

Risk, Governance and Accounting Policy Division
Central Bank of Ireland
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Ireland
By email codereview@centralbank.ie and by post

30 September 2013

Dear Sir / Madam

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

1. Introduction

We appreciate the opportunity to make a submission in respect of Consultation Paper CP 69, Consultation on the Review of the Corporate Governance Code for Credit Institutions and Insurance Undertakings (the “Code”) (the “Consultation Paper”).

We welcome the review of the Code being undertaken by the Central Bank of Ireland (the “Central Bank”) and agree that sufficient time has elapsed since the Code became effective on 1 January 2011 to allow for an informed assessment of its operation with a view to identifying any clarifications, enhancements or amendments which may be desirable.

The submissions contained in this letter reflect our views on certain of the proposed amendments to the Code as set out in the Consultation Paper and the revised Code attached at Appendix 1 to the Consultation Paper (the “Revised Code”). We have also sought to make suggestions or recommendations in respect of the Revised Code where appropriate. These submissions reflect our own opinions based on our experience of working with participants in the Irish financial services market and should not be considered as representing views held by any of our clients.

If you would like to discuss any aspect of our submission, please contact Joe Beashel in the first instance. We would be happy to meet with you to discuss this submission further, or to take part in any working group which may be convened to assist with finalising the Revised Code.

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Chairman: Sir Anthony O'Reilly - Managing Partner: Liam Quirke - Partners: Robert Heron, Patrick Sweetman, Brian Buggy, Michael Jackson, Chris Quinn, Tim Scanlon, Helen Kelly, Sharon Daly, Ruth Hunter, Tony O'Grady, Paraic Madigan, Michael O'Connor, Tara Doyle, Anne-Marie Bohan, Patrick Spicer, Turlough Galvin, Patrick Molloy, George Brady, Brid Munnelly, Robert O'Shea, Joseph Beashel, Deirdre-Ann Barr, John Dunne, Damien Keogh, Cara O'Hagan, Dualta Counihan, Ronan McLoughlin, Niall Horgan, Deirdre Dunne, Alistair Payne, Fergus Bolster, Christian Donagh, Bryan Dunne, Libby Garvey, Shane Hogan, Peter O'Brien, John O'Connor, Thomas Hayes, Nicola Dunleavy, Julie Murphy-O'Connor, Alan Connell, Bonnie Costelloe, Brian Doran, John Gill, Alan Chiswick, Joe Duffy, Pat English, Carina Lawlor, Shay Lydon, Aidan Fahy, Niamh Counihan, Gerry Thornton, Liam Collins, Darren Maher, Michael Byrne, Philip Lovegrove, Rebecca Ryan - Tax Principals: Greg Lockhart, John Kelly, Catherine Galvin - London: Stanley Watson - New York: John Ryan - Palo Alto: Mark O'Sullivan
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2. Submissions

(a) **Ambiguity in respect of any conflict between the Revised Code and another Corporate Governance obligation or standard | Section 3.6 of the Revised Code**

We believe that it would be very beneficial in achieving a robust standard of corporate governance across credit institutions and insurance and reinsurance undertakings licenced or authorised by the Central Bank (for the purposes of this letter, "**Institutions**" and each an "**Institution**") if the Revised Code set out comprehensively the standards and obligations in respect of corporate governance applicable to Institutions both from an Irish regulatory perspective and a wider European law perspective.

Section 3.6 of the Revised Code provides that where a conflict arises between the Revised 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.*"

We submit that in circumstances where breach of the Revised Code may result in criminal prosecution or administrative sanctions being imposed, the requirement to refer to other corporate governance standards and determine which of those are "*stricter*" introduces an element of subjectivity and uncertainty which is undesirable in the context of promoting more transparent and effective governance in the Irish financial services sector.

For example, the limits placed on the number of directorships which may be held simultaneously by directors of credit institutions is an area where differing standards apply at a domestic and European level.

Article 91.3 of the CRD IV Directive¹ ("**CRD IV**") provides that members of the management body of an institution that is "*significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities*" shall, from 1 July 2014, not hold at the same time more than (i) one executive directorship with two non-executive directorships or (ii) four non-executive directorships. Executive or non-executive directorships held within the same group count as a single directorship for the purposes of the rule. Article 91 also states that the limitation imposed does not apply to directorships in organisations "*which do not pursue predominantly commercial objectives*".

