

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2011

**Feedback to the Consultation Process on
Consultation Paper 53 on the Corporate
Governance Code for Captive Insurance and
Captive Reinsurance Undertakings**

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Consultation Paper 53 ('CP 53') on a Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings ('the Code') was published on 29th April 2011. The consultation closed on 10th June 2011, with 6 responses received.

The key issues that emerged are set out below:

- *References to 'Captive Manager' are not applicable to 'self-managed' entities;*
- *The requirements regarding the role of the CEO and the sub-committees of the board are overly prescriptive where these functions are not mandatory;*
- *The requirement to appoint a Deputy Chairman is overly onerous;*
- *The transitional period of six months is insufficient;*
- *S.I. 220 of 2010 is under review regarding its applicability to captives and should not be referenced in the Code;*
- *The requirements relating to Risk Appetite do not take account of the nature of the business of Captives;*
- *The requirements pertaining to Group directors do not reflect the structure and business activities of Captives.*

Governance Accounting and Auditing Policy Division

August 2011

Number	CP 53 Reference	Obligation per CP 53	Comments Received	Summary of Key Comments	Nature of Change
Scope					
1	1.2	The Central Bank may from time to time impose such additional corporate governance requirements on any captive where it considers it necessary to do so, due to the nature, scale and complexity of the captive. In such circumstances a captive will be notified in writing in advance of such additional requirements being imposed.	1	Clarity was sought as to the circumstances where the Central Bank may issue additional requirements on a Captive. Guidance was also sought as to when a captive would be notified that they are subject to additional requirements and what timeframe for complying with any such additional requirements would apply.	No amendment to text required. It is not possible to say at this stage what additional requirements might be imposed on an individual captive in the future.
2	1.4	Captives are required to disclose in their annual report that they are subject to the Code and whether they are required to comply with additional corporate governance requirements.	2	Respondents requested that disclosure in the annual report be confined to disclosure regarding Central Bank requirements.	The end of the sentence 'and whether they are required to comply with additional corporate governance requirements' has been deleted.

Definitions					
3	2, 6.6 , 8.2, 12.1, 13.6	Captive manager: The firm to which the board has delegated by way of contract the management and administrative functions of the captive.	2	Respondents requested that 'captive manager' be replaced with 'outsourced service provider' or 'service provider' to encompass brokers, consultants, claims administrators etc. as well as captive managers.	No amendment to text required. The definition of captive manager incorporates the delegation of administrative functions of the corporate.
Legal Basis					
4	3.5	The Code may be amended or supplemented by the Central Bank from time to time.	3	Respondents requested that the terms of the Code be revisited once the corporate governance standards under Solvency II are finalised to ensure the Code is not in conflict with future European requirements and that it is not excessive compared to future industry standards.	No amendment to text required. As with any other Central Bank requirements the Code will be kept under review for any future developments.
5	3.6.1 and 5.2	References to S.I. 220 of 2010.	3	Respondents commented that S.I. 220 is currently under review with respect to its applicability to captives. It was suggested that all references to S.I. 220 should be removed from the Code or the wording amended to make it more generic.	References to S.I. 220 within the Code have been deleted.

6	3.7	<p>A contravention of the Code may be liable to the Central Bank using any of its regulatory powers, including, but not limited to, any or all of the following:</p> <ul style="list-style-type: none"> • the imposition of an administrative sanction under Part IIIC of the Central Bank Act 1942; • the prosecution of an offence; • the refusal to appoint a proposed director to any pre-approval controlled function where prescribed by the Central Bank pursuant to Part 3 of the Central Bank Reform Act 2010; and/or • the suspension, removal or prohibition of an individual from carrying out a controlled function where prescribed by the Central Bank pursuant to Part 3 of the Central Bank Reform Act 2010. 	1	<p>Guidance was requested on how the Code would interact with the proposed Fitness and Probity regime.</p>	<p>No amendment to text required.</p> <p>The Code and the Fit and Proper regime are not in conflict with each other.</p> <p>Guidance is provided in the Frequently Asked Questions document ('FAQ').</p>
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Reporting to the Central Bank

