this Part and in the Act.

(2) Where a credit union is failing, or likely to fail to comply, with the liquidity requirements in this Part or in the Act, it shall notify the Bank in writing no later than close of business on the next business day.

## **3. Guidance**

### **3.1 Liquidity management policy**

The liquidity management policy should cover the following at a minimum:

- objectives of the credit union's liquidity management policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in liquidity management;
- strategy setting out the quantity and quality of liquid assets to be maintained by the credit union over time, including the setting of liquidity targets, to enable the credit



union to meet its obligations as they arise and to meet stress conditions taking account of:

- the minimum liquidity to be maintained by the credit union in compliance with the legal and regulatory requirements and guidance;
- the strategic plan of the credit union;
- the current economic climate and business operating environment;
- the nature, scale and complexity of the credit union;
- the risk profile of the credit union including the level of credit and market risk in the credit union;
- the risk tolerance of the credit union; and
- any liquidity buffers to be maintained as a safeguard on the basis of stressed conditions that may arise;
- plans for the generation of any additional liquidity required to support the above;
- procedures for:
  - complying with minimum legal and regulatory requirements and guidance in relation to liquidity;
  - monitoring, reviewing and reporting on the credit union's liquidity position against liquidity targets; and
  - regular stress testing of liquidity and scenario analysis taking account of potential risks;
- contingency plans to be put in place if the liquidity targets are not met, including:
  - actions to be taken to protect the credit union's liquidity position;
  - raising of additional liquidity, if necessary; and
  - notifying the Central Bank where liquidity falls below the regulatory minimum;
- reporting arrangements, including the frequency, form and content of reporting on the adequacy of liquidity to the board of directors; and
- the process and timelines for the approval, review and update of the liquidity management policy by the board of directors.

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

### **3.2 Asset and liability management policy**

The asset and liability management policy should cover the following at a minimum:

- objectives of the credit union's asset and liability management policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in managing and monitoring the asset liability position of the credit union;

- strategy for the management of assets and liabilities taking account of:
  - legal and regulatory requirements and guidance including those relating to liquidity, lending, savings, borrowings and investments;
  - the strategic plan of the credit union taking account of the funding strategy proposed to support the projected balance sheet structure;
  - the current economic climate and business operating environment;
  - the nature, scale and complexity of the credit union;
  - the risk profile of the credit union including the level of credit and market risk in the credit union;
  - the risk tolerance of the credit union; and
  - the credit union's policy in relation to the type, maturity and limits for lending, borrowings, savings and investments and pricing strategies for lending and savings;
- the process for measuring and monitoring risks arising from asset and liability mismatches;
- procedures on how the credit union responds to changes in the economic climate and business operating environment including stress testing;
- the credit union's policy in relation to members' savings (shares and deposits) including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit;<sup>2</sup>
- the credit union's policy in relation to borrowings;<sup>2</sup>
- reporting arrangements, including the frequency, form and content of reporting on asset and liability management to the board of directors; and
- the process for the approval, review and update of the asset and liability management policy by the board of directors.

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

### **3.3 Definition of liquid assets**

The Regulations provide a definition of relevant liquid assets for the purposes of calculating the minimum liquidity ratio.

The definition provides that cash and investments with a maturity of less than 3 months qualify as liquid assets, excluding any amount held in the credit union's: (i) minimum

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<sup>2</sup> These policies may be included within the asset and liability management policy or may be maintained as separate policies.

**Liquidity****Publication Date: September 2024**

reserve deposit account for the purpose of complying with its reserve requirement under the minimum reserve requirement regulation; (ii) deposit protection account. While the Central Bank does not consider balances in the minimum reserve deposit account to be investments for the purpose of the Regulations, balances in the minimum reserve deposit account in excess of the ECB minimum reserve requirement come within the definition of "relevant liquid assets". The definition also provides that certain bonds, namely government bonds, supranational bonds and bank bonds which meet the minimum credit rating requirements required under the investments regulations, may qualify for liquidity (subject to a maximum of 10% of unattached savings) where they have a remaining maturity of greater than 3 months. In determining the amount of bonds which may qualify as liquid assets, a discount must be applied to the market value of the bonds. The discounts which are required to be applied are outlined in the liquidity regulations and are dependent on the remaining time to maturity of the bonds.

Where a credit union holds an investment which has a maturity of greater than 8 days or 3 months but such investments have an explicit written guarantee to say that the investments can be accessed within 8 days or 3 months, the credit union may count such investments as liquid assets for the purposes of meeting the applicable requirements of the minimum liquidity ratio.

**3.4 Reporting requirements**

Where a credit union is notifying the Central Bank that it is failing, or likely to fail to comply, with the liquidity requirements imposed by the Regulations, the credit union should set out the steps it proposes to take to restore the liquidity ratio(s) and indicate the timeframe in which the ratio(s) will return to compliance.

# OPERATIONAL RISK

## Contents

<b>1. Operational Risk</b> .....	<b>3</b>
1.1 Legislation .....	3
1.2 Guidance .....	3
1.3 Risk management process .....	4
1.4 Risk register .....	7
<b>2. Business Continuity Plan</b> .....	<b>7</b>
2.1 Legislation .....	7
2.2 Guidance .....	8
2.3 The business continuity plan .....	8
2.4 Business impact analysis .....	9
2.5 Recovery strategies .....	10
2.6 Testing of the business continuity plan .....	10
2.7 Review and update of the business continuity plan .....	11
<b>3. Records Management</b> .....	<b>11</b>
3.1 Legislation .....	11
3.2 Guidance .....	15
<b>4. Information Systems</b> .....	<b>16</b>
4.1 Legislation .....	16
4.2 Guidance .....	16
<b>5. Management Information</b> .....	<b>18</b>
5.1 Legislation .....	18
5.2 Regulations .....	19
5.3 Guidance .....	20
<b>6. Information Systems and Management Information Policies</b> .....	<b>21</b>
6.1 Legislation .....	21
6.2 Guidance .....	22

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Amended wording at Section 1.3.2 to clarify the information to be considered in assessment of operational loss.
1.1	December 2014	Amended text in section 186(3) to reflect amendment made by section 5(2) and Sch. 3, Part 2, Item 7 of the Central Bank (Supervision and Enforcement) Act 2013.
1.2	November 2015	Inserted regulations in Section 5.2.
1.3	January 2016	Updated regulations in Section 5.2.
1.4	September 2024	<ul style="list-style-type: none"> <li>Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>Amended text in Regulation 46(2) of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 to reflect the change made by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2024.</li> <li>The guidance on EBA Guidelines on the Security of Internet Payments (previously included in Section 1.5) has been removed as the EBA Guidelines have been repealed.</li> </ul>

# 1. Operational Risk

## 1.1 Legislation

### Section 76E – Operational risk\*

- (1) In this Act 'operational risk', in relation to a credit union, means the risk of loss (financial or otherwise) resulting from—
- (a) inadequate or failed internal processes or systems of the credit union,
  - (b) any failure by persons connected with the credit union,
  - (c) legal risk (including exposure to fines, penalties or damages as well as associated legal costs), or
  - (d) external events,
- but does not include reputational risk.
- (2) A credit union shall identify the operational risks it is exposed to, or is likely to be exposed to, and provide for the management and mitigation of those risks in the credit union's risk management system as provided for by section 76B.

### Section 47 – Insurance against fraud of officers etc.

- (1) ‡ A credit union shall at all times maintain in force, in respect of each financial year, a policy of insurance which complies with any prescribed requirements and which insures the credit union in respect of loss suffered or liability incurred by reason of the fraud or other dishonesty of its officers.

## 1.2 Guidance

The management and mitigation of operational risk should be fully integrated in a credit union's risk management system. As set out in the Chapter on "Risk Management and Compliance", a risk management system as required under section 76B of the 1997 Act should include the following at a minimum:

- a risk management policy;
- a risk management process;
- a risk register;
- systems and controls; and
- a review by the board of directors.

In addition to the guidance on the above set out in the Chapter on "Risk Management and Compliance", consideration should be given to the guidance set out below in respect of operational risk.

## **1.3 Risk management process**

### ***1.3.1 Identification of operational risk***

Operational risk is inherent in all activities, processes and systems of a credit union. The risk management officer should identify the types of operational risk that the credit union is exposed to including the risk of loss resulting from the following at a minimum:

- lack of adequate security of credit union officers, assets and systems including security of information systems;
- processes and systems failures including transaction processing failures and information systems failures;
- physical damage to officers, assets and systems;
- inaccurate or inadequate management information and/or records;
- human errors or failures including failures arising from fraud; dishonesty; lack of resources, skills, training, policies, procedures, delegations; or poor management;
- failure to meet legal, contractual and other obligations including internal operational targets;
- failure to have adequate insurance policies in place or failure to review or renew them;
- material interruptions to the business of the credit union;
- outsourcing, including the adequacy of resources and expertise of the service provider;
- changes to credit union products, services, activities or operations, including those undertaken by third parties; and
- the current business operating environment including the legal, economic and regulatory climate.

### ***1.3.2 Assessment and measurement of operational risk***

In assessing operational risks, credit unions should consider the following at a minimum:

- actual operational risk losses that occurred or losses that could have occurred but were avoided;
- risk indicators such as member complaints, processing volumes, officer turnover, large number of unreconciled items, process and systems failures;
- changes in the business operating environment;
- any publically available information on operational losses or information available from other credit unions on operational problems/circumstances incurred; and

- the outcome of independent reports and evaluations such as any reports made by the auditor, asset reviews, operational reviews, internal audit reports and inspection reports.

### ***1.3.3 Management of operational risk***

The board of directors of a credit union should ensure that systems and controls are put in place to ensure operational risks are managed and mitigated. This should cover the following at a minimum:

- a) in respect of the risk of loss resulting from failed internal processes and systems, ensuring that -
  - adequate systems and controls, including approval processes, are in place to plan and manage changes to the operations or activities of the credit union;
  - there is adequate investment in appropriate and secure information systems;
  - information systems are effective and produce accurate, reliable, consistent, timely and comprehensive management information;
  - there is regular verification and reconciliation of transactions and accounts;
  - records are accurate, accessible and secure in accordance with the Section of this Chapter on "Records Management"; and
  - systems and controls are implemented to rectify processes and systems failures;
- b) in respect of the risk of loss from any failure by persons connected with the credit union, ensuring that -
  - adequate segregation of duties and clear organisational and reporting structures are in place, including defined and prudent levels of decision-making authority and approval authority to ensure no one individual has responsibility for all stages of processes within the credit union (e.g. loan application, approval and drawdown);
  - there is a strong operational risk management culture in the credit union and that all officers are capable of performing, and are aware of, their operational risk management responsibilities through appropriate training and supervision of officers;
  - adequate resources are in place including succession plans in accordance with the Chapter on "Governance" taking account of the nature, scale, complexity and risk profile of the credit union;
  - the remuneration policy is appropriate in accordance with the Chapter on "Governance";
  - the standard of conduct and ethical behaviour of officers is in accordance with the Chapter on "Governance" and is communicated to all officers of the credit union;
  - the performance of the manager and employees and voluntary assistants of the credit union are reviewed on an ongoing basis, as required under section 55(1) of the 1997 Act;



- systems and controls are in place to mitigate the risk of fraud and dishonesty by officers including appropriate disciplinary policies and procedures; and
  - the credit union is insured against loss suffered or liability incurred by reason of the fraud or other dishonesty of its officers, as required under section 47 of the 1997 Act;
- c) in respect of the risk of loss resulting from legal risk, ensuring that -
- systems and controls are in place to minimise the threat of criminal activity from both within and outside the credit union including fraud, money laundering and terrorist financing;
  - the compliance officer carries out its functions in accordance with section 76D of the 1997 Act<sup>1</sup> to ensure that the credit union complies with all statutory and regulatory requirements and guidance;
  - policies and procedures are communicated throughout the credit union; and
  - weaknesses identified by the internal audit function in the effectiveness of the compliance programme are rectified in a timely manner;
- d) in respect of the risk of loss resulting from external events, ensuring that -
- business continuity plans are in place, communicated to officers and tested on a regular basis in accordance with the Section of this Chapter on “Business Continuity Plan”; and
  - systems and controls are in place to safeguard credit union assets against theft, burglary, vandalism and other physically hazardous conditions which may cause harm to officers, members or the assets of the credit union including putting in place at a minimum:
    - controls on access to the credit union premises including security procedures in relation to the opening and closing of the premises;
    - procedures for the storage and transfer of assets and other valuables including cash;
    - controls to minimise the threat of kidnapping and robbery; and
    - health and safety procedures which are communicated to officers.

#### ***1.3.4 Reporting of operational risk***

In order to ensure that operational risks are adequately monitored, the risk management officer should include in its reports to the board of directors (or risk committee where one exists) the following at a minimum:

- any operational risk exposures and losses;
- likely or actual deviations from risk tolerance levels;
- significant operational risk events and losses;

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<sup>1</sup> See the Chapter on “Risk Management and Compliance”.

- relevant external events; and
- significant increase in operational risk exposure.

Where a significant operational risk event occurs, the risk management officer should bring this to the attention of the board of directors (or risk committee where one exists) immediately.

### **1.4 Risk register**

The operational risks identified by the risk management system should be included in the credit union’s risk register and managed in accordance with the credit union’s overall risk management process.

## **2. Business Continuity Plan**

### **2.1 Legislation**

<b>Section 76I – Business continuity plan*</b>
<p>(1) In this section—</p> <p>‘business continuity’, in relation to the occurrence of one or more abnormal events which could cause a material interruption to the business of a credit union, means the continuation of its business during and after such an occurrence;</p> <p>‘business continuity plan’, in relation to a credit union, means the contingency arrangements put in place to ensure that its essential functions can continue during and after the occurrence of one or more abnormal events which could cause a material interruption to the business of the credit union.</p> <p>(2) A credit union shall put in place a business continuity plan—</p> <p>(a) to ensure its business continuity if there occurs one or more abnormal events which could cause a material interruption to its business, and</p> <p>(b) to enable it to continue to meet all requirements imposed on it under the <i>Credit Union Acts 1997 to 2012</i> and other financial services legislation if any such interruption occurs,</p> <p>and such plan shall include, where appropriate, comprehensive testing at regular intervals of recovery procedures by officers of the credit union and testing of backup facilities.</p>

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(xii) business continuity plan;

...

**2.2 Guidance**

The purpose of a business continuity plan is to ensure that when an interruption occurs a credit union can maintain essential activities and services including preserving essential data and functions and can:

- manage the initial interruption;
- recover lost data and functions and ensure the timely resumption of interrupted services and activities; and
- continue to meet all legal and regulatory requirements and guidance during the interruption.

**2.3 The business continuity plan**

The business continuity plan should cover the following at a minimum:

- objectives and scope of the plan;
- organisational arrangements setting out the roles and responsibilities of officers involved in business continuity;
- identification of resources required (people, systems, facilities and other assets and procedures) to continue critical operations taking account of the nature, scale, complexity and risk profile of the credit union;
- a business impact analysis (see the Section of this Chapter on “Business impact analysis” below);
- recovery strategies (see the Section of this Chapter on “Recovery strategies” below);
- testing of the business continuity plan (see the Section of this Chapter on “Testing of the business continuity plan” below);
- internal and external communication arrangements including escalation plans;
- annual training of officers involved in business continuity;

- business continuity plan for outsourced activities in accordance section 76J(7) of the 1997 Act;<sup>2</sup>
- insurance arrangements in place and insurance notification procedures to be followed in the event of loss from material interruptions;
- arrangements for the secure off-site storage of the business continuity plan;
- reporting arrangements, including the frequency, form and content of reporting on business continuity to the board of directors; and
- the process for the approval, review and update of the business continuity plan by the board of directors (see the Section of this Chapter on "Review and update of the business continuity plan" below).

The business continuity plan should be dynamic and flexible to allow for changes throughout the year. Credit unions should ensure that any significant deviations from the business continuity plan during a business continuity event or business continuity testing are communicated to the board of directors along with the reasons for these deviations and proposed action to address the deviations in accordance with the reporting arrangements set out in the business continuity plan.

The board of directors should ensure that the business continuity plan is communicated to all officers of the credit union.

## **2.4 Business impact analysis**

A credit union should consider the likelihood, impact and resulting severity of an interruption to the continuity of its operations from abnormal events. This should include assessing the interruptions to which it is particularly susceptible, the likely timescale of those interruptions and the financial, operational and reputational impact of those interruptions. Interruptions may include the following at a minimum:

- the loss or failure of internal or external resources (such as people, systems and other assets);
- the loss or corruption of data; and
- any other events including vandalism, hacking or natural disasters.

The business impact analysis should cover the following at a minimum:

- identifying critical business activities;
- undertaking a risk assessment to assess the risk and impact of various interruption scenarios on the credit union's operations, regulatory compliance, finances, members' savings and reputation;

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<sup>2</sup> See the Chapter on "Outsourcing".

- defining the maximum allowable downtime for critical business activities and the acceptable level of losses;
- establishing planned recovery levels and time frames for recovery and resumption of functions; and
- identifying key internal and external dependencies including third party service providers.

Maximum allowable downtime and planned recovery levels and timeframes identified in the business impact analysis should be reflected in outsourcing agreements where such functions are outsourced.

## **2.5 Recovery strategies**

Following completion of the business impact analysis, the board of directors should develop recovery strategies which should cover the following at a minimum:

- emergency reaction and recovery procedures;
- communication arrangements including escalation plans;
- information systems continuity plans and recovery processes and data back-up and storage strategies; and
- processes to validate the integrity of information affected by the interruption.

## **2.6 Testing of the business continuity plan**

A credit union should test the business continuity plan on a regular basis. The roles and responsibilities of officers involved in the test should be clearly defined. Tests should be monitored by an independent party such as the internal audit function or auditor and should, at a minimum:

- take place at least annually or when significant changes take place such as significant changes in business activities, responsibility, systems, facilities, personnel, outsourcing arrangements or the external environment;
- determine whether the credit union can recover to the extent envisaged in the continuity plan within the timeframe set out in that plan;
- test the restoration of data back-ups, simulations and alternative site reviews, where appropriate; and
- identify any gaps and failures in the business continuity plan and update the business continuity plan to address these gaps and failures.

The results of the test should be documented and reported to the board of directors.

## 2.7 Review and update of the business continuity plan

This review by the board of directors should cover the following at a minimum:

- assessing the scope and adequacy of the business continuity plan;
- evaluating the testing of the business continuity plan;
- ensuring that, following testing, appropriate follow-up and corrective actions have been taken; and
- ensuring the business continuity plan is updated as a result of the review.

## 3. Records Management

### 3.1 Legislation

#### Section 108 – Accounting records etc.

(1) Every credit union shall—

(a) cause proper accounting records, whether in the form of documents or otherwise, to be kept on a continuous and consistent basis, that is to say, the entries shall be made in a timely manner and be consistent from one year to the next, and

(b) establish and maintain systems of control of its business and records, in accordance with this section and section 109.

(2) The accounting records of a credit union shall be such as—

(a) correctly to record and explain the transactions of the credit union;

(b) to disclose, with reasonable accuracy and promptness, the financial position of the credit union at any time;

(c) to enable the officers properly to discharge the duties imposed on them by or under this Act;

(d) to enable the credit union properly to discharge the duties imposed on it by or under this Act; and

(e) to enable the accounts of the credit union to be readily and properly audited.

(3) Without prejudice to the generality of *subsections (1) and (2)*, accounting records

kept pursuant to this section shall contain—

- (a) entries from day to day of all sums of money received and expended by the credit union and the matters in respect of which the receipt and expenditure take place;
  - (b) a record of the assets and liabilities of the credit union and entries from day to day of every transaction entered into by the credit union which will or may give rise to liabilities or assets of the credit union; and
  - (c) in respect of the provision of services, whether under *section 48* or otherwise, a record of the services provided and all transactions relating to them.
- (4) For the purposes of *subsection (1)* proper accounting records shall be deemed to be kept if they comply with *subsections (2) and (3)* and give a true and fair view of the state of affairs of the credit union and explain its transactions.
- (5) The accounting records of a credit union—
- (a) shall be kept at the registered office of the credit union or at such other place in the State as the board of directors think fit; and
  - (b) ‡ shall at all reasonable times be open to inspection by the members of the board of directors and the board oversight committee.
- (6) Every record required to be kept under this section shall be preserved by the credit union for not less than six years from the latest date to which it relates.
- (7) ‡ Where the accounting records of the credit union are kept at a place other than the registered office of the credit union, the chair shall have responsibility for ensuring that a written record of their location is kept.
- (8) Where a credit union conducts its business in more than one place, the board of directors shall ensure that such accounting records are kept and such systems of control are established and maintained for each of those places as will enable the credit union to comply with this section and *section 109*.
- (9) A credit union shall take adequate precautions to ensure the safe keeping of the accounting records of the credit union no matter what form they may take.

**Section 109 – Systems of control and safe custody**

- (1) The systems of control which are to be established and maintained by a credit union pursuant to *section 108 (1)* are systems for the control of the conduct of its business as required by or under this Act and in accordance with the decisions of the board of directors and for the control of the accounting and other records of its business.
- (2) Without prejudice to the generality of *section 108 (1)*, the systems of control must be such as to secure that the credit union's business is so conducted and its records so kept that—
  - (a) the information necessary to enable the officers, the credit union and the auditor to discharge their functions is sufficiently accurate, and is available with sufficient regularity and with sufficient promptness for those purposes, and
  - (b) † the information obtained by or furnished to the Bank is sufficiently accurate for the purposes for which it is obtained or furnished and is available as and when required by the Bank.
- (3) Every credit union shall establish and maintain a system to ensure the safe custody of all documents of title belonging to the credit union.

**Section 76F – Records management\***

- (1) Without prejudice to sections 108 and 109, a credit union shall ensure—
  - (a) that it makes, maintains and retains in books and documents proper and secure records of all matters that are required to enable the credit union, including the board of directors, board committees, nomination committee and officers and its board oversight committee and auditor to discharge their respective functions and as required by law,
  - (b) that those records are made in a timely, accurate and consistent manner so that—
    - (i) they contain the information necessary to enable persons discharging functions to which paragraph (a) relates to discharge their respective functions and that those records are sufficiently accurate and available with sufficient regularity and sufficient promptness for the purpose of so discharging, and
    - (ii) any information furnished or caused to be furnished by or on behalf of the



credit union to the Bank is sufficiently accurate for the purposes for which it was so furnished and is available as and when required by the Bank, and

(c) that those records are produced when duly called upon—

(i) by or under this Act, or

(ii) for the purposes of any other statutory obligation to produce them.

### **Section 186 – Records and registers**

(1) † A credit union shall maintain, in addition to the records required to be kept by a credit union by virtue of section 108, such other records as may be prescribed by the Bank.

(2) Any register or record required to be kept by or under this Act may be kept either by making entries in bound books or by recording the matters in any other manner, provided that the recording is readily accessible and readily converted into written form in an official language of the State.

(3) Any duty imposed by this Act [or Part 3 of the Central Bank (Supervision and Enforcement) Act 2013] to allow inspection of, or to furnish a copy of, a record, or any part of it, is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a written form in an official language of the State.

(4) Where any register or record required to be kept by or under this Act is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken by the person required to keep the register or record for guarding against falsification and for facilitating the discovery of any falsification.

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(x) records management policies;

## 3.2 Guidance

### 3.2.1 Records management policy

The records management policy should cover the following at a minimum:

- the objectives of the credit union's records management policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in records management;
- form and content of credit union records and the medium that records are to be recorded on;
- retention periods for records;
- procedures for:
  - the storage, transfer, duplication, back-up and disposal of records;
  - ensuring there is an audit trail for records and transactions to enable the credit union to evidence historical changes to records relating to member accounts, transactions of the credit union and accounting records;
  - the security, destruction and disposal of records;
  - handling requests for information;
  - protecting the integrity of records in situations of severe damage and/or interruption to the business of the credit union;
- schedule of records including the location of records held by the credit union;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors; and
- the process for the approval, review and update of the records management policy by the board of directors.

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

## 4. Information Systems

### 4.1 Legislation

#### Section 76G – Information systems\*

- (1) In this section 'information systems', in relation to the business of a credit union, means all the technical and non-technical methods of establishing, implementing, documenting and maintaining data and information within the credit union in a coherent and informative way which is in, or capable of being reproduced in, a legible form.
- (2) For the purpose of supporting the strategic plan and enabling the board of directors of a credit union and other persons involved in the management of the credit union to control, direct and manage its affairs, a credit union shall, taking account of the nature, scale and complexity and risk profile of its business but without prejudice to any other statutory obligation to the like effect as this section—
- (a) develop, prepare, implement and maintain secure and reliable information systems, or
- (b) where such systems already exist within the credit union, continue to implement and maintain such systems.

### 4.2 Guidance

Information systems of a credit union should, at a minimum, have the capability to:

- support the implementation of the strategic plan;
- provide accurate, reliable, consistent, timely and comprehensive information to enable the board of directors and the management team to monitor and analyse the financial position and performance of the credit union against the financial projections, targets and criteria contained in the strategic plan;
- record all transactions accurately and on a timely basis;
- support the credit union in monitoring compliance with all legal and regulatory requirements and guidance;
- provide an audit trail for all transactions to ensure compliance with the audit, record management and record retention requirements of the credit union including legislative requirements and guidance;
- protect the security of the information systems through appropriate access and process controls; and
- be capable of modification to facilitate changes such as changes to products and services, where appropriate, and the introduction of new regulatory requirements.

The board of directors should ensure that the information systems in a credit union are appropriate having regard to the nature, scale, complexity and risk profile of the credit union.

#### ***4.2.1 Security of information systems***

The security of information systems should be protected by ensuring, at a minimum, that:

- passwords are strong and are changed on a regular basis;
- all mobile devices (e.g. laptops, tablets, USB keys etc.) and back-up devices are encrypted to prevent data loss/theft;
- officers are granted such access as is appropriate to their role and responsibilities;
- remote access, access by third parties and physical access is controlled, monitored and reviewed;
- audit trails of information system access are monitored and reviewed;
- the credit union receives timely notifications where the system has detected unauthorised use or tampering and violation attempts are recorded;
- resources, including people, processes and systems, are put in place to ensure the security of information systems taking account of the nature, scale, complexity and risk profile of the credit union;
- information systems penetration tests, to test the security controls in place to protect information systems against unauthorised access, are carried out where appropriate and vulnerabilities identified are rectified in a timely manner;
- systems are protected against information security incidents including data leakage, fire, vandalism and theft, equipment failure, unauthorised access or tampering, fraud, computer viruses and malicious software;
- training is provided to officers using the information systems; and
- information systems are secure in the event of a system interruption.

Credit unions should monitor the security of information systems and ensure any information system security incidents are reported to the board of directors.

#### ***4.2.2 Development of information systems***

Any proposed change to information systems should be planned, documented, managed, authorised at an appropriate level and should not involve undue risk to the credit union and its operations. The board of directors of a credit union should not consider any new information systems project unless the board of directors has fully satisfied itself that the credit union has the resources, financial and non-financial, and capacity to implement the project taking account of the nature, scale, complexity and risk profile of the credit union. Where information systems are updated or changed, or where new users are

introduced, the credit union should ensure that comprehensive training is provided to users.

#### **4.2.3 Maintenance of information systems**

Credit unions should undertake a review to ensure information systems support the strategic plan on a regular basis, at least annually. Any enhancements required arising from the review should be made to information systems. Credit unions should ensure that the information systems, including hardware and software, are adequately supported, maintained and updated to ensure that they remain reliable on an ongoing basis.

#### **4.2.4 Outsourcing**

Credit unions should comply with the provisions of section 76J of the 1997 Act<sup>3</sup> when outsourcing any activities in relation to information systems. Credit unions should ensure at a minimum that:

- an appropriate level of support is available from the service provider;
- training, including manuals and materials, is provided to the credit union; and
- the information systems provided by the service provider meet current requirements and can be adapted to meet future requirements.

## **5. Management Information**

### **5.1 Legislation**

#### **Section 76H – Management information\***

(1) Without prejudice to any other statutory obligation to the like effect as this section, a credit union shall ensure that its information systems (within the meaning of section 76G) produce management information and other reports that are accurate, reliable, consistent, and timely so as to enable the board of directors and management team to—

(a) direct, control and manage the credit union’s business efficiently and effectively,

(b) make informed strategic and operational decisions, and

(c) provide accurate information to the Bank on a timely basis, as and when required.

<sup>3</sup> See the Chapter on “Outsourcing”.

## 5.2 Regulations

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

#### **PART 8**

#### **SYSTEMS, CONTROLS AND REPORTING ARRANGEMENTS**

##### **Plans, Policies and Procedures**

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

#### **SCHEDULE 1**

1. The systems of control of its business and records required under section 108(1)(b) of the Act,
2. A succession plan for the board of directors and the management team which shall

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

### 5.3 Guidance

Management information required to enable the board of directors and the management team to direct, control and manage the credit union's business effectively and efficiently and to make informed strategic and operational decisions should be produced on a regular basis, but at least monthly. Reports may need to be produced more frequently having regard to the nature, scale, complexity and risk profile of the credit union.

Management information should cover the following at a minimum:

- reports on the financial position of the credit union submitted by the manager under section 63A(4)(c) of the 1997 Act;<sup>4</sup>
- past performance, trends, and projections of the financial position of the credit union;
- strategies proposed by the manager under section 63A(4)(a) of the 1997 Act;<sup>5</sup>
- updates from the manager on the performance of the credit union against financial projections, targets and criteria set out in the strategic plan;
- membership and accounts of the credit union;
- reports of the activities of each board committee under section 56A of the 1997 Act;<sup>6</sup>
- reports from the board oversight committee required under section 76O(2) of the 1997 Act;<sup>7</sup>
- reports of the credit committee, credit control committee and membership committee required under the Third Schedule of the 1997 Act;
- reports from the risk management officer and from the compliance officer under sections 76C and 76D of the 1997 Act;<sup>8</sup>
- reports received from the internal audit function under section 76K(5) of the 1997 Act;<sup>9</sup>
- reports on the results of tests carried out on the business continuity plan required under section 76I(2) of the 1997 Act;

<sup>4</sup> See the Chapter on "Governance".

<sup>5</sup> See the Chapter on "Strategic Plan".

<sup>6</sup> See the Chapter on "Governance".

<sup>7</sup> See the Chapter on "Governance".

<sup>8</sup> See the Chapter on "Risk Management and Compliance".

<sup>9</sup> See the Chapter on "Internal Audit".

- reports on the review of the performance of outsourced activities and agreements;<sup>10</sup> and
- any other reports required under financial services legislation.

