



Corporate Governance Code for Collective Investment Schemes and Management Companies – Frequently Asked Questions

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Transitional Arrangements

<p>This code becomes effective from 1st January 2012, with a twelve month transitional period</p>	<p>When adopting the Code, what is the transitional period?</p>	<p>The Code becomes effective from the 1st January 2012, and there will be a 12 month transitional period.</p>
	<p>When must the first statement of compliance be included in the financial statements?</p>	<p>If your CIS/ManCo has a year-end of 31st December, the first statement of compliance would be included in your financial statements of 31st December 2012; or if your CIS/ManCo has a year -end of 30th June, the first compliance statement will be in the financial statements of 30th June 2013.</p>

Background to Funds- What is Corporate Governance?

<p>1.5</p>	<p>The Board of a corporate CIS is the focal point of the governance regime for that CIS and is therefore responsible for compliance with this Code if adopted. However it is recognised that the Board of a corporate CIS may delegate the management of the CIS to a ManCo.</p>	<p>Where a corporate CIS delegates management to a Management Company ('ManCo') then is the ManCo responsible for compliance with the Code and the corporate CIS no longer bound by the Code?</p>	<p>No, the Board of the corporate CIS will always have the primary responsibility regarding compliance with the Code.</p>
<p>1.6</p>	<p>Where non-corporate CIS are established, and an Irish registered company is appointed as a management company or general partner (whichever is applicable), the Board of that company is accountable and responsible for the performance and conduct of the applicable CIS and falls within the remit of this Code.</p>	<p>Which entity should apply the Code in the case of a non-corporate entity?</p>	<p>The ManCo or General Partner should apply the Code.</p>
<p>Definition</p>	<p>Non Executive Director :A Director who is not directly involved in the day to day discretionary investment management of the CIS.</p>	<p>Can you provide some examples of a Non Executive Director?</p>	<p>A non-executive director would be removed from the actual managing of the assets and could include individuals in roles such as risk and compliance, legal counsel, management of distribution channels, product development or could be responsible for manager selection in a multi-manager CIS.</p>

Legal Basis

<p>2.1</p>	<p>This is a Voluntary Code.</p>	<p>What happens if you choose not to adopt the Code?</p>	<p>Whilst the Code is voluntary in nature, there is an expectation from the industry and the Central Bank that all CIS will adopt the Code. A review will be carried out within an 18 month period to assess adoption rates.</p>
<p>2.2</p>	<p>Where a Board adopts the Code but decides not to apply any provision of the code, it should set out its reasons why in The Directors' Report accompanying the annual audited accounts, or alternatively publish the information through a publicly available medium (e.g. website) detailed in the annual report.</p>	<p>Is there any materiality threshold with respect to the provisions of the Code?</p>	<p>No, there is no materiality threshold. If the Code is adopted, where there is a deviation from the Code, that deviation should be set out in the Director's Report.</p>