7	4.2	Any captive 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.	1	It was noted that 5 business days may be insufficient time to allow for an investigation into the deviation and for a remedial plan to be approved by the Board.	No amendment to text required. Paragraph 4.2 refers to proposed remedial action and not the 'final' remedial action agreed by the board.
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8	4.4	Where a captive no longer complies with the definition of a captive (set out in section 2 of the Code) it shall notify the Central Bank within 5 days. The Central Bank will consider the matter and advise if the status is deemed to be non-captive. In such cases, this Code will cease to apply and the Corporate Governance Code for Credit Institutions and Insurance Undertakings will apply instead.	2	It was commented that 5 days notification is too short and should be amended to 'a reasonable timeframe'. This arises because it can take some time to properly determine whether a company meets captive versus non captive status and then explain this to board members.	No amendment to text required. The board should already be aware of any proposals that take the captive outside the definition of a captive.
Transitional Arrangements					
9	5.1	The Code applies to existing boards and directors with effect from XX 2011 . The Central Bank is conscious that captives may need time to implement changes to systems and structures in order to ensure compliance with the Code. Captives will be given until 31 May 2012 to introduce the necessary changes so as to allow	4	It was asserted that the proposed transitional period of 6 months is too limiting given the number of captives established in Ireland. As each Board would need to formally review and approve an appropriate Governance Code, a 6 month window may not allow sufficient time for all captives to be compliant with the Code. It was recommended that a 9 month transitional period would allow all captives to take the necessary steps to be fully compliant with the Code.	The transitional period has been extended to 9 months so that the final date for implementation is 31 May 2012.

		them to become compliant with the requirements introduced by the Code.		Alternatively tiered timelines for implementation could be adopted.	
10	5.2	Where captives are subject to time limits introduced under other requirements which overlap with the terms of the Code, those time limits so introduced will continue to apply notwithstanding section 5.1 of the Code.	1	Clarification was sought that where an obligation already exists under another regulatory requirement, which is re-iterated in the Code, does the original timeline under that other requirement continue to apply to the captive?	As a consequence of removing references to S.I. 220 from the Code paragraph 5.2 has been deleted.
Composition of the Board					
11	7.2	Board members shall attend each board meeting, unless they are unable to attend due to circumstances beyond their control (for example, due to illness) and their attendance and eligibility to vote at each meeting shall be evidenced in the minutes of each meeting.	1	Guidance was requested on what constitutes 'attendance' at a Board meeting.	Guidance is provided in the FAQ.

