



UPDATE ON FINANCIAL SERVICES REGULATION

The Central Bank are committed to meeting and exceeding best practice in regulation in financial services centres internationally, and has set a high standard to assist in rebuilding and restoring confidence amongst international financial community in the Irish banks and in its regulatory oversight. The purpose of this Article is to give a summary of the regulatory measures enacted or proposed which will shape, mould and assist in restoring the Irish banking system in line with requirements of the EU/IMF Programme. It is not a comprehensive account of all recent regulatory enactments and specific and detailed advice sought be obtained on topics outlined below.

Central Bank & Regulatory Reform

This Central Bank Reform Act 2010 established the Central Bank as a single fully integrated structure with a unitary board – the Central Bank Commission – replacing the Boards of the Central Bank and the Irish Financial Services Regulatory Authority (IFSRA).

The Act enhances the system of regulatory control and confers additional powers on the Central Bank and its Governor to support the stability of the banking system and to protect users of financial services.

In this role, the Central Bank actively review, revise and ultimately have the challenge to refine and where appropriate overhaul the regulatory regime for individual and the institutions. Some of the recent measures to affect improvements and changes include (1) Corporate Governance Code (2010); and (2) Consultation Paper on Fitness and Probity (2011).

Corporate Governance Code for Credit Institutions and Insurance Companies (8 November 2010)

Corporate Governance is defined in the Code as;

"procedures, processes and attitudes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision making"

The Code was introduced in 2010 as conditions to which credit institutions are subject pursuant to various Irish domestic law and EU financial services and insurance regulatory regime and applies to existing boards and directors with effect from 1 January 2011. To allow time for transition and implementation of required measures, institutions will have until 30 June 2011 to introduce required changes. In specific circumstances, such as board membership compliance, the period may be extended to 31 December 2011.

The governance structure of each credit institution is required to be sufficiently sophisticated to ensure that there is effective oversight of the activities of the institutions taking into account the nature, scale and complexity of the business being carried on.



The Code contains specific provisions relating to; the composition of the Board; the Chairman; CEO; Independent Non-executive Directors; Non Executive and Executive Directors; Role of the Board; Committees of the Board; Appointments; Risk Appetite; Conduct of Meetings; Reserved powers; Consolidated Supervision; and Compliance Statements.

Contravention of the Code shall permit the Central Bank to the use of its regulatory powers including (i) imposition of administrative sanction; (ii) prosecution of offences; (iii) 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 (iv) suspension, removal or prohibition of an individual from carry out a controlled function which prescribed by the Central Bank pursuant to Part 3 of the Central Bank Reform Act 2010.

Matthew Elderfield, Head of Financial Regulation at the Central Bank of Ireland in an address on March 22, 2011 to the Foresight Business Group in Trinity College Dublin commented that improving corporate governance is high on the supervisory agenda of the Central Bank and is critical to raising standards. He expressed confidence that the Corporate Governance Code represents a balanced and proportionate approach to strengthening the governance of Irish banks and insurance companies. He acknowledged that standards outlined in the Code are more demanding than those in place in other jurisdictions and this decision was a conscious one. The aim in setting high standards is not simply to match best practice but to raise the bar and to set a higher standard in Ireland. The real challenge will now lie in monitoring and policing these new qualitative requirements.

[\[Click here\]](#) to see a more detailed article on the Code, which is available on the publications section of the [MH+C website](#)

Consultation Paper on new Fitness and Probity Standards (March 2011)

The paper sets out the framework to ensure that the people operating at senior levels in credit institutions are fit and proper. The new requirements will apply to all entities regulated by the Central Bank (except credit unions).

Following the consultation process, it is anticipated that new statutory powers will be introduced to allow the Central Bank to apply and enhanced fitness and probity regime to individuals and entities.

The Central Bank's aim is to raise the bar in Fitness and Probity in 3 ways:

- Gatekeeper role, by being able to prevent individuals from entering senior positions in regulated firms, where there are concerns as to their fitness and probity;
- Ongoing supervisory role, ability to investigate, suspend remove or prohibit individuals from senior positions in the financial services industry where concerns arise about their fitness and probity; and
- By setting high statutory Standard of Fitness and Probity for all individuals in the financial services industry to follow and which can be enforced in the event of non-compliance.



Pursuant to the Central Bank Reform Act 2010, s. 50, the Central Bank has a discretion to issue statutory Standards of Fitness and Probity to apply across the industry. Draft standards have issued in Consultation Paper 51: The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010.

Fitness encompasses concepts of competence and capability and is normally tested with regard to the individual's qualifications and experience. Furthermore it may be necessary to demonstrate the ability to understand internal governance and risk management concepts and the overall business model of the entity. The requirement of competence will vary to reflect the nature of the post and the size and activity of the entity.

Probity refers to honesty, diligence and independence of mind and requirement to act ethically and with integrity and fairness – including acting without a conflict of interest. It is described in the consultation paper as a matter of character illuminated by a person's past behaviour.

Financial Soundness is also a relevant factor in the context of individual Fitness and Probity and covers 2 areas – personal bankruptcy (or equivalent howsoever described); and association with the bankruptcy (or equivalent howsoever described) of a company. Such events are important considerations in determining whether the tests of Fitness and Probity are met and it is important to the Central Bank to be made aware of such events so that it can have all available information to assess with confidence the fitness and probity standards in light of information that may be forthcoming from the public or other sources.

Applications to the Central Bank will be dealt with by the Central Bank's Regulatory Transactions Department (RTD) in consultation with the relevant supervisory department. The Central Bank intends to introduce an automated process with an online Individual Questionnaire (IQ) form to replace existing paper form.

The new regime is expected to come into effect in September 2011.

Conclusion

The regulatory initiatives serve to reinforce Ireland's commitment to resolve and restore confidence of the public and greater transparency in relation to fitness and probity of senior executives working in this sector.

If you require more information on matters referred to here please contact Christine O'Donovan, Partner – Head of Financial Services or Fionan Breathnach, Partner, Financial Services.

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