The management information produced to enable the board of directors and management team to provide accurate information to the Central Bank on a timely basis, as and when required, should cover the following at a minimum:

- prudential returns;
- draft financial statements and final financial statements;
- annual return;
- annual audited accounts;
- AGM notifications; and
- outsourcing notifications (as required under section 76J of the 1997 Act).<sup>11</sup>

### **5.3.1 Review by the board of directors**

The board of directors should assess and review the information systems that produce management information on a regular basis, at least annually, to ensure that the information produced is accurate, reliable, consistent, and timely and that the management information meets all legal and regulatory requirements and guidance.

## **6. Information Systems and Management Information Policies**

### **6.1 Legislation**

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(xi) information systems and management information policies;

...

<sup>10</sup> See the Chapter on "Outsourcing".

<sup>11</sup> See the Chapter on "Outsourcing".



## 6.2 Guidance

The information systems and management information policies required in a credit union should include the following at a minimum:

- management information policy;
- information security policy;
- information systems change management policy; and
- information systems asset management policy.

Each of these policies should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved; and
- the process for the approval, review and update of the policy by the board of directors.

The management information policy should also cover the following at a minimum:

- the management information reports to be produced including details on the frequency, form and content, distribution and management of management information reports;
- procedures in place:
  - to ensure the reliability, consistency, timeliness, accessibility and comprehensiveness of management information;
  - for the independent assurance that information systems produce accurate management information;
  - for the secure storage, back-up, transfer and disposal of management information in line with all legal and regulatory requirements and guidance, including data protection requirements and guidance;
  - to ensure compliance with legislative and regulatory requirements including data protection legislation; and
- a system for logging and rectifying errors in management information.

The information security policy should also cover the following at a minimum:

- resources required in respect of information security taking account of the nature, scale, complexity and risk profile of the credit union;
- how access to information systems (including remote access, third party access and physical access) will be controlled, monitored and reviewed such as the recording and maintenance of audit trails of access;
- security controls to prevent unauthorised access including password management, firewalls, virus protection and encryption of mobile and back-up devices;

- procedures in place for monitoring threats from both technical sources<sup>12</sup> and non-technical sources<sup>13</sup> and updating access and security controls as appropriate;
- procedures in place for the ongoing assessment and testing of access and security controls including information systems penetration tests, where appropriate, and the rectification of any vulnerabilities identified;
- procedures for managing information security incidents such as data leakage, fire, vandalism and theft, equipment failure, unauthorised access or tampering, fraud, computer viruses and malicious software;
- training to officers to ensure the accurate operation of information systems in a safe and secure manner; and
- reporting arrangements, including the frequency, form and content of reporting to the board of directors on information security.

The information systems change management policy should also cover the following at a minimum:

- processes to:
  - assess information systems changes required, including changes required to support the credit union's strategic plan and to ensure that the credit union complies with all legal and regulatory requirements and guidance;
  - determine the business case for and impact of changes to information systems;
  - approve changes to be made to information systems;
  - select, where appropriate, information systems and service providers;
  - manage the implementation of information system changes including planning, designing, developing, testing implementing and supporting changes to information systems;
  - ensure any change is successfully tested prior to implementation, including parallel running<sup>14</sup> where appropriate; and
  - ensure the accuracy of information, including management information, is verified following implementation of any change;
- business continuity procedures in place in the event that changes to information systems cause interruption to the business of the credit union, including roll-back plans,<sup>15</sup> where appropriate;
- communication and training arrangements in relation to the introduction of proposed changes; and
- reporting arrangements, including the frequency, form and content of reporting on changes proposed and made to information systems to the board of directors.

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<sup>12</sup> Technical sources include new systems, new service providers, and increased access.

<sup>13</sup> Non-technical sources include organisational changes, business process changes, new business locations or new products and services.

<sup>14</sup> A parallel run is where the existing information systems and the changed/updated information systems are run concurrently for a specified period of time to ensure expected results are consistent across the systems.

<sup>15</sup> A roll back plan allows a credit union to revert the information system back to the pre-change state.

The information systems assets management policy should also cover the following at a minimum:

- procedures for developing an information system asset register listing all information systems assets, including software licences, and identifying the assets that are critical to the business of the credit union;
- procedures in place to ensure compliance with the terms of the information systems contracts and licence agreements;
- succession and replacement plans for information system assets;
- processes to confirm the existence of all information system assets on a regular basis; and
- reporting arrangements, including the frequency, form and content of reporting on information systems assets to the board of directors.

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

# OUTSOURCING

## Contents

**1. Legislation ..... 2**

**2. Guidance ..... 7**

    2.1 Exercising due skill, care and diligence ..... 7

    2.2 Outsourcing agreement ..... 7

    2.3 Outsourcing policy ..... 8

    2.4 Business continuity plan ..... 9

    2.5 Supervision of outsourced activities ..... 9

    2.6 Notification requirements to the Central Bank ..... 9

    2.7 Review by the board of directors ..... 10

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Information in Section 2.6 on notification updated.
1.1	April 2024	Amended text in section 76J (11)(a)(ii) to reflect the commencement of the Credit Union (Amendment) Act 2023.
1.2	September 2024	<ul style="list-style-type: none"> <li>• Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>• Amended text under Section 2.7 Guidance on Review by the board of directors to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> </ul>

# 1. Legislation

## Section 76J - Outsourcing\*

- (1) Subject to the other provisions of this section, a credit union may by an agreement in writing entered into with any person (in this section referred to as a 'service provider') and upon such terms and conditions as may be specified in the agreement, provide for the performance by that person, subject to such terms and conditions (if any) as may be so specified, of such process, service or activity (in this section referred to as 'outsourced activities') of the credit union as may be so specified.
- (2) The respective rights and obligations of the credit union and of the service provider shall be clearly allocated and set out in a written agreement.
- (3) A credit union shall exercise due skill, care and diligence when entering into, managing or terminating any outsourced activities with a service provider.
- (4) A credit union shall not enter into an agreement with a service provider for the performance of any of the functions exercisable by the board of directors of the credit union under section 55(1) but, subject to any matter that may be prescribed by the Bank, this shall not prevent the credit union from entering into an agreement under subsection (1) with a service provider for the provision of services in respect of any business activity (other than any such function) that is preliminary to or consequential upon the exercise by that board of the function concerned.<sup>1</sup>
- (5) The following conditions shall form part of every agreement to provide outsourced activities between a credit union and a service provider:
  - (a) the service provider has the ability, capacity and any authorisation required by law to perform those activities reliably and professionally;
  - (b) the service provider will carry out those activities effectively;
  - (c) the service provider shall properly supervise the carrying out of those activities, and adequately manage the risks associated with the outsourcing;
  - (d) appropriate action shall be taken by the credit union if it appears to it or to the Bank that the service provider may not be carrying out those activities

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<sup>1</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- effectively and in compliance with any applicable laws and regulatory requirements;
- (e) the service provider shall disclose to the credit union any development that may have a material impact on its ability to carry out the outsourced activities effectively and in compliance with applicable laws and regulatory requirements;
  - (f) the credit union may terminate the arrangement for outsourcing, where necessary, without detriment to the continuity and quality of its provision of services to members;
  - (g) the service provider shall, when required, co-operate with the Bank in connection with the outsourced activities;
  - (h) the credit union, its auditors and the Bank shall have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;
  - (i) the Bank shall have without notice the right of access to the business premises of the service provider for the purposes of paragraph (g);
  - (j) the service provider shall keep any confidential information relating to the credit union or its members in a safe and secure manner.
- (6) For the purposes of every agreement to provide outsourced activities between a credit union and a service provider, the credit union shall—
- (a) ensure that the service provider has no conflicts of interest in relation to the outsourced activity,
  - (b) retain the necessary expertise to supervise the outsourced activities effectively, manage the risks associated with the outsourcing and supervise those activities and manage those risks,
  - (c) establish methods for assessing the standard of performance of the service provider, and
  - (d) be capable of resuming direct control over any outsourced activity or ensure that alternative arrangements are in place to provide the outsourced activities

without detriment to the proper operation and functioning of the credit union or the continuity and quality of its provision of services to members.

(7) Where—

(a) an agreement under this section has been entered into between a credit union and a service provider, and

(b) it is necessary having regard to the activities that have been outsourced,

then the credit union and the service provider shall both establish, implement and maintain a business continuity plan and the credit union shall ensure that such plan is integrated, as necessary, within the business continuity plan referred to in section 76I.

(8) An outsourced activity shall not impair—

(a) the orderliness of the conduct of the credit union's business,

(b) the credit union's ability to manage and monitor its business,

(c) the ability of the board of a credit union to undertake its functions,

(d) the ability of the credit union to comply with requirements imposed under financial services legislation,

(e) the supervision of the credit union by the Bank, and

(f) the quality of the credit union's internal controls.

(9) Where a credit union has outsourced activities, the credit union remains legally responsible for compliance with requirements imposed under financial services legislation in respect of those activities.

(10) Nothing in this section shall be construed—

(a) as applying to any person in his or her capacity as an officer of the credit union, or

(b) as affecting any contract (whether oral or in writing) entered into between the

credit union and any person for the performance by that person of any minor non-business activity where a defect or failure in its performance could not impair—

- (i) the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation,
- (ii) the credit union's financial performance,
- (iii) the soundness or continuity of the credit union's financial performance, or
- (iv) the soundness or continuity of the credit union's business.

(11) (a) A credit union shall notify the Bank, in writing—

- (i) when it is proposed to outsource to a service provider a material business activity, or
- (ii) of any material development affecting the service provider and the service provider's ability to fulfil its obligations.

(b) In this subsection and subsection (12) 'material business activity' means an activity where a defect or failure in its performance would materially impair-

- (i) the continuing compliance with the conditions and obligations of its registration or its other obligations under the financial services legislation,
- (ii) its financial performance,
- (iii) the soundness or continuity of its financial performance, or
- (iv) the soundness or continuity of its business.

(12) (a) The Bank may prescribe the matters that a credit union shall have regard to when selecting a service provider.<sup>2</sup>

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<sup>2</sup> The Central Bank has not yet prescribed Regulations under this subsection.



- (b) Without prejudice to the generality of paragraph (a), requirements for the purposes of that paragraph may include any of the following:
- (i) the formalities to be involved in engaging a service provider for the purposes of a proposed outsourced activity including, for the purposes of subsections (1) and (2), the nature and content of written agreements to be entered into between the credit union and the service provider prior to commencement of the outsourcing activity;
  - (ii) the arrangements for notifying the Bank in writing when a material business activity is proposed to be outsourced;
  - (iii) the arrangements for notifying the Bank in writing of a material development affecting a service provider and what constitutes a material development.
- (13) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

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

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

- (1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:
- ...
- (o) approving, reviewing and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:
    - ...
    - (xiv) outsourcing policies;
    - ...

## 2. Guidance

### 2.1 Exercising due skill, care and diligence

Before making a decision on outsourcing, a credit union should carry out an assessment of the following at a minimum:

- the available options for outsourcing;
- the business case for outsourcing the business activity, including the financial analysis and underlying assumptions supporting the business case;
- whether outsourcing the business activity could impair the credit union in relation to the matters set out in section 76J(8) of the 1997 Act; and
- the operational risks involved in outsourcing a business activity to a service provider which may include the following at a minimum:
  - loss of control over the service;
  - interruption of service due to financial or other difficulties experienced by the service provider;
  - legal risk including the precision and enforceability of the agreement between the credit union and the service provider, especially where foreign jurisdictions are involved; and
  - risks associated with the adequacy of ongoing monitoring of the service provider.

Where the credit union decides to outsource a business activity, it should ensure at a minimum:

- that the outsourcing arrangement does not impair the credit union in relation to matters set out in section 76J(8) of the 1997 Act;
- that any operational risks identified are managed and mitigated in accordance with the risk management system;
- that it carries out a due diligence review of the service provider to ensure that the service provider has the ability, capacity and any authorisation required by law to perform the outsourced activity reliably and professionally; and
- that the internal audit function, the risk management system and the compliance programme are updated to take account of the outsourced activity.

### 2.2 Outsourcing agreement

Notwithstanding section 76J(5) of the 1997 Act, the outsourcing agreement should cover the following at a minimum:

- the nature and scope of the business activity that is to be outsourced;
- clearly defined roles and responsibilities for the credit union and the service provider;
- service level and performance requirements; and

- reporting and monitoring arrangements to enable the credit union to effectively monitor the performance of the service provider.

The outsourcing agreement should be reviewed on a regular basis, at least annually, to ensure the continued appropriateness of the agreement. The outsourcing agreement should be sufficiently flexible to accommodate changes that may be required to outsourced activities such as those arising from changes to the strategic plan and legal and regulatory requirements and guidance.

### **2.3 Outsourcing policy**

The outsourcing policy should cover the following at a minimum:

- the objectives of the outsourcing policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in outsourcing, including those responsible for monitoring and managing each outsourcing arrangement;
- the decision making process for the outsourcing of business activities;
- the selection process for service providers;
- the processes for the ongoing supervision and management of the risks associated with outsourcing;
- business continuity plan for outsourced activities;
- procedures for:
  - notification to the Central Bank (i) where it is proposed to outsource to a service provider a material business activity or (ii) where any material development affects the service provider and his or her ability to fulfil their obligations;
  - appropriate monitoring and assessment by the credit union of the service provider's financial performance and changes in the service provider's organisation structure;
- reporting arrangements, including the frequency, form and content of reporting on outsourcing to the board of directors; and
- the process and timelines for the approval, review and update of the outsourcing policy by the board of directors.

Any significant deviations from the outsourcing policy, the reasons for these deviations and proposed action to address the deviations should be communicated to the board of directors in accordance with the reporting arrangements set out in the outsourcing policy.

## 2.4 Business continuity plan

The business continuity plan, required under section 76I of the 1997 Act,<sup>3</sup> should include the business continuity arrangements in relation to outsourced activities where a defect or failure in its performance would materially impair:

- the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation;
- the credit union's financial performance;
- the soundness or continuity of the credit union's financial performance; or
- the soundness or continuity of the credit union's business.

## 2.5 Supervision of outsourced activities

The credit union should ensure that it retains the necessary expertise to supervise outsourcing arrangements. The credit union should review the performance of service providers on a regular basis, at least annually, to ensure that the outsourced activities are performed in accordance with the service level and performance requirements set out in the outsourcing agreement. The credit union should take any steps necessary to address any deficiencies identified in the review in a timely manner. The credit union should ensure that the outcome of the review, and any action taken or proposed to be taken, is reported to the board of directors.

## 2.6 Notification requirements to the Central Bank

The Central Bank should be notified in writing by the credit union:

- where the credit union is proposing to outsource a material business activity, prior to entering into an agreement with a service provider; and
- within one working day where there is a material development affecting the service provider. A material development is any development which would materially impair:
  - the continuing compliance with the conditions and obligations of the credit union's registration or its other obligations under the financial services legislation;
  - the credit union's financial performance;
  - the soundness or continuity of the credit union's financial performance; or
  - the soundness or continuity of the credit union's business.

Please see the 'Reporting Requirements' area in the credit union section of the Central Bank website for details on notifying the Central Bank in line with requirements referred to above.

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<sup>3</sup> See the Chapter on "Operational Risk".

**2.7 Review by the board of directors**

The board of directors should review the credit union's outsourcing policy on a regular basis, at least every 3 years, ensuring that it takes account of any changes to the following at a minimum:

- legal and regulatory requirements and guidance; and
- the credit union's strategic plan. This should include any proposals in relation to new products and services, material modifications to existing products and services and major management initiatives, such as transfers of engagements or amalgamations.

# RESERVES

## Contents

<b>1.</b>	<b>Legislation .....</b>	<b>2</b>
<b>2.</b>	<b>Regulations .....</b>	<b>5</b>
<b>3.</b>	<b>Guidance .....</b>	<b>7</b>
	3.1 Initial Reserve Requirement .....	7
	3.2 Regulatory Reserve Requirement .....	8
	3.3 Operational Risk Reserve .....	9
	3.4 Reserve Management Policy .....	10
	3.5 Reporting Requirements .....	11

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	November 2015	<ul style="list-style-type: none"> <li>Amended section 45 to reflect the commencement of section 13 of the 2012 Act.</li> <li>Removed Credit Union Act, 1997 (Section 85) Rules 2009 (S.I. No. 334 of 2009).</li> <li>Inserted regulations in Section 2.</li> <li>Amended section 85(5) to reflect the commencement of item 76 of schedule 1 of the 2012 Act.</li> </ul>
1.2	January 2016	Updated regulations in Section 2.
1.3	September 2024	Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.

## 1. Legislation

### Section 45\*

(1) In this section —

'assets' means such assets as the Bank may from time to time specify for the purposes of this section;

'regulatory reserve' means a reserve that is a realised financial reserve which is—

- (a) unrestricted and non-distributable,
- (b) identified separately in a credit union's accounts, and
- (c) to be maintained by a credit union pursuant to this section;

'regulatory reserve requirement' means the amount required to be held in the regulatory reserve of a credit union, expressed as a percentage of the assets of a credit union and prescribed by the Bank.

(2) A credit union shall maintain reserves that are adequate having regard to the nature, scale, complexity and risk profile of its business.

(3) The Bank may prescribe the regulatory reserve requirement that a credit union shall maintain at a minimum and, in so prescribing, may include conditions on the application of the regulatory reserve requirement. For that purpose the Bank may also prescribe in respect of other matters related to the regulatory reserve requirement, including any of the following:

- (a) the application of risk weightings to assets for the purposes of calculating the regulatory reserve requirement;
- (b) the types and attributes of the assets or liabilities included in the calculation of the regulatory reserve requirement;
- (c) the requirement for initial reserves to be held by a newly-registered credit union under section 6.

(4) Where requirements to which subsection (3)(c) relate have been prescribed, they shall not apply to a credit union established as a result of amalgamations of 2 or more existing credit unions.

- (5) A credit union shall maintain reserves, in addition to the regulatory reserve requirement prescribed under subsection (3) that—
- (a) it has assessed are required in respect of operational risk having regard to the nature, scale, complexity and risk profile of its business, and
  - (b) which shall not be less than those required under any additional reserve requirement applicable to it in respect of operational risk by virtue of subsection (6).
- (6) Either or both the level of additional reserves to be maintained by a credit union and the basis for calculating the additional reserves to be maintained by a credit union under this section in respect of operational risk may be prescribed by the Bank. For that purpose the Bank may also prescribe in respect of ancillary matters related to the additional reserves held in respect of operational risks.
- (7) A credit union that fails to meet any reserve requirement under this section—
- (a) may be required by the Bank to transfer all or part of its surplus to reserves, and
  - (b) shall secure the written approval of the Bank before paying a dividend or loan interest rebate.
- (8) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or of the category or categories of credit unions, to which the regulations will apply.
- (9) (a) Pending the prescribing by the Bank of reserve requirements for the purposes of this section in respect of credit unions generally or a category of credit unions, the reserve requirements applicable to credit unions under section 85 shall continue to apply generally or to such category of credit unions, as the case may be.
- (b) Where reserve requirements have been prescribed by the Bank for the purposes of this section in respect of credit unions generally or a category of credit unions, then section 85 shall cease to apply generally to that category of credit unions, as the case may be, in respect of the matters so prescribed.



**Section 85 – Assets and liabilities ratios and structures**

*(This Chapter has not reproduced the entirety of section 85 – please consult the Credit Union Act, 1997 for the full provision.)*

...

(3) The Bank may from time to time by notice in writing require a credit union to maintain, between its assets and its liabilities—

- (a) a ratio specified in the requirement,
- (b) a ratio which does not exceed a ratio so specified, or
- (c) a ratio which is not less than a ratio so specified,

and a ratio may be so specified as a percentage of the assets or liabilities concerned.

(4) A requirement of the Bank under *subsection (3)* may be expressed to apply in one or, more of the following ways—

- (a) in relation to all credit unions or to credit unions of a category or categories specified in the requirement;
- (b) in relation to the total assets or total liabilities of the credit unions concerned or in relation to such assets or kinds of assets or such liabilities or kinds of liabilities as may be specified in the requirement;
- (c) in relation to such time or times or during such period or periods as may be so specified.

(5) ≠ The Bank may, from time to time, by notice in writing specify, as respects a credit union, requirements as to the composition of its assets or, subject to regulations made under section 27(2), the composition of its liabilities.

(6) In this section—

- (a) "liabilities" include such contingent liabilities as the Bank may from time to time specify by notice in writing for the purposes of this section; and
- (b) "liquid assets" mean such assets as the Bank may from time to time specify by

notice in writing for the purposes of this section;

and, until the Bank specifies assets as mentioned in *paragraph (b)*, "liquid assets" include assets held in a form provided for by *section 43*.

(7) Where, under the preceding provisions of this section, the Bank by notice in writing imposes a requirement or specifies any matter, and the requirement is to apply or the matter is specified otherwise than in relation to a particular credit union, the power to give the notice shall be exercisable by rules.

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(iv) reserve management policies;

...

## **2. Regulations**

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

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

#### **Interpretation**

In these Regulations, unless the context otherwise requires:-

"assets" means all of the assets referred to in section 85A of the Act;

"the Bank" means the Central Bank of Ireland;

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

## **PART 2**

### **RESERVES**

#### **Reserves Perpetual in Nature and Available to Absorb Losses**

3. (1) A credit union shall ensure that all reserves held in accordance with, and for the purpose of, this Part and section 45 of the Act are:
- (a) perpetual in nature;
  - (b) freely available to absorb losses;
  - (c) realised financial reserves that are:
    - (i) unrestricted; and
    - (ii) non-distributable.
- (2) For the purpose of paragraph (1), any instrument classified or contributing to a reserve shall, in order to be eligible:
- (a) not be secured or subject to a guarantee which enhances its seniority;
  - (b) be permanent and without an obligation for repayment of principal;
  - (c) have no preferential distribution rights;
  - (d) rank below all other claims in the event of a liquidation;
  - (e) qualify as a reserve for accounting purposes.

#### **Regulatory Reserve Requirement**

4. (1) Subject to paragraph (2), a credit union shall establish and maintain a minimum regulatory reserve requirement of at least 10 per cent of the assets

of the credit union.

- (2) A newly registered credit union shall establish and maintain an initial reserve requirement that:
  - (a) is sufficient to meet the credit union's anticipated growth over 3 years;
  - (b) takes account of operating losses that can be expected to occur until the credit union reaches an operationally viable performance level; and
  - (c) is at least equal to the greater of:
    - (i) €10,000; or
    - (ii) minimum regulatory reserve requirement specified in paragraph (1).

### **Reporting Requirements**

5. (1) A credit union shall monitor its reserves on a continuous basis to ensure compliance with this Part and section 45 of the Act.
- (2) Where a credit union fails, or is likely to fail, to comply with its reserve requirement in this Part or section 45 of the Act, the credit union shall notify the Bank in writing no later than close of business of the next business day.

### **Dividends**

6. Where a credit union has complied with the requirements in this Part and section 45 of the Act, but has recorded a deficit in its annual accounts and is proposing to pay a dividend and/or a loan interest rebate, the credit union shall inform the Bank in writing at least 3 weeks before it gives notice of its Annual General Meeting, as required under section 80(3) of the Act.

## **3. Guidance**

### **3.1 Initial Reserve Requirement**

A newly registered credit union will have zero or close to no assets. As the regulatory reserve requirement is calculated as a percentage of total assets, a newly established credit union could have a regulatory reserve requirement of zero or close to zero. An

initial reserve requirement is necessary to ensure that a newly registered credit union has adequate reserves to meet the credit union's anticipated growth and to take account of operating losses that can be expected to occur until the credit union reaches an operationally viable performance level. Until such time as a new credit union's regulatory reserve requirement exceeds €10,000 they are required to hold an initial reserve of €10,000.

The amount a newly registered credit union is required to hold in initial reserves will be determined on a case by case basis taking account of factors including the proposed business model, common bond, financial information and projections and the credit union's strategic plan. The minimum amount that a newly registered credit union will be required to hold in initial reserves is €10,000.

The initial reserve requirement is not additional to the regulatory reserve requirement. Reserves held for the regulatory reserve requirement also qualify as reserves for the purposes of the initial reserve requirement. When a credit union's regulatory reserve requirement equals or exceeds the initial reserve requirement the requirement to hold an initial reserve will fall away.

### **3.2 Regulatory Reserve Requirement**

Adequate reserves support a credit union's operations, provide a base for future growth and protect against the risk of unforeseen losses. Credit unions need to maintain sufficient reserves to ensure continuity and to protect members' savings.

Regulatory reserves are required to meet the definition of reserves, set out in section 45 of the 1997 Act, as inserted by section 13 of the 2012 Act and to have the characteristics set out in regulation 3 of the Regulations. Commencement of section 13 of the 2012 Act, has removed any reference to the requirement for credit unions to hold a statutory reserve from the 1997 Act.

The regulatory reserve requirement sets out the minimum reserve requirement for credit unions. However, credit unions are expected to operate with a level of reserves above the regulatory reserve minimum requirement. It is for the board of directors of each credit union to decide on the amount of reserves to hold in excess of this minimum requirement having taken prudent account of the scale and complexity of the credit union's business, its risk profile and prevailing market conditions.

Notwithstanding that credit unions are no longer required to maintain a statutory reserve, credit unions are expected to continue to allocate surplus funds to maintain

reserves at an appropriate level having taken prudent account of the scale and complexity of the credit union's business, its risk profile and prevailing market conditions.

The Central Bank expects that credit unions whose total regulatory reserves are currently in excess of 10 per cent of total assets will continue to maintain reserves at existing levels on the basis that these continue to reflect the board of directors' assessment of the appropriate level of reserves for the credit union.

### **3.3 Operational Risk Reserve**

Credit unions are required to hold reserves in relation to operational risk. The reserves that credit unions hold against operational risk are separate, distinct and in addition to the reserves that the credit union is required to hold under the regulatory reserve requirement. All reserves that are held as operational risk reserves must have the characteristics, set out in regulation 3 of the Regulations.

Where operational risks are identified in a credit union the credit union's priority should be the mitigation of these risks through the implementation of appropriate processes and controls. The existence of an operational risk reserve does not impact on the need to appropriately mitigate operational risks.

When determining the appropriate level of operational risk reserves for a credit union, credit unions should assess the level of operational risk they are exposed to. The Central Bank expects that the amount the credit union is to hold in its operational risk reserve would be based, at a minimum, on the predicted impact of operational risk events that may have a material impact on the credit union's business. This will be impacted by the business mix and risk profile of the activities being undertaken in the credit union. This assessment may be supported by considering available information including:

- operational risks identified by internal processes:
  - operational risks to which the credit union is exposed, as identified by the Risk Management Officer and risk management system including operational risks recorded on the credit union's risk register;
  - reports of the internal auditor;
  - reports of the compliance officer;
  - the Annual Compliance Statement; and
  - previous operational risk events including inadequate or failed internal processes or systems of the credit union;
- operational risks identified in external reports:
  - reports from external consultants;
  - external auditor management letter issues;

- relevant asset review findings; and
- reports from whistle-blowers;
- other operational risk considerations:
  - implementation of the credit union's operational risk management system including the effectiveness of the credit union's internal control systems; and
  - external events.

Existing reserves in excess of 10 per cent of total assets may be allocated to the operational risk reserve where the board of directors have determined that it is appropriate to do so having taken account of the appropriate level of reserves for the credit union, taking prudent account of the scale and complexity of the credit union's business, its risk profile and prevailing market conditions.

### **3.4 Reserve Management Policy**

The reserve management policy should cover the following at a minimum:

- objectives of the policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in reserve management;
- strategy setting out the quantity and quality of reserves to be maintained by the credit union over time, including the setting of reserve targets, to protect the credit union against unexpected losses taking account of:
  - the regulatory reserve requirement to be maintained by the credit union in compliance with the 1997 Act, the 2012 Act, the Regulations and any regulations made thereunder;
  - the risk profile of the credit union including the level of credit, market and operational risk in the credit union;
  - the risk tolerance of the credit union;
  - any reserve buffers the credit union requires such as a reserve conservation buffer;<sup>1</sup>
  - additional reserves required to support the strategic plan of the credit union; and
  - the current economic climate and business operating environment;
- plans for the generation of any additional reserves required to support the above;
- dividend and loan interest rebate policy;
- procedures for:
  - complying with minimum legal and regulatory requirements and guidance in relation to reserves;
  - monitoring, reviewing and reporting on the credit union's reserves position against reserves targets; and

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<sup>1</sup> A reserve conservation buffer is a buffer that is designed to build up reserves outside periods of stress and can be drawn down as losses are incurred.

**Reserves****Publication date: September 2024**

- regular stress testing of reserves and scenario analysis taking account of potential risks;
- contingency plans to be put in place if reserve targets are not met, including:
  - actions to be taken to protect the credit union's reserves position such as changes to dividend and loan interest rebate policy;
  - raising of additional reserves, if necessary; and
  - notifying the Central Bank where reserves fall below the regulatory minimum;
- reporting arrangements, including the frequency, form and content of reporting on the adequacy of reserves to the board of directors; and
- the process and timelines for the approval, review and update of the reserve management policy by the board of directors.

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

### **3.5 Reporting Requirements**

Where a credit union is notifying the Central Bank that it is failing, or likely to fail to comply, with the reserve requirement under the Regulations or section 45 of the 1997 Act the credit union should set out the steps it proposes to take to restore the reserve requirement and indicate the timeframe in which the reserve requirement will return to compliance.



# RISK MANAGEMENT AND COMPLIANCE

## Contents

<b>1. Risk management system</b> .....	<b>3</b>
1.1 Legislation .....	3
1.2 Regulations .....	4
1.3 Guidance .....	5
1.4 Risk management policy .....	5
1.5 Risk management process.....	6
1.6 Risk register .....	9
1.7 Systems and controls .....	9
1.8 Review by the board of directors .....	10
<b>2. Risk Management Officer</b> .....	<b>11</b>
2.1 Legislation .....	11
2.2 Guidance .....	12
2.3 Responsibilities of the risk management officer .....	13
<b>3. Compliance Programme</b> .....	<b>14</b>
3.1 Legislation .....	14
3.2 Guidance .....	15
3.3 Compliance plan .....	16
3.4 Review by the board of directors .....	16
<b>4. Compliance Officer</b> .....	<b>17</b>
4.1 Legislation .....	17
4.2 Guidance .....	18
4.3 Responsibilities of the compliance officer.....	19

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	Inserted text in Section 1.4.1 to include definitions of risk categories.
1.1	March 2014	Amended text in Section 2.1 and 4.1 to correct a typographical error in section 76C(3)(a) and section 76D(3)(a).

