

**IN THE MATTER OF SECTION 18(3)
OF THE INLAND FISHERIES ACT 2010**

REPORT

12 JULY 2022

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I. INTRODUCTION

1. On 27 April 2022 the Minister for the Environment, Climate and Communications¹ Mr. Eamon Ryan T.D. directed the carrying out of an independent review and report consequent upon his opinion that the functions of Inland Fisheries Ireland² were not being performed in an effective manner.
2. Subsequently, on 5 May 2022 I was appointed by the Minister in accordance with section 18(3) of the Inland Fisheries Act 2010³ to conduct this review. The following is the report setting out the results of that review.

II. APPOINTMENT & TERMS OF REFERENCE

3. The matters set out in the appointment and terms of reference dated 5 May 2022 which gave rise to the opinion of 27 April 2022 that an independent review and report were warranted arising from the ministerial opinion that the functions of IFI were not being performed in an effective manner relate to the issues raised in correspondence *inter alia* during the period 1 February 2022 and 27 April 2022, including: letters of 4 March and 7 April 2022 from the Assistant Secretary General, Department of the Environment, Climate and Communications⁴ to the Chairperson of IFI; a letter of 22 April 2022 from the Chairperson of IFI to the Assistant Secretary General; email notifications of 22 April 2022 from two Board Members and the Chief Executive Officer⁵ (who is an *ex officio* Board member) and subsequent letters of 24, 25/26 April 2022). My appointment and terms of reference further authorised consideration of the aforesaid correspondence and any other correspondence or records (including electronic records)⁶ and any matter which resulted in the opinion of 27 April 2022.

¹ Hereafter referred to as "the Minister."

² Hereafter referred to as "IFI" or "the Board."

³ Hereafter referred to as "the 2010 Act" or "IFA 2010".

⁴ D/ECC.

⁵ Hereafter "Chief Executive" or "CE."

⁶ The documentation reviewed included that generated prior to 1 February 2022 some of which was referenced in the correspondence dated 7 April 2022 and 22 April 2022.

4. In accordance with section 18(4) of the 2010 Act I have received, and record with appreciation, the full co-operation of all those persons who were requested to assist in the carrying out of this review. For example, I met with the Chairperson, [REDACTED] the Chief Executive Officer [REDACTED] (*ex officio* member of IFI) and all of the members of the IFI Board (together with the legal adviser of four of the Board members, Mr. Hugh Kane, Partner with Kane Tuohy LLP solicitors and Ms. Hanna Jendoubi from Mr. Kane's office) on Tuesday, 29 June 2022 at the Board's offices (after the June board meeting).⁷ This meeting was extremely constructive and of assistance in the completion of this review and report. In particular, I would also like to acknowledge the assistance which I have received throughout this process from [REDACTED] IFI Board Secretariat & Compliance Manager.

III. BACKGROUND

5. IFI's principal function is the protection, management and conservation of the inland fisheries resource.⁸ It is a body corporate with perpetual succession and with the power to sue and be sued in its corporate name and to acquire, hold and dispose of land or rights in, over or under land or water and acquire, hold and dispose of any other kind of property.⁹
6. IFI is responsible for promoting, supporting, facilitating and advising the Minister on the conservation, protection, management, development and improvement of inland fisheries, including sea-angling.¹⁰ In carrying out this role the Board has the stated aim of seeking to build and maintain the trust and confidence of those with whom it deals and to sustain a reputation for honesty, integrity, independence, transparency and fair dealing.¹¹

⁷ By way of hybrid meeting

⁸ Section 7(1) IFA 2010

⁹ Section 6(2) IFA 2010

¹⁰ Section 7(2) IFA 2010

¹¹ Code of Business Conduct for the Board of IFI governance Policy B03, p 3

7. In its Code of Business Conduct the Board states that it:

"...wishes to have a lasting and rewarding relationship with its stakeholders, the public, its parent department and the various fisheries interest both commercial and recreational, its employees, its suppliers, its customers, which includes the communities in which it operates.

The Board of IFI has a public profile and its activities are subject to public scrutiny. It is essential that Board members, individually and collectively, discharge their functions in an independent and transparent manner. While the highest ethical standards are required of all Board personnel, it is considered appropriate to provide specific guidance to members of the Board, in line with S.35 of the Inland Fisheries Act 2010, [who] 'must maintain proper standards of integrity, conduct and concern for the public interest'."¹²

8. This code further provides that Board members are subject to the provisions of the Ethics in Public Office Act 1995, and the Standards in Public Office Act 2001, as well as a general obligation to observe all applicable rules, regulations, legislation and laws including, but not limited to the Department of Public Expenditure's (DPER) Code of Practice for the Governance of State Bodies (2016). The Code of Practice for the Governance of State Bodies (2016) referred to in this report was accessed in June 2022 from www.gov.ie and is the version updated on 23 May 2022.

