

Prudential Policy Unit  
International Credit Institutions  
Financial Regulator  
PO Box 9138  
College Green  
Dublin 2

29<sup>th</sup> June 2010

**By Email**

Dear Sir/Madam

**Consultation Paper 41 ‘Corporate Governance Requirements for Credit Institutions and Insurance Undertakings’**

Chartered Accountants Ireland (‘the Institute’) is pleased to respond to the Central Bank and Financial Services Authority of Ireland (‘CBFSAI’) consultation, CP 41, on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings (‘the Consultation Paper’). The Institute is supportive of the direction adopted in CP 41. We do, however, have a number of high level comments which we set out below and which are based on feedback we have received from members working in the financial services sector.

**The Proposal**

The Institute is supportive of the wider strategy of CBFSAI to update the domestic regulatory corporate governance framework applying to credit institutions and insurance undertakings. We are also pleased to note, in paragraph 6.3, that the Financial Regulator recognises that ‘one size does not necessarily fit all’. However, rather than applying this approach only to ‘captive insurers’, this may also be of relevance to other smaller entities within the scope of the new proposals, as articulated in paragraph 1.4 of the Consultation Paper itself.

As you are aware, listed entities, including certain credit institutions and insurance undertakings, are already required to comply with the Combined Code on a ‘comply or explain’ basis. In this regard, the draft guidance could be improved by setting out clearly the relationship that the Regulator sees between the new requirements in CP 41 and the Combined Code and related guidance.

We note the comments in paragraph 3.1 of the ‘Proposal’ that while the Financial Regulator intends that the requirements apply to credit institutions and insurers licensed or authorised by it, they do not extend to foreign incorporated subsidiaries of an Irish financial institution. The guidance however encourages that such subsidiaries adopt equivalent corporate governance practices. In a similar manner, the Financial Regulator might acknowledge that Irish subsidiaries of foreign parents may equally apply those corporate governance practices of the foreign parent, particularly those from other EU Member States, which, while broadly equivalent, may reflect those cultural and legal differences of the foreign parent jurisdiction. From the comments received by Chartered Accountants Ireland from certain of its members involved with such entities, there would appear to be some confusion and uncertainty in this regard. We would welcome further clarification on this issue.

### **The Consultation Paper**

The Institute acknowledges that the new requirements have been drawn from best practice and guidance from a variety of international sources, as detailed in paragraph 1.3. We believe that this is appropriate and that any new requirements remain consistent with international norms and best practice. We would also suggest that the proposals have regard to other emerging proposals in this area, for example the recently published EU Green Paper on ‘Corporate Governance in financial institutions and remuneration policies’. In that context, we are supportive of harmonisation of governance practices on an EU-wide basis.

We particularly welcome the recognition in paragraph 1.4 of the Consultation that institutions of lesser economic risk as well as those that are part of larger groups may apply the new requirements in a proportionate manner. However, there does appear to be, from comments we have received, some confusion and uncertainty around what this means in practice. In particular, there is concern around the prohibition detailed in paragraph 5.10 regarding the number of chairmanships and other

director positions that might be held and issues relating to independent NEDs. We would welcome further clarification in this regard.

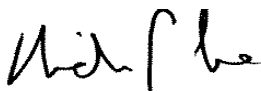
Paragraph 3.7 imposes a quasi ‘whistle blowing’ obligation on directors in general. While we appreciate the rationale behind this proposal, in our experience such obligations, unless accompanied by relevant and meaningful guidance can pose significant problems for those concerned. Further guidance on this area will be needed which should address, in particular, situations when potential conflicts of interest might arise for the director concerned and more specific guidance on the term ‘any concern’.

The requirement that boards fully understand and set the risk appetite for the institution and monitor adherence to this on an ongoing basis is appropriate. Further guidance, however, should be provided on this area, segregated between credit institutions and insurance companies, due to the varied nature of risk appetites in each sector.

We note the intention to require the submission of an annual or periodic ‘compliance statement’. We believe the guidance should provide further detail on how it is intended that this shall operate and the level of ‘assurance’ that it is envisaged directors will provide. Such guidance might also address how this will impact of subsidiaries of foreign parents.

We hope you find the above comments useful. Please do not hesitate to contact me or my colleague, Sarah Lane, at [sarah.lane@charteredaccountants.ie](mailto:sarah.lane@charteredaccountants.ie) if you would like to discuss further.

Yours faithfully



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