

Euronext Dublin
Exchange Buildings
Foster Place
Dublin 2
Republic of Ireland

By email: IECorpGov@euronext.com

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Consultation paper 24-01: Consultation on the launch of the Irish Corporate Governance Code

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs, working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements, which includes compliance with any corporate governance code. They are therefore well placed to understand many the issues raised by this consultation document and we have focussed our response on those specific issues. In preparing our response we have consulted, amongst others, with our members, particularly those based in the Republic of Ireland. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

General comments

This is an important consultation about an important subject, and we share Euronext's desire for the appropriate balance to be found between robust standards of governance and the need for the code not to be overly prescriptive. Having been closely involved with the Financial Reporting Council in the development of the UK Code, we are pleased to see that the draft Code developed by the Working Group has struck an excellent balance between these competing pressures. Consequently, we have few material comments to offer, beyond some relatively minor textual clarifications covered in our response to question 3 below.

The key issue for us is the future development of the Code. Our experience in the UK, where it has been the practice of successive governments to drive change through soft regulation rather than hard law, has been that 'tinkering' with the Code has, generally, been unhelpful. We therefore welcome the proposal for review by the Corporate Governance Panel on a biennial basis. The explanation of the role of the Corporate Governance Panel in the consultation document seems comprehensive, but composition is important. As the only Chartered professional qualifying and membership body focussed on governance, and the global leader in governance thought leadership and education, the Institute would, of course, be keen that one of the members of our Irish Council be invited to be a member of the Panel.

Specific questions asked in the consultation document

- 1. Are there any specific principles/provisions of the Irish Code which diverge from the UK Code which you think are not appropriate/should be revised. If yes, please give further detail.**

The main focus of the changes to the UK Code for 2024 was in the area of internal controls. We note that the Working Group has chosen not to include some of the more prescriptive wording of the new provision 29 of the UK Code. We welcome this decision, although it seems likely that some respondents to this consultation will wish the Working Group to reconsider. In our view, the UK Code changes were, primarily, a response to the UK government's desire to be seen to have taken action in this area, without seeking to develop a legislative solution. They are, therefore, a UK response to a perceived UK issue and are not, therefore, necessarily appropriate in the Irish market.

- 2. Are there any areas of the Irish Code which retain parity with the UK Code which you think should not remain part of the Irish Code. If yes, please give further detail.**

No.



3. Are there any other issues which you feel should be addressed in the Irish Code?

Yes. We have a number of minor suggestions about the wording of the Code. These are:

Principle D / Provision 3

A significant number of our members believe that attempts at shareholder engagement can be ignored by those invited to participate and that this should be reflected in the wording of Principle D, as it is in Provision 3. The word "**ensure**" should be replaced by the word "**seek**", given that shareholder engagement by companies is contingent upon shareholders' willingness to participate:

*"D. In order for the company to meet its responsibilities to shareholders and stakeholders, the board should **seek** effective engagement with, and encourage participation from, these parties."*

Provisions 14 and 16

A key issue not adequately addressed in the Code is the role of the company secretary, which comes to the fore in times of corporate stress. It is vital that its independence is safeguarded to ensure that the role can be effectively discharged. If you are going to restore trust in governance then strengthening the role of the person who, on a daily basis, is most responsible for governance in an organisation has to be a positive. We believe that this involves a requirement that the role be independent of other executive responsibilities such as general counsel, finance executive or other roles where conflicts of interest can easily occur, in much the same way that no one would suggest that the role of an internal auditor be combined with that of a finance director.

We have seen an increasing tendency for companies to adopt the US model of a combined general counsel / company secretary role or to have the company secretary report to the general counsel. We believe that this is poor practice and should be discouraged. Our members' experience is that, although the dual role model may work in some cases, particularly smaller companies or where the individual concerned is dual qualified, this does create a potential conflict of interest, where the responsibilities of each role differ, usually in times of corporate stress.

We therefore believe that it is an omission in Provision 14 that the role of the company secretary is not required to be set out in writing:

*"14. The responsibilities of the chair, chief executive, senior independent director, **company secretary**, board and committees should be clear, set out in writing, agreed by the board and made publicly available.*



The annual report should set out the number of meetings of the board and its committees, and the individual attendance by directors.”

For the same reasons, we believe it important that the independence of the company secretary or governance professional be protected:

*“16. All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. **In order to ensure its independence, the role of the company secretary should report directly to the chair of the board in respect of all board matters and not to anyone who is not a board member.** Both the appointment and removal of the company secretary should be a matter for the whole board.”*

Provision 28

In Provision 28, it does seem slightly odd that the definitions of emerging and principal risks are included as footnotes. We suggest that these might helpfully be included in the text of the Provision and suggest the following:

*“28. The board should determine the risk appetite of the company in order to achieve the company’s strategic objectives. The board should carry out a robust assessment of the company’s emerging and principal risks. **Emerging risks should include those whose impact and probability are difficult to assess and quantify at present, but which have a reasonable probability of affecting the company over a longer time horizon. Principal risks should include, but are not necessarily limited to, those that could result in events or circumstances that might threaten the company’s business model, future performance, solvency or liquidity and reputation. In deciding which risks are principal risks, companies should consider the potential impact and probability of the related events or circumstances, and the timescale over which they may occur.** The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, and an explanation of how these are being managed or mitigated. The board should explain what procedures are in place to identify emerging risks.”*

Provision 29

As noted above, the section of the UK Code relating to internal controls was one of the areas that attracted most debate during the UK Code update. If the Working Group decides to maintain the existing wording, then we believe that, in order to manage stakeholder, including shareholder, expectations, especially where



these have been coloured by experience of the United States Sarbanes-Oxley model, greater emphasis that materiality is in the view of the board, not of other stakeholders, would be helpful here.

*“29. The board should monitor the company’s risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls **that, in the opinion of the board, are material, including financial, operational, reporting and compliance controls.**”*

4. Are you supportive of issuers dual listed on Euronext Dublin and in the UK having a choice as to whether to apply the Irish Code or the UK Code?

Yes. Although, of course, the Financial Conduct Authority in the UK may choose to make application of the UK Code a condition of UK listing.

5. As a dual-listed company (with standard UK listing) if you do support a choice between the application of the Irish Code or the UK Code, which code do you think your company will apply?

Not applicable.

6. Are there matters that you believe should be taken into consideration in establishing the Corporate Governance Panel?

The explanation of the role of the Panel in the consultation document seems comprehensive, but composition is important. As the only Chartered professional qualifying and membership body focussed on governance, and the global leader in governance thought leadership and education, the Institute would, of course, be keen that one of the members of our Irish Council be invited to be a member of the Panel.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

Peter Swabey

Policy and Research Director

The Chartered Governance Institute UK & Ireland

020 7612 7014

pswabey@cgi.org.uk

