

**Submission to the  
Central Bank & Financial Services Authority of Ireland**

**Corporate Governance Requirements for  
Credit Institutions and Insurance Undertakings  
Consultation: CP41  
*June 2010***

## **INTRODUCTION**

IBOA - The Finance Union represents employees working in the financial services industry, predominantly in banking. IBOA presently has over 22,000 members and uniquely represents staff at all levels, up to and including managerial grades, in the Republic of Ireland, Northern Ireland and Great Britain. IBOA is a member of the Irish Congress of Trade Unions (ICTU) and the umbrella body for European Finance Unions, UNI Europe.

IBOA recognises the need for good corporate governance in financial institutions and how its absence contributed to the banking crisis in Ireland. CBFSAI points to the need for Boards to be able to analyse critically the strategy / business models they pursue. The Government saw fit to appoint 'public interest' directors to Banks covered by the State Guarantee. This acknowledged the requirement for independent viewpoints at board level. The recent reports by the Governor of the Central Bank and by Messrs. Regling and Watson into various aspects of the banking crisis in Ireland have further underlined the need for significant improvement in corporate governance in the financial services sector.

In our submission on CP11 Fitness and Probity in June 2005, IBOA stated:

*"IBOA has long held the view that the culture in Irish Banking and other areas of the financial services industry needs to change. Increasing profits and maximising shareholder value invariably supersede the interests of other stakeholders, including employees and customers. Recent scandals have shown that ethical behaviour is an early casualty in the pursuit of profits at any cost"*

Proper governance should dictate that all Boards should have employee and consumer representatives.

IBOA went on to say:

*“Regulated entities, including banks, need to put policies, procedures and systems in place to detect compliance issues and to encourage, protect and reward employees who raise concerns. This will allow institutions to notify the Financial Regulator and address issues in a timely manner. Legislation protecting whistleblowers is required in line with international best practice in corporate governance.”*

Corporate governance legislation like the Sarbanes-Oxley Act 2002 in the U.S. and the Public Interest Disclosure Act 1998 in the U.K. (including Northern Ireland) is sadly lacking in the Republic of Ireland. IBOA supports recent comments from the DPP that whistleblowing legislation is required in order to identify and prosecute white-collar crime.

IBOA welcomes the publication of corporate governance requirements and looks forward to the promise of a revised fitness and probity framework and controls on remuneration policies that encourage short-term risk-taking without regard for long-term consequences.

## 1. BACKGROUND

1.2 The Consultation Paper 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”*. IBOA believes employee directors are ideally suited to this role and provisions should be made for employee representation on the boards of institutions.

1.5 IBOA believes that employees and consumers are key stakeholders that deserve separate mention.

### **Director Independence**

- Some of the definitions are quite vague and open to interpretation and therefore need to be quantified (e.g. provider of professional services to the financial institution in the recent past; significant shareholder; extended periods; related directorships or shareholdings; close business or personal relationship)
- There should be a specified time period where the individual has been employed by the financial institution or a group company in the past.
- The provision of professional services should not relate solely to the individual, it should also extend to a company of which he / she is an employee or significant shareholder.
- A provision is required to cover former regulatory staff. Moving from a senior regulatory role to the board of a financial institution within a short period might lead to questions about an individual’s independence in terms of previous and subsequent decision-making.
- Where there are common directorships it should be assumed a close relationship exists for the purpose of assessing an individual’s independence.

### **Control Functions**

IBOA believes the “finance function” should be added as a control function.

## 2. LEGAL BASIS

IBOA has no comments to make under this heading.

