

# **Code of Practice for the Governance of State Bodies**

August 2016

# Preface

The first set of guidelines on corporate governance in State bodies entitled “*State Bodies Guidelines*” was published by the Department of Finance in March 1992. The guidelines were updated in October 2001 and May 2009. The following is an update by the Department of Public Expenditure and Reform to take account of governance developments, public sector reform initiatives and stakeholder consultations.

The high level principles of the *Code of Practice for the Governance of State Bodies* are set out at the beginning of each section of this Code.

The *Code of Practice for the Governance of State Bodies* is hereafter referred to as “*the Code*”.

It should be noted that:

- this Code should be read in conjunction with the legislative provisions which govern the State body. Existing legislative provisions<sup>1</sup> applying to a State body on matters that are also the subject of this Code, continue to apply and for the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail;
- provisions contained in this Code, including financial thresholds, may be amended from time to time by the Minister for Public Expenditure and Reform, having consulted with relevant Ministers;
- the Minister for Public Expenditure and Reform may issue circulars and/or guidance notes, from time to time, in relation to this Code;
- the National Treasury Management Agency (Amendment) Act 2014 which, inter alia, established NewERA in statute, has introduced new requirements in relation to the corporate governance of certain State bodies designated in that Act; and
- arrangements for appointments to the Boards of State bodies, including the Boards of New Economy and Recovery Authority (NewERA) companies, are set out in the [Guidelines on Appointments to State Boards](#), as amended from time to time, and published by the Department of Public Expenditure and Reform (and as supplemented by the Appendix relating to the NewERA companies). Additional arrangements for appointments to State Boards may also be set out in the legislation governing the establishment of the State body.

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<sup>1</sup> Any reference contained in this Code of Practice, whether a reference to any enactment or otherwise, should be construed as a reference to such provision as amended, adapted or extended from time to time;

It is intended that this Code will be a living document which will evolve in line with best practice. The most recent version of this Code is available on the Department of Public Expenditure and Reform Government Accounting website ([govacc.per.gov.ie/governance-of-state-bodies](http://govacc.per.gov.ie/governance-of-state-bodies)).

**This Code is effective from the 1<sup>st</sup> of September 2016**

## Associated Code Documents

The *Code of Practice for the Governance of State Bodies* should be read in conjunction with the associated Code requirement and guidance documents.

The documents (available at [govacc.per.gov.ie/governance-of-state-bodies](http://govacc.per.gov.ie/governance-of-state-bodies)) are as follows:

1. [Business and Financial Reporting Requirements](#)
2. [Audit and Risk Committees Guidance](#)
3. [Remuneration and Superannuation](#)
4. [Board Self-Assessment Evaluation Questionnaire](#)

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# Introduction

Corporate governance comprises the systems and procedures by which organisations are directed, controlled and managed. State bodies should serve the interests of Government as shareholder, the taxpayer, and all other stakeholders, and pursue value for money in their endeavours, including managing risk appropriately. State bodies should act prudently, ethically and with transparency as public entities and should conduct their activities consistent with their statutory responsibilities.

High standards of corporate governance in State bodies, whether in the commercial or non-commercial sphere, are critical to ensuring a positive contribution to the State's overall economic efficiency, competitiveness, social cohesion and regional development.<sup>2</sup>

The Board and Management of the State body are accountable for the proper management of the organisation. Board members and employees of State bodies and their subsidiaries should be strongly guided by the principles set out in this Code in meeting their responsibility to ensure that all activities, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance.

Good governance in the public sector encourages better informed and longer term decision-making as well as the efficient use of resources. It strengthens accountability for the stewardship of resources and is characterised by robust scrutiny which places ongoing emphasis on improving public sector performance.<sup>3</sup>

The corporate governance framework typically comprises elements of legislation, regulation, self-regulatory arrangements, voluntary codes, commitments and business practices that have evolved within the organisation.

## About this Code

The Code provides a framework for the application of best practice in corporate governance by both commercial and non-commercial State bodies. State bodies should demonstrate their commitment to achieving the highest possible standards of corporate governance.

State bodies and their subsidiaries are required to confirm to their relevant Minister that they comply with this *Code of Practice for the Governance of State Bodies* in their governance practices and procedures. The requirements should be applied in all trading subsidiaries and, as appropriate, in joint ventures of the State bodies. Appropriate confirmation should be provided to the relevant Minister in relation to these.

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<sup>2</sup> Adapted from the "Guidelines on Corporate Governance of State-Owned Enterprises" (OECD, 2015) page 11

<sup>3</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 6

The Code concerns both the internal practices of the State bodies and their external relations with Government, the relevant Minister under whose aegis they fall, the Minister for Public Expenditure and Reform and their respective parent Departments. Reference is made to ethics in public office obligations that apply to all designated Board members and designated office holders.

It is recognised, however, that all aspects of this Code may not necessarily be appropriate for some smaller State bodies. Accordingly, the Code makes provision for certain requirements to be applied proportionately in certain circumstances subject to the written agreement of the relevant Minister/Parent Department.

The provisions of this Code do not override existing statutory requirements and other obligations imposed by the Companies Act 2014, Ethics in Public Office legislation, the specific statutory provisions relating to the State body itself and any other relevant legislation (e.g. equality legislation, employment legislation).

Where it is appropriate, State bodies should, in addition to complying with this Code, also comply in so far as it is practicable with the Irish Corporate Governance Annex (“Irish Annex”) that supplements the provisions of the Financial Reporting Council’s “UK Corporate Governance Code 2016”, which is set out in the published [Listing Rules of the Irish Stock Exchange](#).

## Oversight Agreements

Clear accountability underpins effective relations between Government Departments and the State bodies under their aegis. Effective accountability depends upon respective roles and responsibilities being clearly defined and understood on both sides of the agreement.

The starting point for clarity of accountabilities is the oversight agreement between the relevant Minister/parent Department and the State body. For commercial State bodies the oversight agreement is the Shareholder Letter of Expectation. For all other State bodies the oversight agreement is a written statement between the relevant Minister/parent Department and the State body under its aegis which clearly defines the terms of the parent Departments relationship with that body.

The oversight agreement should reflect the State bodies legal framework; the environment in which it operates (e.g. commercial, non-commercial, regulatory body); the purpose and responsibilities of the State body; the State body’s level of compliance with this Code; details of the Performance Delivery Agreement (e.g. outputs to be delivered); and arrangements for oversight, monitoring and reporting on conformity with Government policy including those actions and areas of expenditure where prior sanction from the parent Department and/or the Department of Public Expenditure and Reform is required.

# Compliance Requirements

All State bodies have a responsibility to implement good corporate governance standards.

Some State bodies may consider that certain requirements of this Code may have a disproportionate effect on them because of the nature and scale of their activities, their business model, the resources available to them, and/or their governing statutes. Instead of a Board structure, some State bodies may be constituted in the form of an individual office holder, tribunal, commission or regulatory body. Where appropriate, the relevant body should reach agreement and formally document with the relevant Minister/parent Department the extent to which the compliance requirement might be suitably adapted in their case. The State body should then note the agreement reached in its annual report and explain whether the requirements are to be phased-in over a longer period of time, or otherwise varied in some way.

Commercial State bodies or their subsidiaries that are involved in strategic alliances, joint ventures or other shareholding arrangements with shareholders other than the State may consider that certain aspects of this Code are not easily enforceable in those ventures. In such circumstances, a commercial State body should take all reasonable steps to ensure that such ventures comply with the principles of corporate governance applicable to commercial State bodies/companies generally and confirm to the relevant Minister that this has been done.

In addition to commercial and non-commercial State bodies, regulatory bodies are also covered by this Code. The 2007 Department of the Taoiseach report [“Bodies in Ireland with Regulatory Powers”](#) defines a regulatory body as one that has statutory recognition, and has functions in at least two of the following three areas of activity:

1. The formulation of goals, the making of rules, [and/or] the setting of standards;
2. Monitoring, gathering information, scrutiny, inspection, audit and evaluation; and/or
3. Enforcement, modifying behaviour, applying rewards and sanctions.

In addition to its regulatory role, a regulatory body has the following features:

- It is an independent organisation, separate from any other body.
- It has some capacity for autonomous decision-making.
- There is some expectation of continuity over time.
- It has some financial resources.

This Code will apply to all such bodies described above including State bodies who generate their own income and are not funded directly by the Exchequer.



## Comply or Explain

As outlined, exemptions from specific provisions in this Code may be justified in certain situations provided the objectives of those provisions can be achieved by other governance measures. Any State bodies with derogations from the provisions of this Code should also have explanatory notes written into their oversight agreements with the relevant Minister/parent Departments with reasons for the exemptions clearly explained.

# Definition of a State Body

While there is no precise definition of a State body, the following criteria will be of assistance in defining such a body<sup>4</sup>:

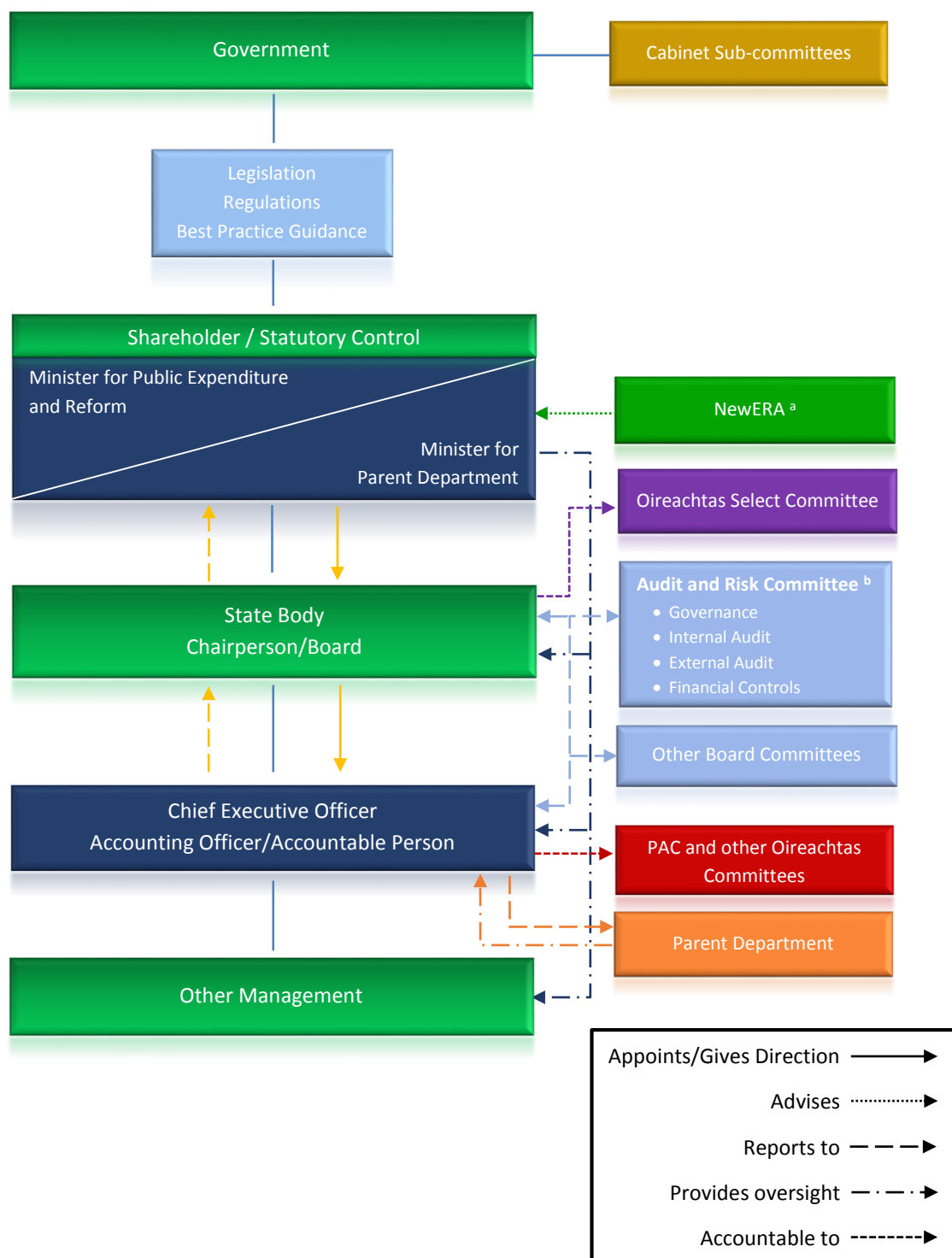
1. The Minister<sup>5</sup> presents legislation relating to the body to the Houses of the Oireachtas.
2. The Minister lays the body's financial statements and/or annual report before the Houses of Oireachtas.
3. The Minister and/or the Department has statutory responsibility for one or more of the following:
  - a. provision of funding;
  - b. presentation of estimates in the Dáil;
  - c. nomination / dismissal of all / majority of the members of a body's Board, Authority or other governing body;
  - d. appointment of Chief Executive Officer (CEO);
  - e. consent functions in relation to remuneration, superannuation, fees; and/or
  - f. consent functions in relation to borrowing.
4. The statutory basis of the body.
5. The Minister sets policy direction for the body.
6. The Minister has the power to issue directions, codes, regulations or guidelines in respect of the body.
7. The Minister approves Statements of Strategy.
8. The Secretary General of the parent Department is the Accounting Officer for the State body.
9. Employees in the body are participating/are eligible to participate in a Public Service Pension Scheme.

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<sup>4</sup> Adapted from "Corporate Governance Standard for the Civil Service" (Department of Public Expenditure and Reform, November 2015) pg 28

<sup>5</sup> 'Minister' in this section refers to the Minister of the parent Department under whose aegis the State body lies.

# Governance Framework



<sup>a</sup> NewERA (New Economy and Recovery Authority) provides, amongst other things, financial and commercial advisory services to the relevant Government Ministers in relation to a number of commercial State bodies (Bord na Móna; Coillte Teoranta; EirGrid; Ervia, ESB; and Irish Water). NewERA can also be requested to advise Ministers in relation to other State bodies and assets.

<sup>b</sup> In general, the Audit and Risk Committees should be combined, however, in some larger entities there may be a requirement for separate Audit and Risk Committees.

# Governance Framework

The Governance Framework schematic on the previous page shows the main features of the governance framework relationship between Government and State bodies. The diagram does not purport to cover all aspects of this relationship which will vary depending on the differing nature, scale and responsibilities of the State body and the governing legislation establishing the State body.

In broad terms there are three types of State bodies: commercial State bodies, non-commercial State bodies and regulatory bodies. Commercial bodies are involved in commercial activities while non-commercial bodies have regulatory, developmental, service delivery or advisory roles. Other arrangements can include an Office Holder, e.g. the Ombudsman, multi-person commissions, e.g. Garda Ombudsman Commission, and tribunals, e.g. the Labour Court and An Bord Pleanála.

State bodies generally have governing legislation which provides for, inter alia, the appointment (by the relevant Minister) of the Board and the Chairperson, for the approval of the form of the annual report and financial statements, for the appointment of auditors and for the furnishing of such information as the Minister may require. The Chairperson and Board are ultimately responsible to the Minister (who is responsible to Government) for the operation and proper functioning of the State body.

The functions and duties of the Board are set out either in the governing legislation or the constitution, i.e. memorandum and articles of association, of the State body concerned. The Board should, using their high level functions and duties as a guide, prepare customised terms of reference for the Board.

Persons being proposed by Ministers for appointment as Chairpersons of State bodies are required to make themselves available to the appropriate Oireachtas Select Committee to discuss the approach which they will take to their role as Chairperson and their views about the future contribution of the State body or Board in question.<sup>6</sup>

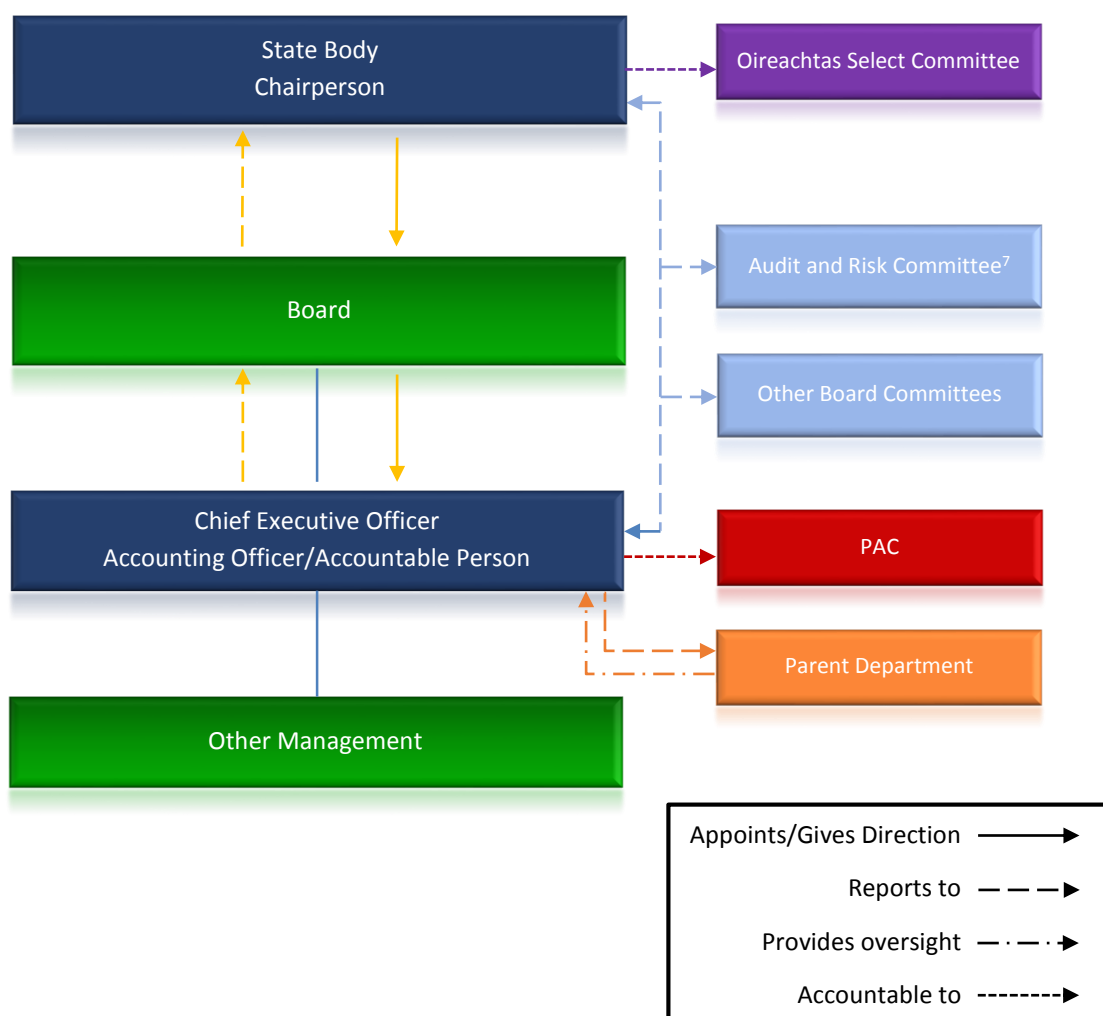
The governing legislation establishing most public bodies makes the CEO of the body accountable to the Public Accounts Committee (PAC) of the Oireachtas. This is on the basis that the financial statements of the State body are audited by the Comptroller and Auditor General and laid before the Oireachtas in accordance with the State body's governing legislation.

A small number of State bodies may have an Accounting Officer within the meaning of the Comptroller and Auditor General Amendment Act, 1993 with responsibility for Voted funds; others have an "Accountable Person" as defined in the State body's governing legislation. In such cases the accountability of the Accounting Officer/Accountable Person to the Oireachtas must be differentiated from that of the Board's general responsibilities.

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<sup>6</sup> "Guidelines on Appointments to State Boards" (Department of Public Expenditure and Reform, November 2014)

# Board of a State Body



The governing legislation establishing most State bodies makes the CEO of the State body accountable to the Committee of Public Accounts (PAC) of the Oireachtas. This is on the basis that the financial statements of the State body are audited by the Comptroller and Auditor General and laid before the Oireachtas in accordance with the provisions of the State bodies governing legislation.

Persons being proposed by Ministers for appointment as Chairpersons of Boards of State bodies are required to make themselves available to the appropriate Oireachtas select committee to discuss the approach which they will take to their role as Chairperson and their views about the future contribution of the State body or Board in question.<sup>8</sup>

Select committees of the Oireachtas examine policies, expenditure, administration and service delivery in defined areas. The Committee of Public Accounts (PAC) examines financial statements, scrutinises value for money and holds the Accounting Officer of a Government Department or Office to account for the use of public resources.

<sup>7</sup> In general, the Audit and Risk Committees should be combined, however, in some larger entities there may be a requirement for separate Audit and Risk Committees.

<sup>8</sup> "Guidelines on Appointments to State Boards" (Department of Public Expenditure and Reform, November 2014)

# 1. Role of the Board

## Principles

Each State body should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.

The Board is collectively responsible for leading and directing the State body's activities. While the Board may delegate particular functions to management the exercise of the power of delegation does not absolve the Board from the duty to supervise the discharge of the delegated functions.

The Board should fulfil key functions, including: reviewing and guiding strategic direction and major plans of action, risk management policies and procedures, annual budgets and business plans, setting performance objectives, monitoring implementation and State body performance, and overseeing major capital expenditure and investment decisions.<sup>9</sup>

The Board should act on a fully informed and ethical basis, in good faith, with due diligence and care, and in the best interest of the State body, having due regard to its legal responsibilities and the objectives set by Government.

The Board should promote the development of the capacity of the State body including the capability of its leadership and staff.

The Board is responsible for holding the CEO and senior management to account for the effective performance of their responsibilities.

## Code Provisions

- 1.1 Leadership:** The Board's role is to provide leadership and direction of the State body within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should agree the body's strategic aims with the Minister and parent Department, to the extent relevant, and ensure optimal use of resources to meet its objectives.
- 1.2 Ethical Standards:** The Board has a key role in setting the ethical tone of a State body, not only by its own actions but also in overseeing senior management and staff. High ethical standards are in the long term interests of the body and a key means to make it credible and trustworthy.<sup>10</sup> It is important that the Board sets the correct 'tone from the top'. The Board should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.
- 1.3 Compliance:** The Board should review the controls and procedures adopted by the State body to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the State body with their statutory and governance obligations.

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<sup>9</sup> Adapted from the "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 53

<sup>10</sup> Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 53

**1.4 Collective Responsibility:** The collective responsibility and authority of the Board should be safeguarded. All Board members should be afforded the opportunity to fully contribute to Board deliberations, and where necessary to provide constructive challenge, while excessive influence on Board decision-making by one or more individual members should be guarded against.

**1.5 Board Oversight Role:** The management of the State body has a duty to provide the Board with all necessary information to enable the Board perform their duties to a high standard. The Board of the State body should take all necessary steps to make themselves aware of any relevant information and access all information as necessary.

While the Board of a State body may establish an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board of the State body maintains responsibility for and makes the final decisions on all of these areas.

**1.6 Advice to Minister:** The Board should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body.

## Matters for Decision of the Board

**1.7 Matters for Decision of the Board:** The Board should meet sufficiently regularly to discharge its duties effectively.<sup>11</sup> The Board should have a formal schedule of matters specifically reserved for it for decision to ensure that the direction and control of the State body is firmly in its hands (some of these matters may require Ministerial approval).

This schedule should include, at least, the following:

- significant acquisitions, disposals and retirement of assets of the State body or its subsidiaries. The schedule should specify clear quantitative thresholds for contracts above which Board approval is required;
- major investments and capital projects;
- delegated authority levels, treasury policy and risk management policies;
- approval of terms of major contracts;
- in commercial State bodies, policy on determination of senior management remuneration (with the exception of the CEO);
- in non-commercial State bodies, assurances of compliance with statutory and administrative requirements in relation to the approval of the appointment, number, grading, and conditions of all staff, including remuneration and superannuation;
- approval of annual budgets and corporate plans;
- approval of annual reports and financial statements;
- appointment, remuneration and assessment of the performance of, and succession planning for, the CEO<sup>12</sup>; and
- significant amendments to the pension benefits of the CEO and staff.

The Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant.

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<sup>11</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 7

<sup>12</sup> Other titles may operate in certain bodies e.g. Managing Director, or there may be analogous roles such as Dean

- 1.8 Annual Confirmation:** The Board has responsibility for ensuring that effective systems of internal control are instituted and implemented. The Board is required to confirm annually to the relevant Minister that the State body has an appropriate system of internal and financial control in place.
- 1.9 Expenditure and Performance:** Decision on major items of expenditure should be aligned with medium to long-term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. A performance measurement system should be put in place to assess the effectiveness/outcome of such expenditure and this should be reported to the Board.
- 1.10 Post Resignation/Retirement:** The Board should, in a manner most effective to the State body, deal with the issue of post resignation/retirement employment, appointment and/or consultancy of its Board members and employees by the private sector and should ensure that any procedures that it may have put in place in this regard are monitored and enforced to guard against conflicts of interest or inappropriate disclosure of information that might otherwise arise. Such procedures could include the return of Board papers at the end of a Board members term.
- 1.11 Conflict of Interest:** The Board should have procedures in place to monitor and manage potential conflicts of interest of Board members and management (See paragraph 5.5).
- 1.12 External Auditors:** The Board should establish procedures for maintaining an appropriate relationship with the external auditors.
- 1.13 Written Charters:** The Audit and Risk Committee and other Board committees as well as the internal audit unit should each have written charters. The Board should agree the intervals within which the charters should be reviewed by the main Board and updated as appropriate.
- 1.14 Protected Disclosures:** In line with the legal requirement under section 21 of the Protected Disclosures Act 2014, every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. The public body shall provide to workers employed by the body written information relating to the procedures as set out above. Guidance for the purpose of assisting public bodies in the performance of their functions published by the Minister for Public Expenditure and Reform can be found [here](#).

## Statement of Strategy

- 1.15 Strategic Plan:** The preparation and adoption of a strategic plan is a primary responsibility of the Board of a State body. Such plans should set appropriate objectives and goals and identify relevant indicators and targets against which performance can be clearly measured. All State bodies, whether they are commercial, non-commercial or, for example, regulatory bodies, should have a formal process in place for setting strategy.
- 1.16 Commercial State Body:** The Board of a commercial State body should within the first six months of each financial year approve the submission of a draft annual rolling five-year business and financial plan, encompassing strategy (taking account of general sectoral policy as determined by the relevant Minister), planned investment and appropriate financial targets to the relevant Minister and, where



appropriate, the Minister for Public Expenditure and Reform and NewERA in accordance with paragraph 1.18.

