

**CODE OF PRACTICE FOR  
THE GOVERNANCE OF STATE BODIES**

**May, 2009**

## **PREFACE**

The first set of guidelines on Corporate Governance in State Bodies entitled “State Bodies Guidelines” was issued by the Department of Finance in March 1992, with an update in October 2001. This is an update to take account of recent developments and consultations. In the layout, certain Core Principles are set out at the beginning of various sections.

It should be noted that:

- existing legislative provisions<sup>1</sup> applying to a State body on matters that are also the subject of this Code of Practice, continue to apply, and;
- provisions contained in this Code of Practice, including the financial thresholds, may be amended from time to time by the Minister for Finance, having consulted with relevant Ministers;
- The Minister for Finance may also issue circulars and/or guidance notes, from time to time, in relation to the Code of Practice;
- Arrangements for appointments to the boards of State bodies are, in general, set out in the legislation establishing the bodies in question.

This Code has been circulated to all Departments in both hard copy and electronic format. It is also available on the Department of Finance website (<http://www.finance.gov.ie>).

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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;

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## 1. INTRODUCTION

Corporate governance comprises the systems and procedures by which enterprises are directed and managed. State bodies must serve the interests of the taxpayer, pursue value for money in their endeavours (including managing risk appropriately), and act transparently as public entities. The Board and management should accept accountability for the proper management of the organisation.

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

The Code of Practice provides a framework for the application of best practice in corporate governance by both commercial and non-commercial State bodies. State bodies and their subsidiaries are required to confirm to the relevant Minister that they comply with the up-to-date requirements of the Code 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. The Code makes provision for certain requirements to be applied proportionately to smaller bodies.

Directors and employees of State bodies and their subsidiaries should be guided by the principles set out hereunder in meeting their responsibility to ensure that all of their activities, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance.

The guidelines concern both the internal practices of the bodies and their external relations with the Government, the relevant Minister under whose aegis they fall, the Minister for Finance and their respective Departments. The guidelines also make reference to the ethical and standards in public office obligations that apply to all designated Directors and designated office holders (See Appendix I).

The provisions of the Code do not override existing statutory requirements and other obligations imposed by the Companies Acts, Ethics legislation, Standards 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).

### **Compliance Requirements in Certain Cases**

1.1 State bodies of all sizes have a responsibility to implement appropriate corporate governance. Nevertheless, some State bodies may consider that certain requirements of the Code of Practice would have a disproportionate effect on them because of the nature and scale of their activities, the resources available to them, and their governing statutes. Instead of a Board structure, some bodies may be constituted in the form of an individual office holder, tribunal, commissions etc. In such cases, the relevant body should reach agreement with the parent Department on the extent to which the requirement might be suitably adapted in their case. The 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. The

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<sup>2</sup> An adaptation from the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

Department of Finance should be advised about the proposed statement in advance of the publication of the report.

1.2 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 of Practice 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 bodies/companies generally and confirm to the relevant Minister that this has been done.

## **A. THE BOARD AND DIRECTORS**

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

### **2. The Board**

*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.*

#### Matters for decision of the Board

2.1 The Board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the body is firmly in its hands (some of these matters may require Ministerial approval and this should be noted). 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 Chief Executive);
- in non-commercial State Bodies, compliance with statutory and administrative requirements in relation to the approval of the number, grading, and conditions of appointment of all staff;
- approval of annual budgets and corporate plans;
- production of annual reports and accounts;
- appointment, remuneration and assessment of the performance of, and succession planning for, the Chief Executive<sup>3</sup>; and

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<sup>3</sup> Other titles may operate in certain Bodies e.g. Managing Director or there may be analogous roles such as Dean.

- significant amendments to the pension benefits of the Chief Executive and staff (which may require Ministerial approval).

2.2 The Board should meet regularly. The collective responsibility and authority of the Board should be safeguarded. All Board members must be afforded the opportunity to fully contribute to Board deliberations while excessive influence on Board decision-making by one or more individual members should be guarded against.

2.3 The Board is responsible for compliance with all statutory obligations applicable to the State body that may be set out in the legislation governing the establishment of the body or in other relevant legislation. The Board should satisfy itself that all such obligations are identified and made known to it.

2.4 The Board is required to confirm annually to the relevant Minister that the State Body has a system of internal financial control in place.

2.5 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.

2.6 The Board should also, in a manner most effective to the State body, deal with the issue of post resignation/retirement employment, appointment and/or consultancy of its Directors 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.

2.7 The Board should have procedures to monitor and manage potential conflicts of interest of management and Board members.

#### Annual Report and Accounts

2.8 The Board has a duty to ensure that a balanced, true and understandable assessment of the body's position is made when preparing the annual report and accounts of the body and when submitting these to the relevant Minister. If the State body operates on a commercial basis, the Board should report that the business is a going concern with supporting assumptions or qualifications, as necessary.

#### Audit

2.9 The Board should establish procedures for maintaining an appropriate relationship with the external auditors.

2.10 The Board Audit Committee and other Board committees should have written constitutions and written terms of reference and the Board should agree the intervals within which these should be reviewed by the main Board and updated as appropriate.

