

The Corporate Governance Association of Ireland response to the Central Bank of Ireland paper on proposed revisions to the Corporate Governance Code for Credit Institutions and Insurance Undertakings – CP69

October 1, 2013

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

Dear Sir/ Madam,

The Corporate Governance Association of Ireland (“CGAI”) is a professional association of members who are certified in corporate governance through post graduate studies and experienced practitioners in the field. The Association seeks to promote best practice in governance across the commercial, public and voluntary sectors, inter alia, by developing and supporting the development of Codes of Good Governance in partnership with like-minded organisations.

We welcome the opportunity to comment on the Central Bank of Ireland consultation paper regarding “*Proposed Revisions to the Corporate Governance Code for Credit Institutions and Insurance undertakings – CP 69*”.

We are generally supportive of the proposed revisions to the code and we welcome in particular the increased focus on risk as seen in the provisions with respect to the Risk Committee and Chief Risk Officer.

Response to Specific Provisions

- 1. Risk Committee (Section 23) and**
- 2. Chief Risk Officer (Section 12)**

The CGAI strongly supports the new requirement for all institutions to appoint a CRO and the new provisions on the risk committee. We note the provision in 23.4 that the risk committee “*as a whole shall have relevant financial experience*”. We suggest that experience in risk appropriate to the organisation should also be included. Boards need to consider the entire range of risks facing the organisation which entails addressing non-financial parameters as well.

3. Board Meetings (Section 16)

‘Recognising that some institutions may naturally have a clustering of business activity around certain parts of the year, it is proposed to permit an institution to tailor the timing of meetings to better fit its business cycle. It is proposed to amend this requirement to permit institutions to hold one board meeting per half year with the balance of meetings to be scheduled as the board deems appropriate.’

CGAI consider that this new flexibility should be extended to High Impact institutions as well. Board meetings for High Impact institutions should be in principle on a monthly basis, but should also take into account the clustering of business activity around certain parts of the year. The Board should have the flexibility to arrange the meetings around the governance requirements of the business with a minimum objective of 11 meetings per year and the proviso that the Central Bank reserves the right to query overlong gaps between meetings.

4. Chairman (Section 8)

The Code prohibits the Chairman of an institution from holding the position of Chairman or Chief Executive Officer of another credit institution or insurance undertaking. It is proposed to relax this provision in relation to the role as Chairman for institutions “*which are not designated as High Impact institutions and are subsidiaries of groups*” subject to the prior approval of the Central Bank.

The summary of the more significant amendments to CP 69 states that “*Although the existing requirement will remain in place for High Impact designated institutions, derogation requests will be considered by the Central Bank on a case-by-case basis.*”

We support the view that the appointment of a group Chairman to the board of a subsidiary institution can bring important benefits to the subsidiary. We believe that this facility should be extended to High Impact institutions as well. As the Central Bank has indicated they will consider a derogation in the case of High Impact institutions in the explanatory notes, it seems logical not to differentiate between institutions in the code, especially given the need for Central Bank approval for all these roles, The Central Bank will still have the ability to examine proposed group Chairmanships and ensure that the applicants have the time and skills to undertake the additional workload.

5. Chief Executive Officer (Section 9)

The CGAI support this provision.

6. Committees of the Board (Section 19 and Appendix 1 Additional Obligations on High Impact Institutions)

The CGAI strongly supports the cross membership of committees proposal. This is an important tool to ensure that there is a comprehensive management of risk for the organisation. We suggest that rather than limit the provision in relation to the remuneration committee to high impact institutions, that this be applied to all institutions where a remuneration committee is in place. Linking remuneration and risk behaviour is an important governance tool.

7. Annual Compliance Statement (Section 26)

8. Board Responsibilities (Section 13)

The CGAI supports these provisions.

Specific Areas for Comment: Diversity (Section 7)

The EU recognises the importance of diversity in its action plan and defines it broadly as “*diversity of competencies and views*” amongst the Board’s members. Diversity in outlooks and skills allows the Board to challenge management’s decisions in a more constructive and objective manner. It has long been recognised that a lack of diversity could expose the Board to the dangers of “group think”, a process blamed for much of the myopia surrounding decisions leading to the financial crisis. However, in promoting diversity in the boardroom there is a danger in focusing too closely on gender disparities and therefore failing to address diversity in a more holistic manner.

The CGAI supports diversity in the boardroom as an important stimulant for robust challenge and discussion. However the CGAI is not in favour of gender quota or targets as a means of achieving a diverse board. Rather we support the amendment at provision 14.9 of the draft code: “*The Board shall put together a formal skills matrix to ensure an appropriate skills matrix across members of the Board and potential new members should be assessed against the skills matrix during the appointment process*”. The focus should be on the skills mix in the boardroom and not on gender, per se. We also believe that this should be combined with an attempt to ensure diversity in background to bring a wider perspective to the Board view. Encouraging a more open approach to recruitment that is not dependent on the “knowledge network” is an important way of ensuring a diverse mix of skills and backgrounds.

A requirement under the code asking Boards to show how new appointments are effective at increasing diversity in the boardroom and have been made in an open and public manner would be a more effective method of increasing diversity than gender quotas. In considering appointments, the Board should consider the balance of gender as part of this process, but imposing a quota on one gender does not provide the most effective method of obtaining a diverse board.

Other Comments

Composition of the board (Section 7.2)

'The majority of the board shall be independent non-executive directors (this may include the Chairman). However in the case of institutions that are subsidiaries of groups the majority of the board may be group directors, provided that in all cases the subsidiary institution shall have at least two independent non-executive directors or such greater number as is required by the Central Bank.'

In CGAI's opinion this section needs to be clarified as it is ambiguous, i.e. a company may have a majority of non-executive directors, which might include a mix of group and independent but not result in a majority of either. This company could therefore be considered as technically in breach of the code. We do not think that this is the intention of this section.

To illustrate this point:

Assume a subsidiary Board with 10 members as follows;

- 3 Group directors
- 3 independent non-executive directors
- 4 executive directors

This board has neither a majority of independent non-executive directors nor group non-executive directors, but does have at least 2 independent non-executive directors, and a majority of non-executive directors when group and independent are combined.

It has been argued in the past that the word "may" can be interpreted as might rather than shall. If this is the case, and the Central Bank's only requirement for subsidiary boards is for at least two independent non-executive directors, the Code should state

"in the case of institutions that are subsidiaries of groups the subsidiary institution shall have at least two independent non-executive directors"

If you wish to discuss any of the above further, please feel free to contact either of the undersigned,

Yours sincerely

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