

Financial Services Consultative Industry Panel

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Structural Reform of Financial Regulation in Ireland

The recent Government announcement of proposed changes in the structure of financial regulation in Ireland was greeted to some extent as if changing the structure meant that the job was done. Of course while the structure is important (and indeed it can clearly be seen that structural failings contributed in part to the overall failure of the regulatory system), what really matters is how the regulator goes about its regulatory business. We set out below our views on the essential characteristics of financial services regulation in Ireland. However we emphasise that the quality of regulatory staff is far more important than the structure in which they operate. They must also be rewarded appropriately and given the tools (empowerment, IT etc.) to do the job properly.

Having stressed that good people are the key, there are a number of critical characteristics that the future financial services regulatory regime must deliver:

- **Coherent structures that clearly assign responsibility** for the achievement of key economic policy objectives:
 - Financial Stability;
 - Prudential Supervision;
 - Market Supervision;
 - Consumer Protection;
 - The competitiveness of the domestic economy i.e. competition in the provision of financial services to Irish consumers;
 - The attractiveness of Ireland as a location for cross-border financial services activity.
- **A differentiated approach is required** – one size fits all is not appropriate

for the different sectors of financial services.

- **Balanced regulatory priorities** which seek to recognise the importance of each of the consumer, the prudential and the securities markets agendas. In addition, the regulatory regime should be designed in a way that eliminates the conflicts of interest (perceived and real) between prudential, consumer and securities markets regulation. Solvent financial institutions are the most important form of consumer protection.
- **Internal structures** which are aligned with the regulatory priorities identified, have good governance arrangements, and clear lines of authority which seek to eliminate any duplication of responsibility.
- **Accountability** within the regulatory system so that it is clear domestically and internationally which regulator is addressing a particular matter.
- **Regulatory competence** to carry out regulatory functions and tasks in a decisive, confident and consistent manner. A priority should be to ensure that individuals have the necessary knowledge and expertise about the financial sector, both domestic and international, and the activities they are regulating - including at board level. This can only be achieved if the regulator takes on experienced senior managers from the private sector – both on secondment and as permanent employees. Competency is also a function of culture and experience and it will be important to foster the development of an appropriate regulatory culture over time.
- **Clearly articulated regulatory objectives** that can be fully understood by all stakeholders (regulatory, regulated firms, Government/Oireachtas and public).
- **Effective systems and adequate resources** to ensure that effective oversight mechanisms are in place at all times.
- **Legitimacy** of the regulatory system will partially be achieved by virtue of legal authority. However, the actions and decisions of the regulator(s) will play a significant part in restoring confidence in the competence of the regulatory system, and transparency in this regard is essential. Independence from political interests is also an important consideration as any perception of influence by political interests is likely to undermine the regulator(s) credibility.
- **A balanced regulatory approach** which seeks not to over-regulate to compensate for historic failures, but instead leads to a proportionate system of regulation which facilitates innovation and ensures that Irish financial services remain competitive and continue to contribute to our economic development.
- **A rules based regime is not a panacea** – while it is accepted that greater clarity and prescription may be necessary in certain cases, it should equally be recognised that some of the greatest failures occurred in countries with rules based systems.
- **Foster enabling relationships with industry**, ensuring they work together to cultivate a genuinely ethical and trustworthy financial services industry in Ireland, that provides products and services that are both fit for purpose and which the consumer values.

Reform of financial services regulation in Ireland

Although there are a number of possible ways to achieve regulatory reform, we believe that the following objectives must be met:

- Provide for distinct regulatory priorities and clear accountability for each area of financial regulation;
- Minimise the current conflicts that exist between prudential regulation, consumer protection and securities markets supervision;
- Provide for enhanced regulatory competence, both at board and staff level, by focusing expertise and experience within expert regulators. This in turn should lead to a greater understanding of market complexities, more proactive regulation and more timely enforcement action;
- Provide for greater levels of on-going dialogue and interaction between the regulator and the regulated;
- Be consistent with the emerging EU approach as detailed in the de Larosiere report and the recent communication from the Commission on European financial supervision;
- Restore the reputation of and investor and consumer confidence in the effectiveness of Ireland's regulatory system.

Conclusion

The type of regulatory reform to be implemented needs to be considered very carefully and it must not only seek to address the regulatory failings that have emerged, but must also send a signal to international markets that Ireland is serious about repairing its regulatory system and adopting an effective regulatory model that delivers over the long term.

In order to achieve this, the revised regulatory system must exhibit the key regulatory characteristics detailed in this commentary. In our view, the various policy choices and decisions that are required to develop such a system need to be properly and transparently debated, not least through a proper consultation process with the industry, a role for which the Industry Panel seems well suited and to which the Minister committed himself in April.