



The Corporate Governance
Association of Ireland

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Governance, accounting and Auditing Policy Unit
Policy and Risk Directorate
Central Bank of Ireland
PO Box 559
Dame Street
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May 20, 2011

Re: Consultation Paper 51 'The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010' ('CP51')

Dear Sir or Madam,

Please accept this letter and attachments as the response of the Corporate Governance Association of Ireland ('CGAI') to CP51. As you may know, the CGAI (website: www.cgai.ie) is a professional association of members certified in corporate governance post-graduate studies. The CGAI's aim is to promote best practice in governance across the commercial, public and voluntary sectors.

Further to recent events, the CGAI recognizes the need for the Financial Regulator to codify certain governance practices in the banking and insurance sectors in Ireland. It should be noted that codification is but a small element in the area of good governance. Good governance emanates from the demonstrated objective mindset of all individuals charged with decision making. Good governance is ultimately about the behaviour of individuals. This includes both board members and senior management. In that regard and in general, the CGAI welcomes the tenet of CP51.

We attach specific observations and recommendation in a schedule hereto.
Yours sincerely,

78. A handwritten signature in black ink, appearing to read 'Michael Kelly', with a stylized flourish at the end.

Michael Kelly,
Chairman.

Schedule I: CGAI's observations and specific recommendations on CP51

It would be generally accepted that the three main principles on which a governance system should be developed are: accountability, transparency and probity. CP 51 is very much about the third of these principles, namely, probity.

Section 5 covers Standards of Fitness and Probity. The section treats three separate elements: Fitness (Competence and Capability), Probity and, Financial Soundness. Since Probity is one of the key constituent elements of a governance system it is considered very important that it should be properly described.

CGAI is of the opinion that para 21 on page 21 is deficient in that it is open to the charge of confusing integrity and probity.

The Collins English Dictionary defines integrity in three ways:

1. Adherence to moral principles; honesty
2. The quality of being unimpaired; soundness
3. Unity; wholeness (not relevant in the context of CP51).

It defines probity as confirmed integrity; uprightness.

Many people would qualify as having integrity but may not be deemed to exhibit probity on the basis their experience within the context under discussion had not been tested.

CGAI is firmly of the opinion the Central Bank is correct in demanding probity but we fear the distinction between probity and integrity has not been brought out in para 21. We believe the requirement should be one of proven integrity, i.e., probity.

We wish to offer the following comments in support of our opinion by reference to the draft text in CP51.

Individuals proposed for CFs or PCFs should be honest, diligent and independent-minded and should act ethically and with integrity and fairness.

We agree with these sentiments but we submit they are in effect elements of demonstration of integrity.

Probity may also include individuals ensuring that they act without conflicts of interest.

We submit that this is another element of integrity.

These attributes are used to describe probity.

We submit they describe integrity because they are stated in the text as desired attributes in terms of future behaviour rather than as characteristics of past behaviour and consequently, as evidence of probity.

Probity is thus a matter of character illuminated by a person's past behaviour.

We agree with the thrust of the sentence but it is not clear how the word 'thus' got into it.

While we rely on a clear record as an indicator of good character, we recognize that it is not an infallible indicator.

If the past record of the applicant cannot be relied upon how will the institution and the Central Bank satisfy themselves that the person under consideration exhibits probity?

Furthermore, it is not easy to define explicitly probity in a way that ensures that the fit and proper test captures all possible aspects of the concept. Probity is broader than any attempted definition or list of qualities.

Not unreasonable sentiments because probity is not a simple matter. However, it is necessary for the Central Bank to outline what it understands to constitute probity and what evidence of probity will be acceptable.

In fairness to the drafters of CP51, CGAI is of the opinion that Sections 2 (Fitness and Probity Standards) and 4 (Conduct to be Honest, Ethical and with Integrity) of Appendix 2 Draft Fitness and Probity Standards have been appropriately framed, especially when taken with Section 3 Conduct to be Competent and Capable.

The absence of the 17 potential problems outlined in Section 4 could reasonably be taken to be indicative of a lack of evidence of a lack of integrity. The absence over a period of some years of all 17 in a relevant context (as specified in Section 3) could be reasonably taken to imply evidence of probity.

In conclusion, our criticism is confined to the text on page 22 which sets out the principles on which the Appendix should be based rather than on the Appendix itself which contains the details.