
# Governance *in brief*

## Minister for Public Expenditure and Reform launched the revised Code of Practice for the Governance of State Bodies with substantial changes

### Overview

- The changes to the Code of Practice for the Governance of State Bodies ('the Code') are substantial - the volume of the Code has expanded from 36 pages to 72 pages (excluding four new supporting documents) which naturally results in increased compliance requirements.
- The Code is effective from 1st September 2016. In this regard, State bodies are expected to be fully compliant in relation to financial reporting periods beginning on or after 1st September 2016. In respect of periods before this date, they can choose to apply to 2009 Code or be an 'early adopter'.
- The revised Code draws on well-respected international standards of governance such as the Organisation for Economic Co-operation and Development ('OECD') Guidelines on Corporate Governance for State-Owned Enterprises and the Financial Reporting Council ('FRC') UK Code of Corporate Governance (the 'UK Code'), raising the expectations of good governance considerably.
- The Code is based on the underlying principles of good governance: accountability, transparency, probity and a focus on the sustainable success of the organisation over the longer term.
- Where appropriate, State Bodies should also comply in so far as it is practicable with the Irish Corporate Governance Annex that supplements the provision of the UK Code. State Bodies will have to determine if this is appropriate and consider the requirements within the Annex.

### Background

On 17 August 2016 the Minister for Public Expenditure and Reform launched the revised Code of Practice for the Governance of State Bodies 2016, along with four new supporting documents setting out the requirements in more detail. **The Code applies to financial reporting periods beginning on or after 1 September 2016.** Prior to this the Code was last revised in 2009.

The Code has been updated to take account of a range of factors, such as: governance developments, public sector reform initiatives and stakeholder consultations. It also reflects relevant legislative and regulatory changes, including: the Companies Act 2014, Protected Disclosures Act 2014, Single Public Service Pension Scheme, Public Spending Code, Office of Government Procurement and the establishment of New Economy and Recovery Authority ('NewERA').

"The Code is not a 'one size fits all' document, but rather acts as a framework to ensure that both commercial and non-commercial State Bodies meet the highest standards of corporate governance commensurate with their significant public roles and responsibilities."

Minister, Department of Public Expenditure and Reform

### Structure of the Code

The revised Code is split into a suite of documents comprising the main Code, as well as more detailed guidance set out in four separate documents:

- Business and Financial Reporting Requirements;
- Audit and Risk Committee Guidance;
- Remuneration and Superannuation; and
- Board Self-Assessment Evaluation Questionnaire.

It is based on the following 4 key pillars:

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

Effective governance is much more than complying with codes and ensuring that the right structures and processes are in place. It is about the behaviours of the individuals that comprise the Board, their collective dynamics and the positive impact they are having on the organisation. The introduction of the four key pillars should be seen as a welcome addition to the Code.

### Comply or explain

State Bodies must confirm their compliance with the Code. It is recognised that all aspects of this Code may not necessarily be appropriate for some smaller State Bodies and the Code allows for certain requirements to be applied proportionately in certain circumstances. Where compliance is not practical and the State Body wishes to adapt the requirements to their particular circumstances, this should be agreed with the Ministerial/parent Department and formally documented. Further, where exemptions have been approved these should be disclosed in the annual report, along with an explanation as to whether the requirements are to be phased in over a longer period of time or otherwise varied in some way.

The new Code also states that 'where appropriate', State Bodies should also comply in so far as it is practicable with the Irish Corporate Governance Annex that supplements the provision of the UK Code. State Bodies will have to determine if this is appropriate and if required, consider the requirements within the Annex.

### Key changes

In Appendix 1 we set out a high-level overview of the key changes to each section of the Code. A summary of the key changes which we consider to be the most significant are set out as follows:

- The Code has greater focus on **accountability**. A number of new principles and provisions in relation to the role of the Board, Chairperson and Board members have been introduced, outlining their key responsibilities and emphasising the expectations required of them.
- The **responsibilities of the Board** have evolved and are more prescriptive. For example, there are new responsibilities relating to talent and culture, such as promoting the development of the capacity of the State Body, including the capability of its leadership and staff, and 'setting the tone from the top.'
- The Code has been updated to reflect the Companies Act 2014 and refers to compliance with relevant statutory provisions. Boards will have to review the controls and procedures to ensure **compliance with statutory obligations** and obtain reasonable assurance that they are adequate. Previously, they had to state that such obligations were identified and made known to them.
- There is now a requirement for Boards to undertake annual **Board effectiveness reviews**. These should take the form of an annual self-assessment evaluation of its own performance and that of its committees, with an **external evaluation** conducted every three years.
- The Code emphasises transparency and requires **additional disclosures in annual reports**, both in the front

## Raising the bar

The objective of the Code remains the same, to provide a framework for the application of best practice in corporate governance by both commercial and non-commercial State Bodies. These standards of corporate governance have, perhaps not surprisingly, evolved since the publication of the previous Code in 2009. This is reflected in the requirements within the Code. State Bodies are expected to demonstrate their commitment to achieving the highest possible standards of corporate governance.