¹² Code of Business Conduct for the Board of IFI: governance Policy B03, p.3.

IV. REVIEW OF MATTERS GIVING RISE TO OPINION OF 27 APRIL 2022

9. Having reviewed the matters which gave rise to the opinion of 27 April 2022 (that a review and report were warranted because the functions of IFI were not being performed in an effective manner) and having had the opportunity to examine additional material and related documentation, the results of this review can best be encapsulated by a consideration of the functions of IFI under the following headings:

- Alleged Unauthorised Disclosure & Recommendations
- Collective Responsibility & Recommendations
- Internal and External Correspondence & Recommendations

10. This report examines these matters in detail and in setting out the results of that review¹³ makes recommendations as to how each of these matters can be addressed so that, in the future, the functions of the IFI can be performed in an effective manner.

The functions of IFI

11. The functions of IFI, of course, includes its powers and duties¹⁴ and the document entitled "Terms of Reference of the Board of IFI" issued in March 2022 sets out, for example, under a subheading "7. Duties" a number of Board duties.

12. These duties include at paragraph 7.4 that "[t]he Board shall satisfy themselves that financial controls and systems of risk management are robust and defensible"; at 7.9 "the Board shall keep under review corporate governance developments (including ethics-related matters) that might affect the State body, with the aim of ensuring that the State body's corporate governance policies and practices continue to be in line with best practice"; at 7.10 that "[t]he Board shall ensure that the principles and

¹³ Section 18(3)(a) of the 2010 Act.

¹⁴ Section 2(1) of the 2010 Act.

provisions set out in the Code of Practice for the Governance of State Bodies (and any other corporate governance codes that apply to the State body) are adhered to."

13. The principal function of IFI is the protection, management and conservation of the inland fisheries resource.
14. Further, for the purposes of performing its statutory functions, IFI is required to manage and report its business on the basis of that part of the following River Basin Districts which are situate within the State –(a) Eastern River Basin District (including the Neagh Bann River Basin District), (b) Western River Basin District, (c) South Eastern River Basin District, (d) South Western River Basin District, (e) North Western River Basin District, and (f) Shannon River Basin District – as defined in the Second Schedule to the European Communities (Water Policy) Regulations 2003.¹⁵
15. Other functions of IFI include *inter alia*: encouraging and developing angling for salmon, trout, coarse fish and sea fish and, for the purposes of any or all of those kinds of angling, provide such facilities and amenities, if any, as may be required;¹⁶ encouraging, promoting, organising and co-ordinating together with the inland fisheries owners, bodies and organisations, the voluntary development of inland fisheries catchment management plans and for that purpose have regard to the distinctive circumstances which pertain in each of the catchment systems and consult with and involve local authorities and other interested bodies and organisations;¹⁷ ensuring the effective and efficient deployment of resources, performance of functions, drawing up of estimates and the provision of services;¹⁸ administering schemes, grants and other financial facilities, including the disbursement of European Union and other funds.¹⁹
16. Further, it is clear that, apart from prescribed legislative exceptions, the statutory prohibition against the unauthorised disclosure of confidential information applies

¹⁵ S.I. No. 722 of 2003.

¹⁶ Section 7(3)(e) of the 2010 Act.

¹⁷ Section 7(3)(f) of the 2010 Act.

¹⁸ Section 7(3)(i) of the 2010 Act.

¹⁹ Section 7(3)(j) of the 2010 Act.

to a member of IFI or a committee of IFI, the chief executive or any other employee of IFI, a person engaged by IFI as a consultant or adviser (or an employee of that consultant/adviser) while performing functions.²⁰ In this case an infraction is alleged to have occurred sometime between the meeting of the Board on 2 March 2022 and the communication by way of e-mail from a third party on 10 March 2022.

17. The approved draft minutes of 2 March 2022 confirm that the Board met on that occasion for the performance of its functions²¹ and was quorate.²²

18. The financial report and controls of IFI are also an important statutory function²³ and, in particular, the adoption of annual Financial Statements for each financial year.²⁴ Indeed, acquisitions and disposals, contracts, financial reporting and controls and internal controls are among the matters which are included in the document entitled "Schedules of Decisions Reserved to the IFI Board of Directors" (issued in November 2016). Notably paragraph 14 of this document – under the subheading Internal Controls – provides:

14. Functions related to ensuring a sound system of control and risk management are in place including –

- *Receiving reports on, and reviewing the effectiveness of IFI risk and control processes to support its strategy and objectives;*
- *Undertaking an annual assessment of these processes;*
- *Approving an appropriate assessment for inclusion in the annual report."*

19. What can be described as "internal control" matters comprise an important function and responsibility of the Board and are a constituent part of the Financial Statement. In this case, this important issue and function cuts across a number of

²⁰ Section 36 of the 2010 Act.