Composition of the Board

<p>4.1</p>	<p>The Board shall be of sufficient size and expertise to oversee adequately the operations of the CIS or ManCo. Three Directors is recommended as the minimum size for the Board. It is recommended that the Board comprise a majority of non-executive directors, and at least one independent director, who would not be an employee, partner, significant shareholders, owner, or director of any service provider firm receiving professional fees from the CIS or ManCo</p>	<p>Is there any materiality threshold regarding professional fees received?</p> <hr/> <p>What constitutes a service provider?</p> <hr/> <p>Can a Director also taken on the role of MLRO for a fee and be deemed independent?</p> <hr/> <p>If I am a Director and I also get paid a fee to chair or participate in other sub-committees of the Board, am I deemed independent.</p> <hr/> <p>Can a director who is an independent director of a ManCo also qualify as an independent director of a CIS to which the ManCo provides management services where the promoter of the CIS and the ManCo are related or affiliated entities and the director would otherwise be regarded as an independent director of the fund?</p>	<p>No there is no materiality threshold.</p> <hr/> <p>A service provider is any firm that is receiving a fee in return for services. For example, Custodian, Administrator, Auditor, Legal Advisor, Consultant etc.</p> <hr/> <p>No.</p> <hr/> <p>Yes.</p> <hr/> <p>Yes, an independent director of a ManCo can also qualify as an independent director of a CIS to which the ManCo provides management services where the promoter of the CIS and the ManCo are related or affiliated entities.</p>
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4.3	At least two of its directors are reasonably available to meet the Central Bank at short notice, if required.	What constitutes "short notice"?	The meaning of "short notice" will depend on the facts of the particular case, and would be influenced for example by the urgency of the issue and the reasonable travel time needed by the directors. Where a director is overseas, contact by telephone or video conference may suffice depending on the situation.
4.4	A minimum of two directors on the Board must be Irish resident.	Does at least one of the 2 Irish resident directors have to be independent?	No
4.5	Each member of the Board shall have sufficient time to devote to the role of director and associated responsibilities.	What determines the sufficient amount of time?	There is no one size fits all, and the amount of time required will vary across funds and depends on many factors, such as number of funds, complexity of investment strategies, frequency of dealing, frequency of board meetings and ad-hoc meetings etc.
		Is there a maximum number of directorships prescribed in the Code?	No. As per the statement above, it is difficult to identify a maximum, as the time commitment required will vary substantially depending on many factors. As a result, the Code focuses on ensuring and documenting the time commitment required on a fund by fund basis combined with a regular review process to ensure that changes in circumstances are addressed appropriately.
4.6	Directors are required to disclose to the Board their other time commitments, including time devoted to the role of directors of CIS domiciled in foreign jurisdictions. The Board must satisfy itself that the directors have sufficient time to fully discharge their duties and in proposing to appoint directors who otherwise have fulltime jobs, the CIS or ManCo should be required to take fully into account the time constraints associated with the full time job (and also from other directorships held).	How frequently does the time commitment need to be reviewed?	At a minimum annually, but a director should disclose any material time commitment changes as they arise, at the next board meeting held.

4.8	<p>Where directorships are held outside CIS, Foreign CIS or ManCos, there shall be a rebuttable presumption that a maximum of eight non-fund directorships may be held without impacting the Director's time available to fulfil his or her role and functions as a director of a CIS or ManCo. Any non-fund directorships in excess of eight will be explained in the comply or explain statement as detailed in section 13.1 of this Code. For the purposes of this requirement, non-fund directorships shall not include:</p>	<p>In relation to 'grandfathering', how is it proposed that a Director demonstrate compliance with these requirements?</p>	<p>Whilst there are no grand-fathering provisions, there is a transitional period of 12 months from the 1st January 2012 to comply with the conditions which should allow for enough time for directors to ensure compliance.</p>
	<p>a. Other directorships of entities with which the director is deemed to be affiliated i.e. group directorships</p>	<p>Can further clarification of point 4.8(d) be provided?</p>	<p>Commonly referred to as "shelf companies" i.e. pre-trading companies incorporated by legal firms for future use by clients.</p>
	<p>b. Directorships of any company, subsidiary or other non-fund entity established or promoted by a promoter of Irish and/or foreign collective investment schemes, or any affiliated company of a promoter of Irish and/or Foreign CIS</p>	<p>Can guidance be provided on how this Code will interact with the Corporate Governance Code for Credit Institutions and Insurance Undertakings?</p>	<p>This Code must be read subject to the Code of Corporate Governance for Credit Institutions and Insurance Undertakings.</p>
	<p>c. Directorships held in a body engaged in public interest, community or charitable purposes</p>		
	<p>d. Directorships to facilitate the incorporation of companies.</p>	<p>Are foreign CIS caught in the 8 "non-fund directorships"?</p>	<p>No.</p>
	<p>e. Directorships in companies not actively trading</p>		
4.11	<p>CIS and ManCos shall formally review Board membership at least once every three years.</p>	<p>Can guidance be provided as to how such review is to be undertaken and documented? And does this have to a review carried out by an external party?</p>	<p>An external review is not required. The Board itself is responsible for carrying out the review of both individual Board members and the overall composition of the Board. The review should be documented in the minutes, and should not lead to automatic renewal. During 2012, the IFIA will provide some guidance on how this review could be achieved.</p>

4.14	Directors are required to disclose to their Board any concurrent directorships which they hold on the Boards of CIS, ManCos and/or related entities which supply services to such schemes.	How often is disclosure of other directorships required? Is annual disclosure sufficient?	Disclosure of new appointments should be made at the next board meeting held.
4.15	Before being appointed, a new Director needs to demonstrate to the satisfaction of the Board that he or she meets the Central Bank's fit and proper standards.	Can further guidance be provided on what fitness requirements are envisaged in this section?	Refer to the Fitness and Probity Regime issued by the Central Bank on 1 st September 2011.

