

# Code of Governance of Irish Institutes of Technology

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January 2012

**Code of Governance of Irish Institutes of  
Technology- as amended to reflect  
2009 Code of Governance for State Bodies**

# Governance of Irish Institutes of Technology

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# **1 Institutes of Technology Legislation and Related Legislative Frameworks**

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# Governance of Irish Institutes of Technology

## Introduction:

### Background

Good governance arrangements are essential for organisations large and small and whether operating in the public or private sectors. Governance comprises the systems and procedures under which organisations are directed and controlled. A robust system of governance is vital in order to enable organisations to operate effectively and to discharge their responsibilities as regards transparency and accountability to those they serve. Given their pivotal role in society and in national economic and social development, as well as their heavy reliance on public as well as private funding, good governance is particularly important in the case of Institutes of Technology.

Institutes of Technology have a strong track record in relation to governance and accountability. The Regional Technical Colleges Acts 1992 to 2001 were proactive in setting out a framework of accountability for the effective governance of Institutes of Technology. The Institutes of Technology Act 2006 underscores the autonomy of Institutes of Technology particularly in section 7 which also amends the 1992 Act by inserting a new section 5A, subsection (1) of which provides that an Institute of Technology shall “*have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs*” The approach to governance set out in this document seeks to preserve the balance between accountability and autonomy which is struck in the Institutes of Technology Acts 1992 to 2006.

### Content

The approach to governance set out in this document enshrines the basic principles of:

- Openness and transparency;
- Selflessness;
- Honesty;
- Leadership;
- Fairness;
- Integrity;
- Independence;
- Accountability;
- Objectivity;
- Efficiency and Effectiveness;
- Value for money.

The governance arrangements are set out in three separate parts as outlined below:

- (1) *Institutes of Technology Legislation and Related Legislative Frameworks;*
- (2) *Institutes of Technology Code: Principles and Best Practice;*
- (3) *More Detailed Governance Guidelines.*

(1) *Institutes of Technology Legislation and Related Legislative Frameworks*

This primarily deals with the governance requirements arising from the provisions of the Institutes of Technology Acts 1992 to 2006 and the agreed frameworks under those Acts. These are obligatory requirements.

### *(2) Institutes of Technology Code: Principles and Best Practice*

This is a voluntary code outlining a further set of principles and best practices, which take account of developments in governance and are intended to be generally applicable regarding the internal practices and external relations and accountabilities of the Institutes of Technology.

The *Code* takes account as appropriate of the corresponding 2009 Code for the Governance of State Bodies which has been put in place by the Government. The latter is an updated version of the 2001 State Bodies Code and reflects governance developments and requirements since 2001. This new Institutes of Technology Code also has regard to developments since the 2003 “Draft Code of Practice for the Governance of higher level Institutions issued to Institutes by the Department of Education and Science and to the more general comments in the OECD Examiners’ Report, “*Review of Higher Education in Ireland September 2004*”.

The Governing Body of each Institute is primarily responsible for ensuring that its activities are governed by the ethical and other considerations enshrined in the *Code*. Where an Institute of Technology’s practices are not consistent with particular provisions of this *Code*, the reasons should be clear and documented.

The provisions of this Code are supplementary to and do not affect existing statutory requirements relating to Institutes (as set out in **Part 1** of this document) and any other legislation applicable to them or their activities.

### *(3) More Detailed Governance Guidelines*

These are a set of illustrative guidelines to inform the implementation of the Institutes of Technology Code: Principles and Best Practice while recognising the particular ethos, circumstances and organisational structures of each Institute. They are not intended to be prescriptive in their detail. It is recognised that it is not feasible or desirable to attempt to provide for all situations or to rule out flexibilities in application that may be needed to take account of the circumstances of individual Institutes.

## **Conclusion**

Good governance should be seen as an aid to performance and effectiveness. It is not there to inhibit enterprise or innovation. Good governance arrangements necessarily involve having appropriate checks and balances in relation to decision-making in the institutions, so as to safeguard the collective responsibility of the Governing Body.

This document will assist Institutes and their Governing Bodies in the good and proper management of Institutes and in ensuring that appropriate procedures and controls are implemented to manage the risks facing such complex institutions, while at the same time respecting their autonomy.

It will also provide comfort to the State and the public at large that Institutes are operating to the highest standards of governance and accountability in relation to all their activities.

While this document deals primarily with governance issues as applicable to Governing Bodies, the principles and best practices in it are equally applicable to other organs of governance, e.g. academic councils, committees of the Governing Bodies and committees generally, faculties, schools, departments, and subsidiaries joint ventures etc. This document will be kept under review and amended from time to time in the light of experience and following appropriate consultation.

## Part I

### 1.1 The Institutes of Technology Acts 1992 to 2006

1.1.1 The Institutes of Technology Acts 1992 to 2006 are the primary pieces of legislation governing Institutes of Technology. The Acts, and in particular the 1992 Act (as amended), impose a number of considerable governance requirements on Institutes of Technology and these are detailed in this section.

### 1.2 Governing Body

1.2.1 In accordance with Section 6 of the 1992 Act (as amended) all Institutes of Technology are required to have a Governing Body.

“6.— (1) *There shall be a Governing Body of a college<sup>1</sup> and the Governing Body, save as otherwise provided by this Act, shall perform the functions conferred on the college by this Act.*

(2) *The Governing Body of a college shall consist of—*

*( a ) a chairman and 17 ordinary members, and  
( b ) the Chief Officer<sup>2</sup> of the college.”*

1.2.1.1 In accordance with Section 6 of the 1992 DIT Act (as amended).

(2) *The Governing Body shall consist of—*

*( a ) the chairman and 18 ordinary members, and  
( b ) the President of the Institute.”*

1.2.2 The functions of the Governing Body are set out in section 7 of the 1992 Act, (as amended) amended by section 8 of 2006 Act as follows:

“7.— (1) *The functions of the Governing Body of a college shall be, in pursuance of the functions of the college under section 5 but within the constraints of the college’s budget under section 13<sup>3</sup>*

*(a) to control and administer the land and other property of the college,*

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<sup>1</sup> The DIT Act refers to “Institute” rather than “College”.

<sup>2</sup> The title “Chief Officer” can be changed by the Governing Body with the consent of the Minister and has been changed to the title “President” in all of the Institutes. For ease of reference the term “chief officer” rather than President is used in this document.

<sup>3</sup> Section 14 in the case of the DIT Act



- (b) *to appoint the Chief Officer and such other staff as it thinks necessary for the purposes of the college, and*
  - (c) *to perform such other functions as are conferred on it by this or any other Act.*
- (2) *For the purpose of the appointment of the Chief Officer under subsection (1)(b), the Governing Body shall develop such interview and other procedures as in its opinion will best ensure participation in the selection process by candidates of a high calibre from both within and outside of the college and shall publish such procedures in such manner as it considers appropriate.*
- (3) *A<sup>4</sup> Governing Body has, subject to this or any other Act, such powers as are necessary for the purposes of performing its functions*
- (4) *A Governing Body may, from time to time, appoint such and as many committees, consisting either wholly or partly of members of the Governing Body, as it thinks necessary to assist it in the performance of its functions and may assign to those committees such of its functions as it thinks fit.*
- (5) *A committee appointed under subsection (4) shall operate in such manner as the Governing Body may direct and its acts shall be subject to confirmation by the Governing Body, unless the Governing Body otherwise directs.*
- (6) *In performing its functions a Governing Body, or, where appropriate, a committee shall—*
- (a) *comply with such policy directions as may be issued by the Minister from time to time, including directions relating to the levels and range of programmes offered by the college,*
  - (b) *have regard to the promotion and use of the Irish language as a language of general communication and promote the cultivation of the Irish language and its associated literary and cultural traditions,*
  - (c) *have regard to the attainment of gender balance and equality of opportunity among the students and staff of the college and shall, in particular, promote access to education in the college by economically or socially disadvantaged persons, by persons who have a disability*

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<sup>4</sup> “The” in the case of the DIT Act

*and by persons from sections of society significantly underrepresented in the student body,*

- (d) ensure as far as it can that the college contributes to the promotion of the economic, cultural and social development of the State and to respect for the diversity of values, beliefs and traditions in Irish society, and*
- (e) have regard to the statutory responsibilities of other education providers.”*

1.2.3 The reserved functions of the Governing Body are set out in section 21A of the 1992 Act, as amended by Section 22 of 2006 Act.

*“21A.—(1) Each college shall perform by resolution of its Governing Body such of the functions as are declared by this Act to be reserved functions and ‘reserved function’ shall in this Act be construed and have effect accordingly.*

- (2) The functions under sections 5(1) (a) to (j)\*\*, 7<sup>5</sup>, 9<sup>6</sup>, 10<sup>7</sup>, 21C<sup>8</sup>, 21D<sup>9</sup> and 21E<sup>10</sup> are declared to be reserved functions<sup>11</sup>.*
- (3) Any dispute as to whether or not a particular function is a reserved function shall be determined by the Minister.*
- (4) A Chief Officer shall assist the Governing Body in the performance of its reserved functions, in such manner as the Governing Body may require.*
- (5) A Governing Body shall not perform by resolution of its members, or give a direction in relation to the performance of, a function that is not a reserved function.”*

1.2.4 The executive functions, which are to be performed by the Chief Officer, are set out in section 21B of the 1992 Act, as amended by Section 22 of 2006 Act.

*“21B.—(1) Every function that is not a reserved function shall be an executive function, and ‘executive function’ shall, in this Act, be construed and have effect accordingly.*

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<sup>5</sup> Control and administer land and property and appoint the Chief Officer and staff and exercise other functions conferred on it by the Acts.

<sup>6</sup> Appointment of a Director.

<sup>7</sup> Make resolutions for the appointment of the Academic Council.

<sup>8</sup> Adopt Strategic Development Plan.

<sup>9</sup> Adopt Equality Policy.

<sup>10</sup> Adopt Dispute Resolution Procedures.

