

Code of Conduct of the Board of Enterprise Ireland 2017

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Introduction

Intent and Scope

The Board has a key role in setting the ethical tone of Enterprise Ireland, not only by its own actions but also by overseeing senior management and staff. High ethical standards are in the long-term interests of Enterprise Ireland and a key means to make it credible and trustworthy. It is important that the Board sets the correct 'tone from the top'. The Board should lead by example and ensure a good standard of governance and ethical behaviours permeate all levels of the organisation.¹

This Code of Conduct sets out, in written form, the standards of business conduct to which the members of the Board of Enterprise Ireland have agreed to adhere in the performance of their duties. The Board requires that this Code of Conduct should also bind the members of boards and committees, to whom the Board has delegated certain of its powers.²

Non-executive Board members should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct.³

The underlying principle of this Code of Conduct is that Board members⁴ will strive to perform their duties to the Agency (including, but not limited to, the fiduciary duties set out below) in accordance with the highest ethical standards of honesty, integrity, fairness, confidentiality and independence and will actively seek to prevent the development or acceptance of unethical practices.

Fiduciary Duties⁵

The principal fiduciary duties which the Board members shall seek to adhere to are:

1. to act in good faith in what the Board member considers to be the interest of Enterprise Ireland;
2. to act honestly and responsibly in relation to the conduct of the affairs of Enterprise Ireland;
3. to exercise his or her powers only for the purposes allowed by law;
4. not to benefit from or use the Agency's property, information or opportunities for his or her own or anyone else's benefit unless as permitted by law or authorised by the Board;
5. not to agree to restrict the Board member's power to exercise an independent judgment
6. to avoid any conflict between the Board member's duties to the Agency and the Board member's other interests unless the Board member is released from his or her duty to the Agency in relation to the matter concerned; and
7. to exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Board member. A Board member may be held liable for any loss resulting from their negligent behaviour.

¹ COP 2016 1.2

² COP 2016 S 5.2 Scope of Application

³ COP 2016 3.8

⁴ Defined as members of the main Board of Enterprise Ireland and those members appointed by the Board to boards and committees to which the main Board has delegated powers.

⁵ COP 2016 Item 3.1

Board members will act at all times in accordance the law and, in particular, with:

- The provisions of the Industrial Development Acts 1986 – 1998 as amended,
- The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001, as amended (“the Ethics Act”),
- The provisions of the Companies Acts as amended from time to time⁶,
- The Code of Practice for the Governance of State Bodies 2016 as amended from time to time (“the Code of Practice”)⁷.

Non-compliance

Where individual Board members find evidence that there is non-compliance with any statutory obligations that apply to Enterprise Ireland, 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 indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position. It is the Chairperson’s responsibility to make such issues known to the Minister.⁸

In fulfilment of the foregoing requirements, the Board has agreed to act in accordance with the following procedures.

Civil Servants

Non-commercial State bodies operate in context where public policy objectives are central to its mission. Where there is a significant public policy issue at stake or a disagreement within the Board on a major public policy issue, the civil servant should request the Chairman to notify the relevant Minister or, failing that, notify the Minister himself/herself.

Department of Finance Circular 12/2010: *Protocol for Civil Servants Nominated to the Boards of Non-commercial State Bodies* outlines the steps to be taken when a civil servant nominee to the Board of non-commercial State bodies has an unanswered concern where there is a significant public policy issue at stake.

As per the Circular 12/2010, the Minister must be notified without delay where:

- i) There are serious weaknesses in controls that have not been addressed despite being drawn to the attention of the Board or the Chairperson;
- ii) There is a significant strategic or reputational risk to the State body that is not being addressed; and/ or
- iii) There are serious concerns about possible illegality or fraud occurring in State body.

⁶ In so far as they apply to Enterprise Ireland e.g. Part V of the Companies Act - Provisions with respect to Insider Trading

⁷ COP 2016 s 5.3 Compliance Requirements

⁸ COP 2016 s 3.3 Non-Compliance

1. Disclosure of Interests:

Ethics in Public Office Acts 1995 and 2001:

The principal obligations imposed by the Ethics Acts on Board Members are:

- To furnish a written statement of “registrable interests” to the Company Secretary, (the “Secretary”) each year⁹.
- To act in accordance with the Standards in Public Office Commission guidelines.
- To comply with the relevant provisions of the Ethics Acts

Disclosure of interests under the Ethics Acts of 1995 and 2001, the Industrial Development (Enterprise Ireland) Act 1998¹⁰ and the Code of Practice for the Governance of State Bodies 2016¹¹