### 3. GENERAL REQUIREMENTS

- 3.2 The Consultation Paper states that while the Board retains primary responsibility for corporate governance, *“Senior management shall operate effective oversight consistent with Board policy”*. Senior management needs to be defined in terms of the number of levels below Board level. Who signs the annual compliance statement and on behalf of whom?
- 3.3 Robust governance arrangements should have, *“...effective processes to identify, manage, monitor and report the risks it is or might be exposed to....”*. Employees at all levels need mechanisms to report risks and abuses without fear of retaliation. A ‘Whistleblowers Charter’ is an essential deterrent to poor corporate governance. The internal audit function should be named as the party responsible for undertaking regular internal reviews of governance where it would report in writing to the Board, at least annually.
- 3.4 The Financial Regulator is responsible for approving the appointment of directors and senior management under fitness and probity requirements. The Financial Regulator should be obliged to approve or at least give guidance on the corporate governance structure to be put in place by an institution. 3.4 as currently drafted is too vague.
- 3.5 Surely this depends on the level of the individual within the institution and the nature of the decision. Is dual decision-making or ratification required in every instance?
- 3.6 *“The corporate governance structure and policies shall be articulated clearly and communicated to all relevant staff within the institution”*. IBOA believes the structure and policies should be communicated to all employees in writing with a process and internal / external contact details in the event that an employee wishes to raise governance concerns. It is not solely directors (ref 3.7) that should have responsibility for reporting governance concerns.
- 3.7 *“Any director who has any concern about the overall corporate governance of an institution shall report these concerns promptly to the Financial Regulator”*. The director should bring his / her concerns to the attention of the board in the first instance unless the concern involves illegality in which the board is complicit.

## 4. Composition of the Board

- 4.1 IBOA agrees that “The Board shall have a majority of independent non-executive directors” taking account of the suggested revisions to the definition of independence under 1.5 above.
- 4.1a) There appears to be an assumption that subsidiary institutions will be accountable to a largely independent Group Board and therefore standards in respect of the composition of its Board can be less restrictive. Many subsidiaries operate as autonomous business units and this assumption may not always hold true.
- 4.2 If non-executive directors do not constitute the majority of the directors present and eligible to vote, does this mean the meeting is inquorate and the board meeting cannot proceed? Will institutions be required to amend their Articles of Association to reflect this and other governance requirements?
- 4.5 IBOA considers the figure of three directorships of credit institutions and insurance undertakings to be excessive. At most, it should be one of each with no limits within a financial services group. There are high levels of sectoral concentration in many areas of the financial services industry and multiple directorships increases the potential for conflicts of interest and market abuses. 5.10 and 6.2 recognise this dilemma in the case of the Chairman and CEO.
- 4.6 IBOA supports restrictions on the number of directorships outside of credit institutions and insurance undertakings as a means of ensuring that directors devote sufficient time to their responsibilities. An indication of the likely time commitment expected from directors (ref. 4.4) in their letters of appointment is also a welcome addition. This should go beyond the time spent in attendance at meetings.
- 4.8 *“The Board shall also satisfy itself as to the appropriateness of the non-executive director to be a director”*. Does this relate to fitness and probity considerations or does the Financial Regulator have something else in mind?
- 4.9 The obligation on a Board to document possible conflicts of interest is very welcome. However, IBOA would contend that this needs to happen continuously

or at least annually and not solely on the appointment of the director. Boards should have a Code of Ethics & Conduct which would oblige directors to disclose potential or actual conflicts of interest relating to themselves and their fellow directors as soon as they become aware of them.

- 4.10 IBOA supports the requirements in 4.10 and 4.11 and the fact that they relate to “possible” and “perceived potential” conflicts of interest. 4.12 covering the review of Board membership is also welcome.

## **5. Chairman**

- 5.1 “*The Chairman shall have a financial background....*”. Does this refer to membership of a professional accountancy body or experience working in the financial services industry. If it is the latter, then it may make it more difficult to source an independent non-executive director to act as Chairman (ref. 5.6). IBOA considers this provision to be too restrictive.
- 5.8 While prior approval by the Financial Regulator is required before taking on any other directorships, the provision is silent on the status of existing directorship at the time the Chairman is appointed. For consistency, approval should be required to retain such directorships.