<sup>11</sup> Section K in the case of the DIT Act

(2) *Executive functions shall be performed by the [Chief Officer].*

(3) *A [Chief Officer] shall provide such information to the Governing Body regarding the performance of his or her functions as the Governing Body may from time to time require.*

(4) *A [Chief Officer] shall provide such information to the Minister or An tÚdarás regarding the performance of his or her functions as the Minister or An tÚdarás, as the case may be, may from time to time require.”*

### 1.2.5 The operation of the Governing Body is governed by the Second Schedule to the 1992 Act as set out below:-

**\*\*5.**—(1) The principal function of a college shall, subject to the provisions of this Act, be to provide vocational and technical education and training for the economic, technological, scientific, commercial, industrial, social and cultural development of the State with particular reference to the region served by the college, and, without prejudice to the generality of the foregoing, a college shall have the following functions—

(a) to provide such courses of study as the Governing Body of the college considers appropriate;

*[Section 5 (1) (b) repealed by Section 32 (c) of the Qualifications (Education and Training) Act, 1999]*

(b) (i) to enter into arrangements with the Higher Education and Training Awards Council, or with any other authority approved by the National Qualifications Authority of Ireland, from time to time, for the purpose of having higher education and training awards made, and

(ii) to make such other arrangements as may be approved by the Higher Education and Training Awards Council and the National Qualifications Authority of Ireland, from time to time, for that purpose and, subject to sections 29 and 30 of the Qualifications (Education and Training) Act, 1999, to make higher education and training awards, as appropriate;

(bb) (i) to enter into arrangements with the Further Education and Training Awards Council or with any other authority approved by the National Qualifications Authority of Ireland, from time to time, for the purpose of having further education and training awards made, and

(ii) to make such other arrangements as may be approved by the Further Education and Training Awards Council and the National Qualifications Authority of Ireland, from time to time, for that purpose;

*[Section 5 (1) (b) inserted by Section 32 (c) of the Qualifications (Education and Training) Act, 1999]*

(c) subject to such conditions as An tÚdarás may determine, to engage in research, consultancy and development work and to provide such services in relation to these matters as the Governing Body of the college considers appropriate;

*[Section 5 (1) (c) amended by Section 6 (a) (i) of the Institutes of Technology Act 2006]*

(d) to enter into arrangements with other institutions in or outside the State for the purpose of offering joint courses of study and of engaging jointly in programmes of research, consultancy and development work in relation to such matters as the Governing Body of the college considers appropriate;

*[Section 5 (1) (e) repealed by Section 37 (a) of the Vocational Education (Amendment) Act, 2001]*

(e) in relation to any of the following companies or undertakings and in accordance with the following law, namely—

(i) a limited liability company in the State — in accordance with the Companies Acts, or

(ii) a company or undertaking (the liability of members of which is limited) in a state other than the State — in accordance with the law of that state, to—

(I) promote and take part in the formation of it,

(II) acquire, hold or dispose of shares or other interests in its capital, or

(III) participate in the management or direction of it, but only if the objects of the company or undertaking include the carrying on of such business, trading or other activities, as the college thinks fit, for the purpose of promoting or assisting in the performance of, or in connection with, the functions of the college;

*[Section 5 (1) (e) inserted by Section 6 (a) (ii) of the Institutes of Technology Act 2006]*

(f) to institute and, if thought fit, to award scholarships, prizes and other awards;

(g) to maintain, manage, administer and invest all the money and assets of the college;

(h) to accept gifts of money, land or other property upon such trusts and conditions, if any, as may be specified by the donors: provided that nothing in any such trust or condition is contrary to the provisions of this Act;

(i) subject to the approval of the An tÚdarás, to acquire land;

***[Section 5 (1) (i) inserted by Section 6 (a) (iii) of the Institutes of Technology Act 2006]***

(j) to do all such acts and things as may be necessary to further the objects and development of the college.

SECOND SCHEDULE (as amended)

Section 6.

THE GOVERNING BODY

1. 

(1) As soon as may be after its establishment the Governing Body of a college shall provide and retain in its possession a seal of the college.

(2) The seal of a college shall be authenticated by the signature of the chairman or a member of the Governing Body authorised by the Governing Body to act in that behalf and by the signature of an officer of the college authorised to act in that behalf.

(3) Judicial notice shall be taken of the seal of a college and every document purporting to be an instrument made by a college and to be sealed with the seal (purporting to be authenticated in accordance with this Schedule) of the college shall be received in evidence and shall be deemed to be such instrument without proof unless the contrary is shown.
2. 

(1) Each<sup>12</sup> Governing Body shall have a chairman who may be designated by such title as the Governing Body may determine.

(2) The chairman shall be appointed by the Minister and may be removed from office by the Minister.

(3) The chairman may, at any time, resign from office as chairman by letter addressed to the Minister and the resignation shall take effect from the date on which the letter is received.

(4) Subject to the provisions of this Act, the chairman shall hold office on such terms and conditions as the Minister may, at the date of the appointment, decide.
3. 

(1) Every ordinary member of a Governing Body shall be appointed by the Minister on the recommendation of the vocational education committee and may be removed from office by the Minister on the recommendation of the vocational education committee.

(2) An ordinary member may, at any time, resign from office as such member by letter addressed to the vocational education committee and the resignation shall take effect from the date on which the letter is received. The vocational education committee shall forthwith notify the Minister of the receipt of the letter.

(3) A member of the Governing Body who is absent from all meetings of the Governing Body for a period of six consecutive months, unless such absence was due to illness or was approved by the Governing Body, shall be disqualified at the expiry of such period from continuing to be a member of the said Governing Body for the remainder of that person's term of office.

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<sup>12</sup> "The" in the case of the DIT Act

*(4) A member (including the chairman) whose term of office expires by effluxion of time shall be eligible for reappointment.*

4. *(1) A member (including the chairman but excluding an ordinary member who is a registered student of the college) shall hold office for a period not exceeding five years.*

*(2) An ordinary member who is a registered student of the college shall hold office for a period of one year.*

5. *(1) Each<sup>13</sup> Governing Body shall, from time to time, as occasion requires, appoint from amongst its members (other than the chairman or the Chief Officer) a member to be deputy-chairman thereof.*

*(2) The deputy-chairman of a Governing Body shall, unless that member sooner resigns or ceases to be deputy-chairman under subparagraph (3) of this paragraph, hold office until the expiration of that member's period of office as a member of the Governing Body.*

*(3) The deputy-chairman, on ceasing to be a member of the Governing Body, shall thereupon cease to be deputy-chairman.*

6. *(1) Where a member of a Governing Body—*

*(a) is nominated as a member of Seanad Éireann, or*

*(b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or*

*(c) is regarded pursuant to [section 13](#) (inserted by the [European Assembly Elections Act, 1984](#)) of the [European Assembly Elections Act, 1977](#), as having been elected to the European Parliament to fill a vacancy, or*

*(d) is adjudged bankrupt or makes, under the protection or procedure of a court, a composition or arrangement with creditors, or*

*(e) is sentenced to a term of imprisonment by a court of competent jurisdiction, that member shall thereupon cease to be a member of the Governing Body.*

*or*

*(f) who was appointed on foot of an election by the academic staff or by the non-academic staff of the college, ceases to be a member of such staff.<sup>14</sup>*

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<sup>13</sup> “The” in the case of the DIT Act

<sup>14</sup> Section 6 of the RTC (Amendment) Act 1994 and DIT (Amendment) Act 1994

- (2) A person shall not be eligible to be a member of a Governing Body if that person—*
- (a) is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein, or*
- (b) is for the time being a member of the European Parliament, or*
- (c) is an undischarged bankrupt, or*
- (d) within the immediately preceding three years has, under the protection or procedure of a court, made a composition or arrangement with creditors, or*
- (e) within the immediately preceding five years, has been sentenced to a term of imprisonment by a court of competent jurisdiction.*
7. *(1) A member of the Governing Body of a college who has—*
- (a) any interest in any company or concern with which the college proposes to make any contract, or*
- (b) any interest in any contract which the college proposes to make, shall disclose to the Governing Body the fact of the interest and the nature thereof and shall take no part in any deliberation or decision of the Governing Body relating to the contract, and the disclosure shall be recorded in the minutes of the Governing Body.*
- (2) A member of the Governing Body of a college who is related to a person who is a candidate for appointment by the Governing Body as an officer or servant of the college shall disclose to the Governing Body the fact of the relationship and the nature thereof and shall, if the Governing Body so decides, take no part in any deliberation or decision of the Governing Body relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the Governing Body.*
8. *The chairman and ordinary members of the Governing Body of a college shall be paid out of funds at the disposal of the Governing Body such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Finance, may decide.*
9. *(a) A Governing Body shall hold such and so many meetings as may be necessary for the performance of its functions.*
- (b) The vocational education committee shall fix the date, time and place of the first meeting of the Governing Body.*
- (c) The quorum for a meeting of a Governing Body shall be six members.*
10. *At a meeting of a Governing Body—*

*(a) the chairman shall, if present, be the chairman of the meeting,*

*(b) if and so long as the chairman is not present or if the office of chairman is vacant, the deputy-chairman shall, if present, be chairman of the meeting,*

*(c) if and so long as the chairman is not present or the office of chairman is vacant, and the deputy-chairman is not present or the office of deputy-chairman is vacant, the members of the Governing Body who are present shall choose one of their number to be chairman of the meeting.*

11. *Every question at a meeting of a Governing Body shall be determined by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.*

12. *Subject to paragraph 9 (c) of this Schedule a Governing Body may act notwithstanding one or more than one vacancy among its members.*

13. *Subject to the provisions of this Act a Governing Body shall regulate, by standing orders or otherwise, its procedure and business.*

14. *The Governing Body of a college shall control and conduct the affairs of the college subject to the provisions of this Act and shall carry out all functions assigned to it by this Act, and, in particular, a Governing Body—*

*(a) shall determine subject to such directions as the Minister may give from time to time the conditions under which persons shall be admitted to the college and to any particular course of study therein,*

*(b) shall determine the conditions under which students, having been admitted to the college, may be excluded from it,*

*(c) may enter into relationships or co-operate with any other institution, authority or body for any purpose of the college,*

*(d) subject to subparagraph (a) of this paragraph may accept, in fulfilment or partial fulfilment of the requirement for entry to any course of study in the college, attendance by a student at a course or portion of a course in another college or such other institution as the Governing Body may decide,*

*(e) may engage such consultants or advisors as it may consider necessary for the performance of its functions and any fees payable to such consultants or advisors shall be paid by the college out of moneys at its disposal, and*

*(f) may make, from time to time, such regulations as it sees fit for the conduct of the affairs of the college.”*



### **1.3 Role of Chairperson and Chief Officer in relation to Governing Body**

#### **Role of Chairperson**

- 1.3.1 The roles of the Chairperson and Chief Officer are governed by the 1992 Act (as amended). The role of the Chairperson is governed in particular by the Second Schedule to the 1992 Act (see **paragraph 1.2.5** above) and in particular paragraphs 10 and 11 of the Second Schedule.

#### **Role of Chief Officer**

- 1.3.2 The role of the Chief Officer is governed particularly by Section 9, amended by Section 10 of 2006 Act and 21B, amended by Section 22 of 2006 Act and by the Third Schedule to the 1992 Act, as amended. Section 21B is set out at paragraph 1.2.4 above and section 9 and the Third Schedule are reproduced below.

*“9.—(1) A Governing Body shall from time to time appoint in a whole-time capacity a person to be the chief officer of the college, and that person shall be known as the Director, or by such other title as the Governing Body, subject to the consent of the Minister, may determine<sup>15</sup>.*

*(2) The selection of the [Chief Officer] shall be a function of the Governing Body in accordance with the procedures, which shall include the composition of a selection board, determined by An tÚdarás from time to time.*

*(3) The provisions of the Third Schedule to this Act shall apply to the [Chief Officer].*

*(4) Where an office of [Chief Officer] becomes vacant, the Governing Body, after consultation with An tÚdarás, may appoint a person to perform the functions of the [Chief Officer] until such time as a permanent appointment to that office is made and such interim appointment may be terminated by the Governing Body at any time.”*

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<sup>15</sup> In the case of the DIT Act: The Governing Body shall from time to time appoint in a whole-time capacity a person to be the President and Chief Officer of the Institute.

