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IN IRELAND

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Central Bank of Ireland  
PO Box 559  
College Green  
Dublin 2

17<sup>th</sup> May 2011

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

Dear Sir/Madam,

Thank you for the opportunity for the Institute of Directors in Ireland (IoD) to take part in the consultation process in respect of CP 51. The IoD considers the publication of this consultation paper to be an important step in the reform of the finance sector and welcomes 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**

The well documented corporate governance shortcomings in financial institutions have led to increased regulation of the sector. The focus on improving standards through the ongoing introduction of corporate governance requirements is broadly welcomed by the IoD.

The IoD has long been an advocate for the improvement of corporate governance standards throughout Irish business and we are therefore pleased to present our views on the proposed fitness and probity requirements.

Part of the IoD International Network

Chief Executive: M Quinn, Company Secretary: R MacDarby  
Directors: A Riordan (President), T Byrne, L Daniel, E Gleeson, D Lamont,  
HA McSharry, M Murphy, W O'Reilly, M Somers, M Walsh

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## **Section 5 (18): Fitness – Competence & Capability, Appendix 2 (3) – Conduct to be Competent & Capable**

### **Non-executive directors**

The emphasis placed on competence for positions designated as CF or PCF is an important requirement to ensuring that the appropriate people are appointed to these roles. However, the IoD is keen to see non-executive positions treated as distinct from executive and senior management roles.

While the requirement for appropriate qualifications and experience is of course necessary and welcome, those going forward for non-executive director positions should be considered and tested in the context of what they will bring to the board in its entirety, and not just with regard to their individual qualifications.

The primary function of the non-executive director is to provide a key layer of oversight, an objective view of the affairs of the company and to constructively challenge the executive. They are generally appointed on the basis of their broad experience and particular personal qualities, and often bring specialist knowledge to the board.

Non-executive directors must be selected on the basis of skill, suitability and experience, and while recognising the benefits of having an appropriate level of financial/technical knowledge, including internal governance and risk, the primary requirement should be the independence which they bring to the board.

In order to address the need to demonstrate capability in the areas of governance and risk, and to avoid excluding highly capable non-executive directors who may not possess such specific capabilities, we would recommend that provision be made for technical training for non-executive directors as part of the induction process.

We recommend that the standards would benefit from a separate consideration of each PCF category and would be more in accordance with the reality of non-executive appointments. Alternatively, such a distinction could be made in the non-statutory guidance and further expanded upon.

### **The Board as a collective entity**

While the motivation behind the introduction of these standards is clear and the necessity to ensure that directors are suitably capable is imperative to reform, the IoD believes that the board needs to be considered as a collective entity.

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Assessing the fitness of individuals is an important step in the process, but one that should be considered in the context of the equally important requirement for a diverse board, with an appropriate mix of skills and experience.

Diversity encompasses not just skills and personal qualities, but also gender, age and nationality. Such diversity leads to improved dialogue and open and honest debate among board members.

There is a real danger that unless the board is considered as a collective entity, with diversity at its core, we run the risk of only appointing candidates with the required technical/financial expertise, rather than ensuring that the board is balanced and sufficiently diverse to avoid a group-think mentality. A mix of skills and expertise brings a range of perspectives to the decision-making process, a necessary component of a fully functioning board. It is recommended for all boards to develop a skills framework to assist in the identification of any skills deficit on the board.

We recommend that the standards should reflect the need for a diverse board, or alternatively, a non-statutory guidance could usefully expand on this aspect and offer guidance as to how the Central Bank will approach the overall composition of the board.

### **Schedule 2 (1): Pre-Approval Controlled Functions**

Various roles listed as PCFs include the office of chairman of the board and of various sub-committees. It is recommended that any non-statutory guidance should incorporate details on the specific competencies and skills required of each function listed. Such guidance would be of great value to nominations committees and executive/non-executive search firms. Clear and concise statements of expectations would avoid wasted time and effort and lead to a greater likelihood of regulatory approval.

Clarification is also sought on whether an individual, who has been previously approved and appointed to a PCF and is subsequently proposed for another PCF role, is required to re-apply for pre-approval in respect of that additional role.

### **Section 5 (21): Probity, Appendix 2 (4), Conduct to be Honest, Ethical and with Integrity**

In discussing probity it would be helpful to prescribe some desirable qualities for PCFs, in addition to detailing reasons for restriction. With particular regard to non-executive directors, it is recommended that the standards should be expanded to include the necessity to constructively challenge and to remain independent and impartial. Alternatively this could be incorporated into a non-statutory guidance.

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## **Section 5 (26): Persons exercising functions prescribed as controlled functions on commencement of the Regulations**

PCFs in existing functions will be subject to the Central Bank's powers of investigation, including the possibility of suspension, removal or prohibition. However, in the investigation process it can be difficult for persons not present at board meetings to truly appraise the performance of individual non-executive directors. Furthermore even observers at board meetings will not always identify the many ways in which non-executive directors contribute to a board, for instance the advisory role they may take outside of scheduled board meetings.

It is therefore recommended that the chairman's review of the board/individual directors play a greater role in any investigation of the fitness and probity of existing PCFs. The chairman is best placed to evaluate the board and the contribution of its directors.

The UK Corporate Governance Code and the Corporate Governance Code for Credit Institutions and Insurance Undertakings require the chairman to engage in an annual performance evaluation of the board itself, its sub-committees, and each board member. An external evaluation of the board is also required every three years.

It is recommended that the Central Bank place specific focus, in the regulations and/or non-statutory guidance, on these evaluations, including their scope, documentation and conclusions.

## **Section 6: Transitional arrangements**

The expected publication date and commencement date of the Regulations are stated as 1<sup>st</sup> September 2011. Clearly, it is unrealistic to expect immediate compliance without publication of the final requirements. A lead time between the date of commencement of the Regulations (together with publication of any non-statutory guidance) and a commencement date for the new regime is therefore recommended. A similar approach has been adopted with the Corporate Governance Code for Credit Institutions and Insurance Undertakings and would facilitate a greater understanding of the relevant obligations for each financial services provider and greater compliance.

The IoD appreciates the opportunity to present this submission on behalf of our members. Clearly progress is well underway with regard to improving standards of corporate governance in the finance sector and no doubt there will be many more initiatives coming down the line.

However, as these regulations are implemented we must be careful that ensuring compliance with the various statutory requirements does not become the core focus of the board, whose primary duty should first and foremost be to the business itself.

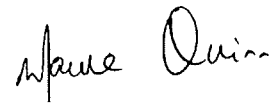
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We hope you find our comments useful and we would be delighted to discuss the issues in greater details and to make any further necessary contributions.

Yours sincerely

A handwritten signature in black ink that reads "Maura Quinn". The signature is written in a cursive style with a large, looped 'Q'.

Maura Quinn  
Chief Executive

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