Introduction

Financial Services Ireland welcomes the publication of Consultation Paper 41 on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings (CP41).

The publication of these proposals coincides with detailed reviews of corporate governance internationally in the light of the financial crisis, including in the UK the report of Sir David Walker[1], the revision of the Combined Code[2], and the publication of a Green Paper by the European Commission[3].

High standards of corporate governance are essential to the effectiveness of financial regulation. A system of regulation can only succeed if the individuals who control firms act in the best interests of the firm and have effective systems in place to direct the firm's activities.

The events of the last two years have shown that some individuals in positions of responsibility did not discharge their functions in an appropriate manner. In some cases they appear to have placed their own short-term interests ahead of their firm's. In other cases they did not fully understand and control the risks that their firms assumed, or had an unquestioning belief in the strength of the market and their business models. As a result, an enormous financial and economic burden has been placed on the Irish people, shareholder value has been destroyed, and Ireland's international reputation has been damaged.

Accordingly, while this submission will draw attention to areas where we believe the Financial Regulator's proposals would benefit from further development, we would like to emphasise that the underlying rationale for CP41 is not in question. Measures that improve the standard of corporate governance in Irish financial institutions are essential to rebuilding Ireland's international reputation.

In preparing this submission Financial Services Ireland has consulted widely with our members. We are grateful for the engagement and assistance of regulatory officials, who provided an overview of the consultation paper and clarified a number of areas at a briefing for more than 70 of our members on 3 June 2010.

In response to our requests a number of member firms have provided us with written feedback and we understand that many of them intend to make submissions to this consultation process individually.

This submission is divided in two parts. In the first section, we make general observations on the paper, while the second focuses on specific areas.

Part 1 - General Observations

Effectiveness

As noted above, our key concern is to ensure that the Financial Regulator's proposals result in an improvement in the standard of corporate governance in Irish financial institutions. However, we are concerned that CP41 is overly reliant on setting highly prescriptive standards and enforcing them effectively[4]. The experience both in Ireland and internationally would suggest that more is required.

For example, the evidence of the last two years shows that the relationship between the level of prescription in the area of corporate governance and the quality or standard of corporate governance practice is unclear.

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[1] *A review of corporate governance in UK banks and other financial industry entities*,Sir David Walker, November 2009
[2] Financial Reporting Council, June 2010, hereafter
[3] Corporate Governance in financial institutions and remuneration policies, COM (2010) 284, hereafter
[4] CP41 states in paragraph 1.1 that because the failure of financial services firms gives rise to externalities, that this justifies more "prescriptive" standards than those applying to non-financial companies.

In their report into the causes of the Irish banking crisis, Regling and Watson note that *"as a broad generalisation, the failings of corporate governance seem to have been much more a problem of deficient implementation than defective guidelines and processes"*[5].

Their report and that of Governor Honohan outline processes, systems, and guidelines that were very prescriptive but provided little protection against the management failures described above.

We acknowledge that increased enforcement should ensure that firms follow the rules. However, simply following the corporate governance rules is not the same as having effective corporate governance. As the Walker Report notes, conformity with procedures does not guarantee improved standards either.

CP41 sets as its objective the creation of "a Board that actively understands and engages with the business it governs"[6]. We agree that this should be the objective but we note that this is fundamentally about changing management behaviour. While stricter requirements and better enforcement have a role to play, real change only comes about when directors and shareholders have ownership of, and a real commitment to, the governance processes within their firms.

That sense of ownership can only be developed if the relationship between corporate governance requirements and the overall welfare of the firm and its stakeholders is clear and well understood.

This is not to suggest that prescriptive standards or hard rules are not required, but rather that they need to be tailored to the specific characteristics of the Irish financial services sector, and must be set at a level that makes sense to those who are expected to follow them. Based on the feedback we have received from members, CP41 is set at a level that largely reflects existing practice in listed institutions but is alien to the vast majority of the firms that will be required to follow them.