#### Confidential Disclosures

2.11 The Board should put in place procedures whereby employees of the State Body may, in confidence, raise concern about possible irregularities in financial reporting or other matters and for ensuring meaningful follow-up of matters raised in this way.

## Strategy

2.12 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.

2.13 The Board of a commercial State body should within the first six months of each year approve annual rolling five-year business and financial plans, encompassing strategy (taking account of general sectoral policy), planned investment and appropriate financial targets. Plans should reflect shareholders' objectives, as appropriate, and the strategic mandate of the body.

2.14 The Board of each non-commercial body should adopt a statement of strategy for a period of 3-5 years ahead. Implementation of the strategy by the management of each body should be supported through an annual planning and budgeting cycle. The Board of each body should approve the annual plan and budget and should formally consider an evaluation of performance by reference to the plan and budget on an annual basis and reflect this, as appropriate, in the annual report.

2.15 A copy of the draft strategic/corporate plan (including, where relevant, plans for levy setting or own income generation) should be sent to the relevant Minister before the plan is finalised and adopted by the Board. Views which the Minister/Department wishes to have reflected in the final plan should be made known to the body within a maximum period of six weeks of submission. While final responsibility for the content of the plan rests with the Board in each case, the views of the Minister under whose aegis the body falls and consideration of the public interest should be carefully weighed by the Board.

## Separation of Roles at the Top Level

2.16 The role of Chairperson and Chief Executive Officer should not normally be combined. When this occurs, it should be with the consent of the relevant Minister. The respective roles should be agreed and documented.

## Composition of the Board

2.17 The Board should constantly review its own operation and seek to identify ways of improving its effectiveness. This will include the identification of gaps in competencies and ways these could be addressed. Where a Board Chair 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 in order that the Minister may take the Chair's views into consideration when making appointments.

## **3. Directors**

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

3.2 Section 5 sets out the approach to dealing with any business or other interests of a Director that could affect the Director's independence.

3.3 The Directors should state in the annual report that they are responsible for preparing the accounts<sup>4</sup>. There should also be a statement by the external auditors about their reporting responsibilities.

3.4 The Directors should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body.

3.5 If a 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 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.

### **Support to Directors**

*Best practice in corporate governance requires that the Board be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive a formal induction on joining the Board and should regularly update and refresh their skills and knowledge.<sup>5</sup>*

3.6 The Board should be supplied with information which is of a suitable quality to enable Board members to satisfactorily discharge their duties.

3.7 The Board should, in a Board resolution, lay down formal procedures whereby Directors, in the furtherance of their duties, may take independent professional advice, if necessary, at the reasonable expense of the State body. Such procedures should also be set out in the Code of Conduct for Directors. The Board should have in place a procedure for recording the concerns of Directors that cannot be resolved.

3.8 The Board should keep under review its own performance and that of its committees and individual directors. The attendances of each Board Member at Board meetings should be reported in the Annual Report.

3.9 Directors of State bodies incorporated under the Companies Acts have duties under these Acts and it is the responsibility of each Director to act in conformity with the applicable provisions of those Acts.

## **4. Briefing for new Directors**

4.1 On appointment of new Directors, the Secretary of the body should provide them with the following information:

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<sup>4</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.

<sup>5</sup> This is an application of a principle contained in the UK Financial Reporting Council's Combined Code on Corporate Governance, June 2008.

- a formal schedule of matters reserved to the Board for decision;
- 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 committees and their terms of reference;
- a statement explaining the Directors' responsibilities in relation to the preparation of the accounts, 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 the Directors that they have access to the advice and services of the Secretary, who is responsible to the Board for ensuring that Board procedures are followed and comply with the applicable rules and regulations;
- a copy of the code of ethics/conduct for Directors, including requirements for disclosure of Directors' interests and procedures for dealing with conflict of interest situations. The procedures regarding disclosure of interests of Directors are set out in Section 5 below;
- specific company information;
- a copy of relevant legislation (or excerpts thereof) together with the most up to date version of this Code of Practice and any relevant circulars and/or guidance notes; and
- a listing of the statutory requirements relating to the body.

### **Codes of Conduct, Disclosure, Ethics in Public Office**

*Individual behaviour is a major factor in the effectiveness of the Board, and also has an influence on the reputation of the organisation, the confidence and trust that members of the public have in it and the working relationships and morale within it. Conflicts, real or perceived, can arise between the State body's interests and those of individual directors. Public trust can be damaged unless the organisation implements clear procedures to deal with these conflicts.<sup>6</sup>*

## **5. Codes of Conduct for Directors and Employees**

5.1 All State bodies should have written Codes of Business Conduct for their directors and employees. The Code should be prepared via a participative approach,

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<sup>6</sup> Taken from the UK Independent Commission on Good Governance in Public Service's "Good Governance Standard for Public Services", Chapter 3.2

and should be approved by the Board. Up-to-date codes of business conduct should be available upon request through the State body's website. A hard copy should be circulated to all directors, management and employees for their retention.

5.2 The Code 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 The Code should refer to the need for directors and staff to comply with the requirements of the Companies Acts, 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 The Code should set out procedures for addressing conflict of interest.

