

# Corporate Governance Handbook



BoardPASS Standard Training Resource  
[www.boardpass.ie](http://www.boardpass.ie)

Year 2013—2014

<http://www.cramdentechsolutions.com>

# Overview

The core functions of the Board of Directors may be summarised as follows:

- To ensure that the company achieves its mission and objectives as agreed by the Board
- To assess and manage the risks faced by the company
- To monitor company performance
- To review internal company controls
- To supervise the financial and budgetary planning processes
- To approve contracts, finance and investment in excess of specified thresholds
- To be accountable to members and external stakeholders
- To ensure the company is managed appropriately
- To meet regularly as a board (as is appropriate) and work effectively in governing the company

Company directors must ensure that they comply with the range of obligations set out in the Companies Acts 1963—2011.

Good corporate governance is based upon five overarching principles. The Board of Directors is responsible for:

- Providing leadership to the company
- Exercising control
- Ensuring transparency and accountability
- Working effectively
- Behaving with integrity

## HANDBOOK CONTENTS

1	OVERVIEW
2	PRINCIPLES OF GOOD GOVERNANCE
4	LEGAL RESPONSIBILITIES OF COMPANY DIRECTORS AND COMPANY SECRETARIES
9	ROLES OF HONORARY BOARD MEMBERS
12	AUDIT AND FINANCE SUB-COMMITTEE TERMS OF REFERENCE
14	GOVERNANCE SUB-COMMITTEE TERMS OF REFERENCE
15	SCHEDULE OF MATTERS RESERVED TO THE BOARD
18	BUSINESS CODE OF CONDUCT
21	BOARD ROTATION AND SUCCESSION PLANNING

# Principles of Good Governance

The responsibilities of a Board are founded upon the overarching principles of good governance of which there are five. Specifically, the Board of Directors is expected to: provide leadership to the organisation; exercise control; be transparent in its dealings; and, be accountable to its members and funders. Directors are also expected to work effectively with each other and to behave with integrity.

## **1. Providing Leadership**

The Board is responsible for providing leadership to the company. It does this through planning the work to be carried out and ensuring that the company is guided by a very clear purpose, vision and set of values. In providing leadership, the Board also ensures that it is accountable for its own actions and those of people acting directly on behalf of the company, such as staff members.

## **2. Exercising Control**

The Board is responsible for exercising control of the organisation. Exercising control is critical to an organisations stability. Therefore, the Board must ensure that risks are managed effectively and that sufficient controls are in place, to exercise management and financial control. Additionally, the Board must also ensure that the company complies with any regulatory requirements that it is subject to.

## **3. Ensuring Transparency and Accountability**

The Board should be both transparent and accountable in its dealings. Specifically, the Board should ensure that it engages appropriately with its membership and stakeholders. Such engagement should facilitate good communication and decision-making. Being accountable also requires that the Board respond appropriately to queries regarding its governance and work activities.

# Principles of Good Governance

## 4. Working Effectively

The Board is required to work effectively, both as a collective group and on behalf of the company. To this end, the Board has assigned clear roles to directors, such as the roles of honorary chairperson and treasurer. The Board will conduct its meetings in an effective manner and ensure that it adheres to the company's procedures regarding board membership, development and director rotation.

## 5. Behaving with Integrity

The Board is required to behave with integrity. Simply put, the members of the Board should be honest and fair in their dealings with each other and with people in general. Directors are also expected to act with independence of mind, meaning that they act in the best interests of the company. Directors are expected to deal openly and effectively with any conflicts of interest that may arise. Ultimately, directors are required to behave in a way that does not damage or negatively impact upon the reputation of the company.

The five overarching principles of good governance are based on the principles articulated in **The Governance Code** located at <http://www.governancecode.ie>.

# Legal Responsibilities of Company Directors and Company Secretaries

## Overview of the Responsibilities of Company Directors

The Companies Acts 1963 – 2009 sets out a number of legally binding obligations. Directors should ensure that the company:

- Maintains proper accounts
- Keep minutes of all meetings
- Maintains both a register of directors and a register of members
- Holds an Annual General Meeting
- Makes an Annual Return to the Companies Registration Office (CRO)
- Submits audited accounts with the Annual Return
- Informs the CRO of any changes in the directors, company secretary, auditors or the registered office
- Notifies the Companies Office of any changes to the Memorandum and Articles of Association
- Notifies the Companies Office of any Special Resolutions
- Has a minimum of two directors at all times to comply with company law.
- As a registered charity, the company must have a minimum of three directors at all times to comply with the requirements of the Revenue Commissioners and to ensure that it can achieve a quorum when holding board meetings as per the company Articles of Association.