It is important to note that we are not suggesting that the *standard* of corporate governance should be lower in any particular part of the Irish financial services industry, rather that the achievement of the objective that boards understand and engage with their business requires a more nuanced approach.

Policy Making

In its 2008-2010 Strategic Plan the Financial Regulator committed to conducting regulatory impact analyses on significant regulatory initiatives and to the development of an RIA methodology in line with EU best practice by 2009. However, such research does not appear to have been part of the development process for CP41, and a result the paper lacks the depth of analysis of similar documents produced by regulators in other jurisdictions[7].

The development of effective regulatory policy in this context requires a clear evidence-based definition of the scope of the underlying policy objective and the adoption of measures that are rationally and proportionately linked to the achievement of those objectives.

To assist with this, a wide range of tools have been developed internationally to improve the policy development process including structured consultations and regulatory and economic impact analysis. We would encourage the Financial Regulator to recommit itself to the introduction of RIA guidelines as a matter of urgency.

International Benchmarking and Alignment

Paragraph 1.3 of the introductory section of CP41 states that the requirements draw on leading research and guidance in the governance area, including the work of the Basel Committee, the IAIS and the OECD, along with the proposed enhancements to the Basel II framework, the advice of CEIOPS, the proposals of the G20, and from European Directives 2009/138/EC (Solvency II) and 2006/48-49/EC (Capital Requirements).

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[5] A Preliminary Report on the Sources of Ireland's Banking Crisis, Regling & Watson, (2010) at pg. 35
[6] Paragraph 1.2
[7] See for example the FSA's Consultation Paper 10/3 on Effective Corporate Governance, January 2010

While not explicitly referenced, it is clear that CP41 has also been heavily influenced by standards developed by the Australian Prudential Regulatory Authority[8]. While there are certain similarities between the Irish and Australian financial systems, in terms of history and legal tradition, there are also very clear differences to be considered.

The sources referred to above articulate general principles and considerations in the area of corporate governance. The APRA requirements are an extremely detailed and prescriptive articulation of these principles and it is not clear from CP41 whether they are appropriate in an Irish context.

In the United Kingdom, reform was preceded by a detailed study (the Walker Report) into exactly how corporate governance failures contributed to the financial crisis. The Walker recommendations are, for the most part, against the introduction of formulaic rules similar to those in Australia, instead focusing on the substance and quality of the people occupying positions of responsibility in financial institutions.

In its recent Green Paper on Corporate Governance, the European Commission has embarked upon a process of review of the area, highlighting various questions to be answered. In doing so the Commission explicitly acknowledges the complexity of the area, the differing approaches which may be suitable in particular cases, and the possibility of unintended consequences.

Both the Commission and the Walker Report raise a number of issues that are not considered in CP41. These include very specific issues such as the role and responsibilities of institutional shareholders, and the relationship between corporate governance requirements and fitness and probity standards. They also consider broader issues such as the diversity of boards, the role of 'comply or explain', and the training requirements for directors.

We do not suggest that the regulator should follow the approach of any single jurisdiction in developing its standards, or that the development of Irish standards should be delayed until these international processes are complete, but we do believe that it would be appropriate for the Regulator to:

- articulate its reasoning for preferring the Australian approach to that adopted in the UK;
- explain how the requirements of CP 41 will interact with the Corporate Governance requirements of Solvency II and the revised CRD;
- outline the relationship between CP41 and the revised statutory fitness and probity tests,
- outline its position on the European Commission's Green Paper.

Finally, although the requirements are clearly intended for a unitary board, the introduction of the Societas Europaea (SE) permits the establishment of two-tier structures, and clarification is necessary on how these proposals would apply to such companies.

Proportionality

Based on our initial estimates CP41 will affect more than 300 firms. These companies range in scale and complexity from large domestic banks to small captive re-insurers. Paragraph 1.4 notes that:

"We recognise differences in the nature of business and risk characteristics of different institutions. The full extent of the requirements will apply to major institutions. Institutions with lesser economic significance and lower risk activities as well as those that are part of a larger financial services group within a comparable corporate governance framework will also be subject to the requirements but implementation may be applied proportionately."

