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MINIMUM COMPETENCY CODE

Introduction

The Central Bank of Ireland (the "Central Bank") issued its new Minimum Competency Code (the "Code") on 1 September 2011 replacing the Minimum Competency Requirements (the "Requirements") which came into effect on 1 January 2007. The Code took effect on 1 December 2011 and replaces the Requirements from that date.

The Requirements were implemented to improve the quality of service provided to consumers by setting down minimum standards of skill and knowledge for staff providing advice on, or arranging, retail financial products. It is intended that the Code will maintain the overall scheme of the Requirements, but the Code is now more closely integrated with the revised Fitness and Probity Standards (the "Fitness and Probity Standards") which were issued under S.I. 437 Central Bank Reform Act (Sections 20 and 22) Regulations 2011 (as amended by S.I. 615 of 2011) (the "Regulations") which also came into effect on 1 December 2011.

Applicability of the Code

The Code applies to persons carrying out a Pre-Approval Control Function ("PCF") or a Controlled Function ("CF") on a professional basis in a regulated firm, the exercise of which includes:

- (a) providing advice to consumers on retail financial products;
- (b) arranging or offering to arrange retail financial products for consumers; and
- (c) carrying out one of the specified functions set out in Appendix 2 of the Code, for example assisting a consumer in making an insurance claim, determining the outcome of an insurance claim or adjudicating on a complaint which relates to advice about a retail financial product or the arranging or offering to arrange a retail financial product for a consumer.

The Code contains categories of products which are considered to be retail financial products which are set out in Appendix 1 of the Code and include savings, investments, collective investment schemes, life assurance products, tracker bonds, shares in a company listed on the Stock Exchange, pensions, insurance and housing loans. The Code sets out the minimum level of knowledge and competence required for each category of retail financial product in Appendix 3 of the Code.



Non-Applicability of the Code

The Code will not apply to regulated firms who provide services to customers who are not "consumers", i.e. the Code will only apply to regulated firms who deal with "consumers". The term consumer can be taken to mean:

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

and includes, where appropriate, a potential "consumer".

Under the Requirements firms were not subject to the Minimum Competency Requirements when providing services in other EU/EEA Member States, however this is not expressly stated in the Code. Dillon Eustace has however received clarification from the Central Bank that the Standards will not apply to regulated firms providing services to consumers in other EU/EEA Member States. This interpretation is line with the revised Consumer Protection Code which also excludes the application of that code to consumers outside of the State.

Fitness and Probity Regime

The Code attempts to align itself closely with the revised Fitness and Probity Standards which also came into effect on 1 December 2011.

Pre-Approval Control Functions

The Regulations contain a detailed list of all PCF's including persons who hold the following positions;

- Office of Executive and Non-Executive Director (PCF-1 and PCF-2);
- Office of Chairman of the Board or Sub-Committee (i.e. audit, risk, remuneration and nomination committees) (PCF-3 and PCF-4 to PCF-7);
- Office of Chief Executive (PCF-8);

- Head of Finance (PCF-11);
- Head of Compliance (PCF-12);
- Head of Internal Audit (PCF-13);
- Head of Risk (PCF-14);
- Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF-15); and
- Branch Manager of branches of other EEA countries (PCF-16).

In addition to the list above, which applies to all regulated firm's, there is a list of industry specific PCFs within the Regulations specifying the functions which will be deemed to be PCFs in insurance undertakings, credit institutions, investment firms and other industry sectors.

Controlled Functions

While certain guidance has been provided as to which positions fall to be considered a PCF, the Regulations afford a more generic definition in respect of the 11 categories of CF's. The definition of CF is aligned with certain activities covered by the Code and includes a function related to the provision of a financial service which amongst others (i) relates to the giving of advice to a customer of the regulated firm in relation to the provision of a financial service (CF-3), (ii) arranging or offering to arrange a financial service for a customer of the regulated firm (CF-4), (iiii) adjudicating on any complaint communicated to the regulated firm (CF-8).

Fitness and Probity Standards

Part 1 of the Code (the "Standards"), specifies certain minimum competency standards with which a person falling within the scope of the Code must comply when performing a CF or a PCF on a professional basis. A regulated firm (which is subject to the Code) shall not permit an individual to perform a controlled function unless they are satisfied that the person complies with the Standards. Similarly the Central Bank will not approve a person to a PCF of a regulated firm (which is subject to the Code) unless they are satisfied that the person complies with the Standards.



A person will not be considered to comply with the Standards, unless he/she:

- has completed a recognised qualifications (a list of which are set out in Appendix 4 of the Code) that is relevant to the function to be exercised; or
- is a grandfathered person in respect of the function; or
- is a new entrant participating in a training process under the supervision of a qualified person or a grandfathered person; or
- in the case of a person performing a prescribed script function has complied with the standards set in the Code for such a role.