Plans should reflect shareholders' objectives, as appropriate, and the strategic and legal mandate of the State body.

- 1.17 Non-commercial State Body:** The Board of each non-commercial State body, including bodies funded by way of levies or fees, should adopt a statement of strategy for a period of 3-5 years ahead or as otherwise mandated by their governing legislation.

The statement should be aligned to specific objectives in the parent Department's Statement of Strategy, to the extent relevant, and should also be consistent with any Government policies for the reform and modernisation of the Public Service as well as the statutory responsibilities of the body concerned.

The Statement of Strategy should contain a mission statement, high level objectives and target outputs and outcomes in the key strategic areas of body activity, as well as a statement on the resources to be deployed to meet the targets.

- 1.18 Ministerial Views:** A copy of the draft strategic plan (including, where relevant, plans for levy setting or own income generation) and the draft annual rolling five year business and financial plan should be sent to the relevant Minister, and, where appropriate, the Minister for Public Expenditure and Reform and NewERA<sup>13</sup> before the plan(s) are/is finalised and adopted by the Board.

Views which the Minister(s) wish to have reflected in the strategic plan and the annual rolling five year business and financial plan should be made known to the State body within a maximum period of twelve weeks of submission.

While final responsibility for the content of the plan rests with the Board in each case, the views of the Ministers and consideration of the public interest should be carefully weighed by the Board.

- 1.19 Implementation:** Implementation of the strategy by the management of each State body should be supported through an annual planning and budgeting cycle. The Board of each State body should approve an annual plan and/or budget and should formally undertake an evaluation of actual performance by reference to the plan and/or budget on an annual basis.

- 1.20 Annual Report and Financial Statements:** The Board should explain in the annual report their responsibility for the preparation of the annual report and financial statements<sup>14</sup> and whether they consider the financial statements to be a true and fair view of the State body's financial performance and its financial position at the end of the year.

There should be a statement by the external auditor in the external auditors' report about the Board's reporting responsibilities.

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<sup>13</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014.

<sup>14</sup> Apart from the case of a statutory body with responsibility for "Voted" funds, in which case the preparation of the annual Appropriation Account is the responsibility of the Accounting Officer.

**1.21 Secretary of the Board:** The Board has a duty to ensure that the person appointed as Secretary of the Board has the skills necessary to discharge their statutory and legal duties and such other duties as may be delegated by the Board. Both the appointment and removal of the Secretary of the Board should be a matter for the Board as a whole.<sup>15</sup>

**1.22 Role of Secretary of the Board:** The role of the Secretary of the Board should be seen as a support to the Board. The scale and scope of the role will depend on the size, nature and responsibilities of the State body.

The Secretary of the Board may be assigned such functions and duties as may be delegated by the Board. The duties can be classified as follows:

- statutory duties;
- duty of disclosure;
- duty to exercise due care, skill and diligence; and
- administrative duties.

**1.23 Governance:** The Secretary of the Board should report to the Chairperson on all Board governance matters and should assist the Chairperson in ensuring relevant information is made available to the Board and its committees.

The Secretary of the Board is responsible for advising the Board through the Chairperson on all governance matters. The Board should have a list of statutory obligations and regulations that are required to be complied with and the execution of which depends on the Secretary of the Board.

## Division of Responsibilities

### Principle

There should be a clear division of responsibilities between leading and managing the Board and the executive responsibility for running the State body. No one individual should have unfettered powers of decision.<sup>16</sup>

### Code Provision

**1.24 Separation of Roles:** The role of Chairperson and CEO should not normally be combined. If this occurs in exceptional circumstances, it should be with the consent of the relevant Minister unless it is required by specific statutory provisions relating to the particular State body. The division of responsibilities between the Chairperson and CEO should be clearly established, set out in writing and agreed by the Board.

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<sup>15</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 14

<sup>16</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 8

## 2. Role of the Chairperson

### Principle

The Chairperson is responsible for leadership of the Board and ensuring its effectiveness on all aspects of its role.<sup>17</sup>

The Chairperson should display high standards of integrity and probity and set expectations regarding culture, values, and behaviours for the State body and for the tone of discussions at Board level.

### Code Provisions

- 2.1 Board's Agenda:** The Chairperson and the CEO are responsible for the effective management of the Board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and the CEO should meet in advance of the Board meeting to agree the agenda.
- 2.2 Openness and Debate:** Essential to the effective functioning of the Board is dialogue which is both constructive and challenging. The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of key management and all Board members.
- 2.3 Timely Information:** The Chairperson is responsible for ensuring that the Board receive accurate, timely and clear information. The Chairperson should ensure effective communication with all relevant stakeholders.<sup>18</sup>
- 2.4 Board Skills:** Where a Chairperson is of the view that specific skills are required on the Board, he/she should advise the relevant Minister of this view for his/her consideration sufficiently in advance of a time when Board vacancies are due to arise. This is in order to seek to ensure that the process undertaken under the Guidelines for Appointments to State Boards identifies candidates with those skills and so that the Minister may take the Chairperson's views into consideration when making appointments from qualified candidates from the stateboards.ie process.
- 2.5 Information Flows:** Under the direction of the Chairperson, the responsibilities of the Secretary of the Board include ensuring good information flows within the Board and its committees and between senior management and non-executive Board members, as well as facilitating induction, mentoring and assisting with ongoing professional development as required.<sup>19</sup>
- 2.6 Comprehensive Report to the Minister:** The Chairperson of each State body should furnish to the relevant Minister and, where appropriate, NewERA<sup>20</sup> in conjunction with the annual report and financial statements of the State body, a comprehensive report to the relevant Minister covering the State body. (See paragraph 1.9 – Business and Financial Reporting Requirements).

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<sup>17</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 5

<sup>18</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 8

<sup>19</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

<sup>20</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014

- 2.7 Statement on Internal Control:** The Chairperson's report to the relevant Minister regarding the system of internal control should be included in the annual report of the State body. This statement should be reviewed by the external auditors to confirm that it reflects the audited body's compliance with the requirements of paragraph 1.9(iv) and is consistent with the information of which they are aware from their audit of the financial statements. The external auditor should include their report on this matter in their audit report on the financial statements.
- 2.8 Oireachtas Committee:** Persons being proposed by Ministers for appointment as Chairpersons of State bodies are required to make themselves available to the appropriate Oireachtas Committee to discuss the approach they will take to their role as Chairperson and their views about the future contribution of the body or Board in question<sup>21</sup>.

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<sup>21</sup> Taken from the Department of Public Expenditure and Reform's "Guidelines on Appointments to State Boards" (November 2014)

## 3. Role of Board Members

### Principle

Each State body should be headed by an effective Board which is collectively responsible for the long-term sustainability of the body.

Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct.

### Code Provisions

**3.1 Fiduciary Duty:** All Board members have a fiduciary duty to the State body in the first instance (i.e. the duty to act in good faith and in the best interests of the State body).

The principle fiduciary duties are<sup>22</sup>:

1. to act in good faith in what the Board member considers to be the interest of the company;
2. to act honestly and responsibly in relation to the conduct of the affairs of the company;
3. to act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
4. not to benefit from or use the company's property, information or opportunities for his or her own or anyone else's benefit unless the company's constitution permits it or a resolution is passed in a general meeting;
5. not to agree to restrict the Board member's power to exercise an independent judgment unless this is expressly permitted by the company's constitution;
6. to avoid any conflict between the Board member's duties to the company and the Board member's other interests unless the Board member is released from his or her duty to the company in relation to the matter concerned;
7. to exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member. A Board member may be held liable for any loss resulting from their negligent behaviour; and
8. to have regard to interests of the company's members.

The powers of governance and management of a company are delegated by the members of the company to the Board and the Board owe their duties, first and foremost, to the company.

### Companies Act, 2014

Under the Companies Act 2014 there is specific statutory recognition for the fiduciary duties of directors of companies incorporated under the Companies Act, 2014 or the Companies Acts, 1963-2013. Boards of State

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<sup>22</sup> See section 228 of the Companies Act, 2014.

bodies formed under the Companies' Acts must adhere with the specific duties and obligations they have under the Companies Act 2014.

**3.2 Companies Act 2014:** The Board of State bodies incorporated under the Companies Act, 2014 or the Companies Acts, 1963-2013 have duties under the Companies Act, 2014 and related law, and it is the responsibility of each Board member to act in conformity with applicable provisions.

A Board member, as a company director, shall comply with the notification requirement to the Registrar of Companies upon becoming a Board member with a signed statement in the following terms:

*"I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Act, other statutes and common law".*

Part 5 of the Companies Act 2014 consolidates the duties and responsibilities of directors in one unified code for clarity and transparency. The Companies Act, 2014 applies to all company directors, incorporated under the provisions of the Companies Act, 2014 or under any former company law enactment including those directors that have been formally appointed and to de facto directors.

The Companies Act 2014 also includes a number of general duties for directors:

- Directors must ensure compliance with the Companies Act and the various tax acts.
- Directors must ensure that the company secretary is suitably qualified.
- Directors must acknowledge the existence of their duties by signing a declaration to that effect.
- Directors must take into account the interests of the members of the company and have regard to the interests of the employees.
- Restrictions on loans, quasi loans, credit transactions and certain guarantees and security exist for directors, but will be subject to the new summary approval procedure.
- Directors must disclose any interests in contracts made by the company.
- Directors must notify the company of any interests in shares in the company, its parent or subsidiary but no obligation arises if the shares held represent less than 1% of the share capital of the company or the shares do not have voting rights.

Directors who are found to be in breach of their duties will be liable to account for any gains accrued and must indemnify companies for losses resulting from any breaches of duties. A court may grant relief from liability where it is satisfied that a director acted honestly and reasonably at all times.

**3.3 Non-compliance:** If a Board member/Director finds evidence that there is non-compliance with any statutory obligations that apply to the State body, he/she should immediately bring this to the attention of their fellow Board members/Directors with a view to having the matter rectified.

The matter should also be brought to the attention of the relevant Minister by the Chairperson indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position. It is the Chairpersons responsibility to make such issues known to the Minister.

**3.4 Civil Servants:** Non-commercial State bodies operate in a context where public policy objectives (either economic or social) are central to its mission. Where there is a significant public policy issue at stake or a disagreement within the Board on a major public policy issue, the civil servant should request the Chairman to notify the relevant Minister or, failing that, notify the Minister himself/herself.

Department of Finance [Circular 12/2010: Protocol for Civil Servants Nominated to the Boards of Non-commercial State Bodies](#) outlines the steps to be taken when a civil servant nominee to the Board of non-commercial State bodies has an unanswered concern where there is a significant public policy issue at stake.

As per the Circular 12/2010, the Minister must be notified without delay where:

- i) there are serious weakness in controls that have not been addressed despite being drawn to the attention of the Board or the Chairperson;
- ii) there is a significant strategic or reputational risk to the State body that is not being addressed; and/or
- iii) there are serious concerns about possible illegality or fraud occurring in a State body. A Board member may have obligations under company law (if it applies) in situations where a State body is not being conducted in accordance with law - this may require that action be taken in addition to reporting matters to the Minister.

**3.5 Professional Advice:** The Board should, in a Board resolution, lay down formal procedures whereby Board members, in the furtherance of their duties, may take independent professional advice, if necessary, at the reasonable expense of the State body where they judge it necessary to discharge their responsibilities as Board members. The Board should have in place a procedure for recording the concerns of Board members that cannot be resolved.

**3.6 Letter of Appointment:** A formal standard letter of appointment should be issued to new Board members from the relevant Minister. The letter of appointment should include the following:

- role of the Board and that of a Board member;
- the Board's terms of reference;
- duration of appointment and renewal provisions;
- support and training to be provided;
- the time commitment involved;
- level of remuneration;
- conflict of interest rules;
- termination arrangements; and
- rules on confidentiality.

## Appendix A: Model Board Terms of Reference

# Briefing for New Board Members

**3.7** On the appointment of new Board members, the Secretary of the Board should provide them with the following information:

- a formal schedule of matters reserved to the Board for decision (see paragraph 1.7);
- procedures for obtaining information on relevant new laws and regulations;

- procedures to be followed when, exceptionally, decisions are required between Board meetings;
- a schedule detailing the composition of all Board committees and their terms of reference;
- a statement explaining the Board members' responsibilities in relation to the preparation of the financial statements, the State body's system of internal control and audit and for reporting on the business as a going concern with supporting assumptions or qualifications as necessary;
- a statement informing Board members that they have access to the advice and services of the Secretary of the Board, who is responsible to the Board for ensuring that Board procedures are followed and that these procedures comply with the applicable rules and regulations;
- a copy of the code of ethics/conduct for Board members, including requirements for disclosure of Board members' interests and procedures for dealing with conflict of interest situations;
- specific information on the role and responsibilities of the State body;
- a copy of relevant legislation (or excerpts thereof) together with the most up to date version of this Code and any relevant circulars and/or guidance notes; and
- a listing of the statutory requirements relating to the State body.

**3.8 Independent judgement:** Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct. Section 3 of this Code sets out the approach to dealing with any business or other interests of a Board member that could affect the Board members' independence.

**3.9 Attendance Requirement:** Board members are appointed as they bring specific knowledge, skills, experiences and expertise to the deliberations of the Board and its committees and this is only possible if members attend all Board meetings and contribute as appropriate. The Board should clarify an expectation of 100% attendance at all Board meetings and as part of the assignment of a new Board member evaluate attendance when the member is due to be re-appointed.

**3.10 Access to Secretary of the Board:** All Board members should have access to the advice and services of the Secretary of the Board, who is responsible to the Board for ensuring that Board procedures are complied with. The Secretary of the Board is also responsible for the formal induction of new Board members and organising mentoring for Board members where required.



## 4. Board Effectiveness

### Principles

The Board and its committees should have the appropriate balance of skills and knowledge to enable them discharge their respective roles and responsibilities effectively.<sup>23</sup>

Board members should receive formal induction on joining the Board and should regularly update and refresh their skills and knowledge.<sup>24</sup>

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.<sup>25</sup>

Board members need to be able to allocate sufficient time to discharge their responsibilities effectively.<sup>26</sup>

The Board should undertake a self-assessment annual evaluation of its own performance and that of its Board committees. Evaluation of the Board should consider the balance of skills, experience, independence and knowledge of the State body on the Board, its diversity, including gender, how the Board works together as a unit, and other factors relevant to its effectiveness.<sup>27</sup>

The Chairperson should act on the results of the performance evaluation by addressing any weaknesses identified through the Board self-assessment evaluation.

### Code Provisions

**4.1 Board Appointments:** Board appointments must be made in compliance with the Public Appointments Service process set down in the [Guidelines on Appointments to State Boards](#) published by the Department of Public Expenditure and Reform, except where the manner of such appointment is otherwise prescribed in the specific statutory provisions relating to the State body.

**4.2 Skills and Knowledge:** Board members should have the appropriate skills and knowledge, updated as required, appropriate to the activities of the State body, to enable them to discharge their respective duties and responsibilities effectively. This should include the identification by the Board of any gaps in competencies and ways these gaps could be addressed through future appointments.

Skill gaps present on the Board should be brought to the attention of the relevant Minister by the Chairperson of the Board sufficiently in advance of a time when Board vacancies are due to arise , as outlined in paragraph 2.4.

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<sup>23</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 10

<sup>24</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

<sup>25</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

<sup>26</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 12

<sup>27</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 14

**4.3 Specific Skills:** In compliance with the Guidelines on Appointments to State Boards, in preparing a specification for a role on a State Board the relevant Minister will consult with the Chairperson of the Board to seek his or her view on the specific skills that are required on the Board.

**4.4 Diversity:** Appointments to State Boards should be made against objective criteria with due regard for the benefits of diversity on the Board. The Chairperson of the Board, in assisting the Department in drawing up the specification for the Board appointment should have due regard for the benefits of diversity on the Board including gender.

Chairpersons should maintain a focus on those Boards on which either women or men are significantly under-represented and should actively seek to appoint candidates of the under-represented gender from the Public Appointments Service short list where possible.

**4.5 Terms of Appointment:** Consistent with best corporate governance practice it is recommended that no member of a State Board should serve more than two full terms of appointment on that Board, or should hold appointments to more than two State Boards, at the same time, unless the specific statutory provisions relating to the particular State body enable such service. In this context, a full term is regarded as five years. It is recommended that the first appointment be for a period of five years, which can be renewed for up to five years, to a maximum of ten years in total. If exceptionally it is decided that a Board member should serve a further additional Board term, this requires Ministerial approval.

State bodies should vary the length of terms of appointment to ensure that the Board does not have to be replaced en masse and to ensure that the Board has the necessary experience to discharge their responsibilities effectively.

**4.6 Performance Review:** Monitoring of effective corporate governance by the Board includes continuous review of the internal structure of the State body to ensure that there are clear lines of accountability for management throughout the organisation. In addition to requiring the monitoring and disclosure of corporate governance practices on a regular basis, the Board should undertake an annual self-assessment evaluation of its own performance and that of its committees. An external evaluation proportionate to the size and requirements of the State body should be carried out at least every 3 years.

**4.7 Statement of How the Board Operates:** The annual report should include a statement of how the Board operates, including a high level statement of which types of decisions are to be taken by the Board and which are to be delegated to management.<sup>28</sup>

**4.8 Appointment of CEO as Chairperson:** In general, the CEO should not go on to be the Chairperson of the same State body. Any exception to this requires Ministerial approval.

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<sup>28</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 7

- 4.9 Frequency of Board Meetings:** The frequency of meetings of the Board and its committees and the attendance of each Board member at Board meetings should be reported in the annual report. The Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant.

A model Board Self-assessment Evaluation Questionnaire is provided for use by the Board to self-assess/promote discussion regarding Board performance. The questionnaire can be found at [govacc.per.gov.ie/governance-of-state-bodies/](http://govacc.per.gov.ie/governance-of-state-bodies/).

## 5. Codes of Conduct, Ethics in Public Office, Additional Disclosure of Interests by Board Members and Protected Disclosures

### Principles

To ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Board should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.<sup>29</sup>

These policies should ensure that any potential or actual conflicts of interest arising in the case of decision-making by Board members and employees of the State body are addressed.

The Ethics in Public Office Acts 1995 to 2001 set out statutory obligations which apply to Board members and employees separately from the provisions of this Code.

### Code Provisions

- 5.1 Codes of Conduct:** All State bodies should have published Codes of Conduct for their Board and employees. The Code of Conduct should be approved by the Board. Up-to-date Codes of Conduct should be available on the State body's website and brought to the attention of all Board members, management and employees.
- 5.2 Scope of Application:** The Code of Conduct should contain a description of nature, intent and scope of application of the Code and a statement of the guiding principles and obligations.
- 5.3 Compliance Requirements:** The Code of Conduct should refer to the need for the Board and staff to comply with the requirements of the Companies Act 2014, if applicable, and any other relevant legislative and regulatory requirements. It should identify the relevant provisions regarding conduct/conflicts of interest in the governing legislation of the body.
- 5.4 Ethics in Public Office:** The Code of Conduct should refer to the need for each member of the Board of a State body holding a Designated Board membership and each person occupying a Designated Position of employment with a State body to ensure his/her compliance with relevant provisions of the Ethics in Public Office Acts 1995 and 2001.

Each Board member, whether he/she holds a designated directorship under the Ethics in Public Office Acts 1995 and 2001 or not, is required to follow the obligations set out in [Appendix B](#) regarding disclosure of interests.

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<sup>29</sup> Adapted from "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) pages 13-14

- 5.5 Conflicts of Interest:** The Code of Conduct should set out procedures for addressing conflicts of interest. In particular the Code of Conduct should recommend that the acceptance of further employment where the potential of conflict of interest arises should be restricted during a reasonable period of time after the exercise of a function in the State body has ceased. This should be brought to the attention of Board members on their appointment to the Boards.
- 5.6 Non-disclosure of Information:** The Code of Conduct should make clear that obligations of the Board and employees regarding the non-disclosure of privileged or confidential information do not cease when Board membership or employment in the State body has ended. This should be brought to the attention of employees and of Board members on their appointment to the Board. Former Board members should treat commercial information received while acting in that capacity as confidential.
- 5.7 Document Retention:** Board members should not retain documentation obtained during their terms as a Board member and should return such documentation to the Secretary of the Board or otherwise indicate to the Secretary of the Board that all such documentation in their possession has been disposed of in an appropriate manner. In the event that former Board members require access to Board papers from the time of their term on the Board, this can be facilitated by the Secretary of the Board.

## Appendix B: Outline of Obligations under Ethics in Public Office Acts

## Appendix C: Framework for a Code of Conduct

# Additional Disclosure of Interests by Board Members

## Code Provisions

### 5.8 Disclosure of Interests by Board Members

- i) **Periodic Disclosure of Interests:** On appointment and annually thereafter, each Board member should furnish to the Secretary of the Board<sup>30</sup> or other nominated person a statement in writing of:

- (a) the interests of the Board member;
- (b) the interests, of which the Board member has actual knowledge, of his or her spouse or civil partner, child, or child of his/her spouse or civil partner;

which could materially influence the Board member in, or in relation to, the performance of his/her official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the Board member, or the spouse or civil partner or child, a substantial benefit.

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<sup>30</sup> Where the Board member is a designated director, the form should be furnished to the 'officer of the body' determined under the Ethics Acts by the Minister for Public Expenditure and Reform for that directorship.

For the purposes of this disclosure, interests has the same meaning as that contained in the Ethics in Public Office Act 1995. The statement of interests form used for annual statements under the 1995 Act could be utilised for this purpose on an administrative basis. Where the Board member is also a designated director for the purposes of the Ethics Acts, the annual statement of interests furnished in January each year under section 17 of the Ethics in Public Office Act 1995 will suffice for the purposes of the annual disclosure of interests under this Code.

- ii) **Disclosure of interest relevant to a matter which arises:** In addition to the periodic statements of interest required under (i) above, Board members are required to furnish a statement of interest at the time where an official function falls to be performed by the Board member and he/she has actual knowledge that he/she, or a connected person as defined in the Ethics Acts, has a material interest in a matter to which the function relates. For the purposes of this disclosure, material interests has the same meaning as that contained in the Ethics in Public Office Act 1995.
- iii) **Doubt:** If a Board member has a doubt as to whether an interest should be disclosed pursuant to this Code, he/she should consult with the Chairperson of the Board and/or the nominated person in the State body for dealing with such queries.
- iv) **Confidential Register:** Details of interests disclosed under this Code should be kept by the Secretary of the Board or other nominated person in a special confidential register. Access to the register should be restricted to the Chairperson and Secretary of the Board and other members of the State body on a strictly need to know basis.
- v) **Chairperson's Interests:** Where a matter relating to the interests of the Chairperson arises, the other members attending the meeting shall choose one of the members present at the meeting to chair the meeting. The Chairperson should absent himself/herself when the Board is deliberating or deciding on a matter in which the Chairperson or his/her connected person has an interest.
- vi) **Documents withheld:** Board or State body documents on any deliberations regarding any matter in which a member of the Board has disclosed a material interest should not be made available to the Board member concerned.
- vii) **Early return of documents:** As it is recognised that the interests of a Board member and persons connected with him/her can change at short notice, a Board member should, in cases where he/she receives documents relating to his/her interests or of those connected with him/her, return the documents to the Secretary of the Board at the earliest opportunity.
- viii) **Absent:** A Board member should absent himself/herself when the Board is deliberating or deciding on matters in which that Board member (other than in his/her capacity as a member of the Board) has declared a material interest. In such cases consideration should be given as to whether a separate record (to which the Board member would not have access) should be maintained. (NB. Board members who are designated directors should note the separate requirements under the Ethics in Public Office Acts 1995 and 2001 regarding a 'material interest').

- ix) **Uncertainty:** Where a question arises as to whether or not an interest declared by a Board member is a material interest, the Chairperson of the Board should determine the question as to whether the provisions of this Code apply. Where a Board member is in doubt as to whether he or she has an obligation under the Ethics in Public Office Acts 1995 and 2001, he or she should seek advice from the Standards in Public Office Commission under section 25 of the Ethics in Public Office Act 1995.

## Protected Disclosures Legislation

- 5.9** **Protected Disclosures Act 2014:** Section 21 of the Protected Disclosures Act 2014 requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the public body.
- 5.10** **Guidance:** The Minister for Public Expenditure and Reform has published Guidance for the purpose of assisting public bodies in the performance of their functions under section 21(1) of [Protected Disclosures Act 2014](#) (available on the Department of Public Expenditure and Reform website). Public bodies shall have regard to this Guidance when establishing and maintaining their own protected disclosures procedures under the Act.
- 5.11** **Annual Report:** Public bodies shall publish a report on protected disclosures in accordance with section 22 of the Protected Disclosures Act 2014 not later than 30 June in each year.

## 6. Business and Financial Reporting

### Principles

Taking account of public accountability and the special considerations which attach to State bodies in relation to their management and operation, the annual report and financial statements, taken as a whole, should be fair, balanced and understandable and provide the information necessary for an assessment of the State body's financial performance, financial position, business model and strategy.<sup>31</sup>

A fundamental duty of the Board is to ensure that a balanced, true and fair view of the State body's financial performance and financial position is made when preparing the annual report and financial statements of the State body and when submitting these to the relevant Minister.

The Board should ensure that timely and accurate disclosure is made to the relevant Minister on all material matters regarding the State body, including the business context, financial performance and position, and governance of the State body.<sup>32</sup>

### Code Provisions

The publication of an annual report and audited financial statements is a primary expression of public accountability for State bodies. The objective of financial statements is to provide information about the financial performance, position and cash flows of the State body that is useful for economic decision-making for a broad range of stakeholders.<sup>33</sup>

The Board of a State body is required to arrange for the preparation of the financial statements in respect of each financial year. The annual financial statements are prepared from the information contained in the State bodies accounting records and other relevant information and in accordance with the accounting standards applicable to the State body.

The Board must present financial statements of a State body that give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the State body as at the financial year end.

Reference to financial statements giving a "*true and fair view*" means in the case of an entity and group financial statements, that the financial statements present fairly the income and expenses (financial performance), assets, liabilities and capital (financial position), and cash flows of the State body or group concerned.

In order for a set of financial statements to give a true and fair view they should<sup>34</sup>:

- comply with the accounting standards applicable to the State body;
- incorporate judgment as to valuation, disclosure, and materiality that aim to give a true and fair view;

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<sup>31</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 16

<sup>32</sup> Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 41

<sup>33</sup> Adapted from "FRS 102" (Financial Reporting Council, September 2015) page 28

<sup>34</sup> Adapted from the "The Principal Duties and Powers of Company Directors under the Companies Act" (ODCE, 2015)



- be prudent in the consideration of matters of judgment in the financial statements, especially where there is uncertainty; and
- ensure that the financial statements reflect the commercial substance of transactions, and not just their legal form.

