**Insurance Ireland response to Consultation on the Review of the Corporate Governance Code (CP69)**

**Overview**

The Corporate Governance Code has had a positive effect and has increased awareness of the importance of corporate governance issues. The Code provides a clear and consistent framework for compliance and enhances the reputation of Ireland as a country with strong internal controls. Our members are supportive of the Code and its aims and have put significant resources into meeting its requirements.

Our members welcome the current review. In particular our members welcome the fact that certain concerns they have raised previously are specifically raised by the consultation document (e.g. number of board meetings, increased flexibility around the roles of chairman and CEO within groups).

Our members are strongly of the view that the current requirement for High Impact insurance undertakings to hold 11 board meetings a year is disproportionate and blurs the roles and responsibilities of board and management.

The Corporate Governance Code was a specific response to the financial crisis. The original version took a very prescriptive approach and did not distinguish between credit institutions and insurers. Over the period since its introduction it has been a positive influence across the financial services industry. However we would suggest that given the increased awareness within institutions and the procedures which have been put in place, the starting point of this review is very different to where we were in 2010. The CGC review should therefore now concentrate on qualitative rather than additional prescriptive, quantitative measures (e.g. some of the proposals in relation to board committees) which do not assist an entity to have a focused risk management structure that best suits the entity's needs and which may cause practical problems, particularly in relation to the deployment of what is a limited pool of non-executive directors.

Our members also wish to raise the issue of the 9 year rule for non-executive directors which is not specifically flagged in the consultation. The suggestion that a director is no longer considered as independent after nine years in office means that insurance companies are losing the valuable skills, expertise and experience that many of their long standing directors hold and also causes practical difficulties in terms of replacing these experienced individuals. There also seems to be a lack of clarity over how the review process works in practice. We would welcome the opportunity to discuss this in more detail with the CBI.

On a general point we would ask the CBI to clarify whether it envisages further changes to the Code to implement the EIOPA guidelines. The expanded wording describing the role of the board suggests that those guidelines have been taken into account but we would like to know whether another series of changes (not subject to local consultation) is possible.

We would be happy to meet with the Bank to discuss our submission in more detail.

**Proportionality**

Although CP69 goes some way towards addressing issues of proportionality, we would suggest that some additional pragmatism is required in order to address the concerns of multi-national groups who may consider the Code to be overly prescriptive and rules-based. In particular, the Code does not fully deal with situations, perhaps most typically on the international side, where an insurance undertaking is a subsidiary of a large international insurance group and usually has a single shareholder which is capable of overseeing its own best interests and overseeing the operation of the insurance undertaking to ensure its proper management and the effective protection of its assets and, thus, policyholders. In such cases the single shareholder should have discretion e.g. over the composition of the board of directors, the need for certain committees and the sharing of resources and management across multiple group entities and locations (without the need for derogations from the Code).

*(The numbering and headings below follow that in CP69)*

**Summary of the more significant proposed developments**

*i.* *Risk Committee*

Please clarify the requirement in 23.4. We are assuming that the proposed requirement is that the majority of *directors* on the risk committee should be non-executives.

We agree with the proposal to require the chairman of the risk committee to be a non-executive director. However we believe that the requirement to have the risk committee composed of a majority of non-executive directors is unnecessary. In the unlikely event that the chairman is uncomfortable with a proposal from the risk committee, he or she may refer this proposal to the board which will comprise a majority of non-executive directors anyway. The committee is only ever helping the board to discharge its obligations.

*ii.* *Chief Risk Officer*

We agree with the proposal to require all institutions to appoint a CRO.

We strongly believe that High Impact institutions should be allowed to share the CRO role, either with another pre-approval controlled function (specifically, PCF 12, 15 and 20 roles - head of compliance, the head of compliance with anti-money laundering and counter terrorist legislation responsibilities and the chief actuary) or with another group risk function, provided there is no conflict of interest between the two roles.

It seems disproportionate to move from a current position of not requiring a CRO at all, to a proposed position of a compulsory CRO who cannot have another role. It also creates potential transitional issues such as accelerating a firm's succession plans.