## Common Law Duties of Directors

Directors are trustees of the company's assets and as such, their common law duties require that:

- Directors must act in good faith and in the company's interest and not use their powers for personal gain
- Directors must not profit from being a director and must account for any profit secretly obtained
- Directors must act with due care, skill and diligence

# Legal Responsibilities of Company Directors and Company Secretaries

## Statutory Duties of Company Directors

The statutory duties of company directors requires that:

- On their appointment, directors must give the company their name, address, date of birth, nationality and occupation. They must also give details of any other companies of which they are a director. They should keep the company up to date on any changes to this information.
- They should inform the company if they have any interest in a company contract or proposed contract.
- The company keeps proper books of account, be able to accurately identify its assets and liabilities and that each year, financial statements be prepared that give 'a true and fair view' of the company's affairs.
- They write a report for the members of the company to include details such as: how the company is doing; important events during the year; developments during the year and any likely developments in the future.
- They must arrange to call the company's annual general meeting (AGM) and circulate a draft agenda to the members in good time along with other relevant documents, including the financial statements, the directors' report and any auditor's report.
- They must arrange to keep minutes of what is said and decided at general meetings and at meetings of the board and its sub-committees.
- They must ensure that the company promptly sends the required documents and information to the Companies Registration Office.

## Powers of Directors

The powers of directors are determined by what is in the company's constitution (Memorandum and articles of association); and by what is legal.

If directors help to create a company debt, knowing that the company will not be able to pay the creditor, they may have to pay some or all of the company's debts themselves, if this is ordered by a court, as this may be deemed to be reckless trading.

A director who has an interest in a contract (or proposed contract) with the company, will declare this interest to company directors.

# Legal Responsibilities of Company Directors and Company Secretaries

## Board Meeting Quorum

The maximum number of directors that shall sit on the Board at any given time is [ ]. A board meeting must have a minimum of [ ] directors present during a board meeting for a quorum to be achieved.

## The Role of the Company Secretary

A company must appoint a Company Secretary to comply with company law. The Board of Directors assigns the full range of duties to be carried out by the Company Secretary, which typically includes the responsibility to:

- Keep the company's registers (that is, lists of all members and directors) up to date
- Make sure that the annual general meeting is held within the appropriate time frame
- Make sure that the proper notice for general meetings is given and that they are run in accordance with the company's articles of association
- Keep the minutes' books (AGM minutes and the minutes of the meetings of the board)
- Make sure the accounts are prepared and audited in conjunction with the treasurer
- File the annual return in the Companies Registration Office by the annual return date
- Keep copies of all annual returns and accounts
- Notify the CRO of any change of company directors or change of their home addresses
- Safeguard and ensure the proper use of the company seal
- Ensure that the certificate of company incorporation is displayed
- Make sure that the name of the company is displayed outside the premises
- Make sure that the company name, registered number and directors' details appear on the letterhead (unless an exemption is obtained from the CRO)
- Notify the CRO of any amendment to the memorandum and articles of association
- Make sure that all legal agreements or contracts are properly discussed and agreed by the members of the board and are kept in a safe place
- Comply with any other duties as imposed by the Companies Acts 1963—2011

# Legal Responsibilities of Company Directors and Company Secretaries

## Filing of Documents

Companies are required to comply with the following filing requirements:

- Every company must file an annual return each year at the Companies Registration Office (CRO) not later than 28 days from its statutory annual return date (ARD). A company director must ensure that an annual return (Form B1) on behalf of the company is returned to the CRO at least once in every calendar year.
- In almost every case, accounts must be attached to the return. Generally, documents attached include:
  - a copy of the balance sheet;
  - a copy of the profit and loss account;
  - a copy of the certified directors' report;
  - a copy of the certified auditor's report; and
  - Notes to the financial statements.

(Please note: these documents must be certified as true copies of those laid before the Annual General Meeting (AGM) of the members of the company. Every company is required to hold an AGM once every year.)

