

Code of Practice for the Governance of State Bodies.....a snapshot of the updates

On 17th August 2016, Minister Pascal Donohoe published a revised and updated Code of Practice for the Governance of State Bodies (“Code”).

The new Code supersedes the 2009 revision published by the Department of Finance and Minister Donohoe’s Department of Public Expenditure and Reform says the Code will be effective from 1st September 2016.

So what’s new?

In a nutshell – PLENTY.

Those expecting to see a similar version to the 2009 Code of Practice for the Governance of State Bodies or even the draft paper circulated to the Sector for comments last year are in for a surprise.

First of all, the new Code is 72 pages long, with 4 additional suites of documents to accompany it. This makes the 2016 revision the biggest Code ever to be published by the Government.

Needless to say, the bigger the Code, the more there is to comply with.

Let’s begin with the obvious

Not surprisingly the Code updated its guidelines in line with changes to the regulatory framework. **Companies Act 2014, Protected Disclosures Act 2014, Single Public Service Pension Scheme, Public Spending Code, Office of Government Procurement and NewERA** are all referenced in the updated Code.

Then there is the introduction of the concept of “**Comply or Explain**”, one that is “unfriendly” in its delivery and prominently used throughout the new Code.

The Government in its “Transforming the Public Sector” initiative has pushed for more KPI reporting to improve the efficiency and the effectiveness in the delivery of public service. The new Code echoes this initiative by:

Introducing Performance Delivery Agreements and Periodic Critical Review

Perhaps the more aggressive of new provisions, the new Code introduces Performance Delivery Agreements –agreements which act as a performance contract between your organisation and your parent Department in which an agreed level of performance is formalised.

That’s not all. Non-commercial state bodies are now subjected to **Periodic Critical Review (PCR)** on your organisation’s 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.

Holding the Board accountable

Possibly the most expanded update in the 2009 Code, it is clear that the new Code wants your board accountable for its effectiveness. Your Board must take cognisance of the added requirements now defined by the Code.

The new Code has been updated with the new sections dedicated to defining the roles of the Chairperson and Members of the board. Duties of the secretary of the Board are also defined.

Your Board and their committees are required to report on their effectiveness by way of a **self-assessment annual evaluation**.

Your Board Members are further expected to attend 100% of all Board meetings. Attendance records will be evaluated when members are due for re-appointment.

Establishing Audit and Risks Committee

Unlike the 2009 Code, the 2016 revision provides no exemptions from the requirement to establish an Audit and Risks Committee, regardless of the size of your organisation. The Code suggests that Audit and Risks Committee should be combined.

The new Code requires that your Audit and Risks Committee undertake an annual review of the effectiveness of internal controls with the added requirement that this review should be conducted close to the end of the financial year and no later than 3 months after year end.

Your Audit and Risks Committee is further asked to give adequate attention to value for money internal audits in their internal audit plan.

Introducing Oversight Agreements

The new Code requires that your organisation put in place written oversight agreements with your Department to define the terms of your organisation's relationship with the relevant Minister.

Emphasis on reporting Non-Competitive Procurement

The Code requires that your organisation maintains a database/listing for all contracts/payments in excess of €25,000 to flag non-competitive procurement. The Code further requires that these are reported in the Chairperson's annual statement to the Minister.

Added disclosures to Financial Reports

The new Code requires added disclosures in your Annual Report. Some examples of these are a statement of how your Board operates, including a high level statement of matters for decisions by your Board and those delegated to management. Another example is a statement on whether your Board considers its financial statements to be a true and fair view of your organisation's financial performance and financial position at year end.

You are now required to itemised and report separately in the financial statements details of all **hospitality expenditure, foreign and national travel, legal costs, tax and financial advisory costs, public relations and marketing costs, pension and human resources costs and consultancy costs.**

The new Code, in essence, is consistent with the Government's initiatives to push for a more transparent and accountable public sector.

However, implementing the requirements of the new Code will undoubtedly be challenging for some and will take time for all.

Crowleys DFK's clients will receive a detailed report on our analysis of the revised Code.

Please contact us if you wish to avail of a copy of this report.

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