1.2	November 2015	Inserted regulations in Section 1.2
1.3	January 2016	Updated regulations in Section 1.2
1.4	April 2024	Amended text in section 76B(5) to reflect the commencement of the Credit Union (Amendment) Act 2023.
1.5	September 2024	<ul style="list-style-type: none"> <li>• Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>• Amended text under Section 3.2 Guidance to reflect changes made to the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 by the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2024.</li> </ul>

# 1. Risk management system

## 1.1 Legislation

### **Section 76B – Risk management systems and systems and control\***

*(The entirety of section 76B is not reproduced here – please consult the Credit Union Act, 1997 for the full provision.)*

(1) In this section—

...

'risk management system', in relation to a credit union, means the sum of those components that provide the basis (including organisational arrangements) for designing, implementing, monitoring, reviewing and continually improving risk management processes throughout the credit union;

'systems and controls', in relation to a credit union, means a set of arrangements designed to provide reasonable assurance regarding the achievement of objectives in relation to the effectiveness and efficiency of operations, reliability of financial reporting and compliance with all legal and regulatory requirements.

(2) A credit union shall develop, implement, document and maintain a risk management system with such governance arrangements and systems and controls to allow it to identify, assess, measure, monitor, report and manage the risks which it is, or might reasonably be, exposed to.

(3) The risk management system—

(a) shall be clearly set out and documented, and

(b) shall clearly set out the related tasks and responsibilities within the credit union.

(4) A credit union shall develop, adopt, implement, monitor, document and maintain systems and controls to manage and mitigate the risks identified by the risk management system.

...

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

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

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

<p>...</p> <p>(l) reviewing and approving all elements of the risk management system on a regular basis, but at least annually and, in particular-</p> <p>(i) assessing the appropriateness of the risk management system,</p> <p>(ii) taking account of any changes to the strategic plan including the credit union's resources or the external environment, and</p> <p>(iii) taking measures necessary to address any deficiencies identified in the risk management system;</p> <p>...</p> <p>(o) approving, reviewing and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:</p> <p>...</p> <p>(xv) risk management policy;</p> <p>...</p> <p>(3) The board of directors shall implement a risk management process that ensures that all significant risks are identified and mitigated to a level consistent with the risk tolerance of the credit union.</p> <p>...</p>
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## 1.2 Regulations

<p><b>CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) REGULATIONS 2016</b> <b>(S.I. No. 1 of 2016)</b></p>
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<p><b>PART 8</b></p>
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<p><b>SYSTEMS, CONTROLS AND REPORTING ARRANGEMENTS</b></p>
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<p><b>Risk Register</b></p>
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- |  |
|--|
| <p>45. (1) A credit union shall establish and maintain a written risk register, maintained by a risk management officer, that documents the risks that the credit union is, or may be, exposed to and the systems and controls that the credit union has established to manage and mitigate those risks.</p> <p>(2) A credit union shall ensure that the board of directors of the credit union review and approve the risk register, at least annually, to ensure that the risks that the credit union is, or may be, exposed to are contained on the risk register and that the systems and controls are appropriate to manage and mitigate these risks.</p> |
|--|

### **1.3 Guidance**

A credit union's risk management system should include policies, processes and controls that provide adequate, timely and continuous identification, assessment, measurement, monitoring, management and reporting of risks that the credit union is, or might reasonably be exposed to, through its current activities and the external environment.

A credit union should document its risk tolerance statement, setting out the quantified level of risk that the credit union is willing to accept in various risk areas in pursuit of its strategic objectives. There is an important link between a credit union's strategies or goals and its risk tolerance. A credit union's strategic goals should be aligned with its risk tolerance. Risks within a credit union's risk management system should be managed and mitigated to ensure that they are consistent with the credit union's risk tolerance and commensurate with its sound operation, financial strength and strategic objectives.

The board of directors should promote a strong risk management culture within the credit union, including the communication of the policies, roles and responsibilities relating to risk management to all officers of the credit union.

The risk management system, which shall be clearly set out and documented, should cover the following at a minimum:

- a risk management policy;
- a risk management process;
- a risk register;
- systems and controls; and
- review by the board of directors.

### **1.4 Risk management policy**

The risk management policy should cover the following at a minimum:

- the objectives of the risk management policy;
- organisational arrangements setting out the roles and responsibilities of officers involved in risk management including the board of directors, manager and risk management officer;
- the risk tolerance statement of the credit union;
- the risk management process including how risks are identified, assessed, measured, monitored, and managed and the nature and extent of reporting and oversight of this process;
- reporting arrangements, including the frequency, form and content of reporting of risks to the board of directors and the manager; and

- the process and timelines for the approval, review and update of the risk management policy by the board of directors.

The risk management officer should communicate any significant deviations from the risk management policy, the reasons for these deviations and proposed action to address the deviations to the board of directors (or the risk committee where one exists) and the manager where appropriate.

The board of directors should ensure that the risk management policy is communicated to all officers of the credit union.

## **1.5 Risk management process**

The key elements of a risk management process should include the following:

### **1.5.1 Identification**

Risk identification should provide a comprehensive 'credit union-wide' view of risk across all material risk types relevant to a credit union. It would be expected that areas of risk to be considered when identifying risk for each credit union would include the following at a minimum:

- **Capital risk:** capital is required to act as a cushion to absorb losses arising from business operations and to allow a credit union to remain solvent under challenging conditions. Capital risk arises mainly as a result of the quality or quantity of capital available, the sensitivity of a credit union's exposures to external shocks, the level of capital planning and the capital management process. Capital risk could potentially impair a credit union's ability to meet its obligations in an adverse situation;
- **Credit risk:** credit risk is the risk of financial loss arising from a borrower, issuer, guarantor or counterparty that may fail to meet its obligations in accordance with agreed terms. Credit risk arises anytime credit union funds are extended, committed or otherwise exposed;
- **Environmental risk:** environmental risk encompasses all risks to the credit union stemming from its external operating environment. This includes risks arising from the macro-economy and credit union sector specific risks;
- **Governance risk:** governance covers the overall oversight and control mechanisms which a credit union has in place to ensure that it is soundly and prudently managed. It refers in particular to the processes, structures and information flows which are used to allow the board of directors and management to satisfy themselves that effective control mechanisms are in place to protect all stakeholders. Governance risk may arise from factors including:

- failure to establish documented governance arrangements setting out clear organisational structures with well-defined transparent and consistent reporting lines and roles, responsibilities and accountabilities;
  - the quality of the board of directors, management and committees;
  - lack of transparency in decision making;
  - conflicts of interest; and
  - inadequate succession planning.
- **Liquidity risk:** liquidity risk is the risk that a credit union will not be able to fund its current and future expected and unexpected cash outflows as they fall due without incurring significant losses. This may occur even where the credit union is solvent. Examples of liquidity risk include loss of existing funding, new lending or investments and timing mismatches between asset maturities/realisation and liability cash flows;
  - **Market risk:** market risk is the risk that the value of an investment will decrease. This risk can arise from fluctuations in values of, or income from, assets or changes in interest rates;
  - **Operational risk:**<sup>1</sup> operational risk means the risk of loss (financial or otherwise) resulting from -
    - inadequate or failed internal processes or systems of the credit union;
    - any failure by persons connected with the credit union;
    - legal risk (including exposure to fines, penalties or damages as well as associated legal costs); or
    - external events;but does not include reputational risk. Examples of operational risks include hardware or software failures, inadequate business continuity plans, misuse of confidential information, data entry errors and natural disasters; and
  - **Strategy/business model risk:** strategy/business model risk refers to the risk which credit unions face if they cannot compete effectively or operate a viable business model. Strategy/business model risk also includes the inherent risk in the credit union's strategy. Risks in a credit union's strategy may include projections based on unrealistic assumptions, risks arising from transfers of engagements or amalgamations and/or risks arising from taking on significant additional business activities. Strategy/business model risk may also arise from ineffective implementation of strategies.

### **1.5.2 Assessment and measurement**

Risk assessment and measurement includes considering the likelihood of a risk occurring and the potential impact of the risk on the credit union. The product of likelihood and impact of a risk occurring provides the credit union with a risk rating, which indicates the

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<sup>1</sup> See the Chapter on "Operational Risk".

magnitude or severity of a risk. In assessing and measuring risks, consideration should be given to potential impact on the regulatory reserve position of the credit union.

When assessing and measuring risk, consideration should be given by the credit union to inherent risk and residual risk. Inherent risk represents the risk posed before the systems and controls which relate to the risk are considered. Residual risk represents the level of risk after consideration of the effectiveness of systems and controls that the credit union has put in place to manage and mitigate the risk.

The credit union should ensure that the risk information collected is appropriate, complete and in a standardised format that will facilitate a complete examination of risks across the credit union. A risk register provides a standardised format for the management of information relating to identified risks.

### ***1.5.3 Management***

In order to manage risk, the credit union should develop, adopt, implement, monitor, document and maintain systems and controls to manage inherent risk. This should be done by the manager with the assistance of the risk management officer. The credit union should analyse the effectiveness of the systems and controls that the credit union has put in place and assess the residual risks to ensure that these are consistent with the credit union's risk tolerance.

### ***1.5.4 Monitoring***

The credit union should monitor significant risks on an ongoing basis to ensure that risks are actively managed and should ensure that timely action is taken, where appropriate, to reduce risk to acceptable levels. This should include the identification of new and emerging risks and take account of any proposals in relation to new products and services, material modifications to existing products and services and major management initiatives. Changes in the external environment should also be monitored. This should also include an assessment of existing risks to ensure that risk ratings and systems and controls remain appropriate.

### ***1.5.5 Reporting***

The risk management officer should provide reports on a monthly basis to the board of directors (or risk committee where one exists). Copies of these reports should be provided to the manager.

Reports should cover the following at a minimum:

- significant risks and the effectiveness of systems and controls;



- any risk events that have occurred and the actions taken or proposed to mitigate the risk;
- likely or actual deviations from risk tolerance levels or established systems and controls and should include the timeframe and status of any activities that are proposed to address these;
- any negative trends in higher risk areas and any recommended changes to risk management activities;
- any new risks including their risk assessment, risk rating and systems and controls;
- any material emerging risks and recommended course of action;
- updates on risk management actions arising from previous reports that have been approved by the board of directors (or risk committee where one exists); and
- any recommended remedial action required.

Where a significant risk event occurs, the risk management officer should bring this to the attention of the board of directors (or risk committee where one exists) immediately. The board of directors should ensure that any risks arising from the risk event are managed and mitigated in a timely manner.

## **1.6 Risk register**

A risk register should cover the following at a minimum, for all risks identified:

- risk description;
- risk area;
- inherent impact of risk;
- inherent probability of risk;
- inherent risk rating;
- risk mitigating systems and controls;
- systems and controls owners;
- effectiveness of systems and controls;
- residual impact of risk;
- residual probability of risk; and
- residual risk rating.

## **1.7 Systems and controls**

In order to manage and mitigate the risks identified by the risk management system, systems and controls should be put in place by a credit union. Such systems and controls should, at a minimum, enable the credit union to:

- safeguard its assets and members' savings;
- ensure compliance with all applicable legal and regulatory requirements and guidance;

- protect against fraud, misstatement and error;
- provide assurance as to the reliability and completeness of financial and management information;
- counter any risk that the credit union might be used to further financial crime; and
- promote the efficient use of resources within the credit union.

Systems and controls should be an integral part of the daily activities of a credit union. An effective systems and controls structure should be established by the credit union, with systems and controls for every business area. At an operational level such systems and controls should include the following at a minimum:

- checking for compliance with limits and follow up on non-compliance;
- a system of approvals and authorisations;
- a system of verification and reconciliation;
- appropriate segregation of duties including ensuring that personnel are not assigned conflicting responsibilities;
- accurate, timely, accessible, consistent and comprehensive management information including internal financial, operational and compliance information and external market information about events and conditions that are relevant to decision making;
- secure, reliable information systems in place that cover all significant activities of the credit union and are supported by adequate contingency arrangements;
- approval processes in place where the credit union proposes to introduce new products or services; and
- effective channels of communication to ensure officers fully understand and adhere to policies and procedures affecting their duties and responsibilities.

### **1.8 Review by the board of directors**

In reviewing the risk management system the board of directors should review the following at a minimum:

- the risk management policy;
- the risk management process;
- the risk register; and
- systems and controls.

The review by the board of directors should be informed by the following at a minimum:

- risk events;
- changes in the financial position of the credit union;
- changes in the external environment; and

- any changes to the credit union’s strategic plan. This should include any proposals in relation to new products and services, material modifications to existing products and services, such as outsourcing to service providers and major management initiatives, such as transfers of engagements or amalgamations.

The board of directors should ensure that any steps necessary to address deficiencies identified in the risk management system are taken, including deficiencies identified in systems and controls.

## **2. Risk Management Officer**

### **2.1 Legislation**

<p><b>Section 55 – Functions of the board of directors*</b></p> <p><i>(The Handbook has not reproduced the entirety of section 55 – please consult the Credit Union Act, 1997 for the full provision.)</i></p> <p>(1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:</p> <p>...</p> <p>(e) the appointment of a manager, risk management officer and compliance officer and the approval of the appointment of any other member of the management team;</p> <p>...</p> <p>(h) ensuring that the performance of every other employee and voluntary assistant, is reviewed and monitored on an ongoing basis to ensure his or her continued appropriateness for his or her role in the credit union;</p> <p>...</p>
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<p><b>Section 76C – Risk management officer*</b></p> <p>(1) 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.</p> <p>(2) Except where subsection (3)(a) applies or where otherwise prescribed by the Bank under subsection (3)(b), nothing in this section shall be read as preventing the appointment of a person as risk management officer of a credit union who-</p> <p>(a) holds another position as an officer in the credit union, or</p>
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- (b) is the risk management officer for one or more than one other credit union.
- (3) The risk management officer of a credit union shall not-
- (a) be a director, a member of the board oversight committee or the auditor of the credit union, or
- (b) hold such other position (whether within the credit union or otherwise) that the Bank may prescribe as being inappropriate to hold while being a risk management officer.<sup>2</sup>
- (4) The risk management officer of a credit union shall be responsible for identifying, assessing, reporting and monitoring all internal and external risks that could affect the credit union to which the risk management system referred to in section 76B relates, including risks to its employees, members, reputation and assets, and assisting the manager with managing and mitigating those risks.
- (5) The board of directors of a credit union shall ensure that the risk management officer –
- (a) has clearly documented reporting lines to the board,
- (b) has access to the board,
- (c) is independent in the exercise of his or her functions and, subject to paragraph (d), shall be free from influence, and
- (d) is subject to internal oversight by the internal audit function.
- (6) The board of directors of a credit union shall ensure that the role and functions of the risk management officer are documented in writing and include any role or function that may be prescribed by the Bank or be otherwise duly provided for by the Bank under any other enactment.<sup>3</sup>

## 2.2 Guidance

### 2.2.1 Responsibilities of the board of directors

The board of directors should ensure that the risk management officer at a minimum:

- has adequate time and resources to carry out their functions having regard to the nature, scale, complexity and risk profile of the credit union;
- has the necessary authority to conduct their activities in an effective and independent manner;

<sup>2</sup> The Central Bank has not yet prescribed Regulations under this subsection.

<sup>3</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- is subject to a performance review to ensure their continued appropriateness for their role; and
- is not remunerated on the basis of the financial performance of the credit union, but on their performance in carrying out their functions.

In order to ensure the independence of the risk management officer, the board of directors should appoint the risk management officer at an appropriately senior level. The board of directors should ensure that where there are any potential conflicts of interest that these are managed.

The board of directors should ensure that it is available to the risk management officer and should hold regular meetings, at a minimum quarterly, with the risk management officer. These meetings may form part of a monthly meeting of the board of directors. The risk management officer is required to have a reporting line to the board of directors. The credit union may decide that additional reporting lines, such as reporting lines to the manager, are appropriate.

### **2.3 Responsibilities of the risk management officer**

The responsibilities of the risk management officer should cover the following at a minimum:

- ensuring each internal/external risk of the credit union is identified, assessed, reported and monitored and assisting the manager with managing and mitigating those risks;
- advising the board of directors on the risk management policy and process and any deviations from the risk management policy;
- reporting on any significant risk event to the board of directors in a timely manner;
- implementing the risk management system approved by the board of directors;
- maintaining the risk register;
- making monthly reports to the board of directors;
- communicating the risk management policy, process and roles and responsibilities relating to officers of the credit union;
- providing training and support in the area of risk management to officers of the credit union;
- making the necessary information available to the internal audit function to facilitate independent review of the risk management system; and
- supporting the board of directors in promoting a culture of risk awareness, identification and management at every level within the credit union.

### 3. Compliance Programme

#### 3.1 Legislation

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

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

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

...

(m) ensuring compliance with all requirements imposed on the credit union by or under the *Credit Union Acts 1997 to 2012* or any other financial services legislation;

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(ix) compliance plan and policies;

...

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

*(This Chapter has not reproduced the entirety of section 63A – please consult the Credit Union Act, 1997 for the full provision.)*

...

(2) The manager of a credit union shall be the chief executive officer of the credit union having responsibility for the day-to-day management of the credit union's operations, compliance and performance and shall be responsible to the board of directors for the performance of his or her functions.

...

**Section 66A - Governance arrangements in credit unions\***

*(This Chapter has not reproduced the entirety of section 66A – please consult the Credit Union Act, 1997 for the full provision.)*

...

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

**Section 76B – Risk management systems and systems and control\***

*(This Chapter has not reproduced the entirety of section 76B – please consult the Credit Union Act, 1997 for the full provision.)*

(1) In this section—

'compliance programme', in relation to a credit union, means the policies, procedures, systems and plans the credit union puts in place to monitor compliance, on an ongoing basis, with its obligations including requirements under all legal and regulatory requirements;

...

(5) A credit union shall develop, implement, document and maintain a compliance programme that allows it to evaluate compliance with its obligations including compliance with all legal and regulatory requirements.

## **3.2 Guidance**

The key elements of a compliance programme should include:

- a compliance policy;
- a compliance plan; and
- a review of the compliance policy and of the compliance plan by the board of directors, at least every 3 years.

### **3.2.1 Compliance policy**

The compliance policy should cover the following at a minimum:

- the objectives of the compliance policy, including, at a minimum, adherence to credit union policies, procedures of the credit union and all legal and regulatory requirements and guidance that apply to credit unions;
- organisational arrangements setting out the roles and responsibilities of officers involved in compliance including the board of directors, the compliance officer and the manager;
- the processes, including monitoring and reporting mechanisms, that will be implemented to ensure the credit union adheres to its compliance objectives and to assist in identifying instances of non-compliance;
- the process to ensure that a culture of compliance is promoted at every level within the credit union;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors; and
- the process and timelines for the approval, review and update of the compliance policy by the board of directors.

The compliance officer should communicate any significant deviations from the compliance policy, the reasons for these deviations and proposed action to address the deviations to the board of directors and the manager.

### **3.3 Compliance plan**

The compliance plan should cover the following at a minimum:

- objectives and scope of the compliance plan;
- organisational arrangements setting out the roles and responsibilities of officers involved in the compliance plan;
- a detailed work programme setting out how the credit union will implement the compliance policy;
- resources required to implement the compliance plan;
- reporting arrangements, including the frequency, form and content of reporting to the board of directors and the manager; and
- the process and timelines for the review, approval and update of the compliance plan by the board of directors.

The compliance plan should be dynamic and flexible to allow for changes throughout the year. Any significant deviations from the compliance plan, the reasons for these deviations and proposed action to address the deviations should be communicated to the board of directors by the compliance officer.

The compliance officer should ensure that the compliance plan is updated to take account of new or updated compliance requirements (including new or updated legal and regulatory requirements and guidance), new products and services, material modifications to existing products and services and major management initiatives.

### **3.4 Review by the board of directors**

In reviewing the compliance policy and the compliance plan, the board of directors should take account of any changes to the following at a minimum:

- compliance obligations, including all legal and regulatory requirements and guidance; and
- the credit union's strategic plan. This should include any proposals in relation to new products and services, material modifications to existing products and services, outsourcing to service providers and major management initiatives, such as transfers of engagements or amalgamations.

The board of directors should take any steps necessary to address any deficiencies identified in the compliance policy and the compliance plan.



## 4. Compliance Officer

### 4.1 Legislation

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

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

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

...

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

...

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

...

#### **Section 76D - Compliance officer\***

(1) The board of directors of a credit union shall appoint a person (in this Act referred to as a 'compliance officer') with the necessary authority and resources to manage the compliance programme, as provided for by section 76B, within the credit union.

(2) Except where subsection (3)(a) applies or where otherwise prescribed by the Bank under subsection (3)(b), nothing in this section shall be read as preventing the appointment of a person as compliance officer of a credit union who-

(a) holds another position as an officer in the credit union, or

(b) is the compliance officer for one or more than one other credit union.

(3) The compliance officer of a credit union shall not-

(a) be a director, a member of the board oversight committee or the auditor of the credit union, or

(b) hold such other position (whether within the credit union or otherwise) that the Bank may prescribe as being inappropriate to hold while being a compliance officer.<sup>4</sup>

<sup>4</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- (4) The compliance officer of a credit union shall be responsible for managing compliance at all levels in the credit union including-
- (a) ensuring that the credit union complies with all statutory and regulatory requirements, and
  - (b) monitoring such compliance to ensure that no conflict of interest arises.
- (5) A credit union shall ensure that the compliance officer-
- (a) has clearly documented reporting lines to the board,
  - (b) has access to the board,
  - (c) is independent in the exercise of his or her functions and, subject to paragraph (d), shall be free from influence, and
  - (d) is subject to internal oversight by the internal audit function.
- (6) The board of directors of a credit union shall ensure that the role and functions of the compliance officer are documented in writing and include any role or function that may be prescribed by the Bank or be otherwise duly provided for by the Bank under any other enactment.<sup>5</sup>

## 4.2 Guidance

### 4.2.1 Responsibilities of the board of directors

The board of directors should ensure that the compliance officer at a minimum:

- has adequate time and resources to carry out their functions having regard to the nature, scale, complexity and risk profile of the credit union;
- has the necessary authority (including access to the records, personnel and physical properties of the credit union, where appropriate) to conduct their activities in an effective and independent manner;
- is subject to a performance review to ensure their continued appropriateness for their role; and
- is not remunerated based on the financial performance of the credit union, but on their performance in carrying out their functions.

In order to ensure the independence of the compliance officer, the board of directors should appoint the compliance officer at an appropriately senior level. The board of directors should ensure that where there are any potential conflicts of interest that these are managed.

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<sup>5</sup> The Central Bank has not yet prescribed Regulations under this subsection.

The board of directors should ensure it is available to the compliance officer and should hold regular meetings, at least quarterly, with the compliance officer. These meetings may form part of a monthly meeting of the board of directors.

### **4.3 Responsibilities of the compliance officer**

The responsibilities of the compliance officer should include the following at a minimum:

- fostering and encouraging a culture of compliance in the credit union;
- ensuring that they are familiar and up to date with all statutory and regulatory requirements and guidance;
- ensuring that they stay informed of emerging statutory and legal requirements which may impact directly upon the credit union and notify the relevant officers in a timely manner;
- advising the board of directors on new and impending statutory and regulatory requirements and guidance;
- developing and documenting the compliance policy;
- developing and implementing an annual compliance plan including systems and controls to ensure the credit union complies with statutory and regulatory requirements and guidance;
- monitoring the activities of the credit union under the compliance plan and reporting to the board of directors on a regular basis, at least quarterly;
- monitoring the systems and controls in place to ensure officers comply with any applicable individual legal and regulatory requirements and guidance (for example, the Minimum Competency Code 2011 and the Fitness and Probity regime for credit unions);
- monitoring the member complaints process;
- reporting compliance exceptions and breaches to the board of directors and the manager;
- reviewing proposals in relation to new products and services, material modifications to existing products and services and major management initiatives to ensure compliance with current and planned statutory and regulatory requirements and guidance;
- updating the compliance policy and plan to take account of new or updated compliance requirements (including new or updated legal and regulatory requirements and guidance), new products and services, material modifications to existing products and services and major management initiatives;
- ensuring that sufficient ongoing training is being undertaken to ensure that all officers have the necessary knowledge to comply with their statutory and regulatory requirements;

- supporting directors in meeting their compliance requirements under section 55(1)(m) of the 1997 Act; and
- supporting the manager in their compliance responsibilities under section 63A of the 1997 Act.

The compliance officer should provide reports on the compliance programme to the board of directors and the manager on a quarterly basis.

Reports on the compliance programme should cover the following at a minimum:

- any compliance activities undertaken by the compliance officer;
- any compliance breaches identified;
- recommendations to address identified breaches;
- action plans to implement recommendations; and
- an update on the implementation of previous action plans agreed by the board of directors.

Where a significant compliance breach occurs, the compliance officer should bring this to the attention of the board of directors and the manager immediately. The board of directors should ensure that any compliance breach is rectified in a timely manner.

# SAVINGS

## Contents

<b>1. Legislation</b> .....	<b>2</b>
<b>2. Regulations</b> .....	<b>7</b>
<b>3. Guidance</b> .....	<b>10</b>
3.1 Savings Limit.....	10
3.1.1 <i>Joint accounts</i> .....	11
3.1.2 <i>Saving stamps</i> .....	11
3.1.3 <i>Budget accounts</i> .....	11
3.1.4 <i>Clubs / associations</i> .....	11
3.1.5 <i>Minor accounts</i> .....	11
3.2 Calculation of the Savings Limit .....	11
3.2.1 <i>Interest payable / Payment of Dividends</i> .....	12
3.2.2 <i>Attached savings</i> .....	12
3.3 Savings Club Accounts .....	12

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	November 2015	<ul style="list-style-type: none"> <li>• Amended section 27 to reflect commencement of section 8 of the 2012 Act.</li> <li>• Amended section 28(5) to reflect the commencement of item 9 of schedule 1 of the 2012 Act.</li> <li>• Amended section 30(5)(a) to reflect item 10 of schedule 1 of the 2012 Act.</li> <li>• Inserted the Regulations in Section 2.</li> <li>• Updated Guidance in Section 3 on the savings limit.</li> </ul>
1.2	January 2016	<ul style="list-style-type: none"> <li>• Updated regulations in Section 2</li> <li>• Inserted section 27A of the Credit Union Act, 1997.</li> </ul>
1.3	March 2018	<ul style="list-style-type: none"> <li>• Guidance in relation to Savings Club Accounts.</li> </ul>
1.4	April 2024	<ul style="list-style-type: none"> <li>• Amended text in section 29(1)(b), 29(3), 29(4), 30(5), 32(1), 32(2) and 32(3) to reflect the commencement of the Credit Union (Amendment) Act 2023.</li> </ul>
1.5	September 2024	<ul style="list-style-type: none"> <li>• Amended text in section 55(1)(o) of the 1997 Act to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023.</li> <li>• Updated to reflect the definition of 'member' contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.</li> <li>• Amended text under guidance in 3.3 Savings Clubs Accounts to reflect the commencement of changes to section 55(1)(o) of the 1997 Act by the Credit Union (Amendment) Act 2023 and to update the reference to the 'Criminal Justice Act 2010, as amended'.</li> </ul>

## 1. Legislation

### Section 27 – Raising of funds by shares and deposits\*

(1) A credit union may raise funds to be used for its objects—

(a) by the issue to its members of shares in the credit union (which may be withdrawable or non-withdrawable), and

(b) by the acceptance of money on deposit from a member,

and the cumulative amount of such shares in, and money on deposit (if any) with, the credit union is referred to in this Act as 'savings'.

(2) For the adequate protection of the savings of members of credit unions the Bank may prescribe requirements and limits for savings, including—

(a) the maximum amount of savings (expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount) or category of savings a credit union member may hold,

(b) the ratio of total deposits from members that may be held by a credit union to total shares issued to members, and

(c) any other requirement or limit which the Bank considers necessary to prescribe.

(3) In prescribing matters for the purposes of this section, the Bank shall have regard to the need to ensure that the requirements imposed by the regulations made by it are effective and proportionate having regard to the nature, scale and complexity of credit unions, or the category or categories of credit unions, to which the regulations will apply.

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

(1) In addition to its reporting functions under the Credit Union Acts 1997 to 2012 and complying with any matter prescribed under those Acts, a credit union shall maintain appropriate oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements to ensure the protection of members' savings and that it complies with requirements imposed under the financial services legislation.

- (2) Without prejudice to the generality of subsection (1), the Bank may make regulations prescribing-
- (a) certain oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements which the credit union is required to maintain where the Bank considers this is appropriate in the interest of protecting members' savings or otherwise appropriate to ensure compliance with the requirements imposed under financial services legislation;
  - (b) requirements in relation to the oversight, policies, procedures, processes, practices, systems, controls, skills, expertise and reporting arrangements required to be maintained under this section.

### **Section 28 - Shares: general provisions**

- (1) All shares in a credit union shall be of €1 denomination and, subject to the rules of the credit union, may be subscribed for either in full or by periodical or other subscriptions, but no share shall be allotted to a member until it has been fully paid in cash.
- (2) A credit union shall not issue to a member a certificate denoting ownership of a share.
- (3) All withdrawable shares in a credit union shall have equal rights.
- (4) All non-withdrawable shares in a credit union shall have equal rights, and repayments in respect of such shares shall not be capable of being made except as provided by this Act.
- (5) ≠ Notwithstanding *subsection (1)*, whenever its board of directors so recommends, a credit union may apply any sum standing to the credit of its reserves (other than the reserves required to be held under section 45) to the payment up of shares, and may issue the shares to members as fully paid-up bonus shares in the proportions to which the members would have been entitled if the sum concerned had been distributed by way of dividend.

### **Section 29 – Transfer of shares**

- (1) A member of a credit union may transfer a share in the credit union to another member so long as—

- (a) the number of shares held by that other member does not exceed the limit imposed under this Act; and
- (b) if the credit union so requires in any case, the transfer has the approval of the credit union.
- (2) No charge shall be made by a credit union in respect of a transfer of shares by a member, and such a transfer shall entitle the transferee to any dividends in respect of the transferred shares which are unpaid at the date of the transfer.
- (3) If, in a case where the credit union has imposed a requirement under *subsection (1)(b)*, the credit union refuses to approve the proposed transfer of shares in the credit union by a member, the member may appeal against the refusal to a Judge of the District Court for the district in which the registered office of the credit union is situated.
- (4) Notice of appeal under *subsection (3)* shall be in writing and shall set out the grounds on which the appeal is based; and, on the hearing of the appeal, the District Court may either confirm the refusal or direct the credit union to approve the transfer.
- (5) A decision of the District Court on an appeal under *subsection (3)* shall be final, except that any question of law arising on the appeal may be referred to the Court for its determination; and, by leave of the Court, an appeal shall lie to the Supreme Court from every such determination.