We strongly believe that the board of an institution should have the ability to make this decision where the board and the PCF role holder are satisfied that the CRO role will be fully discharged. By prohibiting the CRO role from being shared with another PCF or group role for High Impact institutions, the Central Bank is not taking into consideration:

- the particular circumstances and structure of the institution – one size does not fit all;
- whether the institution is a bank or insurance company, life or non-life – these are all very relevant factors;

- the residual risk profile of the institution under the PRISM engagement model;
- the qualifications and experience of the individual who is to perform the shared PCF roles; and
- the adequacy and quality of the resources in place to support the individual.

Ultimately, through its supervisory powers, the Central Bank can require the CRO role to be performed on a stand-alone basis. Hardwiring this into the Corporate Governance Code is we believe the wrong approach. The EIOPA guidance on Solvency II envisages and permits the combination of roles where the correct structures are in place to support it. This proposal, implemented in this blanket way, would be overly onerous on institutions.

Where there is a group function it should be permissible to use a centralised risk function e.g. the Group Chief Risk Officer, approved by the Central Bank, should be able to perform the role for a subsidiary. This would be particularly relevant for international insurers.

*iii.* *Board Meetings*

Insurance Ireland strongly supports the review of the requirement for high impact firms to have 11 board meetings a year. The board of an institution is responsible for organising itself in a manner that it deems appropriate for its size and complexity and considering relevant circumstances and strategic objectives over appropriate timescales. The requirement for 11 meetings a year blurs the roles and responsibilities of board and management and could lead to meetings without meaningful agendas and place unnecessary strain on both directors' and management's time and on corporate resources. It may have the effect of restricting the INED pool to those locally based. It can also make it difficult for international group directors to participate.

In the insurance business it is easier to identify trends on a quarterly basis and there should be flexibility to hold meetings around the needs of the business, key reporting deadlines, risk and audit issues.

**We would propose that the ideal requirement for High Impact firms should be 6 meetings a year.**

Insurance Ireland supports the proposal to give non High Impact firms additional flexibility in relation to the timing of the 4 board meetings during the year.

*iv.* *Chairman*

We support the proposal to allow the chairman of subsidiaries of groups (Medium High, Medium Low, Low Impact) to hold more than one chairman position in the same group. We welcome that the CBI will consider derogations on a case-by-case basis for High Impact institutions.

*v.* *Chief Executive Officer*

We support the proposal that the CEO of a Medium Low/Low Impact institution can hold up to two additional Medium Low/Low Impact CEO roles, reflecting the fact that in certain circumstances the nature, scale and complexity of an institution may not justify a full-time CEO role. We would suggest that where this situation applies the CEO of a Medium High or High Impact firm should also be allowed to take on an additional CEO role, provided the CEO has sufficient time available to fill both roles. This would be particularly relevant where the two institutions are part of the same group, are run in close collaboration and where their affairs can be managed together efficiently but are kept as separate legal entities for technical or historical reasons.

The appointment of directors is a matter for the shareholder and whilst in most cases the CEO will be a director we would suggest that making this an obligation (as required by the new text in Section 9.6 of the amended Code) is overly prescriptive.

In addition to the proposed amendments, we believe that provision 9.4 of the existing code requiring that the "renewal of the CEO contract shall be reviewed at least every 5 years" should be removed. It is not clear what is intended by this provision which can be addressed instead within the Fitness & Probity Regulations, the general supervision process and the right to take disciplinary action, including dismissal, in respect of a CEO who was not performing appropriately

*vi.* *Committees of the Board*

We would suggest that these proposals are overly prescriptive. They may also restrict the deployment of non-executive directors, significantly limit membership options on these two committees and make committee member rotation all the more difficult, which would lead to less diverse viewpoints over time.

The interaction with other scenarios also needs to be considered e.g.