The revised Code leverages corporate governance best practice in the wider public and private sectors in Ireland and internationally, such as the FRC's UK Code (2016), CIPFA and IFAC's "International Framework: Good Governance in the Public Sector" (2014) and OECD's "Principles of Corporate Governance" (2015).

As a result, the expectations on corporate governance have increased considerably and without a doubt, the bar has been raised. Increased accountability and transparency, particularly at Board level, as well as emphasis on behaviors and organisation culture permeate the principles and provisions of the Code.

section of the report and the financial statements. For example, State Bodies now have to disclose more information on expenditure, such as termination/ Severance payments which exceed €10,000; total costs incurred in relation to travel and subsistence; hospitality expenditure and cumulative consultancy fees.

- In relation to **public procurement**, State Bodies now have to maintain a database/ register of all contracts or payments which exceed €25,000 and have monitoring systems in place to identify potential instances of non-compliance in procurement.
- There is now a requirement to establish a combined **Audit and Risk Committee** to give an independent view in relation to risks and risk management systems, with recognition that some larger entities may opt for separate committees. The Code recommends that the Audit and Risk Committee has **external members** drawn from outside the Board.
- The Board must confirm in the annual report that they have carried out a **robust assessment of principal risks**, including a description of these risks and associated mitigation measures or strategies.
- The provisions relating to the Board's responsibilities for ensuring the effectiveness of the organisation's **internal controls** are also more prescriptive, detailing what the annual review should consider and specifying the timing, namely close to the end of the financial period under review or soon after and no later than three months after the period end. The Code also notes the importance of **'on-going monitoring and review'** of internal controls.
- In terms of **oversight arrangements**, the relations with the Oireachtas and Minister have been expanded to cover the Parent Department and are much more **outcomes-focused**. The requirement for a Performance Framework has evolved into a written Oversight Agreement, with a new requirement for non-commercial State Bodies to have a Performance Delivery Agreement in place.

## Deloitte View

We welcome the Code and its guidance however, recognise that the short time between the publication of the Code and the date it took effect will create challenges for State Bodies to get to grips with the changes and make the necessary changes to comply with all the requirements.

Each State Body will have to assess how the changes will impact their governance practices and procedures and identify potential areas of non-compliance. They will need to be in a position to explain any derogations from the provisions of the Code in their oversight agreement.

Boards will need to review their schedule of matters reserved and annual Board calendar to ensure that they cover all responsibilities outlined in the Code, such as talent and culture. They will also need to consider the information and assurance they are receiving on these areas and whether it is sufficient to enable the Board to discharge its responsibilities.

Boards that do not conduct any form of annual self-assessment of its own performance will have to establish a process. For those that have established internal practices, they will need to consider the timing of their external evaluation, which is required every three years.

The additional disclosures present a number of questions Boards and management will have to consider. For example, do their systems capture the data required for the new disclosures? From what date can you provide disclosure? How granular will your reporting be? Will you provide comparative disclosures?

In addition, Boards and management will also need to consider where in the annual report the new disclosure requirements will go, the governance report or financial statements. They will also need to review the impact these changes will have on the internal timetable for delivery of the annual report.

Following the changes to public procurement requirements, State Bodies will have to examine their procurement policies and procedures, alongside the roles and responsibilities for the monitoring and oversight of these systems.

State Bodies will have to review their committee structures with a view to establishing an audit and risk committee, if they do not already have one in place. Those that do have one, will need to assess the composition and take into account the recommendation for an external member.

The changes relating to the Board's risk management and internal control responsibilities will require enhancements to processes to enable the Board 'to form its own view' and provide them with the necessary assurance to sign off the statement. Similarly the requirement for a robust assessment of principal risks will also require State Bodies to look at the processes in place to support this assessment, not just consider the wording of the statement.