²¹ As per section 20 of the 2010 Act.

²² As per section 20(5) of the 2010 Act, the quorum for a meeting of IFI is 5.

²³ Section 46 of the 2010 Act.

²⁴ Section 46(3) of the 2010 Act.

themes set out in this Report. For example, internal control issues were discussed in private session at the Board meeting on 2 March 2022, were the subject of an e-mail sent to the Minister on 10 March 2022, were addressed in the letter of 22 April 2022 and a question remained as whether the fact of an unauthorised disclosure had been brought to the Minister's attention. It is noted that a document entitled "Matters for Decision of the Board", which was part of a review of governance policies by ASM Ltd in November 2021 and was approved by the Board of IFI at its meeting on 2 March 2022, deleted²⁵ a previous verbatim version of Internal Controls as that set out above in paragraph 14 "Schedules of Decisions Reserved to the IFI Board of Directors" (issued in November 2016). This was explained by ASM Ltd in their November 2021 review as one of a number of minor recommendations for improvement and in this case it was recommended to remove the section on Internal Controls from the "Matters for Decision of the Board" as this described a responsibility of the Board rather than a decision that it can make (i.e. it was already a responsibility of the Board).

20. The document entitled "Schedules of Decisions Reserved to the IFI Board of Directors" (issued in November 2016) refers to other matters including *inter alia* the approval of all IFI policies including but not limited to: risk management; banking and treasury management; capital expenditure; health and safety; communications; corporate and social responsibility; employment (anti-bullying/harassment etc.) protected disclosures.

21. The document entitled "Schedules of Decisions Reserved to the IFI Board of Directors" (issued in November 2016) also refers *inter alia* to approval of codes of conduct²⁶, the approval of all requests to the Minister for the making of Bye-laws²⁷, striking and amending rates on fisheries in accordance with the powers under Part V of the Fisheries (Consolidation) Act 1959²⁸, the making and adoption of Standing

²⁵ Struck out in red coloured font.

²⁶ Section 35(3) of the 2010 Act.

²⁷ Section 57(1) of the 2010 Act.

²⁸ Section 7(10) of the 2010 Act.

Orders²⁹, decisions on the authorisation of person(s) to authenticate the seal of IFI³⁰ and in relation to legal proceedings and other matters.

V. ALLEGED UNAUTHORISED DISCLOSURE & RECOMMENDATIONS

22. The statutory prohibition against the unauthorised disclosure of confidential information applies to a member of IFI or a committee of IFI, the chief executive or any other employee of IFI, a person engaged by IFI as a consultant or adviser (or an employee of that consultant/adviser) while performing functions.³¹
23. In this case an infraction is alleged to have occurred sometime between the meeting of the Board on 2 March 2022 and the communication by way of e-mail from a third party on 10 March 2022.
24. The approved draft minutes of 2 March 2022 confirm that the Board met on that occasion for the performance of its functions³² and was quorate.³³ The letter from the Board dated 22 April 2022 states, however, that the information in the letter from the third party had been *"...discussed at several Board meetings over a long period and while it is possible that the leak could have come from the Board it is by no means certain or proven beyond reasonable doubt at this time."*
25. The approved minutes of the meeting of 2 March 2022 describe the meeting of the Board in private session, noting that the CE and the executive assistant had left the room and confirming that the important matter of Internal Control was discussed and commenced by reference to the following:

"...Members engaged in a lengthy discussion on matters which shall be proposed for inclusion in the Statement of Internal Control for 2021, currently being finalised by the executive as part of the

²⁹ Section 20(10) of the 2010 Act.

³⁰ Section 11(2) of the 2010 Act.

³¹ Section 36 of the 2010 Act.

³² As per section 20 of the 2010 Act.

³³ As per section 20(5) of the 2010 Act, the quorum for a meeting of IFI is 5.