We fully endorse this statement of general principle. However, the text of CP41 gives little insight into how it will be applied in practice. In particular:

- it is not clear whether the general principle above means that the regulator will modify the application of all of the provisions of CP41 to the particular circumstances of a firm, or

[8] APRA Prudential Standard GPS 510 Governance, November 2009

whether it merely describes the fact that some of the requirements are explicitly modified in certain circumstances;
- we estimate that more than 250 firms will seek the benefit of some or all of the discretions that the Regulator has retained, creating significant additional work for the regulator and reputational risks for some of the firms in question;
- we are also concerned that the practice of tailoring these proposal through bilateral discussions may undermine international confidence in the consistency and fairness of our regulatory system;
- the line between major/non-major institutions is not particularly clear and the definition of 'major' on page 10 is circular.

While we are not proposing a "one size fits all approach", we believe that the regulator should identify areas where the current proposals can be modified to ensure greater levels of universal and uniform application. This may involve expressing some provisions as 'add-ons' that would be applied to major institutions as opposed to setting standards that require 'carve-outs' for non-major institutions.

We are aware that other submissions make detailed proposals as to how this might be achieved and we believe that these should be given further consideration.

Groups and Subsidiaries

The Basel Committee's Consultation Document, *Principles for Enhancing Corporate Governance*, acknowledges that there can be a tension between the corporate governance requirements of a group and its subsidiaries.

Paragraphs 59-62 of the Basel Committee's document note that good corporate governance demands that boards at group level exercise adequate oversight of subsidiaries and that they should be aware of material risks and issues that might affect both the group as a whole and the subsidiary. The document notes *inter alia,* that a banking subsidiary should retain and set its own corporate governance responsibilities, but should also ensure that its decisions and practices are not detrimental to the legal interests of the subsidiary's stakeholders.

This issue is extremely important to wholly owned subsidiaries of foreign-owned institutions operating in Ireland. CP41 requires that the Chairman of a subsidiary be an independent non-executive which would prevent senior executives from the parent company from holding this position. CP41 also requires that in the case of subsidiaries that are owned by parents who are regulated by a competent authority in another jurisdiction, the majority of directors should be non-executive although they need not be independent.

This represents a significant reduction in the ability of parent companies to ensure effective oversight of their Irish subsidiaries and has raised serious concerns among many of our members. Initial feedback has suggested that these measures would at the very least lead to a marginalisation of the Irish operation within the group. In some cases groups would be unwilling to assume the risks associated with subsidiaries over which they have only limited influence and would move to close their Irish operations.

Although CP41 does not explicitly state a rationale for these requirements, we note the comments of Assistant Director-General Jonathan McMahon to the Mazar's Banking Conference on May 26th 2010 when he stated:

"A financial institution incorporated outside Ireland, but with operations here, may look to protect, or come under pressure from its home country to protect, the parent institution at the expense of its overseas operations. It could do so by sweeping cash held in host jurisdictions back to the home country.

During the crisis, this risk led regulators to intervene to secure locally the resources of foreign firms operating within their borders.

It could lead a financial institution to 'walk away' from its liabilities overseas, problematic as this can be to the sovereign rating of the home country. Another danger is that a financial institution might

choose to hold less capital or liquidity for a given portfolio, irrespective of regulatory capital requirements, than it would in its home country.

It might also locate 'problem' assets outside its home country. These are clearly not the actions of a responsible financial institution, but as the crisis demonstrates, neither are they fragments of the imagination."

