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

The Institute of Directors in Ireland (IoD) welcomes the opportunity to take part in the consultation process in respect of proposed changes to the Corporate Governance Code for Credit Institutions and Insurance Undertakings. Following the implementation of the Code on 1st January 2011, it is timely for a review to be conducted to ensure the overall effectiveness of the Code and the IoD is pleased to detail our views hereunder.

About The Institute of Directors in Ireland:

The Institute of Directors in Ireland is the representative body for over 1,900 directors and senior executives within the private and public sectors. As the leading voice in the debate on improving corporate governance standards, the Institute of Directors is dedicated to developing and improving the effectiveness and performance of directors and boards throughout Ireland.

Initial Remarks:

While the aim of the regulation is to ensure an appropriate level of oversight and accountability, it is equally important that we do not create a situation whereby the focus becomes solely on conformance rather than performance.

In previous consultations, the IoD has raised issues over proportionality in how the Code is applied, a lack of emphasis on the need for adequate induction training for new directors and the need for on-going training and development for the board as a whole, as well as the absence of a requirement for a formal skills matrix to be in place at the appointment process. The IoD is pleased to see that these concerns have mainly been addressed.

The IoD also welcomes the new classification of institutions in the Code using the Probability Risk and Impact System (PRISM) model, as it allows for the consistent classification of institutions and greater distinction, which can allow for proportionality to be applied more effectively.

However, a number of outstanding issues which the IoD believes could enhance the overall effectiveness of the Code include:

- Revision of point **9.2** for the allowance of a CEO of a Medium-Low or Low impact institution to hold up to two additional positions as CEO of Medium-Low or Low impact designated credit institutions or insurance undertakings simultaneously.

- Further emphasis included in point **7.5** and **20.1 (e)** on the importance of physical attendance at board and sub-committee meetings.

- Greater access for the Chief Risk Officer to the board as a whole and for the Chief Risk Officer to undergo relevant training on an on-going basis to be included in points **12.6** and **12.8**.

- For the duties outlined in point **13.1** under the ‘Role of the Board’, to include reference to the responsibility of setting long-term goals and ensuring long-term viability of the institution.

- **19.7** - for cross-committee membership to be managed adequately so no one individual exercises excessive influence or control.

- For members of the risk committee to have knowledge and awareness of other potential risks in areas such as IT and reputation, as well as having relevant financial experience and to undergo relevant training – point **23.5**.

- **14.9 – Appendix 1** - for the requirement of a formal skills matrix to be extended beyond being an additional requirement for High Impact institutions and be included in the general Code.

Response to consultation:

Specific areas for comment:

"The Central Bank is seeking specific feedback from respondents as to whether a provision in relation to diversity requirements should be introduced into the Code and, if so, the nature of any such requirement."

Diversity among directors is of paramount importance to the leadership and success of a business and its interests and the IoD is firmly in favour of the need for balance and diversity in the boardroom. A diverse board is more likely to ask the difficult questions, encourage constructive debate and challenge the executive. It is also more capable of understanding potential risks and identifying the impact of such risks on the business and its various stakeholders.

However, the debate too often focuses on gender diversity, which is only one element - board diversity should encompass everything from the skills and expertise of directors, to their level of independence from the company, to their age, gender and nationality.

The IoD believes that appointments should be made, in the first instance, based on the skills requirements of the board at the time. It is essential that all boards have a skills matrix in place and for potential candidates to be assessed against that matrix during the appointment process. This will ensure that candidates are measured fairly, against a common list of skills requirements. The IoD welcomes the inclusion of point **14.9** in **Appendix 1** for additional obligations on High Impact institutions, outlining the requirement for a formal skills matrix to be put in place, but is disappointed that this requirement is reserved only for High Impact institutions. The IoD believes that all institutions would benefit from a clearly defined skills matrix, which is regularly reviewed and updated. Appointments made against a formal skills matrix allow for an open and transparent process, by which candidates are assessed equally. This in turn can encourage board diversity.

"The Central Bank invites your comments on how this requirement* [directorship limits] *has operated and if the limits are appropriate."

