

**Submission to the  
Central Bank of Ireland**

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

*May 2011*

**INTRODUCTION**

IBOA The Finance Union represents employees working in the financial services industry, predominantly in banking. IBOA presently has 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 and the umbrella body for European Finance Unions, UNI Europa.

IBOA recognises the importance of fitness and probity in financial institutions and how its absence contributed to the banking crisis in Ireland. 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”*

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.”*

It is now clear from various reports into the banking crisis that standards of corporate governance were far lower than they should have been and individuals at board and senior management levels lacked the competence, knowledge and expertise to fulfill

their roles. IBOA welcomes the move towards higher standards of governance including fitness and probity standards. However, the continued absence of provisions to protect whistleblowers six years on, leads us to seriously question the commitment of legislators and regulators to implement a key component of corporate governance present in most other jurisdictions. Again, whistleblowing has been omitted from the draft standards under Section 50 of the Central Bank Reform Act 2010.

IBOA has also been critical about the lack of clarity around definitions and what is expected of regulated entities in order to meet the requirements of broadly stated principles. This occurred with grandfathering and the original minimum competency requirements. A great deal more clarity is required in relation to the 'Draft Fitness and Probity Standards', the assessment process for individuals seeking appointment to Pre-Approval Controlled Functions and the ongoing monitoring of fit and proper requirements for those engaged in Controlled Functions.

## 1. **Pre-Approval Controlled Functions and Controlled Functions**

In the case of a regulated financial service provider that is a body corporate, incorporated in the State, IBOA considers **'the Auditor'** should be added as a PCF. Recent events have shown that auditors need to have particular competence, knowledge and expertise in relation to regulated entities and the sectors they are auditing. For example, the Australian Prudential Regulatory Authority (APRA) <sup>1</sup> imposes additional criteria that must be met for a person to be fit and proper to act as a responsible auditor. This includes a minimum of five years relevant experience in the audit of regulated entities and familiarity with current issues in the audit of regulated entities.

In the case of regulated financial service providers established in the State, IBOA considers the following should be added as PCFs:

**(a) Head of Human Resources/Personnel**

**(b) Head of IT/Systems**

The rationale for including the Head of Human Resources/Personnel is that this function has a key role in ensuring fit and proper requirements are fulfilled for new and existing employees, in addition to supporting Board Committees. In addition, the function usually reports to the Chief Executive.

Increasingly, governance issues result from systems failures that can result in financial loss and reputational damage. IT is a key function where business processes are increasingly automated. The Head of IT/Systems should therefore be considered a PCF.

Although the 'Head of Retail Sales (PCF-18)' is included, the definition of this function is unclear. If this function does not incorporate what might be termed 'Head of Customer Service', this function should also be added.

<sup>1</sup> APRA – Prudential Standard APS 520 Fit and Proper, July 2008.

### **1.1 Pre-Approval Timescales**

IBOA would be concerned that the requirements for approval of individuals seeking appointment to PCFs would be clearly defined and that decisions would be forthcoming on a timely basis when recruiting Directors and Staff to key positions. For example, will the new online Individual Questionnaire be available from 1 September 2011?

The Central Bank might consider introducing long- and short-form questionnaires similar to those used by the FSA in the UK.

### **1.2 Exempt Categories of Staff from the definition of a Controlled Function**

IBOA believes the fit and proper regime as currently outlined should only apply to Directors and Senior Managers in positions of control and influence. The inclusion of individuals engaged in “the giving of advice or assistance to a customer” in Schedule 1 of the Regulations would place a disproportionate regulatory burden on low level employees and regulated entities. The competence of such individuals is already assured through the minimum competency requirements and CPD while probity and financial soundness can be addressed through recruitment processes, employee contracts and employee policies. The Central Bank should exempt such roles while providing guidance on what it would consider to be appropriate due diligence vetting procedures.