- the chairman of the board may also be the chairman of the risk committee but will not be permitted to be on the audit committee;
- this provision, as worded, where a group remuneration committee is relied upon (which is permitted by the Code) would require the group remuneration chairman to be on the subsidiary board.

Institutions are best placed to determine which committees need cross membership based on members' expertise and business needs, which may evolve over time.

The skills needed to chair an audit committee for example may be different from those needed to be a member of the risk committee. Consequently, the last sentence of the newly proposed 19.7 should, we consider, be deleted. If implemented, this requirement may cause institutions to create committees comprised of members that are not the best fit for an individual committee in order to meet the cross membership requirement.

If these cross-membership provisions do remain, then institutions should be exempt from these requirements to the extent that they are relying on a group level committee to satisfy the code requirements. This carve out is necessary because, e.g., it would not be possible to satisfy the code where a company had an entity level risk committee but a group level remuneration committee, as the risk committee chair is unlikely to be a member of the group board of directors.

We agree with the proposal that for High Impact firms the chairman of the risk committee and audit committee should not be the same individual simultaneously.

We would query why it is necessary to set a minimum of three members on the risk and audit committees. The provisions requiring the chairman of the audit committee to be an independent non-executive director and that of the risk committee to be a non-executive director are sufficient. In the unlikely event that a decision cannot be reached at a committee, it may always be referred by the committee chairman to the board.

*vii.* *Annual Compliance Statement*

We support the flexibility to permit institutions with a non-calendar year end to change the submission basis of the annual compliance statement.

*viii.* *Board responsibilities*

We have no particular issues around the amendments to the text in Section 13.

**Specific areas for comment**

i. *Composition of the Board*

We would accept that the issue of board diversity is broader than just that of gender and extends to areas such as nationality and professional background. Our members support the principle of diversity but wonder in practice how to achieve a balance between this and other CBI requirements e.g. requirement to have "relevant skills" such as "accounting, auditing and risk management", Fitness and Probity, MCC, the requirement that a majority of the directors be available to the Bank at short notice. Any proposals in relation to diversity would need to be considered in the context of the full regulatory framework and not just as an addition to the CGC. We would be happy to work with stakeholders to progress a broader discussion around this topic.

Insurance Ireland would support measures to encourage diversity but not a prescriptive approach e.g. quotas. We do not believe that mandatory diversity requirements should be introduced into the Code. Our preferred approach is to monitor developments in this area.

We would also query whether this is an issue that the CBI should be seeking to address either through the Corporate Governance Code (or any other way) given that it is not appear to be a "regulatory" issue.

ii *Directorship limits*

We would support an increase in the number of directorships a director can hold. Increasing the limits should hopefully increase the availability of quality individuals for appointment to the boards of institutions. Ultimately the board and the proposed director should be satisfied that the individual has the time available to effectively contribute to the role. The Central Bank too has oversight of this through the Fitness and Probity Regulations.

**Other matters**

I *Definitions*

Our understanding is that it is possible for an institution to move up/down the CGC categories but that it is not possible under PRISM. Does this proposed change eliminate any possibility of a firm benefiting from a lower risk profile and remove this flexibility?

**Appendix 1 – Proposed changes to CGC**

**2. Definitions**

*Definition of Group director:* the additional wording to this definition (page 21) is not at all clear. The understanding has always been that a group director may be an executive/employee (including an executive director) of another group company or could be a non-executive director of another group company. The new wording provides that a group director may be an "executive or non-executive" from within the group. We are unclear what is meant by an "executive" or a "non-executive" in this context. Contrast this with the wording in the definition of non-executive director which provides that a director may have executive management responsibilities assigned to him or her in the group. Reading these two together, is the implication of the new wording in the definition of group director that a group director must be an executive or non-executive director of another group company? If so, that will cause difficulty. We would propose that the words proposed to be added should be omitted.

**3. Legal Basis**

What is intended to be the practical effect of the new text in Section 3.6? Compliance with a standard which is more strict in certain respects might not in practice constitute compliance with each aspect of the CBI requirement.