The IoD believes that the current limits on directorships, whereby the number of directorships of credit institutions and insurance undertakings held by a director does not exceed five and the number of directorships of other entities does not exceed eight, or in the case of High Impact designated institutions, that the number of directorships of credit institutions and insurance undertakings held does not exceed three, and the number of directorships of other entities does not exceed five, to be appropriate.

There is significant time involved in adequately fulfilling the duties of a director, especially of an institution deemed 'High Impact' and it is essential that directors have the capacity to devote the time and attention needed to carry out the role(s) effectively.

There may of course be certain instances where a director is capable of adequately fulfilling the duties required in excess of the directorship limits in place - professional INEDs, for example, would have the capacity to manage a greater number of directorships than a director who holds a full-time executive role, along with non-executive positions. The IoD is satisfied that in such situations, institutions may seek Central Bank approval for exception from the limits by providing a detailed rationale and supporting documentation outlining why the additional directorship would not constitute an inordinate constraint on their time.

Proposed changes to the Corporate Governance Code for Credit Institutions and Insurance Undertakings

3. Legal Basis

3.6 *If a conflict arises between the Code and another corporate governance obligation or standard, the stricter of the obligations or standards should be met so as to ensure compliance with all sets of obligations.*

The IoD welcomes the clarification for institutions that in the event of conflict between the Code and other obligations and standards to which they may be liable, that the stricter of the obligation or standard should be met. This is especially important with the increased focus on European wide regulation and the number of new and revised European Commission Directives that have been adopted in recent years.

4. Reporting to the Central Bank

4.2 *The board is responsible for determining (in the first instance) whether a breach is material based on the particular facts.*

In previous consultations, the IoD outlined that any concerns regarding material deviation from the Code should be raised with the board in the first instance, and that it is the responsibility of the board to determine the next steps regarding reporting to the Central Bank, based on the particular facts. The IoD welcomes the extension of point **4.2**, which clarifies this.

7. Composition of the Board

7.5 *Directors should attend each board meeting in person wherever possible. However, due to the locations of some directors, physical attendance may not always be possible, in which case videoconferencing or teleconferencing is permissible.*

While the IoD welcomes the clarification that attendance at board meetings via videoconferencing or teleconferencing is permissible, we would stress that this method of meeting attendance should only be in exceptional circumstances. Physical attendance at meetings is preferable, to develop relationships with other board members and be more engaged in the discussion, which is considerably more difficult when joining remotely. Teleconferencing is particularly limiting, with those joining meetings via this method unable to "read the room", and see the physical and emotional reactions to information and events during the meeting, which is often important.

7.8 *…and this shall include directorships of credit institutions and insurance undertakings and reinsurance undertakings authorised outside of the State.*

The IoD welcomes the inclusion in the limitations of directorships that can be held, of credit institutions and insurance undertakings authorised outside of the State. As previously outlined, the IoD is satisfied that in situations where it may be appropriate for a director to hold in excess of the limit outlined in the Code, that the rationale for an exception can be outlined to the Central Bank and considered on a case-by-case basis.

8. Chairman

8.11 *The Chairman shall not hold the position of Chairman or Chief Executive Officer of a credit institution or insurance undertaking or reinsurance undertaking for more than one institution at any one time and this obligation also prohibits the holding of the position of Chairman or Chief Executive Officer in a credit institution or insurance undertaking or reinsurance undertaking authorised outside of the State at the same time as the holding of the position of Chairman or Chief Executive Officer of an institution to whom this Code applies.*

However, in the case of institutions which are not designated as High Impact institutions and are subsidiaries of groups, the Chairman may also hold the position of Chairman of a credit institution or insurance undertaking or reinsurance undertaking (including those authorised outside of the State) simultaneously provided that these roles reside within the group and the Chairman has sufficient time available to fulfil his or her role and function as the Chairman of an institution. The prior approval of the Central Bank shall be obtained prior to the Chairman assuming any such additional roles.

The IoD welcomes the extension of point **8.11**, to include the prohibition of a Chairman from acting as Chairman or Chief Executive Officer in a credit institution or insurance undertaking authorised outside of the State at the same time as the holding of the position of Chairman or Chief Executive Officer of an institution to whom the Code applies.