5.5 The Code should make clear that certain obligations to the State body regarding, in particular, the non-disclosure of privileged or confidential information do not cease when Board membership or employment in the body has ended. In particular the Code should recommend that the acceptance of further employment where the potential for conflict of interest arises should be avoided during a reasonable period of time after the exercise of a function in the State body has ceased.

5.6 The Code should also refer to the need for each member of the Board of a State body and each person holding a Designated Position of employment with a State body to ensure his/her compliance with relevant provisions of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act, 2001. Appendix I contains an outline of the obligations under the above Acts.

A Framework Code of Business Conduct is provided in Appendix II.

## 6. **Disclosure of Interests by Directors**

In addition to the requirements under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 the following procedures should be observed:

- i) On appointment, each Board member should furnish to the Secretary of the body details relating to his/her employment and all other business or professional interests including shareholdings, directorships, professional relationships etc., that could involve a conflict of interest or could materially influence the member in relation to the performance of his/her functions as a member of the Board.
- ii) Any interests of a member's family of which he/she could be expected to be reasonably aware or a person or body connected with the member which could involve a conflict of interest or could materially influence the member in the performance of his/her functions should also be disclosed. For this purpose, persons and bodies connected with a member should include:
  - (a) a spouse, parent, brother, sister, child or step-child;
  - (b) a body corporate with which the member is associated;

- (c) a person acting as the trustee of any trust, the beneficiaries of which include the member or the persons at (a) above or the body corporate at (b) above; and
- (d) a person acting as a partner of the member or of any person or body who, by virtue of (a) - (c) above, is connected with the member.

Similarly, each member should furnish to the Secretary details of business interests on the lines above of which he/she becomes aware during the course of his/her directorship.

- iii) Where it is relevant to any matter which arises for the State body, the member should be required to indicate to the Secretary the employment and any other business interests of all persons connected with him/her, as defined at (i) and (ii).
- iv) Boards may exercise discretion regarding the disclosure by members of minor shareholdings. As a general guideline, shareholdings valued at more than €15,000 or of more than 5 per cent of the issued capital of a company should be disclosed.
- v) If a member has a doubt as to whether this Code requires the disclosure of an interest of his/her own or of a connected person, that member should consult the Chairperson.
- vi) Details of interests disclosed should be kept by the Secretary to the Board in a special confidential register and should be updated on an annual basis. Changes in the interim should be notified to the Secretary as soon as possible by members. Only the Chairperson, Secretary and Chief Executive of the body should have access to the register.
- vii) Where a matter relating to the interests of the Chairperson arises, he/she should depute the Deputy Chairperson or another Director to chair the Board meeting and should absent himself/herself when the Board is deliberating or deciding on a matter in which the Chairperson or a person or body connected with the Chairperson has an interest.
- viii) Board or State body documents on any deliberations regarding interests should not be made available to the member concerned prior to a decision being taken. (Such documents should be taken to include those relating to cases involving competitors to this Board member to the above interests). Decisions once taken should be notified to the member.
- ix) As it is recognised that the interests of a Director and persons connected with him/her can change at short notice, a Director 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 at the earliest opportunity.
- x) A Director should absent himself/herself when the Board is deliberating or deciding on matters in which that member (other than in his/her capacity

as a member of the Board) or a person or body connected with the member has an interest. In such cases a separate record (to which the Director would not have access) should be maintained.

- xi) Where a question arises as to whether or not a case relates to the interests of a Director or a person or body connected with that Director, the Chairperson of the Board should determine the question.
- xii) Former Directors should treat commercial information received while acting in that capacity as confidential.
- xiii) Directors should not retain documentation obtained during their terms as Director and should return such documentation to the Secretary or otherwise indicate to the Secretary that all such documentation in their possession has been disposed of in an appropriate manner. In the event that former Directors require access to Board papers from the time of their term on the Board, this can be facilitated by the Board Secretary.
- xiv) The procedures set out above should also be adopted in subsidiaries of State bodies.

## **B. REMUNERATION**

### **7. Remuneration of Senior Management and Directors Fees**

7.1 Chairpersons and Boards of all State bodies are required to implement Government policy in relation to the total remuneration of the Chief Executive/Managing Director. Arrangements put in place by a relevant Department or the Department of Finance for determining and approving the remuneration of the Chief Executive/Managing Director must also be implemented and adhered to.

7.2 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 Chief Executive or equivalent and other staff of any subsidiary, as relevant.

7.3 The relevant Department should be consulted in good time on any pay proposals or likely developments which could have significant implications for:

- general Government pay policy,
- the body's finances,
- charges for goods or services provides and/or,
- other areas of the public sector.

7.4 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**

7.5.1 The Guidelines on “Contracts, Remuneration and other Conditions of Chief Executives and Senior Management of Commercial State Bodies”, set out the arrangements for the contracts of employment and determination of remuneration of newly appointed Chief Executives of commercial State bodies and the framework that should govern the remuneration and conditions of senior management (below Chief Executives) in such bodies. Copies of the Guidelines are available from the Department of Finance or at <http://www.finance.gov.ie>

## **Non-Commercial State Bodies**

7.5.2 Guidelines on the appointments of Chief Executive Officers of non-commercial State Bodies (including a standard employment contract template) are available from parent Departments.