### **Section 30 – Dividends on shares**

- (1) At each annual general meeting of a credit union, a dividend on shares, not exceeding the permitted maximum, may be declared in respect of the preceding financial year by a resolution passed by a majority of the members present and voting.
- (2) A dividend so declared shall be paid on all shares in the credit union but, in the case of shares which have been held during part only of the financial year to which the dividend relates, only a proportional part of the dividend shall be paid and, in determining such a proportional part, a part of a month may be disregarded.
- (3) The permitted maximum referred to in *subsection (1)* is ten per cent. of the nominal value of the shares of the credit union or such other percentage of that value as may for the time being be prescribed.



- (4) The rate of dividend declared under *subsection (1)* shall not exceed the rate recommended to the members by the board of directors.
- (5) No dividend on shares shall be paid otherwise than out of—
- (a) ≠ surplus funds in respect of the year in question which are available for that purpose and have been accumulated after meeting the requirements to hold reserves in accordance with section 45; or
- (b) a reserve set aside previous years to provide for dividends.

**Section 31 – Interest on deposits**

- (1) Subject to *subsections (2) and (3)*, a credit union may pay interest on deposits at different rates determined from time to time by the board of directors.
- (2) The rate of any interest payable at any time by a credit union on deposits of a particular class shall be the same for all deposits of that class.
- (3) ≠A credit union shall ensure that the rate of interest offered at any time on deposits of any class does not exceed the rate of return received by the credit union from the employment of its funds, whether in the form of loans or investments.

**Section 32 – Restrictions on the withdrawal of shares and deposits**

- (1) Notwithstanding anything in the rules of a credit union or in any contract, a credit union may require not less than 60 days' notice from a member of the member's intention to withdraw a share in the credit union and a member may not withdraw any shares at a time when a claim due on account of deposits is unsatisfied.
- (2) Notwithstanding anything in the rules of a credit union or in any contract, a credit union may require not less than 21 days' notice from a member of the member's intention to withdraw a deposit.
- (3) ≠(a) If a member of a credit union seeks to withdraw savings in the credit union at a time when the member has an outstanding liability (including a contingent liability) to the credit union, whether as borrower, guarantor or otherwise, that withdrawal shall only be permitted—
- (i) if the savings are not attached savings; or

(ii) where the savings are attached savings, if the withdrawal of such attached savings is approved by the credit committee or a credit officer.

(b) Any savings that existed in the credit union immediately before the commencement of this provision (inserted by the *Credit Union and Cooperation with Overseas Regulators Act 2012*) that were not withdrawable under this subsection immediately before that commencement shall be treated as attached savings after that commencement.

(c) Where the outstanding liability reduces below the level of attached savings, the amount of the attached savings shall not be greater than the outstanding balance of the loan.

(d) In this subsection—

'attached savings' means a share in, or deposit with, a credit union which is pledged in writing by a member as security for a loan at the time of the issuing of the loan to the member or guaranteed by the member;

'savings' means a share in, or deposit with, the credit union.

(4) If the Bank sees fit to do so in the circumstances of a credit union, it may, on such terms as it thinks proper, by notice in writing addressed to the credit union provide that *subsection (3)* shall apply in relation to the credit union with the substitution of a higher or lower percentage than that for the time being applicable to the credit union under that subsection.

(5) Where a member of a credit union is indebted to the credit union and consents in writing to the credit union acting under this subsection, the credit union may, by way of set-off against the indebtedness, withdraw any of the member's shares or deposits; and such a withdrawal may be made notwithstanding anything in *subsections (2) and (3)*.

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

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

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

...

(o) approving, reviewing, and updating, where necessary, but at least every 3 years, all plans and policies of the credit union, including the following:

...

(ii) policies in relation to members' shares and deposits including the setting of a maximum number of shares a member can hold and a maximum amount that a member may deposit;<sup>1</sup>

...

## 2. Regulations

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

*(This Chapter has not reproduced the entirety of Part 1 – please consult the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 for the full provision.)*

#### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Interpretation**

In these Regulations, unless the context otherwise requires:-

'member' includes a person in respect of whom services are being offered or provided by a credit union –

- (a) as part of an agreement referred to in section 35(2)(c) of the Act; or
- (b) pursuant to the receipt of a referral from another credit union in accordance with section 51A of the Act;

"the Bank" means the Central Bank of Ireland;

<sup>1</sup> See the Chapter on "Liquidity" for a reference to this policy.

“total realised reserves” means the regulatory reserves of the credit union held in accordance with, and for the purposes of, Part 2 of these Regulations and section 45 of the Act, plus any other realised reserves held by the credit union;

“total savings” means, in respect of a member, those savings referred to in section 27(1) of the Act and any other amounts held by a credit union;

## **PART 6**

### **SAVINGS**

#### **Savings Requirement – Aggregate Liabilities**

34. The aggregate liabilities of a credit union in respect of deposits shall not at any time exceed 100 per cent of aggregate liabilities in respect of shares issued to members.

#### **Savings Limit**

35. Subject to Regulation 36 and 37, a credit union shall ensure that no member shall have total savings which exceed €100,000.

#### **Transitional Arrangements – Retention of savings in excess of €100,000**

36. (1) (a) Subject to paragraph (2), where, on the commencement of these Regulations, a member has total savings with a credit union in excess of €100,000 the credit union shall repay to such members those savings in excess of €100,000.
- (b) For the purpose of subparagraph (a), the repayment shall occur as soon as possible and in any event within 12 months of the commencement of these Regulations or such other date that the Bank may permit.
- (2) (a) Where, on the commencement of these Regulations, a member has total savings with a credit union in excess of €100,000 the credit union may apply to the Bank for approval to continue to hold (but not increase) such savings.
- (b) For the purpose of subparagraph (a), an application shall be submitted in writing to the Bank and contain such information as the Bank may specify from time to time.

- (c) The Bank may grant approval for an application received under subparagraph (a) where the credit union has demonstrated and the Bank is satisfied that the granting of such approval is:
  - (i) consistent with the adequate protection of the savings of members; and
  - (ii) effective and proportionate, having regard to the nature, scale and complexity of the credit union.
- (d) For the purpose of subparagraph (c) the Bank shall consider the following:
  - (i) the total realised reserve position of the credit union;
  - (ii) the asset size of the credit union, by reference to its total assets; and
  - (iii) such other matters that the Bank may specify from time to time.

**Approval for additional savings**

37. (1) A credit union may apply to the Bank for approval to increase individual member total savings in excess of €100,000.
- (2) For the purpose of paragraph (1), an application shall be submitted in writing to the Bank and contain such information as the Bank may specify from time to time.
- (3) The Bank may grant approval for an application received under paragraph (1) where the credit union has a minimum total asset size of €100,000,000 and has demonstrated and the Bank is satisfied that the granting of such approval is:
  - (a) consistent with the adequate protection of the savings of members; and
  - (b) effective and proportionate, having regard to the nature, scale and complexity of the credit union.
- (4) For the purpose of paragraph (3) the Bank shall consider the following:
  - (a) the total realised reserve position of the credit union; and

(b) such other matters that the Bank may specify from time to time.

### **Regulations 36 and 37: Conditions on approval**

38. (1) Where the Bank grants an approval under Regulation 36 or 37, it may, at that time or at any other time, subject such approval to conditions with which the credit union shall comply.
- (2) Where a credit union fails to comply with a condition imposed pursuant to paragraph (1), the credit union shall notify the Bank as soon as possible and thereafter repay to such members those savings in excess of €100,000.
- (3) For the purpose of paragraph (2), the repayment shall occur as soon as possible and in any event within 12 months after the credit union has notified the Bank, or the Bank otherwise becomes aware, of the matters specified in paragraph (2) or such date as the Bank may permit or require.

## **3. Guidance**

### **3.1 Savings Limit**

The individual member savings limit of €100,000 in the Regulations applies on a per member basis. In calculating the total savings of each individual credit union member, the credit union needs to take account of monies held by each member in the credit union across all types of accounts held by the member. This means that each member can only hold savings up to the total savings limit of €100,000 regardless of the number of accounts that the member holds. In general, savings in excess of €100,000 must be repaid to members. The repayment should be made as soon as possible and in any event within 12 months of the commencement of the Regulations.

The following are examples of the types of accounts that are included when calculating the total savings held by an individual member in a credit union:

- deposit accounts;
- share accounts;
- dormant accounts;
- joint accounts;
- saving stamps;
- budget accounts;
- clubs / associations;
- minor accounts.

The Central Bank expects that credit unions maintain sufficient records to ensure that money in all accounts can be attributed to individual members.

### **3.1.1 Joint accounts**

Where a member holds one or more accounts in the credit union, the limit on individual member savings applies on an aggregate basis, regardless of the manner in which savings are held in the credit union. Money in joint accounts is assumed to be split equally unless evidence shows that it should be split otherwise. The Central Bank expects credit unions to maintain sufficient records to ensure that members and their associated savings can be readily identified for calculation of total savings held by each individual member.

### **3.1.2 Saving stamps**

Under the Regulations, credit unions are required to maintain adequate records to allow savings stamps to be attributed to individual member accounts. In calculating the total savings a member holds in the credit union the amount a member holds in savings stamps needs to be taken into account. This includes savings stamps held in both hardcopy and on virtual cards. The Central Bank expects that savings stamps are non-transferable between members and each saving stamp issued is attributable to an individual member.

### **3.1.3 Budget accounts**

Where a credit union member holds a budget account, any positive balance in this account is included in the total members' savings calculation. Where this account is in a negative balance, the total amount overdrawn from the account is not taken into account when calculating total members' savings.

### **3.1.4 Clubs / associations**

Where clubs and associations hold savings in a credit union, the savings limit applies in respect of the total savings of the club or association. The club or association is treated as a single member for the purposes of applying the individual members' savings limit.

### **3.1.5 Minor accounts**

Where a minor has an account in their own name, where a member is the signatory on the account, the individual member's savings limit applies in respect of the minor, whose name is on the account.

## **3.2 Calculation of the Savings Limit**

The following are matters that credit unions should consider in relation to the application of the individual member's savings limit:

- interest payable / payment of dividends;
- attached savings.

### **3.2.1 Interest payable / Payment of Dividends**

Where payment of interest or a dividend would result in an individual member's savings exceeding €100,000 the Central Bank expects the credit union to take steps to avoid this situation arising. Credit unions should give consideration to paying out such amounts to the member to avoid such breaches occurring.

### **3.2.2 Attached savings**

Attached savings are to be included when calculating the total savings held by an individual member in a credit union.

## **3.3 Savings Club Accounts**

Where a credit union operates a savings club account it should remain cognisant to the risks posed by such accounts including operational and reputational risks. A credit union may operate a savings club account where pooled savings of members of the credit union are held in one account. Typically, such accounts will be opened by two or more credit union members who will be named signatories on the account. These members will collect savings from other members of the credit union and deposit these in the account over a defined period of time. When this defined period has expired, the named signatories on the account will withdraw all funds in the account and return these funds to the individual members/savers (in the proportion with which they saved the funds over the defined period). Typically such accounts operate as Christmas savings clubs which are opened in January with disbursements in December of each year.

The Central Bank expects credit unions to have operational procedures in place for such accounts in order to ensure compliance with all legislative and regulatory requirements including the Credit Union Act, 1997, the Credit Union 1997 (Regulatory Requirements) Regulations 2016 and the Criminal Justice (Money Laundering and Terrorist Finance) Act 2010, as amended.

The guidance set out below should be followed at a minimum by all credit unions who operate savings club accounts of this nature. Only where a credit union is in a position to ensure that the below guidance can be followed should savings club accounts of this nature be operated.

- (1) The credit union should maintain a written policy which details the procedures for the operation of savings club accounts. This policy should be approved by the board of directors and reviewed at least every three years.



This policy should at a minimum outline:

- (i) The organisational arrangements setting out the roles and responsibilities in relation to the operation of savings club accounts;
- (ii) The minimum number of account holders required for each savings club operated by the credit union;
- (iii) The operational procedures to be followed in the credit union in relation to the receipt and disbursement of funds from the savings club;
- (iv) The maximum amount which may be accepted into any savings club account, both in aggregate and from any individual saver. This should be determined in accordance with the credit union's risk appetite and to ensure compliance with all regulatory requirements and must take account of other savings which are held by members of the savings club with the credit union. This is particularly relevant in the context of ensuring compliance with the €100,000 individual member savings limit prescribed by Regulation 35 of the 2016 Regulations or any approval granted under Regulation 36 of the 2016 Regulations;
- (v) Any operational risks posed by the operation of a savings club and the risk mitigants proposed by the credit union to address such risks including ensuring that the operation of the savings club by the account holders of the savings club is operated to ensure that the savings of the beneficial owners of the funds (i.e. the relevant member) in the savings club are protected at all times;
- (vi) The dividend policy in relation to savings club accounts;
- (vii) Operational procedures for disbursements from savings club accounts. The Central Bank would expect that disbursements from savings club accounts are made payable to the beneficial owner of the funds (i.e. the relevant member) only in order to minimise the risk of misappropriation of saving club members' funds; and
- (viii) Details on the customer due diligence to be undertaken on all members of the savings club to ensure compliance with AML legislation.

(2) The credit union should ensure that a comprehensive and up to date list is maintained which includes the name and address of each member of each savings club.

(3) The credit union should ensure that, at any point in time, the monies owed to each individual member of an individual savings club can be clearly identified.

(4) A monthly reconciliation should be undertaken of each savings club account to ensure that the beneficial owners of all savings held in the account are known.

(5) The credit union should ensure that the monies held by an individual member with the credit union and the monies held by that individual member within a

**Savings****Publication Date: September 2024**

savings club can be readily identified for the purposes of assessing compliance with the €100,000 individual member savings limit, where applicable.

(6) The credit union should ensure that appropriate documentation is maintained on file for each individual member of the savings club for the purposes of assessing compliance with AML legislation.

(7) For the purposes of Prudential Return reporting to the Central Bank, the credit union should report the total savings held by each individual member in the credit union and this should include the savings held by the credit union member in a savings club account where applicable.

(8) A reconciliation should be performed at the end of each year or at the end of the defined period over which the savings club has operated to ensure that all monies received into the savings club account have been reimbursed to the individual members of the savings club in accordance with the amounts saved by each individual member of the savings club.

Where a credit union operates savings club accounts the Central Bank expects that such accounts and the operational procedures in relation to these accounts would be subject to periodic reviews by the internal audit function in the credit union with reports on the same supplied to the board of directors for review.

# STRATEGIC PLAN

## Contents

- 1. Legislation ..... 2**
- 2. Guidance ..... 4**
  - 2.1 Preparation of the strategic plan ..... 4
  - 2.2 The strategic plan..... 4
  - 2.3 Strategies and policies for achieving strategic objectives ..... 5
  - 2.4 Maintaining adequate resources ..... 5
  - 2.5 Monitoring implementation of the strategic plan and reviewing performance against the strategic plan ..... 5
  - 2.6 Review of the strategic plan by the board of directors to ensure continued relevance ..... 6

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.

## 1. Legislation

### Section 76A – Strategic plan\*

- (1) The board of directors of a credit union shall cause to be prepared and shall adopt a plan (in this Act referred to as a 'strategic plan') which documents the strategy and objectives of the credit union (in this Act referred to as the 'strategic objectives') and indicates how those strategic objectives are to be achieved.
- (2) A strategic plan shall include—
- (a) the objectives of the credit union's activities for a specified period of at least 3 years,
  - (b) the nature and scope of the activities to be undertaken,
  - (c) the strategies and policies for achieving those objectives,
  - (d) the targets and criteria for assessing the performance of the credit union,
  - (e) the financial projections for the credit union for a specified period of at least 3 financial years from, and including, the current financial year together with the supporting financial analysis and assumptions made,
  - (f) the funding strategy proposed to support the projected balance sheet structure, and
  - (g) such other matters as may be prescribed by the Bank.<sup>1</sup>
- (3) A credit union shall maintain adequate resources, both financial and non-financial, in relation to the nature, scale, complexity and risk profile of the activities being undertaken or to be undertaken in accordance with the strategic plan.

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

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

<sup>1</sup> The Central Bank has not yet prescribed Regulations under this subsection.

- (1) Without prejudice to the generality of section 53(1), the functions of the board of directors of a credit union shall include the following:
- (a) setting the strategy for the credit union by preparing, including active participation and examination of strategies being developed or proposed by the manager, management team or others and preparing and adopting a strategic plan;
  - (b) monitoring the implementation of the strategic plan by the credit union, reviewing the performance of the credit union against the measurements defined in the strategic plan and assessing, on a regular basis but at least annually, how the strategic objectives of the credit union are being achieved;
  - (c) reviewing the credit union’s strategic plan on a regular basis, but at least annually, to ensure that it remains relevant and up to date and modifying or revising the strategic plan to incorporate any changes required as a result of the review;
  - ...
  - (k) exercising appropriate oversight over execution by the management team of the agreed strategies, goals and objectives;
  - ...

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

*(This Chapter has not reproduced the entirety of section 63A – please consult the Credit Union Act, 1997 for the full provision.)*

- ...
- (4) The functions of the manager of a credit union include the following:
- (a) without prejudice to the exercise by the board of directors of its functions under subsection (1)(a) of section 55, preparing and proposing to the board of directors for debate, scrutiny and approval, strategies for the strategic plan that the board of directors are required to prepare and approve under that subsection;
  - ...
  - (b) implementing the strategies agreed by the board of directors to the standards set out in the strategic plan or as otherwise required by the board of directors;
  - ...

## 2. Guidance

### 2.1 Preparation of the strategic plan

The board of directors of the credit union should ensure the following are considered, at a minimum, when the strategic plan is being prepared and proposed strategies are being identified:

- the goals and objectives of the credit union;
- analysis of the credit union's economic, social, technological and competitive environment including:
  - the current economic climate and economic forecasts; and
  - the evolving market conditions and current and anticipated member product and service needs;
- a comprehensive and realistic appraisal of the existing business model, including analysis of the credit union's income and expenditure and financial position, membership and common bond, competitive capabilities, governance arrangements, risk management and operational capabilities;
- the regulatory framework including upcoming changes in legal and regulatory requirements and guidance;
- the risk tolerance of the credit union and the risks that the credit union is, or might reasonably be, exposed to; and
- the outcome of independent reports and evaluations such as any reports made by the auditor, asset reviews, operational reviews, internal audit reports, inspection reports and any other third party report.

### 2.2 The strategic plan

The board of directors should determine the feasibility of any proposed strategies, including strategies proposed by the manager, and identify the cost and benefit of each strategy. This should include financial analysis supported by assumptions. The assumptions should be documented and include an explanation for the basis of the assumptions. The board of directors should challenge any assumptions made to ensure they are realistic.

When considering strategies, including proposals for new products or services, material modifications to existing products and services, or major management initiatives, the board of directors should ensure any risks associated with the strategies are identified

and assessed and that the risk management system required under section 76B of the 1997 Act and other relevant areas are reviewed and updated.<sup>2</sup>

The board of directors should ensure that the strategic plan is communicated to all officers of the credit union.

### **2.3 Strategies and policies for achieving strategic objectives**

The strategies and policies for achieving the strategic objectives of the credit union should be set out clearly in the strategic plan and should cover the following at a minimum:

- the activities to be undertaken to implement the objectives;
- organisational arrangements for the implementation of the strategic plan, setting out the roles and responsibilities of officers of the credit union;
- standards for the implementation of strategies by the manager;
- targets and criteria for assessing the performance of the credit union against the strategic plan; and
- reporting arrangements, including the frequency, form and content of reporting to the board of directors on the implementation of the strategic plan.

### **2.4 Maintaining adequate resources**

The strategic plan should include an assessment of key financial and non-financial resources needed to support the activities undertaken or to be undertaken in the strategic plan. This assessment should have regard to the nature, scale, complexity and risk profile of the credit union. In ensuring that the credit union maintains adequate resources in relation to the nature, scale and complexity of activities to be undertaken by the credit union, the board of directors should ensure that the information systems are appropriate to support those objectives, as required under section 76G(2) of the 1997 Act.<sup>3</sup>

### **2.5 Monitoring implementation of the strategic plan and reviewing performance against the strategic plan**

The board of directors should monitor the credit union's implementation of the strategic plan and should review the performance of the credit union against the strategic plan on a regular basis, at least quarterly. In monitoring implementation of, and reviewing the performance of the credit union against, the strategic plan the board of directors should, at a minimum:

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<sup>2</sup> See the Chapter on "Risk Management and Compliance".

<sup>3</sup> See the Chapter on "Operational Risk".

- receive reports from the manager on the implementation of the strategic plan, including the credit union's actual financial performance in comparison to the financial projections contained in the strategic plan; and
- assess the performance of the credit union against targets and criteria set out in the strategic plan.

The board of directors should ensure it receives timely reports of any deviations from financial projections, targets or criteria set out in the strategic plan so that they may be discussed by the board of directors at an early stage.

The board of directors should also ensure that necessary actions are taken to address any deviations from financial projections, targets or criteria set out in the strategic plan.

## **2.6 Review of the strategic plan by the board of directors to ensure continued relevance**

In reviewing the strategic plan, at least annually, the board of directors should, in addition to guidance under the "Preparation of the strategic plan" Section of this Chapter, consider the following at a minimum:

- outcomes of the review of the credit union's performance against the measurements defined in the strategic plan;
- risk events that have occurred;
- any proposals in relation to new products and services, material modifications to existing products and services, such as outsourcing to service providers and major management initiatives, such as transfers of engagements or amalgamations; and
- changes in the financial position of the credit union.

Following this review, the board of directors should update the strategic plan as necessary to take account of the above.

Where a significant event occurs outside of the formal review process that could affect implementation of the strategic plan, the strategic plan should be reviewed and updated to take account of this event.



# TRANSFERS OF ENGAGEMENTS AND AMALGAMATIONS

## Contents

1.	Legislation .....	2
2.	Guidance .....	9

## Version History

Version	Date	Amendments
0.1	July 2013	Initial Version.
1.0	September 2013	No Amendments.
1.1	October 2015	Amended footnote 1 to reflect to reflect the Credit Union and Co-operation with Overseas Regulators Act 2012 (Commencement of Certain Provisions) (No.2) Order 2013.
2.0	May 2016	Updated Explanatory Note and Related Forms.
2.1	April 2024	Amended text in section 136(1) to reflect the commencement of the Credit Union (Amendment) Act 2023.

## 1. Legislation

### Section 128 – Amalgamations of credit unions

- (1) Subject to compliance with *section 130*, any two or more credit unions may amalgamate by forming a credit union as their successor.
- (2) In order to form a credit union as their successor the amalgamating credit unions shall—
  - (a) agree on the rules for the regulation of their successor which comply with the requirements of the *First Schedule*;
  - (b) each approve the terms of the amalgamation by a special resolution, which also approves the rules of their successor; and
  - (c) jointly make an application under *section 131* to the Bank for the confirmation of the amalgamation and send to the Bank three copies of the rules of their successor, each copy signed by the secretary of each of the credit unions.
- (3) If the Bank—
  - (a) confirms the amalgamation under *section 131*, and
  - (b) is satisfied as respects the matters as to which it must be satisfied before it registers the rules of a credit union, the Bank shall register the rules of the successor credit union and issue to it a certificate of confirmation of its approval of the amalgamation and specify a date ("the specified date") as from which the registration takes effect.
- (4) On the specified date, all the property, rights and liabilities of each of the credit unions whose amalgamation was confirmed by the Bank shall by virtue of this subsection stand transferred to and vested in the credit union so registered as their successor.
- (5) On the specified date, each of the credit unions to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by *subsection (4)* shall be deemed to have been effected immediately before the dissolution.

**Section 129 – Transfer of engagements between credit unions**

(1) Subject to compliance with *section 130*, a credit union may transfer its engagements to another credit union which, in accordance with this section, undertakes to fulfil the engagements.

(2) A credit union, in order—

(a) to transfer its engagements, or

(b) to undertake to fulfil the engagements of another credit union,

shall resolve to do so by a special resolution or, if the Bank consents in either case in circumstances where it considers it expedient to do so, by a resolution of the board of directors.

(3) The transfer shall be recorded in an instrument of transfer of engagements.

(4) A transfer of engagements between credit unions shall be of no effect unless—

(a) the transfer is confirmed by the Bank under *section 131*; and

(b) a certificate of confirmation of the transfer is issued in respect of the transfer under *subsection (5)(b)*.

(5) Where the Bank confirms a transfer of engagements between credit unions, it shall—

(a) register a copy of the instrument of transfer of engagements; and

(b) issue to the credit union taking the transfer a certificate of confirmation of the transfer;

and, on such date as is specified in the certificate, all the property, rights and liabilities of the credit union transferring its engagements shall, by virtue of this subsection, stand transferred to and vested in the credit union taking the transfer.

(6) Where its engagements have been transferred, a credit union shall, by virtue of this subsection, be dissolved on the date specified in the certificate issued under

*subsection (5)(b)*; but the transfer effected by *subsection (5)* shall be deemed to have been effected immediately before the dissolution.

(7) (a) Where the engagements of a credit union (in this subsection referred to as the 'transferor credit union') are transferred to another credit union (in this subsection referred to as the 'transferee credit union'), the common bond of the transferee credit union is taken to include the common bond of the transferor credit union and the rules of the transferee credit union are amended accordingly, on and from the date on which the transfer takes effect in accordance with this section.

(b) Section 14 shall not apply to the amendment of the rules of the transferee credit union effected by paragraph (a).

### **Section 130 – Statement for members relating to proposed amalgamation or transfer of engagements**

(1) ‡ A credit union which proposes—

(a) to amalgamate with one or more other credit unions,

(b) to transfer its engagements to another credit union, or

(c) to undertake to fulfil the engagements of another credit union,

shall, subject to subsection (2), cause to be sent to every member entitled to notice of a general meeting of the credit union and to the auditor of the credit union a statement, in such form as the Bank may specify in writing, showing the matters specified in subsection (3), together with a copy of the annual accounts for each credit union concerned for the most recent financial year.

(2) ‡ If, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union, the Bank has consented under *section 129* to the credit union proceeding by a resolution of its board of directors, *subsection (1)* shall not apply but, within the seven days following the meeting of the board at which that resolution is passed, the secretary of the credit union shall send to every member and to the auditor of the credit union—

(a) a notice of the resolution passed by the board of directors,

(b) a statement, in such form as the Bank may prescribe, showing the matters specified in subsection (3), and

(c) a copy of the annual accounts for each credit union concerned for the most recent financial year.

(3) The matters referred to in *subsection (1)* are—

(a) the financial position of each credit union concerned (as appearing from the most recent unaudited monthly statements);

(b) details of any payments proposed to be made to members of each credit union concerned in consideration of the proposed amalgamation or transfer;

(c) any changes to be made, in connection with the amalgamation or transfer, in the terms governing outstanding loans;

(d) the details of the arrangements proposed in relation to employees of each credit union; and

(e) any other matter which the Bank may require in the case of a particular amalgamation or transfer.

(4) † No statement shall be sent to the members of a credit union under subsection (1) or (2) unless its contents have been approved by the Bank but, subject to that, such a statement shall be so sent that every member referred to in that subsection receives it not later than the date on which it receives notice of any resolution which—

(a) is in favour of the proposal concerned; and

(b) is to be moved at a general meeting of the credit union.

### **Section 131 – Confirmation of amalgamation or transfer**

(1) An application for confirmation by the Bank of an amalgamation of credit unions or a transfer of engagements shall be made in such manner as the Bank may specify.

(2) A credit union which makes, or joins in making, an application for confirmation of an amalgamation or a transfer shall, within seven days after the date of the application, cause to be published, in at least two daily newspapers published in the State and circulating in the areas in which the registered offices of the credit unions

concerned in the proposal are situated, a notice giving particulars of the application and indicating that representations relating to it (whether for or against) may be made in writing to the Bank within such period (being not less than 21 days after the date of publication of the notice) as may be specified in the notice.

- (3) A notice under *subsection (2)* shall be in such form as the Bank may specify and shall indicate that a copy of the statement prepared under *section 130* may be obtained on demand at the registered office of the credit union during the ordinary office hours of the credit union.
- (4) Representations relating to an application under *subsection (1)* may be made to the Bank within the period specified in the relevant notice published under *subsection (2)*.
- (5) The Bank shall allow the credit union or credit unions seeking confirmation of an amalgamation or transfer an opportunity to comment on any representations made before the expiry of such period as the Bank may specify in a notice to the credit union or credit unions.
- (6) The Bank, having considered any application, representation and comment under this section, shall either—
  - (a) confirm the amalgamation or transfer, subject to such conditions (if any) as it considers appropriate; or
  - (b) subject to *subsection (7)*, refuse to confirm the amalgamation or transfer if it is satisfied that—
    - (i) confirmation would be contrary to the public interest or the Bank's functions as respects credit unions; or
    - (ii) in the case of an amalgamation or in the case of a transfer which was the subject of a special resolution, some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or
    - (iii) some relevant requirement of this Act (including, in particular, *section 6*) or the rules of any of the credit unions participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that credit union.
- (7) The Bank shall not be precluded from confirming an amalgamation or transfer by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules

of a credit union if it appears to the Bank that it could not have been material to the members' decision about the amalgamation or transfer and the Bank is satisfied that the failure may be disregarded for the purposes of this section.

- (8) A failure to comply with a requirement of this Part or any rules of a credit union shall not invalidate an amalgamation or transfer, but a credit union which and any person who fails to comply with a requirement of this Part shall be guilty of an offence.

### **Section 132 – Distribution to members**

(1) Where the terms, of an amalgamation of, or transfer of engagements between, credit unions include provision for the distribution among any of the members of the participating credit unions of part of the funds of one or more of those credit unions in consideration of the amalgamation or transfer, then in the case of each of the credit unions concerned in the amalgamation or transfer—

(a) that provision must be approved by the special resolution referred to in *section 128(2)(b)* or, as the case may be, *section 129(2)*; or

(b) the Bank must give consent as mentioned in *subsection (2)*.

(2) Where, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union—

(a) the terms of the proposed transfer of engagements include provision for a distribution of funds as in *subsection (1)*, and

(b) the Bank is considering under *section 129(2)* whether to give consent to the credit union proceeding by way of a resolution of its board of directors, rather than by special resolution,

the Bank shall not give that consent unless it is satisfied that the distribution proposed to be made by each credit union concerned is, in all the circumstances, justified and reasonable.