12	7.4 and 7.5	<p>7.4 Each member of the board shall have sufficient time to devote to the role of director and associated responsibilities. The board shall indicate a time commitment expected from directors in letters of appointment. The Board shall confirm to the directors on an annual basis at the beginning of each financial year the on-going time commitment expected from that director.</p> <p>7.5 The number of directorships held by directors of captives shall be:</p> <p>(a) Limited by the amount of time required to properly carry out the role and functions of a director in that particular captive. Directors must advise captives of their time commitment of</p>	3	<p>(a) As a captive undertaking is a core element of the risk management structure and programme of an organisation, it was asserted that it is not relevant for directors of captives to provide a split of their time for this role, as this role is central to their full time position. A captive undertaking is a core element of the parent company's risk management programme, and therefore a core feature of the parent company's risk manager's key responsibilities. As such, therefore, the timing provisions relating to directors are inappropriate to individuals within this type of role since these are central criteria to their full-time position. As captives operate as part of their Parent's Risk Management Strategy, the day-to-day operations of captives are likewise intertwined with the function of the Parent's Risk Management Department. Consequently, there should not be a requirement for a specific time commitment to be determined for each Director.</p> <p>(b) It was asserted that a more appropriate approach would be</p>	<p>The text in paragraph 7.4 has been amended to refer specifically to non-group directors, thus excluding group directors from this requirement.</p> <p>Paragraph 7.5 has been amended by deleting the text 'Directors must also advise captives of their time commitment of existing and any additional directorships taken on annually so as to ensure that directors continue to meet the time commitments of each company'.</p> <p>It is not for the Central Bank to decide on appropriate time commitment on a case by case basis - this is a matter for the board of the captive and its directors.</p> <p>The upper limit of 25 is based on company law (Section 45 of the Companies (Amendment) (No. 2) Act, 1999).</p>
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		<p>existing and any additional directorships taken on annually so as to ensure that directors continue to meet the time requirements of each company; and</p> <p>(b) Subject to an overall limit of 25 directorships (regardless of whether the directorship is held in a captive company or a company which is not a captive).</p>		<p>for each director to confirm to the board on an annual basis, that they have an adequate time commitment to fulfil their duties as Directors.</p> <p>(c) Guidance was requested on the time commitment expected from directors of captives.</p> <p>(d) Clarification was requested on the upper limit on the number of directorships that may be held which is set at 25.</p>	
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13	7.7	In proposing to appoint directors who otherwise have fulltime jobs, the captive is also required to take fully into account the time constraints upon the proposed director including time constraints associated with any part time or full time job held by the director.	2	<p>The following points were made by respondents regarding directors who otherwise have fulltime jobs:</p> <p>(a) Given the role of the captive manager in the captive company, it is usual for the captive manager to provide a director, normally at senior staff level, who sits on the captive board. This is a positive contribution, given the typically low number of employees in a captive. This role would form part of their full time position within the captive management company and from a time commitment perspective it would not be in addition to their full time role.</p> <p>(b) The nature of captives as part of their Parent's Group Risk Strategy would mean that in the majority of instances, all directors are likely to have full time roles.</p> <p>(c) An annual requirement by directors to indicate to the board that they have the ability to fulfil their duties as Directors should be sufficient.</p>	<p>No amendment to text required.</p> <p>Directors of the Irish company have duties in their capacity as director rather than by virtue of their full-time position within the Group. Whether or not a director is a group director, it is necessary that directors of the Irish captive devotes sufficient time to discharge his/her duties to the Irish captive.</p>
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14	7.8	In considering and/or proposing director appointments, the board shall assess and document its consideration of possible conflicts of interest among its members, including, but not limited to personal relationships, business relationships and common directorships among its members or proposed members.	1	It was asserted that given the nature of captives (part of Group Risk Strategy) there is the possibility that conflicts of interest (Group Risk Management versus captive) could arise on a regular basis. A practical alternative solution would be for all directors to make a full disclosure of their interests at the commencement of each Board Meeting.	<p>No amendment to text required.</p> <p>The board of the captive is responsible for identifying and managing possible conflicts of interest among its members to ensure the best interests of the captive are safeguarded notwithstanding what roles the directors carry out at Group level.</p> <p>Group directors should ensure they fulfil their obligations to the captive in addition to their obligations as Group directors/employees.</p>
15	7.11	Captives shall formally review the membership of the board of any person who is a member for nine years or more and it shall document its rationale for any continuance and so advise the Central Bank in writing. The frequency with which board membership is renewed shall be documented.	1	In most instances board membership is derived from within the Group. Respondents noted that it is not unusual for directors of captives to have been on the board for more than 9 years as their employment with the parent is their career. These people have often been involved with the captive since its establishment and bring a wealth of knowledge to their role. It was asserted that the 9 year rule of having to document rationale and advise the Central Bank is unnecessary and should be removed.	<p>No amendment to text required.</p> <p>Boards should be kept refreshed and it is not proposed that there should be mandatory removal after 9 years.</p>

Chairman					
16	8.1	Appointment of Deputy Chairman	5	It was asserted that due to the nature of a captive it may be excessive to require a designated Deputy Chairman and such a position is at odds with the Companies Act. It was also asserted that this requirement as it currently stands is not included in the Corporate Governance Code for Credit Institutions and Insurance Undertakings. Respondents commented that the requirement to appoint a Deputy Chairman is questionable and is disproportionate when the Code requires a minimum of only 3 directors.	The requirement to appoint a Deputy Chairman has been deleted.

17	8.3	The Chairman shall have relevant financial services expertise, qualifications and background or be required to undertake relevant and timely comprehensive training.	1	It was recommended that the requirement for a Chairman to have financial services expertise/experience be removed. In the case of captives, the Chairman needs to understand the extent and nature of the risk taken on by the captive and this will often include an understanding of the inherent risks in the underlying commercial business. 'Financial services qualifications, expertise and background is less relevant to the role of a Chairman of a captive than to the Chairman of other undertakings under the Corporate Governance Code for Credit Institutions and Insurance Undertakings and it is questionable whether such financial services experience should be mandated in this Code at all in light of the nature and business of Captives.	No amendment to text required.
18	8.6	The Chairman of the board shall be proposed for election or reappointment on an annual basis.	1	Respondents recommended that this is unnecessary for a captive and should be removed.	No amendment to text required. The Code does not require that the Chairman be independent so there should be an annual assessment/re-assessment by the shareholders as to the suitability of the Chairman.