## **Fees to Board Members**

7.6 The following requirements are based on the guidelines covering the payment of fees to the Chairpersons and Directors/Members of State Bodies which were issued by the Minister for Finance in July 1992 and which should continue to be observed:

- i. The Board of the State body will ensure that the fees paid to Chairpersons and Directors will be at the rates authorised by the relevant Minister.
- ii. In general, the fees paid to a Chairperson, Director or Board member of a State body is exempt from the deduction of PRSI. Such persons are deemed to be Office Holders, provided the State body was created by an Act of the Oireachtas or by a statutory regulation and provided the holder of the office may be removed if the instrument creating the office authorises it.<sup>7</sup>
- iii. PAYE must also be deducted from all fees paid to members of the Boards of State Bodies.
- iv. The fees paid to the Chairpersons or Directors of any subsidiary or associated body will not exceed the rates applying to the Chairperson or Directors, respectively, of the main body and will, as a general rule, be significantly less.
- v. 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 Boards only.
- vi. The Board will adhere strictly to the arrangements recommended by the Review Body on Higher Remuneration in relation to the retention/surrender by

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<sup>7</sup> A Health Levy may apply (PSRI Class K); if no Health Levy is payable, Class M PRSI applies. Further clarification can be obtained from Scope Section, Department of Social and Family Affairs. Scope section, who give decisions and information on the insurability of employment in accordance with the law, can be contacted by email at [scope@welfare.ie](mailto:scope@welfare.ie) or by telephone at (01) 704 3000.

the Chief Executive of fees for directorships payable to him/her – the arrangements would, for instance, allow the Chief Executive to retain the fee in respect of membership of his/her own main Board, prohibit retention of any fees paid in respect of subsidiary or associate bodies and, subject to Board approval, allow retention of not more than two fees in respect of other directorships.

- vii. A staff member, other than the Chief Executive, who becomes a member of the Board of a subsidiary or associated body shall be regarded as holding that position *ex-officio* and shall not, therefore, receive any additional remuneration in respect of it.
- viii. An executive other than the Chief Executive will, subject to Board approval, be allowed to hold membership of the Boards of bodies which are not subsidiary to or associated with the main body and to retain not more than two fees in respect of such membership.
- ix. As part of the reporting arrangement put in place under the Code of Practice for the Governance of State Bodies, the Chairperson of the main Board will each year submit a report affirming that the above guidelines are being complied with (see paragraph 13.1)

7.7 As part of the Chairperson’s annual report to the relevant Minister, the Chairperson should affirm that the guidelines are being complied with in respect of such appointees who serve on the main Board and any subsidiaries of State bodies. The Chairperson’s annual report should also include a schedule of the fees and aggregate expenses paid to each of the Directors.

## **C. RISK MANAGEMENT, ACCOUNTABILITY, INTERNAL CONTROL AND INTERNAL AUDIT**

In undertaking their public service role, State bodies face a wide range of strategic, operational and financial risks, from both internal and external factors, which may prevent them from achieving their objectives. Risk management is a planned and systematic approach to identifying, evaluating and responding to these risks and providing assurances that responses are effective.

### **8. Risk Management**

*An effective risk management system identifies and assesses risk, decides on appropriate responses and then provides assurance that the chosen responses are effective<sup>8</sup>*

8.1 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.

8.2 Key elements of the Board’s oversight of risk management would include:

<sup>8</sup> Taken from the UK Independent Commission on Good Governance in Public Services “Good Governance Standard for Public Services”

- make risk management a standing meeting agenda item;
- consider establishing a Risk Committee or including it in the charter of the Audit Committee;
- include risk management experience/expertise in the competencies of at least one director. 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;
- approve the Risk Management Policy, set the State body’s risk appetite, and approve the risk management business 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.

## **9. Accountability and Audit**

9.1 In general, it is recommended that each Department/Office set out in writing the respective roles of its Accounting Officer and the Chief Executives of any State Body under its aegis.

9.2 A small number of State bodies may have an Accounting Officer within the meaning of Section 22 of the Exchequer and Audit Departments Act, 1866, with responsibility for Voted funds; others may have an “Accountable Person” as defined in the legislation establishing the body. 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.

9.3 In the case of a Statutory Accounting Officer, the preparation of the Appropriation Accounts and associated public financial procedures would be the responsibility of the Accounting Officer and not the Board.

## **10. Audit Committee**

*The Board should have formal and transparent arrangements for both internal and external audit and for maintaining an appropriate relationship with the State body’s auditors.<sup>9</sup>*

10.1 The Board is responsible for the body’s system of internal control and should review annually the effectiveness of the body’s system of internal controls, including financial, operational and compliance controls and risk management.

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<sup>9</sup> Application of a principle in the UK Financial Reporting Council’s Combined Code on Corporate Governance, June 2008

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

- The Board of any body with more than 20 employees should establish an Audit Committee of at least three (in the case of smaller State bodies two) independent non-executive Directors with written terms of reference which deal clearly with its authority and duties.
- The Board should satisfy itself that at least one member of the Audit Committee has recent and relevant financial experience.
- The Board Audit Committees of the commercial State bodies should only include non-executive Directors. If Chairpersons participate, the Board Audit Committees should be chaired by another Director.
- The Audit Committee should monitor and review the effectiveness of the State body's internal audit activities.
- The Board Audit Committees of State bodies should meet at least four times a year.
- The Board Audit Committee should have explicit authority to investigate any matters within its terms of reference; the resources which it needs to do so and full access to information. The Board Audit Committee should be able to obtain outside professional advice and, if necessary, invite outsiders with relevant experience to attend meetings. Any internal audit/audit items that relate to the Board's areas of responsibilities should be communicated to the Board as soon as they are identified.
- The Board Audit Committee should have a discussion with the external auditors at least once a year, without executive members of the Board or employees of the State body present, to ensure that there are no unresolved issues of concern.

