



ICHAS

Section 2 (a) – Terms of Reference for Decision Making Structures

Subject:	Terms of Reference for the Board of Directors		
Date Approved by Board of Directors:		July 2021	
Policy Version	1/2021	Date due for Revision	July 2024

PURPOSE (including Scope of Functioning/Key Responsibilities and Accountabilities) The Board of Directors holds ultimate corporate and legal responsibility for the proper functioning of the College.

MEMBERSHIP

The Companies Act 2014, stipulates that every company with one exception must have a minimum of 2 directors and further stipulates that a director of a company:

- Cannot be under the age of eighteen. (Section 131).
- Cannot be a body corporate. (section 130)
- Cannot be an undischarged bankrupt. (section 132).
- Cannot be a director of more than 25 companies unless those other companies are exempted (section 142).
- Cannot be disqualified (section 160 1990 Companies Act/Chapter 4 Part 14 Companies Act 2014).

Composition:

The two company Directors are Mr. Declan Carey (also Company Secretary) and Prof. Denis Ryan (President).

Role and Responsibilities

There is an express statutory duty on the Board of Directors (and each director) of the company to ensure that the requirements of the Companies Act 2014 are complied with by the company.

Role of Company Secretary

The Company Directors appoint a Company Secretary who will commonly:

- Provide comprehensive legal and administrative support and guidance to the board of directors.
- Ensure that the board's decisions and instructions are properly carried out and communicated.

- Will ensure that the company complies with all relevant statutory and regulatory requirements.
- Assume responsibility for communication with the shareholders when required.
- Act as principal administration officer, liaising with staff, customers, suppliers, media and the board of directors.
- Execute important documentation on behalf of the company, together with a director.
- Keep up to date the various statutory registers which are required to be maintained by the company under the Companies Act 2014.

These include the:

- Register of members.
- Register of directors and secretaries.
- Register of directors' and secretaries' interests in shares and debentures.
- Register of the instruments which create charges.

The Company Secretary will:

- Ensure that statutory forms are completed and filed on time in the CRO.
- Deliver to the CRO copies of resolutions passed by the company.
- Convene meetings of members in compliance with statutory responsibilities.
- Keep or arrange for the keeping of minutes of directors' meeting and general meetings.
- Ensure that those entitled to do so may inspect company record.
- Ensure proper custody and use of the company seal.
- Ensure that company complies with its obligation to publish its name.
- Ensure that particulars relating to directors are shown on all business letters of the company.

Fiduciary Responsibilities of all Directors

The principal fiduciary responsibilities of a director are set out in Part 5 of the Companies Act 2014. The duties set out in the Act are not exhaustive and directors to consider obtaining legal advice concerning compliance with their duties.

There is a requirement on a director to:

- Act in good faith in what the director considers to be the interests of the company;
- Act honestly and responsibly in relation to the conduct of the affairs of the company;
- Act in accordance with the company's constitution and exercise his or her powers only for the purposes allowed by law;
- Not use the company's property, information or opportunities for his or her own or anyone else's benefit unless—
 - i. this is expressly permitted by the company's constitution; or

- ii. the use has been approved by a resolution of the company in general meeting;
- Not agree to restrict the director’s power to exercise an independent judgment unless—
 - i. this is expressly permitted by the company’s constitution; or
 - ii. the case concerned falls within subsection (2);
- Avoid any conflict between the director’s duties to the company and the director’s other (including personal) interests unless the director is released from his or her duty to the company in relation to the matter concerned, whether in accordance with provisions of the company’s constitution in that behalf or by a resolution of it in general meeting;
- Exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
 - i. the knowledge and experience that may reasonably be expected of a person in the same position as the director; and
 - ii. the knowledge and experience which the director has; and
- In addition to the general duty under section 224 (duty to have regard to the interests of its employees in general), directors will have regard to the interests of its members.

If a director of a company considers in good faith that it is in the interests of the company for a transaction or engagement to be entered into and carried into effect, a director may restrict the director’s power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.

Without prejudice to the director’s duty under subsection (1)(a) to act in good faith in what the director considers to be the interests of the company, a director of a company may have regard to the interests of a particular member of the company in the following circumstances.

Those circumstances are where the director has been appointed or nominated for appointment by that member, being a member who has an entitlement to so appoint or nominate under the company’s constitution or a shareholders’ agreement.

Company Secretary:

The duties of a company secretary are delegated to the position by the directors. There is no definitive term covering what this will entail. Directors must ensure a person is capable of doing the job.

Operating Procedures

Within the context of the general responsibilities set out above, the Board of Directors are charged with overall and ultimate responsibility to govern the operation of the College as a commercial, for-profit organisation, whose main roles and responsibilities can be summarised as engaging in appropriate activities necessary:

- To govern the College based on its strategic aims and objectives.
- To ensure that there are robust and competent governance structures to ensure both the academic capacity and financial viability of the College.
- To ensure compliance with statutory, regulatory and "best practice" in Higher Education.
- To act ethically in the interests of learners.
- To ensure that appropriate measures are in place to be fully compliant with the requirements of legislation and best practice in relation to "protection of enrolled learners" policies.
- To ensure that accounts for financial and performance audit are prepared and submitted on an annual basis.
- To approve financial budgets.
- To agree and approve salary levels.
- To ensure appropriate mechanisms are in place for the appointment of staff.
- To account to College stakeholders for annual performance.

Meeting Frequency: The Board of Directors will normally meet three times per year, normally convened by the Company Secretary.

- The Company Secretary will normally set the agenda for meetings of Board of Directors. Items for inclusion on the Agenda may be submitted to the Secretary with due notice by any director.
- The Company Secretary is responsible for ensuring that the Board of Directors receive accurate, timely and clear information.
- The Company Secretary should endeavour to ensure effective communication between Directors and members of Governing Authority.

Quorum: Meetings of the Board of Directors require both Directors to be in attendance.

Powers of Decision Making: As overall responsibility for the governance of the College and therefore, the functions of the College are the ultimate responsibility of the Board of Directors, decision making shall be performed by, or on the directions of the Board. It should be noted that the Board of Directors delegated authority to its Governing Authority for the proper governance of the College in 2011. Therefore, all acts and things done by and decisions made by a Governing Authority, or in the name of, or on behalf of the College with the express or implied authority of the Governing Authority, shall be deemed to have been done or made by the College.

Reporting Relationships: The Board of Directors has ultimate responsibility for the governance of the College. In keeping with recommendations from the HEA regarding good governance in Irish Higher Education, it has delegated governance responsibilities to Governing Authority to ensure compliance with best practice in Higher Education, legislative requirements and guidelines, good corporate governance and to ensure that its employees act in the best interests of the College. Therefore, it receives reports from

Governing Authority regarding such matters on a regular basis. It makes reports to Revenue, QQI, or other relevant authorities from time to time, or delegates these functions to Governing Authority.