The Revised Code however appears to allow greater flexibility for directors of High Impact Institutions (albeit these include insurance and reinsurance undertakings) in respect of the number of directorships which may be held. Under the Revised Code, the number of directorships held by directors of High Impact Institutions in other credit institutions and

1. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

insurance and reinsurance undertakings is limited to three but it is not specified whether these may be executive or non-executive directorships. Furthermore, unlike CRD IV, the Revised Code provides that directors of High Impact Institutions may also hold up to five directorships in other entities (ie, non-financial institutions). No distinction between directorships of different types of entities is made in CRD IV which appears to limit the number of directorships which may be held in any entity which pursues predominantly commercial objectives to one executive directorship and two non-executive directorships or four non-executive directorships in total.

In our view, it would be useful if the provisions of the Revised Code could be conformed to the requirements set out in CRD IV in respect of directors of credit institutions. While this may result in there being separate standards for directors of insurance and reinsurance undertakings in the Revised Code, a streamlined approach for directors of credit institutions is preferable in the interests of clarity for such directors in complying with corporate governance obligations applicable to them.

Furthermore, while codifying all applicable corporate governance obligations in a single consolidated text may be beyond the scope of the current project, we submit that even express clarification as to the relevant legislative / regulatory instruments to which Institutions are expected to refer in determining which corporate governance standards are "*stricter*" and therefore to be observed would be very beneficial.

(b) **Chairman of Institutions not designated as High Impact Institutions may hold position of Chairman in other group companies | Section 8.11 of the Revised Code**

We agree that the Code should be amended to allow for the Chairman of an Institution which is not designated as a High Impact Institution to take up additional Chairmanship roles in other institutions provided that the individual has sufficient time available to fulfil such additional roles. However, we submit that limiting the application of this amendment to persons occupying the role of Chairman in institutions which are "*subsidiaries of groups*" and to additional roles which "*reside within the group*" as set out in section 8.11 of the Revised Code is overly restrictive. This appears to be based upon the assumption that the chairmanship of a group institution or undertaking is necessarily less time consuming than the chairmanship of another unrelated entity. However, for example, performing the role of Chairman in a Medium High impact group institution might be significantly more time consuming than acting as Chairman of a Low impact unrelated entity.

It is submitted that the relevant Chairman of a Medium-High, Medium Low or Low impact Institution would be best placed to determine his or her availability (taking into account other directorships and personal commitments including salaried employment, family commitments and social interests). We believe that the requirement that prior approval of the Central Bank be obtained prior to the Chairman taking on such additional roles would be sufficient to mitigate against any risk that a Chairman would take on too many chairmanship roles without the adequate time and resources to perform those roles

effectively. In light of the foregoing, we have set out suggested amendments which could be made to section 8.11 of the Revised Code in the Schedule to this letter.

(c) **Additional roles of Chief Executive Officer should include roles in institutions outside of the State | Section 9.2 of the Revised Code**

We support the proposed amendments to the sections in relation to the Chief Executive Officer (“CEO”) which provide that the CEO of a Medium Low or Low impact institution may assume up to two additional positions as CEO of a credit institution or insurance or re-insurance undertaking provided that the Institution is also designated as Medium-Low or Low impact.

We note that by confining this amendment to additional roles in Medium Low or Low impact institutions (and thereby making reference to the Central Bank’s PRISM framework which is unique to Irish Institutions), the option of taking up additional roles as CEO in institutions outside of Ireland is not available under the Revised Code.

We submit that in order to maintain the widest pool possible of senior executives to choose from to populate senior management positions in Irish Institutions, it would be useful if this amendment could be revised to allow a CEO of an institution in an another Member State to also take up the position of CEO of an Irish Institution. We have suggested wording to this effect in the Schedule to this letter.

(d) **Conform the provisions of the Revised Code in respect of the Chief Risk Officer and Risk Committee | Sections 12 and 23 of the Revised Code**

We welcome the requirement that Institutions appoint a Chief Risk Officer (“CRO”) with responsibility for the risk management function of the relevant Institution on a day to day basis.