#### Internal Audit Function

10.3 The operation of the internal audit function should follow the principles below:

- i) the internal audit function should have a formal charter, including terms of reference, which has been approved by the Board (an outline of the charter is set out in Appendix III); The reporting structure for internal audit should be clear and formally documented;
- ii) the head of the internal audit function 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 Board Audit Committee and should

also have access to the Chairperson of the Board and the Chairperson of the Board Audit Committee. Functionally, the head of internal audit should report within the body to such person as the Board decides and to the Chief Executive;

- iii) in carrying out its ongoing work the internal audit function should include detailed testing on all specific areas covered by the charter in order to ensure that the State body is fully complying with all requirements and report its findings to the Board Audit Committee;
- iv) the internal audit function should be properly resourced with the necessary skills including the ability to deal with non-financial aspects;
- v) the internal audit function should liaise frequently 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. (For example, the external auditors could offer guidance on particular areas which the internal audit function might be reviewing. Conversely the internal audit function could provide the external auditor with company specific expertise to assist in the evaluation of the systems being examined as part of the statutory audit);
- vi) the Board Audit Committee should make the external auditors aware of the corporate governance issues outlined in this Code of Practice with which the State body is required to comply. The Board Audit Committee should periodically consult with the external auditors regarding the operation of the internal audit function with particular reference to the staffing of the function, the audit work programmes being applied and the testing carried out in relation to the body's compliance with the requirements set out in this document;
- vii) in planning, executing and reporting its work, the internal audit function should ensure that value-for-money auditing receives adequate attention; and
- viii) the internal audit function in each State body should review compliance with procurement and disposal procedures as required by the Board Audit Committee, from time to time, and report to the Board Audit Committee.

## **D. RELATIONS WITH THE OIREACHTAS AND THE MINISTER**

### **11. Departmental Oversight**

11.1 The Report of the Task Force on the Public Service, published in November, 2008 on foot of the OECD review<sup>10</sup>, recommended that a Performance Framework be

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<sup>10</sup> OECD Public Management Reviews: Ireland 2008 - Towards an Integrated Public Service.

developed<sup>11</sup> through dialogue between Departments and the State bodies under their auspices. Such a framework provides an opportunity to:

- define the expectations that Government and Ministers have of the State body (and the body's own expectations);
- clarify the body's role in the policy sector; and
- define the parameters surrounding the body's resources/income.

11.2 A Performance Framework should allow for the adoption of both annual and multi-annual targets, and the development of output and outcome indicators based on clear outputs including milestones to measure their delivery.

11.3 Annual Output Statements should be produced by all non-commercial agencies in line with the performance framework.

11.4 For State bodies involved in service provision, the development and widespread use of Service Level Agreements should form part of the wider performance management framework.

## **12. Reports and Accounts of State bodies**

*The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the State body, including the financial situation, performance and governance of the body<sup>12</sup>.*

12.1 Existing reporting requirements should be adhered to as follows:

- i. each commercial State body should furnish to the relevant Department and the Department of Finance, not later than the end of the eighth month of the financial year, interim unaudited accounts for the first half of that year;
- ii. draft unaudited annual accounts<sup>13</sup> for each State body should be furnished to its relevant Department and to the Department of Finance not later than two months after the end of the relevant financial year; and
- iii. each commercial State body should publish (or where publication is not required, submit to the Government) its annual report and accounts 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 accounts 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. in the interests of transparency and good governance, State bodies should publish in their Reports details of fees paid to each of their directors, the

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<sup>11</sup> The Task Force Report provides that the Department of Finance will lead the development of models of performance and governance frameworks to be completed within 8 to 12 months of the Task Force Report's publication.

<sup>12</sup> Taken from the OECD Principles of Corporate Governance, 2004.

<sup>13</sup> Draft unaudited accounts refer to draft financial statements and notes thereon (in accordance with generally accepted accounting principles) and not management accounts.

expenses paid to the Board, broken-down by category, and the salary of the Chief Executive Officer.

- 12.2 The Chairperson's statement in the report to the relevant Minister regarding the system of internal financial control (paragraph 13.1(iii)) 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 13.1 and is consistent with the information of which they are aware from their audit work on the financial statements. The external auditors should report their findings accordingly.
- 12.3 Where the audit has been unavoidably delayed and fulfilling the requirements in paragraphs 12.1 (ii) and (iii) would cause unjustifiable difficulties for State bodies, the relevant deadline can be extended, as an exceptional measure, subject to the consent of the relevant Minister.
- 12.4 Annual reports should also be published on the web-site and, in general, State bodies should consider online publication when this can reduce costs.

