

Fit and Proper Regime
Central Bank of Ireland
PO Box 9138
College Green

20th May 2011

By Email

Dear Sir/Madam

Consultation Paper 51 ‘The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010’

Chartered Accountants Ireland (‘the Institute’) is pleased to respond to the Central Bank of Ireland’s (‘CB’) consultation, Consultation Paper 51 (CP), on the Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010. The Institute is supportive of the direction adopted in CP 51. We do, however, have a number of high level comments which we set out below and which are based on feedback we have received from members employed in the financial services sector in Ireland. The responses to the individual questions posed in the CP are included in Appendix 1 to this letter.

The Proposal

The Institute is supportive of the wider strategy of CB to update the domestic regulatory corporate governance framework. We are also pleased to note, in Section 1, that the Central Bank wants to set high statutory standards of Fitness and Probity to be observed by all individuals in the financial services industry. However, rather than applying this approach on a ‘one size fits all’ basis, a proportionate and risk based approach will be used, as articulated in Section 3 of the Consultation Paper itself. As you are aware, Credit Institutions and Insurance Undertakings are also required to comply with the Corporate Governance Code for Credit Institutions and Insurance Undertakings and the Committee of European Banking Supervisors (now replaced by the European Banking Authority) Guidelines on Remuneration Policies and Practices. In this regard, the draft guidance

could be improved by setting out clearly the relationship that the Regulator sees between the definition of Control Function in CP 51, to that in the Corporate Governance Code and the Remuneration guidance.

We note that the standards of Fitness and Probity apply to all entities regulated by the Central Bank with the exception of credit unions. The Institute notes the Central Bank plans to review the Fitness and Probity of all existing executive and non-executive directors of banks which have received government assistance. Guidance should be provided on how this is to be done and whether this review will also be extended to other entities.

The Central Bank will assess against the new standards any incumbent directors who plan to be in post after 1 January 2012, in regulated entities which have received state support, including their competence and performance in the period leading up to the financial crisis. The new regime of regulations and standards will come into effect on 1 September 2011. We would welcome clarification of whether the Central Bank intends to review existing directors of regulated entities against the new standards and the practical implications of this review and at which date this review may occur.

The CP does not specify whether the requirements extend to foreign incorporated subsidiaries of an Irish financial institution, Irish incorporated subsidiaries of foreign institutions and whether there is provision for mutual recognition of fit and proper assessments in other countries. From the comments received by Chartered Accountants Ireland from certain of its members involved with such entities, there would appear to be some confusion and uncertainty in this regard. We would welcome further clarification on these issues.

The CB proposes to implement and publish the final regulations and standards on 1 September 2011. The Institute acknowledges the time it takes to consider fully all feedback and answers received in relation to the draft regulations and the draft standards. However, it may prove difficult to implement the regulations if the guidance is not finalised until the date of implementation. Clarity is required as to when the CB proposes to release the questionnaire to assist Institutions in their completion of the due diligence checks.

The Consultation Paper

The Institute acknowledges that the new requirements have been drawn from the statutory grounds identified in the Central Bank Reform Act 2010. We believe that this is appropriate and that any new requirements remain consistent with the Act which has provided the Central Bank with powers to veto senior appointments.

We particularly welcome the recognition in Section 3 of the Consultation that a proportionate and risk based approach will be used. However, there does appear to be, from comments we have received, some confusion and uncertainty around what this means in practice. We would welcome further clarification in this regard.

The CP defines a Control Function broadly in Section 4. From the comments received by Chartered Accountants Ireland from certain of its members involved with such entities, there would appear to be some confusion as to how the term Control Function should be applied practically. The CP indicates by inclusion of the word ‘or’ at the end of the first bullet in paragraph 8(a), that a person unable to exercise significant influence who is involved in the compliance of a financial service provider with its relevant obligations may be captured as controlled functions. Clarity is required in relation to paragraph 8(a) as to whether the ‘or’ at the end of bullets one and two should read ‘and’. In this regard, the draft guidance could be improved by setting out clearly an approach for regulated entities to identify a Control Function to eliminate scope for interpretation and therefore potential inconsistency in practice.

