



The Association of Compliance Officers in Ireland

Risk, Governance and Accounting Policy Division,
Central Bank of Ireland,
P.O. Box 559,
Dame Street,
Dublin 2

30 September 2013

Consultation Paper CP69

Dear Sir/Madam,

The Association of Compliance Officers in Ireland (ACOI) welcomes the opportunity to contribute to the Central Bank of Ireland's consultation on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings ("the Code").

ACOI aspires to be a center for thought leadership and a balanced and authoritative voice on matters relating to regulatory compliance and business ethics in the financial services industry in Ireland. ACOI promotes the role of Compliance Officers and provides a suite of professional qualifications and continuous professional development in Compliance for its members. ACOI is not an industry lobby group and the views expressed here represent those of an association for compliance professionals and not the interests of specific industry participants or sectors.

More Significant Proposed Amendments

The Central Bank has sought specific comment on a number of proposed amendments.

Risk Committee (Section 23)

ACOI welcomes the proposal to amend the provision to require that the risk committee be composed of a majority of non-executive directors. We believe that for high impact firms the requirement should be that the risk committee is comprised entirely of non-executive directors. This is consistent with Article 76(3) of CRD IV. For firms that are not high impact, we believe that the majority should be non-executive directors. This would address proportionality and align the approach fully with the Central Bank's PRISM methodology. We have suggested draft wording later in this submission.

Chief Risk officer (Section 12)

The introduction of a new section setting out the need for and the responsibilities of the Chief Risk Officer is a positive addition to the Code. By giving formal effect to a primary reporting line to the board, the Central Bank addresses a key governance issue for any control function i.e. the ability of the role holder to act independently of management.

For good governance it is important that this be similarly addressed for other control functions. The operation of an effective internal governance framework, with appropriate assurance to the board, requires that all control functions in the firm operate effectively, are adequately resourced and are independent of the business management. To achieve this the Code should set out the need for and define the responsibilities of the heads of the other control functions (i.e. the Internal Auditor, the Chief Compliance Officer and, in the case of Insurance Undertakings, the Chief Actuary). ACOI would be happy to work with the Central Bank to define these responsibilities.

The Code should also clarify the reporting relationship of these other control functions to the board or committees of the board. We have suggested draft wording later in this submission.

Board Meetings (Section 16)

The critical issue for board governance must be the nature and quality of oversight that the board exercises over the firm. A firm should be able to demonstrate from the number of meetings of the board and board committees that effective oversight is exercised. The requirement for the number of board meetings should reflect the level of work being undertaken by board committees.

Composition of the board (Section 7)

As outlined in the Consultation Paper, there is a clear case for improving diversity at board level. The impact of ‘group think’ on the failure of boards in the run up to the financial crisis has been well documented. However, while an important element of diversity, ACOI would counsel against a narrow focus on gender diversity. The key requirement is that boards should be able to demonstrate that they are effective. Diversity can help to improve board effectiveness if it reduces the propensity for group think. However, diversity in itself will not automatically lead to board effectiveness.



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ACOI supports an increased focus on improving gender diversity on boards. Credit institutions and in-scope investment firms will be required to meet the requirements of CRD IV in respect of gender diversity. An overarching requirement for boards to assess their effectiveness should incorporate diversity as a measure. Consideration of diversity, in a broad sense, should be a central element of the consideration by the board as to whether they have the necessary knowledge, skills, experience, expertise competencies, professionalism, fitness, probity and integrity to carry out their duties, as required under Provision 13.4. ACOI would support the inclusion of a requirement on boards to include a statement in the annual report of the institution on their diversity policy and how they are positioned in achieving it.

ACOI recommends that entities that are within the scope of the Code be provided with appropriate transition periods to achieve any new requirements in this area.

Directorship limits (Section 7 & Appendix 1)

ACOI believes this requirement has operated well. In addition to ensuring a director has sufficient time available to fulfill his/her duties, it also contributes to broadening the pool of directors in financial institutions. This should support any requirements on diversity that the Central Bank may introduce in the Code.

Revised Code

ACOI has the following suggestions in respect of the revised Code.

2. Definitions

We welcome the clarity on ‘Group directors’.

ACOI notes the revision to the requirement under provision 7.14 for the board to formally review the membership of the board of any person who is an independent non-executive for more than nine years. This is a welcome development but we suggest further consideration be given to whether any individual can effectively be considered ‘independent’ after such a lengthy period of involvement at board level. In view of this, we suggest that, at a minimum, the definition of ‘director independence’ should have a specific time limit incorporated.



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4. Reporting to the Central Bank

4.2 ACOI requests clarity on the ‘5 business days’. In our view, the amendment to this provision, as drafted, may potentially lead to delays in reporting. If the board is responsible for determining whether a breach is material then it appears that reporting can only take place following that determination, which suggests that the reporting must be within 5 days of the relevant board meeting. Consideration should be given to including a requirement for a board to hold an out of course board meeting where a potential material deviation is identified, so that delays in reporting can be avoided. If it is the intention that the Board considers the matter then we suggest amending this requirement to read:

Any institution which becomes aware of a material deviation from this Code shall, within 5 business days, report the deviation to the Central Bank, advising of the background and the proposed remedial action. The board is responsible for determining (in the first instance) whether a breach is material, based on the particular facts and must do so at the first board meeting following the institution becoming aware of the deviation. If no board meeting is scheduled imminently, then an out of course board meeting should take place in order to meet the reporting timeline.