*“THIRD SCHEDULE”*

*Section 9*

*THE DIRECTOR*

*1. The [Chief Officer] of a college shall, subject to this Act, manage and direct the carrying on by the college of its academic, administrative, financial, personnel and other activities and for those purposes has such powers as are necessary or expedient.*

*2. In performing his or her functions the [Chief Officer] shall be subject to such policies as may be determined from time to time by the Governing Body and shall be answerable to the Governing Body for the efficient and effective management of the college and for the due performance of his or her functions.*

*3. (1) A Chief Officer may delegate any of his or her functions to another member of the staff of the college, unless they are delegated to the [Chief Officer] subject to the condition that they shall not be delegated further; that other member shall be answerable to the Chief Officer for the performance of those functions.*

*(2) Notwithstanding any such delegation, the [Chief Officer] shall at all times remain answerable to the Governing Body in respect of the functions so delegated.*

*4. A [Chief Officer] shall not hold any other office or position without the consent of the Governing Body.*

*5. A [Chief Officer] shall be entitled to be a member of, and preside over, any and every committee appointed by the Governing Body, except where the Governing Body with the concurrence of An tÚdarás decides otherwise.*

*6. A [Chief Officer] shall be entitled to be a member of the academic council and, if present, shall preside at all meetings of that council; he or she shall be entitled to be a member of every committee established by that council.*

*7. Unless he or she resigns, retires or is removed from office, a [Chief Officer] shall hold office for a period of 10 years.*

*8. A [Chief Officer] shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—*

*(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the college is required by this Act to prepare,*

*(b) the economy and efficiency of the college in the use of its resources,*

*(c) the systems, procedures and practices employed by the college for the purpose of evaluating the effectiveness of its operations, and*

*(d) any matter affecting the college referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in subparagraph (a), (b) or (c)) that is laid before Dáil Éireann.*

*9. A [Chief Officer], if required under paragraph 8 to give evidence, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.*

*10. From time to time and whenever so requested, a [Chief Officer] shall account for the performance of a college's functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to these functions.*

## **1.4 Equality Policy**

- 1.4.1 Section 21D of the 1992 Act (as amended), amended by Section 22 of 2006 Act the text of which is set out in **Appendix A** deals with the Equality policy which must be adopted by each Institute of Technology.

## **1.5 Remuneration**

- 1.5.1 Section 11<sup>16</sup> of the 1992 Act as amended by Section 13 of 2006 Act deals with remuneration of staff and provides for the payment to Institute of Technology employees of “*such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister [for Education and Science] with the consent of the Minister for Finance.*”

## **1.6 Reporting Arrangements**

- 1.6.1 The reporting requirements of Institutes of Technology are set out in Sections 13<sup>17</sup>, 14<sup>18</sup> and 16<sup>19</sup> of the 1992 Act, as amended by Sections 15, 16 and 18 of 2006 Act.
- 1.6.2 Section 13 deals with Institute of Technology budgets and requires a Governing Body to “*..prepare and submit to An tÚdarás, in such form and manner as may from time to time be approved by An tÚdarás, a statement of the proposed expenditure and expected income of the institute of technology for the financial year.*”
- 1.6.3 Section 14 as amended by Section 16 of 2006 Act, requires the Governing Body to “*...prepare and publish a report on the proceedings*” of the Institute of Technology during each academic year and send this to the HEA and the Minister for Education and Science
- 1.6.4 Section 16 as amended by Section 18 of 2006 Act, deals with keeping of accounts and records and requires that accounts “*...be submitted annually ... to the Comptroller and Auditor General, for audit....and immediately after the audit, a copy of the accounts, together with a copy of the report of the Comptroller and Auditor General on the accounts, shall be presented ... to An tÚdarás and to the Minister.*”

## **1.7 Strategic Planning**

- 1.7.1 Section 21C of the 1992 Act, amended by Section 22 of 2006 Act, makes provision in regard to strategic planning and evaluation in the Institutes of Technology.

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<sup>16</sup> Section 12 in the DIT Act

<sup>17</sup> Section 14 in the DIT Act

<sup>18</sup> Section 15 in the DIT Act

<sup>19</sup> Section 17 in the DIT Act

- 1.7.2 The requirement to prepare a plan “*that shall set out the aims of the Governing Body for the operation and development of the college and its strategy for achieving those aims, and for carrying out the functions under this Act, during the period, being not less than three years, to which the plan relates*” is provided for in Section 21C of the 1992 Act, as amended.
- 1.7.3 In accordance with Section 21C (3) a copy of the strategic development plan is provided to the Minister and to the HEA.
- 1.7.4 The full provisions of Section 21C of the 1992 Act are set out in **Appendix A**.
- 1.7.5 The HEA’s entitlement to review and report on the strategic development plan and the equality policy set out in section 21F of the 1992 Act, as amended the text of which is in **Appendix A**.

## **1.8 Borrowing**

- 1.8.1 Under Section 13(9)<sup>20</sup> of the 1992 Act, amended by Section 15 of 2006 Act, Institutes of Technology must observe arrangements entered into from time to time between the Institutes of Technology and the HEA.

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<sup>20</sup> Section 14(9) in the case of the DIT Act

**Appendix A Full Relevant Extracts From 1992 Act, amended by Section 15 of 2006 Act**

13<sup>21</sup> Budgets

13.—(1) A Governing Body shall, on or before the first day of March in each financial year or such other date as An tÚdarás may approve (which may be a date before the commencement of the financial year to which the statement relates), prepare and submit to tÚdarás, in such form and manner as may from time to time be approved by tÚdarás, a statement of the proposed expenditure and expected income of the college for the financial year.

(2) tÚdarás shall, having regard to the statement submitted under subsection (1), determine the amount of money to be allocated to the college for the financial year from moneys provided to tÚdarás pursuant to section 12 of the Higher Education Authority Act 1971, and the amount so allocated, together with the other expected income of the college as agreed with tÚdarás, shall be the budget of the college for the financial year.

(3) Where the budget of a college has been determined, it shall be a function of the Chief Officer, acting on the authority of the Governing Body, to carry it into effect.

(4) tÚdarás may at any time, on application made to it by the Governing Body of a college, increase the amount of money to be allocated to the college from moneys provided to An tÚdarás.

(5) Where the Director of a college is of opinion that—

(a) the actual expenditure in a financial year, or

(b) a proposed course of action, taking into account any increased allocation under subsection (4), will or is likely to result in expenditure in excess of the budget for that financial year (in this section referred to as a ‘material departure from the budget’), the Chief Officer shall so inform the Governing Body.

(6) Where the Governing Body, despite being so informed, decides—

(a) in the case of subsection (5) (a), not to decrease its actual expenditure, or (b) in the case of subsection (5) (b), to continue with its proposed course of action, the Director, as soon as practicable, shall, unless he or she considers that contrary to his or her foregoing opinion a material departure from the budget will not occur, inform An tÚdarás of the decision of the Governing Body.

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<sup>21</sup> Section 14 in the case of the DIT Act

(7) *Where, notwithstanding this section, a college incurs expenditure in excess of its budget that is not met from the income of the college other than the money allocated to it by An tÚdarás, that excess shall be a first charge on the budget for the next succeeding financial year.*

(8) *A college may borrow money by means of a bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons.*

(9) *Borrowing, guaranteeing and underwriting under subsection (8) shall be in accordance with arrangements entered into from time to time between the colleges and An tÚdarás; An tÚdarás shall consult with the Minister and the Minister for Finance before entering into such arrangements.*

*14<sup>22</sup> Annual Report and Information (amended by Section 16 of 2006 Act)*

(1) *The Governing Body of a college shall, as soon as may be, but not later than 3 months, after the end of each academic year, prepare and publish a report of its proceedings during that year in such form as may be determined by An tÚdarás and provide a copy of such report to An tÚdarás and the Minister.*

*16 Keeping of Accounts and Records (amended by Section 18 of 2006 Act)*

16.—(1) *A college shall keep, in such form as may be approved by An tÚdarás, all proper and usual accounts and records of all income received or expenditure incurred by it.*

(2) *Accounts kept in pursuance of subsection (1) shall, to the extent directed by the Comptroller and Auditor General, be submitted annually by a college to the Comptroller and Auditor General, for audit, by such date as the Comptroller and Auditor General may from time to time determine, and, immediately after the audit, a copy of the accounts, together with a copy of the report of the Comptroller and Auditor General on the accounts, shall be presented by the college to An tÚdarás and to the Minister.*

(3) *The Minister shall cause copies of the accounts presented under this section to the Minister by the college, together with copies of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas.*

*21A Reserved Functions (amended by Section 22 of 2006 Act)*

21A.—(1) *Each college shall perform by resolution of its Governing Body such of the functions as are declared by this Act to be reserved functions and ‘reserved function’ shall in this Act be construed and have effect accordingly.*

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<sup>22</sup> Section 15 in the case of the DIT Act

*(2) The functions under sections 5(1) (a) to (j), 7, 9, 10, 21C, 21D and 21E are declared to be reserved functions.*

*(3) Any dispute as to whether or not a particular function is a reserved function shall be determined by the Minister.*

*(4) A Chief Officer shall assist the Governing Body in the performance of its reserved functions, in such manner as the Governing Body may require.*

*(5) A Governing Body shall not perform by resolution of its members, or give a direction in relation to the performance of, a function that is not a reserved function.*

#### *21B Executive Functions*

*21B.—(1) Every function that is not a reserved function shall be an executive function, and ‘executive function’ shall, in this Act, be construed and have effect accordingly.*

*(2) Executive functions shall be performed by the Chief Officer.*

*(3) A Chief Officer shall provide such information to the Governing Body regarding the performance of his or her functions as the Governing Body may from time to time require.*

*(4) A Chief Officer shall provide such information to the Minister or An tÚdarás regarding the performance of his or her functions as the Minister or An tÚdarás, as the case may be, may from time to time require.*

#### *21C Strategic development plan*

*21C.—(1) A Governing Body shall, as soon as practicable but not later than 12 months after the commencement of this section and at such other times as it thinks fit, require the Chief Officer to prepare a plan (in this Act referred to as a ‘strategic development plan’) that shall set out the aims of the Governing Body for the operation and development of the college and its strategy for achieving those aims, and for carrying out the functions under this Act, during the period, being not less than three years, to which the plan relates.*

*(2) A Governing Body may either approve the strategic development plan prepared without modification or, after consultation with the Chief Officer, approve the plan with such modifications as it thinks fit; in exercising its powers under this subsection the Governing Body shall have regard to the resources available to the college.*

*(3) As soon as practicable after it approves the strategic development plan under subsection (2), the Governing Body shall provide a copy of the plan to An tÚdarás and to the Minister.*

#### *21D Equality policy*



*21D.—(1) A Governing Body shall, as soon as practicable but not later than 12 months after the commencement of this section and at such other times as it thinks fit, require the Chief Officer to prepare a statement of the policies of the college in respect of—*

*(a) access to education in the college by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body, and*

*(b) equality, including gender equality, in all activities of the college, and the Chief Officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister.*

*(2) A Governing Body may either approve the statement prepared under subsection (1) without modification or, after consultation with the Chief Officer, approve the statement with such modifications as it thinks fit; in exercising its powers under this subsection the Governing Body shall have regard to the resources available to the college.*

*(3) A college shall implement the policies set out in the statement as approved under subsection (2).*

#### *21E. Dispute Resolution*

*(1) A Governing Body shall establish procedures for the resolution of disputes that arise in the college.*

*(2) Subsection (1) shall not apply to industrial relations disputes, which shall be dealt with through normal industrial relations structures operating in the college.*

*(3) Procedures established under subsection (1) shall—*

*(a) be embodied in writing,*

*(b) be established following consultation with recognised staff associations and trade unions representing the staff of the college and with the students union or other student representative body, and*

*(c) provide for consideration of issues in dispute by an independent person or persons, as appropriate.*

*21F.—An tÚdarás may review—*

*(a) the strategic development plan prepared in accordance with section 21C, and*

*(b) the policies set out in the statement prepared under section 21D and their implementation by the college, and may, following consultation with the college,*

*publish a report, in such form and manner as it thinks fit, on the outcome of any such review.*



## **Part 2            Institutes of Technology Code: Principles and Best Practice**

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## 2.1 Code of Governance

- 2.1.1 In implementing this *Code* each Institute of Technology shall put in place a code of governance and in doing so shall have regard to the more detailed guidelines for governance set out at **Part 3.1**. These guidelines cover:
- The Governing Body;
  - Role of Chairperson and Chief Officer<sup>23</sup> in relation to Governing Body;
  - Briefing for new Governing Body members;
  - Disclosure of interests by members of the Governing Body;
  - Risk management;
  - Audit Committee;
  - Sample terms of reference for Audit Committee;
  - Sample charter for Internal Audit.
- 2.1.2 The role of the Institute of Technology Secretary/Financial Controller shall include the duty to keep Governing Body members briefed in respect of all relevant developments in governance and accountability.
- 2.1.3 Institutes of Technology (including their subsidiaries<sup>24</sup>) should adopt this *Institutes of Technology Code: Principles and Best Practice* and, in accordance with **paragraph 2.11**, confirm to the HEA that this has been done.
- 2.1.4 It is not feasible to have a code of best practice which will specifically provide for all situations that may arise. Members of the Governing Body and employees of Institutes of Technology and their subsidiaries should bear in mind, therefore, that it is primarily their responsibility to ensure that all of their

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<sup>23</sup> Section 10 of the Institutes of Technology Act 2006 refers to the appointment of a person to be the chief officer of the Institute and states “that person shall be known as the Director, or by any such other title as the Governing Body, subject to the consent of the Minister, may determine”. Throughout this document the term chief officer has been used.

