

Significant Changes in the Code of Practice for the Governance of State Bodies (2016)

The Code of Practice for the Governance of State Bodies, 2016 was launched by the Minister for Public Expenditure and Reform, Paschal Donohoe, T.D. on the 17th August 2016.

The Code of Practice for the Governance of State Bodies, 2016 is a suite of documents comprising the main Code and more detailed documents setting out Code requirements as follows:

1. Business and Financial Reporting Requirements;
2. Audit and Risk Committees Guidance;
3. Remuneration and Superannuation; and
4. Board Self-Assessment Evaluation Questionnaire.

The Code of Practice for the Governance of State Bodies, 2016 is based on four key pillars:

- **Values** – Good governance supports a culture of behaviour with integrity and ethical values.
- **Purpose** – Each Body should be clear about its mandate with clearly defined roles and responsibilities.
- **Performance** – Defined priorities and outcomes to achieve efficient use of resources resulting in the delivery of effective public services.
- **Developing Capacity** – Appropriate balance of skills and knowledge within the organisation, updated as required

Publishing the Code, the Minister for Public Expenditure and Reform, Paschal Donohoe TD, said: ‘The key benefit of the updated Code of Practice for the Governance of State Bodies is that it provides greater clarity regarding the roles and responsibilities of the Board of a State body’.

“There is a greater emphasis on accountability and transparency, which is underpinned by effective relationships between the Minister/parent Department and the Chairperson of the State body to ensure that the body is effective in achieving its objectives, uses its resources efficiently and operates in a manner which secures the longer-term sustainability of the State body. In light of the scale and diversity of roles carried out by State bodies, the Code is not a ‘one size fits all’ document, but rather acts as a framework to ensure that both commercial and non-commercial State bodies meet the highest standards of corporate governance commensurate with their significant public roles and responsibilities.”

Corporate Governance best practice in the wider public and private sectors in Ireland and internationally has evolved since 2009: a number of reference documents have been updated and published since then; such as the Financial Reporting Council’s “UK Corporate

Governance Code” (2016), CIPFA and IFAC’s *“International Framework: Good Governance in the Public Sector”* (2014), OECD’s *“Principles of Corporate Governance”* (2015). These developments have been taken account of in the update of the *Code of Practice for the Governance of State Bodies*.

The Code is intended to be a living document and will evolve in line with best practice. It is effective from 1st September 2016.

Compliance with the provisions of the Code is on a “comply or explain” basis.

Given below is a summary of the significant changes since the publication of the Department of Finance Code of Practice for the Governance of State Bodies, 2009.

1. **Principles and Provisions:** The *Code of Practice for the Governance of State Bodies, 2016* sets out the core principles of the Code at the beginning of each section and then the underlying Code provisions to be complied with underpinning those principles.
2. **Strengthening Board Leadership and Strategic Aims:** The Board is tasked with fulfilling 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.

The Board should agree the body’s strategic aims with the body’s parent Minister and Department, to the extent relevant, and ensure optimal use of resources to meet its objectives. (*Section 1, Main Code of Practice Document*)

3. **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. 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. (*Section 1, Main Code of Practice Document*)
4. **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. (*Section 1, Main Code of Practice Document*)

5. **Secretary to the Board:** The Code includes a focus on the Secretary to the Board, an important role in the effective functioning and operations of the Board. The Code states that the Board should ensure that the person appointed as Secretary has the skills necessary to discharge the duties of the role; that the appointment and removal of the Secretary should be a matter for the Board; and it recognises the key relationship between the Secretary and the Chairman. *(Section 1, Main Code of Practice Document)*
6. **Alignment of Statement of Strategy with Parent Department's Statement of Strategy:** The State body statement of strategy 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. *(Section 1, Main Code of Practice Document)*
7. **Promoting a culture of openness and debate within the Board:** The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of key management and all Board members. *(Section 2, Main Code of Practice Document)*
8. **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. *(Section 4, Main Code of Practice Document)*
9. **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. *(Section 4, Main Code of Practice Document)*
10. **Statement of How the Board Operates:** The annual report and financial statements 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. *(Section 4, Main Code of Practice Document)*
11. **Alignment of Disclosure Requirements in the Code of Practice with the Ethics Acts:** The changes are aimed at aligning the disclosure requirements in the *Code of Practice for the Governance of State Bodies* to those set out in the Ethics Acts, in particular by confirming the definitions of interests and the scope in terms of interests of connected persons, with the intention of reducing the volume of paperwork required and reducing

the potential for confusion between the Code and the Ethics Acts disclosure regimes. (*Section 5, Main Code of Practice Document*)

12. **Risk Management:** The Code requires the Board in its annual report to confirm that it has carried out an assessment of the body's principal risks, including a description of the risks, where appropriate, and associated mitigation measures or strategies. (*Section 6, Main Code of Practice Document*)
13. **Audit and Risk Committee:** The Code specifically requires all bodies to have an Audit and Risk Committee (referred to as an Audit Committee in the 2009 Code), illustrating the heightened focus on risk management in the new Code. (*Section 7, Main Code of Practice Document*)
14. **Performance Delivery Agreements:** Each Department is required to agree a Performance Delivery Agreement (reviewed annually) with all non-commercial State bodies under its aegis. These agreements will act as a performance contract between the parent Department and the State body in which an agreed level of performance/service is formalised. (*Section 8, Main Code of Practice Document*)
15. **Periodic Critical Reviews:** The Code provides for Periodic Critical Reviews no later than every five years, with the review, chaired by the parent Department and comprising officials from the parent Department, the State body and the Department of Public Expenditure and Reform, to consider, inter alia, the ongoing business case for a State body. (*Section 8, Main Code of Practice Document*)
16. **Enhanced oversight arrangements between the relevant Minister/parent Department and bodies under their aegis:** Government Departments should ensure that they have written oversight agreements with State bodies under their aegis which clearly define the terms of the relevant Minister's/parent Department's relationship with the State body. (*Section 8, Main Code of Practice Document*)
17. **Disclosure of Key Management Personnel Compensation:** State bodies should disclose in their annual report and financial statements aggregate details of the compensation of their key management analysed by categories. (*Business and Financial Reporting Requirements Document*)
18. **Recommendations of the Comptroller and Auditor General in his Special Report on the Effectiveness of Audit Committees in State Bodies:** The updated *Code of Practice for the Governance of State Bodies* takes account of the C&AG recommendations regarding embedding requirements concerning the selection of audit committee members, identification of conflicts of interest, performance assessment and measuring audit committee effectiveness. In accordance with the C&AG recommendations a checklist will be included for use, on a self-assessment basis, by audit committees in State bodies to determine their level of compliance with good practice principles. (*Audit and Risk Committee Guidance Document*)