

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

Email: corpgov@centralbank.ie

**Central Bank & Financial Services Authority of Ireland – Consultation Paper
CP 41 – Corporate Governance Requirements for Credit Institutions and
Insurance Undertakings**

Please find to follow a submission on behalf of Credit Suisse Life (Ireland) Limited in respect of Consultation Paper CP 41 (the “Consultation Paper”).

The directors of Credit Suisse Life (Ireland) Limited (the “Institution”) have considered the proposals as outlined in the Consultation Paper and are supportive of those efforts which enhance corporate governance leading to the improvement of the resilience of the Irish financial sector in the face of future stresses but have been minded to submit to the Financial Regulator their joint observations on the proposals as would be anticipated to impact on the Institution and the financial services industry, notably those perceived to result in adverse consequences.

1. Proportional Application

Art. 1.4 states “.....institutions with a lesser economic significance and lower activities as well as those that are part of a larger financial services group within a comparable corporate governance framework will be subject to the requirements but implementation may be applied proportionately”

The concern is held that the discretion to apply a level of proportionality lies entirely with the Financial Regulator such that any proposed expansion of activities or additional (sister or subsidiary) entities that may be incorporated will be subject to a greater level of uncertainty given the application of the "new" rules will be applicable in the first instance but may be waived subject to the agreement of the Financial Regulator post project inception.

It is held such uncertainty will lead to opportunities within international groups in the first instance being considered in jurisdictions elsewhere and the potential to develop and retain incumbent enterprises will be undermined given the ability to conclude business will be subject to arbitrary discussions with the Financial Regulator. It is considered a danger that a lack of transparency will emerge in discussions between institutions and the Financial Regulator as a consequence.

2. Chairman & Composition of the Board

Art. 5.6 *"The Chairman shall be an independent non-executive director. If a deputy Chairman is required, the role shall be taken by an independent non-executive director"*.

As a subsidiary of an international banking group, control of capital is of ultimate concern to the parent, notwithstanding any restrictions accepted on receipt of "Conditions for Authorisation" on the respective issue of a license by the Financial Regulator. The Chairman is a representative of the parent company. As a consequence it is inexplicable why a non-executive director cannot be Chairman and the perception is created the parent is no longer in control of their said capital.

It is mistaken to presume a non-executive director could not (Art. 5.2) *"...encourage critical discussions and challenge mindsets..."* nor a non-executive director acting as chairman could not promote effective communication between executive and non-executive directors, given a

wholly owned subsidiary's parent knows with the greatest certainty the strategic purpose and direction befitting the institution concerned. As a subsidiary of (foreign) publicly listed entity it is held at the very least, notwithstanding the issues of the application of proportionality discussed above, a degree of proportionality should be considered in the proposed requirement stipulating a chairman shall be an independent non-executive director.

Art 4.5 "The Financial Regulator requires the number of directorships of credit institutions and insurance undertakings held by a director shall not exceed three"

This article is intended to limit the number of directorships held by those professionals willing to undertake the function of Independent Non-Executive Directors (INED's) by virtue of the presumed time required to fulfil ones functions satisfactorily. It is considered such a limit, whilst understanding its purpose, will cause great & unintended difficulties for firms in securing suitably qualified individuals to act. Ireland has a limited pool of suitably qualified individuals with relevant experience, whilst noting this pool is increasing with the passing of time.

In general forum on briefings on the matter the Financial Regulator has stated companies may seek INED's outside of the Irish jurisdiction. This is not considered appropriate for two reasons, firstly, given the financial services industry is competing for business with other jurisdictions the use of foreign INED's demonstrates Ireland is unable to fulfil those requirements to support companies locally even when suitably qualified candidates are available locally whilst not being fully engaged elsewhere and secondly, serves to weaken the capacity to satisfy the requirements of Art. 4.3 *"An institution shall ensure a majority of its directors are reasonably available to meet the Financial Regulator at short notice..."*

3. Meetings

Art. 11.1 *"...the board shall meet at least once every calendar month."*

This requirement is considered excessive whilst noting the possibility of exception, which is granted again upon discussion with the Financial Regulator. One of the purposes of a board is to challenge management activities thus operating an effective governance model. It is held that is sufficient board meetings are [normally] held quarterly and as necessary on an ad hoc basis. Moreover;

Art. 1.2 states "Effective governance should see a Board that actively understands and engages with the business it governs. Scrutiny and challenge of management should be part of this process"

If such board meetings are conducted on a monthly basis it is anticipated the division of responsibilities between the board and management will become blurred such that management decisions and the implementation of those decisions will become part of the boards' considerations given there will be a continuous cycle of meetings and the issue of governance, challenge and strategic direction setting will be replaced by taking in effect management decisions.

In the insurance industry, institutions are currently working towards implementing Solvency II, many of the initiatives within the Consultation Paper could be implemented in discussion with institutions in agreeing the Pillar II requirements upon the Financial Regulators assessment of risk bearing on each individual institution. Solvency II has taken a number of years to develop within the coordinated framework of CEIOPS, Quantitative Impact Studies and invitations of industry input and feedback. The underlying sense stemming from the Consultation Paper is the Financial Regulator is reacting hastily in advance of the implementation of Solvency II, in advance of its peers, who may indeed be developing their own governance amendments, which could be commonly developed through the auspices of European

Union institutions. It is also held the Financial Regulator is applying a governance framework that is appropriate for a limited number of organisations. The great majority of organisations covered by the Consultation Paper are not systemic to the economy.

In summary it is held the proposals as outlined in the Consultation Paper and considered in this submission are inappropriate to the majority of institutions. The Consultation Paper should be broadly welcomed however if implemented in its current form the alteration in governance structures of those institutions it is intended to strengthen will be inversely and unintentionally weakened. The majority of companies covered by this initiative are not "Major Institutions", are not systemic in any regard and thus the approach of representing the highest common requirements and working backwards, by the application of proportionality, for the majority of institutions' will lead to uncertainty and a lack of [competitive] transparency as discussions with the Financial Regulator will appear to be held behind closed doors. The task of selling Ireland as a place to do business will become infinitely more difficult.

We thank you for the opportunity in making a submission to the proposals as currently outlined and look forward to the Financial Regulators final guidance in due course. If the Financial Regulator would like to discuss the opinions raised in this submission we would be very pleased to expand them further.



Paul O'Connor
Chief Executive Officer
On behalf of the Board of Directors

30 June 2010