Disclosure of Registrable Interests:

On appointment and annually thereafter, each Board member should furnish to the Secretary of the Board or other nominated person a statement in writing of:

- (a) the interests of the Board member; and
- (b) the interests, of which the board member has actual knowledge, of his or her spouse or civil partner, child or child of his/her spouse or civil partner

which could materially influence the Board member in, or in relation to the performance of his/her official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the Board member, or the spouse or civil partner or child, a substantial benefit.¹²

In so doing, Board members will voluntarily seek such information in respect of spouses/partners and dependent children and will disclose such information as may be known to them in respect of other family members at the time of making their statement, or as may become known to them at any other time, or of whose materiality the member becomes aware in respect of any matter which arises from time to time.

For the purposes of this disclosure, interests (including to, but not limited to, shareholdings, holdings of land, directorships and professional relationships) have the same meaning as set out in the definition of “registrable interests” to be found in the second schedule to the Ethics in Public Office Act 1995 (as amended)¹³.

⁹ The obligation is to furnish such a statement to the Standards in Public Office Commission and the Secretary. Accordingly, Board members should ensure that such a statement is furnished to the Secretary for onward transmission to the Standards in Public Office Commission or directly to both the Secretary and the Standards in Public Office Commission.

¹⁰ Section 15 of the Industrial Development (Enterprise Ireland) Act 1998 and section 5.8 of the Code of Practice.

¹¹ COP 2016 s 5.8 Disclosure of interests by Board Members

¹² Section 17(1)(ii) of the Ethics in Public Office Act 1995

¹³ Please see appendix 1 for an explanation of the meaning of “registrable interests”. Please note also that a guide to the meaning of certain terms in the Ethics in Public Office Act and in particular to what constitutes a registrable interest is available from the Company Secretary’s Office or the In-House Solicitor.

As the Board members are designated directors for the purposes of the Ethics Acts, the annual statement of interests furnished in January each year under section 17 of the Ethics in Public Office Act 1995 will suffice for the purposes of the annual disclosure of interests under this Code of Conduct and the Code of Practice.

Disclosure of relevance to a matter which arises

In addition to the periodic statements of interest required under 1.2.1 above, Board members are required to furnish a statement of interest at the time where an official function falls to be performed by the Board member and he/she has actual knowledge that he/she, or a connected person, has a material interest in a matter to which the function relates¹⁴. That is, an interest which could be likely to influence the Board member in relation to his or her functions as a member of the Board¹⁵.

This disclosure obligation reflects the requirements of the Code of Practice and Section 15 of the Industrial Development (Enterprise Ireland) Act, 1998.

Definition of “connected person”¹⁶

The Board notes that, for this purpose, a “person” connected with a Board member is defined so as to include:

- (a) A spouse or civil partner, parent, brother, sister, child, step child of the Board member or a child or step child of the Board member’s spouse or civil partner.
- (b) A body corporate over which a Board member (on his own or with others) has control, as defined in Section 432 of the Taxes Consolidation Act 1997.
- (c) A person acting as the trustee of any trust, the beneficiaries of which include the Board member or the persons at (a) above or the body corporate at (b) above.
- (d) A person acting as a partner of a Board member or of any person or body who, by virtue of (a) – (c) above is connected with a Board member.

Where it is relevant in any matter which arises under this section 1.2, the Board member should indicate to the Secretary his or her interests or the interests of all persons connected with him/her, as mentioned above.

Procedures

Details of interests disclosed should be kept by the Secretary of the Board or other nominated person in a special confidential register (“ the Register of Interests”)

¹⁴ See section 17 (1)(b) of the Ethics in Public Office Act 1995. A statutory definition of “material interests” is found in sub section (3) of section 2 of the Ethics in Public Office Act 1995 (for a definition of “Material Interest” see Appendix 2 to this Code of Conduct and the guide to the meaning of certain terms in the Ethics in Public Office Act available from the Office of the Company Secretary or the In House Solicitor) and a similar, but not identical, definition of “beneficial interest” is to be found in subsection (3) of section 15 of the Industrial Development (Enterprise Ireland) Act 1998.

¹⁵ This explanation of “material interest” is both a summary of the statutory definition in section 2(3) of the Ethics in Public Office Act 1995(- see appendix 2), which can be difficult to interpret, and is consistent with the explanation of “beneficial interest” in sub-section 3 of section 15 of the Industrial Development (Enterprise Ireland) Act, 1998 which also relates to disclosure of interests.