- Where accounts are required to be attached to the annual return, the return filing deadline is either:
  - the company's ARD plus 28 days or
  - the company's financial year-end plus nine months and 28 days, whichever is the earlier

Where returns are not filed on time, a late filing penalty must be paid and further enforcement actions may be pursued by the CRO.

It is the responsibility of each director to ensure that the company is not in breach of the Companies Acts 1963-2011.

## Notification of Resignation

The company must file form B10 in order to notify the cessation of an officer's appointment, resignation, or removal. This form must be sent to the CRO within 14 days of the change occurring.



# Legal Responsibilities of Company Directors and Company Secretaries

## The Role of Members

Members own the company. The company reports to the members once a year at the Annual General Meeting. Directors are accountable to the company members.

The company is required to have a minimum of seven members at all times. If membership falls below seven for a period longer than six months, members will become personally liable for the commitments of the company, if the company is unable to meet these commitments. A member can resign from membership of the company, otherwise membership ceases on death.

Members have the responsibility to make some company decisions at a general meeting. These include the decision to appoint or reappoint the company's auditor.

## The Role of the Auditor

Once appointed, the auditor will act as an officer of the company. The main duty of the auditor is to examine the company books and determine the true financial position of the company.

The auditor will report to the members concerning the accounts examined.

The auditor will state whether or not the directors' annual report is consistent.

## Regulatory Requirements

The directors will monitor the company to ensure compliance with regulatory requirements relating to:

- Company Law
- The Charities Act 2009
- Employment Law
- Health and Safety Legislation
- Equality Legislation
- Data Protection Legislation
- Other regulatory requirements as appropriate

# Roles of Honorary Board Members

## The Role of the Chairperson

There are several duties specifically associated with the role of chairperson of a committee or board. Planning meetings with the committee or board secretary or designated senior staff member is a key function of the role.

In planning a meeting, the Chairperson will help develop a timed agenda to structure discussions at the meeting.

The Chairperson will use a meeting agenda, to help keep meetings in order and to keep the discussions on track. Ensuring that meetings progress effectively is a key function of the chairperson.

In managing a meeting, the chairperson should encourage each person attending to contribute to the discussions. Asking people questions can be a helpful way to encourage quieter meeting participants to contribute directly. Asking questions is also a helpful way to clarify discussion points at meetings.

The Chairperson should help guide meeting discussions to a point where committee or board members can reach decisions. In some instances, it may be appropriate to defer decisions to a future meeting.

The Chairperson should check and ensure that decisions are implemented, by the people whose task it is to carry out actions, arising from decisions taken by the committee or board.

Another key function of the Chairperson is to represent the organisation externally. For example, a chairperson might introduce the organisation at a public event or act as a spokesperson in the media, if this particular role is not allocated to a member of staff or designated committee public relations officer.

Where an organisation employs paid staff, the Chairperson helps to ensure that a clear management reporting structure is in place between the senior manager and committee or board. In effect, the Chairperson is often tasked with acting as a line manager to the most senior staff member. The Chairperson represents the Board to the staff.

# Roles of Honorary Board Members

## The Role of Honorary Secretary

There are several duties specifically associated with the role of honorary secretary of a committee or board. Planning meetings with the committee or board chairperson or designated staff member is a key function of the role.

The honorary secretary typically receives and responds to correspondence addressed to the committee or board.

The secretary is typically responsible for making arrangements concerning board or committee meetings, including booking and confirming meeting rooms, arranging refreshments, and informing meeting attendees of the times, places and dates of committee or board meetings.

The honorary secretary will prepare the agenda for circulation to board or committee members, and will circulate any additional reading materials or documents required by attendees in advance of meetings.

The honorary secretary typically takes the minutes at meetings, though this function can be delegated to another person or note taker, should the committee or board feel it appropriate to so.

An important duty of an honorary secretary is to keep track of committee or board member contact details, such as addresses, telephone numbers and email addresses. Up to date details are essential for good communication within a committee or board and are essential for the circulation of agendas, minutes and other relevant documentation.

The Role of Honorary Secretary may be combined with that of **Company Secretary** in some organisations.

# Roles of Honorary Board Members

## The Role of the Treasurer

There are several duties specifically associated with the role of treasurer of a committee or board. As the name suggests, a treasurer monitors the financial position of an organisation and advises the board or committee.