<sup>24</sup> The Companies Act (section 155) provides that a company is deemed to be the subsidiary of another if, but only if,

(a) that other-

(i) holds a majority of the shareholders’ or members’ voting rights in the undertaking, or

(ii) is a shareholder or member of it and controls the composition of its board of directors, or

(iii) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders’ or members’ voting rights; or

(b) that other has the right to exercise a dominant influence over it-

(i) by virtue of provisions contained in its memorandum or articles, or

(ii) by virtue of a control contract; or

(c) that other has the power to exercise, or actually exercises, dominant influence or control over it, or

(ca) that other and the subsidiary undertaking are managed on a unified basis, or

(d) the undertaking is a subsidiary of any undertaking which is that other’s subsidiary undertaking.

activities, whether covered specifically or otherwise in this document, are governed by the ethical and other considerations implicit in the *Code*.

## **2.2 Code of Conduct for Members and Employees**

2.2.1 It is strongly recommended that all Institutes of Technology have written codes of conduct for members of the Governing Body and employees. The codes should be developed via a participative approach and should be approved by the Governing Body taking into account the implications of all the relevant provisions of the Institutes of Technology Acts 1992 to 2006 as well as the Ethics in Public Office Act 1995 and Standards in Public Office Act 2001. Suggested guidelines for such a code are contained in **Part 3.2** of this document. The Code, a copy of which should be made available to all members of Governing Body and Employees for their retention, should embrace such matters as duty to the Institute, principles for addressing conflict of interest, limits on outside activities, acceptance of gifts and honesty in dealings. The up-to-date codes of conduct should also be available upon request with a copy of each such code being accessible through the Institute's website.

The Code should refer to the need for members and employees to comply with the requirements of the Companies Acts, if applicable, and any other legislative and regulatory requirements. It should also make clear that certain obligations to the Institute, regarding in particular the non-disclosure of privileged or confidential information, do not cease when membership of the Governing Body or employment in the Institute has ended.

2.2.2 As part of the Annual Governance reporting requirements set out in **paragraph 2.11.4** that are to be supplied to the HEA, the Chairperson and the Chief Officer should affirm to the HEA that codes of conduct for members of the Governing Body and employees have been put in place.

2.2.3 In addition to complying with the requirements of Institutes of Technology own governing legislation, each member of the Governing Body of the Institute and each person holding a designated position of employment with the Institute should ensure his/her compliance with relevant provisions of the Ethics in Public Office Act, 1995 and Standards in Public Office Act, 2001.

2.2.4 Institutes 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), having regard to the Institutes own quality and appeal systems. Guidelines in relation to the Principles of such standards of service are included at **Part 3.3**.

2.2.5 The requirements specified in this Code should be applied in all operating subsidiaries of Institutes of Technology, depending on their size and the scale and nature of their operations. Subsidiaries should formally report to the Governing Body in accordance with the procedures determined by the Governing Body and taking account of **paragraph 2.1.3** above. This report

should be received prior to the Chairperson of the Governing Body and Chief Officer reporting to the HEA.

## **2.3 Internal Control and Risk Management**

- 2.3.1 A system of internal control has a key role in the management of risks that are significant to the fulfilment of institutional objectives. A sound system of internal control contributes to safeguarding the interests of all relevant parties and the Institute's assets. Internal control facilitates the effectiveness and efficiency of operations; helps ensure the reliability of internal and external reporting and assists compliance with laws and regulations.
- 2.3.2 Effective financial controls, including clear delineation and separation of functions and the maintenance of proper accounting records, are an important element of internal control. They help ensure that the Institute is not unnecessarily exposed to avoidable financial risks and that financial information used and published is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud.
- 2.3.3 An Institute's objectives, its internal organisation and the environment in which it operates are continually evolving and, as a result, the risks it faces are continually changing. A sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the Institute is exposed.
- 2.3.4 A sound system of internal control reduces, but cannot eliminate, the possibility of poor judgement in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.
- 2.3.5 A sound system of internal control therefore provides reasonable, but not absolute, assurance that the Institute will not be hindered in achieving its objectives, or in the orderly and legitimate conduct of its business, by circumstances which may reasonably be foreseen. A system of internal control cannot provide protection with certainty against failing to meet objectives or prevent all material failures, errors, losses, fraud, or breaches of laws or regulations.
- 2.3.6 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes.
- 2.3.7 It is the responsibility of the Governing Body to ensure that a robust system of internal control and risk management is in place in the Institute taking into account the detailed guidelines in Part 3. It should review annually the effectiveness of the systems in place.

2.3.8 The Governing Body should ensure that the risk assessment and management process is integrated into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it nominated to the Governing Body.

## 2.4 Audit Committee

2.4.1 There should be an Audit Committee established by the Governing Body with written terms of reference which deal clearly with its authority and duties.

2.4.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the Governing Body and updated as appropriate.

2.4.3 Members of the Governing Body who hold executive responsibility within the Institute should not be members of the Audit Committee. Neither the Chief Officer nor Chairperson should be a member of the Audit Committee.<sup>25</sup> Where the Audit Committee does not have sufficient knowledge or expertise in a particular area, it may invite outsiders with the relevant experience to attend meetings/ join the committee.

2.4.4 The Audit Committee should monitor and review the effectiveness of the Institute's internal audit activities.

2.4.5 The Committee should meet sufficiently regularly to enable it to fulfil its duties.

2.4.6 The Committee should submit an annual report to the Governing Body.

2.4.7 The Committee should have explicit authority to investigate any matters within its terms of reference and should be given the resources needed for this purpose including outside professional advice as necessary, and full access to information. Any internal audit / audit issues that relate to the Governing Body's areas of responsibility should be communicated to the Governing Body as soon as possible.

2.4.8 The Committee should keep under review and advise on the operation and effectiveness of the Institute's risk management systems and report annually thereon to the Governing Body.

2.4.9 At least once a year, the Committee should meet with each of the following (a) the Comptroller and Auditor General (b) Head of Internal Audit, without members of the management being present.

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<sup>25</sup> While the 1992 Act, as amended, provides that a Director shall be entitled to be a member of, and preside over, any and every committee appointed by the Governing Body, except where the governing body with the concurrence of An tÚdarás decides otherwise, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.

- 2.4.10 The Head of Internal Audit should have ongoing access to the Chairperson of the Audit Committee.
- 2.4.11 The Committee should meet with the nominated person with overall responsibility for risk management at least once a year.

## **2.5 Internal Audit Functions**

- 2.5.1 There should be a properly constituted and functioning internal audit service in each Institute, whether provided in-house or outsourced.
- 2.5.2 The Internal Audit function should have a formal charter, including terms of reference, which should be approved by the Governing Body and should report directly to the Audit Committee. The Head of Internal Audit function when outsourced or in-house should have considerable seniority within their organisation and the content of all internal audit reports should be entirely at their discretion.
- 2.5.3 The Head of Internal Audit shall have direct access to the Chief Officer, to the Chairperson of the Audit Committee and to the Chairperson of the Governing Body.
- 2.5.4 The objective of Internal Audit should be to provide assurance that the Institute has a sound system of internal control.
- 2.5.5 The functional reporting structure for Internal Audit within the organisation should be clear and formally recorded.
- 2.5.6 The Internal Audit function should be adequately resourced with the necessary skills including the ability to deal with non-financial aspects.
- 2.5.7 The Internal Audit function should liaise frequently with the Comptroller and Auditor General so that the potential for cooperation between the two is maximised. In planning, executing and reporting its work, the Internal Audit function should ensure that value-for-money auditing receives adequate attention.
- 2.5.8 The Audit Committee should periodically consult with the Comptroller and Auditor General regarding the resourcing 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 on the specific areas covered by its charter.
- 2.5.9 As part of its work the Internal Audit function should review compliance with procurement and disposal procedures from time to time and report to the Audit Committee and the Governing Body.

## **2.6 Remuneration**



2.6.1 Governing Body are required to implement Government pay policy (including procedures and systems in relation to Travel and Subsistence), as expressed from time to time. These arrangements cover total remuneration.

## 2.7 Procurement and Tax Clearance

2.7.1 Competitive tendering should be the standard procedure in the procurement process of Institutes subject to **paragraph 2.7.4** below. In addition to the national guidelines set out by the Department of Finance, the relevant EU Directives, which have the force of law in this and all Member States, apply. The National Public Procurement Policy Framework requires that all non commercial State bodies complete a Corporate Procurement Plan. This plan is underpinned by analysis of expenditure on procurement and the procurement and purchasing structures in the organisation. The plan should set practical and strategic aims and objectives for improved procurement outcomes and appropriate measures to achieve these aims should be implemented.(Code 05/09 15.5)

2.7.2 EU Directives and national regulations impose legal obligations in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement that might not be subject to the full scope of EU Directives, such as certain ‘non-priority’ services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles (including non-discrimination, equal treatment, transparency, mutual recognition, freedom to provide service and freedom of establishment) must be observed.

2.7.3 It is the responsibility of the Governing Body and management to ensure that appropriate systems and procedures are implemented to ensure that the requirements for public procurement are adhered to and that the current value thresholds for the application of EU and national procurement rules are respected. The Chairperson and the Chief Officer should, in their report to the HEA (see **paragraph 2.11.4** below), affirm that such systems and procedures are in place and that to the best of their knowledge and belief the Institute has been compliant with the procurement procedures outlined above including the development and implementation of a corporate procurement plan.(Code 05/09 15.5)

2.7.4 Contracts for supplying a research and development service and certain research and development supply contracts as specified in Article 31(2) (a) of Directive 2004/18/EC may be exempt from the scope of Procurement Directives where their benefits are for the greater public good, not confined to the contracting authority, on condition that the service supplied is wholly paid for by the authority. In this context, where the Institute enters into research collaborations, joint ventures with industry or other external parties, or other arrangements where Intellectual Property may be brought to a Institute, and where a decision has been taken that competitive tendering is not required, such cases should be reported to the Governing Body with evidence of a valid and informed basis for

the decision and evidence that the principle of obtaining best value for public funding has been followed.