We submit however that it would be useful if the Revised Code stated more explicitly how the CRO and risk committee are to interact with a view to adequately assisting the Board in setting and overseeing the overall risk framework of the relevant Institution. We have suggested language which could be inserted in sections 12 and 23 of the Revised Code (as set out in the Schedule to this letter) so as to document the relationship between the risk committee and the CRO more clearly.

(e) **Clarification regarding identifying areas where the institution is “especially vulnerable” | Section 15.8 of the Revised Code**

Section 15.8 of the Revised Code provides that: *“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 [emphasis added].”*

We submit that the phrase “*especially vulnerable*” is capable of subjective interpretation and we suggest that this section be amended to define with greater certainty how the board identifies aspects of the Institution’s business which might require contingency planning. We have suggested language set out in the Schedule to this letter which we consider to be more objective and thus more easily interpreted. We believe this is important in circumstances where breach of the Revised Code may lead to criminal prosecution or the imposition of administrative sanctions.

(f) **Requirements in respect of the composition and expertise of the audit and risk committees | Sections 22 and 23 of the Revised Code**

We note that sections 22 and 23 require the audit committee and risk committee to be composed of at least three members. Section 22.2 provides that the audit committee shall be composed of non-executive directors, the majority of whom are independent and the new paragraph 22.4 further provides that the audit committee “*as a whole shall have relevant financial experience and at least one member shall have an appropriate qualification.*”

Pursuant to the amendments to section 23 (formerly section 22 of the Code) in respect of the risk committee, the risk committee should be composed of at least three members, have a majority of non-executive directors and as a whole have relevant financial experience.

We support a policy that the composition of these committees be weighted in favour of individuals who are independent from the executive of the relevant Institution, however the additional requirement that such committees as a whole have financial experience may prove onerous for Institutions to comply with in practice. For example, it may be the case that the boards of smaller institutions with lesser economic significance might not have three members with relevant financial experience for the purposes of the requirements set out in the Revised Code. We would suggest amending this requirement to provide that in the case of Medium Low or Low impact Institutions, a least two members of the audit or risk committee have relevant financial experience. We have set out proposed wording in this regard in the Schedule to this letter.

(g) **Amend requirement that High Impact Institutions hold at least 11 board meetings per calendar year | Section 15 of the section entitled “Additional Obligations on High Impact Institutions” of the Revised Code (the “High Impact Section”)**

We note that in the section of the Consultation Paper entitled “*Summary of the more significant proposed amendments*”, the Central Bank invites comments specifically in respect of the requirement that the boards of High Impact Institutions meet at least 11 times during any calendar year and at least once per calendar month for 11 months of the year (as set out in section 15 of the High Impact Section).

We submit that while such amount of board meetings may have been necessary during the peak of the financial crisis, continuing to require that 11 board meetings per year be held

may be disproportionately burdensome for certain Institutions. In our view, it should be for the board to determine how often it needs to meet to appropriately discharge its functions and we would suggest a minimum of four to six board meetings per calendar year as a more workable minimum standard; in practice it may be the case that the boards of High Impact Institutions meet more frequently than this. The Central Bank could further introduce a requirement that High Impact Institutions notify it of how regularly they intend to meet with a power to require more frequent board meetings if the Central Bank considers it necessary.

(h) **Proposed introduction of a provision in relation to diversity requirements in the Revised Code | Part (i) of the section of the Consultation Paper entitled “Specific areas for comment”**

We note that the Central Bank has requested specific feedback 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. We believe that a reference to diversity should be included in the Revised Code. In order to ensure the consistency of the Revised Code with developments at a European level we would suggest that it should include language similar to that which is set out in Article 91.10 of CRD IV which provides as follows:

“Member States or competent authorities shall require institutions and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.”

We note that Article 91.12 further provides that the European Banking Authority will issue guidelines on various matters including *“the notion of diversity to be taken into account for the selection of members of the management body...”* Given that such guidelines have not been published, we think it is preferable to wait until further guidance at a European level is available before introducing very specific requirements into the Revised Code.

3. **Conclusion**

We hope that the above submissions are of some assistance to the Central Bank in its review of the Revised Code. We would be more than happy to discuss any aspect of our submission, or any matters arising from the Revised Code which we have not addressed, with you at your convenience.

