



An Roinn Airgeadais
Department of Finance

Code of Practice for the Governance of State Bodies

Code of Practice for the Governance of State bodies

Preface

In March 1992, a set of guidelines entitled “State Bodies Guidelines” was issued by the Department of Finance. This document updates and expands those guidelines and takes into account, where appropriate, recommendations made in subsequent reports and publications. It sets out principles of corporate governance which State bodies are required to adopt.

It should be noted that:

- i) 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;
- ii) where legislation applying to a State body contains provisions governing matters the subject of this Code of Practice, such matters will continue to be governed by the relevant legislation; and
- iii) the 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.

This Code was endorsed by Government on 2 October, 2001. The Code was subsequently promulgated to all State sponsored bodies by the relevant parent Departments and made available in both hard copy and electronic format (on the Department of Finance website). For ease of reference, it has now been decided to publish the Code as an official publication of the Department of Finance.

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1. Introduction

- 1.1 Corporate governance comprises the systems and procedures by which enterprises are directed and controlled. In the interests of transparency and accountability, it is important that corporate governance of State bodies should operate to the highest standards applicable in the business world generally. This Code of Practice sets out, at Appendix A, a corporate governance best practice framework which the Government wishes to have put in place in the State body sector.

State bodies, including the subsidiaries of such bodies, are required in the conduct of their operations to adopt this Code of Practice and, in accordance with paragraph 10.2, to confirm to the relevant Minister that this has been done. These procedures relate both to internal practices and external relations with the Government, the relevant Minister, the Minister for Finance and their Departments. The requirements of this Code of Practice are supplementary to and do not affect existing statutory requirements and other obligations imposed by the Companies Acts, the specific statutory provisions relating to the State body itself and any other relevant legislation (including equality legislation). The Secretary to the relevant State body has an obligation to ensure that the Directors of that body are informed as to their legal responsibilities and that they are familiar with the requirements of company law and such other statutory provisions which have relevance for them in the exercise of their functions as Directors.

- 1.2 It is not feasible to have a code of practice which will specifically provide for all situations which may arise. Directors and employees of State bodies and their subsidiaries should bear in mind, therefore, that it is primarily their responsibility to ensure that all of their activities, whether covered specifically or otherwise in this document, are governed by the ethical and other considerations implicit in it.
- 1.3 While the Code of Practice applies to both commercial and non-commercial State bodies, it is recognised that difficulties may arise in a given situation. In this regard non-commercial State bodies may find that some aspects of the Code of Practice are not “appropriate” or fully “relevant” to their circumstances. In such a situation, the application of a provision of the Code of Practice may, with the consent of the relevant

Minister, following consultation with the Minister for Finance, be waived. Also certain commercial State bodies or their subsidiaries who are involved in strategic alliances, joint ventures or other shareholding arrangements may be of the view that certain aspects of this Code of Practice are not appropriate where a shareholder other than the State is involved. In such circumstances, the relevant Minister should be consulted and, with the consent of the Minister for Finance, that Minister may waive any requirement of this Code of Practice he/she considers inappropriate. If a State body is in any doubt as to whether the Code of Practice is directed at such body, it should seek clarification on the matter from the relevant Department.

- 1.4 Subject to the provisions of paragraph 1.3, each State body should comply with the provisions contained in this Code of Practice and any updates of same.

2. Codes of Conduct

- 2.1 All State bodies should have written Codes of Business Conduct for Directors and Employees. Typical components of such a code are listed in Appendix B to this document. The requirements of the Companies Acts which relate to the behaviour of Directors should be implemented in the case of those State bodies which are statutory boards, even where their legislation does not reflect these requirements. The code for employees, a copy of which should be given to every employee, should embrace such matters as duty to the State body, avoidance of conflict of interest, limits on outside activities, acceptance of gifts and honesty in dealings. The up to date codes of business conduct should be available upon request with a copy of each such code being accessible through the State body's web site (where relevant).
- 2.2 As part of the report to be furnished in accordance with paragraph 10.2, the Chairperson of the Board should affirm to the relevant Minister that Codes of Business Conduct for Directors and Employees have been put in place and complied with by the State body.