Chairman

5.1	There shall be a non-executive Chairman appointed to the Board of the CIS or ManCo.	Will the requirement in 5.1 (that a Non-Executive Chairman be appointed to the Board) exclude any representative of the Investment Manager from so acting?	No, this would not preclude an employee of the Investment Manager to act as Chairman, assuming that they can satisfy the definition of non-executive.
5.3	The Chairman shall attend and chair Board meetings. A deputy chair should be appointed as required.	Does the Chairman have to be a permanent Chairman?	Yes.
5.4	The Chairman of the Board should be reviewed at least once every 3 years.	When does the 3 year period commence?	The period commences from the date that the Board of the CIS or ManCo adopt the Code.

Appointments

<p>8.1</p>	<p>The Board (and where applicable shareholders) shall be responsible for appointing all directors, and the Board shall ensure that directors have received adequate training to enable them to discharge their duties.</p>	<p>What kind of “training” is envisaged in this section?</p>	<p>The Board should ensure that the directors are familiar with the business in which the company transacts and the changes that may impact the company such as regulatory changes. It is generally expected that the Director themselves would be responsible for ensuring that they maintain the knowledge that they need in order to competently carry out their responsibilities. However from time to time there may be expert knowledge needed that would require training to be provided by the Board or the investment manager, for example a new specialist investment strategy being employed by the Company.</p>
<p>8.2</p>	<p>The Board shall review the overall Board’s performance and that of individual directors annually with a formal documented review taking place at least once every three years.</p>	<p>Can guidance be provided as to how such review is to be undertaken and documented?</p> <hr/> <p>When does the 3 year period commence?</p> <hr/> <p>What is the difference between the annual review and the review every three years?</p>	<p>Refer to the response for 4.11</p> <hr/> <p>The 3 year period commences from the date that the Board of the CIS or ManCo adopt the Code.</p> <hr/> <p>The annual review relates to the overall Board performance, whereas the 3 year review relates to the Board membership.</p>

Meetings

<p>9.1</p>	<p>The Board shall meet as often as is appropriate to fulfill its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the CIS or ManCo. In any event, the Board shall normally meet quarterly. For non-UCITS funds, the Board could meet less frequently if they believe it is justified but this must be disclosed in the “comply or explain” statement as per 13.1.</p>	<p>Can confirmation be given that this requirement will be met by meetings being held four times a year but not necessarily at three-month cycles?</p>	<p>A meeting must be held once in each quarter, but not necessarily 3 months apart.</p>
<p>9.4</p>	<p>All Directors are expected to attend and participate. An attendance schedule should form a part of the annual informal Board performance review process.</p>	<p>Are Directors expected to attend all meetings in person or does telephone or video conference suffice?</p>	<p>Directors who reside abroad may attend via telephone or video conference but would be expected to attend at least one meeting per year in person.</p>

Committees of the Board

<p>11.7</p>	<p>A CIS or ManCo which constitutes a "public interest entity" within the meaning of, and does not come within an exemption in, the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 is obliged to establish an Audit Committee in accordance with the criteria set out therein.</p>	<p>Can clarification be given in relation to the reference "legislation" in this section?</p>	<p>The Regulation referred to require certain entities, such as public-interest entities, to establish an audit committee. Under the Regulations "public-interest entities" are EU companies whose transferable securities are admitted to trading on a regulated market; credit institutions; and insurance undertakings. Certain subsidiaries, UCITS funds and most EU non-UCITS funds may be exempt from the requirement.</p> <p>Where required, an audit committee must include at least two non-executive directors with an adequate level of independence. The requisite degree of independence means that for three years prior to appointment to the audit committee the relevant director must not have had a material business relationship with the public-interest entity in any way. One of the directors must also be competent in accounting or auditing.</p> <p>The audit committee's functions include monitoring the financial reporting process, internal audit and risk management, the effectiveness of any internal controls, and the statutory audit. The statutory auditor shall report to the audit committee on key matters arising from the statutory audit.</p>
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Compliance