¹⁶ The statutory definition of connected person is to be found in section 2(2) (a) of the Ethics in Public Office Act, 1995.

Access to the Register of Interests should be restricted to the Chairperson and Secretary¹⁷ to the Board and other Board members of the State Body on a strictly need to know basis.¹⁸

The Register of Interests should be updated on a half yearly basis.

Board members will notify the Secretary of changes in their registrable interests in the interim as soon as possible.

Where a matter relating to the interests of the Chairperson arises, the other Board members attending the meeting shall choose one of the members present at the meeting to chair the meeting. The Chairperson should absent himself/herself when the Board is deliberating or deciding on a matter in which the Chairperson or his/her connected person has an interest.

The Secretary of the Board shall ensure that all documents on any matter that, to his or her knowledge, relate to any dealings concerning such interests or to matters involving competitors of the relevant Board member or his connected person are marked on the cover page that they are restricted from the relevant Board Member. Particulars of all such restrictions will be recorded in the minutes of the meeting concerned¹⁹.

Documents will not be made available to Board Members from whom they are restricted prior to a decision being taken. If a relevant member receives such documents, inadvertently, or in error due to changed circumstances, he/she will notify the Secretary, who shall ensure the immediate deletion of documents from the relevant Enterprise Ireland electronic document storage system(s). The Secretary shall consult with the Chairperson to decide upon appropriate consequential action, whether in terms of notice or otherwise, so as to notify and or protect the interests of third parties or clients whose interests may have been potentially compromised by the receipt by a Board member of restricted documents. Such documents should be taken to include those relating to matters involving competitors of the relevant Board member or any connected person of any Board member.

Relevant Board Members will absent themselves during the discussion and decision-making relating to the relevant document. In such cases, a separate minute of the decision (to which the relevant Board Member will not have access) will be maintained²⁰.

Where a question arises as to whether or not a matter relates to the interests of a Board Member, the Chairman will, in the first instance, determine the question as to whether the provisions of this Code apply. Where a Board member is in doubt as to whether he or she has an obligation under this Code, he or she should seek advice from the Company Secretary who may, at his/her discretion, refer the Board member to the Enterprise Ireland in-house Solicitor²¹.

Where a question arises as to whether a course of conduct, if pursued by a person, would be deemed a failure to comply with the disclosure obligations of this Code of Conduct (which reflect the disclosure

¹⁷ In the case of boards and committees to which the Board has delegated authority, the Secretary shall be defined as the Office of the Secretary and shall include those staff members of Enterprise Ireland assigned to act as secretary to the board or committee in question.

¹⁸ COP 2016 s (iv) Disclosure of Interests

¹⁹ COP 2016 s1.11 Conflict of Interest

²⁰ COP 2016 Item (vii)

²¹ COP 2016 s (iii) Disclosure of Interests

requirements of Section 15 of the Industrial Development (Enterprise Ireland) Act 1998, the disclosure obligations under section 17 of the Ethics in Public Office Act, 1995 and the disclosure obligations under section 5.8 of the Code of Practice) , the question will be determined by the Board and particulars of the determination will be recorded in the minutes of the meeting concerned.

Where a Board member is in doubt as to whether he or she has an obligation under the Ethics in Public Office Acts 1995 and 2001, he or she should seek advice from the Standards in Public Office Commission under Section 25 of the Ethics in Public Office Act 1995.

Board members should not retain documentation obtained during their terms as a Board member and should return such documentation to the Secretary of the Board or otherwise indicate to the Secretary of the Board that all such documentation in their possession has been disposed of in an appropriate manner. In the event that the former Board members require access to the Board papers from the time of their term on the board, this can be facilitated by the Secretary of the Board²².

2. Disclosure of Transactions

Notes to the Financial Statements

In the normal course of business, Enterprise Ireland may approve financial support and investments in preference and ordinary shares and enter into other contractual arrangements with undertakings (including companies) in which Enterprise Ireland Board members are employed or otherwise interested.

In the Notes to the Financial Statements each year, a summary of such transactions is published and the Board has agreed that the detailed schedule of such contractual arrangements should be made available on request.

Scope of transactions

In the interests of providing as great a degree of transparency as possible in relation to the declared interests of Board members, Board members have agreed (July 2000) that the definition of “companies with which Board members are employed or otherwise interested” should include those companies in which Board members have direct shareholdings.