- 2.3 In addition to the requirements of the Companies Acts, and, where relevant, their own governing legislation, each member of the Board of a State body and each person holding a designated position of employment with a State body should ensure his/her compliance with relevant provisions of the Ethics in Public Office Act, 1995¹.
- 2.4 To the extent commercially feasible, commercial State bodies should promote the standards of service and the initiatives outlined in the “Principles of Quality Customer Service for Customers and Clients of the Public Service” which was originally launched in 1997 and was revised in 2000. A copy of these Principles is reproduced at Appendix C.
- 2.5 The requirements specified in this document should be applied in all trading subsidiaries of the State bodies. Chairpersons of all subsidiaries 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 Chairperson reporting to the relevant Minister.

3. Internal Audit

Each State body is required to have a properly constituted internal audit function or to engage appropriate external expertise which should operate in accordance with the Framework Code of Best Practice set out in Appendix A.

4. Procurement

- 4.1 Competitive tendering should be normal procedure in the procurement process of State bodies. It is the specific responsibility of the Board to ensure that this procedure is implemented and that it is fully conversant

¹In brief, the Act requires inter alia that persons in State bodies who hold designated directorships and designated positions of employment must make an annual statement or declaration of those interests (as defined in the Act) which could materially influence them in the performance of their functions and refrain them from exercising such functions in accordance with the Act. The annual statement, which may be updated if interests change, must be made to a designated person within the State body, in accordance with the provisions of the Act, and, in the case of those who hold designated directorships, to the Public Offices Commission established under the Act. The Commission will provide advice and publish mandatory procedures concerning steps to be taken by designated directors and holders of designated positions (among others) to ensure compliance with the Act. Where a person who holds a designated directorship or designated position of employment in a State body is advised by the Commission, or it appears from guidelines published by the Commission that his/her interest or the interest of a connected person should be disclosed, that person must make an appropriate statement to the relevant authority in the State body.

with the current value thresholds for the application of procurement rules. The detailed procurement procedures, as set out in the Public Procurement Booklet (1994), in respect of competitive tendering should be applied. It is stressed that, in addition to the national guidelines, the relevant EU Directives, which have the force of law in this and all Member States, should be complied with. It is the responsibility of the Board and management to ensure such compliance. The Chairperson should, in the annual report to the relevant Minister (see paragraph 10.2), affirm compliance with the procurement procedures outlined above.

4.2 **Importance of procurement function**

The management, and ultimately the Board, should ensure that there is a strong focus on the role and expertise of the procurement function and that purchasing personnel are properly conversant with all developments in this area.

4.3 **Tax Clearance Procedures**

All State bodies must ensure that the Tax Clearance requirements set out in Department of Finance Circular of 30 July 1991 (F 49/13/87), as regards the payment of grants, subsidies and similar type payments, and Department of Finance Circular 22/95, as regards Public Sector Contracts, are fully adhered to.

5. **Disposal of Assets and Access to Assets by Third Parties**

- 5.1 It should be standard practice that the disposal of assets of State bodies or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €70,000, 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 certification by the Director of the body with responsibility for financial matters or, alternatively, a Director who is also a member of the Board Audit Committee, that, in his or her view, the anticipated value is likely to be less or greater than €70,000. In determining market value, regard should be had to accounting standards best practice in Ireland.

- 5.2 If an auction or competitive tendering process takes place and the highest bid is not 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.
- 5.3 If an auction or competitive tendering process does not take place and the agreed price is €70,000 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.
- 5.4 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 therefor, or (ii) Board approval, where necessary, has been obtained.
- 5.5 Disposal of assets to Directors, employees or their families or connected persons², should, as with all disposals, be at a fair market-related price. 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 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 retain a requirement that any disposal above an approved threshold may not be made without having been formally endorsed by the Board which may impose specific restrictions with regard to any such disposal.
- 5.6 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 5.5) below the threshold value of €70,000 without auction or competitive tendering process should be formally reported, with the paid price and the name of the buyer, to the Board on an annual basis.

²see Appendix A, section 3(i).