The treasurer presents fellow committee or board members with the budgets and accounts of the organisation.

When required, the treasurer will also present financial reports to the board or committee, including year-end financials such as Income and Expenditure Statements and balance sheets.

It is critical for any committee or board to monitor its organisation's cash flow position on an ongoing basis. The treasurer plays a central role in this monitoring process, to ensure the board and committee are fully aware of the financial position of the organisation.

The treasurer helps to ensure that adequate controls and procedures are in place to monitor and manage the financial obligations and requirements of the organisation.

Typically, the treasurer will also check to ensure that an organisation has adequate insurance cover in place. Insurance cover should reflect the nature of activities that an organisation engages in and the type of risks it must manage.

A treasurer plays a central role in advising a committee or board of the financial implications of its activities, new initiatives or projects.

Where staff are employed by an organisation, the treasurer will typically liaise with management and accounts or finance personnel, to prepare financial reports for the board or committee, to ensure that adequate internal controls and procedures are in place and that financial regulatory compliance is being adhered to by the organisation.

## Audit and Finance Sub-Committee Terms of Reference

The Committee will be chaired by the Treasurer and will comprise of at least three directors. At its discretion, the Committee may co-opt up to three additional independent members whose requisite skills and experience are required. The Committee will advise and make recommendations to the Board, but is subordinate to the Board.

The Committee may require the external auditor and members of the senior management team to attend its meetings. Other parties, may be required to attend meetings , in respect to issues appropriate to the Committee.

### **Meetings of the Audit and Finance Sub-Committee**

The Committee will hold as many meetings in the year as determined by its Chairperson, based on the Chairperson's view of the role and responsibilities of the Committee. No meeting of the Committee will be valid unless there is in attendance a quorum of two directors.

Only the Committee Chairperson and its members are entitled to attend Committee meetings. The Committee will decide if non-members should attend in relation to a specific meeting or agenda item. The Committee will invite the internal and external auditors, managers or staff, or other parties to attend its meeting in respect of its consideration of matters requiring such attendance.

The Chief Executive Officer of the organisation will be responsible for providing the Committee with its information requirements.

### **Reporting Relationships**

The Committee will regularly report to the Board on the outcome of its work. The responsibility for such reporting will fall on the Chairperson of the Committee, who may delegate this responsibility to another Committee member as appropriate or necessary.

The Board will review the work of the Committee on an annual basis

The Board of the organisation will provide sufficient resources to permit the Committee to satisfactorily perform its functions.

## Key Responsibilities of the Audit and Finance Sub-Committee

The Audit and Finance Sub-Committee will ensure that:

- A formal risk assessment process is in place in the company, and that risk management and risk avoidance arrangements are established and reviewed on a regular basis
- Internal control systems are reviewed across the company
- Financial statements and related reports of the company are reviewed. Emphasis should be placed on the judgments made in compiling the financial statements, and the level of clarity and completeness of the financial statements.
- Make recommendations to the Board on the appointment of external auditors and monitor the external auditor's independence and effectiveness.
- Review and monitor all management letter points arising out of the annual audit
- Review on behalf of the Board any issues regarded by the Committee or the Board as critical to the well-being of the organisation
- Seek any external professional advice, with prior notification to the Chairperson, that the Committee deems necessary to carry out its functions
- Prepare the annual internal audit plan on the basis of the Committee's ongoing assessment of the principal risks facing the organisation
- Review the effectiveness of the systems of internal audit in the organisation, report regularly to the Board on the principal outcomes of the internal audits, and advise the Board on the adequacy of internal audit resources and internal audit coverage
- Review the draft annual statutory financial statements and recommend their approval to the Board
- Report regularly to the Board on all other matters arising from its deliberations

## Governance Sub-Committee Terms of Reference

The Committee will be chaired by a company director appointed by the Board and will comprise of at least three directors. At its discretion, the Committee may co-opt up to two additional independent members whose requisite skills and experience are required. The Committee will advise and make recommendations to the Board, but is subordinate to the Board.

### **Meetings of the Governance Sub-Committee**

The Committee will hold as many meetings in the year as determined by its Chairperson, based on the Chairperson's view of the role and responsibilities of the Committee. No meeting of the Committee will be valid unless there is in attendance a quorum of two board directors.