State Bodies will have to examine the changes regarding relations with the Oireachtas and Minister / parent Department, to ensure that written oversight agreements and, in the context of non-commercial State Bodies, relevant Performance Delivery Agreements are in place.

**Further information**

The Code and supporting guidance are available on the Department of Public Expenditure and Reform's website: http://www.per.gov.ie/en/revised-code-of-practice-for-the-governance-of-state-bodies/

# Appendix 1 – overview of the key changes per section

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| **Role of the Board** | A number of new principles and provisions in relation to the role of the Board have been introduced, outlining the key functions of the Board and emphasising the expectations of the ethical standards expected of Board members.<br><br>While the core matters for decision of the Board remain the same, the provisions supporting this section are more prescriptive. For example, where the Board previously had responsibility for compliance with all applicable statutory obligations and satisfying itself that all such obligations are identified and made known to it, they now have to review the controls and procedures to provide itself with reasonable assurance that such controls and procedures are adequate.<br><br>There are a number of new responsibilities relating to talent and culture, such as promoting the development of the capacity of the State Body, including the capability of its leadership and staff, and 'setting the tone from the top'.<br><br>The Code also introduces a number of new provisions on the Secretary of the Board, setting out the high-level responsibilities of the Secretary, emphasising their role in governance. The Code also now states that the Board has a duty to ensure that the Secretary has the required skills to discharge their duties. |
| **Role of the Chairperson** | There is a new section on the role of the Chairperson of State Bodies, highlighting the importance of this role.<br>The key principles include having responsibility for the leadership of the Board and setting expectations regarding culture, values, and behaviours for the State Body and for the tone of discussions at Board level. The provisions provide detail on the specific responsibilities, such as setting the agenda and ensuring timely and clear flows of information to the Board.<br><br>The existing requirement to furnish the relevant Minister with a comprehensive report is now more onerous. There are now requirements to include information such as: providing summary details of all off-balance sheet financial transactions that are not disclosed in the annual report; confirming that Protected Disclosures procedures are in place; and confirming that the State Body has complied with its obligations under tax law. Detailed requirements are set out in the Business and Financial Reporting Guidance. |
| **Role of Board members** | There is also a new section on the role of Board members. This sets out the fiduciary duties of Board members. It also references the specific fiduciary duties of directors of companies incorporated under the Companies Act 2014 (or previous Acts) and notes that bodies formed under these Acts will also have to adhere to the specific duties and obligations under the Companies Act 2014.<br><br>Where a Board member finds evidence of non-compliance with any statutory obligations, they must immediately bring this to the attention of their fellow Board members and the Chairperson should notify the relevant Minister. |
| **Board effectiveness** | Again, there is another new section, this one specifically relating to the effectiveness of the Board, the principles of which have been adapted from the UK Code. The principles are focused on ensuring the Board has the right skills, information and processes in place to support Board effectiveness.<br><br>One of the key changes is the requirement for Boards to undertake an annual self-assessment evaluation of its own performance and that of its committees, with an external evaluation to be conducted every three years. |
| **Codes of Conduct, Ethics in Public Office, Additional Disclosures of Interests by Board Members and Protected Disclosures** | Although the title has changed, the substance of this section remains the same, with the exception of the inclusion of a number of new provisions relating to the Protected Disclosures Act 2014, reflecting the introduction of this legislation since the 2009 Code. Under the revised Code State Bodies must establish and maintain procedures for making and dealing with protected disclosures by workers. Further, there is a requirement to publish a report on protected disclosures in accordance with Section 22 of the Protected Disclosures Act 2014. |