#### **Additional Reporting Requirements**

13.1 The Chairperson of each State body must furnish to the relevant Minister in conjunction with the annual report and accounts of the body, a comprehensive report covering the Group:

- i) outlining all commercially significant developments affecting the 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) affirming that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposals are being carried out;
- iii) including a statement on the system of internal financial control in the format set out in Appendix V 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;
- iv) affirming that Codes of Business Conduct for Directors and Employees have been put in place and adhered to;
- v) affirming that Government policy on the pay of Chief Executives and all State body employees is being complied with (see Section 7);
- vi) affirming that Government guidelines on the payment of Directors' fees are being complied with;
- vii) explaining failure to comply with any of the above and stating any corrective action taken or contemplated;
- viii) outlining significant post balance sheet events;

- ix) confirming that the Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector are being complied with;
  - x) certifying that Government travel policy requirements are being complied with in all respects; and
  - xi) confirming that this Code of Practice has been adopted and the extent to which it is being complied with subject to Board approval.
- 13.2 Along with the unaudited six-monthly accounts, the Chairperson should also provide an interim report to the relevant Minister on significant commercially sensitive developments in the preceding six months and likely developments for the rest of the year.
- 13.3 The Chairpersons 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.
- 13.4 The Accounting Officer of the Department under whose aegis the body lies should satisfy him/herself that the requirements of the Code of Governance are being implemented and if reports indicate that problems exist, ensure that appropriate action is taken as soon as possible.

## **E. SPECIFIC PROCEDURES TO BE FOLLOWED BY STATE BODIES**

### **14. Diversification, Establishment of Subsidiaries & Acquisitions by State Bodies**

14.1 A State body should obtain the approval of the relevant Minister for any intended action which would extend or change significantly the nature, scope or scale of the activities in which it (or any subsidiary or State body joint venture) engages. The financial consequences of such actions, and their consistency with the existing remit of the body (if any), notably its statutory remit, should be set out. The consent of the Minister for Finance should be obtained to any action which, in the view of the relevant Minister, would have significant financial consequences, notably on the debt, profitability or ability of the body to pay dividends (where relevant).

14.2 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 to the prior written approval of the relevant Minister, given with the consent of the Minister for Finance. If a State body, its subsidiaries or State body joint ventures plans a shareholding offering or to acquire shares the offer/application must refer expressly to such legal capacity and approval requirements.

14.3 When seeking such approval, State bodies should supply their relevant Department 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 Department should respond to the State body without undue delay.

14.4 Such details should include, together with such other information requested:

- the full business case for the 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 Chief Executive/Managing Director and, where appropriate, other employees of the subsidiaries should be outlined.

14.5 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 Finance of such shareholdings.

14.6 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. Cash balances are not to be taken into account in calculating borrowings for the purposes of borrowing limits.

14.7 State guarantees cannot be given without explicit statutory authority and may be given only by the Minister for Finance or with his consent. 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 and to allow outstanding guarantees to expire as the relevant borrowings are repaid.

## 15. Procedures for Procurement

*As the ultimate owners of, and investors, in State bodies, citizens and taxpayers 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<sup>14</sup>.*

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<sup>14</sup> Adaptation of a principle set out in the UK Independent Commission on Good Governance in Public Service’s “Good Governance Standard for Public Services”

15.1 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.

15.2 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. Where there is a significant procurement function, it would be appropriate to have a sub-committee of the Board (or to include it in the charter of the Audit Committee) to devise and monitor procedures suited to the body's purchasing profile.

15.3 In this regard, 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.

15.4 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.

15.5 The National Public 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 and objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented. The Chairperson should, in the annual report to the Minister affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan.

15.6 All State bodies must ensure that the Tax Clearance requirements set out in Department of Finance Circular 44/06 (21 December 2006), as regards the payment of grants, subsidies and similar type payments, and Department of Finance Circular 43/06 as regards Public Sector Contracts, are fully adhered to.

15.7 Information on procurement policy and general guidance on procurement matters is published by the National Public Procurement Policy Unit. This can be viewed or downloaded from the national public procurement website [www.etenders.gov.ie](http://www.etenders.gov.ie)

## **16. Capital Investment Appraisal**

16.1 Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector were issued by the Department of Finance in February 2005. These procedures apply to State bodies as well as to Departmental investments. The Chairperson of each State body should confirm in his/her annual report that these Guidelines are being complied with.

16.2 In addition, State bodies should have regard to appropriate models for investment appraisal in their sectors and seek to apply best practice in the appraisal and management of all investment proposals. The Department of Finance Value for Money Frameworks should be adhered to in all cases.

## **17. Travel**

17.1 Non-commercial State Bodies should adopt and comply in all respects with the circulars issued from time to time by the Department of Finance regarding travel and subsistence. These are available on the Department of Finance web-site. Commercial State bodies should also be cognisant of the need to achieve economy and efficiency in expenditure on official travel.

17.2 Boards of State bodies that incur significant annual expenditure on foreign travel by members of the staff or the Board should put appropriate procedures in place to monitor, report, and enforce the relevant rules and requirements.

