

Private & Confidential

Dr Roger Barker
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116 Pall Mall
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United Kingdom

16th August 2024

Re: IoD Consultation Paper: Code of Conduct for Directors

Dear Roger,

Thank you for the opportunity to respond to the Institute of Directors (IoD UK) Consultation Paper on the Code of Conduct for Directors.

The Institute of Directors Ireland (**IoD Ireland**) is the leading membership body for directors and business leaders in Ireland, with membership across all sectors and industries. Our Vision is for Ireland to be an exemplar of corporate governance. Our Purpose is to instil stakeholder trust and confidence in organisations by educating, informing, and supporting directors and business leaders to lead successfully. Being the voice of directors and an advocate for the highest standards of corporate governance in Ireland is a core strategic pillar for IoD Ireland.

Why is IoD Ireland Responding to this Consultation?

We are responding to this consultation as the representative body for directors in Ireland with close links to IoD (UK). While remaining separate and independent, IoD Ireland and IoD UK collaborate on learning and education programmes, through the Global Network of Director Institutes (GNDI) international network, and on ad-hoc policy initiatives.

General Observations on the development of a Code of Conduct for Directors

IoD Ireland is supportive of the rationale for the introduction of a Code of Conduct for Directors (**the Code**). We welcome that the Code is applicable to directors of organisations of all sizes in the private, public and not-for-profit sectors. We support the recognition that many directors may already be subject to codes of conduct arising from their organisations or professional bodies and that the Code is an individual commitment designed to complement such mechanisms. We also support that the Code sets a bar for director conduct beyond the legal baseline as a means of enhancing the legitimacy and reputation of directorship in the eyes of society and stakeholders.

We have some reservations in regard to specific items and these are set out for your consideration in Table 1 below. One area that is reflected in Table 1 relates to the potential of the Code to unintentionally erode the understanding, and effective practice of collective board responsibility and decision-making. We have made some suggestions to minimise this potential.

IoD has expressed an interest in receiving views on 5 specific questions.

1. Are there any additional issues that should be addressed in the Code?

We refer you to our comments in Table 1 below.

2. How can awareness of the Code be encouraged amongst directors and the wider public?

We consider that IoD (UK) has a key role in promoting this awareness. We also consider that an endorsement of the Code by the Financial Reporting Council, as custodian of the UK Corporate Governance Code, would further strengthen its standing. As would an endorsement by or other organisations charged with promoting best in class governance in the UK.

3. Should directors make a public declaration or disclosure of their adoption of the Code?

We have consulted with our members and noted mixed views on whether directors should make a public declaration of disclosure of their adoption of the Code with the dominant sentiment that it should be left to individual directors to decide to or not. Respondents did however raise concerns about the implications of such a declaration/disclosure for the principle of collective responsibility and directors' liability. Concerns were also raised with regard to the potential impact on Directors and Officers insurance.

4. Is there a role for government, regulators or professional bodies in encouraging adoption of the Code?


Please see our comments under 2 above.

5. If you are currently serving as a director, would you be willing to commit yourself to the principles and undertakings of this Code?


As noted above, IoD Members, while broadly in favour of the Code, consider that issues pertaining to the collective responsibility of the board should be clarified and how the Code might be applied across organisational contexts.

Thank you for considering our input in your consultation process. We appreciate the opportunity to contribute and trust that our feedback will be valuable in shaping your final plans. We look forward to seeing the outcomes and continuing our collaboration.

Yours sincerely,



John Reynolds CDir
President
Institute of Directors Ireland



Caroline Spillane CDir
Chief Executive Officer
Institute of Directors Ireland

| Table 1 | |
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| Code Section | IoD Ireland Comment and Suggestion |
| Introduction to the Code | <p>One of the Director Undertakings attached to Principle 2, Integrity, is to “adhere to collective responsibility for agreed decisions”.</p> <p>The Introduction to the Code provides excellent context for the Code such as its applicability across organisational types and the Code versus the legal duties of directors and corporate codes of conduct. We suggest that the IoD includes a sentence/paragraph on the collective responsibility of the board and frames the Code within that context. This might be elaborated on in the supporting Guidance to the Code.</p> |
| <p>Principle 1, Leading by Example</p> <p>One of the Director Undertakings is: “Avoid behaviour which might adversely affect the reputation of <u>my</u> organisation, or which contradicts its values”.</p> | <p>We suggest that reference to “my” be changed to “the”.</p> |
| <p>Principle 2, Integrity</p> <p>Opening paragraph includes: “You should abide with relevant <u>laws and regulations</u>, act in good faith and uphold high ethical standards”.</p> | <p>Directors have legal responsibilities under the Companies Act 2006. For the most part, however, laws and regulations apply to the organisation with the board responsible for ensuring the organisation’s compliance. We suggest that the wording as it stands does not sufficiently distinguish between the two and might be confusing to Directors.</p> <p>We suggest the sentence be amended to the following: “As a director you should act in good faith and uphold high ethical standards at all times. You should ensure that the board creates and effectively oversees the framework to ensure the organisation’s compliance with relevant laws and regulations”.</p> |
| <p>Principle 2, Integrity</p> <p>One of the Director Undertakings is: “Voice constructive challenge and <u>disagreement</u> on matters of concern”.</p> | <p>We suggest that the reference to “disagreement” is not warranted and has the potential to encourage the wrong type of behaviour in the boardroom. The retention of “constructive challenge” is highly appropriate.</p> |
| Principle 3, Transparency | |