Shares held at arm’s length, through trusts or funds, and controlled by independent trust or fund managers (e.g. Unit Trusts, investment funds or BES Funds), are not included.²³

3. Information – Achieving a Balance

Supporting the Principle of Access

The Board of Enterprise Ireland supports the principle²⁴ of access to general information relating to its activities in a way that encourages a spirit of accountability to its shareholders, clients, employees, and to the general public.

²² COP 2016 s 5.7 Document retention

²³ Accordingly, such indirect shareholdings are not relevant for disclosure purposes.

²⁴ Enshrined in the Freedom of Information Act and the Data Protection Act

Restrictions and Exemptions

However, except as required by law, Board members will not, without the consent of the Board, disclose any information obtained while performing their duties.²⁵ The Board is interpreting this to mean confidential, personal, or commercially sensitive information and, for the avoidance of doubt, this restriction also applies to all information described or referred to as confidential in any applicable Enterprise Ireland protocol or policy regarding confidential information. This requirement will apply both during and after their term of office.

4. Dealing in shares, property or otherwise

Insider Trading

The Board notes that it is a criminal offence²⁶, with serious penalties, for a person who is connected with a public company and other corporate entities whose securities are listed on a recognised stock exchange (including a person that might reasonably be expected to have price sensitive information by virtue of business dealings or other relationships with the company or corporate entity) to deal in securities when he/she is in possession of price sensitive information.

Use of information for dealing purposes

In addition to their obligations under law, Board members voluntarily agree not to use any information obtained by virtue of their position as Board members for the purpose of dealing (direct or indirect) in shares, property or otherwise.

5. Gifts and Preferential Treatment

Board members undertake not to give or receive corporate gifts, hospitality, preferential treatment or other benefits that might affect, or appear to affect the ability of the donor or the recipient to make independent judgements on business transactions or matters concerning current or potential clients of Enterprise Ireland or suppliers to, or other counterparties of, Enterprise Ireland.

6. Compliance with policies and procedures

Board members undertake to comply with, and promote within Enterprise Ireland compliance with, appropriate policies and procedures required by applicable legislation and recommended by the Code of Practice, including, but not limited to, policies and procedures adopting best practices in procurement of goods and services, protected disclosures, and the receipt of gifts and the prevention of bribery and corruption.

²⁵ The statutory obligation contained in section 16 of the Act not to disclose information obtained in the course of duties is a broad prohibition and, accordingly, Board members should err on the side of caution and avoid disclosure of such information.

²⁶ Part V of the Companies Act 1990

7. Independent Professional Advice

In the event that any Board member wishes to seek independent professional advice in the furtherance of their duties (including, but not limited to retaining full and effective control over the agency and monitoring the management and performance of the executive), members should first consider relying on expert advice supplied by Enterprise Ireland personnel or advisors retained by Enterprise Ireland. The Secretary will arrange for such advice to be obtained.

It is only in relation to significant or material issues, and in circumstances where such advice cannot be obtained from these sources or is considered to be unreliable or lacking in objectivity, that independent professional advice should be sought.

In such instances, members should consult with the Chairman, who will discuss with the member the justification for, and the basis on which, such advice is required and arrange, through the Secretary, for such independent advice to be made available to the member, if necessary at reasonable expense to Enterprise Ireland. In so doing, the Secretary will consult with the Member regarding all invoices received for services and ensure that internal procedures for the certification of all such invoices for payment are satisfied.

The Chairman will determine what constitutes a reasonable justification for advice to be sought and will adjudicate, if necessary, as to what constitutes reasonable expense.

In all cases, the Secretary will be informed and will retain a record of the process of the securing and provision of professional advice and of the cost and defraying of such cost.

The Board will review this Code of Conduct annually, or more frequently should circumstances require.

8. Post Resignation Restrictions

Board members' duties to avoid conflicts of interest endure beyond the date of their resignation or retirement.

Accordingly, Board members, in taking up positions of employment or offices, including directorships and consultancies, after any such resignation or retirement, should be conscious of their duty to avoid any conflict of interest with Enterprise Ireland.

In that regard, no such appointment should be taken up for a period of one year after retirement or resignation unless either the former Board member is satisfied that no conflict exists (having made all reasonable enquiry) or he/she has obtained the approval of the Board of Enterprise Ireland for the appointment (such approval not to be unreasonably withheld).

This obligation shall have no effect on the continuing confidentiality obligations of a former Board member in respect of information obtained as a Board member"

In this context, retiring and resigning board members should return all Board papers which she or he holds at the end of the Board member's tenure and remain conscious of their contractual and statutory duties of confidentiality towards Enterprise Ireland.

