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*Submitted by email to [corpgov@centralbank.ie](mailto:corpgov@centralbank.ie)*

## **HSBC IRELAND RESPONSE TO THE CONSULTATION PAPER (CP 41) – CORPORATE GOVERNANCE REQUIREMENTS FOR CREDIT INSTITUTIONS AND INSURANCE UNDERTAKINGS**

Dear Sirs,

We refer to the Financial Regulator's consultation paper on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings (CP 41) and welcome the opportunity to participate in the public consultation process. While HSBC operates a number of business lines in Ireland, our comments herein deal primarily with the corporate governance for insurance companies. These submissions reflect our own opinions, based on our experience of the insurance market, and should not be considered as representing views held by any of our clients.

HSBC endorses any provisions to underpin strong corporate governance and, in general, the paper is to be welcomed as a positive development. The paper appears to be written for large institutions at the holding company level and a one size fits all approach for the imposition of standards and requirements on all Credit Institutions and Insurance Undertakings will cause some difficulties for smaller insurance companies where some such requirements are not essential for good governance. This level of governance is also not always appropriate at the subsidiary level and indeed the requirements of the paper may lead to unnecessary duplication and cost. We also note that the paper refers to the proposals as the minimum corporate governance requirements that must be met (3.1), however, it also refers to proportional application. This would appear to be a contradiction and we hope that the proposals will be amended to set out some definition of proportionality that ensures they will be interpreted appropriately.

The consultation paper recognises the need to address proportionality to avoid over regulation of smaller entities through the suggestion that implementation may be applied proportionately for institutions with lesser economic significance and lower risk activities (1.4). The determination of lesser economic significance and lower risk activities is subjective and some form of numerical stratification would be most helpful. All insurance companies will have to comply with the requirements of Solvency II and so stratification structured around a combination of risk based capital, asset size and employee numbers averaged over a period of, say, three years would permit the Financial Regulator to impose increasing requirements according to nature, scale and complexity. Through the receipt of electronic regulatory returns, the Financial Regulator holds all the information to establish the implication of setting the thresholds at different levels.

With regard to the Transitional Arrangements we would suggest that given the extent of the changes that may be required, particularly regarding changes to directors, that an implementation period of 18 to 24 months would be more appropriate.

Our comments in relation to the specific proposals contained in the paper are set out below.

### **3.0 General Requirements**

An obligation to promptly report any concern about the overall corporate governance (3.7) is too onerous. Where a director has a concern that is not satisfactorily addressed in a timely manner, it would be appropriate that such matters be reported to the Financial Regulator, however, when such concerns are addressed and remedied there should be no reporting requirement.

In other jurisdictions where compulsory whistle blowing is a regulatory requirement it has been accompanied by statutory protection and we would welcome clarification regarding whether or not it is intended that such statutory protection be introduced in Ireland.

### **4.0 Composition of the Board**

The requirement that the majority of the Board be independent non-executive directors, and in the case of certain subsidiary companies, non-executive directors, (4.1) may undermine the concept of the unitary Board and the collective responsibilities of all directors. The overall skills and experience and the level of diversity of a Board should be the primary factors in considering Board composition.

We would welcome further clarification regarding what is meant by balance (4.1 & 4.2) and if this is intended to refer to numerical balance. We would suggest that balance is best achieved through diversity and a combination of skills, experience and length of service including, but not being dominated by, independent representation.

The implementation of the proposed limit on directorships may not be practicable given the limited pool of appropriately experienced, skilled and available people to act as independent non-executive directors in insurance companies in Ireland. The proposed limits on the number of directorships which can be held (4.5 & 4.6), notwithstanding the exemption of the restriction to multiple directorships within a financial services group, are unnecessarily low. Independent non-executive directors with the requisite skills, experience and capacity, who are willing to serve on a number of Boards, should not be prevented from doing so and companies should not be deprived of those skills and diversity on their Boards. However, notwithstanding the required clarification in this regard, the rebuttable assumption regarding the appropriate time commitment implies that the Financial Regulator believes that each independent non-executive directorship should involve between 1.5 to 2 months work per directorship per annum. While this may be the case in a large complex institution, not all companies would require that level of input, even including membership of Board committees. In the case of subsidiaries of a regulated multinational group, non-executive directors bring a deeper understanding and knowledge of the organisation which is to the benefit of the Board as a whole. While in agreement that directors should commit appropriate time to their role, rather than imposing a minimum time requirement through restricting the number of directorships that can be held, we would propose that this be measured through the evaluation process to ensure directors commit sufficient time to fulfil their roles.