Chief Executive Officer and Sub-committees of the Board

19	9, 17, 18, 19, 20, and 21	Prescriptive requirements regarding CEO and sub-committees of the Board.	1	<p>Clarification was sought on why there are detailed obligations imposed in the Code in relation to CEOs and sub-committees when these functions are not obligatory. Clarification was sought on instances where a captive will be required by the Central Bank to appoint either a CEO or a sub-committee.</p>	<p>Section 12.1 has been amended to state that 'The Board shall be responsible for appointing a captive manager <u>or CEO</u>'.</p> <p>The definition of CEO at paragraph 9.1 has been amended to clarify that 'The definition of a CEO includes a general manager or any such executive responsible for the performance of such function notwithstanding the title used by that person'.</p> <p>Section 17 has been retained and sections 18 - 21 regarding sub-committees of the board have been deleted.</p> <p>Paragraph 11.7 has been amended to reinforce the role of the board in the discharge of control functions.</p> <p>A new paragraph 11.8 has been inserted: 'Where a captive is part of a wider group which has a Group Audit Committee and a Group Risk Committee, it may rely on those committees provided that the board is satisfied that they are appropriate to the specific circumstances of the captive'.</p>
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Directors					
20	10.1 (b)	The role of the directors, under the Chairman's leadership, is: (b) To participate actively in constructively challenging and developing strategies proposed by the captive manager;	3	It was asserted that parties other than captive managers may be involved in developing strategies for the captive. Respondents requested that Paragraph 10.1 be amended to reflect this.	All references to the captive manager in Section 10.1 have been deleted.
21	10.1 (c)	The role of the directors, under the Chairman's leadership, is: (c) To participate actively in the board's decision-making process;	1	It was asserted that it is more appropriate for the board to consider underwriting and reinsurance programmes.	No amendment to text required. Paragraphs 10.1 (b) and 10.1 (c) are sufficiently broad to encompass board consideration of underwriting and reinsurance programmes.
Role of the Board					
22	11.4	The board shall oversee the management of all renewal processes, including signing off on inwards reinsurance and outwards reinsurance as necessary.	1	It was suggested that the text be amended to state: 'The board shall oversee the <u>approval</u> of all renewal processes...'. 	The text was amended to state: 'The board shall <u>approve and</u> oversee the management of all renewal processes ...'.

Appointments					
23	12.1	The board shall be responsible for appointing a captive manager with appropriate integrity and adequate knowledge, experience, skill and competence for their roles.	3	Although the majority of captives outsource their operations to a captive manager, respondents noted that there are several which are of a sufficient size that they are self-managed. In order to encompass this particular structure, it was suggested that this item be amended to read: 'Where a captive manager is engaged, the board shall be responsible... '.	Paragraph 12.1 has been amended to state that 'The board shall be responsible for appointing a captive manager <u>or CEO</u> '.
24	12.2	The board shall be responsible for endorsing the appointment of people who may have a material impact on the risk profile of the captive and monitoring on an on-going basis their appropriateness for the role.	2	(a) Respondents suggested that 'people' be replaced with 'professional advisors'. (b) Clarification was sought as to the intention of this clause and to which type of parties it may refer. It was suggested that by replacing 'captive manager' with 'service advisors' outlined in 12.1 above, this may allow for the deletion of paragraph 12.2.	Paragraph 12.2 has been amended to replace 'people' with 'persons'. Paragraph 12.2 has been retained. The board should monitor the service provider's appropriateness for the role as well as being responsible for appointing them/endorsing their appointment.

25	12.3	The board shall be responsible for either the appointment of directors or where appropriate identifying and proposing the appointment of directors to shareholders and the board shall ensure that directors are given adequate training about the operations and performance of the captive. The board shall routinely update the training as necessary to ensure that they make informed decisions.	2	Respondents noted that there is agreement that it is vital that the board has the requisite knowledge and information about the captive's operations and performance to undertake its role properly. There may not be appropriate formal training available and this information will need to be obtained from other channels, such as information from the parent company or other sources. It was suggested that this item be amended to replace 'given adequate training' with 'adequately briefed'. It was also suggested that the last sentence be removed.	No amendment to text required. It is good corporate governance practice that directors have adequate training.
26	12.5	The board shall formally review its overall performance and that of individual directors, relative to the board's objectives, at least annually. The review shall be documented.	1	Respondents suggested that this requirement be removed as it is unnecessary for a captive.	No amendment to text required. It is good corporate governance practice to review board performance and that of individual directors at least annually.