In addition to all of the above, individuals holding either a recognised qualification or recognised as a "grandfathered" person must be compliant with the Continuous Professional Development ("CPD") requirements which are outlined in greater detail below.

Grandfathering Arrangements

The previous Requirements included grandfathering provisions for those individuals who were carrying out certain activities on 1 January 2007 and had four years' experience in the eight year period from 1 January 1999 to 1 January 2007. In order to avail of the grandfathering regime under the Requirements regulated firms had to assess whether such individuals met certain conditions and to certify that they satisfied the experience requirement.

The Code has retained the grandfathering process and certification of experience may continue up to 31 December 2012 subject to completion by the individual of the required CPD hours from 1 January 2008 to the date of assessment for grandfathering purposes and the certification of experience by the regulated firm (60 hours in respect of the three year cycle from 1 January 2008 to 31 December 2010 and 15 formal hours each year from 1 January 2011 onwards). A regulated firm must keep certain records in respect of staff members claiming the "grandfathering exemption" and must also ensure that the assessment and certification of each individual's compliance with the experience requirement are complete and accurate. The records should include the following information:

- the documented assessment that was carried out for grandfathering purposes;
- certification of the person's compliance with the experience requirement;
- supporting documentation to confirm the person's experience requirement;
- where the person's experience was with a previous employer, confirmation from that previous employer of the person's experience.



A regulated firm must complete a "Statement of Grandfathered Status" by 1 January 2013 confirming the grandfathered status of each grandfathered person acting on behalf of that regulated firm.

New Entrants

New entrants are subject to tighter supervision than was the case previously. In order to comply with the Standards, a new entrant must participate in a training process that includes:

- Initial Training- the new entrant must take part in a training programme, organised by their employer, which is relevant to the function to be exercised, or alternatively have obtained part of a relevant recognised qualification (as set out in Appendix 4 of the Code) for that particular function. The length of the initial period must be based on an assessment by the regulated firm of the performance of the new entrant and amongst other things must include the nature and complexity of the functions undertaken by the new entrant and the new entrant's knowledge and compliance with regulatory and legislative requirements relevant to the role.
- Supervision- the new entrant must act under the direct supervision of a qualified or grandfathered person for an initial period when undertaking certain activities which are subject to the Standards. This level of accompaniment may be reduced incrementally over time, but the rationale for the reduction must be documented.
- Documentation all documentation relating to advice on or arranging or offering to arrange retail financial products or specified functions is checked and signed off by a qualified or grandfathered person.
- Working towards a recognised qualification- the new entrant must be working towards obtaining a relevant recognised qualification.
- *Timeframe* the new entrant must obtain a relevant recognised qualification within four years of commencing the training process.

The Code imposes onerous obligations on regulated firms to put policies and procedures in place to ensure that all new entrants are adequately monitored and are subject to tighter supervision than was previously the case. Regular meetings must be held between the supervisor and the new entrant and contact must be maintained between them. A supervisor may supervise no more than seven new entrants at any one time.

Regulated firms must maintain detailed written records in respect of new entrants, which records must include the following:

- date the individual commenced the function;
- length of initial period during which the new entrant was supervised at all times;
- criteria for reducing the level of supervision;
- details of the training or part of a recognized qualification completed by the new entrant prior to dealing with consumers;
- details of qualification being obtained; and
- details of arrangements for supervision of the new entrant.

Prescribed Script Function

If a person is operating a CF within a narrow and rigid set of criteria and according to a prescribed script and routine (e.g. call centre staff), then the following standards will apply:

- the person must act in accordance with a script which was devised by a person who is a qualified or grandfathered person;
- the person must have completed training which is relevant to the function to be exercised, or have obtained part of a relevant recognised qualification for that particular function;
- the person must complete ongoing training which is relevant to the function;
- the person must refer requests for information and advice that are outside the content of the script to a qualified or grandfathered person; and
- the person must operate under the supervision of a qualified or grandfathered person.

A regulated firm must maintain detailed records to demonstrate compliance with these requirements.

Continuing Professional Development

Persons subject to the provisions of the Code must complete formal CPD hours on an annual basis. A person who is the holder of a recognized qualification as set out in Appendix 4 of the Code where the ongoing maintenance of the qualification is not dependent on completion of CPD, shall with effect from 1 January 2012 complete 15 formal hours of CPD each calendar year.

A grandfathered person must complete 15 formal hours of CPD in each calendar year with effect from 1 January 2012. A person who is grandfathered in respect of specific functions and holds a recognised qualification for other functions is required to complete 15 formal

hours of CPD in total in each calendar year, however the content of the CPD hours must be relevant to the functions in respect of which the individual is a qualified person and a grandfathered person.

A person who is the holder of a recognised qualification with a professional designation (e.g. a solicitor), the ongoing maintenance of which depends on the completion of CPD, shall be taken to have complied with this section where he or she has successfully completed the CPD requirements of that recognised qualification.

