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International Credit Institutions
Financial Regulator
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29th June 2010

**Submission in respect of Consultation Paper CP41 – Corporate Governance
Requirements for Credit Institutions and Insurance Undertakings**

Dear Sir/Madam,

Thank you for inviting the Institute of Directors in Ireland (IoD) to take part in the consultation process in respect of CP41. The IoD considers the publication of this consultation paper to be a positive step in reform of the finance sector and we welcome the opportunity to present this submission on behalf of our members.

About the IoD

The Institute of Directors in Ireland is the representative body for senior business professionals in Ireland. Members include chief executives, chairpersons, board members, senior executives and partners of national and international entities.

Affiliated to the Institute of Directors worldwide, the IoD offers a range of director development programmes to increase the effectiveness and expertise of our members. In addition, the Institute operates the Boardroom Centre, a service to companies who want to source highly qualified and experienced business people suitable for appointment as non-executive directors.

Corporate Governance

We have seen too many examples of poor corporate governance in recent years and it is now time to move beyond the mistakes of the past and work to improve standards in Ireland for the future.

Part of the IoD International Network

Chief Executive: M Quinn, Company Secretary: R MacDarby
Directors: A Riordan (President), C Brownlee, T Byrne, L Daniel, E Gleeson, R Grier, D Lamont, L Magahy,
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A good corporate governance structure allows an organisation to bring together all of its powers and resources, nurturing better business and ultimately restoring confidence in Ireland Inc.

The IoD has long been an advocate for the need to improve corporate governance standards throughout Irish business and we are therefore pleased to present our views with regard to the proposals outlined in CP41.

Initial Remarks

This consultation paper is welcomed given the generally accepted requirement to improve corporate governance standards.

Overall any enhancement to corporate governance practice is to be welcomed and will strengthen Ireland's position as a global financial services hub.

However, the standards set appear to be benchmarked against what is appropriate for credit/major institutions rather than international insurance undertakings. It must be recognised that the insurance industry is inherently different to banking. A one size fits all approach across both industries will certainly cause difficulties, particularly for smaller insurers by imposing standards and requirements that are not essential to good governance and in many cases, are unworkable.

It is recommended that the Financial Regulator consider a more proportionate approach to regulation, whereby high standards can still be achieved, while avoiding over regulation of smaller entities. The paper does seem to recognise the issue in section 1.4; however, we would suggest that proportionality needs to be far more explicit throughout the document. Setting distinctions between credit/major institutions and the international insurance industry is recommended, as is the requirement to set specific strata and thresholds for the proposals outlined.

We would also recommend a greater focus on director training. All INEDs should be required to undergo training on the duties and responsibilities of a non-executive director so as to ensure that they are fully equipped with the knowledge required for the role. Specific training in good corporate governance practice should also be a requirement.

Below we have outlined the main areas of concern for the IoD and include some suggestions for consideration.

3.0 General Requirements

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.*

- This obligation does not appear to take account of what should be the first step in the process. When a director has a concern, it should be raised with the Board in the first instance. If the issue is not promptly addressed and promptly remedied to the satisfaction of

the director, a report is, of course, then appropriate. However, when concerns are addressed and promptly remedied, it should not be a requirement to make a report to the Financial Regulator.

- In addition, in cases where a director makes a report to the Financial Regulator, there should be some whistle blowing protection available to that director, however, it is unclear as to whether this is also planned.

4.0 Composition of the Board

4.1 The Board of an institution shall have a minimum of five directors and shall be of sufficient size and expertise to oversee adequately the operations of the institution. For major institutions, a larger board may be more appropriate. The Board shall have a majority of independent non-executive directors (this may include the Chairman).