The Board is required to arrange for the financial statements to be audited by an independent auditor. The external audit of non-commercial State bodies is carried out by the Comptroller and Auditor General.

An audit is an independent examination of the financial statements. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. Having conducted an examination of the financial statements, the auditor is required to report to the Board of the State body. In that report, the auditor is required to form an opinion on a number of matters including, for example whether the financial statements give a true and fair view and whether the financial statements are in agreement with the underlying accounting records.

The annual report, comprising the financial statements and commentary thereon, is a comprehensive report of the State body's activities throughout the preceding year. Annual reports are intended to give stakeholders information regarding the State body's activities and financial performance.

Each Government Department should lay the annual report and audited financial statements of State bodies under its aegis before the Houses of the Oireachtas within two months of such accounts being received by the Department, together with any report of the Comptroller and Auditor General on the financial statements.

Where a Department must first present the annual report and financial statements to the Government, this should be done at the earliest opportunity. In such cases Departments must in any event lay the financial statements of the State body before the Houses of the Oireachtas within three months of being received by the Department, as set out in the [Department of Public Expenditure and Reform Circular 7/2015 - Timely Production and Submission of Accounts of Bodies and Funds audited by the Comptroller and Auditor General and the Laying before the Houses of the Oireachtas Special Reports of the Comptroller and Auditor General](#).

The Chairperson of a State body is required to submit a comprehensive report to the relevant Minister in accordance with the specific reporting requirements set out in paragraph 1.9 of *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements*. The Chairpersons comprehensive report to the Minister is a confidential letter from the Chairperson of the Board to the Minister of the parent Department. It includes items such as affirmation that Government policy is being complied with, significant post balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the State body in the preceding year.

**The Business and Financial Reporting Requirements associated with this Code are contained in the *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements* available at [govacc.per.gov.ie/governance-of-state-bodies/](http://govacc.per.gov.ie/governance-of-state-bodies/).**

## 7. Risk Management, Internal Control, Internal Audit and Audit and Risk Committees

### Principles

The Board should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the State body's auditors.

Risk management and internal control are important and integral parts of a performance management system and crucial to the achievement of outcomes. They consist of an ongoing process designed to identify and address significant risks involved in achieving an entity's outcomes.<sup>35</sup>

Advising on key risk is a matter for the Board. The Audit and Risk Committee should support the Board in this role.

### Code Provisions

**7.1 Risk Management Policy:** Each State body should develop a Risk Management Policy and the Board should approve the risk management framework and monitor its effectiveness. The Board should review material risk incidents and note or approve management's actions, as appropriate.

**7.2 Risk Management:** Key elements of the Board's oversight of risk management include:

- establishing an Audit and Risk Committee to give an independent view in relation to risks and risk management systems;
- making risk management a standing item on the Board meeting agenda;
- advising the relevant Minister of the need to include risk management experience/expertise in the competencies of at least one Board member. Where composition of the Board does not allow for this, expert advice should be sought externally;
- appoint a Chief Risk Officer or empower a suitable management alternative, and provide for a direct reporting line to the Board to identify, measure and manage risk and promote a risk management culture in the organisation;
- approve the risk management policy, set the State body's risk appetite, and approve the risk management plan and risk register at least annually;
- review management reporting on risk management and note/approve actions as appropriate;
- require external review of effectiveness of risk management framework on a periodic basis; and
- confirmation in the annual report that the Board has carried out an assessment of the State body's principal risks, including a description of these risks, where appropriate, and associated mitigation measures or strategies.

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<sup>35</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 27

# Internal Control

- 7.3 Internal Control:** The Board is responsible for ensuring that effective systems of internal control are instituted and implemented in the State body including financial, operational and compliance controls and risk management and the Board should review the effectiveness of these systems annually.

The following are the key internal control procedures designed to provide effective internal control including:

- i) the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures);
- ii) processes used to identify business risks and to evaluate their financial implications;
- iii) details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
- iv) the procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud); and
- v) the procedures for monitoring the effectiveness of the internal control system which may include: Audit and Risk Committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the heads of internal audit.
- vi) Confirmation in the annual report that there has been a review of the effectiveness of the system of internal control.

## Review of Effectiveness of Internal Control

- 7.4 Effectiveness of Internal Control:** The existence of risk management policies and internal control systems do not on their own constitute effective risk management. Effective and on-going monitoring and review are essential elements of sound systems of risk management and internal control. Reviewing the effectiveness of internal control is an essential part of the Board's responsibilities. The Board is required to form its own view on effectiveness of internal control systems based on the information and assurances provided.

- 7.5 Annual Review of Effectiveness of Internal Control:** The Board should undertake an annual review of the effectiveness of internal control systems to ensure that it has considered all aspects of risk management and internal control for the year under review and up to the date of approval of the annual report and financial statements.

The annual review of effectiveness should consider the following<sup>36</sup>:

- changes since the last review in the nature and extent of significant risks and the ability of the State body to respond effectively to changes in its business and external environment;
- the scope and quality of management's ongoing monitoring of risks and the system of internal control and, where applicable, the work of its internal audit unit and other providers of assurance;

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<sup>36</sup> Adapted from "Internal Control: Revised Guidance for Directors on the Combined Code" (FRC, October 2005) paragraph 31

- the extent and frequency of the communication of the results of the monitoring to the Board, or Board committees, which enables it to build up a cumulative assessment of the state of control in the State body and the effectiveness with which risk is being managed;
- the incidence of significant control failings or weaknesses that have been identified at any time during the period and the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the company's financial performance or condition; and
- the effectiveness of the State body's public reporting process.

The annual review of effectiveness should conclude on the extent to which controls are adequate, and were operating and should outline actions required to address any deficiencies arising.

**7.6 Timely Completion of Review:** Timely completion of the annual review is critical if it is to fulfil its objectives of providing assurance in relation to the operation of controls in the reporting period. The annual review should be conducted close to the end of the period under review or as soon as possible after the end of the financial period under review, and no later than three months after the period end.

## Internal Audit

### Principle

Internal auditing is an independent, objective, assurance and consulting activity designed to add value and improve the organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.<sup>37</sup>

### Code Provisions

**7.7 Internal Audit Unit:** Each State body should have a properly constituted independent internal audit unit or engage appropriate external expertise which should operate in accordance with the provisions set out below. Where the size or the risk to the State body does not warrant a separate internal audit unit, access to such a unit should be put in place through a joint venture or client arrangement with another State body, or some other appropriate arrangement.

**7.8 Independence:** The internal audit unit shall be independent of the activities it audits. This is to provide it with an environment in which it can make unbiased judgements and provide impartial advice to management.

**7.9 Internal Audit Universe:** The internal audit unit should have the right to review all the management and control systems both financial and operational. The internal audit unit shall have unrestricted access to all functional areas, records (both manual and electronic), property, and personnel in the performance of its audits.

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<sup>37</sup> Definition from the Institute of Internal Auditors UK and Ireland (<http://www.theiia.org/guidance/standards-and-guidance/ippf/definition-of-internal-auditing/?search%C2%BCdefinition>)

Specifically, the internal audit unit shall be responsible for the effective review of both internal control and risk management.

- 7.10 Annual Programme of Audits:** The head of the internal audit unit shall be responsible for drawing up an annual programme of audits having regard to the organisation's Statement of Strategy and Risk Management policy in consultation with the Audit and Risk Committee.

The internal audit unit shall demonstrate objectivity, comprehensiveness and relevance to management, the Audit and Risk Committee and the Board in respect of the areas to be audited and the respective priorities for these audits within the programme.

The existence of the internal audit unit does not relieve line management of its responsibility for effective control of the activities for which it is responsible.

- 7.11** The internal audit unit shall function professionally, adhering to the *Code of Ethics* and *International Standards* of the Institute of Internal Auditors or equivalent professional standards.

The operation of the internal audit unit should follow the principles below:

- i) **Charter:** The internal audit unit should have a formal charter, including terms of reference, which has been approved by the Board. The reporting structure for internal audit should be clear and formally documented.
- ii) **Head of Internal Audit:** The head of the internal audit unit should have considerable seniority within the organisation and the content of all internal audit reports should be entirely at his/her discretion. The head of internal audit should report directly to the Audit and Risk Committee and should also have access to the Chairperson of the Board and the Chairperson of the Audit and Risk Committee. Functionally, the head of internal audit should report within the State body to such person as the Board decides and to the CEO.
- iii) **Compliance Tests:** In carrying out its on-going work, the internal audit unit should assess, using a risk based approach, the areas within its terms of reference (as set out in the audit charter), and report its findings to the Audit and Risk Committee.
- iv) **Resources:** The internal audit unit should be appropriately resourced consistent with its responsibilities under this Code with the necessary skills including the ability to deal with non-financial aspects.
- v) **External Auditors and Internal Audit:** The internal audit unit should liaise with the external auditors so that the potential for co-operation between the two is maximised. The work carried out by these two entities can frequently be complementary and effectiveness can be increased through regular consultation.
- vi) **Value for Money Auditing:** In planning, executing and reporting its work, the internal audit unit should ensure that value-for-money auditing receives adequate attention based on the principles and provisions of the Public Spending Code, where relevant.

- vii) **Procurement and Disposal:** The internal audit unit in each State body should review compliance with procurement and disposal procedures as required by the Audit and Risk Committee, from time to time, and report to the Audit and Risk Committee on these matters.

## Appendix D: Model Internal Audit Activity Charter

# Audit and Risk Committee

## Code Provisions

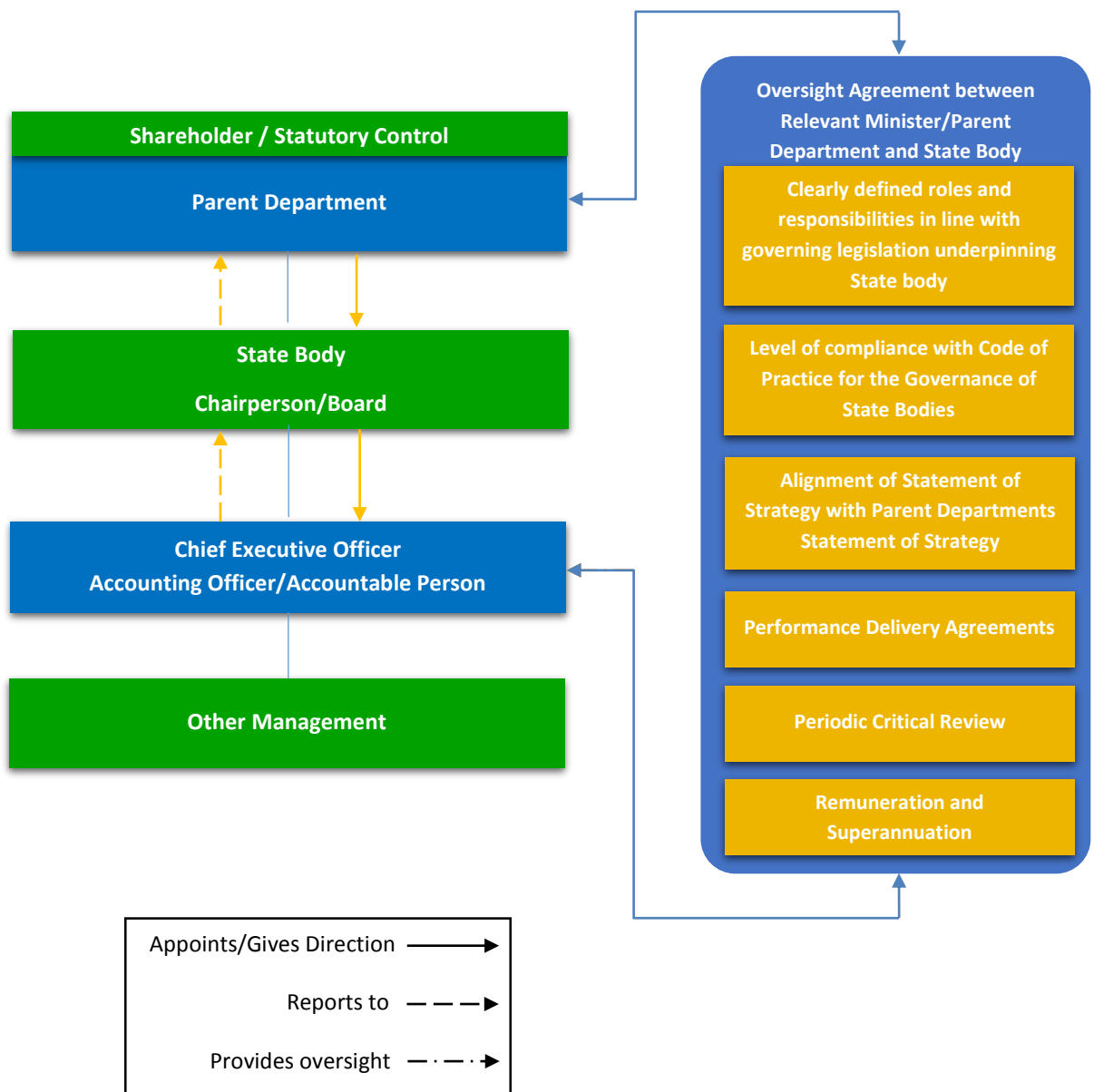
- 7.12 Audit and Risk Committee:** The Board of a State body should establish an Audit and Risk Committee of at least three independent non-executive Board members, or in the case of smaller bodies (less than 20 employees) two independent non-executive Board members, with written terms of reference which deal clearly with its authority and duties. Where a Board is constituted with only executive Board members other arrangements should be made to constitute an Audit and Risk Committee including the use of independent external personnel.

It is recommended for an Audit and Risk Committee to have members drawn from outside the Board. An Audit and Risk Committee is more likely to have the broad range of skills and experience necessary where its membership is not restricted to the Board. The Audit and Risk Committee should be empowered to co-opt members to provide specialist skills at a particular time and to procure specialist advice at reasonable and approved expense to the organisation to assist the committee with specific areas of committee business.

In general, the Audit and Risk Committees should be combined, however, in some larger entities there may be a requirement for separate Audit and Risk Committees.

The Audit and Risk Committee Guidance associated with this Code is contained in the *Code of Practice for the Governance of State Bodies – Audit and Risk Committee Guidance* available at [govacc.per.gov.ie/governance-of-state-bodies/](http://govacc.per.gov.ie/governance-of-state-bodies/).

# Department Oversight Role



The relevant Minister/parent Departments should have written oversight arrangements with State bodies under their aegis appropriate to the scale, nature, responsibilities and functions of the State body.

For commercial State bodies the oversight agreement is the Shareholder Letter of Expectation. For all other State bodies the oversight agreement is a written statement between the relevant Minister/parent Department and the State body under its aegis which clearly defines the terms of the relevant Minister's/parent Department's relationship with the State body.

## 8. Relations with the Oireachtas, Minister and Parent Department

### Principles

Good governance in the public sector is to ensure that entities achieve their intended outcomes as defined in their governing legislation and Statements of Strategy while acting in the public interest. This requires effective arrangements for defining outcomes in terms of sustainable economic, social, and environmental benefits which should be included in the State body's oversight agreement with their relevant Minister/parent Department.<sup>38</sup>

Good governance requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance.

Government Departments should have written oversight agreements with State bodies under their aegis. Any bodies having derogations from provisions of this Code should have such explanatory notes written into their oversight agreements. Reasons for exemptions should be clearly explained in the oversight agreement with the relevant Minister/parent Department.

There should be an ongoing dialogue between Government Departments and State bodies under their aegis based on a common understanding of the objectives of the State body and the actions through which it seeks to achieve those objectives.

### Code Provisions

The statutory basis for each State body set out in its governing legislation defines the parameters for the level of operational autonomy and independence under which each State body operates in pursuit of its objectives. Irrespective of the degree of autonomy and independence applying to any State body, the body must be subject to sufficient oversight and accountability to ensure that it is performing effectively and delivering its objectives to ensure that public resources are used efficiently and effectively.

The functions of some State bodies require that they operate entirely independently of their parent Department. However, functional independence can be achieved and is fully compatible with statutory and financial oversight by the relevant Minister/parent Department and with proper and effective accountability. Effective accountability is strongly dependent on establishing clearly defined roles and responsibilities in accordance with the State bodies governing legislation which are clearly understood and observed in practice by both parties.

The principles and provisions contained within this Code have been formed cognisant of the fact that some State bodies operate in commercial environments competing against organisations which are not subject to the same detailed requirements. A balance has been sought to ensure that State bodies are subject to sufficient oversight and accountability but not at the expense of compromising their commercial competitiveness.

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<sup>38</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 10



## Parent Department Oversight Role

**8.1 Governance Arrangements:** Parent Departments must ensure that there are robust and effective governance arrangements in place in State bodies under their aegis. This requirement is in accordance with the Governance Framework requirements for Government Departments and Offices regarding bodies under their aegis set out in the [Corporate Governance Standard for the Civil Service](#).

**8.2 Comply or Explain:** State bodies and their subsidiaries are required to confirm to their relevant Minister/parent Government Department that they comply with this Code in their governance practices and procedures.

This Code makes provision for certain requirements to be applied proportionately, subject to the written agreement of the relevant Minister/parent Department. In such cases, the relevant State body should reach agreement with the relevant Minister/parent Department on the extent to which the compliance requirement might be suitably adapted in their case. The State body should then note the agreement reached in its annual report and explain whether the requirements are to be phased-in over a longer period of time, or otherwise varied in some way.

**8.3 Oversight Role:** The oversight role in relation to a State body under the aegis of a Government Department should not be the responsibility of the same individual (civil servant) that may be nominated to the Board of a State body by the relevant Minister.

## Oversight Agreements

**8.4 Oversight Agreements:** Government Departments should ensure that they have written oversight agreements with State bodies under their aegis which clearly define the terms of the State body's relationship with the relevant Minister/parent Department.

Oversight agreements should reflect the:

- legal framework of the State body;
- environment in which it operates (e.g. commercial, non-commercial, regulatory body);
- purpose and responsibilities of the State body;
- State bodies level of compliance with Code;
- details of the Performance Delivery Agreement; and
- arrangements for oversight, monitoring and reporting on conformity with the oversight agreement including those actions and areas of expenditure where prior sanction from the relevant Minister/parent Department and/or the Department of Public Expenditure and Reform is required. Absent clear authority to make payments, an entity should seek prior sanction from its parent Department.

Given the policy underlying the Freedom of Information Acts, in concluding settlements a State body should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case. When, in those circumstances, confidentiality agreements are entered into, parties to the agreements should be given prior notice that they may be subject to disclosure in any case where an overriding public interest is identified or when required by law.

The oversight agreement should be a dynamic document insofar as it should be modified in light of changing circumstances. The oversight agreement should be reviewed annually and updated as required.

## Roles and Responsibilities

**8.5 Roles:** It is recommended that each Department/Office set out in writing the respective roles and responsibilities of its Accounting Officer, as well as the Chairperson and the CEO of each State body under its aegis.

**8.6 Accounting Officer:** The Accounting Officer of the Government Department under whose aegis the State body lies should satisfy him/herself that the requirements of this Code are being properly implemented and observed. In support of this role, the Accounting Officer or his/her Department may also request further information/evidence that the entity is in compliance with the Code and the State body should comply with all such reasonable requests.

If information available to the Department indicates to the Accounting Officer that problems or difficulties exist, the Accounting Officer should ensure that appropriate action is taken as soon as possible.

**8.7 Accountable Person:** A small number of State bodies may have an Accounting Officer within the meaning of the *Comptroller and Auditor General Amendment Act, 1993* with responsibility for Voted funds; others have an “Accountable Person” as defined in the governing legislation establishing the State body. In such cases the accountability of the Accounting Officer/Accountable Person to the Oireachtas should be differentiated from that of the Board’s general responsibilities.

State bodies with their own Vote and Accounting Officer fall within the scope of and are required to prepare a Governance Framework in accordance with the [Corporate Governance Standard for the Civil Service](#).

## Performance Delivery Agreements

Non-commercial State bodies should agree Performance Delivery Agreements with the relevant Minister/parent Department and report to the Minister on progress against targets. These agreements will act as a performance contract between the parent Department and the State body in which an agreed level of performance / service<sup>39</sup> is formalised and which will ultimately result in improved efficiency and effectiveness in the delivery of public services.

The agreements allow for the adoption of both annual and multi-annual targets, and the development of output and outcome indicators, including milestones to measure performance against targets.

A Department’s Statement of Strategy is the anchor document to the content and objectives of the Performance Delivery Agreement taking account of the State body’s legal framework. The agreement should be aligned to specific objectives in the parent Department’s Statement of Strategy, to the extent relevant, and consistent with

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<sup>39</sup> Service levels should be included in the case of operational bodies with “customers”.

the State body's legal mandate, and with any Government policies for the reform and modernisation of the Public Service.

The Board of the State body should ensure that the Performance Delivery Agreement and the State body's Statement of Strategy are communicated to all employees and that they have a clear understanding of their role in achieving these objectives.

**8.8 Performance Delivery Agreements:** Each Department is required to agree a Performance Delivery Agreement (reviewed annually) with all State bodies under its aegis including those State bodies who generate their own income and are not funded directly by the Exchequer.

The Performance Delivery Agreement should include:

- high level goals and objectives;
- identify the key programmes of activity for the State body including for each individual expenditure programme;
- set out the key outputs specified in quantitative, measurable terms;
- identify the targets for that output in annual and multi annual targets with clear milestones;
- identify the cost of delivery of that programme; and
- set out the process for the formal review of the performance agreement.

**8.9 High Level Goals and Objectives:** In stating High Level Goals and Objectives, the Performance Delivery Agreement will:

- set out relevant, quantitative metrics of impacts and/or results that will support examination of the effectiveness of the programme; and
- include annual and multi-annual targets that set out clear milestones to measure progress toward a goal.

**8.10 Key Outputs:** In stating Key Outputs, the Performance Delivery Agreement will:

- set out relevant, quantitative metrics of outputs that will support examination of the efficiency of the programme; and
- include annual and multi-annual targets that set out clear milestones to measure delivery.

**8.11 Review of Performance Delivery Agreement:** There should be at least one formal meeting per annum between senior Department officials and representatives of the Board and top management of the State body to review the Performance Delivery Agreement and to strengthen the relationship between the two organisations.

**8.12 Existing Service Level Agreements:** Where State bodies already have existing service level agreements and/or performance frameworks (which include specific performance targets and indicators) in place with their relevant Minister/parent Departments these should be adapted to conform to the requirements of a Performance Delivery Agreement as set out in this Guidance.

## Appendix E: Key Elements of Performance Delivery Agreements

## Commercial State Bodies

- 8.13 Commercial State Bodies:** As alternative arrangements are already in place in commercial State bodies in the form of a Shareholder Expectation Letter it is not intended that Performance Delivery Agreements will apply to commercial State bodies.

A Model Shareholder Expectation Letter for commercial State bodies is available at [govacc.per.gov.ie/governance-of-state-bodies/](http://govacc.per.gov.ie/governance-of-state-bodies/).

## Periodic Critical Review

- 8.14 Periodic Critical Review:** Non-commercial State bodies shall be subject to Periodic Critical Review (PCR) no later than every 5 years. This provision is to ensure that the ongoing business case for State bodies, including those newly established, will be subject to periodic scrutiny and assessment. The overarching objective of the review process is primarily to secure improvements in accountability, efficiency and effectiveness but also to scrutinise objectively the case for rationalisation and consolidation of public bodies in light of changing requirements, demands and priorities. The review process should also assess the extent to which the governance structure of each public body and the Department's oversight of that body (if appropriate) is consistent with its legislative underpinning and is strongly aligned to the business needs of the body.

The review should include the external environment (economic, political, legislative, stakeholder, and technological), organisational capacity (governance, financial management, process management, other organisational linkages, HR management) and organisational performance (relevance, financial viability, economy, efficiency, effectiveness). The review should be evidence based and where possible compare actual performance against targets and/or external benchmarks.

- 8.15 Conduct of Review:** The relevant Government Department should establish a Working Group comprised of officials from the parent Department, the State body and the relevant Vote Sections of the Department of Public Expenditure and Reform, to conduct the Periodic Critical Review (PCR) and report to the relevant Minister. A representative from the Board of the State body should also be considered. The final composition of the group is a matter for the parent Department. The Working Group should be chaired by an official at Principal Officer Level in the parent Department.

The Working Group in their deliberations should have due regard to the guiding principles which inform the Government's approach in this area.

### Appendix F: Periodic Critical Reviews – Guiding Principles

The periodic critical reviews themselves should be:

- **Proportionate.** Reviews must not be overly bureaucratic, administratively burdensome and should be appropriate for the size and nature of the State body in question.
- **Timely.** Reviews should be completed quickly in order to minimise disruption and reduce uncertainty about the State body's future.

- **Challenging.** Reviews should be robust and rigorous and examine and evaluate as wide a range as possible of delivery options.
- **Open and Inclusive.** Key stakeholders should have the opportunity to contribute to reviews.
- **Transparent.** Reviews should be routinely published.

## Procedures for Procurement

### Code Provisions

- 8.16 Public Procurement:** It is the responsibility of the Board to satisfy itself that the requirements for public procurement are adhered to and to be fully conversant with the current value thresholds for the application of EU and national procurement rules.

The Board should satisfy itself that procurement policies and procedures have been developed and published to all staff. It should also ensure that procedures are in place to detect non-compliance with procurement procedures. Entities should have a contracts database/listing for all contracts/payments in excess of €25,000 with monitoring systems in place to flag non-competitive procurement. Non-competitive procurement should be reported in the Chairperson's comprehensive report to the Minister.

- 8.17 Procedures:** Similarly, the Board should ensure that competitive tendering should be standard procedure in the procurement process of State bodies. Management, and ultimately the Board, should ensure that there is an appropriate focus on good practice in purchasing and that procedures are in place to ensure compliance with procurement policy and guidelines.

- 8.18 Legal Obligations:** EU Directives and national regulations impose legal obligations on public bodies in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement which might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.

- 8.19 EU Treaty Principles:** The essential Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. There is a strongly implied requirement to publicise contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders.

- 8.20 Corporate Procurement Plan:** The Office of Government Procurement Policy framework requires that all non-commercial State bodies complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims, objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented.

The Chairperson should affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan in the comprehensive report to the Minister.