- 5.7 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 €70,000 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 10.2).
- 5.8 The Chairperson, in the annual report to the relevant Minister (see paragraph 10.2), should affirm that the disposal procedures, as outlined above, have been complied with.

6. Establishment of Subsidiaries and Acquisitions by State bodies

- 6.1 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. Any offer to acquire shares made by a State body, its subsidiaries or State body joint ventures must refer expressly to such legal capacity and to such approval requirements.
- 6.2 When seeking such approval, State bodies should supply their relevant Department with complete details of such proposed subsidiaries, joint ventures or acquisitions. 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;
 - 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.

6.3 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.

6.4 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.

State guarantees cannot be given without explicit statutory authority and may be given only by the Minister for Finance or with his/her 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.

7. Diversification

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).

8. Investment Appraisal

Guidelines for the Appraisal and Management of Capital Expenditure Proposals were issued by the Department of Finance in July 1994. These procedures apply to State bodies as well as to Departmental investments and should be adhered to. The Chairperson of each State body should confirm that these Guidelines are being complied with.

9. Remuneration and Directors' Fees

9.1 Remuneration

Chairpersons and Boards of all State bodies are reminded that they are required to implement Government policy in relation to the remuneration of the Chief Executive/Managing Director and that the arrangements authorised from time to time cover total remuneration. 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.

Chief Executives of commercial State Bodies

In particular, following Government consideration of Report No.37 of the Review Body on Higher Remuneration in the public sector (the "Review Body Report") and of the Hay Management Consultants' Report on the remuneration of Chief Executives of commercial State bodies, the following new approach applies to the determination of the remuneration of all new (post July 1999) Chief Executives of commercial State bodies and of all those existing Chief Executives who accept that the terms of the Government decision of 14 July 1999 on the application of the recommendations of the Review Body on Higher Remuneration in the public sector on the nature of contracts, performance-related pay and the publication of remuneration information in annual accounts would also apply to them:

- (1) performance criteria, consistent with the corporate plans produced pursuant to paragraph 11, for each body should be drawn up by the Board and should reflect the shareholders' objectives and strategic mandate. The performance-related system should be implemented by a Remuneration Committee of the Board, which should include a civil servant from the relevant Department, whether he/she is a

member of the Board or not, who would represent the relevant Minister's requirements as shareholder;

- (2) the Remuneration Committee should examine the Chief Executive's performance annually and should submit a report thereon, following approval by the Board, to the relevant Minister each year;
- (3) the Chief Executive's remuneration and that of the Chief Executive of any subsidiary should be set out in the company's annual report which should state (a) the Chief Executive's annual basic salary, (b) payments made to the Chief Executive under performance-related pay schemes and (c) the total value of the Chief Executive's superannuation benefits, with a breakdown between standard company superannuation benefits and any additional benefits being provided for the Chief Executive (i.e. any other arrangements made of financial benefit to the Chief Executive). This information should be subject to the company's annual audit;
- (4) revised contractual arrangements should be introduced and operated in accordance with the principles set out in paragraphs 2.18 to 2.22 of the Review Body Report. All contracts require the approval, before signature, of the relevant Minister and the Minister for Finance;
- (5) the remuneration of Chief Executives of commercial State bodies will be reviewed periodically by the Minister for Finance using pay consultants as appropriate;
- (6) the all-in cost to the State body of the total remuneration package of the Chief Executive/Managing Director and the Chief Executive/Managing Director of any subsidiary (with a breakdown of the components) should be included in the Chairperson's annual report to the relevant Minister; and
- (7) any changes in the terms and conditions of employment of the Chief Executives (including remuneration) require the prior written approval of the relevant Minister given with the consent of the Minister for Finance.

General

Chairpersons and Boards are also required to implement Government pay policy, as expressed from time to time, in relation to other staff including, as appropriate, the Chief Executive/ Managing Director and other staff of any subsidiary.

The relevant Department should be consulted in good time on any pay proposals or likely developments which could have significant implications for (i) general Government pay policy (ii) the body's finances (iii) charges for goods or services provided and/or (iv) other areas of the public sector. Compliance with Government pay policy or with any particular Government decision should not be effected in ways which cut across public service standards of integrity or conduct or involve unacceptable practices which result in a loss of tax revenue to the Exchequer.

