

Submission on CP 86 by Gerry Moloney

I am making this submission as a practising INED whose background is in Investment Management. I am now retired from AIB Group and Enterprise Ireland, and am currently a director of 7 Investment Funds and 1 Insurance Company, all regulated by the CBI.

I would like to stress at the outside that I am conscious that my comments may be interpreted as ‘special pleading’. However I am not in the market to add to my current workload, and I have no real interest in taking on any more directorships – although I would not rule out entirely the possibility of taking on one or two more should the right circumstances arise.

General Comment

- 1 In broad terms I believe CP 86 is to be welcomed: it is timely, well argued, relevant, and deals with a number of very germane issues. In particular, it pinpoints the imperative that all boards should have a well balanced mix of relevant skill sets and experience. In particular I welcome and fully support the emphasis in the Paper on risk management in particular, and the need to ensure that all aspects of this are properly supervised at board level.
- 2 An issue which I have reservations about however is an implication (as I read the Paper) that is contained the arguments around board composition. It is that there may be a deficiency on some boards due to a perceived shortage/absence of the required skill sets in the country. Whilst I would be inclined to agree that there may be a shortage of such skills in general terms on some existing boards, that in my view can be attributed in part at least to insufficient effort being made in the first place to identify and appoint individuals to the board with those skills. To put it another way, it is my opinion that when boards are being formed, quite often such individuals (usually with an investment fund management background – professional qualifications and experience) are overlooked in favour of individuals who have closer ties to the advisors to the promoters of Investment Funds. In short, I believe that the implication that there is a deficiency in the required skills sets in the country is distinctly questionable.
- 3 An added problem arising from this issue is that the Paper appears to base (in part at least) its argument to dilute the requirement for Irish resident directors on the need to accommodate the broadening out of the required skill sets. I disagree. If for whatever reason it is considered desirable to appoint directors with whatever skills from outside this jurisdiction, it seems to me that it does not follow in logic that the current residency requirement should be weakened to ‘accommodate’ such an approach. The two requirements (relevant skills and residency) are simply not mutually exclusive. After all the current residency requirement a thoroughly sensible and practical arrangement that works to the benefit of all participants – including the CBI – so I would argue that it is both unnecessary and unwise to consider any dilution in the current residency requirement.

- 4 From personal experience, I take considerable comfort from the fact that I can easily reach another Irish resident director – and so much better if they are genuinely independent - should an issue arise on which I may have some doubts and wish to consult informally with someone who I know. I believe such a communication channel has given me considerable comfort in discharging my responsibilities. Furthermore, I believe that I am not alone as a practising INED in this view. It seems to me therefore, that by extension, the CBI should be slow to remove a facility that provides such a tried and trusted safeguard in the present arrangements.
- 5 A further issue arises on a practical note. Quite often documentation has to be signed off on at short notice e.g. Stock Exchange Announcements. It is of course possible to delegate much of this back to a service provider, but it seems to me that such a step would be a retrograde one and not in keeping with a desire to adhere to good Corporate Governance standards and the maintenance of direct responsibility at board level.
- 6 I would also have thought that from the CBI's perspective there is considerable comfort to be derived from having two independent directors readily accessible to it at all times to deal with unforeseen events. It seems to me that it is not an unreasonable price a Fund should have to pay if it wishes to be authorised to operate in this jurisdiction.
- 7 Again and in keeping with the spirit of what CP 86 is trying to achieve, a critical aspect of the pursuit of the highest standards in corporate governance is that the board of a Fund should be genuinely independent and be strong enough to critically challenge – in particular the Investment Manager who usually acts as a sort of proxy for the 'silent' shareholders, in addition to the 'pure' investment management function. I would have thought that the ability of the CBI to form judgments/opinions around the issue of the independence of directors would be eased considerably if the current requirement was maintained, i.e. the CBI had first hand knowledge of the individuals concerned. Furthermore, I would argue that the case for maintaining as much substance as possible in the county should have distinct tangible benefits for the CBI.
- 8 I also very much support the broadening out of responsibilities in relation to 'Distribution' from the current narrow focus on 'Complaints Handling' in as much as I am not convinced that boards currently pay sufficient attention to the manner in which products (shares in Funds) are marketed. It is by no means unusual for the clients of the Fund Manager/Promoter to hand over his/her funds to be managed at the Manager's (relative) discretion, and so the client is not really active in the choice of Fund in which he/she becomes a shareholder, nor will he/she read the Prospectus, the KIID, or the Annual Report. Thus, the normal checks and balances that can give rise to mis-selling issues become blurred. Therefore the board of the Fund needs to take all reasonable practical steps to try to ensure that shareholder actually understands what he/she is invested in. (This is referred to on Page 21 of CP 86, but could be usefully developed further).

Answers to Questions in Paper

- 1 Yes. However I would like to see more guidance as to what might be expected under the 'Distribution' heading – see 8 above.
- 2 I believe that this is broadly right. However I would have some reservations around it being mandatory that the Chairman being designated as the responsible person for the operational effectiveness function. The function should certainly exist. However various options should be available to companies as to how they would discharge their responsibility for this function. One option could be the Chairman, but others would include say a Vice Chairman, or a Committee. (The risk is that an otherwise excellent Chairman may balk at undertaking such responsibilities on his/her own, and may decide not to allow himself/herself to be considered for appointment in the first place),
- 3 I strongly disagree with the proposal for the reasons outlined above. Apart from anything else, it would certainly 'have an adverse impact on the ability of the CBI to have issues with distressed investment funds resolved.' I would argue strongly that the existing residency requirement is a small price to pay (incidentally, by the investors in the fund, not by the managers) for the comfort in knowing that their company was adhering to the highest standards in corporate governance and full regulatory compliance in a 'best practice' regime.
- 4 In my view there is no need for the CBI to go down this road and cause itself unnecessary grief for little or no tangible benefit, and therefore would caution against it.
- 5 I have reservations about this as I believe it could become self serving and add no real value. My suggestion is to put the burden of proof on the board to prove the skills mix exists. And yes, a changeover timeframe is necessary, say 2 to 3 years, in order to facilitate an orderly transition.
- 6 No, other than repeat my answer to 1 above

Gerry Moloney

12th December 2014