

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

1 October 2013

**Response to Consultation on the Review of the Corporate Governance Code for Credit
Institutions and Insurance Undertakings**

Dear Sir/Madam,

Financial Services Ireland ('FSI') welcomes the opportunity provided by the Central Bank to comment on the review of the Corporate Governance Code. Having consulted with our membership, we enclose a submission.

FSI would welcome the opportunity to engage further with the CBI on the review of the code and we remain available to clarify or elaborate on any aspects of the submission.

Yours faithfully,

Brendan Bruen
Director,
Financial Services Ireland.

Consultation on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings

The specific sections of the Code referred to in this submission relate to new numbering in Consultation Paper 69, and not to the numbering contained in the original Code.

General

The enhancement of corporate governance standards was a necessary and important step in the aftermath of the financial crisis. The spirit and overall objectives of the Code remain widely endorsed by industry, though it is acknowledged that some practical issues have arisen.

The review addresses significant areas of concern for the industry that have been raised in the past, and, in particular, the formalisation of existing practice where derogations have been granted will enhance the clarity of the regime.

The profile of financial services firms operating in Ireland is diverse, ranging from large publicly-quoted head office operations, to smaller, independent firms, and critically, to those operating as part of a wider group structure. The final scenario is critically important in an Irish context, and it is essential to ensure that measures that are directed at parent groups or very large institutions do not have undesirable consequences for subsidiary operations. We have made a number of comments in respect of this on individual measures.

Proportionality in the CBI approach is crucial to the successful operation of the Code and a number of helpful derogations have been allowed in the past. The present consultation on the Code seeks to formalise some of the more widely-arranged and necessary derogations and this is to be welcomed.

Flexibility should, however, be retained to deal with issues as they arise for individual firms.

The intention of the CBI to align terminology in the Code with that used as part of the PRISM engagement system is welcome. This will bring additional clarity and consistency in industry's understanding of requirements imposed by the CBI. Greater consistency in terminology between the Corporate Governance and Fitness and Probity requirements would also be welcome.

The development and improvement of corporate governance is a continuous process, and one that has multiple sources and stakeholders. Maintaining alignment with international efforts and firms' own processes will enhance the overall effectiveness of the regime and facilitate firms in adopting best practices.

CP69 - Significant Proposed Amendments

Risk Committee (Section 23)

The proposal for the majority of members of the risk committee to be non-executive directors will pose practical difficulties in terms of availability of suitable candidates and the utilisation of appropriate skills among the other directors. It is our view that the requirement that the Chair of the committee to be a non-executive director is sufficient to achieve the objectives of the Code in this regard.

Chief Risk Officer (Section 12)

The desire to formalise the role of the Chief Risk Officer is understood by firms and is broadly accepted as reasonable. We note the additional considerations for smaller firms, where a full-time CRO may not be necessary, and would suggest that a derogation should be granted where a High

Impact institution can demonstrate that it does not require a full-time CRO for reasons particular to its business model. In practical terms, it would be useful to have a transitional period following the introduction of the revised Code to allow institutions to make the necessary changes and avoid a shortage arising of suitable candidate CROs.

Board Meetings (Section 16)

FSI welcomes the CBI's acknowledgment that the requirement under Section 16 for eleven board meetings per year for High Impact Institutions should be considered further. This requirement has caused widespread concern among industry regarding the appropriate boundary between management and Board, and the need for these functions to remain separate and distinct. The overriding requirement to operate within a set timetable has also had a negative impact on the quality of Board papers, as the scheduling of meetings may no longer be based on business needs.

High impact institutions will conduct meetings as required based on business cycle and *ad hoc* issues, and the requirement to hold a minimum of 11 meetings per year creates management processes that can become focused on servicing the Board. Equally, the Board can lose its focus in its function of setting the overall business strategy for the institution. Currently, in order to meet the requirements, preparation for subsequent Board meetings needs to start immediately following the preceding Board meeting, hindering the ability of management to review and manage the business within their remit on an appropriate timeline. The Board should have discretion over the number of Board meetings, particularly when there is a single shareholder in the context of a large group.

We would recommend a more proportionate and flexible approach to the convening of Board meetings under the Code, that requires fewer meetings, but potentially with requirements to have a meeting each quarter and a particular number of the total meetings to be timed based on business needs. This will allow the Board to be more effective in the performance of its functions.