9.2 Directors' Fees and Expenses

The guidelines covering the payment of fees to the Chairpersons and Directors of State bodies, which were issued by the Minister for Finance in July 1992, as set out in Appendix D, should continue to be observed. The Chairperson of the main Board should affirm, as part of the Chairperson's annual report to the relevant Minister, that those 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.

10 Reporting Arrangements

10.1 Reports and Accounts of State Bodies

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 accounts³ 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

³Draft unaudited accounts refer to draft financial statements and notes thereon (in accordance with generally accepted accounting principles) and not management accounts.

- iii) the annual report and accounts of each State body should be published (or where publication is not required, submitted to the Government), in the case of commercial State bodies, not later than four months after the end of the relevant financial year and, in the case of non-commercial State bodies, 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).

In addition to the foregoing, the Chairperson's statement in the report to the relevant Minister regarding the system of internal financial control (paragraph 10.2 (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 10.2 and should consider if the statement is inconsistent with the information of which they are aware from their audit work on the financial statements. The external auditors should report their findings accordingly.

In cases where fulfilment of the requirements in paragraphs 10.1 (ii) and (iii) would cause unjustifiable difficulties for bodies, the relevant deadline can be extended, as an exceptional measure, subject to the consent of the relevant Minister.

10.2 Reporting additional to annual report and accounts

The Chairperson of each State body should furnish separately to the relevant Minister, 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, procurement and asset disposals are being carried out;
- iii) including a statement on the system of internal financial control in the form set out in Appendix E⁴;

⁴Paragraph 10.2(iii) came into effect for accounting years ended on or after 31st December, 2002. All other provisions of the Code came into immediate effect in October 2001. The Controller and Auditor General has issued guidance for State bodies on the completion of the statement on internal financial control.

- 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 paragraph 9.1);
- 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 are being complied with; and
- x) confirming that this Code of Practice has been adopted and is being complied with.

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.

11. Strategic and Corporate Planning

The need for sound corporate planning by State bodies is very important. Each body should, within the first six months of each year, produce annual rolling five-year business and financial plans encompassing strategy (taking account of general sectoral policy), planned investment and appropriate financial targets. Such corporate plans should be approved by the Board and should reflect the shareholders' objectives and strategic mandate in terms, inter alia, of dividend policy, capital value and, where relevant, economic and social objectives. The plans should set appropriate objectives and goals and relevant indicators and targets against which performance can be clearly measured. This is important in the context of assessing effectiveness and objectively evaluating achievement of targets. A copy of the corporate plans should be sent to the relevant Minister and the Minister for Finance.

12. Tax Compliance

- 12.1 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. In addition to the reporting requirements set out in paragraph 10, 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.
- 12.2 State bodies, while availing of all legitimate taxation arrangements, should not engage in "offensive" tax avoidance transactions. In broad terms tax avoidance is offensive if it involves the use of the tax code for a purpose other than that intended by the Oireachtas (including an unintended use of a tax incentive) with a view to reducing the amount of tax to be paid by the State body or some other party to a transaction in which the State body participates. Where a doubt arises in a particular instance, the State body concerned should consult the Revenue Commissioners.

Appendix A

Framework Code of Best Practice
for Corporate Governance in State Bodies

1. The Board of Directors

- The Board should meet regularly, retain full and effective control over the State body and monitor the executive management and performance.
- 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 their approval is required;
 - major investments and capital projects, delegated authority levels, treasury policy and risk management policies;
 - approval of terms of major contracts;
 - policy on determination of senior management remuneration;
 - approval of annual budgets and corporate plans;
 - production of annual reports and accounts;
 - appointment, remuneration and assessment of the performance of the Chief Executive; and
 - significant amendments to the pension benefits of the Chief Executive and staff (which may require Ministerial approval).
- The collective responsibility and authority of the Board should be safeguarded. Excessive influence on Board decision-making by individual members should be avoided, while allowing Board members the opportunity to fully contribute to Board deliberations.
- All Directors should have access to the advice and services of the Secretary of the body who is responsible to the Board for ensuring that Board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the Secretary should be a matter for the Board as a whole.