- 8.21 Procurement Information:** Information on procurement policy and general guidance on procurement matters is published by the Office of Government Procurement. This can be viewed or downloaded from the [Office of Government Procurement website](#).

## Property Acquisition and Disposal of Surplus Property

### Code Provisions

- 8.22 Acquisition or Disposal of Assets:** The Chairperson of the Board should seek the approval of the relevant Minister and the Minister for Public Expenditure and Reform in advance of any material acquisition or disposal of land, buildings or other material assets proposed by a State body. This also includes long term leases or purchase of right to use (rather than own) an asset.
- 8.23 Circulars and Guidelines:** In addition to any specific guidelines which apply to a State body, all acquisitions, disposals or proposals to share property should be conducted in accordance with current Department of Public Expenditure and Reform circulars and guidelines as follows:
- [11/2015 – Protocols for the Transfer and Sharing of State Property Assets](#);
  - [17/2016 – Policy for Property Acquisition and for Disposal of Surplus Property](#); and
  - [02/2016 – Arrangements for Digital and ICT-related Expenditure in the Civil and Public Service](#).

Department of Public Expenditure and Reform Circular 02/2016 must be complied with by State bodies considering expenditure on IT and telecommunications projects, systems and infrastructures:

## Acquisition of Land, Buildings or other Material Assets

- 8.24 Procedures:** In addition the requirements set out in Department of Public Expenditure and Reform circulars, as amended from time to time, the following procedures should apply:
- (i) **Independent Valuation:** Where land or property is being considered for acquisition an independent valuation must be obtained. These valuations should be obtained before any decision is taken by the Board to purchase or sell lands. The valuations should be obtained from professional property valuation surveyors.
  - (ii) **Listing of Parties to Transaction:** All parties to land and property transactions should be clearly reported to the Board when transactions are being considered. Any Board resolution related to the purchase of land or property should state the party or parties the asset is being purchased from.
  - (iii) **Options by Others to Purchase:** Where a third party developer has obtained an option to purchase land and is selling this option to a State body, any profit margin, where it can be determined, being charged by the developer should be reported to the Board.

- (iv) **Board Resolutions:** Any Board resolutions regarding the purchase or sale of an asset should state the price the asset has been purchased or sold for.
- (v) **Transparency:** Purchase of land or property should be conducted in as transparent a manner as possible without compromising the negotiating position of the State body.
- (vi) **Due diligence:** A full due diligence report should be prepared for land or property that are being considered for acquisition.
- (vii) **Nominated Staff Member:** A staff member should be nominated to have responsibility for the acquisition, management and sale of land or property. This staff member should report directly to the CEO regarding property issues.
- (viii) **Legal Matters:** When dealing with the acquisition or sale of land or property there should be an active engagement with the solicitors involved and the nominated staff member shall ensure that the commercial and technical aspects of the transaction are fully addressed.
- (ix) **Title Registration:** There should be a planned follow up with the solicitors involved to ensure that the title to any land or property acquired are properly registered with the Property Registration Authority.
- (x) **Legal Obligations:** There should be a planned follow up to ensure that any undertakings, obligations and other matters are completed following the acquisition or sale of land or property. State bodies should instigate periodic (depending on the size of the property portfolio) reviews with their solicitors, and any internal staff dealing with property management, to audit the current status of title registration, way leave agreements, leases, bonds, planning permissions and any other matters which affect their property portfolios.
- (xi) **Recording on State Property Register:** All land and property should be recorded on the online State Property Register managed by the Office of Public Works.

## Capital Investment Appraisal

**The Public Spending Code:** [The Public Spending Code](#) is the comprehensive set of expenditure appraisal and value for money requirements and related guidance covering all public expenditure.

- 8.25** The Board should ensure that robust and effective systems and procedures are in place in the State body concerned to ensure compliance as appropriate, with the relevant principles, requirements and guidelines of the Public Spending Code. The Chairperson of each State body should confirm in the annual report that the organisation is adhering to the relevant aspects of the Public Spending Code.
- 8.26** **Investment Appraisal:** In addition, the Board should ensure that the State body concerned should have regard to appropriate models for investment appraisal in their sectors and seek to apply the best practice financial and economic appraisal principles contained in the Public Spending Code for the appraisal and management of all investment proposals.

## Diversification, Establishment of Subsidiaries and Acquisitions by State Bodies

**8.27 Ministerial Approval:** The Chairperson should seek the approval of the relevant Minister, together with the consent of the Minister for Public Expenditure and Reform for any intended action which would extend or change significantly the nature, scope or scale of the activities in which it (or any subsidiary) engages (including through any joint venture). This provision requires Ministerial consent for any significant change in the (agreed) scope or function of a State body. Any intended action covers anything that a State body may be contemplating doing that would involve it straying (significantly) into a new area which it had never envisaged that it would be involved in or significantly changing the scale of its operations.

The financial consequences of such actions, notably on the debt, profitability or capacity of the State body to pay dividends (where relevant) and their consistency with the existing remit of the State body (if any), notably its statutory remit, should be clearly set out by the Board.

**8.28 Subsidiaries:** The establishment or acquisition of subsidiaries, participation in joint ventures and the acquisition of shares by any State body, by its subsidiaries or by joint ventures in which either a State body or its subsidiaries participate ("State body joint ventures") is subject to the legal capacity to do so and, in respect of a State body and its subsidiaries, to the prior written approval of the relevant Minister, given with the consent of the Minister for Public Expenditure and Reform. If a State body or its subsidiaries plans a shareholding offering or to acquire shares the offer/application must refer expressly to such legal capacity and approval requirements.

The Ministerial consent requirements applicable to a State body joint venture should be considered and determined in the context and at the time of consideration and approval of the formation of the joint venture in the first instance.

**8.29 Approval Process:** When seeking such approval, the Chairperson should supply the relevant Minister with complete details of such proposed subsidiaries, joint ventures or acquisitions and should do so at the earliest opportunity in order to avoid delays. The relevant Minister should respond to the Chairperson in a timely manner.

**8.30 Details:** Such details should include, the following (which is not an exhaustive list) together with such other information as may be requested:

- the full business case for the proposal;
- cash flows and projections;
- risk analysis of proposal;
- the amount of share capital proposed to be acquired compared with the entire issued share capital of the company concerned;
- details of any shares held in such company by any other State body, its subsidiaries or State body joint ventures;
- data on the financial commitment and exposure of the parent body, whether by way of equity, loans, guarantee or otherwise;
- other potential liabilities that may have a negative impact on the company;
- outstanding borrowings of such company from all sources, whether guaranteed or not, and any commitments by them which could involve financial exposure for a State body; and



- in seeking approval for the establishment or acquisition of subsidiaries, the proposed approach to the remuneration and conditions of employment of the CEO/Managing Director and, where appropriate, other employees of the subsidiaries should be outlined.

**8.31 Shareholdings (30%+):** Where State bodies, their subsidiaries and/or any State body joint ventures have a combined holding in any company exceeding 30% of the entire issued share capital of such company, the State bodies concerned should notify the relevant Minister and the Minister for Public Expenditure and Reform of such shareholdings.

**8.32 Borrowing Limits:** Where a State body is subject to a limit on its borrowings, the combined borrowings of both the parent body and all its subsidiaries (the “Group”) are covered by that limit, subject to the specific provisions of the parent legislation. Cash balances are not to be taken into account in calculating borrowings for the purposes of borrowing limits

**8.33 State Guarantees:** State guarantees cannot be given without explicit statutory authority and may only be given by the relevant Minister with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform. State guarantees may also be subject to approval by the EU Commission under the Treaty rules on State Aid. As a general rule, current policy is not to issue new State guarantees to State bodies due to the potential impact on the State’s Balance Sheet and to allow outstanding guarantees to expire as the relevant borrowings are repaid.

## Disposal of State Assets, Access to Assets by Third Parties and Pledging of Assets as Contingent Assets in Pension Scheme Funding Proposals

**8.34 Disposal:** The Board should ensure that arrangements are in place such that the disposal of assets of State bodies or the granting of access to property or infrastructure for commercial arrangements, e.g. joint ventures with third parties, are at a fair market-related price. Disposals or grants of access with an anticipated value at or above a threshold level of €150,000 should be by auction or competitive tendering process, other than in exceptional circumstances. The method used should be both transparent and likely to achieve a fair market-related price. The anticipated value may be determined either by a reserve price recorded in advance in the State body’s records or by a formal sign-off by the Board on the advice of the Chief Financial Officer or, if delegated by the Board, sign-off by the CFO, that, in its view, the anticipated value is likely to be less or greater than €150,000. Valuations should be carried out by a qualified unconnected valuer.

**8.35 Use of Assets as Contingent Assets in Pension Scheme Funding Proposals:** A decision by the Board that the assets of the State body are to be used as contingent assets, in the context of a Pension Scheme Funding Proposal designed to address a Minimum Funding Standard Reserve deficit or to meet the requirements of the Funding Standard Reserve, must only be done as a last resort and where a real and unavoidable obligation on the sponsoring body exists to help the relevant scheme to meet the Minimum Funding Standard (MFS) or other funding deficit.

The Guidance Note issued by the Department of Public Expenditure and Reform [Circular 12/2014 – Assessment of Pension Scheme Funding Proposals](#) must be complied with in such circumstances.

## Compliance with use of Auction or Tendering Requirements

- 8.36 Board Approval - Use of Competitive Process:** If an auction or competitive tendering process takes place and the highest bid is not the bid accepted, then specific Board approval is required before the disposal of the asset or granting of access to property or infrastructure for commercial arrangements with third parties can be completed. The Board must ensure that the provisions of the [EU Commission Communication on State Aid](#) elements in sales of land and buildings by public authorities are complied with fully. Any such approvals together with the reason why a lower bid was permitted to be accepted should be noted in the minutes of the Board.
- 8.37 State Aid:** A measure constituting State aid shall not be implemented before it has been approved by the EU Commission. The EU Commission *Guidance Paper on State aid-compliant financing, restructuring and privatisation of State-owned enterprises* sets out EU State aid rules, which must be complied with when carrying out or financing, restructuring and/or privatisation of State-owned enterprises and provides clarifications on the way the Commission applies the main State aid principles.
- 8.38 Board Approval – Non-Use of Competitive Process:** Where an auction or competitive tendering process is not used and the agreed price is €150,000 or more, then specific Board approval is required before negotiations start and also before the disposal of the asset or granting of access to property or infrastructure for commercial joint venture arrangements with third parties can be completed.
- 8.39 Formal Certification:** No disposal of an asset or grant of access to property or infrastructure for commercial arrangements with third parties should be completed until the officer authorising the disposal or grant of access has certified formally that (i) Board approval is not necessary, with the reasons, or (ii) Board approval, where necessary, has been obtained.
- 8.40 Disposal of Assets to Board Members, Employees or their Families:** Disposal of assets to Board members, employees or their families or connected persons should, as with all disposals, be at a fair market-related price. Where the Board is considering a proposal for any such disposal, the Board member connected to the potential purchase should absent him or herself from the Board deliberations on the issue. A record of all such disposals to such persons (to include details of the asset disposed of, price paid and name of the buyer) should be noted in a register kept for this purpose (minor disposals below €5,000, may be omitted from the register). This register should be available for inspection, if requested, by the Board or by any Board member. The Board may specify that any disposal above an approved threshold should be formally endorsed by the Board who may impose specific restrictions with regard to any such disposal.
- 8.41 Reporting Disposals to the Board:** Details of all disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties (save for connected third parties which is dealt with in paragraph 8.40) below the threshold value of €150,000 without auction or competitive tendering process should be formally reported to the Board, including the paid price and the name of the buyer, on an annual basis.
- 8.42 Reporting Disposals to the Minister:** Details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process should

be included in the Chairperson's comprehensive report to the relevant Minister (see paragraph 1.9 of the Business and Financial Reporting Requirements document).

- 8.43 Compliance:** The Chairperson, in the comprehensive report to the relevant Minister, should affirm that the disposal procedures, as outlined, have been complied with.

## Tax Compliance

- 8.44 Tax Clearance:** It is the responsibility of the Board of the State body to satisfy itself that any Tax Clearance requirements regarding the payment of grants, subsidies and similar type payments, and regarding Public Sector Contracts, are fully adhered to. Any individual or body must have a valid tax clearance certificate when a contract is entered into and should maintain a valid tax clearance certificate or, where the contract is a relevant contract<sup>40</sup>, demonstrate satisfactory subcontractor tax compliance at the time of each payment.
- 8.45 Taxation:** State bodies should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates. Boards of State bodies must take cognisance of any proposed corporate restructuring plans submitted for their approval and should ensure that they are being undertaken for bona fide commercial reasons and not as part of any tax avoidance scheme.
- 8.46 Tax Avoidance:** State bodies, while availing of all legitimate taxation arrangements, should not engage in unacceptable tax avoidance transactions. In broad terms, tax avoidance is offensive if it involves the use of the tax code for a purpose other than that intended by the Oireachtas (including an unintended use of a tax incentive) with a view to reducing the amount of tax to be paid by the State body or some other party to a transaction in which the State body participates. Where a doubt arises in a particular instance, the State body concerned should consult the Revenue Commissioners.

Where the approval of a Minister with the consent of the Minister for Public Expenditure and Reform is required under legislation for any financial transaction, the Chairperson should provide confirmation from the Revenue Commissioners that the tax treatment of the financial transaction is compliant with Irish tax law.

- 8.47 Report to Department:** A report on the State body's compliance with tax laws should be furnished each year to its relevant parent Department. The report should confirm that the State body has complied with its obligations under tax law.

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<sup>40</sup> A relevant contract is a contract to carry out, or supply labour for the performance of relevant operations in the construction, forestry or meat processing industry. Source: (<http://www.revenue.ie/en/tax/rct/>)

## Legal Disputes Involving Other State Bodies

**8.48 Legal Disputes:** Where a legal dispute involves another State body, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve before expensive legal costs are incurred. State bodies should pursue the most cost effective course of action in relation to legal disputes.

In addition to the annual reporting requirement concerning details of legal disputes with other State bodies, State bodies are required to provide details of such legal disputes involving expenditure of €25,000 or over to the parent Department and to the relevant Vote section of the Department of Public Expenditure and Reform, once a year by 30<sup>th</sup> June of each year including an estimate of the legal costs incurred up to the date of such information.

## 9. Remuneration and Superannuation

### Principles

Chairpersons and Boards of all State bodies are required to implement Government policy in relation to the total remuneration package (including basic salary, allowances, and all other benefits in cash or in kind), and in relation to other provisions for superannuation and termination benefits, of the CEOs/Managing Directors of the State bodies.

Chairpersons and Boards of State bodies are also required to implement any relevant Government policy, as expressed from time to time, with regard to remuneration of the Board and other staff. This role is essential to maintaining public trust in as well as the credibility and reputation of the public body concerned.

The Board should adhere to Government policy on the payment arrangements for CEOs and, where applicable other staff in commercial State bodies as well as any conditions of sanction issued by the Department of Public Expenditure & Reform and/or the relevant parent Department.

State bodies are required to publish in their annual report details of non-salary-related fees paid in respect of the Board, analysed by category, and the salary of the CEO.

### Travel and Official Entertainment

### Code Provisions

Commercial and non-commercial State bodies should be cognisant of the need to achieve economy and efficiency in relation to expenditure on travel and official entertainment.

Non-commercial State bodies should adopt, and comply in all respects with, the Department of Public Expenditure and Reform Office circulars and office notices, as amended from time to time, regarding travel and subsistence and official entertainment.

**Guidance for Remuneration and Superannuation in State bodies is contained in the *Code of Practice for the Governance of State Bodies – Remuneration and Superannuation Guidance* available at [govacc.per.gov.ie/governance-of-state-bodies/](http://govacc.per.gov.ie/governance-of-state-bodies/).**

# 10. Quality Customer Service

## Principle

In their dealings with the public, State bodies should publish a customer charter which outlines the nature and quality of service which customers can expect.

## Code Provisions

- 10.1 Customer Charter:** All State bodies should have a customer charter setting out the level of service a customer can expect.
- 10.2 Customer Charter Cycle:** The 4 step cycle of the customer charter involves:
- Consultation with customers / stakeholders;
  - Commitment to service standards;
  - Evaluation of performance; and
  - Reporting on results.
- 10.3 Display and Content:** Customer charters should be displayed prominently (on websites and at the points of service). The charter should state the State body's commitment to providing services to its customers in accordance with the twelve Principles of Quality Customer Service for Customers and Clients of the Public Service (see Appendix G). The customer charter should define service standards in clear terms and simple language and should inform customers of contact and feedback mechanisms.
- 10.4 Customer Action Plan:** The customer charter should be supported by a customer action plan, which describes in detail how the commitments and standards set out in the customer charter, and other customer service improvements, will be delivered and evaluated by the State body.
- 10.5 Customer Charters and Customer Action Plans:** Customer charters and customer action plans should be produced as part of the same process and have separate but complementary roles. While the customer charter is a short, easy to read, accessible document which acts as a public commitment to the customer on the level of service they can expect to receive when dealing with a State body, the customer action plan is a more detailed document which describes how the customer charter commitments will be delivered and evaluated by the State body. Both documents should share the same timeframe (ideally 3 years).

# Glossary

For the purpose of this Code, the terms below shall have the following meaning:

- **Accounting Officer** – the Comptroller and Auditor General (Amendment) Act, 1993 defines an Accounting Officer as “an officer referred to in section 22 of the [Exchequer and Audit Department’s Act of 1866] to whom the duty of preparing the appropriation accounts of a Department is assigned under that section”.
- **Annual Report** – A report detailing the State body’s activities and financial performance during the preceding year. It includes the financial statements and may generally also include reports from those charged with governance (for example, the Chairperson of the Board), a review of the State body’s strategy and performance, information on risk management and governance, alongside other information for stakeholders.
- **CEO** – Chief Executive Officer.
- **Chairperson’s Comprehensive Report to the Minister** – A confidential letter from the Chairperson of the Board of a State body to the Minister of the parent Department.
- **CIPFA** – Chartered Institute of Public Finance and Accountancy.
- **Connected Person<sup>41</sup>** – Companies Act 2014, Section 220 specifies that a person is connected with a director of a company if, but only if, the person (not being himself or herself a director of the company) is:
  - (a) that director’s spouse, civil partner, parent, brother, sister or child;
  - (b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or any body corporate which that director controls; or
  - (c) in partnership with that director.

The term “child” referred to above is deemed to include the child of the director’s civil partner who is ordinarily resident with the director and the civil partner.

- **Fiduciary Duty** – A legal obligation of one party to act in the best interest of another. The principal fiduciary duties of a company director are set out in section 228 of the Companies Act 2014.
- **Financial Statements** – A formal record of the financial activities and position of the State body for the previous financial year, including disclosures, intended to communicate the State body’s economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework.
- **FRC** – Financial Reporting Council (United Kingdom).
- **IFAC** – International Federation of Accountants.
- **Joint Venture** – A joint venture is a business entity created by two or more parties, generally characterised by shared ownership, shared returns and risks, and shared governance.
- **Letter of Representation** – Letters of representation are letters from Board members addressed to the external auditors. The letter makes representations concerning amounts in the financial statements and aspects

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<sup>41</sup> See section 220 of the Companies Act, 2014.

of the audit. The letter is drafted by the external auditors at the end of the audit and is submitted to the Board for signature, often by the Chairperson and the CEO.

- **Management Letter** – Management letters are letters from the auditors to management setting out the failings / weaknesses found during the audit. Unless these weaknesses or failings are material, the auditors will issue a clean/unqualified/unmodified report. Management are required to prepare responses to the management letter points made. The Audit and Risk Committee needs to oversee implementation of the external auditor’s management letter recommendations which the auditors will follow up on the following year.
- **NewERA** – New Economy and Recovery Authority
- **ODCE** – Office of the Director of Corporate Enforcement.
- **OECD** – Organisation for Economic Co-operation and Development.
- **Oversight Agreement** – A written statement between the relevant Minister/parent Department and the State body under its aegis which clearly defines the terms of the relevant Minister’s/parent Department’s relationship with the State body.
- **Parent Department** – The Department under whose aegis the State body lies.
- **Performance Delivery Agreement** – An agreement between the relevant Minister/parent Department and the State body under its aegis in which an agreed level of service is formalised. A performance delivery agreement comprises part of an oversight agreement.
- **Regulatory Body** – See definition on page 8 of this document.
- **State Body** – See page 11 of this document.
- **Subsidiary** – A subsidiary is a company that is controlled by the holding or parent company – often indicated by holdings of more than 50% of the voting share capital of the company. A wholly owned subsidiary is 100% owned by a holding or parent company



# Bibliography

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- Bodies in Ireland with Regulatory Powers (*Department of the Taoiseach, February 2007*)
- Corporate Governance Standard for the Civil Service (*Department of Public Expenditure and Reform, November 2015*)
- Financial Reporting Standard (FRS) 102 (*FRC, August 2014*)
- G20/OECD Principles of Corporate Governance (*OECD, September 2015*)
- Guidance Paper on State aid-compliant financing, restructuring and privatisation of State-owned enterprises (*European Commission, February 2012*)
- Guidelines on Appointments to State Boards (*Department of Public Expenditure and Reform, November 2014*)
- Guidelines on Corporate Governance of State-Owned Enterprises (*OECD, 2015*)
- Internal Control: Revised Guidance for Directors on the Combined Code (*FRC, October 2005*)
- International Framework: Good Governance in the Public Sector (*IFAC/CIPFA, July 2014*)
- International Standards for the Professional Practice of Internal Auditing (Standards) (*The Institute of Internal Auditors, 2012*)
- The Principal Duties and Powers of Company Directors under the Companies Act (*Office of the Director of Corporate Enforcement, 2015*)
- Public Service Guidelines (10<sup>th</sup> Edition) (*Standards in Public Office Commission, November 2015*)
- The UK Corporate Governance Code (*FRC, 2016*)

**Note:** This is an illustrative example of a model Board terms of reference setting out what typically should be included. The requirements included below are not exhaustive. The Board terms of reference should be tailored in accordance with the particular circumstance of the commercial State body.

### Terms of Reference of [Entity]

[Entity] was established under the [insert act] Act 20xx with effect from 1st January 20xx. [Entity] has adopted a corporate governance regime in accordance with best practice.

The purpose of this document is to set out the terms of reference of the Board of [entity]. These terms of reference approved by the Board on [day month year] are effective from [day month year].

#### 1. Membership

- Members of the Board shall be appointed by the Minister for [x] in accordance with Section [x] of the Act. The Board shall be made up of at least [x] members, of which [x] shall be independent non-executive Board members.
- Only members of the Board have the right to attend Board meetings. However, other individuals such as the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Risk Officer, the head of human resources and external advisers may be invited to attend for all or part of any meeting, as and when appropriate as necessary.
- Appointments to the Board shall be for a period of up to [x] years, which may be extended for one further [x] year period.
- In the absence of the Chairperson the remaining members present shall elect one of their number to chair the meeting.

#### 2. Secretary of the Board

- The Secretary of the Board will ensure that the Board receives information and papers in a timely manner to enable full and proper consideration to be given to the issues.
- The Secretary of the Board is also responsible for the formal induction of new members of the Board and organising mentoring for Board members where required.

#### 3. Quorum

- The quorum necessary for the transaction of business shall be [x] members. A duly convened meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board.

#### 4. Frequency of Meetings

- The Board shall meet at least [x] times a year, and as otherwise required.

#### 5. Notice of Meetings

- Meetings of the Board shall be summoned by the Secretary of the Board at the request of the Chairperson of the Board.

- Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the Board and any other person required to attend no later than three working days before the date of the meeting. Supporting papers shall be sent to Board members and to other attendees as appropriate, at the same time.

## **6. Minutes of Meetings**

- The Secretary of the Board shall minute the proceedings and resolutions of all meetings of the Board, including recording the names of those present and in attendance.
- Minutes of Board meetings shall be circulated to all members of the Board.

## **7. Duties**

- The Board shall delegate operational responsibility for the day-to-day running of the State body to the Chief Executive Officer and the State body's management team.
- Monitoring of performance – the Board shall receive regular reports from the State body's management team and Board sub-committees.
- The Board shall advise and support the Chairperson, Chief Executive Officer and management.
- The Board shall satisfy themselves that financial controls and systems of risk management are robust and defensible.
- The Board shall keep itself up to date and fully informed about strategic issues and changes affecting the State body and the environment in which it operates.
- The Board shall ensure that on appointment to the Board, non-executive Board members receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside Board meetings.
- The Board may, from time to time, establish such committees of the Board as are necessary to assist it in the performance of its duties. They may include members who are not members of the Board if specialist skills are required. Where a committee is put in place:
  - the terms of reference shall be specified in writing and approved by the Board and reviewed annually;
  - the Board, on the nomination of the Chairperson, shall appoint its members;
  - the Board shall receive regular reports from the committee;
  - all protocols concerning the operation of the Board shall be applied to a committee;
  - minutes of committee meetings shall be circulated to all Board members.
- The Board shall review the results of the Board performance evaluation process that relate to the composition of the Board and corporate governance generally.
- The Board shall keep under review corporate governance developments (including ethics-related matters) that might affect the State body, with the aim of ensuring that the State body's corporate governance policies and practices continue to be in line with best practice.
- The Board shall ensure that the principles and provisions set out in the Code of Practice for the Governance of State Bodies (and any other corporate governance codes that apply to the State body) are adhered to.

## **8. Reporting Responsibilities**

- The Board shall keep the Minister of the parent Department informed of matters arising within the State body.

**9. Other**

- The Board shall, at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and implement any changes it considers necessary.

**10. Authority**

- The Board is authorised to seek the information it requires from the State body in order to perform its duties.
- The Board is authorised to obtain, at the body's expense, outside legal or other professional advice where they judge it necessary to discharge their responsibilities as Board members.

### Obligations under the Ethics Legislation

All those who hold designated directorships (Board memberships) or occupy designated positions of employment in public bodies, prescribed by regulation for the purposes of the Ethics legislation (i.e. the Ethics in Public Office Acts 1995 and 2001), must comply with the relevant provisions of the legislation. Compliance with the Ethics Acts is deemed to be a condition of appointment or employment. While the summary below is provided for information, detailed guidelines on compliance with the Ethics Acts has been published by the Standards in Public Office Commission (the Standards Commission) on their [website](#).

All persons who have obligations under the Acts are obliged to act in accordance with the guidelines and any advice given by the Standards Commission, unless by so doing they would be contravening another provision of the legislation.