- 2.7.5 All Institutes must ensure that the Tax Clearance requirements set out in *Department of Finance Circular 44/2006* and subsequent *Circulars* (which deals with payment of grants, subsidies and similar type payments), and Department of Finance Circular 43/2006, as regards Public Sector Contracts, are fully adhered to.

## **2.8 Travel**

- 2.8.1 Institutes should not exceed the terms of public policy as reflected in the circulars issued or amended from time to time by the Department of Finance regarding travel and subsistence. These are available on the Department of Finance website.
- 2.8.2 A framework travel policy is provided in Part 3.5

## **2.9 Disposal of Assets and Access to Assets by Third Parties**

- 2.9.1 Institutes should adhere to best practice for the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties with an anticipated value at or above a threshold level of €150,000, which should be by auction or competitive tendering process, other than in exceptional circumstances (such as a sale to a charitable body or in circumstances set out in **paragraph 2.7.4** above). The method used should be both transparent and likely to achieve a fair market-related price. Suggested guidelines for best practice are outlined in **Part 3.6** of this document.
- 2.9.2 Regard should also be had to the guidelines on Intellectual Property entitled “*Funding Agency Requirements & Guidelines for Managing Research Generated Intellectual Property*”, a joint publication of Enterprise Ireland, Forfás, Health Research Board, HEA, Industrial Development Authority, IRCSET and Science Foundation Ireland, 2006. This document is available at: <http://www.hrb.ie/storage/hrbresearch/Intellectual-Property-Guidelines.pdf>.

## 2.10 Investment Appraisal and Value for Money

2.10.1 “*Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector*” were issued by the Department of Finance in February 2005. These procedures outline best practice for the management of significant capital expenditure proposals in the public sector. The Governing Body and the relevant management staff of the Institute should have regard to these guidelines in the planning, appraisal and management of significant expenditure projects. This document is available at:

<http://www.finance.gov.ie/documents/publications/other/capappguide05.pdf>.

2.10.2 The Department of Education and Skills letter of 27<sup>th</sup> April 2006 to the President/Director of each Institute regarding Capital Appraisal Guidelines and other Value for Money measures refers. This requires confirmation that necessary arrangements have been made to ensure full compliance with these requirements. Details of these requirements can be found at:

<http://www.finance.gov.ie/viewdoc.asp?DocID=3561>

## 2.11 Reporting Arrangements

2.11.1 In addition to the reporting requirements set out in the relevant legislation Institutes shall meet the following additional requirements.

2.11.2 Included with the accounts, which are kept in accordance with Section 16 of the 1992 Act, amended by Section 18 of 2006 Act, there should be a statement on the system of internal control in the form set out in **Part 3.4**, which should be signed by the Chairperson and Chief Officer. It is envisaged that this statement will be reviewed by the Comptroller and Auditor General to confirm that it reflects the audited Institute’s compliance with the requirements of **paragraph 2.11.4** and that he will consider if the statement is inconsistent with the information of which he is aware from their audit work on the financial statements. The Comptroller and Auditor General should report his findings accordingly in the accounts to be submitted annually by an Institute in accordance with section 16 of the 1992 Act to the HEA and Minister of Education and Skills.

2.11.3 The annual financial statements of Institutes should reflect all post-balance sheet events, in accordance with generally accepted accounting principles (GAAP).

2.11.4 In addition to these requirements, the following information should be included in an annual governance statement signed by the Chief Officer and Chairperson and submitted to the HEA:

- (i) A statement confirming that a code of Governance and a Code of Conduct for Governing Body Members and Employees have been adopted and put in place and is being monitored ;

- (ii) Financially significant developments affecting the Institute in the past year, including the establishment of subsidiaries or joint ventures and acquisitions, and major issues likely to arise in the short to medium term;
- (iii) A statement affirming that Government policy on pay is being complied with (see **paragraph 2.6.1**);
- (iv) A statement affirming that all appropriate procedures for financial reporting, internal audit, travel, procurement and asset disposals are being carried out;
- (v) Confirmation that the Guidelines for the Appraisal and Management of Capital Proposals are being adhered to where appropriate;
- (vi) Confirmation that Government travel policy requirements are being complied with
- (vii) Confirmation that the Guidelines on Achieving Value for Money in Public Expenditure as set out in the address by the Minister for Finance of 20 October 2005 and communicated to the Institutes are being followed<sup>26</sup>;
- (viii) A statement affirming the Institute of Technology's compliance with tax laws.
- (ix) Confirmation that the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan are being adhered to where appropriate.

In the event that the Institute fails to comply with any of the above the Institute of Technology shall report such matters of non-compliance to the HEA providing an explanation for same and stating any corrective action taken or contemplated.

## **2.12 Tax Compliance**

2.12.1 As major beneficiaries of State funding, Institutes 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.

2.12.2 Institutes, 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 Institute or some other party to a transaction in which the Institute participates. Where a doubt arises in a particular instance, the Institute concerned should consult the Revenue Commissioners.

## **2.13 Diversification and Establishment of Subsidiaries**

2.13.1 One of the functions of the Institute, is as set out in section 5(1)(e) of the 1992 Act, as amended by Section 6 of 2006 Act in the following terms:

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<sup>26</sup> (Ref: <http://www.finance.gov.ie/documents/publications/other/pubproc&cap.app.pdf>)

*“(e) in relation to any of the following companies or undertakings and in accordance with the following law, namely—*

*(i) a limited liability company in the State — in accordance with the Companies Acts, or*

*(ii) a company or undertaking (the liability of members of which is limited) in a state other than the State — in accordance with the law of that state, to—*

*(I) promote and take part in the formation of it,*

*(II) acquire, hold or dispose of shares or other interests in its capital, or*

*(III) participate in the management or direction of it, but only if the objects of the company or undertaking include the carrying on of such business, trading or other activities, as the college thinks fit, for the purpose of promoting or assisting in the performance of, or in connection with, the functions of the college”.*

2.13.2 Any proposals for the diversification of a Institute’s activities, particularly in relation to diversification into areas outside the core functions of teaching and research, or for the establishment of new subsidiaries should require the approval of the Governing Body, which should consider the full implications, including any financial or other risks, for the Institute.

## **2.14 Strategic Planning**

2.14.1 In addition to the requirements of section 21C of the 1992 Act, as amended by Section 2 of 2006 Act Institute of Technology strategic plans, approved by the Governing Body, should set appropriate objectives, goals and relevant indicators and targets against which performance can be clearly measured. There should be a formal process in place for setting strategy.

2.14.2 In addition to the requirements of Section 14 of the 1992 Act, as amended by Section 16 of 2006 Act the report of the Governing Body should normally refer to the specific aims and targets proposed by the Institute in its strategic plan, the expected outputs and outcomes and the key performance indicators by which the achievement of the aims and targets is assessed. Implementation of the Institute’s strategy should be supported through annual planning and budgeting cycle.

2.14.3 Decisions on major items of expenditure should be aligned with medium to long-term strategies so as to ensure that such expenditure is focused on clearly defined objectives and outcomes. The effectiveness / outcome of such expenditure should be reviewed.

## **2.15 Legal Disputes**

2.15.1 Where a legal dispute involving the Institute arises, every effort should be made to mediate, arbitrate or otherwise before expensive legal costs are incurred.

## **Part 3            More Detailed Governance Guidelines**

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## **3.1 More Detailed Governance Guidelines**

### **3.1.1 The Governing Body**

3.1.1.1 The procedural operation and functions of the Governing Body of the Institute are governed by the 1992 Act. Sections 7 of the 1992 Act, as amended (see **Appendix 1A**) amended by Section 8 of 2006 Act, set out the functions of the Governing Body. The Second Schedule to the Act in particular governs the operation of the Governing Body.

3.1.1.2 The Governing Body should meet regularly, exercise effectively its strategic governance role and monitor the executive management and performance. The Governing Body should bring an independent judgement to bear on issues of strategy, performance, resources, key appointments, and standards of conduct. (State code 05/09 3.1)

3.1.1.3 The Governing Body should have a formal schedule of matters specifically reserved to it for decision to ensure the proper management and control of the Institute. This schedule should include the various statutory functions reserved to the Governing Body as set out in the 1992 Act, as amended:

- Section 5 (1) (a) to (j)
- Section 7 - Functions of a Governing Body;
- Section 9 – Appointment of a Director
- Section 10 - Academic Council;
- Section 11, 11A and 12 (Section 12 in the case of the DIT Act) - Staff;
- Section 13 - Budgets;
- Section 14 - Annual Report;
- Section 21 C - Strategic Development Plan;
- Section 21 D - Equality Policy
- Section 21 E - Dispute Resolution
- and should include at least, the list of matters set out in Section 2.1 of the 2009 State Body Code of Practice where appropriate to an Institute of Technology.

3.1.1.4 The collective responsibility and authority of the Governing Body should be safeguarded. Excessive influence on Governing Body decision-making by individual members should be avoided, while allowing Governing Body members the opportunity fully to contribute to Governing Body deliberations.

3.1.1.5 All members of the Governing Body should have independent access to the advice and services of the Secretary of the Institute, in respect of the reserved functions of Governing Body as statutorily defined, who must ensure that Governing Body members are fully aware of the appropriate rules, regulations and procedures.

3.1.1.6 In the normal course outside legal or other advice required will be obtained by the Secretary on behalf of the Governing Body in accordance with the collective



nature of its responsibilities. Notwithstanding the foregoing, a Governing Body should consider making provision for the seeking, in exceptional circumstances, of independent legal or other professional advice by an individual member or group of members at the reasonable expense of the Institute; the Secretary/Financial Controller shall deal with the matter in accordance with procedures to be laid down by the Governing Body. Minutes of Governing Body meetings should record concerns of members that cannot be resolved.

- 3.1.1.7 Any business or other interests, which could affect a member's independence, should be dealt with as outlined in **paragraph 3.1.4** below.
- 3.1.1.8 Non-executive members of the Governing Body should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the elected staff and student members of a Governing Body except that in the course of their employment or in their activities as students they may have executive responsibilities within the institution.
- 3.1.1.9 A member of a Governing Body of the Institute shall at all times act, as a member, in the best interests of the Institute.
- 3.1.1.10 It is the Governing Body's duty to ensure that a balanced and understandable assessment of the Institute's position is made in presenting its annual accounts to the Minister for Education and Skills, and to the HEA.
- 3.1.1.11 The Governing Body should state in the annual accounts that they are responsible for approving the accounts. There should also be a statement by the Comptroller and Auditor General about their reporting responsibilities.
- 3.1.1.12 The Governing Body should ensure that the Institute has in place a sound system of internal management and control, including
  - Managerial control systems, which may include defining policies, setting objectives and plans, setting Key Performance Indicators and monitoring financial and other performance;
  - Financial and operational control systems and procedures which may include the physical safeguards of assets, segregation of duties, authority and approval procedures and information systems.
- 3.1.1.13 The Governing Body should review on a periodic basis the effectiveness of the Institute's system of internal controls, including financial, operational and compliance controls and risk management.
- 3.1.1.14 The Governing Body should be supplied, in a timely fashion, with information which is of a suitable quality to enable Governing Body members satisfactorily to discharge their duties.