**4.2 Reporting to the Central Bank**

*"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".*
Some of our members have concerns that this 5 day period is unduly restrictive.

**6.7 General Requirements**

*"Any director who has any material concern about the overall corporate governance of an institution shall report the concern without delay to the board in the first instance and if the concern is not satisfactorily addressed by the board within 5 business days, the director shall promptly report the concern directly to the Central Bank advising of the background to the concern and any proposed remedial action. This is without prejudice to the director's ability to report directly to the Central Bank".*
Some of our members have concerns that this 5 day period is unduly restrictive particularly where a director may need to take legal advice.

**7. Composition of the Board**

**7.10** ***"****In calculating the number of directorships held, the Central Bank shall exclude directorships held in the public interest on a voluntary and pro bono basis provided that such directorships shall not interfere with the director's ability to fulfil properly his or her role and functions as a director of a financial institution. Any such directorships should be notified to the Central Bank"*
The underlined piece in italics is new and difficult to manage. We suggest it is dropped as these are non-paid voluntary directorships.

**7.14** There is a requirement "*to review board membership every 3 years and institutions shall formally review the membership of the board of any person who is an independent non-executive member for 9 years or more and it shall document its rationale for any continuances and so advise the CBI in writing*".

There appears to be a lack of clarity around this process.

**12.3 Chief Risk Officer**

The proposed new role infringes on the role given to the board under Solvency II. The role should be to advise the board on and implement effective processes approved by the board to identify and manage risks.

We have concerns about the proposed new wording in section 12.3 in that it states that "*The CRO shall be responsible for maintaining effective processes to identify, manage, monitor and report the risks....*" as this suggests a first line of defence role ("identify", "manage") and would suggest that the wording should more correctly reflect a 2nd line of defence role - e.g. "*The CRO shall be responsible for ensuring that the institution has effective processes to identify and manage the risks......The CRO shall be responsible for maintaining effective processes to monitor and report the risks.....*"

**13.5 Role of the Board**

Following on from our earlier comments around proportionality, for an undertaking that is a subsidiary of a group, the requirement for an external evaluation is excessive and expensive. We would suggest that it should not apply in such cases as such boards are subject to constant assessment by the shareholder in a group approach.

**14 Appointments**

**14.2 "***The board shall be responsible for endorsing the appointment of people who may have a material impact on the risk profile of the institution and monitoring on an on-going basis their appropriateness for the role".*
Suggest reworded as: "shall be responsible for ensuring there are sound procedures in place to ensure the fitness and probity of all persons appointed to etc…."

**14.9 Appointments (Appendix 1) High Impact Institutions**

The requirement of a skills matrix is too prescriptive. The requirement should simply be that the board considers whether the mix of skills possessed by its members is appropriate, and it should be left to the board to determine how best to do that.

**15 Risk Appetite**

**15.4 "***In the event of a material deviation from the defined risk appetite measure, the details of the deviation and of the appropriate action to remedy the deviation shall be communicated to the Central Bank by the board promptly in writing and no later than five business days of the board becoming aware of the deviation".*
Some of our members have concerns that this timescale is unduly prescriptive.

**15.8** We would request some clarification around the requirement in 15.8 and what its practical impact is intended to be. Should this come under the remit of the risk committee rather than the board?

### 16.3 Meetings

The current requirement provides *that minutes of meetings shall provide sufficient detail to evidence appropriate board attention, the substance of discussions and their outcome and shall be agreed at the subsequent board meeting*. In practice, whilst it is important that the minutes accurately record the discussion at a meeting, it is not often possible to have the minutes “agreed at the subsequent meeting”. Difficulties arise where draft minutes are presented to the board, comments are received and the updated minutes will then be submitted to the next meeting for approval. There are also difficulties when meetings are held close together, for example weekly, or when a meeting is called to consider an urgent matter and the minutes of the previous meeting may not be available.

### 23.5 Risk Committee

Should the requirement here be for the risk committee to have “financial experience” or “financial services industry experience”? The latter would include experienced people who might not necessarily have an accountancy or similar background.