Response to Central Bank of Ireland's Consultation on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings – CP 69

Irish Banking Federation

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1. Introduction

The Irish Banking Federation (IBF) welcomes the opportunity to contribute to this timely review of the Corporate Governance Code. In general members of the IBF consider that this Review carries constructive changes, which adds clarity to some aspects that may not have previously been so apparent. The Review includes welcome changes in relation to proportionality, which IBF members had previously raised. It also incorporates responses to some questions in the Frequently Asked Questions (FAQs), which makes for a more comprehensive document. We anticipate that the FAQs will be updated in conjunction with the publication of the revised Code.

What follows are primarily observations where additional clarity might be provided or points which might be elaborated upon.

2. More Significant Proposed Amendments

These Amendments appear at the early part of the document, prior to the proposed changes to the Code. Only where these topics are not addressed in the body of the IBF response are they raised here.

Page 7 **- Risk Committee** - Section 23

Is the CBI response considered proportionate? Addressed below.

Page 8 - **Board Meetings** Section 16 - addressed below.

Page 13 - **Board Diversity -** Section 7

We note that the Central Bank is seeking feedback as to whether a provision in relation to diversity requirements should be introduced into the Code and the nature of any such requirement.

We acknowledge that diversity requirements (with particular reference to gender diversity) are being introduced under CRD IV. We do not see merit in having any diversity provisions introduced into the Code that place an undue emphasis on gender diversity. Gender diversity is only one component of board diversity which should consider a wide range of issues including, but not limited to, skill mix, regional and industry experience, background and gender.

While a gender balance is desirable, the key concerns should be equal access for all, and appointment on the basis of merit, particularly where there are existing difficulties in finding the appropriate skill set in a relatively small pool of potential candidates within the jurisdiction. A mandatory diversity policy in such circumstances would further reduce this potential candidate pool in the near future.

Any requirements introduced on diversity should also take proportionality (nature, scale and complexity) of an institution into account.

Page 13 **- Directorship limits -** addressed below

3. Proposed Changes

Scope

Point 1.4, page 18: This is a useful addition but we consider the request to dis-apply certain parts of the Code should apply to all banks, as already exists, not just those in the process of run off.

Definitions

Control Functions, page 22: Control functions in Banking are normally understood to be Head of Audit, Risk Management and Compliance and may include Head of HR depending on the size of institution. Can this definition be clarified? In addition we consider that not all PCFs under the Fitness and Probity Regime are control functions and would appreciate confirmation of this.

Legal Basis

Paragraph 3.8: This section is similar but slightly different to that provided in other Codes. We consider this wording to be superior to that in other Codes and suggest it might be used as a standard for all Codes.

Reporting to the Central Bank

We do not have a difficulty with the reporting concept. However we are unclear when the 5 business days start in Section 4.2 for the reporting of a deviation. Is it from the time of Board awareness? This would seem more realistic than from the time of Management or control function awareness, if the Board is now responsible for determining if a breach is material, once management has advised the Board of same.

Before this control functions/management would generally have determined that a material breach had arisen, advise the Board, but equally advise the Central Bank within 5 business days.

By making the Board responsible for determining if a breach is material or not, adds another layer to the process and one that is not as quick to proceed with as a management decision. It may involve calling a Board meeting but at a minimum it will require briefing the Board and having a conference call with Board members. This additional layer makes the reporting within 5 days extremely tight if not impossible to achieve. Therefore we propose that when an institution *"becomes aware of a material deviation"* is when the Board decides it is a material deviation, and management will then proceed with remedial action and the five day notice period then starts. We would appreciate clarification in relation to this timing.

Transitional Arrangements

We would appreciate clarity on the transitional arrangements proposed by the Central Bank. Some institutions may need to appoint additional committee members and/or formalise a CRO appointment and the time required to implement these changes should be reflected in any transitional arrangements proposed.

Composition of the Board

For improved understanding, in Section 7.2, we propose the following wording for the second sentence: "However in the case of institutions that are subsidiaries of groups the majority of the board ***will be composed of a combination of Group NEDs and INEDs***, 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."

7.2 Appendix 1 of Code – We note that the change to 7.2 (page 30) has not been replicated in 7.2 of Appendix 1 and suggest that this change should be replicated in Appendix 1 to ensure consistency in definitions.