The IoD also welcomes the loosening of restrictions to allow the Chairman of a credit institution, insurance undertaking or reinsurance undertaking that is not designated as 'High Impact' to also hold the position of Chairman of a subsidiary simultaneously, with prior approval of the Central Bank and subject to having sufficient time to fulfil the additional role adequately.

9. Chief Executive Officer

9.2 *The CEO shall not hold the position of CEO of a credit institution or insurance undertaking or reinsurance undertaking of more than one institution at any one time and this obligation also prohibits the holding of the position of CEO in a credit institution or insurance undertaking or* *reinsurance undertaking authorised outside of the State at the same time as the holding of the position of CEO of an institution to whom this Code applies.*

However, in the case of institutions which are designated as Medium-Low or Low impact institutions, the CEO may also hold up to two additional positions as CEO of a credit institution or insurance undertaking or reinsurance undertaking simultaneously provided the institution is also designated as a Medium-Low or Low impact institution and the CEO has sufficient time available to fulfil his or her role and function as the CEO of an institution. The prior approval of the Central Bank shall be obtained prior to the CEO assuming any such additional roles.

The IoD also welcomes the extension of point **9.2**, to include the prohibition of a CEO from acting as CEO in a credit institution or insurance undertaking authorised outside of the State at the same time as the holding of the position of CEO of an institution to whom the Code applies.

However, we believe the allowance for a CEO of a Medium-Low or Low impact institution to hold up to two additional positions as CEO of Medium-Low or Low impact designated credit institutions or insurance undertakings to be somewhat excessive in most circumstances.

The CEO of an organisation is responsible for the performance of the company, as dictated by the board's overall strategy and fulfilling this role effectively requires sufficient provision of time. The IoD does not envisage many situations where an individual would be capable of adequately fulfilling the duties required of a Chief Executive Officer in three Medium-Low or Low impact institutions simultaneously.

12. Chief Risk Officer

12.1 *There shall be a person appointed the Chief Risk Officer ('CRO') with distinct responsibility for the risk management function. Where an institution is not designated as a High Impact institution and where the nature, scale and complexity of the operations of the institution do not justify a dedicated, exclusive CRO function, another pre-approval control function may fulfil that role, provided there is no conflict of interest. The Central Bank shall be notified of any such arrangement.*

The IoD welcomes the requirement for the appointment of a Chief Risk Officer (CRO). The IoD is also pleased that proportionality has been applied for those institutions not designated High Impact and not of the nature, complexity and scale to justify an exclusive CRO function, for another pre-approval control function to be allowed fulfil the role.

12.6 *The CRO shall have relevant expertise, qualifications and background or be required to undertake relevant and timely training. The CRO shall have sufficient seniority and independence to challenge or influence decisions which affect an institution's exposure to risk.*

Risk by its very nature is changeable, especially in the area of information technology, and it is essential that any individual carrying out the role of CRO regularly updates their knowledge and undertakes relevant and timely training on an **on-going basis.**

12.8 *The CRO shall report to the board risk committee with direct access to the Chairman of the board.*

The IoD would suggest the extension of point **12.8** to include reference to access for the CRO to the full board, not just the risk committee and Chairman. Risk management is ultimately a function of the entire board and it is important that the CRO, given their distinct responsibility for the risk management function of an institution, can report directly to the board as a whole to deliver clear and consistent messaging.

13. Role of The Board

13.1 *The board of each institution is responsible for the effective, prudent and ethical oversight of the entity; institution. The board is responsible for, among other things, setting and overseeing:*

• the business strategy for the institution;

• the amounts, types and distribution of both internal capital and own funds adequate to cover the risks of the institution;

• a robust and transparent organisational structure with effective communication and reporting channels;

• a remuneration framework that is in line with the risk strategies of the institution; and

• an adequate and effective internal control framework, that includes well-functioning risk control, compliance and internal audit functions as well as an appropriate financial reporting and accounting framework.

The extension of point **13.1** for the **Role of The Board**, particularly the inclusion of the setting of a remuneration framework that is in line with the risk strategies of the institution, having an adequate and effective internal control framework that includes well-functioning risk control and a robust and transparent organisational structure with effective communication and reporting channels, is to be welcomed. The IoD believes this section could be further enhanced by clearly outlining that the board is also responsible for setting the **long-term** goals of an institution to ensure **long-term viability**.