*Financial Statements for submission to the Comptroller & Auditor
General (OCAG)..."*

26. These matters comprise important functions which are expressly reserved to the Board of IFI. The minutes of 2 March 2022 confirm that the Board Members' Private Session (or non-executive meeting) discussed *inter alia* the disbursement of the Dormant Accounts Fund during 2019 and 2020; the underperformance in a particular River Basin District; lease arrangements at Aasleagh Lodge and Cottages; insurance cover for the IFI fleet.
27. These matters also formed part of the response in the letter dated 22 April 2022 from the Board to the letter from the Asst. Secretary General dated 7 April 2022³⁴ where it was *inter alia* stated: "*...That non-executive meeting, which was minuted by the Board Secretary, considered and accepted the advice received which was that the Board should cease further discussion on these issues pending the completion of external reports providing full details. It was also agreed as per the advice to include these matters in the Statement of Internal Control (SIC) before the March 31st deadline...*"³⁵
28. Accordingly, as stated, these matters are set out in the subsequent Financial Statement (year end to 31st December 2021) which is dated 30 March 2022 and includes a concise reference to the role and functions of the Board under the sub-heading "Governing Statement and Board Members' Report".
29. The Financial Statement was signed on behalf of the Board by the then Chairperson on 30 March 2022. The financial statement, which itself is a function of the Board³⁶, states *inter alia* as follows:

³⁴Letter dated 22 April 2022, pp.2-3 which referred to (a) Aasleagh Lodge and Cottages; (b) Uninsured vehicles; (c) Dormant Accounts Grant. The reference to (c) in the letter dated 22 April 2022 appears to be in error and the paragraph is a continuation of (b) Uninsured vehicles.

³⁵ Letter dated 22 April 2022, p.3.

³⁶ Section 46 of the 2010 Act.

"...The Board of Inland Fisheries Ireland was established under S.6 of the Inland Fisheries Act 2010. The functions of the Board are set out in S.7 of this Act. The Board is accountable to the Minister for the Environment, Climate and Communications and is responsible for ensuring good governance and that the principal functions of the agency as set out under S.7 are performed. The Board performs this task by setting its strategic objectives and taking strategic decisions in all key business issues. The regular day to day management, control and direction of Inland Fisheries Ireland are the responsibility of the Chief Executive Officer (CEO) and the senior management team. Their focus is on delivering on the broad strategic direction set out by the Board, ensuring that all Board members have a clear understanding of the key activities and decisions relating to the entity, and of any significant risks likely to arise. The CEO acts as a direct liaison between the Board and management of Inland Fisheries Ireland."

30. Importantly, at paragraph 4.8 of the document entitled "Financial Statements (year end to 31st December 2021)" dated 30 March 2022 under the sub-heading Internal Control Issues, the following is stated:

"I confirm that the Board concluded an annual review of the effectiveness of the internal controls from 2021 on 30th March 2022. The following weaknesses in internal control were identified in relation to 2021 and required disclosure in the financial statements. Dormant Accounts Funding (DAF) – The Board of IFI requested that internal audit consider the use of DAF drawn down by IFI during the course of 2019 and 2020. The review was envisaged as a fact-finding exercise to inform the Board and to enable them to consider appropriate next steps. The internal audit review outlined a number of areas for improvement including the evaluation process for DAF grants, and ensuring sufficient arrangements are in place to evidence

that the benefits of the funding flows primarily to the DAF target groups. The Board of IFI believe that lessons have been learned and that new processes in place would correct the issues outlined by the internal audit as a need of improvement.

The Board of IFI are seeking further assurance that a specific asset in the West of Ireland has been appropriately managed and is fully contributing to IFI statutory responsibilities. The report findings are awaited.

IFI suffered a breakdown in internal control processes in relation to fleet insurance, that resulted in a delay of appropriate insurance cover. New procedures are in place to address the fault in the process and an estimate of the potential liabilities included in note 5 of the financial statements presented herewith.

Past year-end IFI received an unsubstantiated allegation in writing regarding its protection function. The communication was copied to the Minister for the Environment, Climate and Communications, Eamon Ryan T.D., IFI is confident that it is in a position to fully refute this allegation.

Included in the above communication was a criticism of IFI's management of an invasive species of aquatic weed in the West of Ireland. In response to this criticism, which poses a significant reputational risk to the Organisation, IFI proposes to draft a response to each of the issues raised.

Within the above correspondence to the Minister a further assertion was raised regarding the deployment IFI's RIB Fleet at night. To provide the necessary assurance regarding the use of this significant asset, a report has been commissioned and shall be shared with the C&AG in due course."

31. The Internal Control Issues set out above at paragraph 4.8 of the Financial Statement reflect the discussions of the Board on 2 March 2022 where the minutes of that date show that the Board Members' Private Session (or non-executive

meeting) discussed inter alia the disbursement of the Dormant Accounts Fund during 2019 and 2020; the underperformance in a particular River Basin District; lease arrangements at Aasleagh Lodge and Cottages; insurance cover for the IFI fleet.