### Disclosure of Registrable Interests

The Ethics in Public Office Act 1995 provides for the disclosure of registrable interests by holders of designated Board memberships and occupiers of designated positions of employment in public bodies prescribed for the purposes of the Ethics legislation. Briefly, the requirements are:

**Designated Board Members:** Are required in each year, during any part of which they hold or held a designated Board membership of a public body prescribed by regulations made by the Minister for Public Expenditure and Reform, to prepare and furnish, in a form determined by that Minister, a statement in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, which could materially influence the person in, or in relation to, the performance of the person's official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the person, his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, a substantial benefit. The statement must be furnished to the Standards Commission and to such an officer of the body as determined by the Minister for Public Expenditure and Reform.

**Designated Positions of Employment:** Are required in each year, during any part of which they occupy or occupied a designated position of employment in a public body, prescribed by regulations made by the Minister for Public Expenditure and Reform, to prepare and furnish, in a form determined by that Minister, a statement in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, which could materially influence the person in, or in relation to, the performance of the person's official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the person, his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, a substantial benefit. The statement must be furnished to the relevant authority for the position as determined by the Minister for Public Expenditure and Reform.

**Material Interests:** The holder of a designated Board membership or the occupier of a designated position of employment is required to furnish a statement of a material interest where a function falls to be performed, and where the Board member or the employee or a "connected person" (e.g. a relative or a business associate of the Board member or employee) has a material interest in a matter to which the function relates. Such a statement must be furnished to the other Board members of the public body by a designated Board member or to the relevant authority by the occupier of a designated position of employment. The function must not be performed unless there are compelling reasons to do so. If a designated Board member or the occupier of a

designated position of employment intends to perform the function, he or she must, either before doing so, or if that is not reasonably practical, as soon as possible afterwards, prepare and furnish a statement in writing of the compelling reasons to the other Board members and to the Standards in Public Office Commission if a designated Board member, or to the relevant authority if an employee. This obligation applies whether or not the interest has already been disclosed in a statement of registrable interests.

### **Tax Clearance Obligations of Appointees to “Senior Office”**

The tax clearance provisions of the Standards in Public Office Act 2001 apply to persons appointed to "senior office", i.e. to a designated position of employment or to a designated Board membership in a public body under the 1995 Ethics Act, in relation to which the remuneration is not less than the lowest remuneration of a Deputy Secretary General in the civil service. All persons appointed to a designated Board membership “senior office” must provide to the Standards in Public Office Commission not more than nine months after the date on which he or she is appointed:

- a tax clearance certificate that is in force and was issued to the person not more than nine months before, and not more than nine months after, the appointment date; or
- an application statement that was issued to the person and was made not more than nine months before, and not more than nine months after, the appointment date; and
- a statutory declaration, made by the person not more than one month before, and not more than one month after, the date of appointment, that he or she, to the best of his or her knowledge and belief, is in compliance with the obligations imposed on him or her by the Tax Acts and is not aware of any impediment to the issue of a Tax Clearance Certificate.

### **Investigations**

The Board and employees of public bodies can be subject to investigation by the Standards Commission, either where it considers it appropriate to do so, or following a complaint, or where there is contravention of the tax clearance requirements, and there is nothing that precludes the Standards Commission from taking into account this Code in such an investigation.

### **Additional Information and Advice**

This appendix is provided for information purposes only and does not constitute a legal interpretation of the Ethics Acts. Regard should be had in the first instance to the Standards Commission’s guidelines. Requests for advice on compliance with the legislation should be referred to the Standards Commission.

### Introduction

This is a suggested framework for a Code of Conduct for the Board and employees of State bodies. The Code of Conduct should be prepared via a participative approach and should be approved by the Board, taking into account the provisions of the Ethics in Public Office Act, 1995 and the various Codes made under it. Such a Code of Conduct should address the following matters:

### Intent and Scope

It should contain a description of nature, intent and scope of the application of the Code of Conduct.

### Objectives

The Code of Conduct should set out basic objectives such as the:

- establishment of an agreed set of ethical principles;
- promotion and maintenance of confidence and trust; and
- prevention of the development or acceptance of unethical practices.

### Integrity

- The disclosure by Board members of outside employment/business interests in conflict or in potential conflict with the business of the State body.
- Management and employees should not be involved in outside employment/business interests in conflict, or in potential conflict, with the business of the State body.
- Giving or receiving corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions should be avoided.
- Commit to compete vigorously and energetically but also ethically and honestly.
- The conduct of purchasing activities of goods/services should be in accordance with best business practice.
- Ensure a culture of claiming expenses only as appropriate to business needs and in accordance with good practice in the public sector generally.
- Ensure that the State body's annual report and financial statements accurately reflect their business performance and are not misleading or designed to be misleading.
- Avoid the use of the State body's resources or time for personal gain, for the benefit of persons/organisations unconnected with the body or its activities or for the benefit of competitors.
- Commit not to acquire information or business secrets by improper means.

### Information

- Support by the Board, management and employees of a State body for the provision of access by the body to general information relating to the body's activities in a way that is open and enhances its accountability to the general public.
- Respect for the confidentiality of sensitive information held by the State body. This would constitute material such as:
  - commercially sensitive information (including, but not limited to, future plans or details of major organisational or other changes such as restructuring);
  - personal information; and
  - information received in confidence by the public body.

- Observe appropriate prior consultation procedures with third parties where, exceptionally, it is proposed to release sensitive information in the public interest.
- Comply with relevant statutory provisions (e.g. data protection and Freedom of Information legislation).

### **Obligations**

- Fulfil all regulatory and statutory obligations imposed on the State body.
- Comply with detailed tendering and purchasing procedures, as well as complying with prescribed levels of authority for sanctioning any relevant expenditure.
- Introduce controls to prevent fraud including adequate controls to ensure compliance with prescribed procedures in relation to claiming of expenses for business travel.
- All Board members and employees are required to co-operate with internal audit in the internal audit process.
- Board members should endeavour to attend all Board meetings.
- Conform with procedures laid down by the Board in relation to conflict of interest situations, including in regard to acceptance of positions following employment and/or engagement by a State body that may give rise to the potential for conflicts of interest and to confidentiality concerns.
- Acknowledge the duty of all to conform to highest standards of business ethics.

### **Loyalty**

- Acknowledge the responsibility to be loyal to the State body and fully committed in all its business activities while mindful that the organisation itself must at all times take into account the interests of the shareholder.

### **Fairness**

- Comply with employment equality and equal status legislation.
- Commitment to fairness in all business dealings.
- Value customers and treat all customers equally.

### **Work/External Environment**

- Promote the development of a culture of 'speaking up' whereby workers can raise concerns regarding serious wrongdoing in the workplace without fear of reprisal.
- Place highest priority on promoting and preserving the health and safety of employees.
- Ensure that community concerns are fully considered.
- Minimise any detrimental impact of the operations on the environment.

### **Responsibility**

- Circulate the Code of Conduct and a policy document on disclosure of interests to all Board members, management and employees for their retention.
- Ensure the above recipients acknowledge the receipt and understanding of same.
- Prepare an explanatory booklet providing practical guidance and direction on such areas as gifts and entertainment and on other ethical considerations which arise routinely.

### **Review**

- Arrange for, and commit to, reviewing the Code of Conduct as appropriate.



### Introduction

Internal Auditing is an independent and objective assurance and consulting activity that is guided by a philosophy of adding value to improve the operations of the [insert name of entity]. It assists [insert name of entity] in accomplishing its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of the organisation's governance, risk management, internal control.

### Role

The internal audit activity is established by the Board, Audit and Risk Committee, or highest level of governing body (hereafter referred to as the Board). The internal audit activity's responsibilities are defined by the Board as part of their oversight role.

### Authority

The internal audit activity, with strict accountability for confidentiality and safeguarding records and information, is authorised full, free, and unrestricted access to any and all of [insert name of entity] records, physical properties, and personnel pertinent to carrying out any engagement. All employees are requested to assist the internal audit activity in fulfilling its roles and responsibilities. The internal audit activity will also have free and unrestricted access to the Board.

### Organisation

The head of internal audit will report functionally to the Board and administratively (i.e. day to day operations) to the Chief Executive Officer.

The Board will:

- Approve the internal audit charter.
- Approve the risk based internal audit plan.
- Approve the internal audit budget and resource plan.
- Receive communications from the head of internal audit on the internal audit activity's performance relative to its plan and other matters.
- Approve decisions regarding the appointment and removal of the head of internal audit.
- Approve the remuneration of the head of internal audit.
- Make appropriate inquiries of management and the head of internal audit to determine whether there is inappropriate scope or resource limitations.

The head of internal audit will communicate and interact directly with the Board, including in executive sessions and between Board meetings as appropriate.

### Independence and Objectivity

The internal audit activity will remain free from interference by any element in the organisation, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of a necessary independent attitude.

Internal auditors will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity that may impair the internal auditor's judgment.

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<sup>42</sup> Adapted from *The Institute of Internal Auditors – Model Internal Audit Activity Charter*

Internal auditors will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all the relevant circumstances and not be unduly influenced by their own interests or by others in forming judgments.

The head of internal audit will confirm to the Board, at least annually, the organisational independence of the internal audit activity.

### **Responsibility**

The scope of internal auditing encompasses, but is not limited to, the examination and evaluation of the adequacy and effectiveness of the organisation's governance, risk management, and internal controls as well as the quality of performance in carrying out assigned responsibilities to achieve the organisation's stated goals and objectives. This includes:

- Evaluating risk exposure relating to achievement of the organisation's strategic objectives.
- Evaluating the reliability and integrity of information and the means used to identify, measure, classify, and report such information.
- Evaluating the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations which could have a significant impact on the organisation.
- Evaluating the means of safeguarding assets and, as appropriate, verifying the existence of such assets.
- Evaluating the effectiveness and efficiency with which resources are employed.
- Evaluating operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.
- Monitoring and evaluating governance processes.
- Monitoring and evaluating the effectiveness of the organisation's risk management processes.
- Evaluating the quality of performance of external auditors and the degree of coordination with internal audit.
- Performing consulting and advisory services related to governance, risk management and control as appropriate for the organisation.
- Reporting periodically on the internal audit activity's purpose, authority, responsibility, and performance relative to its plan.
- Reporting significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by the Board.
- Evaluating specific operations at the request of the Board or management, as appropriate.

### **Internal Audit Plan**

At least annually, the head of internal audit will submit to senior management and the Board an internal audit plan for review and approval. The internal audit plan will consist of a work schedule as well as budget and resource requirements for the next fiscal/calendar year. The head of internal audit will communicate the impact of resource limitations and significant interim changes to senior management and the Board.

The internal audit plan will be developed based on a prioritisation of the audit universe using a risk-based methodology, including input of senior management and the Board. The head of internal audit will review and adjust the plan, as necessary, in response to changes in the organisation's business, risks, operations, programs, systems, and controls. Any significant deviation from the approved internal audit plan will be communicated to senior management and the Board through periodic activity reports.

### Reporting and Monitoring

A written report will be prepared and issued by the head of internal audit or designee following the conclusion of each internal audit engagement and will be distributed as appropriate. Internal audit results will also be communicated to the Board.

The internal audit report may include management's response and corrective action taken or to be taken in regard to the specific findings and recommendations. Management's response, whether included within the original audit report or provided thereafter (i.e. within thirty days) by management of the audited area should include a timetable for anticipated completion of action to be taken and an explanation for any corrective action that will not be implemented.

The internal audit activity will be responsible for appropriate follow-up on engagement findings and recommendations. All significant findings will remain in an open issues file until cleared.

The head of internal audit will periodically report to senior management and the Board on the internal audit activity's purpose, authority, and responsibility, as well as performance relative to its internal audit plan. Reporting will also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the Board.

### Quality Assurance and Improvement Programme

The internal audit activity will maintain a quality assurance and improvement program that covers all aspects of the internal audit activity. The program will include an evaluation of the internal audit activity's conformance with the Definition of Internal Auditing and the *Standards* and an evaluation of whether internal auditors apply the Code of Ethics. The program also assesses the efficiency and effectiveness of the internal audit activity and identifies opportunities for improvement.

The head of internal audit will communicate to senior management and the Board on the internal audit activity's quality assurance and improvement program, including results of ongoing internal assessments and external assessments conducted at least every five years.

### Internal Audit Activity Charter

Approved this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Head of Internal Audit

\_\_\_\_\_  
Chairperson of the Board /  
Audit and Risk Committee

\_\_\_\_\_  
Chief Executive Officer

### (Non-commercial State body)

#### Introduction

The Public Service Reform Plan set out the Government's approach to reforming the public service and how public resources are used to deliver services for the citizens.

A key deliverable of the *Public Service Reform Plan* is a requirement that Departments should put in place Performance Delivery Agreements with the State bodies under their aegis. The agreements also form part of the wider framework for improving the focus on medium-term, structural and strategic planning of expenditure (Medium Term Expenditure Framework) and a greater emphasis on output and performance achieved.

This appendix sets out the key elements of what should be contained in Performance Delivery Agreements. While it details the standard elements that should be included in an agreement, it should be borne in mind that it presents a generic approach that needs to be adapted to the individual circumstances of each State body.

#### Performance Delivery Agreements

A Performance Delivery Agreement is a contract between the relevant Minister/parent Department and a non-commercial State body in which an agreed level of service and performance is formalised and which will ultimately result in the improved effectiveness and efficiency of public services. The information contained in the agreements (paragraph 6 in particular, see overleaf) together with annual reports etc., will be used to monitor performance of the bodies versus targets year-on-year. The benefits of having such an approach in place are that they:

- state the high level goals and objectives;
- set out quantitative metrics for measuring progress toward achieving High Level Goals and Objectives;
- set out the Key Outputs with a specific emphasis on quantitative metrics, that contribute toward achieving High Level Goals and Objectives;
- provide details on the Financial and Human Resources;
- articulate unambiguous performance / service requirements from the State body; and
- provide a useful performance measurement and control tool whereby metrics and targets are clearly stated.

#### Key Elements of Performance Delivery Agreements

The level of detail in each agreement will differ from body to body, however the more complex the functions, the likelihood is that greater detail will be required in the agreement. Performance Delivery Agreements should typically contain the following sections:

1. **Introduction:** This section should briefly set out the background to the agreement; the parties involved; and also, clarify the statutory tasks of the State body.
2. **Corporate Governance:** The underlying framework including the legislative context, compliance with relevant statutory and corporate governance obligations; as well as compliance with the Public Spending Code (<http://publicspendingcode.per.gov.ie/>) should be outlined in this section.

3. **Objectives of the Agreement:** The agreement must focus on key priorities / objectives of the State body. There must be a clear link between the State body's goals and objectives and those of the Department, under whose aegis they operate, as set out in the Department's Statement of Strategy. A Department's Statement of Strategy is the anchor document of the Performance Delivery Agreement. For example, in the case of the IDA, it is linked to the high level goal "to maximise sustainable job creation across the enterprise base to make Ireland the best small country to do business in by 2016", the strategic programme being "Jobs and Enterprise Development" of the Department of Jobs, Enterprise and Innovation. Details of strategic programmes and high level goals are set out in the annual Revised Estimates publication.
4. **Mutual Commitments:** An effective agreement should acknowledge the mutual relationship in terms of responsibilities and obligations between the Department and the State body. Therefore the agreement should include a section clearly setting out the Department's commitments e.g. the Department will provide a range of operational supports X, Y and Z, to enable the State body fulfil its mandate.
5. **Inputs:** In order to provide a comprehensive picture and to allow for ready comparison with previous/future agreements, the inputs/resources of the State body in terms of income (capital and current, exchequer and non-exchequer), including pay allocations/staffing for the period of the agreement should be clearly set out.
6. **Performance/Service Levels and Performance Measurement:** The key section(s) of any agreement will specify the performance/services and outputs/service levels, based on agreed inputs outlined in the above paragraph, to be provided by the State body as well as the performance monitoring and measurement indicators.

In so far as possible, performance/service levels and expected levels (including minimum level) should be explicitly detailed and agreed upon in order to avoid misinterpretation or misunderstanding between the Department and the State body.

The difficulties in defining these levels should not be underestimated and will depend on the functions/services of the State body, ranging from straightforward e.g. "number of customer queries handled" to the complex e.g. "the volume of policy advice provided". As State bodies may carry out many functions/services, the focus should be on those functions/services which are key to delivering the strategic objectives of the State body. In this regard, it is not necessary to include the secondary or support services to the core activities.

It is also worth bearing in mind that the administrative and process demands of having a robust performance measurement system in place must be balanced with the resources available to Departments and State bodies. Therefore in selecting appropriate indicators, the focus should be on the quality of the information/indicators as opposed to quantity.

The types of metrics outlined should support the evaluation under the Public Spending Code of how well or otherwise the allocated resources were utilised, that is, were they used efficiently to deliver an effective public service.

It is important also that current performance/service levels, for example from annual reports, are stated in the agreement in order to allow for baselining and to develop realistic annual and eventually multi-annual targets. High level output trends should also be included where possible.

7. **Potential Risk Factors:** Potential risk factors or other likely constraints, both internal and external, that might impact on expected performance/service levels over the duration of the agreement should also be highlighted. As the resources for the period of the agreement will be agreed and included in the agreement, resource constraints need not be included as a potential risk factor.
8. **Performance Measurement:** It is important to have credible and reliable measurement indicators of outputs (what actions the State body carries out) and impacts or results (what the State body achieves). Further information is available in [Chapter III.5 of the Comprehensive Expenditure Report 2012-2014](#) and in particular Box III.b of that Chapter which provides examples of potentially useful “Output indicators” and “Context & Impact indicators” that might be considered for particular areas.<sup>43</sup>
9. **Flexibility & Amendment of Targets:** While it is not recommended to do so, unless in exceptional cases, it may become necessary to change, modify, add to or otherwise alter, agreed performance/service targets during the course of the agreement, due to unforeseen circumstances. A necessity for amendments may be prompted by changes in e.g., legislation, Government/Ministerial priorities, prevailing operating circumstances and/or broader political, economic, financial or related factors. Where amendments become necessary, the Department should engage with the State body to agree on amended targets.
10. **Monitoring Arrangements:** The specific monitoring and reporting arrangements of the agreement should be highlighted in this section, as well as procedures for dealing with variations in performance against targets. For example, the arrangements may include reporting information on the operation of the agreement in annual reports, officials meeting on a regular basis to review performance against the agreement; implementing an internal system to monitor performance against the activities outlined in the agreement. The successful monitoring of the agreement will be in large part dependent on how well defined the performance/service levels are set out, see paragraph 8 above.
11. **Duration and Signatories to the Agreement:** This section should highlight the duration of the agreement and the commencement date. While the period covered by the agreement will be dependent on the nature and complexity of each State body, it is expected that they will typically be for a 3 year period.

Only those officials with delegated sanction/authority should be signatories to the agreement.

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<sup>43</sup> See Ronnie Downes et al, 2013, “Ireland Stat – Government Performance Measurement”, *Administration*, Vol.60 (3): 189-200.

**Citizen Focus:** The relationship between citizens and the State is the key relationship in any democratic society. Proposals should respect and enhance this relationship, in particular by ensuring that State bodies are designed to deliver quality public services, and to contribute effectively to the business of public administration whether directly or via their parent Department.

**Policy Formulation:** In the Irish system of public administration, Government Departments should be the primary locus of public policy formulation, evaluation and analysis. Policy evaluation and advisory functions should not, as a general rule, be carried out by external State-funded bodies. Specialist advice and consultancy may be availed of from time to time by Government Departments, subject to the tightened Government structures on the budgets for external consultancies.

**Clear Democratic and/or Cost Benefit:** Merging and restructuring of State bodies should have a clear and demonstrable benefit in terms of delivering greater democratic control, improved service delivery and/or real cash savings.

**Specialist Bodies:** Decisions should take into account whether it is appropriate that a separate body carry out particular functions in areas where specialist skills may be required, and where independence in the performance of functions requires functional separation from Government Departments.

**Streamlining:** Decisions should be cognisant of duplication, overlapping and similarities of functions and roles of bodies, and the synergies from bringing together separate bodies within cognate areas.

**Service Sharing:** Even where bodies should remain separate from one another, or from a parent Department, the possibility of sharing services, including back-office functions, should be explored to the maximum extent possible.

**State Body Life Cycle:** Government should consider on a regular basis whether the goal for which a State body was originally established has been achieved (or has been found to be unachievable) and whether the original objective remains relevant today having regard to developments in society, changes in Government priorities, and the much more limited availability of resources.

**Governance Structure:** The governance structure of State bodies should be consistent with their legislative underpinning. This needs to be reflected in the governance framework of State bodies.

**Performance Focus:** Citizens are entitled to expect that every State body has a clear mandate, clear benchmarks for the level of services that they are expected to deliver with their resources, and an appropriate governance structure that delivers accountability for results and performance.

**Respect for Staff Interests:** In relation to the staff employed in the various bodies, the Government will abide by the commitments given in different agreements in considering and implementing specific body rationalisation proposals, subject to the necessary flexibilities, in particular on redeployment, being delivered.

In their dealings with the public, Public Service offices will:

### **Quality Service Standards**

Publish a statement that outlines the nature and quality of service which customers can expect and display it prominently at the point of service delivery.

### **Equality/Diversity**

Ensure the rights to equal treatment, established by equality legislation, and accommodate diversity, so as to contribute to equality for the groups covered by the equality legislation (under the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller Community). Identify and work to eliminate barriers to access to services for people experiencing poverty and social exclusion, and for those facing geographic barriers to services.

### **Physical Access**

Provide clean, accessible public offices that ensure privacy, comply with occupational and safety standards and, as part of this, facilitate access for people with disabilities and others with specific needs.

### **Information**

Take a proactive approach in providing information that is clear, timely and accurate, is available at all points of contact and meets the requirements of people with specific needs. Ensure that the potential offered by Information Technology is fully availed of and that the information available on Public Service websites follows the guidelines on web publication. Continue the drive for simplification of rules, regulations, forms, information leaflets and procedures.

### **Timeliness and Courtesy**

Deliver quality services with courtesy, sensitivity and the minimum delay, fostering a climate of mutual respect between provider and customer. Give contact names in all communications to ensure ease of on-going transactions.

### **Complaints**

Maintain a well-publicised, accessible, transparent and simple-to-use system of dealing with complaints about the quality of service provided.

All service delivery organisations may be subject to complaints at both the level of the official and the organisation. These may relate to the quality of the service itself or the manner in which the service was delivered. The scope for customer dissatisfaction can be reduced by provision of appropriate information to the customer regarding the available service and training to staff in how to deliver the service.

In setting up systems to deal with customer dissatisfaction, organisations should ensure that all complaints are dealt with objectively in a consistent, open and fair manner.

Some elements to be included in Comments/Complaints systems include:

- information regarding complaints procedures should be freely available to the public at all points of service delivery and should be publicised by organisations;
- complaints procedures should be straightforward and access should be conveniently available to customers and clients at no cost wherever possible;
- all complaints should be directed to, and acknowledged, by a named officer of appropriate grade;
- appropriate training should be provided to all staff dealing with complaints;



- complaints should be addressed as quickly as possible and the customer should be kept informed of progress;
- complaints procedures should be subjected to regular review; and
- provisions should be made for speedy correction of errors and, where required, the making of appropriate redress to the complainant.

### **Appeals**

Similarly, maintain a formalised, well-publicised, accessible, transparent and simple-to-use system of appeal/review for customers who are dissatisfied with decisions in relation to services.

### **Consultation and Evaluation**

Provide a structured approach to meaningful consultation with, and participation by, the customer in relation to the development, delivery and review of services. Ensure meaningful evaluation of service delivery.

### **Choice**

Provide choice, where feasible, in service delivery including payment methods, location of contact points, opening hours and delivery times. Use available and emerging technologies to ensure maximum access and choice and quality of delivery.

### **Official Languages Equality**

Provide quality services through Irish and/or bilingually and inform customers of their right to choose to be dealt with through one or other of the official languages.

### **Better Co-ordination**

Foster a more co-ordinated and integrated approach to delivery of public services.

### **Internal Customer**

Ensure that employees are recognised as internal customers and that they are properly supported and consulted with regard to service delivery issues.

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# Code of Practice for the Governance of State Bodies

## Remuneration and Superannuation

August 2016

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# Remuneration and Superannuation

## Introduction

The purpose of this document is to set out the Remuneration and Superannuation requirements to be observed by State bodies under the *Code of Practice for the Governance of State Bodies*.

Chairpersons and Boards of all State bodies are required to implement Government policy in relation to the total remuneration package (including basic salary, allowances, and all other benefits in cash or in kind), and in relation to other provisions for superannuation and termination benefits, of the Chief Executive Officers (CEOs)/Managing Directors of State bodies.

Chairpersons and Boards of State bodies are also required to implement any relevant Government policy, as expressed from time to time, with regard to the remuneration of the Board and all other staff.

This document has been developed by Government Accounting Unit, Department of Public Expenditure and Reform. For further information, please contact:

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# 1. Remuneration and Superannuation

## Principles

Chairpersons and Boards of all State bodies are required to implement Government policy in relation to the total remuneration package (including basic salary, allowances, and all other benefits in cash or in kind), and in relation to other provisions for superannuation and termination benefits of the CEOs/Managing Directors of the State bodies.

Chairpersons and Boards of State bodies are also required to implement any relevant Government policy, as expressed from time to time, with regard to the remuneration of the Board members and all other staff. This role is essential to maintaining public trust in as well as the credibility and reputation of the public body concerned.

The Board should adhere to Government policy on the payment arrangements for CEOs and, where applicable, other staff in commercial State bodies as well as any conditions of sanction of approval issued by the Department of Public Expenditure & Reform and/or the relevant parent Department.

State bodies are required to publish in their annual report details of non-salary-related fees paid in respect of Board members, analysed by category, and the salary of the CEO.

## Code Provisions

- 1.1** Chairpersons and Boards of all State bodies are required to implement Government policy in relation to the total remuneration package (including basic salary, allowances, and all other benefits in cash or in kind), and in relation to other provisions for superannuation and termination benefits of the CEOs/Managing Directors of the State bodies.
- 1.2** **Departmental Arrangements:** Arrangements put in place by the parent Department or the Department of Public Expenditure and Reform for determining and approving the remuneration of the CEO/Managing Director should also be adhered to and implemented.
- 1.3** **Other Staff:** Chairpersons and Boards are required to implement Government pay policy as expressed from time to time, in relation to other staff including, as appropriate, the CEO or equivalent and other staff of any subsidiary, as relevant.
- 1.4** **Departmental Consultation:** The Department of Public Expenditure and Reform should be consulted in good time prior to the implementation of any pay proposals, and of any likely developments, which could have significant implications for:
  - general Government pay policy;
  - the State body's finances;
  - charges for goods or services provided; and/or
  - other areas of the public sector.