The CP outlines what is considered a Pre-Approval Controlled Function in Section 4. We would welcome further clarification as to whether the Central Bank would consider a Corporate Body acting as a company secretary as a Pre-Approved Controlled Function.

Section 5 of the CP determines the appropriate standards of Fitness and Probity, specifically paragraphs 22 and 23 of the CP outline Financial Soundness. Chartered Accountants Ireland would welcome guidance around whether an employee of an entity that has become insolvent is considered by the CB as ‘associated’ to that Institution. Appendix 2, part 5 stipulates the CB’s interpretation of financial soundness. We would welcome further guidance and examples in relation to the Central Bank’s interpretation of Paragraph 5.2(g).

As you are aware, Appendix 2 of the CP outlines the draft Fitness and Probity Standards. There is a degree of concern that data protection issues may arise for an Institution applying the standards. The Institute suggests that the views of the Data Protection Commissioner be sought in advance of finalizing the requirements.

From the comments received by Chartered Accountants Ireland, there would appear to be some confusion as to the practical application of some of the standards, including in the following specific paragraphs.

Paragraph 4.1(b) implies that if a person has been the subject of a complaint, that person may not be able to demonstrate his or her ability to conduct the work honestly, ethically and with integrity. The CP could be improved by providing clarification that if the complaint has been cleared, whether 4.1(b) still applies.

Paragraph 4.1(j) indicates that any person who has been the subject of any investigation or disciplinary proceedings whether in the state or elsewhere that person may not be able to demonstrate his or her ability to conduct the work honestly, ethically and with integrity. Clarity is required as to whether the relevance of the investigation is dependent on the outcome.

Paragraph 4.1(m) implies that if a person has been uncooperative in any dealings with the bank, that person may not be able to demonstrate his or her ability to conduct the work honestly, ethically and with integrity. We would welcome further guidance to prevent subjectivity in this regard.

Paragraph 4.1(p) implies that if a person has been investigated, publically or privately, that person may not be able to demonstrate his or her ability to conduct the work honestly, ethically and with integrity. Guidance could be provided to clarify if the investigation yielded no prosecution, whether 4.1(p) no longer applies.

We hope you find the above comments useful. Please do not hesitate to contact me or my colleague, Sarah Lane, at sarah.lane@charteredaccountants.ie if you would like to discuss further.

Yours faithfully



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APPENDIX 1

Sections 4 and 8 of the CP outlined questions relating to the proposed standards of Fitness and Probity which the Institute has answered below:

16ia Do you consider any PCFs of CFs be removed from the list?

No. However, further guidance could be provided on what qualifies as a Control Function as outlined above, perhaps with the use of terms such as ‘significant influence’.

16ib Do you consider any other positions should be added to the lists?

No.

16ic 1 Should we formally exempt specific categories of staff from the definition of a CF?

No. However, further guidance should be provided on the term Control Function as outlined above.

16ic 2 Should we provide non statutory guidance to firms on what we consider appropriate due diligence?

Yes to avoid misinterpretation of the legislation.

41i Do you consider the standards are comprehensive?

Yes.



41ii Do you consider any of the standards to be superfluous?

No.

41iii Do you consider that the standards are sufficiently clear?

Not in all areas as detailed in the letter above.

42 What issues should the guidance cover to assist firms in carrying out their own fit and proper test for PCFs and CFs?

The CP proposes to issue a questionnaire which will assist firms in carrying out their own fit and proper test for PCFs and CFs. Further detail on what will be contained in the questionnaire and whether Institutions will have an opportunity to give feedback to the CB would be helpful.

The guidance is insufficiently specific with respect to the manner and process institutions might follow in assessing whether employees are fit and proper.