

CODE OF PRACTICE FOR THE GOVERNANCE OF STATE BODIES

SUMMARY GUIDANCE ON NEW REQUIREMENTS OF THE 2009 CODE

Introduction

The 2009 Code of Practice for the Governance of State Bodies ("the Code"), published in June 2009, is a welcome and anticipated update to the 2001 Code. The 2009 Code is focused on providing clear guidance on the responsibility and accountability of Board members and management. It also more clearly defines the relationships between State bodies and the Government, the relevant Minister under whose aegis they fall, the Minister for Finance and their respective Departments. The Code also imposes additional obligations on State bodies and provides a performance framework against which State bodies can be measured.

The purpose of this document is to highlight some of the new requirements of the Code and it is intended that it will be used in conjunction with the Code.

Compliance Requirements

The Code considers that State bodies may be constituted in different forms and that the provisions of the Code may have to be applied proportionately based on their nature, size and governing statutes. Also, where aspects of the Code are not easily enforceable in commercial ventures, governance principles applicable to such ventures should be followed. In all these cases, agreement should be reached with the relevant parent Department and agreement should be advised to the Department of Finance prior to being disclosed in the annual report.

The Board

A number of new provisions are included in the 2009 Code to clarify the functions and responsibilities of the Board. As an overriding principle, it is stated that: "The Board is collectively responsible for promoting the success of the State body by leading and directing the body's activities. It should provide strategic guidance to the State body, and monitor the activities and effectiveness of management. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the state body, subject to the objectives set by Government."

New specifically defined Board requirements include that the Board should:

- annually confirm to the Minister that a system of internal financial control is in place;
- ensure that major expenditure decisions are aligned to longer term strategies and clearly defined objectives and outcomes with performance measurement in place;
- deal with and monitor post resignation / retirement employment, appointment and/or consultancy of its Directors by the private sector;
- have procedures in place to monitor and manage potential conflicts of interest for management and Board members;
- have written constitutions and terms of reference for all Board committees and agree review intervals for these;
- have confidential disclosure procedures in place;
- prepare and adopt a strategic plan which includes appropriate objectives and goals, as well as relevant indicators and targets against which performance can be measured;
- approve annual rolling 5 year business and financial plans within the first six months each year (commercial State bodies);
- adopt a statement of strategy for 3 – 5 years ahead, supported by a Board approved and evaluated annual planning and budgeting cycle (non-commercial State bodies);
- ensure that strategic / corporate plans are sent to the relevant Minister and that the Minister's views are considered in the final plan;
- not normally combine the role of Chairperson and Chief Executive, save with consent from the Minister;
- constantly review its operation and seek to improve its effectiveness; specific competency or skills gaps in the Board should be advised to the relevant Minister.

Directors

The added Directors' functions, roles and support are summarised as follows:

- The Board should keep under review its own performance and that of its committees and individual Directors, and report Board member attendance in the annual report.
- The Directors of State bodies incorporated under the Companies Acts should act in conformity with the applicable provisions of those Acts.
- The Secretary of State bodies should now also provide newly appointed Directors with:
 - procedures for dealing with conflict of interest situations;
 - a list of statutory requirements relating to the State body.
- Directors should not retain documentation obtained during their term and should return or dispose of such documentation.
- Directors should regularly update and refresh their skills and knowledge.

Codes of Conduct

The Code now specifically requires that Codes of Business Conduct for Directors and employees should:

- be prepared on the basis of a participative approach;
- be approved by the Board;
- contain a description of the nature, intent and scope of application and a statement of the guiding principles and obligations;
- set out procedures for addressing conflicts of interest;
- clarify that certain obligations regarding, in particular, non-disclosure of privileged or confidential information do not cease when membership or employment has ended;
- state that the acceptance of subsequent employment where the potential of a conflict of interest may arise, should be avoided for a reasonable period of time;
- refer to ensuring that members and employees of State bodies should comply with the Standards in Public Office Act, 2001.

Remuneration

In respect of remuneration considerations for commercial State bodies, the Code no longer lists requirements, but refers to the Guidelines on "Contracts, Remuneration and other Conditions of Chief Executives and Senior Management of Commercial State Bodies" available from the Department of Finance. Guidelines in respect of the appointments of Chief Executive Officers of non-commercial State bodies are available from the parent Department.

The provisions issued by the Minister for Finance in July 1992 in respect of the payment of fees to the Chairpersons and Directors / Members of State bodies are now listed in greater detail, but do not constitute new requirements; the Chairperson should annually affirm to the Minister that these guidelines are complied with.

Risk Management

New guidance is included in respect of risk management. The key requirements are:

- Each State body should develop a Risk Management Policy.
- The Board should approve the risk management framework and monitor its effectiveness, including evaluating management's actions on material incidents.
- The Board's oversight of risk management should include:
 - risk management as a standing agenda item;
 - establishing a Risk Committee or including this responsibility in the charter of the Audit Committee;
 - including risk management in competencies of at least one Director or seek expert external advice;
 - appointing a Chief Risk Officer or suitable management alternative with a direct reporting line to the Board;
 - setting the State body's risk appetite and reviewing the risk management business plan and risk register at least annually;
 - reviewing management reporting on risk management;
 - requiring external review of the effectiveness of the risk management framework on a periodic basis.