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| <p>One of the Director Undertakings is: “Communicate with stakeholders in a straightforward and accessible manner, providing proactive, relevant and timely information”.</p> | <p>We suggest that this may, unintentionally, provide directors with the license to speak with stakeholders without any guardrails to protect the interests of the organisation.</p> <p>While we note the final Director Undertaking (“Be candid with stakeholders about the limits of transparency (such as information of a commercially sensitive nature)), we suggest that the Director Undertaking be amended to the following:</p> <p>“Communicate with stakeholders in accordance with the board’s stakeholder engagement policy and in a straightforward, proactive and accessible manner”.</p> |
| <p>Principle 4, Accountability</p> <p>The Principle’s heading states: “Taking personal responsibility for actions and their consequences”.</p> | <p>We are unsure how this sentence is consistent with the principle of the collective responsibility of the board. We fully agree that every director should take responsibility for their contribution to the collective decision. One of the core tenets of corporate governance is that one person does not have unfettered control, hence the need for the voice of the collective. We suggest that this heading might be reframed in the context of Directors’ contributing fully to the collective decision (in terms of preparation, engagement and constructive challenge, decision-making process, requesting access to expert or legal advice as appropriate) and owning their part in that collective decision.</p> |
| <p>Principle 4, Accountability</p> <p>One of the Director Undertakings is: “Comply with my legal duties to the organisation, <u>fulfil my delegated responsibilities, and take personal responsibility for my actions</u>”.</p> | <p>We suggest that IoD (UK) reflect on the reference to “delegated responsibilities” which is confusing.</p> <p>Directors are not delegated responsibilities. Boards use board committees to support them in executing their responsibilities. Boards do not, and cannot, delegate their responsibilities, with the exception of the establishment of a Remuneration Committee. A Remuneration Committee can have delegated responsibility to set the remuneration of senior executives, following the principle that no person (e.g., CEO, CFO) should be involved in setting their own remuneration.</p> <p>We reiterate our earlier comment on personal responsibility for actions.</p> |

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| <p>Principle 4, Accountability</p> <p>One of the Director Undertakings is: “Reflect on whether I have the knowledge and skills required to fulfil my role as a director and, where appropriate, decline to serve on a board”.</p> | <p>We suggest that the IoD (UK) include a reference to a Director’s time commitment within this Undertaking.</p> |
| <p>Principle 5, Fairness</p> <p>One of the Director Undertaking is: “Make decisions on an objective and evidence-based basis”.</p> | <p>Boards make decisions under uncertainty, and it is not always possible to make decisions on an evidenced-based basis. Reiterating the point on collective decision making, we suggest the Undertaking be amended to the following:</p> <p>“Contribute to collective decision-making on an objective basis, in good faith armed with the information available to the board.”</p> |
| <p>Principle 5, Fairness</p> <p>Outcomes: “Ensuring that <u>your</u> decisions are made impartially...”</p> | <p>We suggest that this reference be changed to “your contribution to board decisions is made impartially”.</p> |
| <p>Principle 6, Responsible Business</p> <p>Opening paragraph includes: “Responsible Business requires <u>you</u> to align strategic objectives with creating favourable outcomes for stakeholders over the longer term”.</p> <p>Outcomes: “By linking the success of <u>your</u> organisation to that of wider society and the environment, you will contribute to a more sustainable and equitable future”.</p> | <p>We suggest that IoD (UK) consider changing the reference to “you” to “the board”.</p> <p>We suggest that IoD (UK) consider changing the reference to “your” to “the”.</p> |
| <p>Principle 6, Responsible Business</p> <p>One Undertaking is: “Consider the consequences of <u>my decisions</u> for society, local communities and the environment”.</p> | <p>We suggest that IoD (UK) consider changing the reference to “my decisions” to “board decisions” reflecting that the Director is contributing to a collective decision by the board.</p> |