We would suggest that, provided that there is no conflict of interest, the availability of highly knowledgeable independent non-executive directors to a larger number of companies than three, especially smaller companies, in the insurance industry is highly desirable for all stakeholders. It is also extremely important that experienced independent non-executive directors be available to a wide range of smaller companies outside the financial sector.

## **5.0 Chairman**

With regard to the proposed requirement that the Chairman would have a financial background or be required to undertake relevant and timely comprehensive training (5.3), there is a danger that this could be interpreted as requiring the Chairman to be an accountant or actuary. It would be more appropriate that the Chairman bring diversity of knowledge, expertise and experience to a Board rather than coming from a financial discipline.

In respect of the requirement that the Chairman be an independent non-executive director (5.6), we would suggest that the application of this would be unnecessarily restrictive if applied to all insurance companies and it should be permissible that a non-executive director be allowed to act as Chairman. In the case of a subsidiary of a regulated multinational group, the appointment of an executive from another business line or group company would also bring a deeper understanding and knowledge of the organisation to the role of the Chairman.

In relation to the proposed annual re-election of the Chairman we would propose that election every three years, particularly for smaller institutions, would be more appropriate and would also align with the three yearly review of the Board membership.

The proposed limitation on the number of other Chairmanships (5.10) is very restrictive and as discussed under 4.0 Composition of the Board above, will severely limit the pool of suitably qualified persons to take on these roles.

We would also welcome clarification regarding whether the exemption to directorships within a financial group will also be applied to restrictions for a Chairman and if it is intended that 5.10 should not apply to multiple subsidiaries in one regulated institution so that a Chairman could chair a number of subsidiaries.

## **6.0 Chief Executive Officer**

In relation to the requirement that the CEO shall not hold the position of CEO of a credit institution or insurance undertaking for more than one institution at any one time (6.2) we would suggest that this should be dependent on the scale of the organisation and would also welcome clarification regarding whether this would apply to multiple CEO roles within a financial group.

In relation to the requirement that the CEO shall have a financial background or be required to undertake relevant and timely comprehensive training (6.3) we would refer you to our comments in relation to 5.0 Chairman above.

## **9.0 Appointments**

With regard to the proposal for a formal annual review of Board performance, we would suggest that, for companies other than larger non-group companies, that a review every three years would be more appropriate.

## **10.0 Risk Appetite**

We would propose that the concept of proportionality needs to be applied to this section particularly in relation to the requirement to apply detailed quantitative risk metrics (10.1) and the requirement to ensure that remuneration practices do not promote excessive risk taking and design and implement a remuneration policy to meet that objective and evaluate compliance with this policy (10.7). Such requirements would not be appropriate for smaller organisations and would introduce additional costs without adding any value.

## **11.0 Meetings**

The requirement that Board meetings be held at least once in each calendar month (11.1) is excessive. Meetings should be held with sufficient frequency to enable the Board to discharge its duties effectively and a minimum of quarterly meetings would be more appropriate.

## **17.0 Audit Committee**

The proposal that the Audit Committee be comprised of non-executive directors, the majority being independent, and that it may not include the Chairman of the Board (17.2 & 17.4) may not be practicable given the other proposals regarding Board composition and would require companies to appoint a minimum of three independent non-executive directors. We would also suggest that the exclusion of executive directors from the Audit Committee be re-considered in view of the knowledge and an understanding of the company that they could bring to the Committee.

## **18.0 Risk Committee**

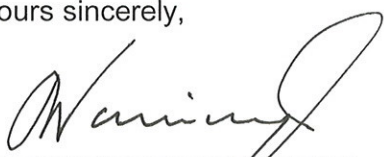
With regard to the proposal for the establishment of a Risk Committee (18.1), we feel that for smaller institutions it would be counter-productive to move the consideration of risk to a specific committee and that it would be more appropriate that this function remains at Board level. We accept that for larger institutions it may not be possible for the Board to adequately monitor all the risks of the business and that a Risk Committee, incorporating appropriately experienced personnel, would be appropriate. In this regard we would suggest that a two tiered system be considered and that the threshold for the establishment of a Risk Committee be based on a company's Risk Based Capital as calculated under Solvency II.

## **21.0 Compliance Statement**

With regard to the submission of a compliance statement (21.1) we would suggest that a statement explaining any deviations from the Financial Regulator's guidelines would be more practicable rather than a requirement to detail how a company has complied with each individual requirement and this would be similar to the comply or explain based regime operated under the FRC's Combined Code.

We would like to thank you for providing us the opportunity to comment on the proposals in CP 41 and we would be happy to expand on any of the foregoing comments should you wish to discuss any of them further.

Yours sincerely,



Simon Wainwright  
Chief Executive Officer  
HSBC Ireland