- The requirement for a minimum Board size is welcome, along with the requirement for a sufficient level of expertise.
- It is correctly acknowledged that major institutions will require a larger Board than the minimum size outlined; however, the IoD recommends that the Financial Regulator should also consider imposing a maximum Board size requirement. This will serve to improve effectiveness and efficiency.
- With regard to the requirement for a majority of independent non-executive directors (INEDs), the IoD would question whether this is necessary. Given that the requirement would substantially increase costs, an alternative approach might be to explicitly set a proportionate number of independent non-executive directors, bearing in mind that Plcs would require a higher percentage. A proportionate number could still allow an institution to achieve the necessary level of independent oversight.
- Additionally, we would question whether any international group operating in the IFSC would be willing to give majority control of the Board of its Irish based subsidiary to independent non-executive directors. It is probable that were this point pursued, they may indeed consider moving their operations out of Ireland.

4.4 Each member of the Board shall have sufficient time to devote to the role of director and associated responsibilities. This is particularly important in the case of non-executive directors. The Board shall indicate a time commitment expected from directors in letters of appointment.

- We suggest that the time commitment expected for each directorship may serve to determine how many positions a director is entitled to hold. For instance, some INEDs may easily have the capacity to hold far more directorships than others depending on the required time commitment for each role. An approach based on proportionality is recommended.

Given that points 4.5 and 4.6 are related, both points have been considered together.

4.5 The number of directorships held by directors of institutions shall be limited. The Financial Regulator requires that the number of directorships of credit institutions and insurance undertakings held by a director shall not exceed three. This restriction does not apply to multiple directorships within a financial services company.

4.6 Where directorships are held outside of credit institutions and insurance undertakings, the Financial Regulator considers that an individual holding more than 5 directorships creates a rebuttable presumption that the director has insufficient time available to fulfil his role and functions as a director of a financial institution. [] Where it is proposed that a director of an institution hold more than five directorships, the institution shall satisfy itself as to whether this is appropriate and seek the approval of the Financial Regulator.

- The proposals placing a limit on the number of directorships which a director can hold is of greatest concern to IoD members.
- If these recommendations were to be implemented in the current format, the IoD believes that there are a number of significant unintended consequences attached to them.
- The primary influencer in the proposal to limit the number of directorships is to ensure that directors have sufficient time available to carry out their role, however if implemented, the proposals would have a number of potentially negative implications:
- **Time constraints**
 - The proposal presupposes that by limiting the number of directorships an independent non-executive director can hold, that an INED will automatically increase the time which they allocate to the Boards that they do sit on.
 - However, it is just as likely that an INED will use their spare capacity in other ways, such as consultancy assignments.
- **Professional independent non-executive directors**
 - The limitations do not appear to recognise the career of a professional independent non-executive director. Professional INEDs would clearly have the capacity to manage a far greater number of directorships than a director who holds a full time executive role along with non executive positions.
 - The restrictions could also deter experienced directors from pursuing a full time career as a professional INED, particularly as they may not be able to earn a viable income. This in turn could impact the availability of suitably qualified and skilled INEDs and ultimately have a negative impact on the finance sector.

- It is therefore recommended that a distinction needs to be made between professional INEDs and those who also hold executive positions.
- **Limiting the talent pool**
 - A limit of five directorships, even if increased after consideration and approval by the Financial Regulator, will only contribute towards limiting the pool from which qualified and suitable directors are drawn, which of course is not the desired effect, and will have consequences beyond the financial sector.
 - It is likely that the limitations could also lead to fee inflation, which would damage Ireland's overall attractiveness as a financial services hub. In addition, it could lead to constant boardroom changes as INEDs seek to change positions so as to move up the value and fee chain.
 - Thus the limitations could make it very difficult for smaller companies, particularly smaller IFSC based companies, to recruit INEDs, as those available and suitable could very quickly be maxed out. This could result in a two tier quality of corporate governance; with smaller companies finding it more difficult to recruit INEDs given they would not have the same Board requirements as Plcs and would be likely to offer smaller remuneration packages.
 - The limitations could also discourage well qualified directors from taking up directorships in voluntary, charitable, professional or representative bodies as these would generally pay less or not at all. In addition, pro bono directorships may be avoided in order that remunerated positions can be held without question.
 - It is also important that experienced INEDs be available as mentors to a wide range of smaller companies, outside the financial sector, such as start ups, family owned businesses etc and this availability could be impacted.
 - The proposed limitations could potentially have far reaching implications across the business sector and beyond.
- **Proportionality**
 - It is important to recognise the varying requirements for INEDs who hold directorships in the finance sector. The level of involvement and time required from an INED in a Plc/major institution for instance, can differ greatly from what may be required of an INED sitting on a smaller IFSC company board.
 - While recognising the need for an appropriate limitation in respect of the very large and complex institutions, the IoD believes that greater proportionality needs to be applied.