- 1.5 Public Service Standards:** Compliance with Government pay policy or with any particular Government decision should not be effected in ways which cut across public service standards or integrity or conduct or involve unacceptable practices which result in a loss of tax revenue to the Exchequer.

## Commercial State Bodies

- 1.6 Government Policy on Payment Arrangements:** The Board will adhere strictly to Government policy on the payment arrangements for CEOs and, where applicable, other staff in commercial State bodies as well as any conditions of sanction of approval issued by the Department of Public Expenditure & Reform and/or the relevant parent Department.
- 1.7 CEO Contract:** The CEO of each commercial State body shall hold office subject to the terms and conditions as determined by the Board of the State body with the consent of the relevant Minister and the Minister for Public Expenditure and Reform. Proposed draft contracts for employment, including the amount of the proposed remuneration, must be submitted for approval by the relevant Minister in advance of being presented to prospective CEOs.

A template contract of employment, containing all the relevant terms and conditions for employment of the CEO, has been approved by the Minister for Public Expenditure and Reform and endorsed by the Office of the Attorney General. CEOs should only be employed on the basis of a signed sanctioned contract based on this template contract. The template contract of employment is available from the Remuneration, Industrial Relations and Pensions Division of the Department of Public Expenditure and Reform.

- 1.8 Recruitment Process:** Save in exceptional circumstances, and then with the agreement of the relevant Minister, the CEO should be recruited after a competitive process, and the contract should be signed prior to the CEO taking up duty.
- 1.9 Remuneration of CEOs:** The Government reserves the right to vary the CEOs remuneration over the terms of their contracts by virtue of the application of public sector pay policy. While matters relating to the terms and conditions of new CEOs, or changes in the terms and conditions of sitting CEOs, are properly subject to discussion by the Board of each commercial State body, these must be authorised by the relevant Minister, in consultation with the Minister for Public Expenditure and Reform, in advance of any offer being made to the CEO. No sanction of approval will be given in respect of an offer of remuneration to the CEO unless it is in line with Government policy and in accordance with the relevant guidelines on the permissible range and limits of CEO pay. This applies to the recruitment of a new CEO and to any change in remuneration subsequent to the signing of a contract.
- 1.10 Duration of Contract:** It is the policy and practice across all Departments that the term of the contract of a CEO (or equivalent) of a commercial State body is normally limited to a single contract period of between five and seven years. This contract will not be renewable. The fact that contracts are of a fixed term nature has been taken into account in setting the appropriate level of remuneration for these posts. The template contract also stipulates that the Unfair Dismissals Acts do not apply to a dismissal consisting only of the expiry of the contract period.

This contract period also applies where the appointee is from within the commercial State body or a subsidiary thereof. In this case, the CEO contract must state unequivocally that it is separate and distinct from any earlier contract of employment.

**1.11 Superannuation:** There are three possible pension options for new CEOs. Administration costs of these pension schemes (except for standard commercial fees) will be met by the State body. They are as follows:

1. Contributory Defined Benefit scheme covering only the term of the CEO appointment, providing a pension of 1/80<sup>th</sup> of basic salary, and a lump sum of 3/80<sup>th</sup> of basic salary, for each year of service as CEO.
2. Company pension scheme - if the CEO is already a member of a company pension scheme, then he or she may elect to continue as a member of that scheme. The rules of the scheme will continue to apply although they may be amended to reflect any Government Decisions or legislation applicable to the CEO.
3. A separate Defined Contribution scheme with the company contributing a maximum of 25% of the CEO's basic salary during the term of the contract.

**1.12 Staff below CEO Level:** Unlike CEOs of commercial State bodies, the terms and conditions of the senior managers reporting to them are generally not governed by specific legislation relating to the State body concerned. However, the State body is required (in relation to all staff) to have regard to, and to implement, the Government's policy on pay and related matters.

The pay levels of senior staff should be set by reference to pay levels of posts with similar levels of duties and responsibilities in comparable employments but should also take account of the approved salary of the CEO of the State body. The salary of senior management should also be set at a level that allows sufficient headroom between the CEO and the senior management.

In relation to perquisites, it is important that these are kept to an appropriate level. Any perquisites should in no case exceed those available to the CEO and a reasonable differentiation between the CEO and other senior management should be maintained.

**1.13 CEO Board Fees:** In accordance with the One Person One Salary rule a CEO who is ex officio a Board member of a commercial State body will not be paid any fees or other form of compensation whether in cash or in kind in respect of the role as Board member.

## Non-commercial State Bodies

**1.14 Guidelines on Appointments of CEOs:** Guidelines on the appointments of CEOs of non-commercial State bodies (including a standard employment contract template) are available from parent Departments.

**1.15 Single Pension Scheme:** Pension provision for all persons, including senior management and CEOs, who are recruited by non-commercial State bodies (and other public service employers) on or after 1 January 2013 shall consist solely of membership of the Single Public Service Pension Scheme. This provision



applies in all cases except where exempted under law (Public Service Pensions (Single Scheme and Other Provisions) Act 2012), and notwithstanding the existence in place of any private voluntary pension scheme for staff recruited on or prior to 31 December 2012.

## 2. Fees to Board Members

### Principles

As set out in the Code of Practice for the Governance of State Bodies, Board members play a number of critical roles in setting the strategic direction and overseeing the performance of State bodies which are discharging key responsibilities laid down in legislation.

Inherent in the role of the Board is that of public value in seeking to ensure that the State body carries out its responsibilities as effectively and efficiently as possible and maximises its contribution to outcomes for citizens.

The reformed system of appointments to State Boards highlights the objective to attract high calibre individuals from all walks of life to serve on State Boards. Remuneration arrangements for Board members of State bodies reflect the ethos of public value.

### Code Provisions

- 2.1 Authorised Fee Levels:** In general, for fees to be payable to the Chairperson or members of a Board, an enabling provision in the legislation governing the State body concerned is required. Such a provision typically specifies that members may be paid such remuneration (if any) which the relevant Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. Current fee rates for Category 1 - 4 State Boards are available from the Remuneration, Industrial Relations and Pensions Division of the Department of Public Expenditure and Reform.
- 2.2 One Person One Salary Rules:** Since 1 November 2011 under the One Person One Salary principle it has been a requirement of that principle that public servants and public sector employees (with the exception of certain worker Directors of commercial State bodies only) who sit on State Boards may not be paid Board fees. The criteria previously used to determine the eligibility of public servants and public sector employees to receive Board fee payments no longer applies in any such cases. This applies to all Board members, including those in place prior to 2011, and also to full-time executive Board members who operate on a salaried basis. The implementation of and adherence to these arrangements is the responsibility of the State body concerned.
- 2.3 Option to Waive Board Fee:** It is a requirement since January 2012 that all existing Board members of State bodies, and any members that may be appointed in the future to such Boards, are to be given the option by the relevant Minister to waive the related Board fee on a discretionary basis as a matter of formal protocol. The implementation of the arrangements necessary to ensure adherence to this requirement is a matter for the relevant Government Departments and State bodies concerned.
- 2.4 Authorised Fee Rates:** The Board of the State body must ensure that the fees paid to Chairpersons and the Board are at the rates sanctioned and approved by the Minister for Public Expenditure and Reform and that no fees are paid to public servants or public sector employees (with the exception of certain worker Directors of commercial State bodies only) under the One Person One Salary rules.

- 2.5 PRSI:** In general, fees paid to a Chairperson, Board members/Directors (including Worker Directors) of a State body are exempt from PRSI. Such persons are deemed to be Office Holders, provided the State body was created by an Act of the Oireachtas or by statutory regulation and provided the holder of the Office may be removed if the instrument creating the Office authorises it. (Scope Section, Department of Social Protection provides direction and information on the insurability of employment in accordance with law).
- 2.6 Tax:** Board fees are subject to taxation. The requirements are set out in Statement of Practice SP-IT/1/04 (Revised April 2011) *'Tax Treatment of Remuneration of members of State and State Sponsored Committees, Boards, Commissions and other Bodies'*, available from the Office of the Revenue Commissioners. Any queries in this regard should be directed to the Office of the Revenue Commissioners.
- 2.7 Subsidiaries:** The fees paid to the Chairperson or Board members/Directors of any subsidiary or associated body will not exceed the rates applying to the Chairperson or Board member/Directors, respectively, of the main body and will, as a general rule, be significantly less. Any such fees must be at the rates sanctioned and approved by the Minister for Public Expenditure and Reform.
- 2.8 Single Fee:** Only one fee will be payable to a person in respect of (a) service on the main Board of a State body and Boards of subsidiary or associated bodies or (b) service on subsidiary or associated State Boards only.
- 2.9 External Boards:** An executive other than the CEO will, subject to Board approval, be allowed to hold membership of the Boards of State funded bodies which are not subsidiary to or associated with the main body, but may not receive a Board fee under the One Person One Salary rules.
- 2.10 Chairperson's Comprehensive Report:** As part of the Chairperson's comprehensive report to the relevant Minister, the Chairperson should affirm that Government Pay Guidelines is being complied with in respect of such appointees who serve on the Board and any subsidiaries of State bodies. The Chairperson's comprehensive report should also include a schedule of the fees paid to each Board member.

## Funded Pension Schemes and Minimum Funding Standard Requirements

- 2.11 Funded Pension Schemes:** Funded pension schemes established by employers (both public and private) to provide superannuation benefits for their employees are required (with certain exceptions) to comply, inter alia, with minimum funding standards set out in the Pensions Act 1990, as amended. If the assets of a scheme's fund are judged by the scheme's actuary to be insufficient to meet the funding standard, the Act provides that a funding proposal to meet the deficit must be prepared and forwarded to the Pensions Authority.
- 2.12 Funding Proposal for Pension Scheme:** Where such a funding proposal is required to be prepared for a funded pension scheme of a State body, in preparing the funding proposal the State body should have regard to the Guidance Note issued by the Department of Public Expenditure & Reform on 27 June 2014

[\(Circular 12/2014 – Assessment of Pension Scheme Funding Proposals\)](#). The draft funding proposal should, prior to final agreement between the State body's Board and the scheme trustees, be submitted for the approval of the relevant parent Department, given with the agreement of the Department of Public Expenditure and Reform. Only following this approval should the funding proposal be forwarded to the Pensions Authority (or, as the case may be, the Revenue Commissioners) for approval.

## 3. Travel and Official Entertainment

### Principle

Commercial and non-commercial State bodies should be cognisant of the need to achieve economy and efficiency in expenditure on travel and official entertainment.

### Code Provisions

- 3.1 Travel Circulars:** Non-commercial State bodies should adopt, and comply in all respects with, the Department of Public Expenditure and Reform circulars and office notices regarding travel and subsistence, as amended from time to time.

Board members and employees must claim travel and subsistence only in respect of official business and not personal travel or accommodation and must not make a claim from more than one State body for the same journey. All Travel and Subsistence claims must have a clear stated business purpose.

The Department of Public Expenditure and Reform [Circular 5/2015: Subsistence Allowances](#) sets out rates of subsistence allowance, which apply where applicable.

- 3.2 International Travel:** Non-commercial State bodies that incur significant expenditure on international travel by employees or members of the Board should put in place appropriate monitoring and control procedures to ensure compliance with relevant Department of Public Expenditure and Reform circulars and requirements.

- 3.3 Official Entertainment:** Department of Finance [Circular 25/2000: Official Entertainment](#) sets out the entertainment allowances, the limits on expenditure on official entertainment, and the numbers that can be accommodated at any given event (dependent on the grade or position of the host).

#### Appendix A: Framework for a Travel Policy for State Bodies

# Glossary

For the purpose of this Code, the terms below shall have the following meaning:

- **Annual Report** – A report detailing the State body’s activities and financial performance during the preceding year. It includes the financial statements and may generally also include reports from those charged with governance (for example, the Chairperson of the Board), a review of the State body’s strategy and performance, information on risk management and governance, alongside other information for stakeholders.
- **CEO** – Chief Executive Officer.
- **Chairperson’s Comprehensive Report to the Minister** – A confidential letter from the Chairperson of the Board of a State body to the Minister of the parent Department.
- **Financial Statements** – A formal record of the financial activities and position of the State body for the previous financial year, including disclosures, intended to communicate the State body’s economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework.
- **Parent Department** – The Department under whose aegis the State body lies.
- **State Body** – See page 11 of the Code of Practice.
- **Subsidiary** – A subsidiary is a company that is controlled by the holding or parent company – often indicated by holdings of more than 50% of the voting share capital of the company. A wholly owned subsidiary is 100% owned by a holding or parent company.

### Introduction

In matters of official travel and subsistence, non-commercial State bodies should adhere to civil service procedures as set-out in guidance issued by the Department of Public Expenditure and Reform, either communicated directly or via the parent Department. Similarly, commercial State bodies should also be cognisant of the need to achieve economy and efficiency in their expenditure on official travel and should have a policy in place that covers both domestic and international travel.

The Board of the State body should satisfy itself that the principles of its travel policy are adhered to and that the internal audit process is effective in ensuring that the State body is fully complying with the policy.

Board members should be advised of the details of the State body's travel policy. Board members and employees must only claim travel and subsistence allowances in respect of official travel and must not make a claim from more than one State body for the same journey.

### Intent and Scope

The purpose of the travel policy should be to ensure that value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business. Alternatives to frequent travel, such as use of video conferencing facilities, should also be considered.

#### Domestic Travel

- Maximum use to be made of public transportation options for official travel; the use of taxi services should be rationalised as much as possible.

#### Air Travel

- A statement of the practice to be followed e.g. the criteria to be applied in choosing either restricted internet fares or fully-flexible economy class fares, where this approach is cost-effective.
- Outline of the exceptional circumstances in which more expensive Business Class options may be considered (the use of premium rates can rarely be justified).
- Frequent flyer points should not influence decisions taken in relation to the carriers used for official business.

#### Accommodation

- A statement to the effect that if an employee is not required to stay in a particular hotel for business reasons, the standard of hotel used should not be extravagant e.g. that three or four star hotels should be used.

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# Code of Practice for the Governance of State Bodies

## Business and Financial Reporting Requirements

August 2016

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# Business and Financial Reporting Requirements

## Introduction

The purpose of this document is to set out the business and financial reporting requirements to be observed by State bodies under the *Code of Practice for the Governance of State Bodies*.

This document provides details of reporting requirements for State bodies in (a) the annual report, (b) the financial statements, and (c) the Chairperson's comprehensive report to the relevant Minister.

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# Business and Financial Reporting Requirements

## Principles

Taking account of public accountability and the special considerations which attach to State bodies in relation to their management and operation, the annual report and financial statements, taken as a whole, should be fair, balanced and understandable and provide the information necessary for an assessment of the State body's financial position, financial performance, business model and strategy.<sup>1</sup>

A fundamental duty of the Board is to ensure that a balanced, true and fair view of the State body's financial performance and financial position is made when preparing the annual report and financial statements of the State body and when submitting these to the relevant Minister.

The Board should ensure that timely and accurate disclosure is made to the relevant Minister on all material matters regarding the State body, including the business context, financial performance and position, and governance of the State body.<sup>2</sup>

## Code Provisions

The publication of an annual report and audited financial statements is a primary expression of public accountability for State bodies. The objective of financial statements is to provide information about the financial performance, position and cash flows of the State body that is useful for economic decision-making for a broad range of stakeholders.<sup>3</sup>

The Board of a State body is required to arrange for the preparation of the financial statements in respect of each financial year. The annual financial statements are prepared from the information contained in the State bodies accounting records and other relevant information and in accordance with the accounting standards applicable to the State body.

The Board must present financial statements of a State body that give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the State body as at the financial year end.

Reference to financial statements giving a "*true and fair view*" means in the case of an entity and group financial statements, that the financial statements present fairly the income and expenses (financial performance), assets, liabilities and capital (financial position), and cash flows of the State body or group concerned.

In order for a set of financial statements to give a true and fair view they should<sup>4</sup>:

- comply with the accounting standards applicable to the State body;
- incorporate judgment as to valuation, disclosure, and materiality that aim to give a true and fair view;

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<sup>1</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 16

<sup>2</sup> Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 41

<sup>3</sup> Adapted from "FRS 102" (Financial Reporting Council, September 2015) page 28

<sup>4</sup> Adapted from the "The Principal Duties and Powers of Company Directors under the Companies Act" (ODCE, 2015)

- be prudent in the consideration of matters of judgment in the financial statements, especially where there is uncertainty; and
- ensure that the financial statements reflect the commercial substance of transactions, and not just their legal form.

The Board is required to arrange for the financial statements to be audited by an independent auditor. The external audit of non-commercial State bodies is carried out by the Comptroller and Auditor General.

An audit is an independent examination of the financial statements. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. Having conducted an examination of the financial statements, the auditor is required to report to the Board of the State body. In that report, the auditor is required to form an opinion on a number of matters including, for example whether the financial statements give a true and fair view and whether the financial statements are in agreement with the underlying accounting records.

The annual report, comprising the financial statements and commentary thereon, is a comprehensive report of the State body's activities throughout the preceding year. Annual reports are intended to give stakeholders information regarding the State body's activities and financial performance.

Each Government Department should lay the annual report and audited financial statements of State bodies under its aegis before the Houses of the Oireachtas within two months of such accounts being received by the Department, together with any report of the Comptroller and Auditor General on the financial statements.

Where a Department must first present the annual report and financial statements to the Government, this should be done at the earliest opportunity. In such cases Departments must in any event lay the financial statements of the State body before the Houses of the Oireachtas within three months of being received by the Department, as set out in the [Department of Public Expenditure and Reform Circular 7/2015 - Timely Production and Submission of Accounts of Bodies and Funds audited by the Comptroller and Auditor General and the Laying before the Houses of the Oireachtas Special Reports of the Comptroller and Auditor General](#).

The Chairperson of a State body is required to submit a comprehensive report to the relevant Minister in accordance with the specific reporting requirements set out in paragraph 1.9 of *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements*. The Chairpersons comprehensive report to the Minister is a confidential letter from the Chairperson of the Board to the Minister of the parent Department. It includes items such as affirmation that Government policy is being complied with, significant post balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the State body in the preceding year.

## Annual Reports and Financial Statements

- 1.1 Audited Financial Statements:** All State bodies are required to publish audited financial statements. As set out above the financial statements of a State body are a formal record of the financial performance and financial position of the State body. Depending on the requirements set out in the governing legislation establishing the State body, some entities produce financial statements and an annual report while others only produce financial statements.

**1.2 Preparation of Annual Report and Financial Statements:** The Board of a State body is responsible for the preparation of the annual report and financial statements in accordance with relevant accounting standards. The Board is required to:

- ensure consistent application of accounting policies;
- make judgements and estimates that are reasonable and prudent; and
- ensure the preparation of the financial statements on a going concern basis unless it is inappropriate to presume that the entity will continue in existence for the foreseeable future.

Financial statements should be subject to external audit before inclusion in a State body's annual report. It is important that every effort is made not to delay the presentation of the financial statements before the Houses of the Oireachtas while completing other elements of the annual report.

**1.3 Annual Report and Financial Statements:** In addition to disclosure requirements of the State body's governing legislation, applicable accounting standards and other regulations applying to the State body, specific elements to be disclosed in the annual report and financial statements include:

- A Statement of how the Board operates, including a statement of types of decisions to be taken by the Board and which are to be delegated to management.<sup>5</sup>
- The names of the Chairperson, the deputy Chairperson (if any), the Chief Executive Officer (CEO) and members of the Board and Board committees.
- Termination/Severance Payments and Agreements – “The financial statements should disclose details of payments and agreements with an aggregate value in excess of €10,000 made in the reporting period. This includes severance/ termination payments, granting of added years for pension purposes or early retirement without normal actuarial reductions. The value of the latter can be determined in accordance with guidance to be issued by the Department of Public Expenditure and Reform from time to time. Given the policy underlying the Freedom of Information Acts, in concluding settlements a State body should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case. When, in those circumstances, confidentiality agreements are entered into, parties to the agreements should be given prior notice that they may be subject to disclosure in any case where an overriding public interest is identified or when required by law.
- Travel and Subsistence - The financial statements should disclose the total costs incurred in relation to travel and subsistence for the entity analysed between national and international travel.
- Hospitality Expenditure - The financial statements should disclose the aggregate total expenditure incurred in relation to hospitality in the period. (This includes Christmas parties, retirement parties, expenditure on staff wellbeing, contribution to sports and social clubs, One4all vouchers, retirement/leaving gifts, flowers, etc.)

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<sup>5</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 7

- Legal Costs/Settlements – in cases where cumulative legal costs incurred in the year of account exceed €50,000, a note should be included in the financial statements with a breakdown of the total costs as between legal fees and compensation paid.

#### 1.4 **Reporting Requirements:** Reporting requirements should be adhered to as follows:

*It is important to note that parent Departments may choose to seek additional financial information at more frequent intervals than those outlined below.*

- i) **Interim Unaudited Financial Statements:** Each commercial State body should furnish to its parent Department and, where appropriate, the Department of Public Expenditure and Reform and NewERA<sup>6</sup> not later than the end of the eighth month of the financial year, interim unaudited financial statements for the first half of that year.
- ii) **Draft Unaudited Financial Statements:** Draft unaudited financial statements<sup>7</sup> for each State body should be furnished to its parent Department and, where appropriate, the Department of Public Expenditure and Reform and NewERA not later than two months after the end of the relevant financial year.
- iii) **Publication of Annual Report and Financial Statements:** Each commercial State body should publish (or where publication is not required, submit to the Government) its annual report and/or financial statements not later than four months after the end of the relevant financial year. In the case of non-commercial State bodies, this should be done not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General and six months from the end of that body's financial year end (whichever is the earlier).
- iv) **Board Fees:** In the interests of transparency and good governance, State bodies are required to publish in their annual report and/or financial statement details of non-salary-related fees paid in respect of Board members analysed by category of fees, and the salary of the CEO.
- v) **Board Meetings and Attendance:** The number of meetings of the Board and its committees and the attendance of each Board member at Board meetings should be reported in the annual report.
- vi) **Disclosure of Key Management Personnel Compensation:** State bodies should disclose in their annual report and/or financial statements aggregate details of the compensation of their key management analysed by the following categories:
  - (a) Salaries and short term employee benefits;
  - (b) Post-employment benefits; and
  - (c) Termination benefits;

An entity shall also disclose key management personnel compensation in total. *Compensation includes all employee benefits.*

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<sup>6</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014

<sup>7</sup> Draft unaudited financial statements refer to draft financial statements and notes thereon (in accordance with applicable accounting standards) and not management accounts.

*Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any Board members (whether executive or otherwise) of that entity.*

*Key management personnel will vary across State bodies. However, it should include, at a minimum, the CEO, Board members and the top layer of management reporting to the CEO.*

The following arrangements should also apply:

- a) State bodies should disclose in their financial statements the aggregate amount of total compensation paid to employees including employee numbers in whole time equivalent format.
- b) The aggregate total compensation paid to employees should be split between salary, overtime and allowances.
- c) A separate note on CEO salary and benefits (and termination payment if relevant) should also be included.
- d) A separate note on termination benefits to all staff should be included. CEO termination benefits should be kept separate, as set out above.

**vii) Commercial State Bodies:** In addition to disclosing the aggregate pay bill and total number of employees, State bodies should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each band of €25,000 from €50,000 upwards and an overall figure for total employer pension contributions in their annual report and/or financial statements.

**viii) Non-commercial State Bodies:** In addition to disclosing the aggregate pay bill and total number of employees, non-commercial State bodies should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each pay band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report and/or financial statements.

**ix) Pension Liabilities:** The standard conventions setting out how public service superannuation liabilities are reflected should be followed in all cases.

**1.5 Consultancy Costs:** State bodies should disclose details of expenditure on external consultancy/adviser fees in their annual report and/or financial statements for each accounting year for each entity.

For this purpose consultancy fees mean fees paid to external parties providing advisory services of any nature. Such fees should be itemised by category as stated below or as the State body considers appropriate having regard inter alia to its size and competitive position and to the extent to which information is already disclosed:

- Legal (legal fees across all areas to be included here e.g. for pension, HR etc.);
- Tax and financial advisory (e.g. due diligence, accounting, corporate finance);
- Public relations/marketing; and
- Pensions and human resources; and
- Other.



Note that financial advisory excludes what is currently required to be disclosed in respect of fees paid to the auditors.

In procuring the services of external consultants, State bodies should comply with all applicable laws and Code guidelines regarding competitive tendering.

- 1.6 Statement on Internal Control:** The Chairperson's report to the relevant Minister regarding the system of internal control (paragraph 1.9(iv)) should be included in the annual report of the State body. This statement should be reviewed by the external auditors to confirm that it reflects the audited State body's compliance with the requirements of paragraph 1.9(iv) and is consistent with the information of which they are aware from their audit work on the financial statements. The external auditors should include their report on this matter in their audit report on the financial statements.
- 1.7 Deadlines:** Where the audit has been unavoidably delayed and fulfilling the requirements in paragraphs 1.4(ii) and (iii) would cause unjustifiable difficulties for State bodies, the relevant deadline can be extended, subject to the consent of the relevant Minister.
- 1.8 Web Publication:** Annual reports should be published on the website of the State body.

## Additional Reporting Requirements (Chairperson's Comprehensive Report to the Minister)

- 1.9 Chairpersons Comprehensive Report to Relevant Minister:** The Chairperson of each State body must furnish to the relevant Minister and, where appropriate, NewERA<sup>8</sup> in conjunction with the annual report and financial statements of the State body, a comprehensive report covering the State body, or where appropriate the Group:
- i)** outlining all commercially significant developments affecting the State body in the preceding year, including the establishment of subsidiaries or joint ventures and share acquisitions, and major issues likely to arise in the short to medium term;
  - ii)** providing summary details of all off-balance sheet financial transactions<sup>9</sup> of the State body that are not disclosed in the annual report and financial statements of the State body, including information on the nature, purpose and financial impact of the off-balance sheet financial transactions. The contents and format of this section of the report should be agreed in advance with the relevant Minister/designated Departmental officials;
  - iii)** affirming that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposals are being carried out;
  - iv)** including a statement on the system of internal control in the format set out in [Appendix D](#) and including, in cases where a breach of this system has been identified, an outline of the steps that will be taken to guard against such a breach occurring in future;

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<sup>8</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014

<sup>9</sup> As a guide, off-balance sheet transactions are arrangements that give rise, or may give rise, to an asset or liability in excess of €10m, or 2% of the total assets of the company, whichever is the smaller that is not recognised on the State body's own balance sheet (or the State body's consolidated group balance sheet), including, for example, leases, letters of credit, guarantees, derivatives, sale of receivables, debt or debt-like instruments of non-consolidated equity interests or joint ventures.