The Committee will invite other parties to attend its meetings as and when necessary.

The Chief Executive Officer of the organisation will be responsible for providing the Committee with its information requirements.

### **Reporting Relationships**

The Committee will report to the Board on the outcome of its work. The responsibility for such reporting will fall on the Chairperson of the Committee, who may delegate this responsibility to another Committee member as appropriate or necessary.

The Board will review the work of the Committee on an annual basis .

The Board of the organisation will provide sufficient resources to permit the Committee to satisfactorily perform its functions.

# Governance Sub-Committee Terms of Reference

## Key Responsibilities of the Governance Sub-Committee:

- To ensure that the Governance Sub-Committee and the Board understand and are compliant with their corporate governance role
- To ensure that Board Members and the Chief Executive Officer fulfil their roles in a manner that conforms with their responsibility to behave ethically
- To accept on behalf of the Board any conflict of interest issues from the Chief Executive Officer or senior staff in relation to an employee, where an actual or perceived conflict could negatively impact upon the reputation of the company
- To work to ensure that the company's corporate governance arrangements are effective and robust
- To receive information and reports from the Chief Executive Officer in relation to compliance with corporate governance procedures and requirements
- To ensure that the system for managing gifts and hospitality offered and received by Board Members is effective
- To liaise with professional advisors (if necessary) when undertaking periodic reviews of corporate governance procedures, protocols, board structure, delegated powers and authority
- On an annual basis, to evaluate and assess Governance Sub-Committee performance, including procedures, Terms of Reference, effectiveness and membership
- To report regularly to the Board on all matters arising from its deliberations



## Schedule of Matters Reserved to the Board

**The schedule of matters reserved to the board for decision includes:**

- Approval of the organisation's mission, vision, values, aims, objectives, strategy and structure
- Changes to the company's Memorandum and Articles of Association
- Approval of major corporate actions
- Approving the delivery of new services or programmes
- Approving the cessation of delivery of existing services or programmes
- Definition of authorities delegated to management
- Supervision of company progress
- Setting board policy
- Approval of the annual Income and Expenditure budget
- Approval of expenditure of budgeted and non-budgeted items in excess of €[   ]
- Approval of the delivery of service contracts and programmes in excess of €[   ] in value
- Setting of the organisation's reserves policy
- Approval of the organisation's Audited Annual Accounts
- Approval of the organisation's investment policy and investment decisions where the amount of money involved is in excess of €[   ] in value
- Approval of increases in the number of staff employed and the awarding of contracts of indefinite duration

## Schedule of Matters Reserved to the Board

**Continuation of the schedule of matters reserved to the board for decision. Further matters include:**

- Approval of employment contracts for middle and senior management grade employees
- Appointing, evaluating and remunerating the position of Chief Executive Officer
- Establishing and setting Terms of Reference for sub-committees and task forces of the Board
- Evaluating the performance of sub-committees of the Board
- Approval and review of the Board Members Business Code of Conduct
- Appointing honorary board roles of Chairperson, Secretary and Treasurer
- Appointing the Company Secretary
- Co-option of new Board Members subject to ratification at the next Annual General Meeting

# Business Code of Conduct

The company places utmost importance on its reputation for behaving ethically and fairly. The Business Code of Conduct provides a practical guide to Board Members to assist them in their activities and decision-making duties on behalf of the organisation. The Business Code of Conduct applies to all Board Members.

Board Members are required to comply with the Companies Acts, The Charities Act 2009 and other relevant legislative requirements with which the company must comply.

## **Behaving with Integrity**

All members of the Board are expected to exercise the highest standards of honesty in their business dealings. Board Members must adhere to and respect company procurement policy and claim expenses only as appropriate to board business needs. Board Members may not use company property or assets for personal gain or engage in business practices that may be generally considered improper in nature.

Board Members may not accept gifts, hospitality, benefits or offers of preferential treatment that may affect (or be perceived to affect) the ability of Board Members to make objective decisions with respect to the company.

Board Members must undertake not to behave in a manner that could damage the reputation of the company.

## **Respecting Confidentiality**

Each Board Member owes a duty of confidentiality to the company and is expected to safeguard, and not disclose, sensitive information such as:

- Information that is not in the public domain
- Sensitive business information with respect to beneficiaries, funders or company finances
- Any information which the Board of Directors has deemed to be confidential

Board Members are expected to safeguard board documents, information and reports and ensure that they are not accessed or mis-used by third parties.