- In light of the considerations set out above, it is recommended that the proposed limitations on directorships should be reconsidered. If a limitation is to be adopted, the IoD recommends that a higher threshold should be set both within and outside of the finance sector, so as not to discourage those suitably skilled and qualified directors, and so as not to deprive companies of experienced directors and the knowledge and expertise they can offer.

4.7 *Non-executive directors shall ensure that they have sufficient time available to fulfil their role and functions as a director of an institution.*

- This is without doubt vitally important and we would suggest that the point may be strengthened by amended the wording to the following: “non-executive directors shall ensure that they **devote** sufficient time to fulfil their role and functions as a director of an institution.”

5.0 Chairman

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.*

- The primary concern relating to this requirement is the need to distinguish between larger/quoted companies and smaller entities that may be subsidiaries of larger foreign owned groups.
- Take for example an IFSC company which may be just one of a number of subsidiaries of an international financial group. The reality is that the business model and strategy for these entities is generally decided at group level and the role of the local board tends to be one of oversight and execution.
- Currently smaller foreign owned insurance undertakings are generally chaired by a non-executive director from the parent company. The requirement that such companies must, in future, be chaired by an INED could lead to Ireland being less attractive to these international groups.
- We would therefore recommend that this proposal is reconsidered and while we recognise the value of an INED as chairman, the ‘one size fits all approach’ needs to be addressed or we run the risk of doing potential damage to the wider IFSC marketplace.

5.5 *The role of Chairman and CEO shall be separate*

5.9 *An individual who has been the CEO, executive director or member of senior management of an institution, during the previous 5 years, shall not advance to the role of Chairman of that institution.*

- We agree with the requirement for the roles of Chairman and CEO to be separate.
- With regard to the provision laid down in 5.9, we would suggest going further with this requirement by recommending that the CEO should never become the Chairman of an organisation. If in exceptional circumstances the CEO were to become the Chairman, the Board should consult with major shareholders in advance. This would be in line with best practice, such as the UK Combined Code on Corporate Governance.

5.8 *The required time commitment for a Chairman may be significant. In light of this and to ensure that a Chairman has sufficient time to devote to his responsibilities as Chairman, the prior approval of the Financial Regulator shall be obtained prior to taking on any other directorships.*

- The motivation for this requirement is understood for Plcs where the time commitment may be greatest; however, implementing the proposal across the board may result in a reticence on the part of INEDs to take on the role of Chairman in less significant organisations.
- In addition, in searching for an INED, many companies may not wish to have an additional layer of approval included in the selection process for those potential candidates who chair another organisation.
- We would suggest amending this requirement so as to address the proportionality issues.

7.0 Independent Non-Executive Directors

Sections 7.3 and 7.4 will be considered together

7.3 *The independent non-executive directors shall have a knowledge and understanding of the business to enable them to contribute effectively.*

7.4 *The independent non-executive directors shall comprise individuals with relevant skills, experience and knowledge (including accounting, auditing and risk management knowledge) who are able to provide an independent challenge to the executive directors of the Board.*

- The IoD believes that INEDs must be selected on the basis of skill, suitability and experience and having knowledge of accounting, audit and risk would certainly be of benefit.
- However, while recognising the benefits of having an appropriate level of technical knowledge, the IoD is also acutely aware that making this a requirement runs the risk of excluding highly skilled and competent INEDs on the basis that they do not have sufficient technical experience.