(3) Any reference in this section to a distribution of funds, with reference to members, includes a reference to a distribution by means of a special rate of interest available to members for a limited period.

**Section 97 – Cancellation of registration**

*(This Chapter has not reproduced the entirety of section 97 – please consult the Credit Union Act, 1997 for the full provision.)*

...

- (2) The Bank shall cancel the registration of a credit union that has been—
- (a) dissolved by virtue of *section 128* or *129*; or
  - (b) wound up under *section 133* or *section 134*, or dissolved under *section 135*.
- (3) The Bank shall not cancel the registration of a credit union otherwise than—
- (a) at its own request, or
  - (b) under subsection (2),

unless it has given the credit union at least 2 months' notice in writing specifying the ground on which it is proposed to cancel that registration.

- (4) Notice of every cancellation under this section of a credit union's registration shall, as soon as practicable after it takes place, be published in *Iris Oifigiúil* and in any other manner which the Bank considers necessary for bringing the cancellation to the notice of the persons affected by it.
- (5) From the date of publication in *Iris Oifigiúil* under *subsection (4)* of a notice of the cancellation of a credit union's registration, the credit union shall cease to be entitled to any of the privileges of this Act as a credit union.
- (6) *Subsection (5)* is without prejudice to any liability incurred by a credit union before the cancellation of its registration; and any such liability may be enforced against it as if the cancellation had not taken place.

**Section 136 – Restriction on dissolution or cancellation of registration**

- (1) Until a certificate under this section has been lodged with the Bank—
- (a) a credit union shall not be dissolved in accordance with *section 135(6)*; and
  - (b) the Bank shall not cancel the registration of a credit union under *section 97(2)(b)*.



(2) A certificate under this section is one which—

(a) ‡ is signed by the secretary or other officer (other than a person who is an officer solely by virtue of being a voluntary assistant) of the dissolving or transferor credit union approved by the Bank; and

(b) certifies that all property vested in the credit union has been duly conveyed or transferred to the persons entitled.

## 2. Guidance

The following explanatory note has been prepared by the Central Bank in relation to a transfer of engagements between credit unions:

- [Transfer of Engagements: Explanatory Note and Related Forms \(May 2016\)](#)<sup>1</sup>

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<sup>1</sup> The definition of “special resolution” provided in this Explanatory Note was amended by the 2012 Act on 1 October 2013.

# APPENDIX 1 - DOCUMENTATION REQUIRED TO BE MAINTAINED PURSUANT TO THE 1997 ACT

## 1. Introduction

The 1997 Act places obligations on credit unions in relation to requirements for specified documentation. To assist credit unions in this regard this Appendix refers to certain documentation credit unions are required to maintain pursuant to the 1997 Act that are referred to in the Handbook. **The list below is an indicative list provided for assistance and may not be complete. Credit unions should consult the 1997 Act in order satisfy themselves of their compliance with all of their obligations to maintain and hold documentation under that Act.** Please note that this Appendix refers to certain documentation required to be maintained pursuant to the 1997 Act **only** and not pursuant to any other provision of financial services legislation or any other enactment or requirement. Credit unions are required to satisfy themselves of their compliance with all of their obligations to maintain and hold documentation pursuant to all other applicable legislation.

The documentation that credit unions are required to maintain includes policies, plans and other documentation. In relation to policies required to be kept by a credit union, the Central Bank does not only look for evidence that credit unions have appropriate policies in place but also for indicators that these policies are understood, are being followed and that, as a result, they are effective.

The documentation set out below is grouped by Chapter. Where documentation is referred to both in the Chapter on "Governance" and another chapter, it is listed under the other Chapter, for example, the investments policy is listed under the Chapter on "Investments".

## 2. Documentation

Documentation pursuant to the 1997 Act	Reference in the 1997 Act
<b>Chapter on "Accounts and Audit"</b>	
1. Proper accounting records	section 108(1)
2. Location of accounting records	section 108(7)
3. Annual accounts	section 111(1)
4. Auditor report	section 120(1)
<b>Chapter on "Governance"</b>	
5. Minutes of all meetings of the board of directors	section 54(7)
6. Reasons for decisions of the board of directors	section 55(1)(d)
7. Succession plan for each of the positions of the management team	section 55(1)(j)
8. Standards of conduct and ethical behaviour of officers	section 55(1)(o)(vii)
9. Remuneration policies and practices	section 55(1)(o)(viii)/ section 66B
10. Conflicts of interest policy	section 55(1)(o)(xvi)/ section 69(2)
11. Review of the overall performance of the board of directors	section 55(4)
12. Register of matters or categories of matters that require the approval of the board of directors and which cannot be assigned by the board of directors to other persons for performance on behalf of the board of directors.	section 55(6)
13. Decision by the board of directors to allow certain matters to be performed or carried out by board committees on behalf of the board of directors including: a. Terms of reference for the committee b. Procedures for monitoring and documenting the exercise of the matters to be carried out on behalf of the board of directors	section 56A(5)  section 56A(5)(a) section 56A(5)(b)
14. Report on activities and deliberations of the board committee to the board of directors	section 56A(14)
15. Succession plan for the board of directors	section 56B(4)(h)
16. Record of time a person has served as a member of the board of directors	section 56B(4)(l)
17. Rationale for continuance of a member of the board of	section 56B(12)

<b>Documentation pursuant to the 1997 Act</b>	<b>Reference in the 1997 Act</b>
directors that has served 12 years in aggregate	
18. Register of directors	section 57(1)
19. Functions and division of responsibilities between board of directors and the manager	section 63A(3)
20. Governance arrangements including organisational structure with well-defined transparent and consistent reporting lines setting out roles, responsibilities and accountabilities of officers	section 66A(1)
21. Annual compliance statement	section 66C
22. Record of applications for credit furnished by a credit officer under section 65(2) of the 1997 Act	section 67(2)
23. Register of conflicts of interest	section 69(11)
24. Minutes of all meetings of the board oversight committee	section 76O(1)
25. Report to board of directors by board oversight committee on its assessment of whether the board of directors has operated in accordance with Part IV and Part IVA of the 1997 Act and any regulations made thereunder	section 76O(2)
26. Register of members of the board oversight committee	section 76R(1)
27. Report of the credit committee, credit control committee, and membership committee to the board of directors	Third Schedule, paragraph 2(b)
<b>Chapter on "Internal Audit"</b>	
28. Internal audit charter	section 55(8)/ section 76K(2)
29. Internal audit plan	section 55(8)/ section 76K(3)
<b>Chapter on "Investments"</b>	
30. Investment policies	section 55(1)(o)(v)
31. Designating of depositories for the funds of the credit union and signatories	section 55(1)(o)(vi)
<b>Chapter on "Lending"</b>	
32. Lending policies	section 55(1)(o)(i)
<b>Chapter on "Liquidity"</b>	
33. Liquidity management policies	section 55(1)(o)(iii)
34. Asset and liabilities management policies	section 55(1)(o)(xiii)
<b>Chapter on "Operational Risk"</b>	

<b>Documentation pursuant to the 1997 Act</b>	<b>Reference in the 1997 Act</b>
35. Records management policies	section 55(1)(o)(x)
36. Information systems and management information policies	section 55(1)(o)(xi)
37. Business continuity plan	section 55(1)(o)(xii)/76I(2)
<b>Chapter on "Outsourcing"</b>	
38. Outsourcing policies	section 55(1)(o)(xiv)
39. Outsourcing agreements	section 76J(1)
40. Agreement setting out rights and obligations of credit union and service provider	section 76J(2)
<b>Chapter on "Reserves"</b>	
41. Reserve management policies	section 55(1)(o)(iv)
<b>Chapter on "Risk Management and Compliance"</b>	
42. Risk management system <ul style="list-style-type: none"> <li>a. Risk management policy</li> <li>b. Systems and controls adopted to manage and mitigate the risks identified by the risk management officer</li> </ul>	section 76B(3) section 55(1)(o)(xv) section 76B(4)
43. Compliance programme including: <ul style="list-style-type: none"> <li>a. Compliance plan</li> <li>b. Compliance policy</li> </ul>	section 76B(5) section 76B(5)/ section 55(1)(o)(ix) section 55(1)(o)(ix)
44. Reporting lines of risk management officer to the board of directors	section 76C(5)
45. Role and functions of risk management officer	section 76C(6)
46. Reporting lines of compliance officer to the board of directors	section 76D(5)
47. Role and functions of compliance officer	section 76D(6)
<b>Chapter on "Savings"</b>	
48. Policies in relation to members' shares and deposits	section 55(1)(o)(ii)
<b>Chapter on "Strategic Plan"</b>	
49. Strategic plan	section 55(1)(a) / section 76A(1)

## APPENDIX 2 - ENFORCEMENT

### 1. Introduction

Documents and full details about the Central Bank's enforcement process can be found on the Enforcement section of the Central Bank's website at the following [link](#).

Prior to the 1 August 2013 the Administrative Sanctions Procedure did not apply to credit unions, except in relation to prescribed contraventions of Anti-Money Laundering and Payment Services legislation. However, the 2012 Act contains amendments, which, since 1 August 2013, have applied the Administrative Sanctions Procedure to credit unions for breaches of any obligation which amounts to a "prescribed contravention"<sup>1</sup> (including breaches of the 1997 Act) occurring after that date.

### 2. Enforcement tools

The imposition of formal sanctions, whether by way of the Administrative Sanctions Procedure or otherwise, is only one of the regulatory tools available to the Central Bank. The Central Bank also has a wide range of other regulatory powers (for example, the imposition of directions) which may also be suitable depending on the circumstances. The use of other regulatory tools does not preclude the taking of an administrative sanctions case pursued for contraventions of legislative or regulatory requirements.

Whether or not an administrative sanctions case is pursued is a matter for the discretion of the Central Bank. The Central Bank will consider all relevant facts before commencing the Administrative Sanctions Procedure.

### 3. Administrative Sanctions Procedure

Part IIIC of the Central Bank Act 1942 ("the 1942 Act") provides the Central Bank with the power to administer sanctions in respect of prescribed contraventions by regulated entities and persons concerned in the management of regulated entities. Sections 34 and 36 of the

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<sup>1</sup> Section 33AN of Part IIIC of the Central Bank Act 1942 defines a "prescribed contravention" for the purposes of that Part.

2012 Act apply Part IIIC of the 1942 Act to credit unions.<sup>2</sup> Where the Central Bank has concerns that a prescribed contravention is being or may have been committed, an investigation into the issue may be commenced to establish whether there are reasonable grounds for the Central Bank's suspicion, after which an Inquiry may be held.<sup>3</sup> The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions.<sup>4</sup>

The following sanctions may be imposed:

- caution or reprimand;
- direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service;
- imposition of a monetary penalty (in the case of a corporate and unincorporated body an amount not exceeding €10,000,000 or 10% of the annual turnover of the regulated financial service provider in the last financial year, whichever is the greater, or in the case of a natural person an amount not exceeding €1,000,000)<sup>5</sup>;
- a direction disqualifying a person from being concerned in the management of a regulated financial service provider;
- suspension of the authorisation<sup>6</sup> of a regulated entity, in respect of one or more of its activities, for a period not exceeding 12 months;
- revocation of a regulated entity's authorisation<sup>7</sup>;
- direction to cease a contravention, if it is found the contravention is continuing; and
- a direction to pay to the Central Bank all or a specified part of the costs incurred by the Central Bank in holding the Inquiry and in investigating the matter to which the Inquiry relates.<sup>8</sup>

Credit unions can learn more about the administrative sanctions procedure and Part IIIC of the 1942 Act by accessing the following documents on the Central Bank's website:

- [Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942 \(2014\)](#)
- [Outline of Administrative Sanctions Procedure \(2014\)](#)

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<sup>2</sup> Credit unions should also be aware of the Central Bank (Supervision and Enforcement) Act 2013 which contains provisions relating to the Administrative Sanctions Procedure.

<sup>3</sup> The Central Bank also has the power to enter into a settlement agreement to resolve the matter. Further information in relation to settlement agreements is contained in the "Outline of the Administrative Sanctions Procedure," a link to which is provided above.

<sup>4</sup> In determining sanctions, all of the circumstances of the case will be taken into account.

<sup>5</sup> In both cases this will be subject to the overriding requirement that any monetary penalty imposed under section 33AQ or 33AR of the Act will not cause a corporate entity to cease business or cause an individual to be adjudicated bankrupt (section 33AS(1) and (2) of the Act).

<sup>6</sup> In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

<sup>7</sup> In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

<sup>8</sup> Section 33AQ of the Act.





Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2014

# Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942





The Inquiry Guidelines are issued by the Governor of the Central Bank of Ireland, Patrick Honohan, for and on behalf of the Central Bank of Ireland, in exercise of the Central Bank of Ireland's powers under Section 33BD of the Central Bank Act 1942, as amended.

The Inquiry Guidelines repeal and replace the previous Inquiry Guidelines published by the Central Bank of Ireland in 2013.

Signed for and on behalf of the Central Bank of Ireland on 03 November 2014



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Patrick Honohan  
Governor of the Central Bank of Ireland

## Contents

<b>1. INTRODUCTION</b>	<b>3</b>
<b>2. REFERRAL</b>	<b>4</b>
Referral to Inquiry	4
Appointment of Inquiry Members	4
Regulatory Decisions Unit	5
Enforcement	5
Legal Representation	6
Legal Practitioner	6
<b>3. PRELIMINARY INQUIRY PROCEDURES</b>	<b>7</b>
Notice of Inquiry	7
Inquiry management	8
<b>4. THE INQUIRY HEARING</b>	<b>10</b>
Form and order of proceedings	10
Standard of proof	10
Legal submissions	10
Applications during an Inquiry	10
Commencement of the Inquiry Hearing	11
Hearing without oral evidence	12
Hearing with oral evidence	12
No oral hearing or evidence	13
Referral to the High Court on a point of law	14
Applications for an adjournment to pursue settlement	14
<b>5. THE FINDINGS OF THE INQUIRY MEMBERS</b>	<b>16</b>
Written Findings	16
Sanctions	16
Appeal to the Irish Financial Services Appeals Tribunal	20
Appeal to the High Court	20
When a decision of the Inquiry takes effect	21
Publication	23
<b>APPENDIX 1: Preliminary Inquiry Procedures</b>	<b>26</b>
<b>APPENDIX 2: Order of proceedings at hearing without oral evidence</b>	<b>27</b>
<b>APPENDIX 3: Order of proceedings at hearing with oral evidence</b>	<b>28</b>

## 1. Introduction

- 1.1 The Central Bank of Ireland (**“the Central Bank”**) may conduct an Inquiry under Part IIIC of the Central Bank Act 1942, as amended (**“the Act”**) where it suspects on reasonable grounds that a prescribed contravention is being or has been committed<sup>1</sup>. Such Inquiries will be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matters before the Inquiry will allow.<sup>2</sup>
- 1.2 These Inquiry Guidelines, published pursuant to section 33BD of the Act, (**“the Guidelines”**) set out the procedures which the Central Bank ordinarily proposes to follow when holding an Inquiry under Part IIIC of the Act. It may be necessary to depart from the Guidelines in certain instances where compliance with the Guidelines is not appropriate in the circumstances of the individual case. The Guidelines may be altered from time to time by the Central Bank as it considers appropriate and in particular may be altered to take into account any legal or other developments.
- 1.3 The Guidelines should be read in conjunction with another information publication - *Outline of the Administrative Sanctions Procedure 2014* (**“the Outline”**), which provides a general overview of the Administrative Sanctions Procedure operated by the Central Bank. The Guidelines and the Outline do not purport to represent a definitive legal interpretation of Part IIIC of the Act and in case of doubt it is recommended that reference be made to the text of the legislation itself and/or individual legal advice sought, as appropriate.
- 1.4 For the purposes of these Guidelines reference to **“regulated entities”** or a **“regulated entity”** can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management and any other person subject to Part IIIC of the Act. Similarly, in this regard, reference to regulated entities or a regulated entity having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in the management of a regulated entity, or any other person subject to Part IIIC of the Act, have participated in that prescribed contravention.

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<sup>1</sup> The tasks and powers of the European Central Bank, under the Single Supervisory Mechanism, and as contained in Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, should be noted. Please see paragraph 2.2 of the Outline of the Administrative Sanctions Procedure 2014 for further details.

<sup>2</sup> Section 33AY(1) of the Act.

## 2. Referral

### *Referral to Inquiry*

- 2.1 Where the Central Bank suspects on reasonable grounds that a prescribed contravention is being, or has been committed, it may decide to hold an Inquiry.<sup>3 4</sup>
- 2.2 The Enforcement Directorate (“**ENF**”) will inform the Regulatory Decisions Unit (“**RDU**”) within the Central Bank of a decision to hold an Inquiry and will refer the case to the RDU. The work and role of the RDU is outlined in further detail at paragraph 2.10 below.
- 2.3 At the time of referral ENF will provide the RDU with the following:
- an outline of the prescribed contraventions that the regulated entity is suspected of committing or having committed and the grounds upon which the suspicions are based;
  - an Investigation Report, which will detail the Investigation carried out by ENF and contain a schedule of the categories of materials and information gathered during the Investigation;
  - copies (hard copy or electronic) of documentation relied upon in preparing the Investigation Report; and
  - copies of any Investigation Letter(s) issued to the regulated entity and any responses.

### *Appointment of Inquiry Members*

- 2.4 One or more persons, internal officers or employees of the Central Bank and/or external individuals<sup>5</sup>, will be appointed to an Inquiry, (“**the Inquiry Members**”). Following the notification to the RDU of the decision to hold an Inquiry, the RDU will arrange for the appointment of the Inquiry Members. Where appropriate, the RDU will arrange the nomination of a presiding person on the Inquiry, who shall be known as the Chairperson. In certain

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<sup>3</sup> Either under section 33AO or, if the prescribed contravention is admitted, but the sanction cannot be agreed, under section 33AR of the Act.

<sup>4</sup> See footnote 1 above in relation to the Single Supervisory Mechanism.

<sup>5</sup> Section 33BE(2) of the Act provides that: “Without prejudice to the generality of subsection (1), the Bank may for the purposes of that subsection designate a person who is not an officer or employee of the Bank. A person so designated is an agent of the Bank for performing and exercising the functions and powers of the Bank under this Part or the part of those functions and powers for which the Bank designated him or her”.

cases, the RDU may arrange for the appointment of a sole member and in such cases, references in these Guidelines to the “Inquiry Members” and the “the Chairperson” shall be understood as referring to “the Sole Member”.

- 2.5 Each proposed Inquiry Member shall confirm in writing that he or she is not prevented from participating in the Inquiry by virtue of any actual or apparent conflict of interest.
- 2.6 All decisions of the Inquiry shall be determined by a simple majority of the Inquiry Members, with each member having one vote. Where the RDU arranges for the appointment of a Sole Member, he or she shall decide the matter.
- 2.7 Once appointed, the Inquiry Members will not meet with, correspond or discuss matters relating to the Inquiry with supervisory or ENF staff involved in the case without the regulated entity either being offered the opportunity to be present, or sent a copy of any correspondence.
- 2.8 The Inquiry will commence once the Inquiry Members are appointed. The Inquiry Members will decide how the Inquiry will proceed and the procedures to be followed.
- 2.9 The RDU will furnish all materials provided to it at referral by ENF to the Inquiry Members.

### ***Regulatory Decisions Unit***

- 2.10 The RDU will provide administrative support to the Inquiry. The RDU will act as registrar to the Inquiry and will be the point of contact within the Central Bank for the regulated entity in relation to all Inquiry matters. The RDU will not give the Inquiry or the regulated entity legal advice but can provide assistance on procedural matters. The RDU will have no role in deciding matters before the Inquiry. RDU staff supporting the Inquiry will have had no prior involvement in the subject matter of the Inquiry or the supervision or authorisation of the regulated entity.

### ***Enforcement***

- 2.11 ENF will be available during the Inquiry to provide any assistance, information or evidence requested by the Inquiry Members. Such assistance might include asking ENF to explain or provide (including by

way of submissions) any or all of the following:

- (i) additional information about the matter before the Inquiry;
- (ii) further explanation of any aspect of the papers furnished to the Inquiry by ENF;
- (iii) information about Central Bank policies (including as to ENF's view on the law or on the correct legal interpretation of legislative provisions relevant to the matter at Inquiry);
- (iv) information relevant to any sanctions hearing;
- (v) information relevant to the publication of Inquiry Members' findings; and/or
- (vi) any other relevant matter.

2.12 Any information furnished by ENF as outlined above will also be furnished to the regulated entity, which will be afforded an opportunity to respond.

2.13 At least one representative of ENF will attend any Inquiry management meetings, the Inquiry hearing and any sanctions hearing. Should further relevant information come to the attention of ENF during the course of the Inquiry it will bring this to the attention of the Inquiry.

### ***Legal Representation***

2.14 The regulated entity may choose to be represented at the Inquiry by a legal practitioner or, with the leave of the Inquiry Members, any other person.<sup>6</sup>

### ***Legal Practitioner***

2.15 The Act provides that the Inquiry may be assisted by a legal practitioner.<sup>7</sup> In certain potentially lengthy and complex matters more than one legal practitioner may be appointed to assist the Inquiry and different roles may be assigned to different legal practitioners. Any decision to appoint a legal practitioner and the precise role to be played by the legal practitioner in any given Inquiry will be a matter for the Inquiry Members.

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<sup>6</sup> Section 33AY(4) of the Act.

<sup>7</sup> Section 33AY(3) of the Act.

### 3. Preliminary Inquiry Procedures

#### *Notice of Inquiry*

3.1 The RDU will send a written **Notice of Inquiry**<sup>8</sup> to the regulated entity at least 25 working days in advance of an Inquiry hearing being held. The Notice of Inquiry shall:

- (a) set out the suspected prescribed contravention(s) and the grounds upon which the suspicions are based, as outlined by ENF at referral; and
- (b) append an Inquiry Management Questionnaire, as outlined further at paragraph 3.6 below.

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU by ENF at the time of the referral and a copy of the written confirmation(s) referred to at 2.5 above.

3.2 Inquiry hearings (including any Inquiry management meetings) will usually be held in public.<sup>9</sup> An Inquiry hearing may only be held in private (or part in private) in the following circumstances:<sup>10</sup>

- *by agreement*: the Inquiry and the regulated entity agree that the Inquiry should be held in private (or part in private); or
- *by decision of the Inquiry*: the Inquiry decides that the Inquiry shall be held in private (or part in private) being satisfied that:
  - (a) evidence may be given, or a matter may arise during the Inquiry that is of a confidential nature or relates to the commission, or the alleged or suspected commission, of an offence against a law of the State, or
  - (b) a person's reputation would be unfairly prejudiced.

3.3 A notice will appear on the Central Bank website advising of the time and location of the Inquiry hearing. The public and media will be able to watch

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<sup>8</sup> Section 33AP of the Act.

<sup>9</sup> Section 33AZ(1) of the Act provides that except as provided by section 33AZ(2), the Central Bank shall hold its inquiries in public.

<sup>10</sup> See Section 33AZ(2) of the Act.

and listen to the proceedings in a public gallery located within the Inquiry Room or adjacent to it.

- 3.4 If the Inquiry hearing or part of the Inquiry hearing is to be held in private a Notice will appear on the Central Bank's website outlining the fact that an Inquiry hearing is commencing which is being held in private, or is being conducted in part in private, unless the Inquiry Members direct otherwise based on the considerations outlined in paragraph 3.2.
- 3.5 A stenographer will be in attendance at all Inquiry hearings. A copy of the transcript will be made available to the Inquiry Members and the regulated entity as soon as practicable. The RDU will provide a copy of transcripts to ENF.

### ***Inquiry management***

- 3.6 Appended to the Notice of Inquiry will be an Inquiry Management Questionnaire ("**the Questionnaire**"), which must be completed and returned to the RDU by the regulated entity within the time specified in the Questionnaire (allowing at least 10 working days for response). If the regulated entity fails to respond within the time specified, the RDU will notify the Inquiry Members who may proceed to confirm the date and arrangements for the hearing without further consultation with the regulated entity.
- 3.7 The purpose of the Questionnaire is to enable the Inquiry Members to establish whether an Inquiry management meeting is required for the purpose of issuing directions prior to the Inquiry hearing. The Questionnaire may seek responses on the following topics:
- Inquiry arrangements (confirmation of suggested dates when the Inquiry will sit, estimated length of the Inquiry, legal representation);
  - any submissions in relation to the public nature of the Inquiry;
  - whether the regulated entity intends to deliver written submissions;
  - matters of evidence;
  - proposed witnesses; and
  - any other relevant matters.
- 3.8 Where the Inquiry Members decide that an Inquiry management meeting is required, the regulated entity will be invited to attend and may make submissions to the Inquiry. The Inquiry Members may agree to hold the Inquiry management meeting in private where the regulated entity wishes



to make submissions in relation to the public nature of the Inquiry.

- 3.9 It should be emphasised that the purpose of an Inquiry management meeting is to assist in the timely and efficient running of the Inquiry. It ensures that the issues to be determined at Inquiry are narrowed to the greatest extent possible. Effective Inquiry management meetings enable, for example:
- any material factual disputes to be identified at an early stage;
  - arrangements to be put in place to ensure that evidence, whether disputed or not, is presented clearly and effectively;
  - the needs of any witnesses to be taken into account; and
  - an effective programme and timetable to be established for the conduct of the Inquiry.
- 3.10 Following review of the completed Questionnaire and any Inquiry Management meeting, the Inquiry Members will issue directions to the regulated entity together with a timeframe for compliance and confirm the Inquiry hearing date and location.
- 3.11 The regulated entity will have the opportunity to provide written legal submissions in accordance with the timetable laid down in any directions given by the Inquiry Members. All submissions must be accompanied by a copy of the case law to be relied upon in the course of legal submissions.
- 3.12 If the regulated entity fails to comply with a direction made by the Inquiry Members and the Inquiry Members are satisfied of adequate notification to the regulated entity, the Inquiry hearing may proceed on the date confirmed by the Inquiry or on any other date which has been notified to the regulated entity by the RDU.
- 3.13 The Inquiry Members may direct the RDU to furnish to ENF a copy of correspondence issued to and received from the regulated entity. The Inquiry Members may also direct the RDU to furnish a copy of any written submissions received from the regulated entity to ENF and may seek ENF's response to any submissions. A copy of any response from ENF will be sent to the regulated entity.
- 3.14 A sample running order for Preliminary Inquiry Procedures is set out at **Appendix 1**.

## 4. The Inquiry Hearing

### *Form and order of proceedings*

- 4.1 The Inquiry is not a court of law, and the procedure at the Inquiry hearing will be kept as informal as possible. The Central Bank has a statutory duty to undertake the Inquiry with as little formality and technicality, and with as much expedition, as proper consideration of the matter will allow.<sup>11</sup> However, an Inquiry into suspected prescribed contravention(s) is a serious matter and the procedure at Inquiry must reflect this fact. The Inquiry will at all times observe the rules of procedural fairness, but is not bound by the rules of evidence.<sup>12</sup>
- 4.2 The Central Bank is not proposing that the Inquiry necessarily adopts the approach of a hearing adducing oral evidence. In exercising its discretion whether to hold a hearing with oral evidence, the Inquiry Members will consider whether oral evidence is necessary for a fair determination of the suspected prescribed contravention(s), having considered any submissions by the regulated entity on the matter.

### *Standard of proof*

- 4.3 The Inquiry Members shall make findings as to whether the regulated entity is committing or has committed the prescribed contravention(s) to which the Inquiry relates on the balance of probabilities.

### *Legal submissions*

- 4.4 As outlined in paragraph 3.11, the regulated entity will have the opportunity to provide written legal submissions prior to the Inquiry hearing date and in accordance with the directions of the Inquiry. In the context of a hearing, with or without oral evidence, the regulated entity will also be afforded the opportunity of making oral legal submissions.

### *Applications during an Inquiry*

- 4.5 The Inquiry Members must act fairly and must consider and deliberate upon such applications as may be made to them in the course of the Inquiry.

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<sup>11</sup> Section 33AY(1) of the Act.

<sup>12</sup> Section 33AY(2) of the Act.

4.6 The Inquiry Members may be required to deal with a number of preliminary applications and issues, including *inter alia*:

1. A decision to proceed in the absence of the regulated entity

The Inquiry may proceed in the absence of the regulated entity provided that the regulated entity has been given an opportunity to participate in an Inquiry or to make written submissions to it.<sup>13</sup>

2. A request for an adjournment

The Inquiry Members may, at any point during an Inquiry, be requested to adjourn any Inquiry hearing. The Inquiry Members have the discretion to grant or refuse an application for an adjournment. In considering any such request the Inquiry Members shall exercise their discretion fairly, in accordance with fair procedures, taking into account the circumstances of the application and any submissions made, and where granted shall ensure that the regulated entity is notified of the date, time and place at which any Inquiry hearing is to be resumed.<sup>14</sup>

### ***Commencement of the Inquiry Hearing***

4.7 At the beginning of a hearing, the Chairperson shall state the purpose of the Inquiry and introduce the Inquiry Members and explain the manner and order of the Inquiry. **Appendices 2 and 3** outline sample running orders but these formats are flexible and may be varied by the Inquiry Members.

4.8 Following this introduction, the suspected contraventions, as per the Notice of Inquiry, will be set out by the Chairperson with the main facts, dates and persons involved outlined. If minor or clerical amendments are to be made to the Notice of Inquiry by the Inquiry Members, they will be raised at this stage. If more substantive amendments are required and the regulated entity has not agreed to such amendments in advance, the hearing may be adjourned in order to give the regulated entity adequate time to consider the amendments. The regulated entity will then be invited to make any preliminary submissions.

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<sup>13</sup> Section 33AP(5) of the Act.

<sup>14</sup> Section 33AP(4) of the Act.

### ***Hearing without oral evidence***

- 4.9 A hearing may be convened for the purpose of hearing oral submissions only. The Inquiry Members may decide, following consideration of any submissions by the regulated entity, that the matter is suited to resolution without adducing oral evidence. The Inquiry Members will then conduct their review based on relevant documents, any witness statements, written submissions and oral submissions.
- 4.10 A sample running order for this type of Inquiry is set out at **Appendix 2**.