## **6. Chief Executive Officer**

- 6.1 Chief Executive Officer may not always be the term used to describe the position. Managing Director or President are also used. The description of the role and not the job title should determine the requirements.
- 6.2 The equivalent requirements for the Chairman debars him/her from holding the position of Chairman or CEO of a credit institution or insurance undertaking for more than one institution at any one time. At first glance it might appear that a CEO can act as Chairman elsewhere but in doing so he/she would be in breach of 5.10. The fact that the CEO is debarred from acting as Chairman of another institution should be explicit in this requirement.
- 6.4 Any requirement regarding contract reviews and renewals needs to be consistent with employment law.

## **7. Independent Non-Executive Directors**

7.4 While acknowledged as being important, there appears to be an over emphasis on control functions when citing examples of individuals with relevant skills, experience and knowledge. Legal, consumer and industry knowledge are also relevant for independent non-executive directors, who shouldn't see their role as simply that of a counter-balance to executive directors.

## **8. Role of the Board**

8.1 – 8.5 All requirements relating to the role of the Board are sensible and reflect good practices.

## **9. Appointments**

9.3 In appointing non-executive directors, the Board should be encouraged to appoint individuals reflecting employee and consumer interests, as two of the main stakeholders in every institution.

9.7 The bar on an institution entering into any agreement with a head of Control Function that would purport to preclude, or would dis-incentivise, the provision of information to the Financial Regulator should be extended to include any director or employee. All gagging agreements should not be allowed.

## **10. Risk Appetite**

10.2 IBOA agrees that *"The risk appetite definition shall be comprehensive and clear to all stakeholders"*. This includes employees.

10.2 IBOA subscribes to the sentiments expressed about the need to ensure that an institution's remuneration practices do not promote excessive risk taking. We expect this will be covered comprehensively in forthcoming requirements.

## **11. Meetings**

11.1 Rather than a requirement to meet at least once each calendar month, greater flexibility during holiday periods and the same objectives might be met by saying a minimum of 12 meetings and no greater than 6 weeks between meetings.

11.2 A detailed agenda of items should be circulated at least 7 days prior to a Board meeting.

## **12. Reserved Powers**

12.1 IBOA supports this requirement.

## **13. Consolidated Supervision**

13.1 IBOA supports this requirement.

## **14. Committees of the Board**

14.1 – 14.4 IBOA supports these requirements.

## **15. General Requirements of Committees**

15.1b) In keeping with the requirements for Boards in 11.3, “points for further actions” and “dissents or negative votes” should be documented in committee minutes.

## **16. Terms of Reference of Committees of the Board**

16.1 – 16.2 IBOA supports these requirements.

## **17. Audit Committee**

17.1 – 17.6 IBOA supports these requirements.



## **18. Risk Committee**

18.2 There is no apparent requirement for the appointment of an independent non-executive director to the Risk Committee. This should be a requirement given the importance of the committee and the need for an independent individual to challenge established viewpoints.

## **19. Remuneration Committee**

19.2 Does the use of “where possible” open the door to Executive Directors sitting on the Remuneration Committee?

## **20. Nomination Committee**

20.1 – 20.4 IBOA supports these requirements.

## **21. Compliance Statement**

21.1 IBOA supports the concept of an annual compliance statement.

## **CONCLUSIONS**

IBOA welcomes the publication of Corporate Governance Requirements for credit institutions and insurance undertakings and believes that similar requirements should apply to all regulated institutions. The main requirement is that the majority of directors on the Board and committees are truly independent and that Boards are obliged to recognise and disclose possible and perceived potential conflicts of interest. The role of employees and consumers in challenging established viewpoints and representing major stakeholders must be recognised. Consumers have recourse to the Financial Services Ombudsman but employees are still waiting for whistleblowing legislation and/or a statutory code of practice. In general, neither of these stakeholders are represented on the Board's credit institutions. If we are serious about good governance and consumer protection, there should be mandatory representation.