32. The reference to these matters and functions also formed part of the response in the letter dated 22 April 2022 from the Board to the letter from the Asst. Secretary General dated 7 April 2022³⁷ as follows:

"...That non-executive meeting, which was minuted by the Board Secretary, considered and accepted the advice received which was that the Board should cease further discussion on these issues pending the completion of external reports providing full details. It was also agreed as per the advice to include these matters in the Statement of Internal Control (SIC) before the March 31st deadline..."³⁸

33. The e-mail dated 10 March 2022 from a third party sent to *inter alia* the Minister alleged concerns about management practices of IFI including *inter alia*: the weed removal programme for Lough Corrib; protection and the cost of same; uninsured vehicles; high powered boats and lack of personnel; the outreach programme and money drawn down from Dormant Accounts; the running of Aasleagh Lodge and associated cottages and included the alleged assertion that *"When questioned about this by the Board of Directors, it was passed over following an internal investigation by the executive..."*

34. The e-mail of 10 March 2022 inter alia stated that the *"management of the state agency for the conservation and protection of fish in Ireland should be questioned, in particular the [REDACTED] and [REDACTED]"*

³⁷ Letter dated 22 April 2022, pp.2-3 which referred to (a) Aasleagh Lodge and Cottages; (b) Uninsured vehicles; (c) Dormant Accounts Grant. The reference to (c) in the letter dated 22 April 2022 appears to be in error and the paragraph is a continuation of (b) Uninsured vehicles.

³⁸ Letter dated 22 April 2022, p.3.

the [REDACTED]. *There could be serious breaches of management and professional conduct within a state agency, and this should be brought before the Public Accounts Committee...*"

35. This alleged disclosure of information (without Board authorisation) as set out above, in and of itself, provides the basis for deciding on 27 April 2022 that an independent review and report was warranted arising from the opinion that the functions of IFI were not being performed in an effective manner. Consequently, the documents examined as part of this subsequent review, particularly those from 2 March to 10 March 2022, suggest that the e-mail dated 10 March 2022 from a third party referred to functions of the Board which had been discussed at the Board meeting on 2 March 2022.³⁹ This, in turn raised concerns about the alleged disclosure of information without the Board authorising such disclosure during the performance of its functions. In my assessment while there is not a basis – from the alleged disclosures and the information and documentation which has been reviewed– for the Minister to be satisfied that the functions of IFI are not being performed in an effective manner such as to effect the removal of all of the members of IFI from office⁴⁰, there is a compelling case for the Board to give meaningful application to section 36 of the 2010 Act which provides for the unauthorised disclosure of confidential information together with the power for IFI to impose an appropriate sanction in that section 36(4) provides that where a person fails to comply with the requirements of section 36, IFI shall decide the appropriate action (including removal from office or termination of contract) to be taken. Accordingly, a recommendation to give effect to these provisions is set out below.

36. Before addressing this recommendation, to recap, the issue of the alleged disclosure of confidential information was summarised, for example, in the CE's briefing note to the Board, dated 22 March 2022 which also sets out the potential

³⁹ The letter dated 7 April from the Assistant Secretary General to the then Chairperson also alleged an earlier disclosure in relation to the Midlands Fishery Permit which appeared to have informed an erroneous newspaper article which had to be corrected with resultant reputational damage to IFI.

⁴⁰ Section 18(1) of the 2010 Act.

significance of this issue. The details are set out in paragraph 5 on page 3 of that briefing note which states as follows (with appropriate redactions made):

"Communication from [X] and corresponding communication from DEEC.

On 11th March the CEO received correspondence from [X] to the Board's secretary, this correspondence had been sent by [X] directly to a Board member, Minister Ryan and others. This correspondence is deeply concerning, and it is disconcerting that matters discussed during 'Private Members Time' during a Board meeting would be shared with the public in this way. Of additional and immediate concern is the governance issues that this raises due to breaches of Code of Practice for the Governance of State Bodies.

The letter to Mr. Ryan named several executives and presents a number of positions that would suggest that those executives are frustrating the giving of information and should be questioned. The letter further implies that senior executives including the CEO could be involved in serious breaches of management and professional conduct, and that these matters should be brought before the PAC.

As CEO and a member of the Board of IFI, I am obliged to advise the Chair and Board of matters that are at risk to the Board. I am equally obliged to do same with our parent department and the Minister if warranted. This includes financial reputational, compliance and strategic risk areas, and ask [the] [B]oard for strategic advice and help to resolve same. It is also incumbent on me to minimise risk to our parent department and to the Minister of the day by way of internal processes and mitigation measures depending on the issue at hand.

I will continue to do this in the knowledge that there is now a high degree of risk that sensitive information will enter the public arena in advance of DEEC or the Minister being aware of same. This is an unsustainable position on so many fronts. I am now asking the Chair of the Board to notify Minister Ryan of this issue under section 3.3 of the Code of Practice for Governance of State Bodies."