### ***Hearing with oral evidence***

- 4.11 Once the suspicions against the regulated entity have been set out and the regulated entity has been invited to make preliminary submissions, witnesses may be called. The Inquiry Members will call such witnesses as they wish to hear from to give evidence at the Inquiry. A legal practitioner assisting the Inquiry Members may be required to lead evidence or cross-examine witnesses as appropriate. The legal or other representative of the regulated entity may also lead evidence or cross-examine witnesses as appropriate. In addition Inquiry Members may question witnesses as appropriate.
- 4.12 During the course of an Inquiry, at any time from the appointment of the Inquiry Members to the conclusion of the Inquiry, the Inquiry Members may, in writing:
- summons a person to appear before the Inquiry Members to give evidence and/or produce specified documents; and
  - require the person to attend each day of the hearing unless excused or released from attendance.<sup>15</sup>
- 4.13 The Chairperson may require the oral testimony of a witness to be given on oath. He or she may also:
- require a witness at the Inquiry to answer a question put to the witness; and
  - require a person appearing at the Inquiry pursuant to a summons to

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<sup>15</sup> Section 33BA(1) of the Act.

produce any document specified in the summons.<sup>16</sup>

4.14 The Chairperson may also allow a witness at the Inquiry to give evidence by tendering a written statement, verified by oath.<sup>17</sup> The witness may be required to attend the Inquiry hearing for the purposes of examination.

4.15 An answer to a question put to a person, or information provided by a person, in response to a requirement shall not be admissible as evidence against the person in criminal proceedings, other than proceedings for perjury, if the information was provided on oath.<sup>18</sup>

4.16 A person may be held to have committed a criminal offence where they:

- obstruct the Inquiry in the exercise of a power conferred under Part IIIC of the Act;
- without reasonable excuse, fail to comply with a requirement or request made by the Inquiry under Part IIIC of the Act;
- in purported compliance with such a requirement or request, give information that the person knows to be false or misleading; or
- refuse to comply with a summons to attend before, or to be examined on oath by, the Inquiry.<sup>19</sup>

4.17 The Inquiry has the same powers with respect to the examination of witnesses (including witnesses who are outside the State) that a judge of the High Court has when hearing civil proceedings that are before the High Court. A person who is summoned to appear before the Inquiry will be entitled to the same rights and privileges as a witness appearing in civil proceedings before the High Court.<sup>20</sup>

4.18 A sample running order for this type of Inquiry is set out at **Appendix 3**.

### ***No oral hearing or evidence***

4.19 The Inquiry Members may decide to proceed on an entirely written basis, *i.e.* without oral submissions or evidence. This may occur where the Inquiry Members do not intend to take oral evidence and:

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<sup>16</sup> Section 33BA(2)-(4) of the Act specifically reserves these powers to the person presiding at the Inquiry.

<sup>17</sup> Section 33BA(5) of the Act also specifically reserves this power to the person presiding at the Inquiry.

<sup>18</sup> Section 33BA(8) of the Act.

<sup>19</sup> Section 33BA(9) of the Act.

<sup>20</sup> Section 33BA(6)&(7) of the Act.

- i) the regulated entity has indicated in the Questionnaire that it does not intend to make oral submissions; or
- ii) the regulated entity has been afforded an opportunity to be present at the Inquiry hearing, but has failed to appear.<sup>21</sup>

### ***Referral to the High Court on a point of law***

4.20 The Inquiry Members may, on their own initiative or at the request of the regulated entity or ENF, refer a question of law arising during the Inquiry to the High Court for decision.<sup>22</sup> This procedure constitutes a consultative case-stated procedure, the main purpose of which is to seek clarification on a point of law. The Inquiry Members are not obliged to state a case upon being requested to do so.

4.21 Where a question of law is referred to the High Court, the Inquiry will be temporarily stayed in full or in part (depending on whether the question is relevant to all of the prescribed contraventions), pending a decision by the High Court.

4.22 The question of law shall be drafted by or for the Inquiry Members taking into account any submissions and shall be sent by the RDU to the High Court, accompanied by all documents before the Inquiry that are relevant to the matter in question.<sup>23</sup>

### ***Applications for an adjournment to pursue settlement***

4.23 The Central Bank has authority and discretion to enter into a settlement agreement with the regulated entity at any stage before completion of the Inquiry.<sup>24</sup>

4.24 Where the regulated entity wishes to settle the matter immediately prior to or during the course of the Inquiry, the regulated entity and/or its legal adviser should contact ENF. The Inquiry Members may adjourn any hearing in order to facilitate settlement but shall have no other role in relation to settlement. The settlement discussions shall be carried out in private. The details of any settlement discussions should not be disclosed to the Inquiry

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<sup>21</sup> In accordance with section 33AP(5) of the Act.

<sup>22</sup> Section 33BB(1) of the Act.

<sup>23</sup> Section 33BB(3) of the Act.

<sup>24</sup> Section 33AV of the Act.

Members. Where the matter is successfully settled, the Inquiry Members shall be informed of the fact of settlement. Where settlement discussions are unsuccessful, the Inquiry shall, where it has been adjourned, be resumed.

- 4.25 Settlement agreements will be concluded only where the basis for settlement is consistent with the general approach to regulation adopted by the Central Bank, is fair having regard to all the facts known, and will contribute to the efficient, effective and economic use of resources.

## 5. The Findings of the Inquiry Members

### *Written Findings*

- 5.1 Following any closing submissions and a review of all the evidence, the Inquiry Members shall set out in writing their finding(s) as to whether the regulated entity is committing or has committed the prescribed contravention(s) to which the Inquiry relates.<sup>25</sup>
- 5.2 In all circumstances, the Inquiry Members shall produce written findings, which shall set out:
- their findings as to whether or not the regulated entity:
    - (a) is committing or has committed a prescribed contravention, or
    - (b) is participating or has participated in the commission of the prescribed contravention to which the Inquiry relates; and
  - the grounds on which their findings are based.
- 5.3 The written findings will be delivered to the regulated entity as soon as the written findings are available. The regulated entity will be kept informed of any delays in the completion of the written findings.
- 5.4 If necessary, the Inquiry Members will invite the regulated entity to attend before them on a specified date for a sanctions hearing.

### *Sanctions*

- 5.5 A sanctions hearing will either: (a) follow the Inquiry Members' written findings; or (b) constitute a standalone hearing in circumstances where the regulated entity acknowledges that the regulated entity is committing or has committed the contravention.<sup>26</sup>
- 5.6 The Inquiry Members will invite submissions regarding sanctions from the regulated entity and ENF.
- 5.7 The regulated entity will be entitled to submit any documentation relevant to the Inquiry Members' decision on sanctions once the Inquiry Members have delivered their findings on the prescribed contravention(s). Oral

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<sup>25</sup> Section 33AQ(1) and (2) of the Act.

<sup>26</sup> Section 33AR of the Act.



submissions may also be made directly to the Inquiry Members at the sanctions hearing.

5.8 If the Inquiry Members find that a regulated entity is committing or has committed a prescribed contravention, or is participating or has participated in the commission of such a contravention, the Inquiry Members may, pursuant to Part IIIC of the Act<sup>27</sup>, impose one or more of the following sanctions:

- (a) a caution or reprimand;
- (b) a direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service by the regulated financial service provider;
- (c) a direction to pay to the Central Bank a monetary penalty (not exceeding the prescribed maximum amount, see paragraph 5.10 below);
- (d) except where the provisions of Council Regulation (EU) No 1024/2013 apply, suspension of the regulated financial service provider's authorisation<sup>28</sup> in respect of any one or more of its activities, for such period, not exceeding 12 months, as the Central Bank considers appropriate;
- (e) except where the provisions of Council Regulation (EU) No 1024/2013 apply, revocation of the regulated financial service provider's authorisation<sup>29</sup>;
- (f) a direction disqualifying a person from being concerned in the management of a regulated financial service provider for such period as is specified in the order;
- (g) if the contravention is found to be on-going, a direction ordering the contravention to cease;
- (h) a direction to pay the Central Bank all or a specified part of the costs incurred by it in holding the Inquiry and investigating the matter.<sup>30</sup>

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<sup>27</sup> It may arise that other sanctions, further or in addition to the sanctions outlined in section 33AQ of the Act, may be available to the Inquiry Members. For example, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide that particular sanctions may be imposed in respect of certain contraventions as set out therein.

<sup>28</sup> As per Section 33AQ(9) of the Act 'authorisation', in this context, means an authorisation, licence, or any other permission required to carry on business as a regulated entity granted by the Central Bank pursuant to any provision of financial services legislation, and includes registration.

<sup>29</sup> As per Section 33AQ(9) of the Act 'authorisation', in this context, means an authorisation, licence, or any other permission required to carry on business as a regulated entity granted by the Central Bank pursuant to any provision of financial services legislation, and includes registration.

<sup>30</sup> See Sections 33AQ(3) and (5) of the Act.

5.9 All the circumstances of the case will be taken into account by the Inquiry Members in determining the appropriate sanction(s) and, in doing so, regard may be had to the following factors<sup>31</sup> –

1. The Nature, Seriousness and Impact of the Contravention

- (a) whether the contravention was deliberate, dishonest or reckless;
- (b) duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided due to the contravention;
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;
- (e) the extent to which the contravention departs from the required standard;
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;
- (g) the loss or detriment or the risk of loss or detriment caused to consumers or other market users;
- (h) the effect, if any, of the contravention on vulnerable consumers;<sup>32</sup>
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

2. The Conduct of the Regulated entity after the Contravention

- (a) how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority;
- (b) the degree of co-operation with the Central Bank or other agency provided during the investigation of the contravention;

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<sup>31</sup> Where appropriate the Inquiry Members may take other circumstances into account, for example, see Regulation 58 of the European Union (Capital Requirements) Regulations 2014.

<sup>32</sup> The term “vulnerable consumer” has the same meaning as the definition set out in Chapter 12 (‘Definitions’) of the Consumer Protection Code 2012 at p.75.

- (c) any remedial steps taken since the contravention was identified, including identifying whether consumers have suffered loss or detriment and compensating them, taking disciplinary action against staff involved (where appropriate), addressing any systemic failures, and taking action designed to ensure that similar problems do not arise in the future;
- (d) the likelihood that the same type of contravention will recur if no administrative sanction is imposed;
- (e) whether the contravention was admitted or denied.

3. The Previous Record of the Regulated entity

- (a) whether the Central Bank has taken any previous enforcement action including instances resulting in a settlement or sanctions or whether there are relevant previous criminal convictions;
- (b) whether the regulated entity has previously undertaken not to do a particular act or engage in particular behaviour;
- (c) whether the regulated entity has previously been requested to take remedial action, and the extent to which such action has been taken.

4. Other General Considerations

- (a) prevalence of the contravention;
- (b) the appropriate deterrent impact of any sanction on the regulated entity and on other regulated entities;
- (c) action taken by the Central Bank in previous similar cases;
- (d) the level of turnover of the regulated entity in its last complete financial year prior to the commission of the contravention; and
- (e) any other relevant consideration.

5.10 Where a monetary penalty is imposed, pursuant to section 33AQ or section 33AR of the Act, the amount shall not exceed: <sup>33</sup>

- (a) in the case of a body corporate or an unincorporated body, the greater of
  - i) €10,000,000, and
  - ii) an amount equal to 10% of the turnover of the body for its last complete financial year before the finding is made;

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<sup>33</sup> Notwithstanding Part IIIC of the Act and the sanctions set out in section 33AQ of the Act, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide for administrative pecuniary penalties which may be imposed in respect of particular contraventions by regulated entities.

- (b) in the case of a natural person, €1,000,000; or
- (c) such other amount as may be prescribed by regulations.

The monetary penalty shall not be of an amount that would be likely to cause the regulated entity to cease business, or in the case of a natural person would be likely to cause the person concerned to be adjudicated bankrupt.<sup>34</sup> If more than one contravention is found in respect of the same conduct, only one monetary penalty may be imposed.<sup>35</sup>

- 5.11 If a monetary penalty is imposed in respect of a contravention which is also an offence under the law of the State, the regulated entity is not liable to be otherwise prosecuted or punished for the offence.<sup>36</sup> Where a regulated entity has already been tried for an offence and found either guilty or not guilty, and the offence involved a prescribed contravention, a monetary penalty may not be imposed.<sup>37</sup>
- 5.12 At the conclusion of a sanction hearing the Inquiry Members shall issue their written decision, which will set out their findings, the sanctions, if any, imposed and the reasons for same.<sup>38</sup>

### ***Appeal to the Irish Financial Services Appeals Tribunal***

- 5.13 A decision of the Inquiry may be appealed by the regulated entity to the Irish Financial Services Appeals Tribunal (**"IFSAT"**) within 28 days of being notified of that decision, or within such time as agreed with the Registrar and Chairperson of IFSAT.<sup>39</sup> IFSAT may affirm, vary, substitute or set aside the decision or remit the matter back to the Inquiry for reconsideration, together with any recommendation or direction as to the matters to be reconsidered.

### ***Appeal to the High Court***

- 5.14 The regulated entity or the Central Bank may appeal the decision of IFSAT to the High Court within 28 days of being notified of the decision, or within such time as the High Court may allow.<sup>40</sup> An appeal to the High Court does not affect the operation of the IFSAT decision appealed against, or prevent the taking of action to implement the decision, unless the High Court

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<sup>34</sup> See Sections 33AS(1) and (2) of the Act.

<sup>35</sup> Section 33AS(3) of the Act.

<sup>36</sup> Section 33AT(1) of the Act.

<sup>37</sup> Section 33AT(2) of the Act.

<sup>38</sup> Section 33AQ(7) & (8) of the Act.

<sup>39</sup> Section 57L(1) of the Act.

<sup>40</sup> Section 57AK of the Act.

otherwise orders.<sup>41</sup>

5.15 The High Court may make such order as it sees fit in light of its decision, including, but not limited to, affirming or setting aside the decision of IFSAT, or remitting the matter to IFSAT with such directions as it sees fit. The decision of the High Court is final, save that an appeal may be brought to the Supreme Court on a point of law only, with leave of either Court.<sup>42</sup>

***When a decision of the Inquiry takes effect***

5.16 A decision by the Inquiry Members to impose a **caution or reprimand** will take effect:<sup>43</sup>

- if no appeal is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT);<sup>44</sup> or
- if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT (with or without variation), at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT’s determination having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows);<sup>45</sup> or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

5.17 A decision by the Inquiry Members directing payment of a **monetary**

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<sup>41</sup> Section 57AM of the Act.

<sup>42</sup>Section 57AL(3) of the Act.

<sup>43</sup> Section 33AW(1) of the Act.

<sup>44</sup> Section 57L(2)(b) of the Act.

<sup>45</sup> Section 57AK(3) of the Act.

**penalty, a refund of money or costs** will take effect:<sup>46</sup>

- if the amount is not paid to the Central Bank within the period allowed for appeals against such a decision (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT), and no appeal to IFSAT is lodged (or having been lodged, is withdrawn), at the time when the decision is confirmed by an order of a court of competent jurisdiction;<sup>47</sup> or
- where an appeal is lodged with IFSAT and the decision is confirmed by that Tribunal (with or without variation), at the time when the period allowed for lodging an appeal against IFSAT's determination with the High Court has ended (28 days after the affected person is notified of IFSAT's decision or such extended period as the High Court allows), no appeal having been lodged within that period; or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is lodged with the High Court against IFSAT's determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is lodged with the High Court against IFSAT's determination and withdrawn, at the time of withdrawal.

5.18 **A disqualification direction** will take effect:<sup>48</sup>

- if no appeal is lodged with IFSAT within the period allowed for bringing such an appeal (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT), or is lodged within that period but is later withdrawn, at the time when it is confirmed by an order of a District Court; or
- if an appeal is lodged with IFSAT and the direction is confirmed by IFSAT, at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT's determination

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<sup>46</sup> Section 33AW(2) of the Act.

<sup>47</sup> Section 33AW(2)(a) of the Act.

<sup>48</sup> Section 33AW(3) of the Act.

having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows); or

- if such an appeal is lodged within that period but is later withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

**5.19 Any other decision by the Inquiry Members will take effect:**<sup>49</sup>

- if no appeal against the decision is lodged with IFSAT within the period allowed, at the end of that period (28 days after the affected person is notified of the decision or such extended period as the Registrar of IFSAT allows after consulting with the Chairperson of IFSAT); or
- if an appeal is lodged with IFSAT and the decision is confirmed by IFSAT (with or without variation), at the time when the period allowed for lodging an appeal with the High Court has ended, no appeal against IFSAT’s determination having been lodged within that period (28 days after the affected person is notified of IFSAT’s decision or such extended period as the High Court allows); or
- where an appeal is lodged with IFSAT and withdrawn, at the time of withdrawal; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination and the determination is confirmed (with or without variation), at the time of confirmation; or
- where an appeal is subsequently made to the High Court against IFSAT’s determination, and withdrawn, at the time of withdrawal.

***Publication***

5.20 Generally, the Central Bank’s obligations to publish the findings of an

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<sup>49</sup> Section 33AW(4) of the Act.

Inquiry are set out in section 33BC of the Act<sup>50</sup>. Pursuant to section 33BC of the Act, where the Inquiry Members have found that a regulated entity is committing or has committed a prescribed contravention and/or the Inquiry Members have imposed a sanction, the Central Bank must, subject to paragraph 5.21, publish in such form and manner as it considers appropriate the Inquiry Members' findings and such (if any) of the particulars of the contravention(s)<sup>51</sup> as it thinks appropriate, which will ordinarily include:

- (a) the name of the regulated entity on whom a sanction has been imposed;
- (b) details of the prescribed contravention(s) in respect of which the sanction has been imposed;
- (c) details of the sanction imposed; and
- (d) the grounds on which the finding is based.<sup>52</sup>

5.21 Notwithstanding this, the Central Bank is not required to publish a finding or particulars:

- if publication of the finding or particulars involves the disclosure of confidential information the disclosure of which is prohibited by the 'Rome Treaty'<sup>53</sup>; the ECSB Statute or the Supervisory Directives (within the meaning of section 33AK(10) of the Act); or
- if the Inquiry Members determine:
  - (i) that the finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State; or
  - (ii) that publication of the finding or particulars would unfairly prejudice a person's reputation.<sup>54</sup>

5.22 The regulated entity shall be entitled to make submissions in relation to publication. Such submissions shall not affect the timeframe within which

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<sup>50</sup> There are, however, circumstances where different publication provisions apply in respect of the imposition of sanctions. For example where the prescribed contravention constitutes a breach of the European Union (Capital Requirements) Regulations 2014 and/or Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Regulation 56 of European Union (Capital Requirements) Regulations 2014 applies.

<sup>51</sup> Section 33BC(1) and (2) of the Act.

<sup>52</sup> Section 33BC(3) of the Act.

<sup>53</sup> The Treaty on the Functioning of the European Union.

<sup>54</sup> Section 33BC(4) of the Act.



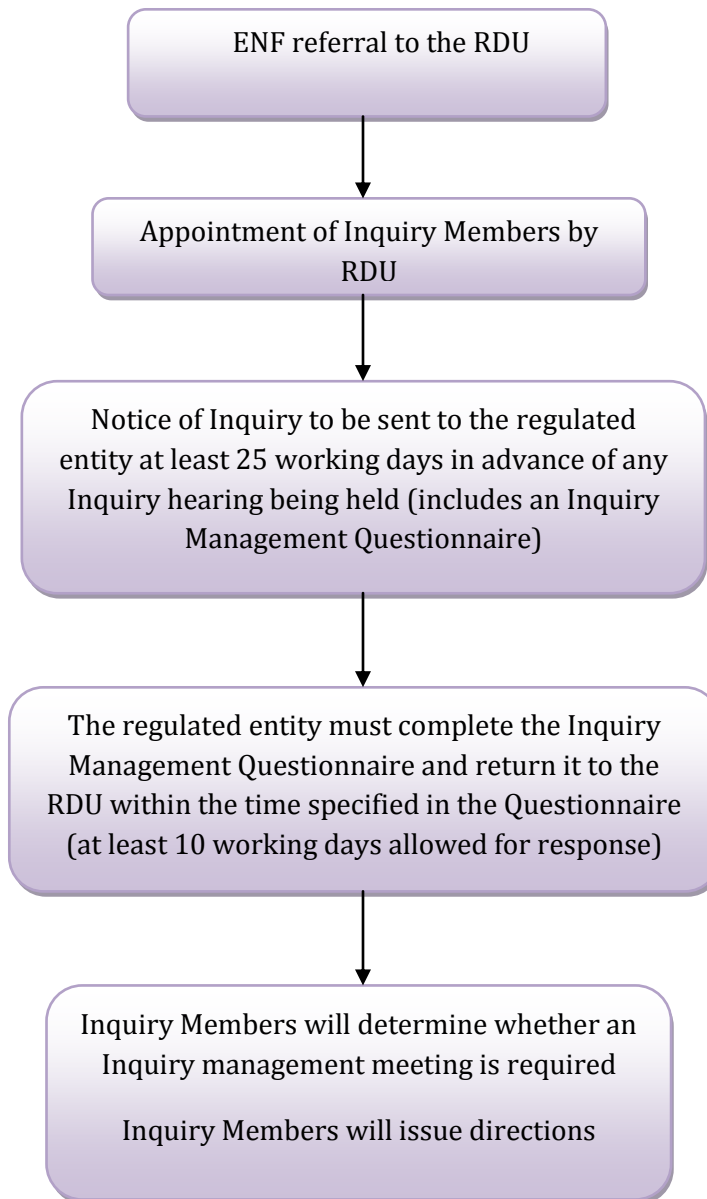
the regulated entity must appeal the decision.

- 5.23 Separate to the publication of the Inquiry Members' findings, the Central Bank may issue a market commentary on the outcome of the Inquiry, which will outline the Central Bank's view of how the findings in the case apply more broadly to the market at issue.
- 5.24 The Central Bank will publish annually, in summary form, information on its actions under Part IIIC of the Act<sup>55</sup>, including on the decisions of any Inquiry conducted.

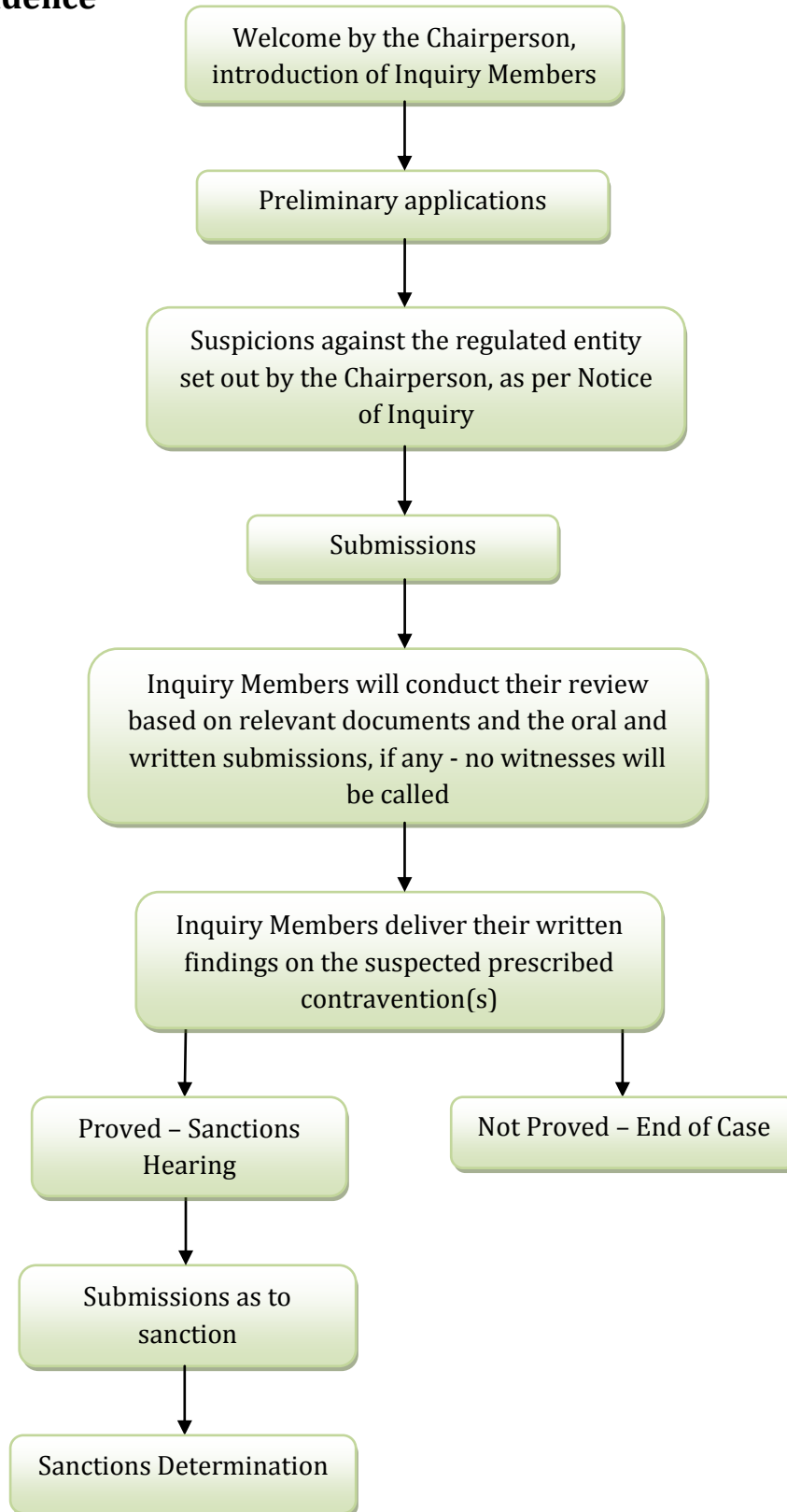
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<sup>55</sup> Section 33BC(5) of the Act.

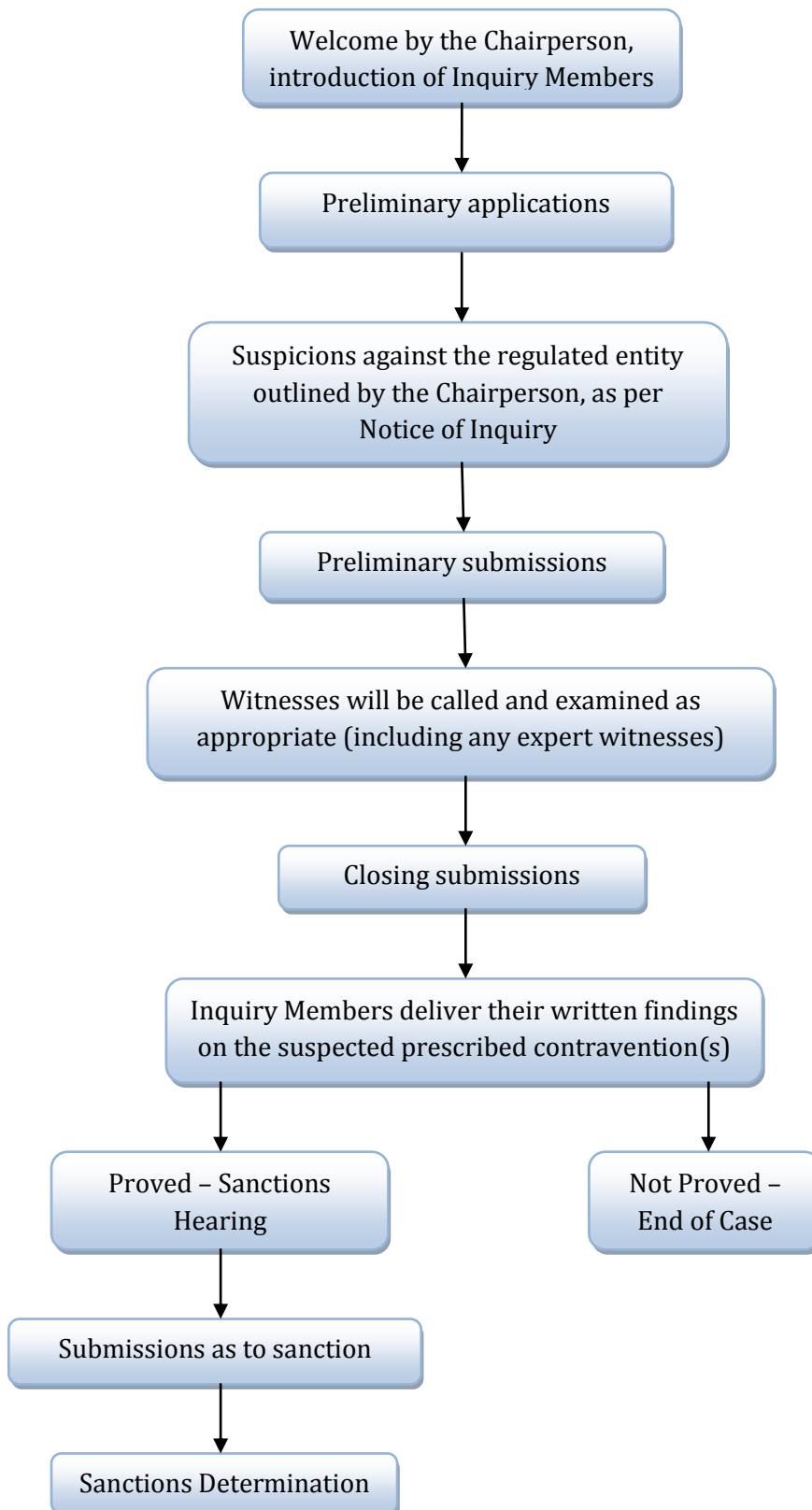
## Appendix 1: Preliminary Inquiry Procedures



## Appendix 2: Order of proceedings at hearing without oral evidence



### Appendix 3: Order of proceedings at hearing with oral evidence



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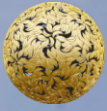


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2014

## Outline of the Administrative Sanctions Procedure



## Contents

<b>1. INTRODUCTION</b> .....	<b>3</b>
<b>2. AN OVERVIEW OF THE ADMINISTRATIVE SANCTIONS PROCEDURE</b> .....	<b>5</b>
2.1 INTRODUCTION.....	5
2.2 THE SINGLE SUPERVISORY MECHANISM AND CRDIV .....	6
2.3 WHAT IS A PRESCRIBED CONTRAVENTION?.....	7
<b>3. INVESTIGATIONS</b> .....	<b>9</b>
3.1 INTRODUCTION.....	9
3.2 DECISION TO COMMENCE AN INVESTIGATION .....	9
3.3 INVESTIGATION LETTERS.....	11
3.4 GATHERING OF EVIDENCE IN THE INVESTIGATION.....	12
3.5 REFERRAL TO PROSECUTING OR DISCIPLINARY BODIES.....	12
3.6 CRIMINAL PROSECUTION.....	13
3.7 FINALISING AN INVESTIGATION .....	14
<b>4. SETTLEMENT POLICY AND PROCEDURE</b> .....	<b>20</b>
4.1 LEGISLATIVE PROVISIONS ON SETTLEMENT .....	20
4.2 THE CENTRAL BANK'S APPROACH TO SETTLEMENT.....	20
4.3 COMMENCEMENT OF THE SETTLEMENT PROCEDURE.....	22
4.4 EARLY SETTLEMENT DISCOUNT SCHEME .....	22
4.5 SETTLEMENT MEETING .....	24
4.6 SETTLEMENT AGREEMENT.....	25
4.7 PUBLIC STATEMENT.....	27
4.8 EFFECT OF SETTLEMENT AGREEMENT.....	28
<b>5. THE INQUIRY</b> .....	<b>31</b>
5.1 THE INQUIRY GUIDELINES.....	31
5.2 INQUIRY NOTICE.....	31
5.3 INQUIRY PROCEDURE.....	32
5.4 APPEALS .....	32
5.5 PUBLICITY.....	32
<b>6. SANCTIONS</b> .....	<b>35</b>
6.1 INTRODUCTION.....	35
6.2 TYPES OF SANCTIONS IMPOSED .....	35
6.3 SANCTIONING FACTORS .....	36
6.4 RESTRICTION ON IMPOSITION OF MONETARY PENALTIES .....	38
6.5 WHEN A DECISION OF THE INQUIRY TAKES EFFECT .....	39
<b>APPENDIX 1: SAMPLE PUBLIC STATEMENT</b> .....	<b>40</b>



<b><u>Version</u></b>	<b><u>Date</u></b>	<b><u>Amendments</u></b>
<b><u>1.1</u></b>	<b><u>October 2005</u></b>	
<b><u>1.2</u></b>	<b><u>2010</u></b>	<b><u>Minor amendments to reflect the creation of a dedicated enforcement function within the Central Bank of Ireland.</u></b>
<b><u>2.1</u></b>	<b><u>2013</u></b>	<b><u>Outline amended to reflect the issuance of the Inquiry Guidelines in 2013 which repealed and replaced the previous Administrative Sanctions Guidelines published by the Central Bank of Ireland in October 2005.</u></b>
<b><u>2.2</u></b>	<b><u>2014</u></b>	<b><u>Outline amended to reflect the issuance of the Inquiry Guidelines 2014 which repealed and replaced the previous Inquiry Guidelines 2013, primarily, in order to reflect the introduction of the Single Supervisory Mechanism.</u></b>



## 1. Introduction

- 1.1 This Outline of the Administrative Sanctions Procedure (“**the Outline**”) describes the structures and procedures of the Administrative Sanctions Procedure of the Central Bank of Ireland (“**the Central Bank**”) under Part IIIC of the Central Bank Act 1942 (as amended) (“**the Act**”). Reference in the Outline to the Administrative Sanctions Procedure refers only to the Administrative Sanctions Procedure under Part IIIC of the Act. While the Outline indicates the procedure that the Central Bank will generally follow, it may be necessary to depart from the procedure outlined herein in appropriate circumstances.
- 1.2 The Outline does not purport to represent a definitive legal interpretation of Part IIIC of the Act and, in case of doubt, you should refer to the relevant legislative provisions and the Inquiry Guidelines published pursuant to section 33BD of the Act (“**the Inquiry Guidelines**”)<sup>1</sup>, or seek legal advice, if required.
- 1.3 This document, which replaces the “Outline of Administrative Sanctions Procedure” published by the Central Bank in October 2005, is a “live” document that will be updated from time to time and brought specifically to the attention of regulated financial service providers and/or persons concerned in their management at the time they are notified of an Investigation<sup>2</sup> having been commenced.
- 1.4 References in the Outline to “*regulated entities*” or “*regulated entity*” can be taken to include both present and former regulated financial service providers, as well as persons presently or formerly concerned in their management and any other person subject to Part IIIC of the Act. Similarly, in this regard, reference to regulated entities having committed a prescribed contravention, can be taken to include situations where persons presently or formerly concerned in their management, or any other person subject to Part IIIC of the Act, have

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<sup>1</sup> A copy of the Inquiry Guidelines is available on the Central Bank website.