- 3.1.1.15 The Governing Body is responsible for ensuring compliance with all statutory obligations applicable to the Institute. Where individual Governing Body members become aware of non-compliance with any such obligation, they should immediately bring this to the attention of their fellow Governing Body members with a view to having the matter rectified subject to the provisions of the Acts. However, if the matter cannot be rectified and/or constitutes a flagrant breach of the members' obligations, the Chairperson should advise the HEA accordingly.
- 3.1.1.16 The Governing Body has a responsibility to establish procedures for maintaining an appropriate relationship with the Comptroller and Auditor General.
- 3.1.1.17 The Governing Body should put in place procedures for Confidential Disclosure whereby employees may, in confidence, raise concern about possible irregularities in financial reporting or other matters and for ensuring meaningful follow-up of matters raised in this way.

### **3.1.2. Role of Chairperson and Chief Officer in relation to Governing Body**

- 3.1.2.1 The roles of the Chairperson and Chief Officer are governed by the 1992 Act. The role of the Chairperson is governed in particular by the Second Schedule to the Act. The role of the Chief Officer is governed particularly by Section 9 amended by Section 10 of 2006 Act and by the Third Schedule of the Act.

#### **Role of the Chairperson**

- 3.1.2.2 The Chairperson is responsible for the leadership of the Governing Body. As chairperson of its meetings he/she should promote its wellbeing and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business.
- 3.1.2.3 **Composition of the Board**  
The Board should constantly review its own operation and seek to identify ways of improving its effectiveness. This will include the identification of gaps in competencies and ways these could be addressed. Where a Board Chair is of the view that specific skills are required on the Board, he/she should advise the relevant Minister of this view for his/her consideration sufficiently in advance of a time when board vacancies are due to arise in order that the Minister may take the Chair's views into consideration when making appointments.
- 3.1.2.4 A Chairperson should take particular care that the Governing Body observes the principles of good governance, and that committees which play a central role in the proper conduct of the Governing Body's business report back appropriately. The Chairperson should also ultimately be responsible for ensuring that the Governing Body operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way. The Chairperson should lead a periodic review by the Governing Body

of its own effectiveness. The attendances of each Board Member at Board meetings should be reported in the Annual Report.(State code 05/09 Section 3.8)

3.1.2.5 Through leadership of the Governing Body, the Chairperson plays a key role in the strategic direction of the institution, but is not to be drawn into the day-to-day executive management. For the Governing Body to be effective, there must be a constructive and challenging working relationship between the Chairperson and the Chief Officer of the institution. This relationship will depend on the personalities involved, but it is desirable to emphasise the need for both sides to recognise that the roles are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution.

### **Role of the Chief Officer**

3.1.2.6 The Chief Officer is responsible for the executive management of the institution and its day-to-day direction. He or she must not seek to determine matters reserved for the Governing Body.

3.1.2.7 The specific responsibilities of the Chief Officer in relation to Governing Body business include:

- Implementing the decisions of the Governing Body or ensuring that they are implemented through the relevant part of the institution's management structure;
- Initiating discussion and consultation including, where appropriate, consultation with the staff and the academic council on proposals concerning the institution's future development, and ensuring that such proposals are presented to the Governing Body.

3.1.2.8 It is noted that section 13 of the 1992 Act (as amended) and section 14 of the DIT Act amended by section 15 of 2006 Act provides as follows:

*“(5) Where the [Chief Officer] is of the opinion that*

*(a) the actual expenditure in a financial year, or*

*(b) a proposed course of action taking into account any increased allocation under subsection (4), will or is likely to result in expenditure in excess of the budget for that financial year (in the section referred to as a 'material departure from the budget'), the [Chief Officer] shall so inform the governing authority.*

*(6) Where a Governing Body, despite being so informed, decides*

*(a) in the case of subsection (5) (a) not to decrease its actual expenditure or*

*(b) in the case of subsection (5) (b) to continue with its proposed course of action,*

*the [Chief Officer], as soon as practicable, shall, unless he or she considers that contrary to his or her foregoing opinion a material departure from the budget will not occur, inform An tÚdarás of the decision of the Governing Body.”*

### **3.1.3. Briefing for new Governing Body Members**

3.1.3.1 Governing Body members of the Institutes have duties under the Institutes of Technology Acts 1992 to 2006 and it is the responsibility of each Governing Body member to act in conformity with the applicable provisions of these Acts.

3.1.3.2 On appointment of new Governing Body members, the Secretary should provide them with the following information in the form of a member’s handbook or guide:

- A formal schedule of matters reserved to the Governing Body for decision;
- Procedures for obtaining information on relevant new laws and regulations;
- Procedures to be followed when, exceptionally, decisions are required between Governing Body meetings;
- A schedule detailing the composition of all Governing Body committees and their terms of reference;
- A statement explaining the Governing Body members’ responsibilities in relation to the preparation/approval of the accounts, the Institute’s system of internal control and audit;
- A statement informing the Governing Body members that they have access to the advice and services of the Secretary who is responsible to the Governing Body for ensuring that Governing Body procedures are followed and the applicable rules and regulations are complied with;
- Code of ethics/conduct for Governing Body, including disclosure of Governing Body members’ interests
- Specific Institute information;
- A copy of the most up-to-date version of this document together with any relevant circulars and/or guidance notes;
- Any arrangements laid down by the Governing Body for seeking legal or other professional advice.

### **3.1.4. Disclosure of Interests by members of the Governing Body**

3.1.4.1 It is central to the conduct of the business of the Governing Body that members should act, and be perceived to act, impartially and not to be influenced in their roles as members by business or social relationships.

3.1.4.2 The requirements of the Ethics in Public Office Act 1995, and the Standards in Public Office Act 2001 have been referred to at **paragraph 2.2.3** of the Institute of Technology Code: Principles and Best Practice.

It should be noted that in relation to contracts the paragraph 7(1) of the Second Schedule to the 1992 Act provides that,

*7. (1) A member of the Governing Body of a college who has—*

*(a) any interest in any company or concern with which the college proposes to make any contract, or*

*(b) any interest in any contract which the college proposes to make, shall disclose to the Governing Body the fact of the interest and the nature thereof and shall take no part in any deliberation or decision of the Governing Body relating to the contract, and the disclosure shall be recorded in the minutes of the Governing Body.*

3.1.4.3 Paragraph 7(2) of the Second Schedule deals with the obligations of a member of a Governing Body who is related to a candidate for appointment by the Governing Body as an employee in the Institute and is in the following terms: “A member of a Governing Body of a college who is related to a person who is a candidate for appointment by the Governing Body as an officer or servant of the college, shall disclose to the Governing Body the fact of the relationship and the nature thereof and shall, if the Governing Body so decides, take no part in any deliberation or decision of the Governing Body relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the Governing Body.”

3.1.4.5 In addition to the statutory requirements, the Governing Body should set down a broader code for the disclosure of all relevant interests (pecuniary, family<sup>27</sup>, financial or other) by members of the Governing Body, which could pose a real or potential risk for conflict of interest or could materially influence the member in the performance of his or her functions as a member of the Governing Body or damage public confidence in the Institute . The code should have regard, as appropriate, to the relevant detailed disclosure provisions in Section A.6 of the Code of Practice for State Bodies of May 2009. A member for whom a relevant interest arises in relation to matters for decision by the Governing Body should not take part in any deliberation or decision of the Governing Body in relation to those matters.

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<sup>27</sup> 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.

- 3.1.4.6 Former members of a Governing Body should treat commercial information received while acting in that capacity as confidential.
- 3.1.4.7 Members of the Governing Body should not retain documentation obtained during their terms of office as members and should return such documentation to the Secretary or otherwise indicate to the Secretary that all such documentation in their possession has been disposed of in an appropriate manner. In the event that former members require access to Governing Body papers from the time of their tenure on the Governing Body, this can be facilitated by the Secretary
- 3.1.4.8 The procedures in this section should also be applied in subsidiaries of Institutes.

### **3.1.5. Internal Control Risk Management and Internal Audit**

- 3.1.5.1 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes. See also paragraphs 2.3 and 2.4.
- 3.1.5.2 Risks fall into a variety of categories, some of the most common being:
- Strategic risks;
  - Operational risks;
  - Financial risks;
  - Reputation risks.
- 3.1.5.3 It is the responsibility of the Governing Body to ensure that a robust system of risk management is in place in the Institute. Such a system involves;
- The identification of risks that threaten the achievement of the Institute's objectives;
  - The evaluation of the likelihood of occurrence and potential impact of the risks identified;
  - The segregation of risks according to their gravity;
  - An appraisal of the techniques employed to manage the major risks and identification of any further steps that should be taken;
  - An appraisal of the levels of residual risk - after the application of mitigation techniques - and whether the residual risk is acceptable;
  - Continuous monitoring of the effectiveness of controls and management techniques;
  - Decision- making informed by the risk management process.

The Governing Body should in the context of its statutory role in Strategic Plans (Section 21(c))

- Approve the risk management policy and monitor its effectiveness
- Review material risk incidents and note or approve actions taken to deal with them
- Make risk management a regular meeting agenda item for the Audit Committee
- Consider establishing a Risk Committee and, in any event, including review of risk management in the terms of reference if the Audit Committee
- Require external review of effectiveness of the risk management framework on a periodic basis

3.1.5.4 The Governing Body should ensure that the risk assessment and management process is integrated into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it should be nominated.<sup>28</sup>

### **3.1.6. Audit Committee**

- 3.1.6.1 There should be an Audit Committee established by the Governing Body of at least three members with written terms of reference which deal clearly with its authority and duties. In appointing members, consideration should be given to appointing individuals external to the staff and members of the Institute. The Board should satisfy itself that at least one member of the Audit Committee has recent and relevant financial experience. See also paragraph 2.4.
- 3.1.6.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the Governing Body and updated as appropriate.
- 3.1.6.3 The Committee should meet at least four times each year.
- 3.1.6.4 The Committee should report annually to the Governing Body.
- 3.1.6.5 The Committee should have explicit authority to investigate any matters within its terms of reference and should be given the resources needed for this purpose including outside professional advice as necessary.
- 3.1.6.6 The Committee should keep under review and advise on the operation and effectiveness of the Institute's risk management systems and report annually thereon to the Governing Body.
- 3.1.6.7 The Committee should meet the external auditors at least once a year in the absence of executive members of the Governing Body and other executive management.

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<sup>28</sup> Reference may be made to "Risk Management Guidance for Government: Departments and Offices" issued by the Department of Finance in March 2004 as well as the State Bodies Code of May 2009.

- 3.1.6.8 The Head of Internal Audit should have on-going access to the Chairperson of the Audit Committee and the Committee should meet the Head of Internal Audit at least once a year.
- 3.1.6.10 The Committee should meet with the nominated person with overall responsibility for Risk Management at least once a year.
- 3.1.6.11 A sample overall Terms of Reference for the Audit Committee, which can be adapted to cater for individual circumstances, is given below.

### **3.1.7. Sample Terms of Reference for Audit Committee**

#### **Constitution**

3.1.7.1 The Governing Body has established a committee of the Governing Body known as the Audit Committee which shall have a major role in relation to assuring proper financial management, effectiveness of internal control and risk management systems and economy, efficiency and effectiveness of the Institute's activities.

#### **Membership**

3.1.7.2 The membership of the committee shall be appointed by the Governing Body. The Committee shall consist of at least three members. In appointing members consideration should be given to the skills and independence of members and in particular it may be appropriate that at least two members be external members of the Governing Body and that at least one of the members need not be a member of the Governing Body but may be external to the Institute of Technology. At least one member should have recent and relevant financial experience. The Chief Officer and Chairperson of the Governing Body should not be a member of the Committee.<sup>29</sup> Members of the Governing Body who hold responsibility within the Institute should not be members of the Committee.