Risk Appetite

27	13.1	<p>Risk Appetite. The board is required to understand the risks to which the captive is exposed and shall establish a documented risk appetite for the captive. The appetite shall be expressed in qualitative terms and also include quantitative metrics to allow tracking of performance and compliance with agreed strategy (e.g. Value at Risk, leverage ratio, range of tolerance for bad debts, acceptable stress losses, economic capital measures). It shall be subject to annual review by the board.</p>	4	<p>(a) Respondents suggested that given the underlying purpose of a captive (to insure group risks in the most cost effective and efficient manner) captives are not driven by the need to create profits for their owners or create market share. In practice this means that captives are conservative in nature and do not represent a financial or systemic risk to the wider community. It was asserted that in recognising the nature, scale and complexity of risks underwritten by captives, the development of a Risk Appetite is not appropriate for captive entities.</p>	<p>No amendment to text required.</p> <p>Solvency II requires undertakings to 'implement effective and appropriate risk management systems (including the setting of risk appetite)'.</p>
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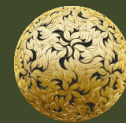
	13.1			<p>(b) It was recommended that this section be amended in order to appropriately reflect the principle of proportionality in the captive context.</p> <p>(c) It was asserted that the examples of risk appetite metrics appear to be more relevant to credit institutions than to insurance undertakings.</p> <p>(d) It was suggested that the last 2 sentences be removed.</p>	The second sentence of paragraph 13.1 (b) was amended to delete: (Value at Risk, leverage ratio, range of tolerance for bad debts).
28	13.2	The risk appetite definition shall be comprehensive and clear to all stakeholders. The definition shall clearly define the appetite and address separately the short, medium and long term horizons.	3	It was asserted that the nature of captives is such that often there is no differentiation between short, medium and long term horizons and so the second sentence should be deleted.	The second sentence requiring the definition of risk appetite over different time horizons has been deleted.
29	13.4	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	1	Clarification was requested on whether this item foresees a 'material deviation' as being identified by the board of directors or the manager.	Clarification is provided in the FAQ.

		board promptly in writing and no later than 5 business days of the board becoming aware of the deviation.			
30	13.5	The board shall satisfy itself that all key Control Functions such as internal audit, compliance and risk management are operating effectively.	2	<p>(a) A captive frequently has its internal audit function outsourced. This item should be amended to delete 'internal audit'.</p> <p>(b) Clarity was requested as to whether an internal audit function is required under the Code. Many Captives may not currently have an internal audit function. Respondents commented that the Code does not specifically require that such a function be established but yet refers to it as a 'key control function'.</p>	<p>No amendment to text required.</p> <p>Internal audit remains a 'key control function' whether it is provided in-house, by Group or outsourced and the board shall always retain responsibility for its discharge. No amendment to text required.</p> <p>As per Solvency II, an undertaking must provide for an effective internal audit function that is objective and independent and it is permissible to outsource the internal audit function or to use the group internal audit function provided that the board satisfies itself that all the requirements of Solvency II, in this regard, are met.</p> <p>Clarification is provided in the FAQ.</p>

Compliance Statement					
31	22.1	A captive shall submit to the Central Bank a compliance statement specifying, in accordance with any relevant guideline issued by the Central Bank, whether the captive has complied with this Code during the period to which the statement relates.	1	It was suggested that given that separate Compliance Statements are already in place for both Insurance and Reinsurance captives existing texts could remain in place with the inclusion of the following additional statement: 'The board confirms that to the best of its knowledge, the Company complies in all material respects with the requirements of the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings'.	No amendment to text required. Clarification is provided in the FAQ.
FAQ					
32	N/A	Frequently Asked Questions Document	2	Respondents noted that the FAQ document for the Corporate Governance Code for Credit Institutions and Insurance Undertakings does not apply to Captive Insurance and Captive Reinsurance Undertakings.	A FAQ document has been published on the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings.

Miscellaneous					
33	N/A	There has been no guidance provided on the applicability of the Code to captive undertakings in run-off.	3	It was requested that captives that have ceased underwriting or are in 'run-off' be exempted from the Code.	No amendment to text required. Clarification is provided in the FAQ.
Requests for additional guidance					
34	6.3	The system of governance shall be subject to regular review.	1	Guidance was requested on the expected frequency of review of governance and risk management procedures.	No amendment to text required. This is a matter for the board of the captive to decide.
35	7.10	Directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists.	1	Guidance was requested on what is meant by 'reasonably perceived conflict of interest'.	No amendment to text required. The board of the captive shall assess conflicts of interest.
36	8.4 (& 9.3)	The Chairman (CEO) shall have the necessary personal qualities, professionalism and integrity to carry out his or her obligations.	1	Guidance was requested on what is meant by 'personal qualities, professionalism and integrity'.	This will be covered in the Fitness and Probity requirements.

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