



November 2018

Publication of Corporate Governance Requirements for Investment Firms and Market Operators 2018

On 5 November 2018, the Central Bank of Ireland (the “**Central Bank**”) published its Corporate Governance Requirements for Investment Firms and Market Operators 2018 (the “**CG Requirements**”).¹

The CG requirements should be read in conjunction with the ESMA Guidelines on the management body of market operators and data reporting service providers of September 28, 2017, as well as the relevant legislative framework.

Who is in Scope?

The CG Requirements will apply to:

- (i) all firms and market operators authorised by Central Bank under The European Union (Markets in Financial Instruments) Regulations 2017; and
- (ii) non-retail investment intermediaries authorised under the Investment Intermediaries Act, 1995 (as amended)

provided that the relevant firm is designated as either high impact, medium high impact or medium low impact by the Central Bank’s Probability Risk Impact System (“**PRISM**”) (each a “**Relevant Firm**”).

¹ Separate Central Bank corporate governance requirements exist for credit institutions, for insurance undertakings and for captives. Fund Management companies generally adopt the Irish Funds Corporate Governance Code for Collective Investment Schemes and Management Companies.

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Firms designated by the Central Bank as low impact are not obliged to comply with the CG Requirements, although the Central Bank encourages them to do so. Similarly, the CG Requirements will not apply to foreign subsidiaries of Irish firms. They are encouraged to adopt equivalent good corporate governance practices.

Timing and Legal Basis

The CG Requirements will apply to Relevant Firms from July 1, 2019, and are stated to be conditions to which Relevant Firms are subject. We assume that the Central Bank will write to currently authorised Relevant Firms formally imposing such conditions in due course.

What do the CG Requirements provide?

The CG Requirements impose new rules relating to board composition, the chairperson and board committees. The main obligations are addressed below.

Board Composition: The Central Bank requires the board of a Relevant Firm to be of “*sufficient size and expertise to adequately*” oversee the operations of the Relevant Firm. It also requires that the board be made up of a majority of independent non-executive directors;

The CG Requirements define “director independence” as “*the ability to exercise sound judgement and decision making independent of the views of management, political interests or inappropriate outside interests*”. The following criteria should be considered and given reasonable weight when assessing a director’s independence:

- any financial or other obligation the individual may have to the Firm or its directors;
- whether the individual is or has been employed by the Firm or a group entity in the past and the post(s) so held;
- whether the individual is or has been a provider of professional services to the Firm in the recent past;
- whether the individual represents a significant shareholder;
- circumstances where the individual has acted as an independent non-executive director of the Firm for extended periods;
- any additional remuneration received in addition to the director’s fee, related directorships or shareholdings in the Firm; and
- any close business or personal relationship with any of the Firm’s directors or senior employees.

By way of exception to the majority independent requirement, for Relevant Firms which are subsidiaries of groups, the majority of the board may be composed of a following combination subject to the PRISM Impact of the Relevant Firm:

- in the case of High Impact Firms, the majority of the board may be composed of group directors and independent non-executive directors provided that in all cases the Firm shall have at least three independent non-executive directors;
- in the case of Medium High Impact Firms, the majority of the board may be composed of group directors and independent non-executive directors provided that in all cases the Firm shall have at least two independent non-executive directors;
- in the case of Medium Low Impact Firms, the majority of the board may be composed of group directors and independent non-executive directors provided that in all cases the Firm shall have at least one independent non-executive director.

Note that the Central Bank retains the discretion to require that the Firm shall have a greater number of independent non-executive directors than specified above. Group directors are required to act critically and independently so as to exercise objective and independent judgement.

Chairperson: A Chairperson must be appointed to the board and must have the “*relevant financial services expertise, qualifications and experience, or be required to undertake comprehensive, relevant and timely training*”. The position must be filled by an independent non-executive director or, if the Relevant Firm is a subsidiary, a group director can be appointed as Chairperson.

Committees of the Board: All Relevant Firms are required to establish an Audit Committee and a Risk Committee. Where a Relevant Firm is categorised as High Impact it must also establish a Remuneration Committee. The requirements applicable to each Committee varies, based on the PRISM rating of the Relevant Firm.

For Medium Low and Medium High Impact firms, where the board comprises five or less members, the full board, including the Chairperson and the Chief Executive Officer, may act as the Audit Committee and/or the Risk Committee once that has been approved in advance and in writing by the Central Bank. The minutes of those meetings must reflect that the board was sitting as the Audit Committee or as the Risk Committee, as the case may be.

Next Steps

Relevant Firms should now commence preparation to make any necessary changes to their governance arrangements so that they can be fully implemented in the first half of 2019.

Note that a contravention of the CG Requirements may result in the imposition of administrative sanctions or the exercise of certain powers under the Fitness and Probity Regime by the Central Bank.

A copy of the Requirements can be accessed [here](#).

For further guidance regarding the Requirements, please refer to the contacts above, or to your usual contact within Dillon Eustace.

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