- 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 non-executive Directors should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct.
- Any business or other interests, which could affect a Director's independence, should be dealt with as outlined in section 3.
- It is the Board's duty to ensure that a balanced and understandable assessment of the body's position is made in presenting its' annual report and accounts to the relevant Minister.
- The Directors should state in the annual report that they are responsible for preparing the accounts. There should also be a statement by the external auditors about their reporting responsibilities.
- The Directors should review annually the effectiveness of the body's system of internal controls, including financial, operational and compliance controls and risk management.
- The Directors should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body.
- The Directors should report that the business is a going concern with supporting assumptions or qualifications, as necessary.
- The Board should be supplied, in a timely fashion, with information which is of a suitable quality to enable Board members to satisfactorily discharge their duties.
- The Board is responsible for compliance with all statutory obligations applicable to the State body. Where individual Board members become aware of non-compliance with any such obligation, they 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.

- The Board has a responsibility to establish procedures for maintaining an appropriate relationship with the external auditors.

2. Briefing for new Directors

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.

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

- 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 the applicable rules and regulations are complied with;
- code of ethics/conduct for Directors, including disclosure of Directors' interests;
- specific company information; and
- a copy of the most up to date version of the "Code of Practice for the Governance of State bodies" together with any relevant circulars and/or guidance notes.

3. Disclosure of Interests by Directors of State bodies

In addition to the legal requirements under the Companies Acts and requirements under the Ethics in Public Office Act 1995, the following procedures should be observed:

- i) On appointment to a Board of a State body, each member should furnish to the Secretary of the body details relating to his/her employment and all other business interests including shareholdings, professional relationships etc., which 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. 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.

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.

- ii) Where it is relevant in any matter which arises, 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).
- iii) 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.
- iv) 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.
- v) Details of the above interests should be kept by the Secretary of the body in question 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. Only the Chairperson, Secretary and Chief Executive of the body should have access to the register.

- vi) Should a matter relating to the interests of the Chairperson arise, 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.
- vii) Board or company documents on any case which relate to any dealings with the above 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 the above interests). Decisions once taken should be notified to the member.
- viii) 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.
- ix) 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.
- x) 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.
- xi) Former Directors should treat commercial information received while acting in that capacity as confidential.
- xii) The procedures set out above should also be adopted in subsidiaries of State bodies.

4. Audit Committee

- The Board should establish an Audit Committee of at least three independent non-executive Directors with written terms of reference which deal clearly with its authority and duties.
- The Board Audit Committees of the commercial State bodies should only include non-executive Directors. If Chairpersons participate, the Board Audit Committee should be chaired by another Director.
- The constitution and terms of reference of the Board Audit Committee and other Board committees should be reviewed by the main Board and updated as appropriate.

- 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.
- 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.

4(a) Internal Audit Function

The operation of the internal audit function should comply with the following code:

- 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 below);
- ii) the reporting structure for internal audit should be clear and formally documented. 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 document 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.

4(b) 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 include:
- **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 B

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 into 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 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

It should include a description of fundamental principles, for example:

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 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 Act, 1997).

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
- acceptance of positions following employment and/or engagement by a State body can give rise to the potential for conflicts of interest and to confidentiality concerns. The Board of a State body should, therefore, in a

manner most effective to such 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.

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
- acknowledge the duty of all to conform to highest standards of business ethics.

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

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

Appendix C

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

Appendix D

Guidelines on the payment of fees to the Chairpersons and
Directors/Members of State Bodies

1. 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.
2. 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.
3. 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.
4. The Board will adhere strictly to the arrangements recommended by the Review Body on Higher Remuneration in relation to the retention/surrender by 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.
5. 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.
6. 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.
7. 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.

Appendix E

Format for the Report from the Chairperson
regarding the assessment of internal
financial controls of a State Body
as required in paragraph 10.2 (iii)

1. Acknowledgment 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.

Department of Finance

Public Expenditure Division

Government Buildings
Upper Merrion Street
Dublin 2

Telephone: 676 7571

Fax: 631 8012

www.finance.gov.ie