

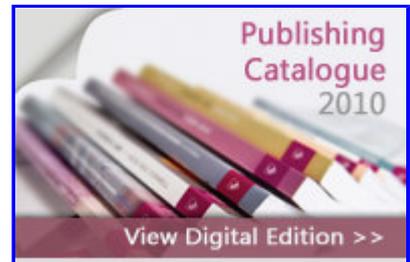
- [Home](#)
- [Members](#)
- [Students](#)



- [Your Institute](#)
- [Member Search](#)
- [Shop](#)
- [Technical](#)
- [eLibrary](#)
- [Contact Us](#)
- [Location](#)

You Are Here - [Home](#) / [Members](#) / [Technical](#) / [Corporate Governance](#)

- [Corporate Governance](#)
 - [News](#)
 - [UK Corporate Governance Code](#)
 - [Audit Committees](#)
 - [Directors](#)
 - [Internal Control](#)
 - [Corporate Governance and the EU](#)
 - [Corporate Governance Resource Guide](#)
 - [UK Stewardship Code](#)
 - [Corporate Governance Journal](#)
 - [Corporate Governance Articles](#)
 - [Useful links](#)
 - [Events /CPD](#)



How Can I

- [Access CHARIOT](#)
- [My Account](#)
- [Members Directory](#)

New Corporate Governance Rules for Banks and Insurers - Kevin O'Doherty, FCA

Monday, December 13, 2010

The Central Bank has commenced its crusade to fix the regulation of financial services in Ireland. Given the recent description by Matthew Elderfield of corporate governance practices at Irish banks as “*woefully inadequate*”, the Central Bank has chosen to start at Ground Zero – by setting out a Corporate Governance Code for Credit Institutions and Insurance Undertakings (the “Code”). Covering banks, building societies, life and non-life insurers and reinsurance firms, the Code is imposed as a requirement to be followed to the letter, not as a polite suggestion as to how matters could be approached.

How has the Central Bank approached the task?

Follow Us



Site Login

Login:

Mem No./

Username:

Password:

[Register](#) | [Forgot Password](#)

The Code mixes its prescriptive elements with areas of considerable latitude for boards. Proportionality is applied, but boards are encouraged to voluntarily adopt standards higher than the minimum. There is even an explicit requirement for firms to promptly self-report observed material breaches of the Code to the Central Bank. As the sectors first identified as being most in need of regulatory focus, the Code applies to banks and insurers, but is the first element of a larger overhaul of governance practices. While Matthew Elderfield has spoken of his desire for Irish firms to operate to an elevated standard of corporate governance, the intention is that this should be a desirable characteristic in operation, not seen as a deterrent to foreign direct investment.

The Central Bank has produced as a result a very interesting document. Written in plain English and reading at times like an Institute of Directors textbook, it attempts to set out the core principles of organisation and conduct that should be present at the heart of any substantial firm, not just in financial services.

At times, the Code seems to be stating the obvious (Section 8.5 states that *"the Chairman shall attend and chair board meetings"*), but it would appear from recent bitter experience that these precepts need to be stated in print.

Reacting to criticism of a one-size-fits-all approach, the Central Bank has introduced additional requirements for Major Institutions, a category purposefully left imprecisely undefined. Firms are reminded that there is no bar to adopting standards higher than the regulatory minima if they wish to do so.

So what are the details?

1. Composition of the board

Boards must have a minimum of five members (seven for major institutions). The majority of the Board members must be independent non-executive directors ("NEDs"), although for subsidiaries of international groups, this role can be fulfilled by NEDs from within the group, provided there are always a minimum of two independent NEDs. This point is particularly important to banks and insurers based in the IFSC, whose parent undertakings indicated in response to CP41 (the Central Bank's consultation paper preceding the Code) that they would not react favourably to losing control over the boards of their Irish subsidiaries.

2. Restrictions on activities of directors

One of the most talked-about elements of CP41 was a restriction on the number of directorships that a single person can hold, because of concerns about the ability of persons with multiple directorships to devote sufficient time to each position. This concept has been retained in the Code with a relaxed restriction of five directorships of banks and insurers and eight directorships of other firms (reduced to three and five respectively if a Major Institution is one of them). This is not a hard ceiling, but additional appointments will be subject to persuading the Central Bank with regard to constraints on the proposed director's time.

CP41 contained a proposal that the chairman of a bank or insurer be prohibited from holding any other office. This has now been softened to requiring the prior approval of the Central Bank, so applications can be assessed on an individual basis.