We assume that the Financial Regulator is attempting to manage the risks described above. These comments identify issues of real importance - the key issue is the balancing of group control on one hand with the prudential protection of the subsidiary on the other. We would make the following observations in relation to this balance:

1. An inability of the parent group to effectively control a subsidiary is a corporate governance failure in and of itself. Some of the most significant banking losses have been caused by international parents who failed to maintain effective control over subsidiaries and/or their employees – examples include Barings, National Australia Bank and M&T.
2. The European Union has adopted a range of measures to improve cross-border supervision including the establishment of colleges of supervisors and European Supervisory Authorities; related proposals are currently under consideration to deal with bank resolutions. These measures should provide a mechanism for the regulator to highlight where it believes that Irish subsidiaries are at risk of being sacrificed to protect parent companies.
3. We acknowledge that in some jurisdictions firms did attempt to walk-away from their overseas commitments. However, the experience in Ireland has been that subsidiaries received support from their parents and foreign governments. The Irish state has not provided any assistance to any IFSC bank or insurance company, but if Irish regulation prevents parent companies from running their businesses, Ireland is arguably more exposed to requests for support.
4. Furthermore, it is not clear that formal 'independence' of board members would mitigate such risks. As Mr McMahon notes, the actions described above would not be those of a responsible financial institution. Such an institution is unlikely to populate its board with independently minded individuals who will actively challenge instructions from the parent company.

We would suggest that better protection against the risks identified above comes from the quality and calibre of the subsidiaries' board members, and from the active engagement of parent companies in the running of their Irish operations. As currently drafted, CP41 marginalises parent companies, and makes Irish subsidiaries entirely dependent on a very limited pool of non-executive directors.

Sectoral Application

We are concerned that while the paper applies to both credit institutions and insurance companies, the focus appears to be primarily on banking issues.

Although we appreciate that lapses in corporate governance in Ireland have not been confined to the banking sector it is not clear whether CP41 is the appropriate place to address these.

Corporate governance provisions form a major part of the Solvency II Directive, in particular Articles 40-50, and while the Directive is referenced on Page 9, no further consideration is given to it and there appears to be almost no consideration given to actuarial functions or to the specific circumstances of insurance companies. The implementation of Solvency II would appear to present a more obvious forum to consider the appropriate corporate governance regime for insurers.

The relationship between CP41 and the existing requirements for reinsurance companies is not addressed. We have proceeded on the understanding that the paper applies to, and supersedes existing provisions for reinsurers. If this is the case we would ask the regulator to reconsider the application of CP41 to this sector. Extensive corporate governance requirements were introduced for reinsurers in December 2007, we are unaware of any evidence to suggest that these are not functioning well As they will have to reviewed in any event as a result of Solvency II there appears to be little reason to apply CP41 to this sector.

We also note the invitation from the regulator to comment on the application of these measures to captive insurers. We understand that another submission will address this subject in detail. However,

we do not believe that the rationale underpinning CP41, that of the need to prevent externalities has any application in the context of firms that are established exclusively to meet the needs of their parent companies.

The regulator has also asked whether provisions should be developed for investment firms. In the case of firms regulated under the Market in Financial Instruments Directive, and the announcement of the European Commission to review MiFID, we would suggest that no decision be taken on this issue until the European Commission has clarified the timetable and scope of the review. We have received no feedback on the position of firms regulated under the Investment Intermediaries Act.

Part 2 – Specific Comments

Definitions

'Institution'

We understand from communication with the regulator that it is the intention to include re-insurance firms within the scope of the proposals. However, this is not clear from the definition of 'institution'.

'Major Institution'

The definition of major institution is key to the application of proportionality. At present the definition used is unclear – it is circular to equate 'major' with 'sufficiently large'. Paragraph 1.4 appears to suggest that whether or not a firm is 'major' depends to some degree on its level of economic importance, whether it is of lower risk, or whether it is part of a financial service group regulated in a comparable jurisdiction.

It is not clear what the introduction of the word 'major' adds that is not captured by the concept of systemic importance. Similarly, it may be the case that the differentiation of approach can be better articulated as being risk-based.

One possible way of identifying those firms to whom CP41 should be applied in full would be to rely on some of the concepts set out in the IMF/FSB publication, *Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments, October 2009.*

'Director Independence'

A number of aspects of the current definition have been noted.