37. The question of alleged disclosure of information or matters being discussed by the Board by anyone is a very serious matter and is hugely damaging for the cohesiveness and collaborative work of any Board. It is, however, almost impossible to determine after the event the provenance of the alleged disclosure of information which had been discussed at the Board meeting. Section 36 of the 2010 Act, however, provides for the unauthorised disclosure of confidential information together with the power for IFI to impose an appropriate sanction and would, therefore, provide an appropriate, effective, proportionate and dissuasive deterrent for future cases.

38. For example, subject to the provisions of S.36(2), S.36(1) of the 2010 Act states that:

"Except in those circumstances a person shall not disclose confidential information obtained while performing functions as

(a) a member of IFI or a Committee of IFI..."

Section 36(3) provides that confidential information means the following:

"...(a) Information that is expressed by IFI to be confidential, either as regards particular information or as regards information of a particular class or description; and

(b) proposals of a commercial nature or tender submitted by any person."

39. Section 36(4) of the 2010 Act provides that where a person to whom section 36 applies fails to comply with the requirement of the Section, IFI shall decide the

appropriate action (including removal from office or termination of contract) to be taken.

40. It is clear, therefore, that section 36 of the 2010 Act allows certain information to be deemed to be confidential information by IFI with a sanction to be imposed by IFI in the event that a person fails to comply with such a requirement. The following Recommendation, if adopted by IFI, will assist in seeking to ensure the confidentiality of information.

RECOMMENDATIONS

41. A document entitled **Statement of Board Members' Responsibilities** was drawn up in **November 2018** (with a review suggested for October 2021) and sets out *inter alia* Board Members' responsibilities, obligations, duties and other related matters.

42. Of particular relevance is paragraph 6 under a sub-heading "**Confidentiality**" on page 7 of the November 2018 document (version 3.0) which records as follows:

"At its meeting in November 2018 the Board of Inland Fisheries Ireland resolved at that:-

- 1. All documents, information and data (whether in electronic form) that are provided to members of IFI or the contents of which are disclosed to the members of IFI;*
- 2. All discussions that take place at meetings of the members of the Board of IFI;*
- 3. All other information and data that are learned by members of the Board of IFI in the discharge of their functions as members of IFI;*
- 4. All and any information belonging to IFI including tactical information (whether or not recorded in documentary form or on computer disc or tape) relating to the affairs, organisation*

and business methods, corporate plans, management systems, finances, new business opportunities or research and development projects of the IFI;

5. *All and any trade secrets, secret formulae, process, inventions, decisions, know-how, discoveries, tactical specifications and other tactical information (whether or not recorded in documentary form or electronically) belonging to IFI relating to the creation, production or supply of any past, present or future product or service of the IFI;*

are, and is, for the purpose of Section 36(3)(a) of The Inland Fisheries Act 2010 hereby expressed and declared to be "confidential information" for the purpose of Section 36 of that Act."

"It is important to note that in the event of there being an unlawful disclosure of confidential information as defined then Section 36 of the Act empowers IFI to take appropriate action against the wrongdoer."

43. In the same document under sub-heading "7. Communication" (on page 7) it states as follows:-*"Further to a resolution at its meeting in November 2018, the Board of Inland Fisheries Ireland resolved at that:- 'In furtherance of s.35(1) of the Act and if operating to proper standards of integrity, conduct and concern for the public interest, members of IFI should refrain from issuing communications to employees and other stakeholders, where such communications have not been discussed first by members at a meeting of the Board and agreed as being appropriate'."*
44. The application of section 36 of the 2010 Act, at the commencement of every meeting of the Board, in the expansive manner set out in paragraph 6 "Confidentiality" of the document **Statement of Board Members' Responsibilities** will provide an a priori check on the unauthorised disclosure of any information

from the Board and would allow for the giving of an appropriate sanction by IFI as provided for in section 36 of the 2010 Act.

45. While it is noted that the letter dated 22 April 2022 states that *"in view of the serious nature of this leak of information the Board has decided to enter into a procurement process to obtain the services of a governance expert to appraise all Board members and the executive of their responsibilities, address cybersecurity and to ensure adequate security going forward..."* the implementation of this recommendation will deal with this issue immediately and comprehensively.⁴¹

VI. COLLECTIVE RESPONSIBILITY & RECOMMENDATIONS

*"Collective Responsibility: The collective responsibility and authority of the Board should be safeguarded. All Board members should be afforded the opportunity to fully contribute to Board deliberations, and where necessary to provide constructive challenge, while excessive influence and Board decision-making by one or more individual members should be guarded against."*⁴²

46. The above quotation emanates initially from the Code of Practice for the Governance of State Bodies (2016) and the term collective responsibility, as so defined, forms part of the code's core provisions, the others being: leadership, ethical standards, compliance, board oversight role, advice to the Minister. Collective responsibility and Advice to Minister are two of the core codes which are discussed in this report.

