June 28,2010

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

Dear Sirs,

Subject: **Corporate Governance – Consultation Paper CP 41**
Submission from the Board of ECCU Assurance Company Ltd

The Board of ECCU Assurance Company Ltd welcomes the publication of Consultation Paper CP 41 on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings.

We, as Directors of ECCU Assurance Company Ltd, are pleased to respond to the Consultation Paper not just from the narrow perspective of ECCU but also taking account of what we regard as wider public interest issues.

Section 1 – Background:

1. We are acutely aware of the background against which this Consultation Paper has been issued. Happily, due to prudent management and a strongly reserved position, ECCU Assurance Company Ltd continues to serve the needs of its policy holders from a position of financial strength and stability. Nevertheless we fully appreciate the need for more prescriptive corporate governance requirements in the wake of widespread and wholly justifiable public concern regarding business practices within the wider financial services industry in recent times.

2. We particularly welcome the balanced approach articulated by the Financial Regulator in Clause 1.4 in which it is suggested that institutions with lesser economic significance and lower risk activities will be required to operate within a corporate governance framework comparable to major institutions but that implementation may be applied proportionately.

Section 2 – Legal Basis:

- Section 2 is factual in nature and does not require comment.

Section 3 – General Requirements:

1. We fully agree with the fundamentals of corporate governance as described in Section 3.

2. Whilst we agree absolutely with the principle enshrined in Clause 3.4, one would presume that the level of sophistication considered appropriate for *institutions with lesser economic significance and lower risk activities* would take on board the principle of proportionality.

3. Under Clause 3.7 it is noted that each director will have what amounts to a "whistle blowing" responsibility in relation to any concern about the overall corporate governance of an institution. That being the case one would expect to see some form of statutory protection being available to a director who is obliged to report any such concern to the Regulator.

Section 4 – Composition of the Board:

1. A primary objective of Section 4 is to ensure that all directors are capable of discharging their responsibilities having due regard to the totality of their commitments. This is an absolutely correct objective and the emphasis should be on the most effective means of achieving it.

2. Limiting the number of directorships of credit institutions and insurance undertakings held by a director to three may well prove to be a somewhat blunt instrument as a means of achieving the objective described in paragraph 1 above as sufficient weight is not given to:

(a) The nature, scale and complexity of the institutions, and
(b) The experience and professional qualifications of a director.

3. A limit of three may well be too high in some instances and too low in others. For example, in the light of recent events public interest concerns would suggest it is reasonable to contend that a director of any one of the three principal Irish financial institutions, namely, Allied Irish Bank, Bank of Ireland and Irish Life and Permanent, should be precluded from being a director of any other independent credit institution or insurance undertaking in recognition of the scale, market dominance, diversity and overall complexity of these institutions. Likewise, a director of relatively minor credit institutions or insurance undertakings may be eminently well qualified and have sufficient time to devote to directorships of significantly more than the limit of three suggested in Clause 4.5.

4. In the public interest, we suggest that the arbitrary limit of three suggested in Clause 4.5 should be abandoned in favour of a structure based on the principles enshrined in paragraph 3 above. We further suggest that the procedures as set out in Clause 4.6 should be followed in relation to **any** outside directorships which a director of a major credit institution or insurance undertaking may seek to hold. The complexity of directorships of non-credit institutions may be even more time consuming than those of credit institutions and consequently the range of business activities of the companies involved should be a significant factor in determining whether a director has sufficient time to execute directorship responsibilities.

5. In line with the sentiments expressed in paragraphs 3 and 4 above we fully support the procedures described in paragraph 4.6 in relation to multiple directorships.

6. We would question the appropriateness of having a majority of independent non-executive directors in all circumstances other than the exceptions described in paragraphs a) and b) of Clause 4.1. In particular we suggest it would be unreasonable to expect a parent company to relinquish control of a captive insurance undertaking through a requirement to have a majority of independent non-executive directors. We suggest that Clause 4.1 may need further clarification in this regard.

7. If a limit is being set on the period a director can serve then the rotational process needs to strike a balance between the benefit of intimacy of knowledge that comes from

experience of the company versus the dilution of objectivity that can ensue from remaining too long on the Board.

8. As presently constructed, the Board of ECCU Assurance Company Limited complies with the provisions of Section 4 in every respect.

Section 5 – Chairman:

1. The text of Section 5 leaves open the obvious question: *who appoints the Chairman?* In the interest of clarity it would be preferable if such an appointment were specified as the prerogative of the Board of Directors of the institution.

2. Subject to the point made in paragraph 1 above, we fully support the requirements of Section 5 in relation to the role and responsibilities of the Chairman. We are particularly supportive of the requirement that the Chairman and Chief Executive Officer shall be separate (Clause 5.5).

Section 6 – Chief Executive Officer:

1. We fully support the requirements of Section 6 relating to the role and responsibilities of a Chief Executive Officer.

2. In the interest of clarity we would suggest that Clause 6.4 might be reworded to read:

   "The CEO may or may not be appointed for a prescribed time period but in any event the CEO contract shall be reviewed at least every 5 years"

Section 7 – Independent Non-Executive Directors:

- We fully support the requirements of Section 7 relating to the status and competency requirements of independent non-executive directors.

Section 8 – Role of the Board:

1. We fully support the Regulator's expectations as regards the role of the Board as described in Section 8.

2. We regard Clause 8.1 as especially relevant and we particularly welcome the reference to "*ethical oversight*" in the context of the Board's responsibilities.