17.3 A Framework Travel Policy is provided in Appendix VI.

## **18. Disposal of State Assets and Access to Assets by Third Parties**

18.1 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, 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 (such as a sale to a charitable body). 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 (CFO) or, if delegated by the Board, sign-off by the CFO or the Board Audit Committee, that, in its view, the anticipated value is likely to be less or greater than €150,000. In determining market value, regard should be had to accounting standards best practice in Ireland.

### Compliance with use of Auction or Tendering Requirements

18.2 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. For reasons of transparency, such approval together with the reason why a lower bid was permitted to be accepted should be noted in the minutes of the Board.

18.3 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.

18.4 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 therefore, or (ii) Board approval, where necessary, has been obtained.

#### Directors and their Families

18.5 Disposal of assets to Directors, employees or their families or connected persons,<sup>15</sup> should, as with all disposals, be at a fair market-related price. Where the Board is considering a proposal for any such disposal, the Director 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, or a threshold approved by the Board may be omitted from the register). This register should be available for inspection, if requested, by the Board or by any Director. 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.

#### Reporting of Disposals

18.6 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 18.5) 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.

18.7 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 annual report to the relevant Minister (see paragraph 13.1).

18.8 The Chairperson, in the annual report to the relevant Minister (see Paragraph 13.1), should affirm that the disposal procedures, as outlined above, have been complied with.

### **19. Tax Compliance**

19.1 In addition to Paragraph 15.6, 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.

19.2 In addition to the reporting requirements set out in Paragraph 12, a report on the body's compliance with tax laws should be furnished each year to its relevant Department. The report should confirm that the body has complied with its obligations under tax law.

19.3 State bodies, while availing of all legitimate taxation arrangements, should not engage in clearly 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

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<sup>15</sup> See paragraph 6(ii)

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.

## **20. Legal Disputes Involving Other State Bodies**

20.1 Where a legal dispute involves another State body, every effort should be made to mediate, arbitrate or otherwise before expensive legal costs are incurred.

20.2 State bodies should provide a list of such legal issues to the Department of Finance together with an estimate of the legal costs incurred up to the date of such information.

## Online Resources

Forum of the Chairs of State Bodies	<a href="http://www.chairpersons.ie">http://www.chairpersons.ie</a>
Association of Chief Executives of State Agencies in Ireland	<a href="http://www.acesa.ie">http://www.acesa.ie</a>
Change-Leaders for Corporate Governance	<a href="http://www.change-leaders.com">http://www.change-leaders.com</a>
Department of Enterprise, Trade and Employment	<a href="http://www.entemp.ie">http://www.entemp.ie</a>
Department of Finance	<a href="http://www.finance.gov.ie">http://www.finance.gov.ie</a>
Department of An Taoiseach	<a href="http://www.taoiseach.gov.ie">http://www.taoiseach.gov.ie</a>
The IPA Governance Forum	<a href="http://www.governance.ie">http://www.governance.ie</a>
Institute of Directors in Ireland	<a href="http://www.iodireland.ie">http://www.iodireland.ie</a>
National Public Procurement Website	<a href="http://www.etenders.gov.ie">http://www.etenders.gov.ie</a>
Oireachtas Website (access to the websites of relevant committees, including the PAC)	<a href="http://www.oireachtas.ie">http://www.oireachtas.ie</a>
Office of the Director of Corporate Enforcement	<a href="http://www/odce.ie">http://www/odce.ie</a>
UCD Centre for Corporate Governance	<a href="http://www.corporategovernance.ie">http://www.corporategovernance.ie</a>

## Appendix I\*

### Ethics and Standards in Public Office

#### Obligations under the Ethics legislation

All those who hold designated directorships 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 Act 1995 and the Standards in Public Office Act 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.

#### Disclosure of Registrable Interests

The Ethics in Public Office Act 1995 provides for the disclosure of registrable interests by holders of designated directorships and occupiers of designated positions of employment in public bodies prescribed for the purposes of the Ethics legislation.

Briefly, the requirements are:

#### Designated Directors

Are required in each year, during any part of which they hold or held a designated directorship of a public body, prescribed by regulations made by the Minister for Finance, to prepare and furnish, in a form determined by the Minister for Finance, a statement in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or a child of the person or of his or her spouse, 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, or the spouse or child, a substantial benefit. The statement must be furnished to the Standards in Public Office Commission (the Standards Commission) and to such an officer of the body as determined by the Minister for Finance. Where no registrable interest or interests exist, a 'nil' statement is requested.

#### 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 Finance, to prepare and furnish, in a form determined by the Minister for Finance, a statement in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or a child of the person or of his or her spouse, 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, or the spouse or child, a substantial benefit. The statement must be furnished to the relevant authority for the position as determined by the Minister for Finance. Where no registrable interest or interests exist, a 'nil' statement is requested.

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\* This is an updated version of the text of Appendix I that appeared in the first print run of the Code of Practice. As well as adding further clarification, this update corrects some inaccurate references in the earlier version of the Appendix.

### **Material Interests**

The holder of a designated directorship 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 director or the employee or a “connected person” (e.g. a relative or a business associate of the director or employee) has a material interest in a matter to which the function relates. Such a statement must be furnished to the other directors of the public body by a designated director 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 director 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 directors and to the Standards in Public Office Commissions if a designated director, 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 designated directorship 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 “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**

Directors and employees in public bodies can be subject to an 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 of Practice 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. Requests for advice on compliance should be

referred to the Standards in Public Office Commission. The Standards Commission publishes the "Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 - Public Servants" that provides information on the steps that public servants who are covered by the Ethics legislation need take in order to comply with the requirements of the legislation.