<sup>2</sup> See Part 3 below.

participated in that prescribed contravention.

## 2. An Overview of the Administrative Sanctions Procedure

### 2.1 Introduction

2.1.1 The Central Bank and Financial Services Authority of Ireland Act 2004 introduced Part IIC of the Act to give the Central Bank additional, stronger powers to enable it to promote compliance with regulatory requirements. Under the Act, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements (referred to in the Act and throughout the Outline as “**prescribed contraventions**”) by regulated entities and to publicise the findings and sanctions imposed. The Central Bank (Supervision and Enforcement) Act 2013 (“**the 2013 Act**”) and transposition of European Directives<sup>3</sup> further strengthened these powers by introducing additional sanctions under the Administrative Sanctions Procedure, and substantially increasing the fines available thereunder.

2.1.2 Generally, where a concern arises that a prescribed contravention has been or is being committed, the Central Bank may investigate<sup>4</sup>. Following any investigation, an Inquiry<sup>5</sup> may be held where there are reasonable grounds to suspect that a prescribed contravention has been or is being committed. The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions. The final decision of an Inquiry may be appealed to the Irish Financial Services Appeals Tribunal (“**IFSAT**”)<sup>6</sup> and subsequently to the High Court.

2.1.3 As an alternative, the Administrative Sanctions Procedure provides that, at any time before the conclusion of an Inquiry, the matter may be resolved by entering

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<sup>3</sup> For example, the European Union (Capital Requirements) Regulations 2014.

<sup>4</sup> An investigation may also arise on foot of a requirement of the European Central Bank pursuant to Article 18(5) of Council Regulation (EU) No 1024/2013 (SSM Regulation). Additionally, where under the Single Supervisory Mechanism the European Central Bank is competent (as referred to at paragraph 2.2 below) for the supervision of certain entities the Central Bank may not be competent to impose monetary sanctions.

<sup>5</sup> See Part 5 below.

<sup>6</sup> Established under section 57C of the Act.

into a Settlement Agreement.<sup>7</sup> This is a written agreement which binds both the Central Bank and the regulated entity. The settlement procedure is discussed in detail in Part 4 of the Outline.

## **2.2 *The Single Supervisory Mechanism and CRDIV***

An important progression within the area of banking supervision is the creation of the Single Supervisory Mechanism<sup>8</sup> (the “SSM”) which involves, amongst other things, the direct supervision of certain entities<sup>9</sup> by the European Central Bank. Consequently, in certain instances the European Central Bank will be competent for the investigation and sanctioning of regulatory breaches. In other instances the European Central Bank may require the Central Bank to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed.

In addition, following the commencement of the European Union (Capital Requirements) Regulations 2014<sup>10</sup> certain specific sanctions, as provided for in Regulations 54 and 55 of those Regulations, may now be imposed by the Central Bank following an Inquiry under section 33AO of the Act.

This document does not purport to present a definitive legal interpretation of the legislation underpinning the SSM or of the European Union (Capital Requirements) Regulations 2014 but does reference where SSM or CRDIV are relevant to or impact on the ASP and its operation under Part IIIC of the Act.

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<sup>7</sup> See Section 4.6 below.

<sup>8</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions effectively establishes the SSM.

<sup>9</sup> Tasks conferred on the ECB are set out at Article 4 of Council Regulation (EU) No 1024/2013 of 15 October 2013.

<sup>10</sup> The European Union (Capital Requirements) Regulations 2014, give effect to the Capital Requirements Directive (Directive 2013/36/EU) and the European Union (Capital Requirements) (No. 2) Regulations 2014, give effect to a number of technical requirements in order that the Capital Requirements Regulation (Regulation 575/2013) (the “CRR”) can operate effectively in Irish law. That Directive and the CRR (together referred to as “CRD IV”) form a package of reforms to the European Union’s capital requirements regime for credit institutions and investment firms, the main purpose being to implement key Basel III reforms.

## 2.3 What is a Prescribed Contravention?

2.3.1 A prescribed contravention is a breach of:

- a provision of a designated enactment, including any instrument made thereunder, or a designated statutory instrument; or
- a code made, or a direction given, under such a provision; or
- any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction; or
- any obligation imposed on any person by Part IIIC of the Act or imposed by the Central Bank pursuant to a power exercised under Part IIIC of the Act.<sup>11</sup>

The list of designated enactments and designated statutory instruments is located in Schedule 2 of the Act.<sup>12</sup>

2.3.2 As there are many instances where the Central Bank issues statutory instruments, or imposes conditions, directions or requirements, pursuant to a designated enactment or statutory instrument, Schedule 2 of the Act will not provide a definitive list of the legal provisions which may give rise to a prescribed contravention under Part IIIC of the Act. Some obligations, in the form of conditions, directions or requirements, are imposed on a bilateral basis. These obligations will be known only to the Central Bank and the regulated entity involved.

2.3.3 Administrative sanctions cases may also be taken where a regulated entity:

- attempts to commit a prescribed contravention;
- aids, abets, counsels or procures a person to commit a prescribed

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<sup>11</sup> Section 33AN of the Act.

<sup>12</sup> For the purposes of Part IIIC of the Act, the phrases “*designated enactment*” and “*designated statutory instrument*” do not include:

- Parts 4 or 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;
- The Market Abuse (Directive 2003/6/EC) Regulations 2005 (S.I. 342/05);
- The Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. 324/05);
- Part 5 of the European Union (European Markets Infrastructure) Regulations 2014; and that amendment to section 33AN; or
- Regulations for the time being in force made under section 20 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006.

- contravention;
- induces, or attempts to induce, a person (whether by threats or promises or otherwise) to commit a prescribed contravention;
  - is (directly or indirectly) knowingly concerned in, or a party to, a prescribed contravention; and
  - conspires with others to commit a contravention.<sup>13</sup>

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<sup>13</sup> Section 33AN of the Act.

### 3. Investigations

#### 3.1 *Introduction*

3.1.1 The investigatory phase of the Administrative Sanctions Procedure will be referred to as the “**Investigation**”. This is without prejudice to the fact that Supervisory Divisions<sup>14</sup> may engage in their own investigations in the ordinary course of their functions.

3.1.2 The purpose of the Investigation is to allow the gathering of sufficient information to enable the Central Bank to determine whether it has reasonable grounds to suspect that a prescribed contravention has been, or is being, committed by a regulated entity, and accordingly whether to refer the matter to Inquiry, or take such other action as is appropriate in the circumstances. The Central Bank will only establish an Inquiry in circumstances where the Central Bank has brought the relevant matters to the attention of the regulated entity and they have had a reasonable opportunity to respond.

#### 3.2 *Commencement of an Investigation*

3.2.1 Concerns that prescribed contraventions may have been committed will arise in the normal course of work undertaken by a Supervisory Division, or may arise from other sources. Information gathered pursuant to any such concerns may be referred by the relevant Supervisory Division to the Enforcement Directorate<sup>15</sup>, whereupon the Enforcement Directorate will become the regulated entity’s point of contact for all matters relating to the Investigation. The relevant Supervisory Division will continue to be the regulated entity’s point of contact for matters outside the remit of the Investigation.

3.2.2 An investigation may also be commenced where the Central Bank is required to open proceedings by the European Central Bank pursuant to Article 18(5) of

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<sup>14</sup> A Supervisory Division is one which in the ordinary course of its functions within the Central Bank engages in ongoing supervision and oversight of regulated entities.

<sup>15</sup> The Enforcement Directorate is primarily concerned with enforcement action against regulated entities under financial services legislation.

Council Regulation (EU) No 1024/2013 of 15 October 2013 (the “SSM Regulation”).



### 3.3 *Investigation Letters*

- 3.3.1 Once an Investigation has commenced, the Enforcement Directorate will issue letters to the regulated entity in relation to matters relevant to the Investigation (“**Investigation Letters**”). The Central Bank may issue a number of Investigation Letters during the course of an Investigation.
- 3.3.2 Investigation Letters may contain an outline of the suspected prescribed contraventions, and/or may call upon the regulated entity to provide information, responses to specific questions, or responses to the suspected prescribed contraventions. Investigation Letters may also enclose key documents and materials, where appropriate. Where suspected prescribed contraventions are outlined in an Investigation Letter, these may be subject to later amendment or addition in light of the responses received from the regulated entity and/or any other information or evidence gathered during the course of the Investigation or otherwise in the possession of the Central Bank.
- 3.3.3 The Investigation Letters will place the regulated entity on notice that the matter may be referred to Inquiry and will indicate that the Central Bank will consider any responses from the regulated entity to the Investigation Letters in deciding whether to refer the matter to Inquiry.
- 3.3.4 The Investigation continues notwithstanding the issuance of Investigation Letters and further information may be sought from the regulated entity. During the Investigation the Central Bank will consider the responses and information received from the regulated entity. The responses, if any, from the regulated entity to the Investigation Letters should be on an open basis<sup>16</sup> and will inform the decision as to whether or not the matter will be referred to Inquiry. Prior to the decision to refer the matter to Inquiry, the suspected prescribed

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<sup>16</sup> Where information or documents are sought in an Investigation Letter any response should be provided in open correspondence, by which it is meant that full and complete disclosure of information should be provided on the record.

contraventions will have been outlined to the regulated entity through the Investigation Letters, and an opportunity given to reply.

### **3.4 *Gathering of Evidence in the Investigation***

3.4.1 During the course of the Investigation it may be necessary for the Central Bank to invoke its statutory powers to assist it in gathering evidence. For example, in the course of an Investigation, the Central Bank may interview persons whom it suspects have knowledge of matters pertaining to the suspected prescribed contravention(s). These may include persons both internal and external to a regulated entity, as well as individuals both concerned and not concerned in its management. Persons being interviewed may have recourse to their own legal advice, and, where appropriate, may be provided with documentation by the Central Bank in advance.

3.4.2 Delay in the provision of information and/or documentation by the regulated entity can have a significant impact on the efficient progression of an Investigation. Accordingly, prompt responses to requests for information and documentation from the regulated entity will be required and may be a factor taken into account in determining any sanction imposed.<sup>17</sup> In general the relevant date(s) for response will be set out in the Investigation Letter(s), or other correspondence from the Central Bank, taking into account the circumstances of the case and complexity or accessibility of the materials requested. Once a timeframe has been agreed or set, the Central Bank will generally only agree to an extension of time for complying with the requirement where it can be shown that there are reasonable grounds for doing so.

### **3.5 *Referral to Prosecuting or Disciplinary Bodies***

3.5.1 The Central Bank has various reporting obligations in circumstances where the information obtained by it at any stage prior to, during, or after the Investigation, gives rise to a suspicion of a criminal offence, a breach of company law, or a

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<sup>17</sup> See Section 6.3 below.

breach of competition law. In such circumstances, the Central Bank has an obligation to refer the matter to the relevant authority.<sup>18</sup>

3.5.2 If information obtained by the Central Bank gives rise to a suspicion that the regulated entity, a professional person or firm, either internal to the regulated entity or engaged by it, has committed acts of misconduct or has failed to properly perform its functions or responsibilities, the Central Bank may refer the matter to the relevant professional body.

### 3.6 *Criminal Prosecution*

3.6.1 If a suspected breach of a designated enactment or designated statutory instrument gives rise to a concern that a criminal offence may have been or is being committed, the Central Bank will generally adopt the following approach<sup>19</sup>:

**a) Where both the Administrative Sanctions Procedure and summary criminal prosecution are available:**

The Central Bank may decide to pursue prescribed contraventions through the Administrative Sanctions Procedure instead of bringing a summary prosecution. However, the Central Bank will consider the circumstances of each case on its merits and may decide to pursue matters which constitute both a prescribed contravention and a criminal offence via the criminal courts. In deciding whether to pursue criminal proceedings, the Central Bank will exercise its discretion, having regard to the Director of Public Prosecution's "Guidelines for Prosecutors".<sup>20</sup>

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<sup>18</sup> Relevant authorities include An Garda Síochána, the Revenue Commissioners, the Director of Corporate Enforcement, the Competition Authority, and the National Consumer Agency. See section 33AK(3) of the Act.

<sup>19</sup> Notwithstanding any other provision of the Outline, this approach will also apply to the administrative sanctions procedures under Part 5 of the Market Abuse (Directive 2006/6/EC) Regulations 2005, Part 15 of the Prospectus (Directive 2003/71/EC) Regulations 2005, Part 10 of the Transparency (Directive 2004/109/EC) Regulations 2007, and Part 5 of the European Communities (European Markets Infrastructures) Regulations 2014.

<sup>20</sup> See: <http://www.dppireland.ie/filestore/documents/GUIDELINES - Revised NOV 2010 eng.pdf>

**b) Where only criminal prosecution is available:**

In deciding whether to pursue criminal proceedings, the Central Bank will exercise its discretion, having regard to the Director of Public Prosecution's "Guidelines for Prosecutors".

3.6.2 No criminal prosecution may be brought if the prescribed contravention(s) in question has already been the subject of an Inquiry under the Administrative Sanctions Procedure which led to the imposition of a monetary penalty under sections 33AQ or 33AR of the Act.

3.6.3 If a criminal prosecution has been brought in respect of an offence that also involves a prescribed contravention, and a regulated entity is found either guilty or not guilty, then no monetary penalty may be imposed pursuant to the Administrative Sanctions Procedure under sections 33AQ or 33AR of the Act.<sup>21</sup>

**3.7 *Finalising an Investigation***

3.7.1 Where a prescribed contravention is suspected to have been committed the Central Bank may deal with the issue in a number of ways. The Central Bank may, in appropriate circumstances,:

- decide to take no further action;
- issue a Supervisory Warning<sup>22</sup>;
- resolve the matter by taking supervisory action;
- agree a settlement; or
- refer the case to Inquiry for determination and sanction.

3.7.2 The decision to take enforcement action will be determined on a case-by-case basis, taking into account the full circumstances of each case. The following objectives may, amongst others and where appropriate, be considered:

- the promotion of compliance by the regulated entity;
- the promotion of compliance within the industry or sector;

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<sup>21</sup> Section 33AT of the Act.

<sup>22</sup> See Section 3.7.5 below.

- the proportionality of the enforcement action; and
- support of the strategy, objectives and policies of the Central Bank, including the proper and effective regulation of financial institutions and markets, and ensuring that the best interests of consumers of financial services are protected.

### ***No Further Action***

3.7.3 The Central Bank may decide to discontinue an Investigation and take no further action in a number of circumstances, including where:

- the information obtained leads the Central Bank to conclude that no prescribed contravention has been committed;
- the matter giving rise to concern:-
  - is very minor in nature,
  - immediate remedial action has been taken, and
  - full co-operation has been provided;
- the Central Bank considers that resources could be more effectively directed to other uses; and/or
- other policy considerations of the Central Bank are of relevance.

3.7.4 Where an Investigation Letter has been issued and an Investigation is subsequently discontinued, the regulated entity will be informed of this fact by letter. However, where relevant information becomes available to the Central Bank at a later date, the Central Bank may commence a new Investigation into the same matter.

### ***Supervisory Warnings***

3.7.5 Where, upon consideration of the evidence, the Central Bank considers that the matter does not warrant an administrative sanction, but there are nonetheless reasonable grounds to suspect a prescribed contravention has occurred, the Central Bank may, in appropriate circumstances, issue a Supervisory Warning. A Supervisory Warning may be issued, regardless of whether or not an Investigation Letter has been issued to the regulated entity.

3.7.6 A Supervisory Warning is a written warning notifying the regulated entity that the Central Bank considers that it has not complied with certain regulatory requirements, and calling upon the regulated entity to rectify the matter(s) identified. Prior to the issuance of a Supervisory Warning, the Central Bank will outline in writing to the regulated entity the basis upon which the Central Bank is minded to issue a Supervisory Warning and the regulated entity will be afforded an opportunity to respond. The responses, if any, from the regulated entity will inform the decision as to whether or not a Supervisory Warning will be issued.

3.7.7 Supervisory Warnings may be issued in a number of circumstances, including where:

- the matter giving rise to concern is minor in nature;
- immediate remedial action has been taken;
- full co-operation has been received; and,
- considerations supporting another enforcement approach do not apply.

3.7.8 The decision to issue a Supervisory Warning will be within the sole discretion of the Central Bank, made on the basis that the regulated entity has disclosed all relevant information.<sup>23</sup> If a Supervisory Warning is issued it will form part of the regulated entity's compliance record. Where further suspicions of prescribed contraventions occur, the prior issuance of a Supervisory Warning may influence the Central Bank's decision as to whether to commence an Investigation against a regulated entity. Supervisory Warnings will also be considered cumulatively, taking into account the date on which the Supervisory Warning was issued. Supervisory Warnings are not published by the Central Bank.

### ***Supervisory Action***

3.7.9 Notwithstanding any other action taken, and whether or not an Investigation has been undertaken, the Central Bank may decide that further action should be taken in relation to its supervision of the regulated entity. Such action may

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<sup>23</sup> If relevant information later comes to light which was not provided to the Central Bank at this stage, the Central Bank may recommence the ASP in relation to the prescribed contraventions.

include utilising any of the supervisory or other legislative powers as the Central Bank considers appropriate in the circumstances, for example the issuing of directions or conditions.

### ***Settlement***

3.7.10 It is open to a regulated entity to seek to settle a matter under Investigation. The Central Bank is under no obligation to settle and will only do so where it is satisfied that it is appropriate in the given circumstances. Settlement is dealt with in more detail in Part 4 of the Outline below.

### ***Notice of Inquiry***

3.7.11 If the Central Bank suspects on reasonable grounds that a regulated entity is committing or has committed a prescribed contravention and the matter has not otherwise been concluded (for example by way of settlement), the Central Bank may issue a Notice of Inquiry<sup>24</sup>, see Section 5.2 of the Outline below.

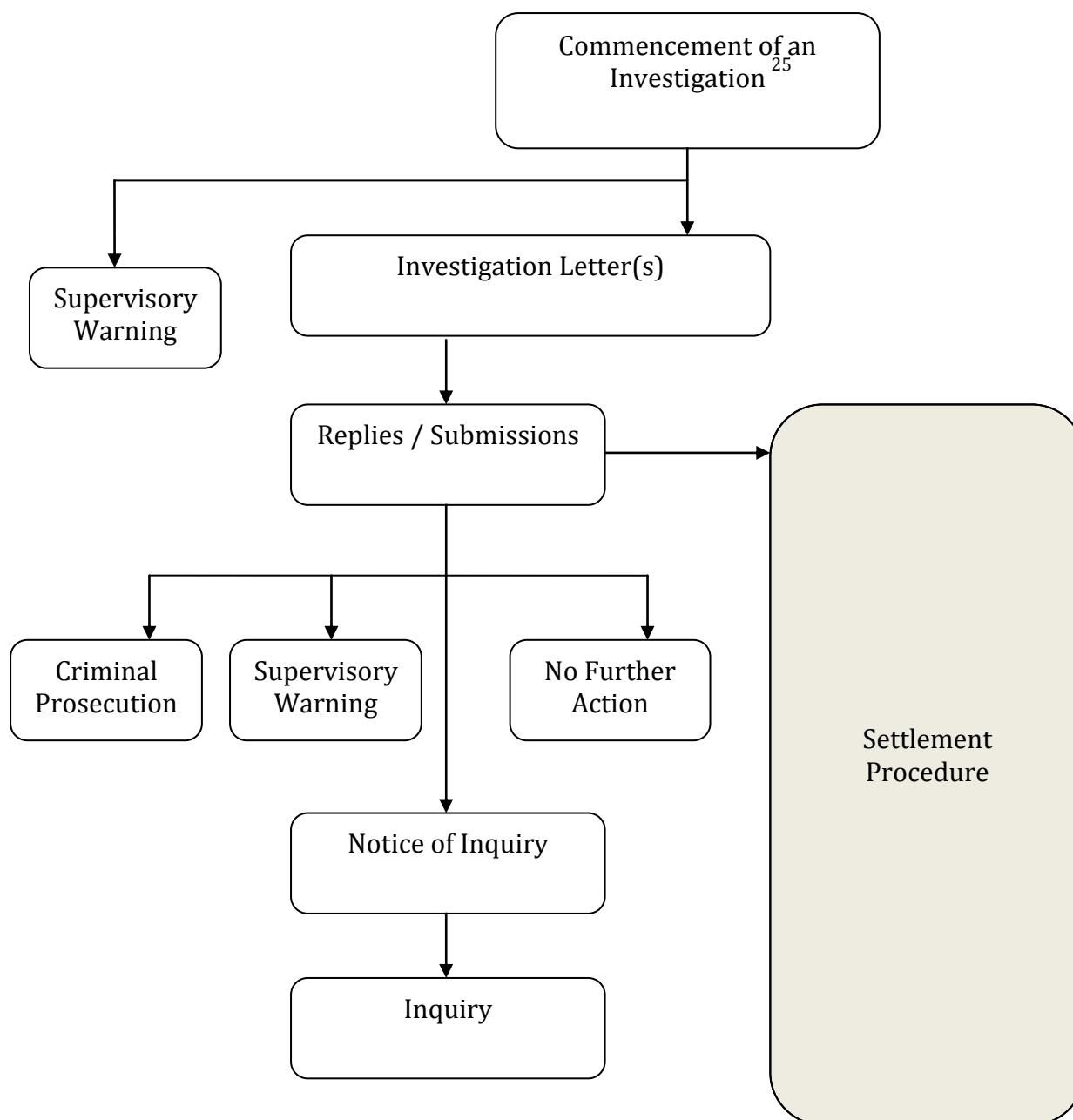
3.7.12 The Enforcement Directorate will provide the following to the Inquiry:

- an outline of the prescribed contraventions that the regulated entity is suspected of committing or having committed and the grounds upon which the suspicions are based;
- an Investigation Report, which will detail the Investigation carried out by Enforcement and contain a schedule of the categories of materials and information gathered during the Investigation;
- copies (hard copy or electronic) of documentation relied upon in preparing the Investigation Report; and
- copies of any Investigation Letter(s) issued to the regulated entity and any responses.

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<sup>24</sup> This is subject to the provisions of the SSM Regulation.

**Diagram 1: Flow diagram of Investigations**



<sup>25</sup> The decision to commence an Investigation may come from a number of sources, including, but not limited to: (i) supervisory divisions; (ii) themed inspections; (iii) whistleblowers; or (iv) publicly available information. Additionally, an Investigation will be commenced where the Central Bank is required, by the European Central Bank, to open proceedings pursuant to Article 18(5) of the SSM Regulation.





## 4. Settlement Policy and Procedure

### 4.1 *Legislative Provisions on Settlement*

4.1.1 The Act provides that if the Central Bank suspects on reasonable grounds that a regulated entity is committing or has committed a prescribed contravention, the Central Bank may enter into an agreement with the regulated entity to resolve the matter<sup>26</sup> (“**the Settlement Agreement**”).

4.1.2 The Settlement Agreement must be in writing and is binding on the Central Bank and the regulated entity. The terms of the Settlement Agreement may contain sanctions of a kind referred to in section 33AQ of the Act and will stipulate that a public statement containing details of the Settlement Agreement will be published.

4.1.3 On occasion it may be necessary for the Central Bank to depart from all or any part of the settlement procedure set down in this Outline, where appropriate, having regard to the circumstances of the case.

### 4.2 *The Central Bank’s Approach to Settlement*

4.2.1 The Central Bank considers that, in appropriate cases, it may be in the public interest for Administrative Sanctions Procedure cases to settle, and settle as early as possible. However, the Central Bank must be satisfied that the basis for settlement is appropriate taking into account all relevant facts, including the determination of the appropriate sanction, whether all concerns have been addressed to the Central Bank’s satisfaction, and any other relevant considerations.<sup>27</sup> The level of co-operation from the regulated entity with the Central Bank during an Investigation will be relevant to settlement.

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<sup>26</sup> Section 33AV(1) of the Act.

<sup>27</sup> Entry into a Settlement Agreement will be conditional upon all relevant facts known to the regulated entity having been openly disclosed by the regulated entity.

- 4.2.2 The settlement procedure offers both the Central Bank and the regulated entity a means of achieving early resolution of the matter. Early settlement is an efficient use of the Central Bank's resources, and provides timely resolution and transparency through the publication of the details of the case. Where settlement is agreed, it results in the avoidance of the additional costs and administrative burden of extended administrative sanctions proceedings for both the Central Bank and the regulated entity.
- 4.2.3 In each case, the Central Bank will consider its statutory objectives in determining whether it is appropriate to settle a case, and on what terms, and whether the agreed settlement terms will result in an acceptable regulatory outcome. The Central Bank expects that the regulated entity will admit the contravention(s) and that the terms of the settlement will be published.<sup>28</sup>
- 4.2.4 There is no obligation on the Central Bank to engage in the settlement procedure or to settle once the settlement procedure has been commenced, and the Central Bank will decide in its sole discretion whether a particular case is suitable for settlement. The settlement procedure runs in parallel with an Investigation and it should be noted that an indication of willingness to enter into settlement discussions by the regulated entity does not cause the suspension of an Investigation. The Central Bank expects full information in response to questions raised in any Investigation Letter(s) to be provided in open correspondence before it will consider scheduling a settlement meeting.
- 4.2.5 The settlement procedure may be considered by the Central Bank at any time from the time at which full information in response to questions raised in any Investigation Letter(s) are provided in open correspondence until the date on which the Inquiry makes a finding as to whether a regulated entity has committed, or is committing, a prescribed contravention.<sup>29</sup> However, generally the Central Bank will not consider the settlement procedure option once the Notice of Inquiry has issued.

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<sup>28</sup> See Section 4.7 below.

<sup>29</sup> Section 33AV(3)(b) of the Act.

4.2.6 The entire settlement procedure will be conducted on a “without prejudice” basis. Any discussion contained in writing should be made under cover of a separate letter which only addresses settlement. In such circumstances, statements made during the settlement procedure will not be used at any subsequent Inquiry or Court procedure. This is to ensure that, in the event that discussions break down, neither party is prejudiced as a result of a position taken in the course of trying to resolve the matter.

4.2.7 The settlement procedure is voluntary and any party may withdraw at any stage, should they choose to do so. No settlement will be concluded unless and until all concerns in the Investigation have been addressed to the Central Bank’s satisfaction.

#### **4.3 *Commencement of the settlement procedure***

4.3.1 Once an Investigation has commenced, the Central Bank may issue a letter offering the possibility of settlement (“**the Settlement Letter**”) to the regulated entity. The Settlement Letter will be issued on a without prejudice basis.

4.3.2 The Central Bank will not, however, issue a Settlement Letter until such time as it has sufficient factual information to understand the nature and gravity of the suspected prescribed contraventions to allow it to make an assessment of the suitability or otherwise of the case for the settlement procedure.