In 7.8, in relation to the new reference to "authorised outside the state", we assume the authorisation would be provided by an equivalent authority to the CBI. Can this be clarified?

Paragraph 7.9 does not allow a relaxation on the total non-financial directorships held "in the same group", as is permitted in 7.8. We consider the same commonality of conditions and time requirements apply when considering a possible expansion of directorships held either

within a financial services group or in another non-financial corporate group. Therefore we would consider additional directorships possible, if held within a non-financial group of which the credit institution is a part.

In 7.10, we would appreciate clarity as to when to notify the Central Bank of directorships held on a voluntary or pro bono basis. Is this in the Annual Compliance Statement or Fitness & Probity return?

We assume this notification will apply only to relevant appointments that proceed after the implementation of the revised Code.
Under section 7.14, is it expected that once a 9 year review is completed for an INED that it must then be completed annually thereafter, as currently outlined in the FAQs? If so, this could usefully be incorporated in the revised Code.

Chairman

In relation to 8.7, we suggest that the requirement to utilise an independent non-executive Director as deputy Chairman should be extended to read "If a deputy Chairman is required, the role shall be taken by ***either*** an independent non-executive director ***or a Group non-executive director***."

We suggest that the reference to High Impact Institutions be removed from Section 8.11, as subsidiaries within a Group will have a reduced time commitment, which we see as the over-riding constraint, and could benefit from common chairing. The proposed revised wording for the second paragraph is:

"However, in the case of institutions which 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."

Under 8.11, we would appreciate confirmation that existing derogations continue, for institutions which are subsidiaries of a group, in relation to a Chairman holding an additional Chairman role.

In addition, can it be clarified that any other existing derogations received remain in place until the next review date, as per the derogation letter, and that the revised Code will not override any such derogations.

Chief Executive Officer

We consider that Section 9.1 would read better with the new sentence "The institution shall appoint a CEO" coming at the top of the paragraph. As the appointment of a CEO is clearly a board responsibility we also suggest that the proposed amendment should be changed to read *"**the Board** shall appoint a CEO".*

Under 9.2, we propose that the restriction on the CEO occupying the role of CEO of more than one institution at any one time be lifted for all institutions, not just Medium-Low and Low impact institutions. This would be helpful in an institution which is part of a wider group and when the time required for the additional Medium-Low or Low impact institution would not be significant.

The references to Medium Low and Low impact institutions should also be linked to PRISM categorisation. This has been done on page 14, in the preamble in respect of the consultation process, but is not part of the Code and could usefully be included in the Code itself.

Under 9.5, we consider wording "The ***continuation*** of the CEO contract shall be reviewed at least every 5 years" to be more appropriate, as not all CEO positions would be subject to renewal.

Chief Risk Officer

We welcome that the appointment of a CRO is being considered on a proportionality basis taking account of the nature, scale and complexity of the organisation.

It is proposed under Section 12.1 to include a requirement for all institutions to appoint a CRO. Clarification would be useful around the CRO role in subsidiary companies. Some of these would only have a handful of employees, with the majority of support functions outsourced to the parent entity. Does the CRO of the subsidiary company have to be an employee of that subsidiary company or can the role be performed at group level?

We would appreciate clarity on the no "*conflict of interest*" concept as such term is not defined. We assume that it is for the institution itself to determine whether a conflict of interest arises and once such has been considered and documented by the Board, with notification to the CBI, that this is sufficient.

For 12.8, revised wording such as "***Separate to day to day operational management responsibilities,*** the CRO shall report to the board risk committee, with direct access to the Chairman of the board." This ensures that reporting to management also exists as a normal part of CRO duties.

Role of the Board

Many of the provisions require the Boards of subsidiary companies, which have been set up to manage a particular function for the Group, to undertake identical activities as the Irish parent company Board. This could include setting the business strategy for the institution, without acknowledging that overall strategy is approved at parent Board level. This leads to additional time being spent discussing a strategy, that has previously been approved at parent Board level, by a Board which also includes Members of that parent company Board. It diverts Board attention from the key strategic concerns of the subsidiary company, which are generally narrower and derive from the overall Group strategy. We suggest this overlap be addressed in the review.