47. The term collective responsibility is, of course, well-known in other codes. The Government, for example, is collectively responsible to the Dáil and in constitutional terms collective responsibility means that the Government speaks as one collective

⁴¹ Reference is made in both letters dated 7 April 2022 and 22 April 22 to an alleged earlier unauthorised disclosure in relation to a Midlands Fishery Permit.

⁴² This is quoted at paragraph 1 (p.4) under the sub-heading "Board Members' Responsibilities" in the "Statement of Board Members' Responsibilities" dated November 2018 (Version 3.0)

authoritative body.⁴³ Similarly, an aspect of collective responsibility in many jurisdictions has two principle aspects insofar as executive government is concerned: first, ministers should be able to have free and frank confidential discussions prior to coming to a collective decision; second, once a position has been agreed in cabinet all ministers are expected to abide by that position.

48. There are, therefore, common attributes which apply across all codes, whether legal or governance, to the notion of collective responsibility.

49. Insofar as IFI is concerned, the incorporation of the term “collective responsibility” in the “Statement of Board Members’ Responsibilities” dated November 2018⁴⁴ refers in effect to the meaningful engagement of Board members in the context of the authority of the Board’s decision-making.

50. Accordingly, the recommended governance code of collective responsibility is intended to inform and guide decision-making processes including the mechanical process of decision-making prescribed under the 2010 Act and in Standing Orders. It is to that which I now turn.

51. In terms of what might be described as ‘the mechanics’ of decision-making, in accordance with section 20(7) of the 2010 Act, each question at a meeting is required to be determined by a majority of the votes of the members present and voting on the question. Section 20(8) of the 2010 Act provides that: “*In the case of an equal division of votes, the Chair or other member presiding at the meeting has a second or casting vote.*” Section 20(11) of the 2010 Act provides that: “*Non-compliance with a standing order of IFI does not invalidate a decision of the Board of IFI.*” Section 20(12) of the 2020 Act provides that: “*The Board of IFI may perform any of its functions through or by any of its’ officers or servants or any other person duly*

⁴³ Article 28.4.2° of the Constitution provides that “[t]he Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.” See also Article 28.11.1° of the Constitution which provides that “...[i]f the Taoiseach at any time resigns from office the other members of the Government shall be deemed also to have resigned from office, but the Taoiseach and the other members of the Government shall continue to carry on their duties until their successors shall have been appointed.”

⁴⁴ Version 3.0.

authorised in that behalf, but nothing in section 20(12) shall be construed as enabling any person to execute on behalf of IFI any document under Seal.”

52. The most recent Standing Orders of the IFI Board are dated March 2021. Again the Standing Orders provide at paragraph 3.1 (on page 5) that each question at a meeting shall be determined by the majority of the votes of the members present and voting on the question and makes reference to section 20(7) of the 2010 Act. Standing Order 3.5 also provides that particular questions may be determined by secret ballot where such a course is requested by any one member present and voting; and Standing Order 3.6 provides that a Motion or an amendment, when not seconded, shall fail.
53. While the import of Standing Order 4.4 is very clear, the final sentence is somewhat superfluous and consideration should be given to having it deleted. For example, S.O. 4.4 provides that any statements emanating from the Board should come from the Chair or Chief Executive only or other persons duly authorised by the Board and “...[t]he Board speaks with one voice or does not speak at all...” (It is recommended that the line “...[t]he Board speaks with one voice or does not speak at all...” should be deleted).
54. The Board’s decision-making functions are also set out in paragraph 9, pages 7 to 8, and sub-paragraphs 9.1 to 9.6 of the document entitled “*Terms of Reference of The Board of IFI*”. The latest version of that document is March 2022. In addition to the statutory provisions, described above, this document provides at paragraph 9.5 for *collective responsibility*⁴⁵ and at paragraph 9.6 for openness and debate. Appendix 1 to the document is entitled “Inland Fisheries Ireland Act 2010” under sub-heading “Meetings and Procedures” and includes an extract of section 20 of the 2010 Act.
55. The draft minutes of the Board meeting of Wednesday, 20 April, 2022 refers to the draft response to the letter from the Asst. Secretary General dated 7 April, 2022.