- The list of criteria must be "considered and given reasonable weight" when determining if a Director is independent. It is not clear whether or to what extent a director can meet some, but not necessarily all, of the criteria and still be considered independent.
- The position of subsidiaries would be improved if group employees in controlled positions, who are not employees of the subsidiary, were regarded as independent on the basis that their current role requires them to challenge management.
- Further, we submit that independent Directors at a group level should not lose their independence if they sit on the board of a subsidiary by virtue of the fact that they represent a significant shareholder. The logic is that if they are sufficiently independent to challenge group strategy, that they will do so in the case of subsidiaries.
- Greater clarity is required in relation to phrases such as 'extended', 'significant', 'recent', 'close relationships' and 'inappropriate'.

Legal Basis

Applicability to reinsurers

Our understanding from discussions with the regulator is that this paper applies to reinsurers. However, there is no reference made to the Reinsurance Directive in [2.2].

Legal basis of compliance statement

We do not believe that application of Section 25 of the Central Bank Act 1997 in [2.4] is appropriate for the exercise of this power. In previous submissions on the implementation of Section 25 of the Central Bank Act, FSI expressed the view that this section was intended by the Oireachtas to be used as an investigative or forensic tool. We continue to hold this view.

It is our view that it is open to the regulator to require firms to confirm that they have implemented the provisions of CP41 as part of their on-going supervisory activities, and if firms have failed to do so to punish them accordingly. However, if the regulator were to proceed on the basis that section 25 is necessary, we would expect guidelines to be issued as provided for under the legislation.

General Requirements

Reporting of concerns

In relation to the requirement to report concerns in relation to corporate governance in [3.7], we suggest further clarity is required as to the nature of the relevant concerns. In particular, guidance is required on what constitutes a material concern. The existence simply of a dissenting view on a board decision in relation to corporate governance structures should not necessitate informing the regulator. Nor should good faith disagreements in relation to, for example, risk appetite require disclosure. It would also be beneficial to outline the relationship between this section and the voluntary reporting guidelines that exist under the administrative sanctions regime.

Individual institutional compliance

We believe that while institutions must comply individually rather than on a group level, explicit acknowledgement and provision should be made of closely related structures, e.g. connected life/non-life/re-insurance firms, where appropriate corporate governance structures should take into account the links and shared resources and personnel between the firms.

Composition of the Board

Size of the board

We believe that the approach of the first clause of [4.1] in establishing a minimum of 5 with potential additional requirements for major institutions is broadly correct.

The requirement to have a majority of independent non-executive directors does not pose any difficulties for larger independent institutions. However, the application of the exceptions that appear to be intended to deal with subsidiaries is less clear. In particular:

- it is stated that the exceptions 'may' apply, guidance is required on the type of circumstances where they 'may not' be applied;
- confusion has arisen through the use of the phrase 'competent authority' given its established usage in EU legislation as referring to other EU supervisory authorities. We assume that firms regulated in the US, Canada, and other major OECD firms could also avail of these exceptions;
- we do not believe that subsidiaries require Chairmen with the same level of independence as that demanded by holding companies. This can be addressed in two ways, either by removing the requirement for a independent chair from subsidiaries, or by expanding the definition of 'independent' to allow senior group executives to serve;
- as noted above, the requirement for a majority of independent non-executives to serve on the board creates as many risks of poor corporate governance as it addresses. For that reason, we would submit that the more proportionate approach would be to require a minimum number of INEDs on each board.

Majority of Non-Executives at Board Meetings

It is required in [4.2] that a majority of directors at any board meeting be non-executives. This is regarded as impractical by a large number of smaller companies and would frustrate the day-to-day management of firms. This is a provision which would also benefit from being re-cast as a requirement to have a minimum number of non-executives present.

It has also been suggested by regulatory staff that teleconferencing might be used. However, there is a lack of clarity in this regard, and explicitly addressing whether physical presence at board meetings is necessary would be alleviate this. However, the practicality of this must also be assessed in light of the requirement that effective control of the company must be located in Ireland.