Chairman (Section 8) / Chief Executive Officer (Section 9)

The proposed amendments in Section 8 to permit a person to hold more than one Chairman position within the same Group are welcome, as this will open up a pool of talented and appropriate individuals for the role while still fostering Board diversity.

The proposal to permit the CEO of a Medium-Low or Low Impact institution to hold up to two additional CEO roles is welcomed. This prohibition was challenging for many institutions in securing suitably-qualified candidates, and will reflect the realities and impact of varying complexity, size, capacity and organisational support of entities.

Many international groups have set up operations in Ireland where more than one regulated entity has been required to fulfil the overall strategic goal. For example, in some instances both a life company and a reinsurance company are established as part of the same project, or a life and non-life company may be required depending on the class of business written. Where there are clear overlaps and synergies to be obtained from the two entities being operated on a consolidated basis, and where the relevant CEO can demonstrate that he will have sufficient time to devote to performing both roles, we believe that it would be beneficial for the CBI to permit the same person to act as CEO of both entities, regardless of the PRISM category applicable.

The reappointment of the Chairman under Section 8.8 on an annual basis causes difficulties in the context of a subsidiary and is perceived as not bringing any specific governance benefits. We request that this requirement be relaxed.

Section 9.5 of the Code requires the renewal of the CEO contract to be reviewed every five years. For wholly-owned subsidiaries, where contracts are endorsed at group level, the review of the CEO contract in the context of an already-comprehensive group appointments process is seen by firms as being of very limited value.

Committees of the Board (Section 19)

Cross-membership of the audit and risk committees is to be welcomed but these proposals are currently overly prescriptive – and must be adopted in a way which ensures that cross-committee membership facilitates effective member rotation of these committees for each category of institution.

Annual Compliance Statement (Section 26)

The proposal to change the required submission date of the Annual Compliance Statement to that of the individual institution's financial year is welcome.

CP69 - Specific Areas for Comment

Directorship Limits (Section 7)

FSI welcomes the proposed limiting of the nine-year formal review to independent non-executive Directors. The original requirement to review all members who have sat on the Board for nine or more years seemed to add little value to this Section when taken with the annual assessment of Board performance and the overall review of Board composition every three years.

Further enhancement to Section 7.7 would also be welcome in order to reflect that the time commitment required from executive Directors is not specific, but is related to the individual's overall executive responsibilities. Further clarification to Section 7.9 would also be welcome in order to understand whether directorships in the same non-financial group can be counted as a single non-financial directorship.

Additional Comments

FSI would welcome greater clarity from the CBI as to its expectations from the term 'material deviation' when it comes to determining what constitutes non-compliance with the Code. This could perhaps be conducted via the publication of an anonymous table of reported material deviations. Flexibility around the requirements under Section 16.2 for circulation of minutes in advance of each Board meeting would be welcome, particularly in situations where the Board is convened for urgent business needs and the minutes from the previous meeting may not yet be available for approval. For ease of reference, it would be helpful if the CBI guidelines contained in its December 2012 letter to industry regarding the contents of the Risk Appetite Statement were included in the revised Code. It is our understanding that the wording of Section 6.7 means that it is appropriate to raise any such concerns at the next scheduled Board meeting.

It would be helpful to understand when the CBI considers that remuneration committees are needed.

Finally, we would also welcome guidance from the CBI as to its understanding of the following terms utilised in the Code:

- 'conflict of interest' – particularly in a group sense;

- ‘all appropriate staff’ under Section 6.6 of the Code, as this can vary considerably in larger institutions;
 - ‘nature, scale and complexity’.

As regards the definition of ‘Director Independence’, the exclusion of an individual who is or has been a provider of professional services to the institution in the recent past has merit in theory, but in practice, has caused considerable difficulty for some institutions, due to the limited availability of suitable candidates. The rule has operated to exclude many professionals who previously acted with the utmost integrity and brought much knowledge and expertise to the Board. Greater flexibility around this criterion for independence would therefore be of benefit to quality in Board composition.

At Section 23.5, we would suggest that this wording be changed to read “The risk committee as a whole shall have relevant financial services industry experience.”