Appendix 1 - Registrable Interests

Explanation of “Registrable Interests”, being those interests that are to be disclosed annually.

The following interests are defined as “registrable interests” in the Acts²⁷:

- (i) Any **remunerated trade, profession, employment**, vocation or other occupation, the remuneration (including pay, pension, benefits-in-kind, etc.) from which exceeded €2,600 during the relevant period.
- (ii) Any holding of **shares**, bonds, debentures or **other investments** in a company, enterprise or undertaking (including a holding in unit trusts or managed funds) where the aggregate value exceeded €13,000 at any time during the relevant period. *Monies in a current, deposit or other similar account at a Bank or financial institution are excluded from this definition.*
- (iii) A **directorship** or **shadow directorship** of any company during the relevant period.
- (iv) Any **interest in land (including premises)** during the relevant period which exceeds €13,000 in value, including any interest in a contract or option to purchase land but *excluding the private home of the person or of the person’s spouse and any land ancillary to it that is not being used primarily for commercial purposes. Also excluded is a holiday home and any other private home used by the person or his or her family*²⁸.
- (v) Any **gift received** during the relevant period, *excluding any gift from a relative or friend given for purely personal reasons unless the acceptance of the gift could have materially affected the person in the performance of his or her official functions for Enterprise Ireland. Gifts which at no time during the relevant period exceeded €650 in value are also excluded - provided the aggregate value of gifts from the same person does not exceed €650.*
- (vi) Any **property supplied or lent** to the person at a price which is less than the commercial price by more than €650, or if supplied or lent for free where the commercial price is €650 or more. Any property supplied or lent by a relative or friend in the nature of a gift is excluded unless the acceptance of the property or loan could have materially affected the person in the performance of his or her official functions for Enterprise Ireland.
- (vii) Any **service supplied** to the person at a price which is less than the commercial price by more than €650 or if supplied for free where the commercial price is €650 or more. *Any service supplied or lent by a relative or friend in the nature of a gift is excluded unless the acceptance of the property or loan could have materially affected the person in the performance of his or her functions for Enterprise Ireland. If the service supplied relates to legal or medical services (including psychiatric or psychological services), the statement disclosing such an interest should specify only that legal or medical services, as the case may be, were supplied to the Board Member, or to another person (i.e. spouse, child or child of spouse) who should not be identified*²⁹. *No further details will be required.*
- (viii) Any **travel facilities, accommodation, meals or entertainment** supplied to the person outside the State at a price which is less than the commercial price by more than €650 or if

²⁷ Second Schedule to the 1995 Act

²⁸ SIPO Commission Guidelines for Public Servants- 2nd Edition

²⁹ Section 34 (1995)

supplied for free where the commercial price is at least €650 - provided the gift, or the aggregate value of gifts from the same person, exceeds €650. *Any such travel etc is excluded from the definition of "interest" if supplied in the course of and for the purpose of the person's performance of his or her functions for Enterprise Ireland or in the course of and for the purpose of some other occupation or employment. Such matters are also excluded if supplied by a relative or a friend in the nature of a gift given for personal reasons only unless the acceptance of the travel etc. might reasonably be seen to be capable of influencing the person in the performance of his or her functions for Enterprise Ireland.*

- (ix) Any **remunerated position as a political or public affairs lobbyist, consultant or adviser** during the relevant period.
- (x) Any **contract** to which the person was a party or was in any way, directly or indirectly, interested in the **supply of goods or services to a Minister of the Government or a public body** during the relevant period – where the value of the goods or services supplied exceeded €6,500 or the aggregate value of such contracts exceeded €6,500.

Appendix 2 – Material Interest

Explanation of “material interest” being the interest which a Board member is obliged to disclose where he or she is has a potential conflict of interest in relation to any matter arising during the course of the year relating to the discharge of his or her function as a Board member.

In summary, it may be explained as an interest which could be likely to influence the Board member in relation to his or her functions as a member of the Board.

The detailed statutory definition of “material interest” is to be found in section 17(1) (b) of the Ethics in Public Office Act, 1995 as follows:

A person has a “**material interest**” in a matter where as a consequence of the performance of a function of his or her office or of any decision made in the course of or as a result of such performance by the person, a significant benefit is conferred on or withheld from the person/connected person, or a significant loss, penalty or other disadvantage is imposed on the person, without also conferring it on or withholding it from persons in general or a class of persons of significant size having regard to the circumstances