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| **Business and Financial Reporting** | The requirements to provide disclosure on material matters, including financial position, are now set out in a standalone section, supported with comprehensive separate guidance – 'Business and Financial Reporting Requirements'.<br><br>In line with good transparency, the new Code requires additional disclosures in annual reports, both in the front section of the report and the financial statements. Examples include: a statement on how the Board operates and a high level statement of matters for decision by the Board and those delegated to management; and a statement on whether the Board considers its financial statements to be a true and fair view of financial performance and financial position at year end.<br><br>The financial statements now need to disclose more information on expenditure, such as: termination/severance payments which exceed €10,000; total costs incurred in relation to travel and subsistence; hospitality expenditure (including Christmas parties, retirement parties, sports & social contributions, leaving gifts, flowers); legal costs/settlements where the cost of a case exceeds €50,000 in the calendar year; cumulative consultancy fees (legal, tax, financial advisory (excluding auditors), PR, marketing, pensions, HR, and others). |
| **Risk Management, Internal Control, Internal Audit and Audit and Risk Committees** | Further detail has been included on the principles and provisions for Risk Management, Internal Control and Internal Audit. The title of this section now includes 'Audit and Risk Committees', reflecting the need to establish a combined Audit and Risk Committee to give an independent view in relation to risks and risk management systems.<br><br>In general the Audit and Risk Committee should be combined, however for larger entities, the Code acknowledges there may be a requirement for a separate Audit and Risk Committee. The revised Code sets out details of the composition, which recommends that Audit and Risk Committees have members drawn from outside the Board. These Code provisions should be read in conjunction with the supporting Audit and Risk Committee Guidance.<br><br>In addition to this change in oversight of risk management, there is now a requirement for Boards to confirm in the annual report that they have carried out an assessment of the State Body's principal risks, including a description of these risks, and associated mitigation measures or strategies.<br><br>In line with the overarching theme of culture running throughout the revised Code, the Chief Risk Officer, or suitable management alternative, are required to promote a risk management culture in the organisation.<br><br>The revised Code emphasises the need for the Board 'to form its own view on the effectiveness of internal control systems.' The provisions relating to the Board's responsibilities for ensuring the effectiveness of the organisation's internal controls are also more prescriptive, detailing what the annual review should consider and specifying the timing, namely close to the end of the financial period under review or soon after and no later than three months after the period end. The Board now has to conclude on the extent to which the controls are adequate and were operating, as well as outline any actions to address any deficiencies. In addition to undertaking an annual review, the revised Code also refers to 'on-going monitoring and review' of internal controls.<br><br>Similar to the above areas, the principles and provisions relating to internal audit have also expanded. The revised Code includes a new provision on the 'Internal Audit Universe', stating that internal audit has the right to review all the management and control systems, both financial and operational, and has unrestricted access to all functional areas, records, property, and personnel in the performance of its audits.<br><br>There is also another new provision on the 'Annual Programme of Audits', whereby the head of internal audit is responsible for drawing up an annual programme of audits having regard to the State Body's Statement of strategy and risk management policy in consultation with the Audit & Risk Committee. |

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| **Relations with the Oireachtas, Minister and Parent Department** | In contrast to the previous version of the Code, the relations with the Oireachtas and Minister have been expanded to cover the parent Department and are more outcomes-focused. For example, one of the principles states that the procedures must define 'expected outputs and outcomes and clear procedures for monitoring performance'.<br><br>The requirement for a Performance Framework has evolved into two separate requirements.<br>• Firstly, an Oversight Agreement which defines the terms of the State Bodies relationship with the relevant minister/Parent Department. This is similar to the previous Performance Requirement, with the inclusion of additional criteria.<br>• Secondly, and perhaps one of the more onerous provisions, there is a new requirement for non-commercial State Bodies to have a Performance Delivery Agreement which acts as a performance contract between the State Body and Parent, formalising an agreed level of performance.<br><br>Further, non-commercial State Bodies will now also be required to undertake a Periodic Critical Review ('PCR') on their organisational performance no later than every 5 years, by a Working Group established by the relevant Government Department who will report their findings to the relevant Minister. |
| **Remuneration and Superannuation** | There are limited revisions to this section of the Code. Separate 'Remuneration and Superannuation' guidance has been provided which includes additional information on areas such as Commercial State Bodies, Funded Pension Schemes and Minimum Funding Standard Requirements. |
| **Quality Customer Service** | While the appendix on the principles of quality customer service is largely the same, with some additional detail on complaints, the revised Code introduces principles and provisions regarding quality customer services. State Bodies are expected to have a customer charter in place, displayed in a prominent place, setting out the level of service a customer can expect. This should be supported with a customer action plan, both of which should be produced simultaneously. |

**Deloitte Centre for Corporate Governance**
The Centre for Corporate Governance is designed to provide Boards and senior management with a single point of access to current developments, Deloitte perspectives, learning materials and other useful information related to corporate governance.

We provide a range of corporate governance services across all industries, bringing insight into the latest developments and the practical challenges. We work collaboratively with clients to either assess their existing governance arrangements in place or to assist in the design and implementation of new solutions. Our approach is tailored to your needs and will be dependent upon a number of factors to include: sector you operate in, ownership and legal structure, whether you are regulated and the stage of maturity of your business.

See our website for further details - http://www2.deloitte.com/ie/en/pages/governance-risk-and-compliance/solutions/center-corporate-governance.html

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