<p>13.1</p>	<p>Where a Board adopts the Code but decides not to apply any provision of the code, it should set out its reasons why in The Directors' Report accompanying the annual audited accounts, or alternatively publish the information through a publicly available medium (e.g. website) detailed in the annual report.</p>	<p>Will promoter groups who have just finalised their UCITS IV policies and procedures, which operate off a harmonised regulatory regime, be deemed to be compliant with the Code?</p>	<p>No.</p>
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Delegates

<p>14.4</p>	<p>The Board shall be responsible for the appointment of the delegate service providers.</p>	<p>In relation to outsourcing and the issue of accountability, when and how it is appropriate to rely on the input from a specialist delegate?</p>	<p>The Board is always responsible for any activity delegated to any delegate service providers.</p>
		<p>Can a definition of the terms 'delegate service providers' and 'service providers' be provided?</p>	<p>Delegated services providers include Administration, Custodian, Advisory and Investment Management firms.</p> <p>Service Providers would include legal, accounting firms and also advisory firms who undertake a non-designated Board function.</p>
<p>14.5</p>	<p>The Board shall be responsible for monitoring the performance of its delegate service providers including, inter alia, the monitoring of investment performance.</p>	<p>Are Boards required to monitor absolute or relative fund performance, fund performance within agreed constraints, over-performance as well as under performance?</p>	<p>In relation to the monitoring of investment performance, this can vary from Board to Board. However, at a minimum, monitoring performance should be compared to the investment objectives of the CIS as set out in the prospectus.</p>

Risk Management, Audit, Control & Compliance

<p>15.1</p>	<p>The Board shall ensure that internal control procedures of service providers are being monitored to ensure that they are effective.</p>	<p>Is it possible for the board of a CIS/ManCo to 'ensure' that delegate internal control procedures are being monitored and are effective?</p>	<p>The Board would be expected to satisfy itself of the adequacy of the internal audit function. A component of this review could include for example a SAS70 (or similar) report of the relevant service provider.</p>
<p>15.2 & 15.5</p>	<p>The Board is responsible for keeping proper books of account, which disclose with reasonable accuracy at any time the financial position of the CIS or ManCo and to enable it to ensure that the financial statements comply with the Companies Acts. The board may delegate these duties to the administrator provided that it reviews the performance by the administrator of these functions.</p> <p>The Board shall be responsible for preparing the annual audited financial statements prior to the Shareholders being requested to adopt same. The Board may delegate these duties to the administrator provided that it reviews the performance by the administrator of these functions.</p>	<p>Can guidance be provided on how it is proposed that the Board review the performance of the administrator in keeping books of account? Is the annual audit by external auditors under company law sufficient to satisfy this requirement?</p>	<p>The maintenance of books of account is an ongoing obligation of the Board often delegated to an administrator. Reporting lines should be put in place to ensure this obligation is being satisfied on an ongoing basis and in particular the Board should review the performance of any outsourced functions at its board meetings. It is not sufficient to rely on the annual audit to operate as a check to satisfy the Board as to compliance.</p>
<p>15.19</p>	<p>The Board shall ensure that there are appropriate processes and systems in place to monitor and manage risks identified by the Board or its service providers at all times.</p>	<p>Can clarification be provided as to whether the Board of the ManCo is required to oversee the internal risk and risk management processed and systems within delegates?</p>	<p>The Board must satisfy itself as to the adequacy of processes and systems of the service provider. A component of this review could include for example a SAS70 (or similar) report of the relevant service provider.</p>
<p>15.21</p>	<p>The Board shall require that it is notified promptly by applicable service providers of any breaches in risk limits as determined by the Board in order that immediate action can be taken.</p>	<p>Can clarification be provided as to whether the notification of breaches in risk limits should be all breaches or only those above an agreed de minimus level?</p>	<p>The Board should agree appropriate thresholds and trigger events with service providers.</p>

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For further information and a full list of IFIA members' contact details and services provided, please log onto www.irishfunds.ie

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