Risk Appetite

Section 15.8 refers to 'contingency plans'. The Board would normally identify risks and address these through material risk assessments or risk appetite statements, but not necessarily through contingency plans, which have a very specific meaning in terms of business continuity. Can we assume the former approach is acceptable?

Meetings

The flexibility allowed for meeting at least once per half year (Section 16.1) is welcomed as practical and in line with business requirements. We suggest the amendment reads better as "the board shall meet at least four times per calendar year ***provided that this includes*** at least once per half year."

Similarly for High Impact institutions in Appendix 1, under 15.1 page 65 (which should read 16.1?), we suggest some flexibility such as *"the board shall meet at least 11 times per year during any calendar year,* ***normally once per calendar month but at least four times per half year****"*. This would allow for more frequent meetings around busy times e.g. year end results and less at quieter times, or two meetings during a month with more working days.

Committees of the Board

We note that cross memberships between key sub committees of the Board should be encouraged but would suggest that this should state that where only one committee exists within an institution (in accordance with the provisions of the Code) this cannot apply.

Under 19.7, Appendix 1 (page 66), we would appreciate clarification that for High Impact institutions where the existing Group Remuneration Committee has an exemption to fulfil the role of a local remuneration committee, this exemption will continue and the Group RemCo may be exempt from cross membership.

We acknowledge the benefit of cross-committee membership, however the proposal that the Chairman of the Audit committee be a member of the Risk committee and vice versa, coupled with a 3 member Audit Committee and a limitation on the Chairman of the Board being a member of the Audit committee will present difficulties, in particular for Medium Low / Low Impact firms.

We ask that the Central Bank takes proportionality (nature, scale and complexity) of an institution into account in this requirement, particularly for the PRISM categories Medium Low and Low Impact firms. In particular, we suggest that the CBI considers that the number of members of the Audit committee might be determined by a Medium Low and Low Impact firm themselves (rather than the CBI imposing a minimum requirement of 3 members), with

such an institution taking account of the nature, scale size and complexity of the business conducted by it. We suggest that a 2 member Committee may be acceptable in some cases.

For High Impact institutions, it is proposed in Section 19.7, Appendix 1 that in addition to the Chairman of the Audit committee being a member of the Risk committee, and the Chairman of the Risk committee being a member of the Audit committee, there is also a requirement that the Chairman of the Remuneration committee be a member of the Risk committee and the Chairman of the Risk committee shall be a member of the Remuneration committee.

While the principle of cross-committee membership is appropriate, specifying that the Chairman is the appropriate person for this is too prescriptive. There may be another member of the committee who is best placed and suited to sit on the other committee as well. Also these proposals may put too much demand on the time of the Chairman of the particular committees, especially the Chairman of the Risk committee of a High Impact institution who would also have to sit on both the Audit and Remuneration committees.

General Requirements for Committees

We suggest for clarity that 20.1(e) read "Directors should attend each sub-committee ***of which they are a member*** in person whenever possible."

Audit Committee

In Section 22.1,we question if a prescriptive requirement for three members of an audit committee is suitable for smaller subsidiaries, where the board itself may be comprised of only 5 directors. As already mentioned under **Committees** above, we instead suggest "The number of members of an audit committee shall be sufficient with reference to the nature, scale and complexity of the operations of the Institution but should be at least 2".

Risk Committee

Section 23.2 allows for some proportionality, which is welcomed. This is also referred to on page 7 of the Consultation "Summary of the more significant proposed amendments".

However we have a concern in relation to the Risk committee being "composed of a majority of non-executive directors", Section 23.4. We would appreciate some proportionality parameters here, e.g. the reference to a majority of non-executive directors could be extremely restricting on subsidiaries of a group, who should therefore be allowed to apply for a disapplication.

We suggest that for wholly-owned subsidiaries of international banks, the Risk Committee may be chaired by a Group director or an independent non-executive director, provided that the individual has the requisite skills for the role (Section 23.3.).

Compliance Statement

The reference to the first annual compliance statement for the year end 2011 in Section 26.1 is no longer relevant. Equally the amended submission timing for compliance statements is unclear. To provide clarity on the timing of future compliance statements we suggest for Section 26.1 that "***The report shall be submitted with the institution's Annual Report***" should replace the reference to the first report which is now historical.

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