Section 9 – Appointments:

1. We would suggest that due consideration may need to be given to the respective roles of Shareholders and the Board as regards the appointment of non-executive directors – and of directors generally. If the Regulator's intention is to preclude Shareholders from the appointment of non-executive directors then this should be stated explicitly. Our view is that the exclusion of Shareholders from the appointment of non–executive directors is neither practical nor desirable. This point is very obvious where there is a single corporate shareholder.

2. An *appropriate succession plan* as required by Clause 9.6 may well be both practical and desirable for major institutions. However, for smaller organisations we believe this is an issue that should be left to the discretion of the Board to deal with in a manner suited to the scale and nature of the institution. In particular we suggest that Boards of smaller institutions should be required to ensure that in the normal course of events, as part of a succession plan, new directors should have a period of overlap with existing directors. We suggest that the required degree of flexibility could be achieved by rewording Clause 9.6 to read:

   "Insofar as it is practicable to do so, the Board shall ensure that there is an appropriate succession plan in place"

Section 10 – Risk Appetite:

1. We fully support the requirements of Section 10 as regards an institution's risk profile and risk management systems on the reasonable understanding that the application of qualitative assessments and quantitative metrics would be proportionate to the scale and nature of the institution's business profile.

2. In the public interest and in the light of recent events we suggest the addition of a further Clause 10.8 to read as follows:

   "The Board of any institution whose ordinary shares or debentures are classified as Authorised Investments within the meaning of the Trustee (Authorised Investments) Act 1958 shall ensure that due consideration is given to such classification in establishing and monitoring the risk profile appropriate to its

business model and this aspect of the institution's risk appetite shall be subject to a documented annual review by the Board"

Section 11 – Meetings:

1. The first sentence of Clause 11.1 encapsulates all that should be necessary as regards the frequency of Board meetings from a Regulatory perspective.

2. If mandatory frequency must be specified then it should be quarterly rather than monthly. It is likely that for many institutions monthly Board meetings would generate a "*meetings for the sake of meetings*" culture which would not contribute towards the effective management of the institution's business.

3. At the present time the Board of ECCU Assurance Company Ltd meets on a monthly basis because we consider that such frequency is suited to the current business needs of the Company. However, that might not always be the case and we would reasonably expect to have the flexibility to determine the appropriate frequency of future Board meetings without reference to the Financial Regulator.

Section 12 – Reserved Powers:

- We agree that matters specifically reserved for consideration by the Board should be set out in a Board Charter or similar document.

Section 13 – Consolidated Supervision:

- We agree with the requirements of Clause 13.1 relating to the supervision of subsidiary institutions.

Section 14 – Committees of the Board:

1. We fully support the requirements of Clauses 14.2, 14.3 and 14.4 on the basis that they will have universal application.

2. We would suggest that, on grounds of proportionality, an Audit Committee and a Risk Committee could be combined and operate as an Audit and Risk Committee for smaller institutions. Our view is that in smaller institutions the desire for leadership by independent non-executive directors on committees would be better facilitated by combining Risk and Audit. We suggest that adequate safeguards would exist if the first sentence of Clause 14.1 were re-worded to read as follows:

   "The Board shall ensure that a committee structure exists to an extent that deals adequately and effectively with the orderly conduct of its business and, at a minimum, the Board shall establish a committee or committees to deal with audit considerations and risk considerations. Major institutions are required to establish an Audit Committee and a Risk Committee as separate entities"

Section 15 - General Requirements of Committees:

- We fully support the requirements of Section 15 dealing with the orderly conduct of committee business.

Section 16 - Terms of Reference of Committees of the Board:

- The requirements of Section 16 are in line with normal business practices which we fully support.

Section 17 – Audit Committee:

- We fully support the requirements of Section 17 relating to the composition, scope and responsibilities of the Audit Committee as appropriate for the generality of major institutions but due cognisance needs to be taken of our comments elsewhere in this submission regarding exceptions to the need for a majority of independent non-executive directors in restrictive institutions (Section 4 above) and flexibility needed by smaller institutions regarding committee structures generally (Section 14 above).

Section 18 – Risk Committee:

1. If our suggestion of smaller institutions having the flexibility to establish a combined Audit and Risk Committee is accepted, the wording of Clause 18.1 would need to be suitably amended.

2. We would consider the requirement that prior written approval of the Financial Regulator is needed for a Board itself to carry out the functions of a Risk Committee as excessively restrictive. A practical alternative requirement would be for a Board to simply notify the Financial Regulator of its modus operandi as regards committee structures generally and to proceed to conduct its business in the manner it considers appropriate to the nature, scale and complexity of the institution unless directed otherwise by the Financial Regulator.

Section 19 – Remuneration Committee:

- We have no issue with Section 19 on the understanding that a mandatory requirement to establish a Remuneration Committee is confined to Major institutions.

Section 20 – Nomination Committee:

- We have no issue with Section 20 on the understanding that a mandatory requirement to establish a Nominations Committee is confined to Major institutions.

Section 21 – Compliance Statement:

1. We fully support the principle of an annual Compliance Statement as envisaged in Clause 21.

2. We would reasonably expect that the principles of proportionality and materiality would be given due weight in relation to the level of detail required from smaller institutions. This is not to say that there could ever be any level of compromise relating to procedures and practices that would in any way impact negatively on the Financial Regulator's view of the manner in which the business of any institution is being conducted.

We would hope that our views will be viewed as constructive and helpful to the Financial Regulator's quest for appropriate and effective regulation pertaining to corporate governance requirements for credit institutions and insurance undertakings.

Yours faithfully

For and on behalf of the Board of ECCU Assurance Company Limited

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James R Kehoe

Chairman