3.1.7.3 The Chairperson of the Committee shall be appointed by the Governing Body on the nomination of the Chief Officer of the Institute.

3.1.7.4 The Committee shall draw up its own working procedures.

#### **Frequency of meetings**

3.1.7.5 The Committee shall meet at least four times a year.

#### **Attendance at Meetings**

3.1.7.6 The Chief Financial Officer, Head of Internal Audit, Chief Officer of Risk Management and any employee or external person relevant to the work of the

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<sup>29</sup> While the 1992 Act (as amended) provides that the Chief Officer is entitled to be chairperson of any committee appointed by the Governing Body, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.



Committee may attend for all or part of meetings at the invitation of the Committee

- 3.1.7.7 At least once a year the Committee will meet separately with each of the following: (a) the Comptroller and Auditor General, (b) the Head of Internal Audit without members of management being present. The Committee will meet regularly with a representative of the Office of the Comptroller and Auditor General.

### **Mandate**

- 3.1.7.8 The Committee is authorised by the Governing Body to investigate any activity within its terms of reference and to seek any information it may require on that activity from any employee of the Institute of Technology or its subsidiaries and all such employees are directed to co-operate with the Committee. The Committee shall be given the necessary resources for this purpose.
- 3.1.7.9 The Committee is authorised by the Governing Body to obtain outside legal or other independent professional advice, if it considers this necessary.

### **Terms of Reference**

- 3.1.7.10 The terms of reference of the Committee are as follows-

#### *Financial Statements*

To review the draft annual financial statements of the Institute and consolidated statements, and their format, taking account of all relevant considerations and of accounting standards and legal requirements, before they are submitted to the Governing Body;

To recommend to the Governing Body whether they should approve any accounts so reviewed by the Committee;

To determine at least annually whether, in the Committee's opinion, the Institute has kept proper books of account.

#### *External Audit*

To discuss with the external auditor, before the audit commences, the nature and scope of the audit;

To discuss problems and reservations arising from the audit and any other matters requested by the external auditors;

To review the external auditor's Management Letter and all other audit letters from the external auditors and to consider management's response;

#### *Internal Controls and Risk Management*

To satisfy itself that the arrangements made for and resources available to Internal Audit are suitable, and to monitor performance of Internal Audit;

To consider the system of internal financial controls and to satisfy itself that the control environment is adequate and that controls are operating effectively;

To keep under review and advise on the operation and effectiveness of the Institute's risk management systems;

To provide an opinion annually on the proposed statement of internal controls and on any legal compliance requirements;

To consider the Internal Audit annual audit programme, to review reports of the Head of Internal Audit and to consider major findings and management's response.

#### *Other*

To consider reports by the Comptroller and Auditor General and management's response;

To satisfy itself that arrangements are in place to promote economy, efficiency and effectiveness;

To consider other topics, as requested by the Governing Body or initiated by the Committee;

To promote co-ordination between the Institute's internal and external auditors.

### **Reporting Arrangements**

3.1.7.11 The Committee shall make an annual written report on its activities to the Governing Body within three months after the conclusion of the financial year. The report will include the Committee's opinion on the adequacy of the systems of internal controls and risk management. The Committee will report to meetings of the Governing Body on such other occasions as requested.

3.1.7.12 Minutes or reports of meetings of the Committee shall be circulated to each member of the Governing Body.

### **3.1.8 Sample Charter for Internal Audit**

#### **Introduction**

3.1.8.1 The Internal Audit service is responsible for conducting an independent appraisal of all of the Institute's activities, financial and otherwise. It should provide a service to the whole organisation, including the Governing Body and all levels of management.

3.1.8.2 The Internal Audit service is responsible for assurance to the Institute's Governing Body and Chief Officer on the entire system of controls. It assists management by evaluating and reporting to them on the effectiveness of the controls for which they are responsible. It remains the duty of the management, not the auditor, to operate an adequate system of internal control.

#### **Mission of Internal Audit**

3.1.8.3 The general aim is to help the Institute to accomplish its objectives by conducting a systematic and disciplined review of the effectiveness of risk management, control, governance processes and performance. As part of this it helps to ensure the reliability of internal and external reporting and assists compliance with laws and regulations. Each assignment undertaken by Internal Audit is intended to provide an independent, objective assurance as well as recommendations designed to add value and improve the operations of the Institute.

#### **Scope**

3.1.8.4 All the Institute's activities, funded from whatever source, fall within the remit of Internal Audit, which is not confined solely to financial matters. Internal Audit will consider the adequacy of controls necessary to secure propriety, economy, efficiency and effectiveness in all areas. It will seek to confirm that management have taken the necessary steps to achieve these objectives.

3.1.8.5 Internal Audit may also conduct any special reviews requested by the Governing Body, Chief Officer or Audit Committee provided such reviews do not compromise its objectivity or independence or achievement of the approved audit plan.

#### **Responsibilities**

3.1.8.6 The Head of Internal Audit is required to give an annual opinion to the Audit Committee, on the adequacy and effectiveness of the whole system of internal controls within the Institute, and the extent to which the Governing Body may rely on it.

3.1.8.7 To provide the required assurance the Internal Audit service will undertake medium-term and annual programmes of work. These will be drawn up by the Head of Internal Audit and then forwarded to the Governing Body following the approval of the Audit Committee. The programmes will be designed to:

Appraise progressively the soundness, adequacy and application of the entire control system;

Ascertain the extent to which the entire system of internal control ensures compliance with established policies and procedures;

Ascertain the extent to which the assets of the Institute are properly controlled and safeguarded from losses arising from fraud, irregularity or corruption;

Ascertain that accounting and other information is reliable as a basis for producing accounts, and for financial, statistical and other returns;

Confirm the reliability of management information;

Confirm compliance with laws, regulations, Government Guidelines and EU requirements.

### **Standards and Approach**

3.1.8.8 Internal Audit will, in general, and taking account of the control environment, adopt a systems-based approach to its audits supplemented, as appropriate, by the use of traditional transaction testing and verification methods on a sample basis on all specific areas covered by the charter.

3.1.8.9 The Internal Audit function should carry out its work professionally and ethically and having regard to the Standards for the Professional Practice of Internal Auditors, published by the Institute of Internal auditors, and the Auditing Practices Board.

3.1.8.10 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.

### **Authority and Access**

3.1.8.11 The Governing Body and the Chief Officer hereby authorise Internal Audit to act on their behalf in carrying out its work.

3.1.8.12 The Internal Audit service has rights of access to all of the Institute's records, information and assets which it considers necessary to fulfil its responsibilities. Rights of access to other bodies controlled or funded by the Institute should also be guaranteed.

3.1.8.13 The Head of Internal Audit shall have direct access to the Chairperson of the Governing Body, to the Chief Officer and to the Chairperson of the Audit Committee in the performance of his or her duties.

### **Independence**

3.1.8.14 Internal Audit has no operating responsibilities, and will remain independent of, the activities being examined. However, if deemed appropriate by the Chief Officer, its remit may extend to systems being developed and it may provide advice on control and related matters arising without prejudicing its right to subsequently audit such systems.

### **Liaison**

3.1.8.15 The Internal Audit service will liaise closely with the external auditors.

### **Follow- Up**

3.1.8.16 On completion of an audit, findings will be relayed to the management and employees of the audited area for their views. These views will be considered and incorporated in the final report. Copies of the final report will go to the Chief Officer, the Audit Committee and the Governing Body.

3.1.8.17 There will be periodic follow-up action by Internal Audit to ascertain if findings and recommendations have been acted upon by management.

### **Annual report**

3.1.8.18 The Head of Internal Audit should provide an annual report on Internal Audit activities. This report shall be forwarded, within three months after the end of the financial year, to the Audit Committee, the Chief Officer and the Governing Body. The report should comment, inter alia, on the adequacy of the resources available to it to carry out its approved programmes.

## **3.2 Code of Conduct Guidelines**

### **Code of Conduct**

3.2.1 These are suggested guidelines for a Code of Conduct for all members of the Governing Body and employees. The Code should be prepared via a participative approach, and should be approved by the Governing Body, taking into account the implications of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act 2001 and the Institutes of Technology Acts 1992 to 2006.

### **Introduction**

3.2.2 [Name of Institute] has developed this Code of Conduct for members of the Governing Body and employees. This Code of Conduct takes account of the implications of the Ethics of Public Office Acts, 1995 and the Standards in Public Office Act 2001 as well as the Regional Technical College and Dublin Institute of Technology Acts 1992 to 2006. A copy of the Code will be circulated to all members and employees for their retention and it will also be available upon request through the Institute's website.

### **Intent and scope**

3.2.3 The purpose of the Code is to provide guidance to the Chairperson and members of the Governing Body and employees of [name of Institute ] in performing their duties as members of the Governing Body and employees as set down in the Institutes of Technology Acts 1992 to 2006. Copies of the Act have been provided to all members of the Governing Body.

### **Objectives**

3.2.4 The objectives of the Code are

To set out an agreed set of ethical principles;

To promote and maintain confidence and trust in the Governing Body and employees of [name of Institute];

To prevent the development or acceptance of unethical practices;

To promote the highest legal, management and ethical standards in all the activities of [name of Institute];

To promote compliance with best current governance and management practices in all the activities of [Institute].

## General Principles

3.2.5 All members of the Governing Body and employees are required to observe the following fundamental principles as set out in the guidelines for the Code of Conduct.

### *Integrity*

Members of the Governing Body are required to disclose outside employment/business interests which they consider may be in conflict or in potential conflict with the business of [name of Institute], or may be perceived as such - see **Section 3.1.4** for further details of disclosure requirements;

The Governing Body will not allow management or employees to be involved in outside employment/business interests in conflict or in potential conflict with the business of [name of Institute]. It will put in place appropriate arrangements to give effect to this;

Members of the Governing Body will avoid giving or receiving gifts, corporate 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;

Members of the Governing Body must be committed to having [name of Institute] compete vigorously and energetically but also ethically and honestly with other educational institutions, commercial and other providers of research and advisory services;

[Name of Institute] is committed to conducting its purchasing activities of goods/services in accordance with public policy and best business practice and its purchasing regulations reflect this;

[Name of Institute] is also committed to ensuring that its engagement of consultancy and other services is in compliance with public policy guidelines;

[Name of Institute of Technology] is also committed to fostering a culture of claiming expenses only as appropriate to official needs and in accordance with good practice in the public sector; [Name of Institute] is committed to ensuring that the accounts/reports accurately reflect the operating performance of the Institute and are not misleading or designed to be misleading;

Members of the Governing Body and employees are required to avoid the use of [name of Institute] resources or time for personal gain, for the benefit of persons/organisations unconnected with the institutions or its activities or for the benefit of competitors; and

[Name of Institute] is committed not to acquire information or business secrets by improper means.

## ***Information***

[Name of Institute] is committed to providing access to general information relating to its activities in a way that is open and enhances its accountability to the general public;

Members of the Governing Body are required to respect the confidentiality of sensitive information held by [name of Institute] This would constitute material such as:

personal information;

information received in confidence by [name of Institute ];

any commercially sensitive information or other information sensitive to the reputation of [name of Institute], including future plans or details of major organisational or structural changes.