- v) affirming that Codes of Conduct for the Board and employees have been put in place and adhered to;
- vi) affirming that Government policy on the pay of CEOs and all State body employees is being complied with;
- vii) affirming that Government guidelines on the payment of Board members' fees are being complied with;
- viii) explaining failure to comply with any of the above and stating any corrective action taken or contemplated;
- ix) outlining significant post balance sheet events;
- x) confirming that the appropriate requirements of the Department of Public Expenditure and Reform Public Spending Code are being complied with;
- xi) confirming that procedures are in place for the making of protected disclosures in accordance with section 21(1) of the Protected Disclosures Act 2014 and confirmation that the annual report required under section 22(1) of the Act has been published;
- xii) confirming that Government travel policy requirements are being complied with in all respects;
- xiii) confirming that the State body has complied with its obligations under tax law;
- xiv) providing details of/information on legal disputes involving other State bodies;
- xv) confirming that this Code has been adopted and the extent to which the State body is in compliance with the Code; and
- xvi) stating that any subsidiary of the State body (or subsidiary thereof) continues to operate solely for the purpose of which it was established, remains and continues to remain in full compliance with the terms and conditions of the consent under which it was established.

**1.10 Commercially Sensitive Developments:** Along with the unaudited six-monthly financial statements, the Chairperson should also provide an interim report to the relevant Minister and, where appropriate, NewERA on significant commercially sensitive developments in the preceding six months and likely developments for the rest of the year.

**1.11 Subsidiary Reporting:** The Chairperson of the Board of each subsidiary should formally report to the main Board in a similar manner as the main Board Chairperson reports to the relevant Minister. This report should be received prior to the main Board reporting.

**Reporting requirements for State bodies required under (a) the annual report, (b) the financial statements, and (c) the Chairperson's comprehensive report to the relevant Minister are set out in tabular format in Appendices A, B and C.**

<b>Appendix A:</b>	<b>Annual Report</b>
<b>Appendix B:</b>	<b>Financial Statements</b>
<b>Appendix C:</b>	<b>Chairperson's Comprehensive Report to the Minister</b>
<b>Appendix D:</b>	<b>Statement on System of Internal Controls in a State Body</b>

# Glossary

For the purpose of this Code, the terms below shall have the following meaning:

- **Accounting Officer** – the Comptroller and Auditor General (Amendment) Act, 1993 defines an Accounting Officer as “an officer referred to in section 22 of the [Exchequer and Audit Department’s Act of 1866] to whom the duty of preparing the appropriation accounts of a Department is assigned under that section”.
- **Annual Report** – A report detailing the State body’s activities and financial performance during the preceding year. It includes the financial statements and may generally also include reports from those charged with governance (for example, the Chairperson of the Board), a review of the State body’s strategy and performance, information on risk management and governance, alongside other information for stakeholders.
- **CEO** – Chief Executive Officer.
- **Chairperson’s Comprehensive Report to the Minister** – A confidential letter from the Chairperson of the Board of a State body to the Minister of the parent Department.
- **Financial Statements** – A formal record of the financial activities and position of the State body for the previous financial year, including disclosures, intended to communicate the State body’s economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework.
- **Joint Venture** – A joint venture is a business entity created by two or more parties, generally characterised by shared ownership, shared returns and risks, and shared governance.
- **NewERA** – New Economy and Recovery Authority
- **ODCE** – Office of the Director of Corporate Enforcement.
- **OECD** – Organisation for Economic Co-operation and Development.
- **Parent Department** – The Department under whose aegis the State body lies.
- **State Body** – See page 11 of the Code of Practice.
- **Subsidiary** – A subsidiary is a company that is controlled by the holding or parent company – often indicated by holdings of more than 50% of the voting share capital of the company. A wholly owned subsidiary is 100% owned by a holding or parent company.

### Reporting requirements for the Annual Report include the following:

1. Each State body should note the agreement reached with its parent Department in its annual report regarding their level of compliance with this Code. This should explain whether certain requirements are to be phased-in over a longer period of time, or otherwise varied in some way. **(Compliance Requirements)**
2. The Board of each State body should approve an annual plan and/or budget and should formally undertake an evaluation of actual performance by reference to the plan and/or budget on an annual basis and reflect this, as appropriate, in the annual report. **(1.19 – Code of Practice)**
3. It must be stated in the annual report that the Board are responsible for preparing the annual report and financial statements<sup>10</sup> and whether they consider the financial statements to be a true and fair view of the State body's financial performance and its financial position at the end of the year. **(1.20 – Code of Practice)**
4. The Board should state in the annual report and financial statements how the performance evaluation of the Board and its committees has been conducted. An external evaluation proportionate to the size and requirements of the State body should be carried out at least every 3 years. **(4.6 – Code of Practice)**
5. The annual report should include a statement of how the Board operates, including a high level statement of which types of decisions to be taken by the Board and which are to be delegated to management. **(4.7 – Code of Practice)**
6. The Audit and Risk Committee should meet at least four times a year and invite outsiders with relevant experience to attend meetings if necessary. In the event that four meetings is not considered necessary the Chairperson of the State body should make a statement in the annual report of the State body that the he/she is satisfied that the Audit and Risk Committee discharged its role with fewer than four meetings in a year. **(1.13 – Audit and Risk Committee Requirements)**
7. The names of the Chairperson, the deputy Chairperson (if any), the CEO and members of the Board and its committees. **(1.3 – Business and Financial Reporting Requirements Document)**
8. The number of meetings of the Board and its committees and the attendance of each Board member at Board meetings should be reported in the annual report. **(1.4(v) – Business and Financial Reporting Requirements Document)**
9. Each commercial State body should publish (or where publication is not required, submit to the Government) its annual report and financial statements not later than four months after the end of the relevant financial year. In the case of non-commercial State bodies, this should be done not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General and six months from the end of that body's financial year end (whichever is the earlier). **(1.4(iii) – Business and Financial Reporting Requirements Document)**
10. Confirmation that the Board has carried out an appropriate assessment of the State body's principal risks, including a description of these risks, where appropriate and associated mitigation measures or strategies. **(7.2 – Code of Practice)**
11. The Chairperson of each State body should confirm in the annual report that the organisation is adhering to the relevant aspects of the Public Spending Code. **(8.25 – Code of Practice)**

<sup>10</sup> Apart from the case of a statutory body with responsibility for "Voted" funds, in which case the preparation of the annual Appropriation Account is the responsibility of the Accounting Officer.

12. The Chairperson's report to the relevant Minister regarding the system of internal control (**paragraph 1.9(iv) – Business and Financial Reporting Requirements Document**) should be included in the annual report of the State body. This statement should be reviewed by the external auditors to confirm that it reflects the audited body's compliance with the requirements of paragraph **1.9(iv)** and is consistent with the information of which they are aware from their audit work on the financial statements. The external auditors should include their report on this matter in their audit report on the financial statements. (**1.6 – Business and Financial Reporting Requirements Document**)

Reporting requirements for the Financial Statements include the following:

*Note: Parent Departments may choose to seek additional financial information at more frequent intervals than those outlined here.*

1. Each commercial State body should furnish to the parent Department and, where appropriate, the Department of Public Expenditure and Reform and NewERA<sup>11</sup> not later than the end of the eighth month of the financial year, interim unaudited financial statements for the first half of that year. **(1.4(i) - Business and Financial Reporting Requirements Document)**
2. Draft unaudited annual financial statements<sup>12</sup> for each State body should be furnished to its parent Department and, where appropriate, the Department of Public Expenditure and Reform and NewERA not later than two months after the end of the relevant financial year. **(1.4(ii) - Business and Financial Reporting Requirements Document)**
3. Each commercial State body should publish (or where publication is not required, submit to the Government) its annual report and/or financial statements not later than four months after the end of the relevant financial year. In the case of non-commercial State bodies, this should be done not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General and six months from the end of that body's financial year end (whichever is the earlier). **(1.4(iii) – Business and Financial Reporting Requirements Document)**
4. In the interests of transparency and good governance, State bodies are required to publish in their annual report and/or financial statements details of non-salary-related fees paid in respect of Board members analysed by category, and the salary of the CEO. **(1.4(iv) – Business and Financial Reporting Requirements Document)**
5. State bodies should disclose details of expenditure on external consultancy/adviser fees in their annual report and/or financial statements for each accounting year for any given entity.  
  
For this purpose consultancy fees mean fees paid to external parties providing advisory services of any nature. Such fees should be itemised by category as stated below or as the State body considers appropriate having regard inter alia to its size and competitive position and to the extent to which information is already disclosed:
  - Legal (legal fees across all areas to be included here e.g. for pension, HR etc.);
  - Tax and financial advisory (e.g. due diligence, accounting, corporate finance);
  - Public relations/marketing;
  - Pensions and human resources; and
  - Other. **(1.5 - Business and Financial Reporting Requirements Document)**
6. **Commercial State Bodies:** In addition to disclosing the aggregate pay bill and total number of employees, State bodies should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each band of €25,000 from €50,000 upwards and an overall figure for total employer pension contributions in their annual report and/or financial statements. **(1.4(vii) – Business and Financial Reporting Requirements Document)**

<sup>11</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014

<sup>12</sup> Draft unaudited financial statements refer to draft financial statements and notes thereon (in accordance with applicable accounting standards) and not management accounts.

7.	<b>Non-commercial State Bodies:</b> In addition to disclosing the aggregate pay bill and total number of employees, non-commercial State bodies should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each pay band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report and/or financial statements. <b>(1.4(viii) – Business and Financial Reporting Requirements Document)</b>
8.	<p>State bodies should disclose in their annual report and/or financial statements aggregate details of the compensation of their key management level broken down by the following categories:</p> <ul style="list-style-type: none"> <li>a) Salaries and short term employee benefits;</li> <li>b) Post-employment benefits; and</li> <li>c) Termination benefits.</li> </ul> <p>An entity shall also disclose key management personnel compensation in total. <b>(1.4(vi) – Business and Financial Reporting Requirements Document)</b></p>
9.	Termination/severance payments and agreements - The financial statements should disclose details of payments and agreements (with a value in excess of €10,000) made in the reporting period. These would include severance/termination payments, granting of added years for pension purposes or early retirement without normal actuarial reductions. <b>(1.3 – Business and Financial Reporting Requirements Document)</b>
10.	Travel and subsistence - The financial statements should disclose the total costs incurred in relation to travel and subsistence broken down between national and international travel. <b>(1.3 – Business and Financial Reporting Requirements Document)</b>
11.	Hospitality expenditure - The financial statements should disclose the aggregate total expenditure incurred in relation to hospitality in the period. (This would include Christmas parties, retirement parties, expenditure on staff wellbeing, contribution to sports and social clubs, One4all vouchers, retirement/leaving gifts, flowers, etc.) <b>(1.3 – Business and Financial Reporting Requirements Document)</b>
12.	Legal Costs/settlements – in cases where cumulative legal costs incurred in the year of account exceed €50,000, a note should be included in the financial statements with a breakdown of the total costs as between legal fees and compensation paid. <b>(1.3 – Business and Financial Reporting Requirements Document)</b>

Items for inclusion in the Chairperson's Comprehensive Report to the Minister and, where appropriate, NewERA<sup>12</sup> include the following:

1. The Chairperson's report to the relevant Minister regarding the system of internal control (**paragraph 1.9(iv) – Business and Financial Reporting Requirements Document**) should be included in the annual report of the State body. This statement should be reviewed by the external auditors to confirm that it reflects the audited body's compliance with the requirements of paragraph 1.9(iv) and is consistent with the information of which they are aware from their audit work on the financial statements. The external auditors should include their report on this matter in their audit report on the financial statements. **(1.6 – Business and Financial Reporting Requirements Document)**
2. The Chairperson's report to the relevant Minister should include a statement on the system of internal control in the format set out in Appendix D and include, in cases where a breach of this system has been identified, an outline of the steps that will be taken to guard against such a breach occurring in future. **(1.9(iv) - Business and Financial Reporting Requirements Document)**
3. Outlining all commercially significant developments affecting the State body in the preceding year, including the establishment of subsidiaries or joint ventures and share acquisitions, and major issues likely to arise in the short to medium term. **(1.9(i) - Business and Financial Reporting Requirements Document)**
4. The Chairperson's comprehensive report should provide summary details of all off-balance sheet financial transactions<sup>14</sup> of the State body that are not disclosed in the annual report and financial statements of the State body, including information on the nature, purpose and financial impact of the off-balance sheet financial transactions. The contents and format of this section of the report should be agreed in advance with the relevant Minister/designated Departmental officials. **(1.9(ii) - Business and Financial Reporting Requirements Document)**
5. Affirming that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposals are being carried out. **(1.9(iii) - Business and Financial Reporting Requirements Document)**. For example, details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process should be included. **(8.34)**
6. Affirming that Codes of Conduct for the Board and Employees have been put in place and adhered to. **(1.9(v) - Business and Financial Reporting Requirements Document)**
7. Affirming that Government pay guidelines on the pay of CEOs and all State body employees are being complied with. **(1.9(vi) - Business and Financial Reporting Requirements Document)**
8. Affirming that Government guidelines on the payment of Board members' fees are being complied with. **(1.10(vii) - Business and Financial Reporting Requirements Document)** The Chairperson's comprehensive report should also include a schedule of the fees and aggregate expenses paid to each of the Board members. **(2.10 – Remuneration and Superannuation)**

<sup>13</sup> This applies in the case of entities designated under the NTMA (Amendment) Act 2014

<sup>14</sup> As a guide, off-balance sheet transactions are arrangements that give rise, or may give rise, to an asset or liability in excess of €10m, or 2% of the total assets of the company, whichever is the smaller that is not recognised on the State body's own balance sheet (or the State body's consolidated group balance sheet), including, for example, leases, letters of credit, guarantees, derivatives, sale of receivables, debt or debt-like instruments of non-consolidated equity interests or joint ventures.



9.	As part of the Chairperson's comprehensive report, the Chairperson should affirm that the Government pay guidelines are being complied with in respect of such appointees who serve on the main Board and any subsidiaries of State bodies. <b>(2.10 – Remuneration and Superannuation)</b>
10.	Explaining failure to comply with any of the above and stating any corrective action taken or contemplated. <b>(1.9(viii) - Business and Financial Reporting Requirements Document)</b>
11.	Outlining significant post balance sheet events. <b>(1.9(ix) - Business and Financial Reporting Requirements Document)</b>
12.	Confirming that the appropriate requirements of the Public Spending Code are being complied with. <b>(1.9(x) - Business and Financial Reporting Requirements Document)</b>
13.	Confirming that procedures are in place for the making of protected disclosures in accordance with section 21(1) of the Protected Disclosures Act 2014 and confirmation that the annual report required under section 22(1) of the Act has been published; <b>(1.9(xi) - Business and Financial Reporting Requirements Document)</b>
14.	Certifying that Government travel policy requirements are being complied with in all respects. <b>(1.9(xii) - Business and Financial Reporting Requirements Document)</b>
15.	The Chairperson's letter should include the confirmation that the State body has complied with its obligations under tax law. <b>(1.9(xiii) - Business and Financial Reporting Requirements Document)</b>
16.	Providing details of/information on legal disputes involving other State bodies. <b>(1.9(xiv) - Business and Financial Reporting Requirements Document)</b>
17.	Confirming that this Code has been adopted and the extent to which the State body is in compliance with the Code. <b>(1.9(xv) - Business and Financial Reporting Requirements Document)</b>
18.	Stating that any subsidiary of the State body (or subsidiary thereof) continues to operate solely for the purpose of which it was established, remains and continues to remain in full compliance with the terms and conditions of the consent under which it was established. <b>(1.9(xvi) - Business and Financial Reporting Requirements Document)</b>
19.	Along with the unaudited six-monthly financial statements, the Chairperson should also provide an interim report to the relevant Minister and, where appropriate, NewERA on significant commercially sensitive developments in the preceding six months and likely developments for the rest of the year. <b>(1.10 - Business and Financial Reporting Requirements Document)</b>
20.	The Chairperson should, in the comprehensive report to the Minister affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan. <b>(8.20 – Code of Practice)</b>
21.	Non-competitive procurement should be reported in the Chairperson's comprehensive report to Minister. <b>(8.16 – Code of Practice)</b>

# Appendix D

## Statement on System of Internal Controls in a State Body

A statement on the system of internal controls in a State body should include the following items:

1. Acknowledgement by the Chairperson that the Board is responsible for the State body's system of internal control.
2. An explanation that such a system can provide only reasonable and not absolute assurance against material error.
3. Description of the key control procedures tailored to reflect the size and complexity of the organisation in order to provide a full understanding of the procedures, which have been put in place by the Board, to provide effective internal control.
  - i) A statement in relation to when the annual review of the effectiveness of control was conducted or where such a review was not conducted, a statement that it was not conducted.
  - ii) Disclosure of details regarding instances where breaches in control occurred – such breaches might include non-compliance with procurement rules or instances where other elements of the control system (e.g. internal audit, Audit and Risk Committee or other committees) were not operational.
  - iii) Disclosure of details of any material losses or frauds.
  - iv) Statement on System of Internal Controls is to be reviewed by the Audit and Risk Committee and the Board to ensure it accurately reflects the control system in operation during the reporting period.
  - v) Statement on System of Internal Controls is to be reviewed by the external auditors to confirm that it reflects the audited body's compliance with the requirements of paragraph 1.9 (iv) and is consistent with the information of which they are aware from their audit work on the financial statements and where this is not the case, the external auditor should report on this in the audit report on the relevant financial statement.
  - vi) the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities);
  - vii) processes used to identify business risks and to evaluate their financial implications;
  - viii) details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
  - ix) the procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud); and
  - x) the procedures for monitoring the effectiveness of the internal control system which may include: Audit and Risk Committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the heads of internal audit.
4. Confirmation that there has been a review of the effectiveness of the system of internal control.
5. Information (if appropriate) about the weaknesses in internal control that have resulted in material losses, contingencies or uncertainties which require disclosure in the financial statements or the auditor's report on the financial statements.
6. The information relating to weaknesses in internal control should be a description of the action taken, or intended to be taken, to correct the weaknesses, or an explanation of why no action is considered necessary.
7. Confirmation that the State body is in compliance with current procurement rules and guidelines as set out by the Office of Government Procurement.

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# **Code of Practice for the Governance of State Bodies**

Audit and Risk Committee Guidance

August 2016



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# Audit and Risk Committee Guidance

## Introduction

The purpose of this document is to set out Audit and Risk Committee best practice guidance under the *Code of Practice for the Governance of State Bodies*, to provide guidance to State Boards in making appropriate arrangements for their Audit and Risk Committee, and to assist the Audit and Risk Committee in carrying out their role and responsibilities.

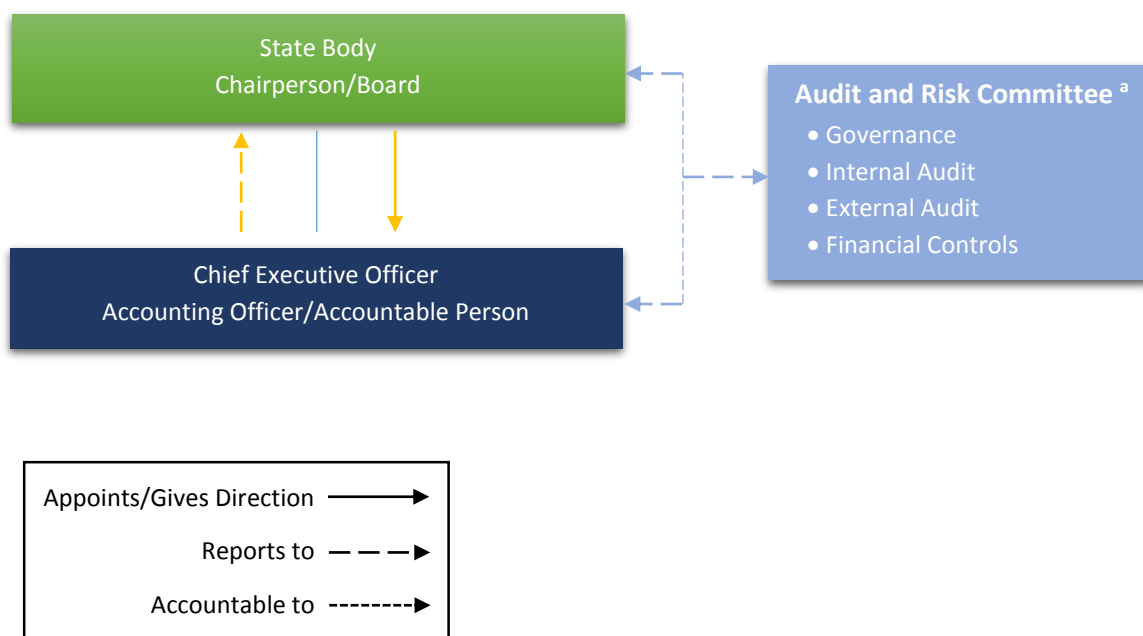
Best practice requires that Boards of State bodies should ensure that the Audit and Risk Committee arrangements in place are suited to the particular circumstances of the State body, which will vary depending on the scale, nature, responsibilities and functions of the State body.

This document has been developed by Government Accounting Unit, Department of Public Expenditure and Reform. For further information, please contact:

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# Audit and Risk Committee



<sup>a</sup> In general Audit and Risk Committees should be combined, however in some larger entities there may be a requirement to have separate Audit and Risk Committees.

# 1. Audit and Risk Committee

## Principle

While the Board has a duty to act in the interests of the State body, the Audit and Risk Committee has a particular role, acting independently of the management of the State body, to ensure that the interests of Government and other stakeholders are fully protected in relation to business and financial reporting and internal control.

## Code Provisions

**1.1 Internal Controls:** The Board should ensure that there are effective arrangements in place in the State body for governance, risk management and internal control. The Board should be supported by:

- an Audit and Risk Committee; and
- an Internal Audit Unit operating to the International Standards of the Institute of Internal Auditors or equivalent professional standards.

**1.2 Audit and Risk Committee:** The Board of a State body should establish an Audit and Risk Committee of at least three independent non-executive Board members, or in the case of smaller State bodies (less than 20 employees) two independent non-executive Board members, with written terms of reference which deal clearly with its authority and duties. Where a Board is constituted with only executive Board members other arrangements should be made to constitute an Audit and Risk Committee including the use of independent external personnel.

It is recommended for an Audit and Risk Committee to have members drawn from outside the Board. An Audit and Risk Committee is more likely to have the broad range of skills and experience necessary where its membership is not restricted to the Board. The Audit and Risk Committee should be empowered to co-opt members to provide specialist skills at a particular time and to procure specialist advice at reasonable and approved expense to the organisation to assist the Committee with specific areas of the Committee's business.

In general, the Audit and Risk Committees should be combined, however, in some larger entities there may be a requirement for separate Audit and Risk Committees.

**1.3 Written Charter:** The roles and responsibilities of the Audit and Risk Committee should be set out in a written charter, including terms of reference which should be communicated to all members of the Committee.

The terms of reference for the Audit and Risk Committee should be set by the Board and should include provisions regarding:

- membership;
- reporting requirements;
- authority to investigate;
- meetings – timing, conduct and frequency;
- information requirements;

- value for money;
- governance; and
- responsibilities regarding:
  - risk management;
  - internal control;
  - internal audit;
  - external audit; and
  - reviewing its own effectiveness.

The Audit and Risk Committee should review on an annual basis their terms of reference and recommend any necessary changes to the Board. It is important that a balance is struck during Audit and Risk Committee meetings between governance, risk management, internal control, and financial reporting items.

## Appendix A: Model Terms of Reference for Audit and Risk Committees

- 1.4 Chairperson of the Board:** The Chairperson of the Board may attend Audit and Risk Committee meetings and be a member of, but not chair, the Audit and Risk Committee.
- 1.5 Appointments:** Appointments to the Audit and Risk Committee should be made by the Board in consultation with the Chairperson of the Audit and Risk Committee. The Board of the State body should satisfy itself that at least one member of the Audit and Risk Committee has recent and relevant financial experience.
- 1.6 Duration of Appointment:** The duration of appointment of Audit and Risk Committee members should be clearly set out at time of appointment. It is recommended that the first appointment be for a period of three years, which can be renewed for up to three years, to a maximum of six years in total.
- 1.7 Relevant Skills and Experience:** The Audit and Risk Committee should collectively possess an appropriate range of skills to perform its functions to the required standard. This may vary according to the nature and size of the organisation, but at least one member of the Audit and Risk Committee should have recent, relevant financial experience and other members should have experience in the core areas of its business including risk management, internal audit, governance, relevant technical or specialist issues, an understanding of the public sector environment, in particular the accountability structures, and current public sector reform initiatives.
- 1.8 Assessment Criteria:** There should be formal assessment criteria for the appointment of the Chairperson and other Audit and Risk Committee members. In addition to the skills mix issues outlined above, members should have, or acquire as soon as possible after their appointment, an understanding of:
- organisational culture, objectives and challenges;
  - organisational structure including key relationships e.g. the State body's relationship with the relevant Minister and parent Department; and
  - relevant legislation or other rules governing the organisation.

**1.9 Letter of Appointment:** There should be a standard letter of appointment for each new Audit and Risk Committee member, where appropriate, including:

- role of the Audit and Risk Committee;
- duration of appointment and renewal provisions;
- support and training to be provided;
- the time commitment involved;
- level of remuneration (where appropriate);
- rules regarding conflict of interests;
- performance management arrangements; and
- termination arrangements.

## Appendix B: Model Letter of Appointment for an Audit & Risk Committee Member

**1.10 Conflict of Interest:** The process for recording declarations of conflicts of interest in the Audit and Risk Committee should be the same used at Board level. Each member of the Committee should take personal responsibility to declare any potential conflict of interest arising in relation to any items on the agenda for Audit and Risk Committee meetings.

**1.11 Register of Members Interests:** A register of Audit and Risk Committee members' interests should be maintained by the Board. Members should be required to declare any potential conflict of interest with any of the business items on the agenda for the Audit and Risk Committee meeting. The Committee should specify its procedures where a conflict of interest arises including the requirement that the relevant member brings this to the attention of the Chairperson and, where necessary, leaves the room for the duration of the discussion and not take part in any decisions relating to the discussion. Similar arrangements should apply in relation to meeting documentation, where such documentation is not made available to the member. This should be noted in the minutes of the meeting.

**1.12 Training and Development:** There should be a formal induction process in place (including individually tailored training) for new Audit and Risk Committee members. The Audit and Risk Committee and Chairperson should make recommendations to the Board on the Committee's and individual member's training needs. The Audit and Risk Committee should keep up to date with best practice and developments in corporate governance.