The designated directorships and designated positions of employment in public bodies, as prescribed for the purposes of the Ethics legislation, the forms for preparing statements of registrable interests and 'nil' statements, and details of the officers of the body and the relevant authorities to whom such statements should be furnished are also provided in the Standards Commission's "Guidelines", available for download on its website: <http://www.sipo.gov.ie>.

## Appendix II

### Framework for a Code of Business Conduct

#### Introduction

This is a suggested framework for a Code of Business Conduct for all directors and employees of state bodies. The Code should be prepared via a participative approach and should be approved by the Board, taking account the implications of the Ethics in Public Office Act, 1995. Such a Code should address the following matters:

#### Intent and Scope

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

#### Objectives

The Code should set out basic objectives such as:

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

#### *General Principles*

A Code of Business Conduct should address fundamental issues of principle such as:

#### *Integrity*

- disclosure by Directors of outside employment/business interests in conflict or in potential conflict with the business of the body;
- management and employees should not be allowed to be involved in outside employment/business interests in conflict or in potential conflict with the business of the body;
- avoidance of the giving or receiving of 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;
- commitment to compete vigorously and energetically but also ethically and honestly;
- conduct of purchasing activities of goods/services in accordance with best business practice;
- ensuring a culture of claiming expenses only as appropriate to business needs and in accordance with good practice in the public sector generally;
- ensuring that the body's accounts/reports accurately reflect their business performance and are not misleading or designed to be misleading;

- avoidance of 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; and
- commitment not to acquire information or business secrets by improper means.

### ***Information***

- support by Directors, 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 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 legislation, the Freedom of Information Acts, 1997 and 2001).

### ***Obligations***

- fulfil all regulatory and statutory obligations imposed on the State body;
- compliance 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;
- Directors should use their reasonable endeavours to attend all Board meetings; and
- conformity 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 owner(s); and

***Fairness***

- compliance with employment equality and equal status legislation;
- commitment to fairness in all business dealings; and
- value customers and treat all customers equally.

***Work/External Environment***

- place highest priority on promoting and preserving the health and safety of employees;
- ensure that community concerns are fully considered; and
- minimise any detrimental impact of the operations on the environment.

***Responsibility***

- circulation of this Code of Business Conduct and a policy document on disclosure of interests to all Directors, management and employees for their retention;
- above recipients to acknowledge receipt and understanding of same; and
- 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***

- Arrangements for and commitment to review the Code of Business Conduct as appropriate.

## Appendix III

### Charter for Internal Audit

A charter for the internal audit function should include the following:

- **Board policy statement**  
This should state the Board's policy to support and develop the internal audit function.
- **A mission statement**  
This should set out the internal audit function's contribution to the organisation.
- **Terms of Reference**  
The terms of reference of the internal audit function should be included.
- **Scope and authority**  
The Board should provide the internal audit function with authority to act on its behalf in carrying out internal audit and there should be no operational areas or levels within the organisation precluded from internal audit review.
- **Independence, role and responsibilities**  
The internal audit function should serve the best interests of the State body as a whole and carry out its work in a manner that is consistent with the Standards for the Professional Practice of Internal Auditors, published by the Institute of Internal Auditors. In order to demonstrate that due professional care has been taken in performing its work, it is necessary to have comprehensive records of activity showing that the work has been performed in accordance with accepted standards of best practice.
- In order to ensure objectivity and independence, internal audit staff should be free from all operating responsibility.

Where State bodies appoint appropriate external expertise to undertake this function, objectivity and independence should also be assured.

## **Appendix IV**

### **Principles of Quality Customer Service for Customers and Clients of the Public Service**

In their dealings with the public, Civil Service Departments and 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 web sites 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 ongoing transactions.

#### **Complaints**

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

#### **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.

## APPENDIX V

### **Format for the Report from the Chairperson Regarding Assessment of Internal Financial Controls of a State Body as Referred to in Paragraph 13.1(iii)**

1. Acknowledgement by the Chairperson that the Board is responsible for the body's system of internal financial control.
2. An explanation that such a system can provide only reasonable and not absolute assurance against material error.
3. Description of the key procedures, which have been put in place by the Board, designed to provide effective internal financial 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 financial control system which may include: audit 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 financial control.
5. Information (if appropriate) about the weaknesses in internal financial 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 financial 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.

## **Appendix VI**

### **Framework for a Travel Policy for State Bodies**

#### **Introduction**

In matters of official travel and subsistence, non-commercial State bodies should adhere to civil service procedures as set-out from time to time in guidance issued by the Department of Finance, either communicated directly or via the parent Department, as appropriate. 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 foreign and domestic 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 insuring that the State body is fully complying with the policy.

Board members should be advised of the details of the policy applying.

#### **Intent and Scope**

The purpose of the Travel Policy should be to ensure that the best 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 installation of video conferencing facilities, should also be benchmarked.

Detailed elements of a Travel Policy might refer to the following:

##### ***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, overall.
- 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 be not allowed to 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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