14. Appointments

14.4 *The board shall ensure that new non-executive directors are provided with adequate induction training about the operations and performance of the institution. The board shall ensure that adequate on-going training is provided to board members which is routinely updated as necessary to ensure that they make informed decisions.*

The IoD is pleased to see the inclusion of a specific requirement relating to adequate induction training for new non-executive directors and that adequate on-going training be provided to board members and routinely updated as necessary. Continuous director development and training is essential for improved board performance and directors should be encouraged to regularly update their skills and knowledge.

15. Risk Appetite

15.8 *The board shall ensure that it identifies risks to be addressed by contingency plans based on the areas where it considers the institution to be especially vulnerable and that these are reviewed, updated and tested on a regular basis.*

The IoD welcomes the inclusion of point **15.8** outlining that identified risks in areas where the institution is particularly vulnerable be addressed by contingency plans that are regularly reviewed, updated and tested. An institution can face any number of risks - operational, financial, compliance, reputational, technology, fraud, management succession and business continuity - and it is vital to not only identify those risks, but to also put in place a system to adequately deal with those risks as they arise. Best practice would dictate that risk management procedures be embedded into the company's activities, set out in writing, continuously reviewed and understood and regularly monitored by the board.

19. Committees of The Board

19.7 *Board consideration of risk-related issues may be enhanced by members serving on more than one board sub-committee as members may gain a greater appreciation of risk considerations across the institution. Cross memberships between key sub-committees of the board should be encouraged. The Chairman of the audit committee shall be a member of the risk committee and the Chairman of the risk committee shall be a member of the audit committee***.**

The IoD welcomes the encouragement of cross membership between key sub-committees where relevant, as this allows for maximum use of board expertise. It is important, however, to manage cross-committee membership to ensure that no one individual exercises excessive influence or control. The IoD would also suggest that appointments to any key sub-committees are made against a formal skills matrix relative to the requirements of the particular committee and that such a skills matrix be regularly reviewed and updated.

20. General Requirements of Committees

20.1 (e) *Directors should attend each sub-committee meeting in person wherever possible. However, due to the location of some directors, physical attendance may not always be possible, in which case videoconferencing or teleconferencing is permissible.*

As previously outlined, while the IoD welcomes the clarification that videoconferencing or teleconferencing is permissible, as with board meetings, physical attendance at sub-committee meetings is preferable, and as sub-committee meetings are in addition to general board meetings, the availability of directors to be physically present should be considered prior to the appointment of a director to a sub-committee.

23. Risk Committee

23.5 *The risk committee as a whole shall have relevant financial experience.*

While it is of course vital that the risk committee as a whole has relevant financial experience, it is also important that committee members have experience in other areas where it considers the institution to be especially vulnerable, as identified in point **15.8**. The risks associated with, for example, information technology and reputation can have equally devastating consequences for an institution and committee members should have competences in identifying and planning for these and other potential risks. Members of the risk committee should also be required to undertake specific and regular training in the area of risk identification and management.

<u>APPENDIX 1 to the Corporate Governance Code for Credit Institutions and Insurance Undertakings ("The Code")</u>

Additional Obligations on High Impact Institutions

14. Appointments

14.9 *The board shall put in place a formal skills matrix to ensure that there is an appropriate skills mix across members of the board and potential new members should be assessed against the skills matrix during the appointment process.*

In previous consultations the IoD has called for the inclusion of a requirement for a formal skills matrix to be in place, to ensure that there is an appropriate skills mix around the boardroom table and that potential new candidates are assessed against this skills matrix during the appointment process. The IoD welcomes the inclusion of point **14.9** in **Appendix 1**, but is disappointed that is has only been applied as an additional requirement for High Impact designated institutions. The IoD would welcome the extension of the requirement to also be included in the general Code. The creation of a skills matrix framework is not a particularly onerous task for institutions of any size and the advantages of clearly outlining the skills requirements of the board will greatly improve how appointments are made, making it an open and transparent process, by which candidates can be assessed equally against the specific requirements of the board at that time.

We appreciate the opportunity to present this submission and would be delighted to discuss the issues raised in greater detail or to make any further contributions as necessary.

Yours Sincerely

Maura Quinn
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Institute of Directors in Ireland