3. Fit, Proper and Performing

Boards are now explicitly required to review board memberships at least once every three years, although general personnel changes are not

mandated in an explicit fashion. Renewal frequency is to be based on the balance of experience and independence sought and should be documented. Boards will need to annually justify in writing to the Central Bank the continuation of any director in office for nine years or longer. The renewal of the Chief Executive Officer's (CEO) contract must be reviewed at least every five years.

Major Institutions are required to conduct an annual assessment of board performance and compliance with requirements. Similar requirements are imposed on all other firms in Section 13.3 requiring a documented formal annual review of the board's overall performance and that of the individual directors.

The Chairman and CEO are both required to have relevant financial services experience or undergo "*timely and comprehensive*" training. Other directors are required to bring with them relevant skills and knowledge.

4. *Compliance Statements*

Section 25 of the Code requires firms to submit an annual compliance statement to the Central Bank confirming compliance with the Code. While Life and Non-Life Insurers have been obliged since 2003 to submit an annual compliance certificate signed by all directors attesting to the adequacy and accuracy of the financial records, the other provisions in Irish company law and financial services law relating to compliance statements have never been commenced due to extensive corporate opposition. The Code is silent on the proposed form and content of the required compliance statement but mentions possible future guidelines to outline requirements in this area. Such statements are always a useful weapon for an enforcing regulator as an unwary director signing a statement which later proves to have been untrue can then be pursued for making false returns to the regulator as well as for the original compliance lapse!

5. *Committees of the board*

Firms are required to establish an audit committee and a risk committee at a minimum. They are encouraged to establish other committees such as remuneration and nomination committees. These latter two are mandatory for Major Institutions.

For firms with smaller boards, the full board can act as the audit committee or the risk committee (although the prior consent of the Central Bank is required for a risk committee to function in this way). For firms that are part of larger groups, the group audit committee and the group risk committee can fulfil these roles, provided the concerns of the Irish-authorised firm are adequately addressed in these fora. NEDs are charged with satisfying the board that this is in fact the case.

6. *Risk Management*

Building on the above requirement to have a risk committee, the Code requires the board to document the firm's risk appetite with both qualitative description and quantitative key risk indicators that can be objectively tracked and monitored for compliance. Material deviations from these quantitative targets are reportable to the Central Bank. Presumably failures to report promptly will prompt an enforcement response as well as close scrutiny of the issue which gave rise to the deviation itself.

The board is explicitly charged with ensuring that the firm's remuneration practices do not promote excessive risk taking.

7. *Periodicity of meetings*

CP41 was criticised for mandating monthly board meetings. The Code now requires quarterly meetings of firms, but encourages meetings more frequently as required. Major Institutions are required to hold at least eleven meetings, and with a mind to avoidance measures, requires that these minimum meetings take place in eleven separate months.

8. *Standard of documentation*

Circulation in advance of documentation for meetings (an agenda, the minutes for the previous meeting and other required board papers) is a measure so obvious, one would have thought it would not have required stating, but the Central Bank has thought fit to spell it out, presumably to discourage firms known to have undesirably informal practices.

9. *Establishing Management*

Section 13 of the Code deals with the appointment of management. The board is formally charged with appointing a CEO and senior management. While this is normal, there is also a more intrusive provision in Section 13.2 explicitly stating that the board endorsement is required for appointments of "*people who may have a material impact on the risk profile of the institution*".

By a similar token the removal from office of a head of a Control Function also requires board approval, presumably to prevent an individual CEO from using their staffing powers to intimidate the management college.

So what does all this get us?

The new Code is a very impressive document. An intelligent mixture of principle and prescription, it builds on established thinking about board structure and function. Setting out clear minimum expectations of corporate organisation and governance it removes the excuse of ignorance from non-compliant institutions and brings these expectations firmly within the scope of the administrative sanctions regime. While it doesn't impose unreasonable requests and is proportionate, it also provides the Central Bank with the tools it needs to pursue those who might attempt to abuse procedure to dominate their organisation. NEDs also receive a first taste of the Central Bank's increasing expectations for them in the discharge of their duties. If the Central Bank can enforce this Code properly, we can hopefully induce effective self-governance in our key financial institutions, however the recent findings of the Central Bank's own Review of Remuneration Policies & Practices in Irish Retail Banks are not encouraging.

Kevin O'Doherty, FCA is a director of Compliance Ireland Regulatory Services Limited, a consultancy firm specialising in providing regulatory and governance advice to financial services firms.

[Share](#) |

- [Privacy Statement](#)
- [Terms and Conditions](#)
- [Site Map](#)
- © Copyright Chartered Accountants Ireland 2011. All Rights Reserved.