**1.13 Frequency of Meetings:** The Audit and Risk Committee should meet at least four times a year and invite outsiders with relevant experience to attend meetings if necessary. In the event that four meetings is not considered necessary the Chairperson of the State body should make a statement in the annual report of the State body that they are satisfied that the Audit and Risk Committee discharged its role with fewer than four meetings in a year.

**1.14 Authority to Investigate:** The Audit and Risk Committee should have explicit authority to investigate any matters within its terms of reference, as well as the resources and outside professional advice it needs to do so, and full access to information.

- 1.15 Relationships:** As the business of the Audit and Risk Committee requires, the CEO, Finance Director, Head of Internal Audit and external auditor should attend for specific meetings or agenda items at the Committee's request. Executive members of the organisation should be invited to attend Audit and Risk Committee meetings to participate in discussions and provide information as required. Executive members of the organisation should maintain an appropriate relationship with the Audit and Risk Committee.
- 1.16 Communications:** The Audit and Risk Committee should ensure that it communicates effectively with the Board, the Head of Internal Audit, the external auditor and other stakeholders. Any internal audit or audit items that relate to the Board's areas of responsibilities should be communicated to the Board as soon as they are identified.
- 1.17 Draft Financial Statements:** The Audit and Risk Committee should review the draft financial statements before recommending their adoption by the Board and where possible, before submission for audit taking account of public accountability and the special considerations which attach to State bodies in relation to their management and operation, consider whether the annual report and financial statements, taken as a whole, is fair, balanced and understandable and provides the information necessary for an assessment of the State body's financial position and financial performance, business model and strategy.<sup>1</sup>
- 1.18 External Auditors:** The Audit and Risk Committee should periodically consult with the external auditors regarding the operation of the Internal Audit Unit with particular reference to the staffing of the Unit, the audit work programme being applied and the testing carried out in relation to the State body's compliance with the requirements set out in this document.

Taking account of the size of the State body and the occurrence of weaknesses in internal controls or audit issues, the Audit and Risk Committee should meet with or otherwise engage with the external auditor at least once a year without executive Board members present to ensure there are no unresolved issues of concern and to make the external auditor aware of any emerging risks or governance issues.

- 1.19 Annual Report:** The Audit and Risk Committee's annual report to the Board should present its opinion on the adequacy of risk management and internal control systems, and the adequacy of sources of assurance to the Board.

The annual report should include:

- governance issues;
- financial reporting; and
- quality of internal and external audit.

The Committee should also report its view of its own effectiveness with advice on how it can be strengthened and developed.

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<sup>1</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 18

**1.20 Chairperson of the Audit and Risk Committee:** The Chairperson of the Audit and Risk Committee has particular responsibility for ensuring:

- that the Audit and Risk Committee is appropriately resourced;
- the Committee reviews Internal Audit Reports and management responses and ensures that actions are followed up;
- reports to the Committee contain relevant information and are provided at the right time in an appropriate format;
- absent Committee members are briefed on meetings and attendance records are maintained and reviewed annually;
- they report at Board meetings and submit regular written reports to the Board containing relevant information;
- matters arising are reported on at each subsequent meeting; and
- they are involved in the appointment of new Committee members.

**1.21 Appraisal:** Appraisal of the Chairperson of the Audit and Risk Committee should be overseen by the Chairperson of the Board.

**1.22 Audit and Risk Committee Secretariat:** The secretariat to the Audit and Risk Committee should:

- commission papers as necessary and support the Chairperson in preparing reports;
- circulate documents and keep and circulate minutes of meetings to Committee members and to internal and external audit as necessary in good time for meetings;
- for any agreed actions, document the owner, deadline and any advice given by stakeholders and monitor between meetings;
- keep the Committee abreast of development in the State body; and
- maintain a record of members' appointments and termination/renewal dates and ensure that appropriate appointment procedures are initiated when necessary.

## 2. Audit and Risk Committee Work Programme

### Code Provisions

**2.1 Audit and Risk Committee Work Programme:** The Audit and Risk Committee's work programme should include:

- i) **Internal Audit Unit:** Monitoring and reviewing the effectiveness of the State body's internal audit activities and consideration of the Internal Audit Unit's independence, expertise, experience and adherence to professional standards.
- ii) **Scope of Work:** The Audit and Risk Committee should consider the scope of the Internal Audit Unit's work and consider whether the available resources and access to people and information allow the Unit to address significant risks within the organisation.
- iii) **Audit Plan:** The Audit and Risk Committee should have an approval role in relation to the Internal Audit Unit audit plan, including the Committee making suggestions regarding risk and problem areas the audit plan should address. The Audit and Risk Committee should also receive regular progress reports from the Internal Audit Unit.
- iv) **External Auditor:** The Audit and Risk Committee should review Management Letters and Letter of Representations and should be given sight of the organisational responses to the external auditor Management Letters and reports.
- v) **Views of External Auditor:** The Audit and Risk Committee should request the views of the external auditor on the work and effectiveness of the Audit and Risk Committee. The Audit and Risk Committee should engage with the external auditor at least annually without executive Board members being present to ensure that there are no unresolved issues of concern and should make the external auditors aware of the corporate governance issues outlined in this Code with which the State body is required to comply.
- vi) **Co-operation between the External Auditor and Internal Audit Unit:** The Audit and Risk Committee should encourage co-operation between the external auditor and Internal Audit Unit and receive confirmation from the external auditor and the Internal Audit Unit of the effectiveness of their working relationship. This involves a sharing of audit plans to prevent duplication of effort and Internal Audit Unit should provide the external auditor with copies of all completed Internal Audit Unit reports.
- vii) **Draft Financial Statements:** The Audit and Risk Committee should review draft financial statements before recommending their adoption by the Board and consider whether:
  - accounting policies, completeness of financial statements, anti-fraud policy and losses are properly recorded and accounted for;
  - suitable processes are in place to ensure regularity, probity and propriety is achieved;
  - issues raised by the external auditor have been comprehensively and appropriately dealt with;
  - the financial statements present fairly the financial position of the State body;

- the comprehensiveness and meaningfulness of the State body's Statement on Internal Control and review of the Letter of Representation before issue by the State body.
- viii) The Committee should also consider:
- the effectiveness and adequacy of the State body's anti-fraud, anti-corruption and protected disclosure policies and staff awareness of them;
  - whether financial control, including the delegation structure, enables the organisation to achieve its objectives on a value for money basis; and
  - whether the procedures for investment appraisal are fit for purpose and comply with best practice including the principles and relevant requirements of the Department of Public Expenditure and Reform [Public Spending Code](#).
- ix) **Statement on Internal Control:** The Committee should also satisfy itself that the State body's system of internal control operated effectively during the reporting period and that the system of internal reporting gives early warning of internal control failures and emerging risks.

## Appendix C: Checklist for the Effectiveness of Audit and Risk Committees

### Commercial State Bodies

- 2.2 Commercial State Bodies:** The Audit and Risk Committee of a commercial State body should only include non-executive Board members. If Chairpersons participate, the Audit and Risk Committee should be chaired by another Board member.
- 2.3 Appointment of External Auditor:** In commercial State bodies the Audit and Risk Committee will:
- make recommendations to the Board on the appointment, re-appointment and removal of the external auditor;
  - approve terms of engagement and remuneration of the external auditor; and
  - monitor the external auditor's independence and objectivity and the effectiveness of the audit process.



# Glossary

For the purpose of this Code, the terms below shall have the following meaning:

- **Accounting Officer** – the Comptroller and Auditor General (Amendment) Act, 1993 defines an Accounting Officer as “an officer referred to in section 22 of the [Exchequer and Audit Department’s Act of 1866] to whom the duty of preparing the appropriation accounts of a Department is assigned under that section”.
- **Annual Report** – A report detailing the State body’s activities and financial performance during the preceding year. It includes the financial statements and may generally also include reports from those charged with governance (for example, the Chairperson of the Board), a review of the State body’s strategy and performance, information on risk management and governance, alongside other information for stakeholders.
- **CEO** – Chief Executive Officer.
- **Financial Statements** – A formal record of the financial activities and position of the State body for the previous financial year, including disclosures, intended to communicate the State body’s economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework.
- **Letter of Representation** – Letters of representation are letters from the Board addressed to the external auditors. The letter makes representations concerning amounts in the financial statements and aspects of the audit. The letter is drafted by the external auditors at the end of the audit and is submitted to the Board for signature, often by the Chairperson and the CEO.
- **Management Letter** – Management letters are letters from the auditors to management setting out the failings/weaknesses found during the audit. Unless these weaknesses or failings are material, the auditors will issue a clean/unqualified/unmodified report. Management are required to prepare responses to the management letter points made. The Audit and Risk Committee needs to oversee implementation of the external auditor’s management letter recommendations, which the auditor will follow up on the following year.
- **Parent Department** – The Department under whose aegis the State body lies.
- **State Body** – See page 11 of the Code of Practice document.

The Board has established an Audit and Risk Committee as a Committee of the Board to support them in their responsibilities for issues of risk, control and governance by reviewing the comprehensiveness of assurances in meeting the Board's and Accounting Officer's assurance needs and reviewing the reliability and integrity of these assurances.

### Membership

The members of the Audit and Risk Committee are:

- non-executive Board members: [list those who are appointed to the Audit and Risk Committee];
- independent external members: [list those who are appointed to the Audit and Risk Committee; (in all cases indicate the date of appointment and when the appointment is due to end / become eligible for renewal)];
- the Audit and Risk Committee will be chaired by [name]; and
- the Audit and Risk Committee will be provided with a secretariat function by [name].

### Reporting

- the Audit and Risk Committee will formally report in writing to the Board; and
- the Audit and Risk Committee will provide the Board with an Annual Report, timed to support finalisation of the annual report and financial statements, summarising its conclusions from the work it has done during the year.

### Responsibilities

The Audit and Risk Committee will advise the Board on:

- the strategic processes for risk, internal control and governance;
- the accounting policies, the financial statements, and the annual report of the organisation, including the process for review of the financial statements prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors;
- the planned activity and results of both internal and external audit;
- adequacy of management response to issues identified by audit activity, including external audit's management letter of representation;
- assurances relating to the management of risk and corporate governance requirements for the State body;
- (where appropriate) proposals for tendering for either internal or external audit services or for purchase of non-audit services from contractors who provide audit services;
- anti-fraud policies, protected disclosure processes, and arrangements for special investigations; and
- the Audit and Risk Committee will also periodically review its own effectiveness and report the results of that review to the Board.

### Rights

The Audit and Risk Committee may:

- co-opt additional members to provide specialist skills, knowledge and experience; and
- procure specialist ad-hoc advice at the reasonable expense of the State body, subject to budgets agreed by the Board.

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<sup>2</sup> Adapted from "Audit and Risk Assurance Committee Handbook" (HM Treasury, March 2016)

## Access

The Head of Internal Audit and the representative of external audit will have free and confidential access to the Chairperson of the Audit and Risk Committee.

## Meetings

- The Audit and Risk Committee will meet at least four times a year. The Chairperson of the Audit and Risk Committee may convene additional meetings, as they deem necessary;
- a minimum of [number] members of the Audit and Risk Committee will be present for the meeting to be deemed quorate;
- as the business of the Audit and Risk Committee requires the CEO, the Finance Director, Head of Internal Audit, and a representative of external audit should attend for specific meetings or agenda items at the Committee's request [add any others who may routinely attend];
- the Audit and Risk Committee may ask any other officials of the State body to attend to assist it with its discussions on any particular matter;
- the Audit and Risk Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters; and
- the Board may ask the Audit and Risk Committee to convene further meetings to discuss particular issues on which they seek the Committee's advice.

## Information Requirements

For each meeting the Audit and Risk Committee will be provided (well ahead of the meeting) with:

- a report summarising any significant changes to the State body's strategic risks and a copy of the strategic/corporate Risk Register;
- a progress report from the Head of Internal Audit summarising:
  - work performed (and a comparison with work planned);
  - key issues emerging from the work of internal audit;
  - management response to audit recommendations;
  - changes to the agreed internal audit plan; and
  - any resourcing issues affecting the delivery of the objectives of internal audit.
- a progress report (written/verbal) from the external audit representative summarising work done and emerging findings (this may include, where relevant to the organisation, aspects of the wider work carried out by the Comptroller and Auditor General, for example, Value for Money reports and good practice findings);
- management assurance reports; and
- reports on the management of major incidents, "near misses" and lessons learned.

As and when appropriate the Committee will also be provided with:

- proposals for the terms of reference of internal audit / the internal audit charter;
- the internal audit strategy;
- the Head of Internal Audit's annual opinion and report;
- quality assurance reports on the Internal Audit Unit;
- the draft financial statements of the organisation;
- the draft governance statement;
- a report on any changes to accounting policies;
- external audit's management letter;
- a report on any proposals to tender for audit functions, where appropriate;
- a report on co-operation between internal and external audit; and
- the organisation's risk management strategy.

*The list provided suggests minimum requirements for the inputs which should be provided to the Audit and Risk Committee. In some cases more may be provided. For instance, it might be agreed that Audit and Risk Committee members should be provided with a copy of the report of every internal audit assignment.*

# Appendix B

## Model Letter of Appointment for an Audit & Risk Committee Member

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It is recommended that the following issues be included in the Letter of Appointment of an Audit and Risk Committee member:

### Appointment and Purpose

You are hereby appointed by the [Board] as a member of the Audit and Risk Committee of [Insert name of entity]. As a member of the Audit and Risk Committee you are accountable to the [Board] through the Chairperson of the Committee. Your appointment is for [number] years from (date)]. This appointment may be renewed [number] times (by mutual agreement) after the duration of this appointment.

The Audit and Risk Committee is a Committee of the Board of [Insert name of entity] and the purpose of the Audit and Risk Committee is to:

- review the comprehensiveness of assurances on governance, risk management and the control environment in meeting the Board and Accounting Officer's assurance needs;
- review the reliability and integrity of these assurances;
- review the integrity of the financial statements; and
- advise the Board and Accounting Officer about how well assurances support them in decision-taking and in discharging their accountability obligations.

A copy of the Audit and Risk Committee's terms of reference is enclosed. The Committee is chaired by [name] and the other members are [names]. [It is recommended that the new member be provided with a list of their contact details]

### Support and Training

The Secretary of the Audit and Risk Committee is [name / contact details] and they will shortly be in touch with you to discuss and arrange appropriate induction training.

To help you understand the governance arrangements and the role of the Audit and Risk Committee in a State body, a copy of the suite of documents entitled the "*Code of Practice for the Governance of State Bodies*" is enclosed with this letter of appointment.

### Commitment and Remuneration

Your duties as an Audit and Risk Committee member are expected to typically take [number] days per annum, including time to read papers in preparation for meetings and a programme of activity to keep you in touch with the organisation's activities and priorities. The Committee normally meets [number] times each year, but additional meetings may be required from time to time. [Include, if appropriate, details of amount of remuneration].

### Conflicts of Interest

If during your period of appointment to the Audit and Risk Committee your personal circumstances change in any way that may provide a conflict of interest for you in your Audit and Risk Committee role, you are to declare the circumstances to the Chairperson of the Audit and Risk Committee.

### Appraisal

As a member of the Audit and Risk Committee you may be subject to appraisal by the Audit and Risk Committee Chairperson [include brief details of the appraisal process].

### **Conduct**

Although your appointment does not make you a Public Servant, you are expected to conduct yourself in your role in the State body in accordance with the [Guidelines for Public Servants](#).

### **Termination**

If you choose to resign from this appointment you will be expected to give [\[number\]](#) months' notice, unless your circumstances have changed in a way that make it appropriate for you to resign immediately. If your performance as an Audit and Risk Committee member is decided to be unacceptable or if your conduct (including conflicts of interests) is unacceptable your appointment may be terminated by the Board.

# Appendix C

## Checklist for the Effectiveness of Audit and Risk Committees

The Role of the Audit and Risk Committee		Y	N	N/A	Comment / Action Required
The Audit and Risk Committee fulfils an important role in the governance framework of an entity by assisting the Board monitor the internal control environment, risk management and financial reporting and internal and external audit unit. The Committee does not undertake management responsibilities and is not a substitute for entity management controls and accountabilities.					
1.	Is there a written charter and terms of reference, setting out the roles and responsibilities of the Audit and Risk Committee and its members, and has it been communicated to all members?				
2.	Do the terms of reference include the provisions as set out in paragraph 1.3 of this document?				
3.	Do the terms of reference require the Audit and Risk Committee to regularly review its own effectiveness? If so, when was the last time such a review was carried out?				
4.	Does the Audit and Risk Committee meet at least four times a year?				
Membership, Independence, Objectivity and Understanding		Y	N	N/A	Comment / Action Required
The Audit and Risk Committee should be independent and objective. In addition, each member should have a good understanding of the objectives and priorities of the organisation and of their role as a Committee member.					
Membership and Terms of Appointment					
5.	Does the Audit and Risk Committee have at least three, or in the case of smaller State bodies, two, independent non-executive Board members?				
6.	For what duration are Audit and Risk Committee members appointed?				
7.	Is there a standard letter of appointment for new Audit and Risk Committee members and does it include: <ul style="list-style-type: none"><li>role of Audit and Risk Committee?</li><li>duration of appointment and renewal provisions?</li><li>the support and training to be provided?</li><li>the time commitment involved?</li><li>level of remuneration (where appropriate)?</li><li>rules regarding conflicts of interest?</li><li>performance management arrangements</li><li>termination arrangements?</li></ul>				

Independence				Y	N	N/A	Comment / Action Required
8. What is the breakdown of Audit and Risk Committee members and Chairperson in terms of executive Board members, non-executive Board members and external members?							
9. Is the Audit and Risk Committee Chairperson different to the Chairperson of the Board?							
Relationship with the Executive and Other Participants				Y	N	N/A	Comment / Action Required
10. Are the executive members of the organisation invited to attend Audit and Risk Committee meetings, participate in discussions and provide information to the Audit and Risk Committee as required?							
11. Do the CEO, Finance Director, Head of Internal Audit and the external auditor routinely attend all Audit and Risk Committee meetings? If not, do they attend for specific meetings or specific agenda items, at the request of the Committee?							
Managing Conflicts of Interest				Y	N	N/A	Comment / Action Required
12. Is there a register of Audit and Risk Committee members' interests?							
13. Are members regularly required to declare any potential conflict of interest with any of the business items on the agenda for Audit and Risk Committee meetings?							
14. In instances where a member declares an interest in an agenda item, what action is taken?							
Skills and Experience				Y	N	N/A	Comment / Action Required
<b>The Audit and Risk Committee should collectively possess an appropriate range of skills (skills mix) to perform its functions to the required standard.</b>							
15. Are there formal assessment criteria for the appointment of the Audit and Risk Committee Chair?							
16. Does the assessment criteria for Audit and Risk Committee members include (or expect members to acquire as soon as possible after appointment) an understanding of: <ul style="list-style-type: none"> <li>the organisation's culture, objectives and challenges?</li> <li>the organisation's structure, including key relationships such as that with the relevant Minister and parent Department?</li> <li>relevant legislation or other rules governing the organisation?</li> </ul>							
17. Does the Audit and Risk Committee corporately possess knowledge, skills and experience of: <ul style="list-style-type: none"> <li>accountancy/finance – with at least one member having recent and relevant financial experience?</li> <li>governance, assurance and risk management?</li> <li>audit?</li> <li>technical or specialist issues pertinent to the organisation's business?</li> <li>the wider environments, including the Government and accountability structures, in which the organisation operates?</li> </ul>							



Access to Additional Skills	Y	N	N/A	Comment / Action Required
18. Is the Audit and Risk Committee empowered to co-opt members on a short-term basis to provide specialist skills needed at a particular time? When was the last time this was done?				
19. Can the Audit and Risk Committee procure specialist advice (at reasonable and approved expense to the organisation) on an ad-hoc basis, to assist the members with specific areas of Committee business? When was this last done?				
Training and Development	Y	N	N/A	Comment / Action Required
20. Is there a formal induction process (including individually tailored training) for new Audit and Risk Committee members?				
21. Does the Audit and Risk Committee and the Chairperson make recommendations to the Board on the Committee's and individual members training needs?				
22. Does the Audit and Risk Committee keep up to date with best practice and developments in corporate governance? How is this done?				
Scope of Work	Y	N	N/A	Comment / Action Required
The scope of the Audit and Risk Committee's work should be defined in the terms of reference, and encompass all of the assurance needs of the executive Board or the CEO, including particular engagement with the work of the internal and external audit and financial reporting issues.				
Relationship with Internal Audit				
23. Does the Audit and Risk Committee monitor and review the effectiveness of the Internal Audit Unit?				
24. Does the Audit and Risk Committee consider that the independence, experience, expertise and professional standard of the internal audit team are appropriate for the organisation?				
25. Does the Audit and Risk Committee consider whether the scope of internal audit work, the resources at its disposal and their access to information and people allow it to address significant risks within the organisation?				
26. Does the Audit and Risk Committee receive regular progress reports on work undertaken by the Internal Audit Unit?				
27. Does the Audit and Risk Committee review internal audit reports and management responses to issues raised, and monitor the progress made on internal audit recommendations?				
28. Does the Head of Internal Audit have direct access to the Chairperson of the Audit and Risk Committee?				

Relationship with External Audit	Y	N	N/A	Comment / Action Required
29. Does the Audit and Risk Committee periodically request the views of the external auditor on the work and effectiveness of the Audit and Risk Committee?				
30. Does the Audit and Risk Committee consider the external auditor management letter and other relevant reports and the management response, and monitor the progress made on the recommendations?				
31. Does the Audit and Risk Committee meet the external auditors at least once a year, without executive Board members being present, to discuss any issues of concern?				
Relationship between Internal and External Audit	Y	N	N/A	Comment / Action Required
32. Does the Audit and Risk Committee seek confirmation from internal audit and the external auditors on the effectiveness of their relationship?				
Fraud	Y	N	N/A	Comment / Action Required
33. Does the Audit and Risk Committee consider whether anti-fraud and corruption policies and procedures are in place and operating effectively?				
34. Does the Audit and Risk Committee consider whether there is an anti-fraud policy and code of conduct and its distribution to employees?				
Internal Control	Y	N	N/A	Comment / Action Required
35. Does the Audit and Risk Committee satisfy itself that the system of internal control has operated effectively throughout the reporting period and that the system of internal reporting gives early warning of control failures and emerging risk?				
36. Does the Audit and Risk Committee consider whether the Statement on Internal Control is sufficiently comprehensive and meaningful?				
37. Does the Audit and Risk Committee consider whether financial control, including the structure of delegations, enables the organisation to achieve its objectives and achieve good value for money?				
Financial Reporting	Y	N	N/A	Comment / Action Required
38. Does the Audit and Risk Committee review the draft of the financial statements?				
39. Before the Accounting Officer/CEO signs off the financial statements, does the Audit and Risk Committee consider whether: <ul style="list-style-type: none"> <li>▪ accounting policies, completeness of financial statements, anti-fraud policy and losses are properly recorded and accounted for?</li> </ul>				

<ul style="list-style-type: none"> <li>▪ there has been a robust process in preparing the financial statements to ensure completeness and whether appropriate processes are in place to ensure accurate accounting records are maintained?</li> <li>▪ suitable processes are in place to ensure regularity, probity and propriety are achieved?</li> <li>▪ issues raised by the external auditors have been given appropriate attention?</li> <li>▪ the comprehensiveness and meaningfulness of the State body's Statement on Internal Control and review of the Letter of Representation before issue by the State body?</li> </ul>				
<p style="text-align: center;"><b>Communication</b></p> <p><b>The Audit and Risk Committee should ensure it has effective communication with the Board, the Head of Internal Audit, the external auditor, and other stakeholders.</b></p>	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>
40. Does the Audit and Risk Committee provide an annual report to the Board?				
41. Does the annual report of the Audit and Risk Committee present the Committee's opinion about: <ul style="list-style-type: none"> <li>▪ the adequacy of risk management and internal control systems?</li> <li>▪ the adequacy of sources of assurance for same?</li> <li>▪ governance issues and concerns?</li> <li>▪ financial reporting for the year?</li> <li>▪ quality of internal and external audit?</li> <li>▪ the Audit and Risk Committee's view of its own effectiveness, including advice on ways in which it considers it needs to be strengthened or developed?</li> </ul>				
42. Does the Chairperson of the Audit and Risk Committee have open lines of communication with the Board, the Head of Internal Audit and the external auditors?				
43. Do reports to the Audit and Risk Committee communicate relevant information at the right frequency, time and format to be effective?				

<b>The Role of the Audit and Risk Committee Chairperson</b> The Chairperson of the Audit and Risk Committee has responsibility for ensuring that the work of the Committee is effective, that the Committee is appropriately resourced, and that it is maintaining effective communication with stakeholders.				Y	N	N/A	Comment / Action Required
<b>Monitoring Actions</b>							
44. Does the Chairperson of the Audit and Risk Committee ensure that members who have missed a meeting are appropriately briefed on the business conducted in their absence?							
<b>Appraisal</b>				Y	N	N/A	Comment / Action Required
45. Are records of attendance maintained and reviewed annually by the Board? What was average attendance over the three preceding years?							
46. Does the Audit and Risk Committee Chairperson ensure that Committee members are provided with an appraisal of their performance as a Committee member?							
47. Does the Audit and Risk Committee Chairperson seek appraisal of their performance from the Accounting Officer or Chairperson of the Board?							
<b>Appointments</b>				Y	N	N/A	Comment / Action Required
48. Is the Chairperson involved in the appointment of new Audit and Risk Committee members, including providing advice on the skills and experience required of the new individual?							
<b>Audit and Risk Committee Support</b> The organisation should provide its Audit and Risk Committee with appropriate secretariat support to enable it to be effective. This is more than a minute-taking function, it involves providing active support for the work of the Committee and helping its members to be effective in their role.				Y	N	N/A	Comment / Action Required
49. Is the Audit and Risk Committee supported by a secretariat?							
50. Does the Audit and Risk Committee secretariat: <ul style="list-style-type: none"> <li>▪ commission papers as necessary to support agenda items?</li> <li>▪ circulate meeting documents and meeting minutes to all Committee members, internal audit and external auditors in good time before each meeting?</li> <li>▪ for any agreed actions, document the owner, deadline and any advice given by stakeholders and monitor between meetings?</li> <li>▪ keep the Committee abreast of development in the State body?</li> <li>▪ maintain a record of when members' terms of appointment are due for renewal or termination?</li> <li>▪ ensure that appropriate appointment procedures are initiated when required?</li> </ul>							



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