These obligations do not cease when membership of the Governing Body or employment in the institution concerned has ended

[Name of Institute] will observe appropriate prior consultation procedures with third parties where, exceptionally, it is proposed to release sensitive information in the public interest;

[Name of Institute] will comply with all relevant statutory provisions (e.g. data protection legislation, the Freedom of Information Act, 1997);

Members of the Governing Body and staff will observe due confidentiality in relation to all discussions and decisions taken at meetings of the Governing Body.

## ***Obligations***

[Name of Institute] will fulfil all regulatory and statutory obligations imposed on the [Institute] by (insert title of relevant Act);

[Name of Institute] will comply with detailed tendering and purchasing procedures, as well as complying with prescribed levels of authority for sanctioning any relevant expenditure;

[Name of Institute] has introduced measures to prevent fraud and to ensure compliance with the prescribed levels of authority for sanctioning any relevant expenditure;

Members are required to use their reasonable endeavours to attend all Governing Body meetings;

It is acknowledged that the acceptance of positions following employment and/or engagement by a higher level institution can give



rise to the potential for conflicts of interest and to confidentiality concerns. The Governing Body of [name of Institute] will consider any cases in which such conflicts of interest or confidentiality concerns may arise and will take appropriate steps to deal with such matters in an effective manner during a reasonable period following employment by a higher level institution. The Governing Body will also ensure that any procedures that it may put in place in this regard are monitored and enforced.

The Governing Body and employees of [name of Institute] acknowledge the duty of all to conform to highest standards of business ethics.

### ***Loyalty***

The Governing Body and employees of [name of Institute] acknowledge the responsibility to be loyal to [name of Institute] and to be fully committed to all its activities, with due respect to the tenets of academic freedom, while mindful that [name of Institute] itself must at all times take into account the interests of its students and providers of funds including taxpayers;

### ***Fairness***

[Name of Institute] is committed to complying with employment equality and equal status legislation;

[Name of Institute] is committed to fairness in all business dealings; and

[Name of Institute] values its students, suppliers, employees and customers and treats all its students, suppliers, employees and customers equally.

### ***Work/External Environment***

The Governing Body and employees of [name of Institute of Technology] place the highest priority on promoting and preserving the health and safety of its employees and students;

[Name of Institute] will ensure that community concerns are fully considered in its activities and operations;

[Name of Institute] will minimise any detrimental impact of its operations on the environment.

### ***Responsibility***

[Name of Institute] will circulate this Code of Conduct (and a policy document on disclosure of interests) to all members of the Governing Body and employees for their retention;

[Name of Institute] will ensure that all members of the Governing Body and employees receive a copy of the Code and understand its contents;

[Name of Institute] will provide practical guidance and direction as required on such areas as gifts and entertainment and on other ethical considerations which arise routinely.

### ***Review***

[Name of Institute] will review this Code of Conduct as appropriate.

## **3.3 Guidelines in respect of Quality Customer Service for Customers and Clients of Institutes of Technology**

In their dealings with the public, Institutes shall have regard to the following:

### **Quality Service Standards**

3.3.1 Publish a statement that outlines the nature and quality of service which customers can expect and, where appropriate, display it prominently at the point of service delivery.

### **Equality/Diversity**

3.3.2 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**

- 3.3.3 Provide clean, accessible public offices that comply with occupational and safety standards and, as part of this, facilitate access for people with disabilities and others with specific needs.

### **Information**

- 3.3.4 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 Institute's web sites follows the guidelines on web publication.

Continue the drive for simplification of rules, regulations, forms, information leaflets and procedures.

### **Timeliness and Courtesy**

- 3.3.5 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 on-going transactions.

### **Complaints**

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

### **Appeals**

- 3.3.7 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**

- 3.3.8 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**

- 3.3.9 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**

- 3.3.10 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**

- 3.3.11 Foster a more co-ordinated and integrated approach to delivery of services.

### **Internal Customer**

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

### **3.4 Format of Statement of Internal Control**

- 3.4.1 Acknowledgment by the Chairperson and Chief Officer that the Governing Body is responsible for the body's system of internal control.
- 3.4.2 An explanation that such a system can provide only reasonable and not absolute assurance against material error.
- 3.4.3 Description of the key procedures, which have been put in place by the Governing Body, designed to provide effective internal 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 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.
- 3.4.4 Confirmation that there has been a review of the effectiveness of the system of internal control.
- 3.4.5 Information (if appropriate) about the weaknesses in internal 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.
- 3.4.6 The information relating to weaknesses in internal 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.

Signed:

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Chairperson

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Chief Officer

### **3.5 Framework for a Travel Policy**

#### **Introduction**

- 3.5.1 In matters of official travel and subsistence, Institutes should not exceed the terms of public policy as reflected in civil service procedures as set out from time to time in guidance issued by the Department of Finance or communicated via the Department of Education and Skills or the Higher Education Authority, as appropriate.
- 3.5.2 The Governing Body of the Institute should satisfy itself that the principles of its travel policy are adhered to and that the internal audit process is effective in ensuring that the Institute is fully complying with the policy.
- 3.5.3 Governing Body members and staff should be advised of the details of the policy applying.

#### **Intent and Scope**

- 3.5.4 The purpose of the travel policy should be to ensure that the best value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business. Alternatives to frequent travel, such as installation of video conferencing facilities, should be benchmarked.
- 3.5.5 Detailed elements of a travel policy might refer to the following;

##### **Domestic Travel**

Maximum use to be made of public transportation options for official travel; the use of taxi services should be rationalised as much as possible.

##### **Air Travel**

A statement on the practice to be followed e.g. the criteria to be applied in choosing either restricted internet fares or fully flexible economy-class fares, where this approach is cost-effective overall.

Outline the exceptional circumstances in which more expensive Business Class options may be considered (the use of premium rates can rarely be justified).

Frequent flyer points should not be allowed to influence decisions taken in relation to the carriers used for official business.

##### **Accommodation**

A statement to the effect that if an employee is not required to stay in a particular hotel for business reasons, the standard of hotel used should not be extravagant e.g. that three or four star hotels should be used

The Department of Finance's revised foreign travel policy of July 2009 provides that organisations should not fund the travel costs of those who have no direct connection with an organisation other than in exceptional circumstances.

The travel policy of the Institute should explicitly address the circumstances in which travel costs of external persons may be charged as business expenses.

### **3.6 Guidelines for Best Practice in Asset Disposal and Access to Assets by Third Parties**

- 3.6.1 Institutes should adhere to best practice for the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties. It should be standard practice that the disposal of assets of Institutes or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €150,000, should be by auction or competitive tendering process, other than in exceptional circumstances. 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 or by a formal sign-off by the Governing Body on the advice of the Chief Officer or by the Audit Committee of delegated to it, that in its view the anticipated value is likely to be less or greater than €150,000. In determining market value, regard should be given to accounting standards best practice in Ireland.
- 3.6.2 The exceptional circumstances mentioned at 3.6.1 could include a sale to a charitable body or where Institutes believe that competitive tendering is not appropriate due to the sensitive nature of particular arrangements in respect of research collaborations, joint ventures with industry or other external parties or in respect of arrangements where Intellectual Property may be brought to the Institute. Where in such circumstances a decision has been taken that competitive tendering is not appropriate such cases should be reported to the Governing Body. In all cases, the method used should be both transparent and likely to achieve a fair market-related price. See also paragraph 2.9
- 3.6.3 If an auction or competitive tendering process takes place and the highest bid is not accepted, it is desirable that specific Governing Body approval be 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 Governing Body.
- 3.6.4 If an auction or competitive tendering process does not take place, and the agreed price is €150,000 or more, then it is desirable that specific Governing Body approval be 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.
- 3.6.5 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) Governing Body approval is not necessary, with the reasons therefore, or (ii) Governing Body approval, where necessary, has been obtained.

- 3.6.6 In accordance with best practice, it is desirable that disposal of assets to members of governing authorities, employees or their families or connected persons, should, as with all disposals, be by a transparent method and 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 Governing Body may be omitted from the register). This register should be available for inspection, if requested, by the Governing Body or by any member of the Governing Body. The Governing Body may retain a requirement that any disposal above an approved threshold may not be made without having been formally endorsed by the Governing Body which may impose specific restrictions with regard to any such disposal.
- 3.6.7 In accordance with best practice, 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 3.6.1**) below the threshold value of €150,000 without auction or competitive tendering process should be formally reported, with the price paid and the name of the buyer, to the Governing Body on an annual basis.
- 3.6.8 Details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been the subject of auction or competitive tendering process should be included.
- 3.6.9 The Chairperson and Chief Officer in their report to the HEA (see **paragraph 2.11.4**) should affirm that the disposal procedures, as outlined above, have been complied with.

## References



A number of seminal documents on governance were reviewed and took account of new developments in the area, particularly in regard to the Institute of Technology sector. A number of these documents are listed below along with website references.

Governance of Irish Universities – A Governance Code of Legislation, Principles, Best Practice and Guidelines, HEA and IUA; 2007

Office of the Chief Officer of Corporate Enforcement (ODCE): Draft ODCE Guidelines on Audit Committees; ODCE; April 2006

Code of Practice for Governance of State Bodies; Department of Finance; 2001 and 2009

<http://www.finance.gov.ie/documents/publications/other/codeofpractice.pdf>

The Role and Responsibilities of Accounting Officers – A Memorandum for Accounting Officers; Department of Finance; December 2003

<http://www.finance.gov.ie/documents/publications/other/roleaccoffs.pdf>

Public Procurement Guidelines: Competitive Process; Department of Finance; July 2004

<http://www.finance.gov.ie/documents/publications/other/pubprocguidejuly04.pdf>

Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 – Public Servants; Standards in Public Office Commission; June 2006

<http://www.sipo.gov.ie/en/Guidelines/EthicsActs/PublicServants/File,5414,en.pdf>

Funding Agency Requirements and Guidelines for Managing Research-Generated Intellectual Property; Commercialisation Steering Group; February 2006

Local Government Act 2001 - Code of Conduct for Councillors; Department of the Environment, Heritage and Local Government; June 2004

Report of the Working Group on the Accountability of Secretaries General and Accounting Officers, July 2002 (“The Mullarkey Report”)

<http://www.finance.gov.ie/viewdoc.asp?DocID=935>

The Combined Code on Corporate Governance; Financial Reporting Council; June 2006 (Update of “The Turnbull Report”)

<http://www.frc.org.uk/documents/pagemanager/frc/Combined%20code%202006%20OCTOBER.pdf>

Internal Control – Revised Guidance for Chief Officers on the Combined Code; Financial Reporting Council; October 2005

<http://www.frc.org.uk/documents/pagemanager/frc/Revised%20Turnbull%20Guidance%20October%202005.pdf>

Guide for Members of Higher Education Governing Bodies in the UK; Committee of University Chairmen; November 2004.

[http://www.hefce.ac.uk/pubs/hefce/2004/04\\_40/](http://www.hefce.ac.uk/pubs/hefce/2004/04_40/)

OECD Review of Higher Education in Ireland: Examiner's Report; OECD; September 2004

OECD Principles of Corporate Governance; OECD; 2004  
<http://www.oecd.org/dataoecd/32/18/31557724.pdf>

Review of Quality Assurance in Irish Universities: Sectoral Report; EUA; February 2005

Issues in Australian University Governance; Coaldrake, Stedman and Little; August 2003  
<http://www.chancellery.qut.edu.au/vc/governancefinal.pdf>

University Resourcing: Australia in an International Context; Productivity Commission (Australia); December 2003.