Yours faithfully

A handwritten signature in black ink that reads "Matheson".

MATHESON

SCHEDULE

Section	Current wording	Proposed new wording
8.11	<p>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.</p> <p>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.</p>	<p>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.</p> <p>However, in the case of institutions which are <u>designated as Medium-High, Medium-Low or Low impact institutions</u> [deleted wording: 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 [deleted wording: 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.</p>
9.2	<p>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.</p> <p>However, in the case of institutions which</p>	<p>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 undetaking 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.</p> <p>However, in the case of institutions which</p>

	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.	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 <u>(including those authorised outside of the State)</u> simultaneously provided <u>that if such institutions are authorised or licenced by the Central Bank they shall be designated as Medium-Low or Low impact institutions and</u> [deleted wording: <i>the institution is also designated as a Medium-Low or Low impact institution and</i>] 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.
Insert a new subsection 12.4	Not applicable	<u>The CRO shall report to the board risk committee on a regular basis so as to support the role of the risk committee in advising the board effectively in relation to all aspects of the risk management framework including the risk appetite and tolerance of the institution.</u>
12.5	The CRO shall be responsible for the facilitation of the setting of the risk appetite by the board.	The CRO, <u>through his or her reports to the risk committee,</u> shall be responsible for the facilitation of the setting of the risk appetite by the board.
12.7	The CRO shall be responsible for providing comprehensive and timely information on an institution's material risks which enables the board to understand the overall risk profile of the institution.	The CRO, <u>through his or her reports to the risk committee,</u> shall be responsible for providing comprehensive and timely information on an institution's material risks which enables the board to understand the overall risk profile of the institution.
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 board shall ensure that it identifies risks to be addressed by contingency plans based on: <u>1. an assessment performed annually for this purpose by the Chief Risk Officer and reviewed by the risk committee;</u> <u>2. any developments in the markets in which the Institution operates which give rise to increased risks in any areas;</u>

		<p><u>3. any matters which come to its attention with respect to the business of the Institution which give rise to increased concerns;</u></p> <p><u>4. the risk appetite of the Institution; and</u></p> <p><u>5. the risk management framework of the Institution. [Deleted wording: the areas where it considers the institution to be especially vulnerable and that these.]</u></p> <p><u>The board shall ensure that such contingency plans</u> are reviewed, updated and tested on a regular basis.</p>
22.4	The audit committee as a whole shall have relevant financial experience and at least one member shall have an appropriate qualification.	The audit committee as a whole shall have relevant financial experience and at least one member shall have an appropriate qualification. <u>However, in the case of Medium Low or Low impact institutions, it shall be sufficient if at least two members of the audit committee have relevant financial experience and at least one member has an appropriate qualification.</u>
23.5	The risk committee as a whole shall have relevant financial experience.	The risk committee as a whole shall have relevant financial experience. <u>However, in the case of Medium-Low or Low impact institutions, it shall be sufficient if at least two members of the risk committee have relevant financial experience.</u>
23.6	The role of the risk committee shall be to advise the board on risk appetite and tolerance for future strategy, taking account of the board's overall risk appetite, the current financial position of the institution and, drawing on the work of the audit committee and the external auditor, the capacity of the institution to manage and control risks within the agreed strategy. The risk committee shall oversee the risk management function.	The role of the risk committee shall be to advise the board on risk appetite and tolerance for future strategy, taking account of the board's overall risk appetite, the current financial position of the institution and, drawing on the work of the audit committee and the external auditor, the capacity of the institution to manage and control risks within the agreed strategy. The risk committee shall oversee the risk management function <u>which is managed on a day to day basis by the Chief Risk Officer.</u>
23.7	The risk committee shall ensure the development and on-going maintenance	The risk committee shall <u>liaise regularly with the Chief Risk Officer in order to</u>

	<p>of an effective risk management system within the institution that is effective and proportionate to the nature, scale and complexity of the risks inherent in the business.</p>	<p>ensure the development and on-going maintenance of an effective risk management system within the institution that is effective and proportionate to the nature, scale and complexity of the risks inherent in the business.</p>
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