- We would therefore recommend an alternative approach, whereby specialist technical training is mandatory for all INEDs as part of the induction process and not a requirement at the appointment stage.
- The IoD believes that having expertise as a director and appropriate training in the responsibilities and duties attached to the role of an INED is of fundamental importance. These are the primary skills required, and knowledge of the functions of the business can be accommodated for through timely and comprehensive training.
- While we recognise that the role of the INED is to challenge executive directors, it is also to contribute their skills, knowledge and expertise in areas such as strategic direction, business development and corporate governance.
- We therefore recommend that undergoing formal training in their role and responsibilities as a director, including training on corporate governance, is essential and should be a requirement for all directors operating in the finance sector.

9.0 Appointments

9.3 The Board shall be responsible for appointing non-executive directors and the Board shall ensure that non-executive directors are given adequate training about the operations and performance of the institution. The Board shall routinely update the training as necessary to ensure that they can make informed decisions.

- We agree with this point and are delighted to see an emphasis placed on training needs. We would recommend that the proposal also consider training for directors not just in the operations of the business but also specifically focused on their duties and responsibilities as directors.
- It is our belief that each director should undergo director training on appointment, with the exception of those who may have already undergone appropriate director training.
- In addition, we would recommend that the Board, as a collective body, undergo training in corporate governance and board performance at least once every three years.

9.5 The Board shall formally review the overall performance and that of individual directors, relative to the Board's objectives, at least annually. The review shall be documented.

- The IoD welcomes this proposal. We would also recommend that institutions undergo an evaluation of their corporate governance standards, to be conducted by an independent and external assessor. This may need to be adopted proportionately.

11.0 Meetings

11.1 *The Board shall meet as often as is appropriate to fulfil its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the institution. In any event, subject to the exception below, the Board shall meet at least once each calendar month. A Board of an institution with lesser scope and low risk profile may meet less frequently than once every calendar month if an institution believes the requirement for monthly meetings is disproportionate and the Financial Regulator has given its prior written consent.*

- A requirement for monthly Board meetings is likely to place a significant administrative burden on the Executive. Board papers are usually distributed to members a week in advance of a meeting and often take a week to prepare. This would leave a period of just two weeks for the Executive to progress any business before preparing for the next meeting, along with various committees meetings etc taking place in between.
- In addition, a requirement to hold monthly Board meetings would increase administration costs and would also be likely to push director fees upwards, therefore having a negative impact on Ireland's attractiveness as a financial services centre.
- It must also be acknowledged that many IFSC company Boards include directors who are based abroad and it may not be feasible for them to attend meetings every month.
- We suggest that larger organisations should be required to hold board meetings no more than every 5/6 weeks so as to allow sufficient time for Board members to deliberate between meetings.
- For smaller institutions, with a lower risk profile, quarterly meetings should be sufficient.
- It is of course recognised that should unforeseen circumstances arise, the Board will meet as many times as required and hold additional committee meetings where necessary.

11.3 *Detailed minutes of all Board meetings shall be prepared with all decisions, discussions and points for further actions being documented. Dissents or negative votes shall be documented in terms acceptable to the dissenting person or negative voter. The minutes of meetings shall provide sufficient detail to evidence appropriate Board attention where necessary and shall be agreed at the subsequent Board meeting.*

- We would raise the point that minutes by their nature should provide a record of the actions of the Board in a concise form and should not be a verbatim/transcript recording of the proceedings. The stipulation for detailed minutes documenting all discussions is perhaps an unnecessary requirement.

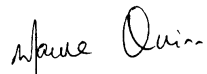
17.0 Audit Committee

We would like to offer some general comments with regard to the Audit Committee.

- It is true to say that the Audit Committee must liaise with both the internal and external functions on specific issues such as financial statements/annual accounts, but we would add that a pro-active Audit Committee would also work with and through the internal and external functions to identify problems before, not after the event. This can contribute to reducing an institution's corporate risk.

The IoD appreciates the opportunity to present this submission on behalf of our members. We hope you find our comments useful and we would be delighted to discuss the issues in greater detail and to make any further necessary contributions.

Yours Sincerely



Maura Quinn
Chief Executive