Availability to meet Regulator

In relation to the requirement to be available to meet the regulator at short notice in [4.3], greater clarity is required as to what amounts to 'short notice', whether physical presence would be required, and again it would be more practical to specify that at least a particular number of Directors should be available.

Time Commitments

We agree that in [4.4] an expected time commitment should be indicated. It follows that these time commitments should be used to provide a more nuanced approach to the restrictions on total number of directorships, rather than a blanket maximum of three.

The requirement in [4.6] that the institution will provide the regulator with a detailed rationale and supporting documentation in cases where more than 5 directorships are held creates a practical difficulty. Difficulties under competition, market abuse and employment law may arise in the disclosure of specific information regarding the activities of other firms where directorships are held, and it may be appropriate for such discussions to be directly between the director and the regulator.

We believe [4.7] is already covered within existing employment and company law provisions, and in the requirement to estimate the time commitment contained in [4.4].

Limitations on number of directorships

The blanket limitation of three financial directorships contained in [4.5] does not take into account the personal circumstances of the director and the existence or absence of other time commitments. There are a limited number of qualified individuals in the country with relevant experience. By reducing the number of directorships an individual may hold, the cost for the company increases, and the director himself becomes more dependent on that company.

To place a restriction of only 3 financial directorships would render NEDs even more difficult to find, and increase their remuneration substantially. We believe in this case that smaller companies would have difficulty attracting NEDS of the calibre required, which would result in a falling standard of corporate governance, in effect creating a two tier system where only the largest firms could afford the highest calibre of NED.

Given the emphasis in the Walker Report on the quality of director it would appear counterproductive to allow an arbitrary limitation to prevent an otherwise qualified individual from taking up a role for which they are the most suitable candidate.

We understand the NEDs are being required to give more of their time to the businesses concerned, but submit that a more suitable measure would be to apply the limitation either by capital at risk or as noted above, by taking into account the time commitments that are being expected.

Furthermore, this area appears to a matter that would be better addressed through the fitness and probity regime rather than as a corporate governance issue.

Appropriateness of directors

Some guidance is required as to how the regulator will interpret [4.8] to determine the appropriateness of the director, or how the board should undertake this exercise themselves. At present the provision is very vague and could lead to differing approaches being taken by different companies.

The provision in [4.10] is extremely vague, and on its face would preclude the appointment of any director where a conflict of interest could arise in the future. We submit that this is impossible to determine, and may prevent individuals taking directorships based on a remote and speculative possibility of a future conflict of interest appearing.

Review of membership

The periodic review of board membership in [4.12] is covered sufficiently under existing company law, and in the firm's memorandum and articles of association. Further, it does not appear to make a distinction between executive and non-executive directors – we do not believe that it is necessary for executive management. However, if the provision is to be kept, we would suggest that the criteria for review should be outlined to ensure that there is consistency of application.

Chairman

Independence of Chairman

The role of chairman in the majority of international subsidiaries is taken by a representative of the parent company. The requirement for independence in [5.6] would cause severe difficulties for such firms, as discussed above.

Annual Re-election of Chairman

It is unclear what the requirement for annual re-election of the Chairman in [5.7] sets out to achieve, and is particularly cumbersome for smaller institutions / international subsidiaries.

Prior approval of additional directorships

Prior approval by the regulator is proposed in [5.8] before a chairman may assume any additional directorships. Such a restriction is likely to cause INEDs to refuse nomination unless there is significant financial compensation. This is not only cost prohibitive to the company but also puts the individual into a position of financial dependency which may compromise independence. We believe that this requirement is unduly onerous, and will further reduce the available panel of non-executive directors. The paragraph also lacks any materiality qualification, so may apply in cases where it would appear to be unintended, e.g. charity boards. It is also necessary to bear in mind that (especially in the case of a parent company director) the other directorships may be outside the jurisdiction.