Accountability and Audit

Each Department/Office is now required to define the respective roles of its Accounting Officer and the Chief Executives of any State body under its aegis.

The accountability of the Accounting Officer / Accountable Person to the Oireachtas (responsible for Voted funds) must be differentiated from that of the Board's general responsibilities.

The preparation of Appropriation Accounts and associated public financial procedures is the responsibility of the Statutory Accounting Officer and not the Board.

Audit Committee

The Board's responsibility for the system of internal control is now specifically highlighted under the Audit Committee's responsibilities.

The requirement for an Audit Committee is also now linked to a Board of any State body with more than 20 employees and the Audit Committee should:

- include adequate financial expertise (at least one member);
- monitor and review the effectiveness of the State body's internal audit activities;
- receive information on audit items relating to their areas of responsibility when these are identified.

The requirement of an internal audit function now includes provisions for joint venture or client arrangements with another body where this is warranted by the size or risk profile of the State body.

Departmental Oversight

The Code envisages the development of a Performance Framework through dialogue between Departments and the State bodies under their auspices, which should allow for:

- defining the expectations that Government and Ministers have of State bodies;
- clarification of the State body's role in the public sector;
- defining the parameters surrounding the State body's resources / income;
- the adoption of both annual and multi-annual targets, and the development of outputs and outcome indicators based on clear outputs / milestones to measure delivery;
- annual output statements to be produced by all non-commercial agencies;
- the development and widespread use of Service Level Agreements for State bodies involved in service provision.

Reports and Accounts

State body annual reports are now also required to include:

- a schedule of fees and details of aggregate expenses paid to each of the Directors or Board members, by category;
- in addition to the statement on the system of internal financial control, a description of breaches in the system identified and steps taken to avoid future similar breaches;
- affirmation that the Government travel policy requirements are being complied with.

Annual reports should be published on State body websites and, in general, online publication should be considered where this can reduce costs.

The Chairpersons of each subsidiary should formally report to the main Board in a similar manner as the main Board Chairperson reporting to the Minister.

The Accounting Officer of the parent Department should satisfy him/herself that requirements of the Code are being implemented and ensure that appropriate action is taken where problems are identified.

Diversification, Establishment of Subsidiaries and Acquisition by State Bodies

When seeking approval from the Minister for the proposed establishment of subsidiaries, joint ventures or acquisitions, such applications should now also include:

- other potential liabilities that may have a negative impact on the company;
- the proposed approach to the remuneration and conditions of employment of the Chief Executive / Managing Director and where appropriate, for other employees of the subsidiaries.

Procurement

More comprehensive requirements in respect of procurement are included in the new Code. As an overriding principle, it is stated that, "as the ultimate owners of, and investors, in State bodies, citizens and tax payers have an important and legitimate interest in the achievement of value for money in the State sector. Whether commissioning public services or providing them directly, State bodies have a duty to strive for economy, efficiency, transparency and effectiveness in their expenditure." Additional procurement provisions include:

- Where a significant procurement function is in place, a sub-committee of the Board (or the Audit Committee) should devise and monitor procedures suited to the purchasing profile.
- EU Directives and Treaty principles impose legal obligations on public bodies in regard to tendering and purchasing procedures.
- Essential EU Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide services and freedom of establishment. It is implied that contracts of significant value will be publicised in other Member States.
- A Corporate Procurement Plan should be completed by all non-commercial State bodies, based on an analysis of expenditure and procurement / purchasing structures in the organisation. The plan should aim at improving procurement outcomes. Compliance with procurement policies and procedures and the implementation of the Plan should be annually affirmed to the Minister.
- Tax Clearance requirements set out in Department of Finance Circulars 44/06 and 43/06 should be fully adhered to.
- Guidance on procurement policy and general procurement matters is available from the National Public Procurement Policy Unit.

Investment Appraisal

Reference is now made to the updated Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector which were issued by the Department of Finance in February 2005.

Additionally, State bodies should have regard to appropriate models for investment appraisal in their sectors and seek to apply best practice.

The Department of Finance Value for Money Frameworks should also be adhered to.

Travel

A new provision is added which refers to required compliance with Department of Finance circulars regarding travel and subsistence.

Specific emphasis is placed on the requirement for monitoring and reporting where significant foreign travel is annually undertaken.

A Framework Travel Policy is suggested which includes consideration of value for money principles, for example considering alternatives to travel.

Disposal of State Assets and Access to Assets by Third Parties

The new Code raises the threshold for State assets to be disposed of by auction or competitive tendering to €150,000. It is also specifically stated that Directors connected to potential disposals should absent themselves from Board deliberations on the matter.

Legal Disputes Involving Other State Bodies

In respect of legal disputes involving other State bodies, new provisions are included in the Code to ensure that:

- every effort is made to mediate, arbitrate or otherwise resolve the dispute before significant legal costs are incurred;
- information in respect of such legal issues is provided to the Department of Finance on a list together with an estimate of the legal costs incurred to date on such matters.

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