## **2. Draft Fitness and Probity Standards**

### **2.1 Legal Basis (paragraph 1.2)**

*“A regulated financial service provider shall not permit a person to perform a controlled function unless the regulated financial service provider is satisfied on reasonable grounds that the person complies with this Code and the person has agreed to abide by such standards.*

*Failure to do so may expose that regulated financial service provider and/or a person concerned in its management to financial penalties and other sanctions under Part IIIC of the Central Bank Act 1942”*

### **2.2 Conduct to be Competent and Capable (paragraph 3.2)**

It is unclear if an individual has to meet all of the requirements under (a) to (h) and what the benchmarks are for each of the listed requirements.

### **2.3 Conduct to be Honest, Ethical and With Integrity (paragraph 4.2)**

The section refers to refusals, prohibitions, restrictions, suspensions, complaints, investigations, inquiries, criminal or disciplinary proceedings, civil liability, civil penalty enforcement action, dismissals, resignations, strike-offs, disqualifications, removals, convictions, offences, judgements, warnings, reprimands or found negligent in **any** jurisdiction.

What is the nature of the ‘due diligence’ required to satisfy the Central Bank that there are no such concerns about an individual's conduct in **any** jurisdiction?

### **2.4 Financial Soundness (paragraph 5.2)**

Again, the nature of the ‘due diligence’ required to satisfy the Central Bank is unclear, although the paragraph 7 states *“In determining whether an individual has complied with this Code, a regulated financial service provider or the Bank, as the case may be, shall have regard to any applicable guidance issued by the Bank”*.

### **2.5 Commencement of Regulations and Standards**

In compliance with Section 21 of the Central Bank Reform Act 2010, the draft Standards state

*“A regulated financial service provider shall not permit a person to perform a controlled function unless the regulated financial service provider is satisfied on reasonable grounds that the person complies with this Code and the person has agreed to abide by such standards.*

*Failure to do so may expose that regulated financial service provider and/or a person concerned in its management to financial penalties and other sanctions under Part IIIC of the Central Bank Act 1942”.*

Given the possibility of financial penalties and other sanctions there should be an obligation on regulated entities to inform individuals where they are designated as carrying out CFs and PCFs and for an annual declaration of compliance in writing.

*CP51 further states*

*“The Central Bank will require firms to identify and maintain a record of the individuals who are carrying out PCFs and CFs at transition to the new regime together with the necessary due diligence undertaken”.*

Why are firms obliged to maintain a record of individuals carrying out PCFs and CFs but only required to submit a list of those individuals carrying out PCFs by 31 December 2011? Surely a list of CFs would assist the Central Bank in ensuring consistency across sectors and providing additional guidance on requirements, where appropriate.

### **3. Guidance and Policies**

#### **Are the Standards clear?**

The Standards as presented are not sufficiently clear in terms of how the Bank expects them to be applied and operate in practice. **Guidance is not only useful, it is essential.** Guidance is required well in advance of 1 September 2011. At present, IBOA believes the Standards are broad statements of principle but not sufficiently clear in practical terms to ensure consistent adoption and compliance by regulated entities.

#### **Are the Standards comprehensive?**

No. IBOA believes the standards would be greatly strengthened by adding whistleblowing provisions and the requirement for each regulated entity to have a Fitness & Probity Policy approved by the Board of Directors. These are part of the Australian regime cited earlier (see attached APRA - ASP520 Prudential Standard Fit and Proper, July 2008)

## **CONCLUSION**

IBOA welcomes the publication of the Fit and Proper Regulations and Standards in CP51 and sees them as an essential building block to restoring confidence in the Irish banking system. IBOA is concerned that the requirements should be proportionate and that practical guidance is provided to regulated entities. IBOA believes the Standards provide an opportunity to require institutions to have a written policy on Fitness and Probity and that the policies and standards should include provisions in relation to whistleblowing. On page 22 the Bank speaks about “information coming from members of the public or from other sources” in relation to an individual's financial soundness. Such flows of information would be greatly facilitated by a ‘Whistleblowers Charter’. This has existed in the UK since 2002, was proposed by IBOA in 2005 in its submission on CP11 and was introduced in Australia in 2008. It is time for similar provisions to be adopted in Ireland.