6. General Requirements

6.3 ACOI supports the requirement for the system of governance to promote an appropriate risk culture. But the governance code must, in our view, also support an appropriate compliance culture within any regulated entity. We suggest that the final sentence of the stated requirement be amended to read:

The system of governance shall promote an appropriate risk and compliance culture at all levels of the institution and shall be subject to regular internal review.

One risk with a Code is that institutions may focus on a ‘tick box’ approach to risk or compliance. Introduction of a set of corporate general principles, focused on desired outcomes or the quality of decision making may be required. This could be included within the general requirements or, preferably, as a separate section of the Code. We recommend it should focus on principles covering outcomes such as accountability, objectivity, responsible and ethical decision making and stakeholder transparency. ACOI would be willing to work on this with the Central Bank.



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12. Chief Risk Officer

ACOI welcomes the requirement to appoint a Chief Risk Officer. The importance of the role and the requirement to ensure the board receives sufficient independent information on the management of the institution's risks warrants the primary reporting line of the CRO to the board risk committee. The requirement, as drafted, may lead to some confusion on reporting lines relating to operational matters. ACOI suggests that this can be clarified by the inclusion of the following text in Provision 12.8:

The Central Bank recognises that, in addition to the Chief Risk Officer's primary accountability to the board risk committee, an executive reporting line may be necessary for operational purposes. Accordingly, to the extent necessary for effective operational management, the Chief Risk Officer should report to the Chief Executive.

The Code should similarly set out the requirement for and define the responsibilities and reporting lines of the heads of the other control functions (i.e. the Internal Auditor, the Chief Compliance Officer and, in the case of Insurance Undertakings, the Chief Actuary). ACOI would be happy to support and work with the Central Bank in defining these responsibilities.

19. Committees of the Board

The ACOI has considered the proposed amendment that the full board *including the Chairman and the CEO*, may act as the audit committee and/or the risk committee. While noting that this reflects the requirement under Provision 9.6 that the CEO will be appointed to the Board, it appears to go against best practice where the CEO would not be a regular attendee at audit committee and, therefore, may not be appropriate. We suggest that this be amended to read:

“the full board, including the Chairman but excluding the CEO, may act as the audit committee and/or the risk committee”.

19 Committees of the board

As stated above, ACOI welcomes the requirements relating to the CRO that are included in the revised Code. Equally, it is important that reporting lines from the other control functions to the board or board committees are set out in the Code.



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To achieve this, ACOI suggest the inclusion of a new Provision 19.8 as follows:

19.8 The board, in implementing an appropriate internal control framework, should also require verification by independent control functions that the institution's policies and procedures are complied with. The control functions should include a Risk function, a Compliance function, an Internal Audit function and, in the case of an Insurance Undertaking, an Actuarial function.

- *The control functions should be established at an adequate hierarchical level and report directly to a Committee of the Board. They should be independent of the business and support units they monitor and control as well as organisationally independent from each other (since they perform different functions).*
- *The head of the control function should be ratified by and report directly to the board risk committee, in the case of the Risk function, the Compliance function, and the Actuarial function, and to the board audit committee, in the case of the Internal Audit function, and should regularly attend the meetings of such Committees.*
- *The Board, or a committee of the Board, should approve the policy establishing the control function. The board committee overseeing the control function should review, at least annually, the control function's work programme and resourcing.*
- *Control functions should regularly submit to a committee of the board, formal reports on their activities, on the management of risk and on major identified deficiencies.*
- *The Board, or a committee of the Board, should meet individually with the head of each control function without the Chief Executive Officer or other members of management being present.*

The committee reporting lines proposed fully reflect the three lines of defence model i.e. that the Risk function, the Compliance function, and the Actuarial function are in the second line of defence and the Internal Audit function is the third line of defence.

This proposal is derived from the EBA Guidelines on Internal Governance, which have applied to banks in Ireland since March 2012. While the inclusion of these provisions in the Code will create no new regulatory obligations for banks, their inclusion in the Code will bring them within the enhanced compliance requirements attaching to the Code and will further emphasise the importance that



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the Central Bank attaches to the effective operation of independent control functions.

22. Audit Committee

It is appropriate, in the view of ACOI, that paragraph 22.6 should provide that the Chief Risk Officer, the Chief Compliance Officer and, in the case of Insurance Undertakings the Chief Actuary, should also attend at the Audit Committee from time to time to give assurance regarding the standards of internal control in their respective areas of control oversight.

23. Risk Committee

Article 76 of CRD IV requires that Member States shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a risk committee composed of members of the management body who do not perform any executive function in the institution concerned. ACOI suggest that applying this standard to High Impact firms would meet the proportionality requirements while ensuring the appropriate composition of the risk committee in those firms.

We suggest the inclusion of a new rule 23.3 for High Impact firms (to be included in Appendix 1 to the Code) as follows:

The risk committee shall be composed of non-executive directors.

ACOI would welcome an opportunity to discuss these proposals in greater detail and would be happy to meet the Central Bank to do so.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Philip Brennan', is written over a horizontal line.

Philip Brennan,
Chairman