Multiple Chairmanships

Multiple chairmanships are prohibited in [5.10]. Within the insurance sector, it is common to have two/three very closely related firms, one handling life business, and the other non-life. In such cases, the firms often share resources / personnel and it is necessary to view the firms together to fully understand the business. In these cases common board members serve to ensure coherent and effective direction, and we suggest that [5.10] should not apply.

Chief Executive Officer

Multiple CEO Positions

A restriction on multiple CEO positions is proposed in [6.2]. As discussed in relation to the similar requirement in [5.10] we believe this provision should not limit the ability of a person to be CEO of closely related companies, e.g. life and non-life firms.

Renewal of CEO Contracts

A five year review of the CEO contract is provided for in [6.4]. While this does not create issues for future CEOs, provision for this may need to be negotiated in relation to existing CEOs to ensure compliance with contractual rights and employment law, and also the ability of firms to dismiss an employee under the Protection of Employees (Fixed Term Work) Act 2003.

CEO Qualification

The requirement for the CEO to have a financial background, or to receive training, would appear to a matter that relates to her fitness and probity rather than being properly dealt with in corporate governance standards.

Role of the Board

Documentation of roles and responsibility

In respect of [8.2], various aspects of the role and responsibilities of the board are provided by and are subject to various provisions of company law, ODCE guidance notes, the regulator and the Memorandum and Articles of the company itself. It is not within the power of the board to redefine these, and it would add unnecessary confusion to have each board independently restate them.

Appointments

Documentation of responsibilities

In relation to [9.4], as noted for [8.2], the roles and responsibilities of the board (and of all the directors equally) are established independently of the institution's competence. Similarly, the board committees have their own terms of reference.

Risk Appetite

Remuneration

The board is required to ensure that remuneration practices to not promote excessive risk taking in [10.7]. We agree that this is clearly a requirement for the board, however, work in this area is ongoing on both national and international levels, and we would suggest that in the absence of directly included remuneration provisions this would be best dealt with separately.

Meetings

Frequency of meetings

The monthly meeting requirement in [11.1] is inappropriate for the majority of firms. While it is accepted that circumstances may arise where the board needs to meet very regularly, these are the exception rather than the rule.

For businesses, e.g. unit-linked life assurance, where strategy is long-term, monthly board meetings would not serve a useful purpose. Apart from the additional cost burden that such a requirement would impose, in particular on international firms, excessively frequent board meetings also present the danger that the board will be drawn into the day-to-day management of the firm, rather than fulfilling its essential strategic and oversight functions.

For many firms, insurance companies in particular, relatively little data is available on a monthly basis that is amenable to board-level review. We suggest that rather than focusing on the frequency of meetings, it is more important to ensure that meetings take place at appropriate times at the ends of quarters, allowing the preparation and examination of reports.

A key goal of CP41 is to improve the quality of the pool of NEDs. We would suggest that, in particular in the case of international directors, that unduly frequent meetings will rule out otherwise suitable candidates.

We suggest that the 'baseline' scenario should be at most quarterly meetings, with flexibility for the Regulator to require more frequent meetings for a small number of more complex institutions.

Similarly, even in the case of institutions where monthly board meetings are necessary there should be sufficient flexibility to allow these to be scheduled in a way that respects annual leave periods without the requirement to ask for regulatory approval.

Committees

Majority of independent directors

Where the provisions relating to majority INEDs [4.1] do not apply, this should be reflected in the provisions requiring a majority of independent directors on board committees. Further, where the Chairman is an independent non-executive director, it is suggested that he be allowed to sit on the Audit and other committees.

Remuneration / Nomination

For smaller firms we would question the need for separate nomination and remuneration committees.

Compliance Statement

Form 23 of the annual return for insurance companies are effectively a 'Compliance Statement' – we question whether it is necessary to add an additional requirement. As mentioned in the comments to [2.0], we are of the view that Section 25 of the Central Bank Act was not intended to be used in this manner.