#### **4.4 *Early Settlement Discount Scheme***

4.4.1 Where a regulated entity settles a matter at an early stage with the Central Bank<sup>30</sup>, a discount may be applied to the sanction<sup>31</sup> (“**the Early Settlement Discount Scheme**”).

4.4.2 Under the Early Settlement Discount Scheme, the Central Bank may allow a

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<sup>30</sup> Having met the conditions already set out in Section 4.3 above.

<sup>31</sup> After consideration of any relevant sanctioning factors.

discount up to a set maximum to be applied to a sanction that it would otherwise expect to be imposed on a regulated entity after considering the sanctioning factors. Any discount applied pursuant to the Early Settlement Discount Scheme will be applied to the overall sanction, which will have been arrived at by reference to the relevant sanctioning factors.<sup>32</sup> The Central Bank has identified two stages of the Administrative Sanctions Procedure for these purposes:

- from the issuance of the Settlement Letter for such period as the Central Bank indicates in the Settlement Letter (“**Stage 1**”);
- from the end of Stage 1 until the date on which a Notice of Inquiry is issued (“**Stage 2**”).

The maximum percentage discount for sanctions (both monetary penalty and/or period of disqualification) will be up to as follows:

<b>Stage at which agreement reached</b>	<b>Percentage discount</b>
Stage 1	Up to 30%
Stage 2	Up to 10%

4.4.3 In order to avail of the Stage 1 percentage discount the regulated entity will be required, within a period specified by the Central Bank in the Settlement Letter, to confirm its willingness to enter into the settlement procedure and to settle within the timeframe indicated by the Central Bank.

4.4.4 If the regulated entity does not confirm its willingness to enter into the settlement procedure and/or fails to settle within the indicated timeframe, the Stage 1 percentage discount will no longer be allowed. The Stage 2 percentage discount will only be allowed until such time as a Notice of Inquiry is issued.

4.4.5 Where the regulated entity has not confirmed in writing, before the date a Notice of Inquiry is issued, its willingness to enter into the settlement procedure, the

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<sup>32</sup> See Part 6.

case will progress towards Inquiry.

4.4.6 Where settlement is agreed after the Notice of Inquiry has issued<sup>33</sup> no discount will apply, and the sanction will take into account the costs incurred by the Central Bank, including any costs incurred as part of the Investigation and the Inquiry process.

4.4.7 Any Settlement Agreement between the Central Bank and the regulated entity will include a statement as to any discount applied in accordance with the Early Settlement Discount Scheme. Further discussion on Settlement Agreements is contained in Section 4.6 below.

4.4.8 In deciding upon the appropriate sanctions in the settlement procedure which will be subject to the discount, the Central Bank will take into account all of the circumstances of the case. In so doing, the Central Bank will consider the sanctioning factors set out in Part 6 of the Outline and in the Inquiry Guidelines.<sup>34</sup>

#### **4.5 *Settlement Meeting***

4.5.1 Where the regulated entity indicates in writing its willingness to enter into the settlement procedure and the regulated entity has provided full and open information in response to matters raised in the Investigation Letter(s), such that the Central Bank is satisfied that settlement is appropriate, a settlement meeting between the respective parties will be scheduled for an agreed date and time.

4.5.2 Prior to the settlement meeting taking place (but only after the regulated entity has indicated its willingness to enter into the settlement procedure), the Central Bank will write to the regulated entity notifying it of the sanction (monetary or otherwise) which the Central Bank considers as appropriate, taking into account

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<sup>33</sup> As noted above, generally, the Central Bank will not consider entering into settlement discussions once the Notice of Inquiry has issued.

<sup>34</sup> Paragraph 5.9 of the Inquiry Guidelines.

relevant sanctioning factors. This letter will be on a without prejudice basis.

4.5.3 It is envisaged that the settlement procedure shall consist of one meeting only, attended by representatives of the Central Bank and representatives of the regulated entity. Those persons who attend the settlement meeting must have authority to agree any terms of settlement. All information which the regulated entity wishes to rely on at the settlement meeting should be provided to the Central Bank in advance of the meeting, and a copy brought to the meeting. Likewise, the Central Bank will provide copies of all information it will seek to rely on at the meeting and bring copies to the meeting. The settlement meeting will be held on a without prejudice basis as explained at Section 4.2.6 above. The without prejudice format of the settlement meeting will give the regulated entity an opportunity to discuss the case in detail with the Central Bank with a view to agreeing settlement terms.

#### **4.6 Settlement Agreement**

4.6.1 The terms of any proposed settlement will be put in writing and will be agreed by the Central Bank and by the regulated entity in the Settlement Agreement. The Settlement Agreement is conditional upon all relevant facts known to the regulated entity at the time of entry into the Settlement Agreement having been openly disclosed (in the context of responses to the Investigation Letters) and is legally binding.<sup>35</sup> The regulated entity should have carried out such internal enquiries as are necessary to ensure that it is satisfied that it has disclosed all such relevant facts known to it or which ought to have been known to it at the time of entry into the Settlement Agreement.

4.6.2 A Settlement Agreement will only be concluded where it is consistent with the objectives of the Central Bank<sup>36</sup> and:

- the basis for settlement is consistent with the general approach to regulation of the Central Bank;

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<sup>35</sup> Section 33AV(2) of the Act.

<sup>36</sup> See Section 3.7.2 above.

- it is fair having regard to all the known facts; and
- the Settlement Agreement will contribute to the efficient, effective and economic use of resources.

4.6.3 A Settlement Agreement will include the following:

- admissions by reference to the prescribed contraventions;
- a statement that the prescribed contraventions have ceased or are being addressed;
- a statement from the regulated entity that it has disclosed all relevant information in its possession;
- appropriate sanctions;
- any discount for early settlement;
- a detailed public statement; and
- other relevant terms.

4.6.4 The Settlement Agreement will represent the final agreed position between the parties and will specify the prescribed contraventions in respect of which a settlement has been agreed. The Central Bank expects that all Settlement Agreements will contain admissions by the regulated entity in respect of the prescribed contraventions contained therein.

4.6.5 The Settlement Agreement will contain details of the sanction(s) imposed on the regulated entity and, where a monetary penalty has been imposed, the manner in which such monetary penalty is to be paid. Where applicable, the Settlement Agreement will also include any discount applied pursuant to the Early Settlement Discount Scheme.

4.6.6 Both parties shall adhere to the terms of the Settlement Agreement. However, if the regulated entity fails to comply with the terms of the Settlement Agreement the Central Bank may apply to the High Court for an order requiring the regulated entity to comply with the terms of the agreement<sup>37</sup>, and/or may seek

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<sup>37</sup> Section 33AV(3A) of the Act.



to recover any monetary amount agreed to in a court of competent jurisdiction as a debt due to the Central Bank.<sup>38</sup> Further, should additional material information emerge, which was not brought to the attention of the Central Bank during the course of the Investigation, the Central Bank may, if the circumstances warrant it, commence a further Investigation into the regulated entity.

4.6.7 Where the prescribed contraventions are admitted by the regulated entity but agreement cannot be reached as to the sanctions to be imposed, a Settlement Agreement cannot be entered into.<sup>39</sup>

#### 4.7 *Public statement*

4.7.1 Public statements are an important tool in promoting the transparency of the Central Bank's decision-making process. They inform the general public as well as the market, and help to maximise the deterrent and educational effect of enforcement action. The Central Bank expects that a public statement will be released in all administrative sanctions cases which are settled pursuant to the settlement procedure.

4.7.2 Once the terms of a Settlement Agreement have been agreed by the Central Bank and the regulated entity, the Central Bank will prepare a statement for publication ("**the public statement**"). The public statement will provide a detailed account of the admitted prescribed contraventions and will contain:

- the name of the regulated entity;
- the prescribed contraventions;
- the facts of the case;
- the sanctions imposed, including any discount applied for early settlement;  
and
- other relevant factors.

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<sup>38</sup> Section 33AV(4) of the Act.

<sup>39</sup> If sanctions cannot be agreed at settlement, an Inquiry into sanctions may be undertaken under section 33AR of the Act. See Section 5.3.2 below.

A sample public statement is attached at Appendix 1 to this Outline. Appended to a public statement will be a prepared statement by the Central Bank on the market aspects of the case and how it corresponds with the Central Bank's objectives. The wording of any market commentary is a matter for the Central Bank alone and does not form part of the Settlement Agreement.

- 4.7.3 The timing and manner of the release of a public statement will be within the sole discretion of the Central Bank. It may, however, be discussed between the parties at the settlement meeting. The public statement and any market commentary on the case will generally be published promptly on the Central Bank's website.

#### **4.8 *Effect of Settlement Agreement***

- 4.8.1 The Settlement Agreement will form part of the regulated entity's compliance record. As such, it may influence the Central Bank's decision to commence enforcement action, taking into account the age of the previous Settlement Agreement(s), and may be taken into account in other actions taken by the Central Bank.
- 4.8.2 Settlement Agreements may be considered cumulatively, although they relate to separate areas of a regulated entity's business, where the concerns which gave rise to those Settlement Agreements are considered to be indicative of a regulated entity's compliance culture. Similarly, Settlement Agreements with different subsidiaries of the same parent company may be considered cumulatively where the concerns which gave rise to those Settlement Agreements relate to common issues or controls.
- 4.8.3 A Settlement Agreement entered into with a person concerned or formerly concerned in the management of a regulated entity may be considered by the Central Bank in assessing a subsequent application by that person to perform a pre-approval controlled function under the Fitness and Probity regime pursuant

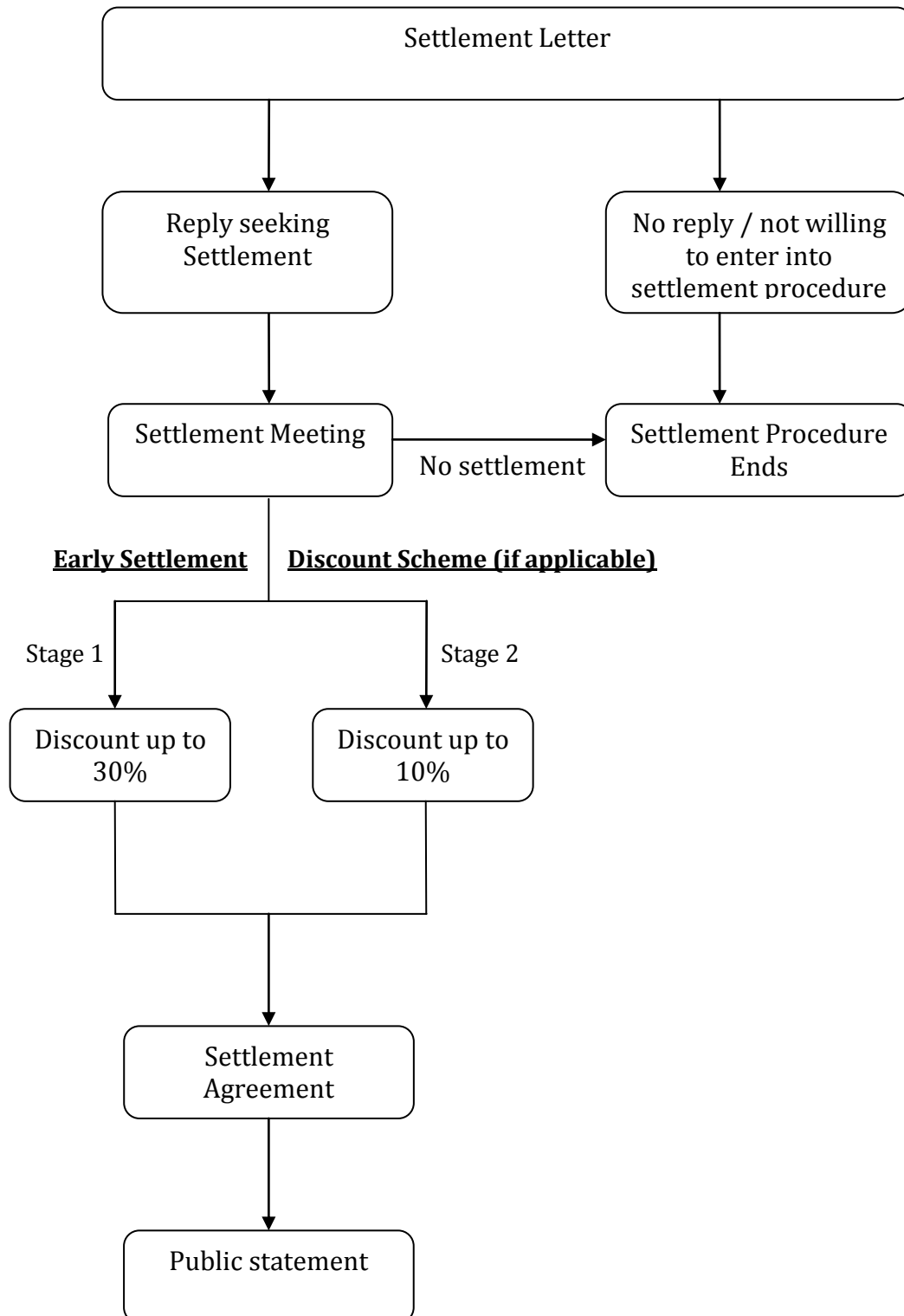
to Part 3 of the Central Bank Reform Act 2010.<sup>40</sup>

- 4.8.4 Settlement Agreements may be taken into account in determining appropriate sanctions pursuant to the Administrative Sanctions Procedure (including at Inquiry) if subsequent prescribed contraventions are committed by the regulated entity.

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<sup>40</sup> For further information on Fitness and Probity and the relevant regulatory requirements, please see the Central Bank website.

Diagram 2: Flow diagram of the Settlement Procedure



## 5. The Inquiry

### 5.1 *The Inquiry Guidelines*

5.1.1 The procedures relating to the conduct of an Inquiry are set out in detail in the Inquiry Guidelines. The Outline only provides a summary of the procedures. Reference should therefore be made to the Inquiry Guidelines for the purposes of information relating to Inquiries.

### 5.2 *Inquiry Notice*

5.2.1 If it is determined that there are reasonable grounds to suspect that a prescribed contravention is being or has been committed, the Central Bank may refer the matter to an Inquiry pursuant to Part IIIC of the Act. The purpose of the Inquiry is to determine if a prescribed contravention is being or has been committed and to determine the appropriate sanctions.

5.2.2 Where the Central Bank has decided to refer a matter to Inquiry, the Regulatory Decisions Unit (“**RDU**”) of the Central Bank will issue a Notice of Inquiry to the relevant regulated entity. The Notice of Inquiry will:

- (a) set out the suspected prescribed contravention(s) and the grounds upon which the suspicions are based, as outlined by ENF at referral; and
- (b) append an Inquiry Management Questionnaire (“**the Questionnaire**”).<sup>41</sup>

The Notice of Inquiry will be accompanied by a copy of all documentation provided to the RDU<sup>42</sup> by the Enforcement Directorate at the time of referral.

5.2.3 The Questionnaire must be completed and returned to the RDU within such time as specified in the Questionnaire, allowing at least 10 working days for response. If no response to the Questionnaire is received within the time specified, the RDU will notify the members of the Inquiry (“**Inquiry Members**”)<sup>43</sup> and will proceed

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<sup>41</sup> See paragraph 3.6 of the Inquiry Guidelines.

<sup>42</sup> See paragraph 2.3 of the Inquiry Guidelines.

<sup>43</sup> In certain cases an Inquiry may be comprised of a sole member, see paragraph 2.4 of the Inquiry Guidelines.

to confirm the date and arrangements for the Inquiry hearing without further consultation. The RDU will act as registrar to the Inquiry and will be the point of contact within the Central Bank for the regulated entity in relation to all Inquiry matters.

### **5.3 *Inquiry Procedure***

5.3.1 The Inquiry Members may consider both written and oral submissions in relation to the alleged contravention(s) and will make a determination as to:

- whether the prescribed contravention(s) occurred; and
- the appropriate penalty to be applied.

5.3.2 Where the regulated entity has admitted a prescribed contravention(s) formally in open correspondence, but does not agree with the sanction proposed by the Central Bank, an Inquiry as to sanctions only will be undertaken.<sup>44</sup> Any such Inquiry will be held in accordance with the Inquiry Guidelines.

### **5.4 *Appeals***

5.4.1 If the regulated entity disagrees with the final decision of the Inquiry, it may appeal the decision to IFSAT within 28 days of being notified of that decision, or within such time as agreed with the Registrar or Chairperson of the IFSAT.<sup>45</sup> IFSAT's decision may subsequently be appealed to the High Court.<sup>46</sup> The decision of the Inquiry will not take effect while the appeal is pending.

### **5.5 *Publicity***

5.5.1 Generally, the Central Bank's obligations to publish the findings of an Inquiry, are set out in section 33BC of the Act<sup>47</sup>. Pursuant to section 33BC of the Act, where

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<sup>44</sup> Section 33AR of the Act

<sup>45</sup> Section 57 of the Act.

<sup>46</sup> Section 57AK of the Act.

<sup>47</sup> There are, however, circumstances where different publication provisions may apply in respect of the imposition of sanctions. For example, where the prescribed contravention constitutes a breach of the European Union (Capital Requirements) Regulations 2014 and/or Regulation (EU) No 575/2013 of the

the Inquiry Members find that a prescribed contravention is being or has been committed and/or impose a sanction, the Central Bank must publish the findings of the Inquiry Members<sup>48</sup> and such (if any) of the particulars of the contravention(s) as it thinks appropriate, which will ordinarily include:

- the name of the regulated entity on whom a sanction has been imposed;
- details of the prescribed contravention(s) in respect of which the sanction has been imposed;
- details of the sanction imposed; and
- the grounds upon which the findings are based.<sup>49</sup>

5.5.2 Notwithstanding this, the Central Bank is not required to publish a finding or particulars:

- if publication of the finding or particulars involves the disclosure of confidential information the disclosure of which is prohibited by the 'Rome Treaty'<sup>50</sup>, the ECSB Statute or the Supervisory EU legal acts (within the meaning of section 33AK(10) of the Act); or
- if the Inquiry Members determine:
  - (i) that the finding or particulars are of a confidential nature or relate to the commission of an offence against a law of the State; or
  - (j) that publication of the finding or particulars would unfairly prejudice a person's reputation.<sup>51</sup>

5.5.3 Separate to the publication of the Inquiry Members' findings, the Central Bank may issue a market commentary on the outcome of the Inquiry, which will outline the Central Bank's view of how the findings in the case apply more

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European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Regulation 56 of European Union (Capital Requirements) Regulations 2014 applies.

<sup>48</sup> Section 33BC(1) and (2) of the Act.

<sup>49</sup> Section 33BC(3) of the Act.

<sup>50</sup> The Treaty on the Functioning of the European Union.

<sup>51</sup> Section 33BC(4) of the Act.

broadly to the market at issue.

- 5.5.4 The Central Bank will publish annually, in summary form, information on its actions under Part IIC of the Act<sup>52</sup>, including on the decisions of any Inquiry conducted.

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<sup>52</sup> Section 33BC(5) of the Act.



## 6. Sanctions

### 6.1 *Introduction*

6.1.1 Prior to November 2013, the Central Bank undertook a substantive review of the sanctions which may be imposed under the Administrative Sanctions Procedure. In imposing sanctions under the Administrative Sanctions Procedure, including under the settlement procedure, the Central Bank continues to place an increased emphasis on deterrence, both in relation to the specific regulated entity and the overall relevant financial market, and the annual turnover of the regulated entity subject to sanction, where appropriate. The Central Bank will have regard to the sanctioning factors specified in 6.3 below. It is envisaged that this may lead to the imposition of greater sanctions than has previously been the case.

### 6.2 *Types of Sanctions Imposed*

6.2.1 The Central Bank, in light of its enforcement and supervisory objectives and policies, may, either under a Settlement Agreement<sup>53</sup> or following an Inquiry<sup>54</sup>, impose one or more of the following sanctions:

- caution or reprimand;
- direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service;
- imposition of a monetary penalty (in the case of a corporate and unincorporated body an amount not exceeding €10,000,000 or 10% of the annual turnover of the regulated financial service provider in the last financial year, whichever is the greater, or in the case of a natural person an

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<sup>53</sup> In relation to settlement, this list is non-exhaustive.

<sup>54</sup> It may arise that other sanctions, further or in addition to the sanctions outlined in section 33AQ of the Act, may be available to the Inquiry Members. For example, Regulations 54 and 55 of the European Union (Capital Requirements) Regulations 2014 provide that particular sanctions may be imposed in respect of certain contraventions as set out therein.

amount not exceeding €1,000,000)<sup>55</sup>;

- a direction disqualifying a person from being concerned in the management of a regulated financial service provider;
- except where the provisions of Council Regulation (EU) No 1024/2013 apply, suspension of the authorisation<sup>56</sup> of a regulated entity, in respect of one or more of its activities, for a period not exceeding 12 months;
- except where the provisions of Council Regulation (EU) No 1024/2013 apply, revocation of a regulated entity's authorisation<sup>57</sup>;
- direction to cease a contravention, if it is found the contravention is continuing; and
- a direction to pay to the Central Bank all or a specified part of the costs incurred by the Central Bank in holding the Inquiry and in investigating the matter to which the Inquiry relates.<sup>58</sup>

### 6.3 *Sanctioning Factors*

6.3.1 All the circumstances of the case will be taken into account in determining sanctions and, in doing so, regard may be had to the following factors<sup>59</sup>:

#### **1. The Nature, Seriousness and Impact of the Contravention**

- (a) whether the contravention was deliberate, dishonest or reckless;
- (b) duration and frequency of the contravention;
- (c) the amount of any benefit gained or loss avoided due to the contravention;
- (d) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business;

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<sup>55</sup> In both cases this will be subject to the overriding requirement that any monetary penalty imposed under section 33AQ or 33AR of the Act will not cause a corporate entity to cease business or cause an individual to be adjudicated bankrupt (section 33AS(1) and (2) of the Act).

<sup>56</sup> In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

<sup>57</sup> In this context, 'authorisation' has the same meaning as provided for in section 33AQ(9) of the Act.

<sup>58</sup> Section 33AQ of the Act.

<sup>59</sup> In particular, and where appropriate, the Central Bank shall, when determining the appropriate sanction take into account such circumstances as detailed in Regulation 58 of the European Union (Capital Requirements) Regulations 2014.

- (e) the extent to which the contravention departs from the required standard;
- (f) the impact or potential impact of the contravention on the orderliness of the financial markets, including whether public confidence in those markets has been damaged or put at risk;
- (g) the loss or detriment or the risk of loss or detriment caused to consumers or other market users;
- (h) the effect, if any, of the contravention on vulnerable consumers<sup>60</sup>;
- (i) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention;
- (j) whether there are a number of smaller issues which individually may not justify administrative sanction, but which do so when taken collectively;
- (k) any potential or pending criminal proceedings in respect of the contravention which will be prejudiced or barred if a monetary penalty is imposed pursuant to the Administrative Sanctions Procedure.

## **2. The Conduct of the Regulated Entity after the Contravention**

- (a) how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant regulatory authority;
- (b) the degree of co-operation with the Central Bank or other agency provided during the Investigation of the contravention;
- (c) any remedial steps taken since the contravention was identified, including identifying whether consumers have suffered loss or detriment and compensating them, taking disciplinary action against staff involved (where appropriate), addressing any systemic failures, and, taking action designed to ensure that similar problems do not arise in the future;
- (d) the likelihood that the same type of contravention will recur if no

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<sup>60</sup> The term “vulnerable consumer”, has the same meaning as the definition set out in Chapter 12 (‘Definitions’) of the Consumer Protection Code 2012 at p.75.

- administrative sanction is imposed;
- (e) whether the contravention was admitted or denied.

### **3. The Previous Record of the Regulated Entity**

- (a) whether the Central Bank has taken any previous enforcement action including instances resulting in a settlement or sanctions or whether there are relevant previous criminal convictions;
- (b) whether the regulated entity has previously undertaken not to do a particular act or engage in particular behaviour;
- (c) whether the regulated entity has previously been requested to take remedial action, and the extent to which such action has been taken.

### **4. Other General Considerations**

- (a) prevalence of the contravention;
- (b) the appropriate deterrent impact of any sanction on the regulated entity and on other regulated entities;
- (c) action taken by the Central Bank in previous similar cases;
- (d) the level of turnover of the regulated financial service provider in its last complete financial year prior to the commission of the contravention;
- (e) any other relevant consideration.

## **6.4 *Restriction on Imposition of Monetary Penalties***

- 6.4.1 Section 33AT(2) of the Act provides that no monetary penalty may be imposed under sections 33AQ and 33AR of the Act if the regulated entity has been found guilty or not guilty of committing a criminal offence under the law of the State involving a prescribed contravention. In those circumstances the Central Bank may, under section 33AQ and 33AR of the Act, only impose non-monetary penalties.

**6.5 *When a Decision of the Inquiry Takes Effect***

6.5.1 The Inquiry Guidelines contain detailed information on when a decision of the Inquiry takes effect. Please see paragraphs 5.16 to 5.19 of the Inquiry Guidelines for further information.

## Appendix 1: Sample Public statement

*[On Central Bank headed paper]*

### **Settlement Agreement between the Central Bank of Ireland and *[the regulated financial service provider / person concerned in its management]***

The Central Bank of Ireland (“the Central Bank”) has entered into a Settlement Agreement with effect from *[date]* with *[the regulated financial service provider / person concerned in its management]* (“the firm”) / *[name]*, a *[regulated financial service provider / person concerned in the management of the firm]*, in relation to breaches of regulatory requirements contained in *[relevant legislation]*.

*[X number of]* breaches of the *[relevant legislation]* were identified. The firm breached the *[relevant legislation]* by failing *[for y period of time]* to:

1. *[particulars of contraventions]* *[the particulars of the contraventions will be described in substantial detail]*
2. *[particulars of contraventions]*
3. *[particulars of contraventions]*

The Central Bank has imposed the following sanctions:

*[details of sanctions imposed, including any discounts under the early settlement discount scheme]*

*[Facts of the case]* *[the facts of the case will be described in substantial detail and will provide a narrative of the contraventions and their Investigation, including any mitigating or aggravating factors]*

The sanction(s) imposed in this case reflects *[the seriousness with which the Central Bank treats the relevant contravention(s)]*.

The Central Bank confirms that the matter is now closed.

END.

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*[Market Commentary]*

[www.centralbank.ie](http://www.centralbank.ie)



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

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## APPENDIX 3 – APPEALS UNDER THE 1997 ACT

### 1. Legislation

#### **Section 52 – Appeal against certain decisions of Bank\***

The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

- (a) a decision by the Bank under section 6A for the purposes of subsection (1) or (2) of that section;
- (b) a decision by the Bank under section 11(5) to direct a credit union to change its name to a name approved by the Bank;
- (c) a decision by the Bank under section 41(5) to direct a credit union to dispose of the interest to which the direction relates;
- (d) a decision by the Bank under section 49(3)(b) to refuse to grant approval;
- (e) a decision by the Bank under section 50(3)(a) to withdraw an approval granted under section 49;
- (f) a decision by the Bank under section 50(3)(b) to vary any condition imposed on such an approval;
- (g) a decision by the Bank to impose any condition on such an approval (whether at the time the approval is granted or later by virtue of section 50(3)(c));
- (h) a decision by the Bank to give a regulatory direction under subsection (1) or (2) of section 87.

#### **Section 8 – Acknowledgement or refusal of registration**

*(This Chapter has not reproduced the entirety of section 8 – please consult the Credit Union Act, 1997 for the full provision.)*

...

- (4) A decision of the Bank refusing to register a society as a credit union is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.



...

**Section 11 – Change of registered name**

*(This Chapter has not reproduced the entirety of section 11 – please consult the Credit Union Act, 1997 for the full provision.)*

...

- (3) A decision of the Bank declining to give its approval under subsection (2)(b) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

...

**Section 14 – Amendment of registered rules**

*(This Chapter has not reproduced the entirety of section 14 – please consult the Credit Union Act, 1997 for the full provision.)*

...

- (5A) A decision of the Bank refusing to register an amendment of a credit union's rules under subsection (5) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

...

**Section 96 - Removal or suspension of directors and members of board oversight committee**

*(This Chapter has not reproduced the entirety of section 96 – please consult the Credit Union Act, 1997 for the full provision.)*

...

- (2) † The removal or suspension from office by the Bank of a director or member of the board oversight committee of a credit union under subsection (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

...

**Section 99 – Appeals against cancellation or suspension**

- (1) The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

(a) a decision of the Bank under section 97 (3) or section 98 (3) proposing to cancel or suspend the registration of a credit union;

(b) a decision of the Bank under section 98 (1)(b) renewing the suspension of the

registration of a credit union so that the suspension extends beyond 3 months from when the suspension began.

(2) A decision cancelling the registration of a credit union does not take effect until—

(a) the end of the period within which an appeal against the decision may be lodged under Part VIIA of the Central Bank Act 1942, or

(b) if an appeal is lodged against the decision within that period—

(i) the confirmation of the decision by the Irish Financial Services Appeals Tribunal on the hearing of the appeal, or

(ii) the withdrawal of the appeal,

whichever first occurs.

#### **Fourth Schedule – Supplementary provisions in relation to regulatory directions**

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

...

2. (1) On forming the opinion that a credit union to which a regulatory direction was given is able to meet its obligations to its members and creditors but the circumstances that gave rise to the direction are unlikely to be rectified, the Bank may, by notice in writing given to the credit union, require the credit union—

(a) to prepare, in consultation with the Bank, a scheme for the orderly termination of its business and the discharge of its liabilities to its members and creditors under the supervision of the Bank; and

(b) to submit that scheme to the Bank for its approval.

(2) A credit union shall comply with a direction made to it under subparagraph (1) not later than 2 months after the requirement was notified to it under that subparagraph.

(3) A requirement made to a credit union under this paragraph is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

...

## **2. Appeals to IFSAT under the 1997 Act**

The list of appealable decisions provided in this Appendix relates to the appealable decisions under the 1997 Act only and is without prejudice to any other right of appeal to IFSAT which may exist in financial services legislation and which could be exercised by a credit union.

Part VIIA of the Central Bank Act 1942 sets out the legislative basis for the establishment and operation of IFSAT.

The rules of IFSAT are included in the following statutory instrument:

- Irish Financial Services Appeals Tribunal Rules 2008 (S.I. 224 of 2008)

For further information please see the IFSAT website, [www.ifsat.ie](http://www.ifsat.ie).