The duty of confidentiality does not end upon cessation of board membership.

Board Members should be aware of the company's obligations under the Data Protection Acts 1988 and 2003 and the Freedom of Information Act 1997.

# Business Code of Conduct

## Complying with Legislation

Board Members are required to fulfill all regulatory, reporting and oversight obligations, imposed on the company; in as far as it is within their power to do so. Directors are also required to adhere to the company's procedures for handling conflicts of interest and to ensure that the company's Annual Returns and Financial Statements are not misleading or inaccurate.

## Disclosure of Interests

Board Members are required to disclose to the Company Secretary and Chairperson details of outside interests which are, or may be, in conflict with company operations. Board Members are required to adhere to board procedures for handling conflicts of interest. Board Members have a responsibility to be loyal to the company and be fully committed to pursuing the best interests of the company members.

## Behaving Ethically and Fairly

All Board Members are:

- Expected to conform to the highest standards of business ethics
- Commit to fairness in all business dealings
- Ensure that concerns of the company members and the wider community are fully considered

## Gifts and Hospitality Guidelines

It is not appropriate for Board Members to accept gifts from suppliers or contractors who have worked for the company. Such offers of gifts should be declined. Gifts should be returned to the sender, advising that acceptance would contravene company policy. Details of returned gifts should be provided to the Chairperson.

Modest hospitality may be accepted by Board Members subject to:

- Prior approval having been received from the Chairperson
- The frequency and scale of the hospitality is reasonable and not excessive
- No travel or overnight accommodation is provided

Details of hospitality that has been declined should be provided to the Chairperson.

# Business Code of Conduct

## **Professional Advice**

Board Members may access independent professional advice should they deem it necessary in furtherance of their board duties. Board Members should follow board procedures and consult with the Company Secretary and Chairperson should the need to consult independent advice arise.

## **Review**

The Business Code of Conduct will be reviewed every two years.

## **Compliance**

Board Members are required to read and acknowledge receipt of the Business Code of Conduct and to confirm in writing an undertaking to comply with the Code.

## Board Rotation and Succession Planning

Directors will ensure that the collective skills and experience of Board members is sufficient to enable the directors to consistently discharge their responsibilities under company law.

The Board undertakes to:

- Rotate board members in compliance with the company's Memorandum and Articles of Association
- Use a fair and equitable process for recruiting new directors when board vacancies arise
- Provide each new director with board induction training upon appointment or co-option to the Board
- Rotate the honorary board officer roles to ensure that an officer does not hold any one honorary officer role for a period longer than specified in the company's Memorandum and Articles of Association
- Appoint a Vice-Chairperson in the year preceding the final term of the current Chairperson
- Appoint a Vice-Treasurer in the year preceding the final term of the current Treasurer
- Conduct an evaluation of board performance on an annual basis

## Acknowledgements

***The Corporate Governance Handbook was compiled using references and excerpts from a range of source material including:***

The “Roles and Responsibilities of the Board” information leaflet produced by Carmichael Centre, and other relevant materials available in the Online Library located at <http://www.carmichaelcentre.ie>.

Information Leaflet No. 18 “Notification by Director/Secretary of Resignation” which is available at <http://www.cro.ie>.

Information Leaflet No. 2 “Six Things that every Company Director should know about Company Registration” and Information Leaflet No. 22 “Filing an Annual Return to The CRO” both of which are available at <http://www.cro.ie>.

The guide “Directors *Their duties and powers*” published by the Office of the Director of Corporate Enforcement and available online at <http://www.odce.ie>.

The principles of good governance detailed in The Governance Code documents located at <http://www.governancecode.ie>.

Relevant materials located in the online resource ‘Managing Better’ located at <http://www.pobal.ie>.

Relevant online material from Arthur Cox Solicitors and Boardmatch Ireland.

Relevant online material from Citizens Information Board located at <http://www.citizensinformation.ie>

The Skills Development section of the Governance and Compliance Tracking Solution developed by CramdenTECH Ltd.



**BoardPASS Corporate Governance Handbook**

**Developed by CramdenTECH Ltd. 2013**

**<http://www.cramdentechsolutions.com>**

**<http://www.boardpass.ie>**