For all of the above, at least one hour of CPD in each calendar year must relate to "ethics". Surplus hours in one year may not be carried into the following year. Where a person fails to complete 15 formal CPD hours in any year, the shortfall may be made up by the end of the following year (in addition to the requirement for that CPD year) provided the person has not incurred another shortfall within the previous five years. A person must complete at least one hour of CPD in each calendar year for each function undertaken that falls within the scope of these Standards, i.e. for each product category that they are accredited in.

Formal CPD hours must directly relate to the function(s) undertaken by each individual and may be obtained by attending seminars, lectures, conferences, workshops or courses dealing with a directly relevant topic. All formal CPD hours must be accredited by the provider of a recognised qualification or one of the professional educational bodies providing recognised qualifications that have a CPD requirement.

A regulated firm must ensure that it has procedures in place to ensure that qualified persons and grandfathered persons are in compliance with their CPD requirements. An individual's line manager must review a person's compliance with their CPD requirements including the relevance to the categories of product for which the person is accredited. All breaches of CPD requirements by a qualified person or a grandfathered person must be recorded on that person's file. Furthermore the Central Bank has reserved the right to check any person's compliance with their CPD requirements.

Regulated firms must ensure that they retain certain records relating to CPD requirements:

- records of monitoring compliance with CPD requirements;
- records demonstrating compliance by grandfathered persons and qualified persons with CPD requirements; and
- details of any breaches of CPD requirements.



Register of Accredited Persons

The Code imposes an obligation on all regulated firms to ensure that any persons acting on their behalf comply with the Standards when exercising a relevant function. Where a regulated firm takes full responsibility for the activities of tied agent or others, the regulated firm is required to monitor compliance with the Code of those tied agents or others¹.

A regulated firm must maintain a register of all persons who satisfies the standards set out in the Code. The Register shall record the following information:

- name of accredited person;
- how that person complies with the standards; i.e. through qualification, grandfathered status, new entrant, or prescribed script function and the date upon which the person obtained such qualification or grandfathered status;
- the function which that person performs and which makes them subject to the Code.

If an individual fails to comply with the relevant CPD requirements such that their professional designation is removed they must be removed from the register. Similarly where a grandfathered person or a holder of a recognized qualification fails to complete 15 formal hours of CPD more than once in any five year period they must also be removed from the register. This rule also applies to professions who are not subject to ongoing CPD requirements, which means that a person will be obliged to comply with ongoing CPD requirements under the Code. The Code provides that where a person is removed from the register for non-compliance with CPD requirements but has otherwise complied with the Code, then that person should be restored to the register once he/she is in compliance with their CPD requirements.

The obligation to maintain a register of accredited persons also extends to (i) a financial services provider authorised, licensed or registered in another EU or EEA Member State when providing services into the State on a branch or cross border basis, (ii) a regulated firm's branch offices in the State, e.g. branch offices of a bank (iii) foreign branches of an Irish regulated firm where that branch is providing services to Irish consumers in the State.

¹ Under Regulation 109(2) of the European Communities (Markets in Financial Instruments) Regulations 2007, as amended an investment firm that appoints a tied agent will remain fully and unconditionally responsible for any act or omission on the part of the tied agent when acting on behalf of the firm. This means that where an investment firm appoints a tied agent it must monitor compliance with the Code of that tied agent.



Minimum Competency Qualifications

New qualifications have been recognised by the Central Bank as meeting the standards contained in the Code. These qualifications will enable an individual to become accredited in one of the eight product categories set out in the Code. Accredited Product Advisor is the designation attached to the qualification.

A list of qualifications that meet the current competencies for the various categories of retail financial products are set out in Appendix 4 of the Code. A list of additional qualifications recognised by the Central Bank for specified functions is also set out in Appendix 4. No qualification shall be deemed to meet the minimum competency standards until that qualification has been formally recognized by the Central Bank.

Complaints Handling

The adjudication on any complaint communicated to a regulated firm by a consumer which relates to (i) advice about a retail financial product provided to that consumer, (ii) the arranging or the offering to arrange of a retail financial product for that consumer (iii) assisting consumers in the making of a claim under a contract of insurance or (iv) the determination of the outcome of claims by consumers arising under contracts of insurance will be regarded as a specified function. This means that any person who adjudicates on complaints relating to the aforementioned matters will be subject to the Code. Appendix 4 provides that a person adjudicating on such matters must be a solicitor member of the Law Society of Ireland, a barrister at law called to the Bar of Ireland or a Licentiate of the Association of Compliance Officers in Ireland.

Conclusion

The Code came into effect on 1 December 2011 and aims to enhance the minimum professional standards for all persons who provide advice on, or arrange retail financial products. The Code places responsibilities both on the persons carrying out relevant functions, as well as regulated firms, in line with the Central Bank's new Fitness and Probity Standards which also came into effect on 1 December 2011.

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