⁴⁵ In the manner referred to above and defined at paragraph 1 (p.4) under the sub-heading “Board Members’ Responsibilities” in the “Statement of Board Members’ Responsibilities” dated November 2018 (Version 3.0)

The specific subject matters referred to in the (subsequently issued) letter of 22 April, 2022 have been addressed in the earlier part of this report under the sub-heading "Alleged Unauthorised Disclosure & Recommendations." I have also had sight of an initial draft of the letter which became the letter dated 22 April, 2022. It appears that the issue of providing a collective response was discussed in detail at the meeting. The draft minutes of the meeting dated 20 April, 2022 suggest that the final draft of the letter was the subject of a vote where three abstentions are recorded.

- 56 Both the initial letter from the Asst. Secretary General dated 7 April, 2022 and the response dated 22 April, 2022 referred to the collective response of the Board.
57. In this case, the issue arises in the context of the manner of the response by the Board on 22 April 2022 to the matters raised in the letter from the Asst. Secretary General dated 7 April 2022. It appears that a pre-drafted draft letter was put forward by the Chairperson, at that time, for consideration, amendment and agreement by the members
58. The matters raised by the CE in correspondence dated 26 April 2022 which touch upon a decision he took (as CE) on 1 February 2022 on foot of a protected disclosure are outside the scope of this review and are the subject of a separate process. The CE's view that this was connected to the subsequent letter sent by a third party to the Minister on 10 March 2022 is also outside this review. The fact of the letter of 10 March 2022 and its contents are, of course, within this review and have been addressed in the earlier part of this report under the sub-heading "Alleged Unauthorised Disclosure & Recommendations."
59. The point of importance so far as this review is concerned which arises from *inter alia* – the e-mail of 22 April 2022 from the CE to the Asst. Secretary General, the e-mail of 22 April 2022 from the CE to the other Board members; the correspondence from the CE to the Minister dated 26 April 2022; the e-mail of 21 April 2022 from the [REDACTED] to the other Board members; the letter of 24 April 2022 to the

- Minister; the e-mail from ██████████ to the Board dated 21 April 2022; the letter from ██████████ to the Minister dated 26 April 2022 – is the stated concern from three members of the Board (the CE being *ex officio*) that the manner of responding to the Asst. Secretary General’s letter of 7 April 2022 in the letter dated 22 April 2022 did not reflect, in their view, a collective response. It should be noted, of course, that this view does not appear to have been shared by the other members of the Board.

RECOMMENDATIONS

- 60 The general point being made is that the Asst. Secretary General’s letter of 7 April 2022 raised issues of such fundamental importance that it would have been arguably preferable if the starting point for the consideration of a response had been a discussion of the issues by the Board, in the first instance, which would then evolve into a consensus for responding rather than commenting upon and editing a pre-prepared first draft
61. Generally speaking it is, of course, the case that not every response from a Board to issues which arise would require a “first discussion then draft” response. It is normal practice that routine draft letters dealing with a range of issues are put before a Board for consideration, amendment and approval.
- 62 However, in this case, it would appear that the issues raised in the Asst. Secretary General’s letter of 7 April 2022 were of such fundamental importance that it required, in at least three members’ views, a more organic and iterative approach, and one which was preceded by discussion before determining the response, and certainly before any written response was contemplated. These views were articulated robustly by the members concerned as is apparent in the subsequent e-mails and correspondence which issued after the letter of 22 April, 2022 had been sent. This view was not, of course, shared by the other members of the Board who

were satisfied with an approach where a pre-prepared draft was discussed, amended and agreed.

63. In the circumstances, and in order to address similar matters arising in the future, it is recommended that the following proposed draft Standing Order be adopted by the Board:

"...In order to give effect to the collective responsibility and authority of the Board and to afford all Board members the opportunity to contribute to its deliberations and decision-making, where any issue arises in relation to a communication received by IFI, any Board Member (including ex officio members) can request that such communication be set down, in the first instance, for consideration by the Members of the Board who after considering same can request the Chief Executive to draft a response as per the directions of the Board..."

64. It is recommended that Standing Order 3.5 be deleted:

~~*"3.5 Particular questions may be determined by secret ballot where such a course is requested by any one member present and voting."*~~

65. It is also recommended that Standing Order 4.4 be amended by deleting the last sentence:

~~*"4.4 Any statements emanating from the Board should come from the Chair or Chief Executive only or other persons duly authorised by the board. The Board speaks with one voice or does not speak at all."*~~

VII. INTERNAL & EXTERNAL COMMUNICATIONS & RECOMMENDATIONS

Internal: Meetings & Procedures

66. Meetings and procedures of the Board of IFI are provided for in the 2010 Act⁴⁶ and subject to the 2010 Act, IFI is obliged to regulate, by standing orders or otherwise, the procedures and business of IFI.⁴⁷
67. Standing Order 1.6 provides that the *"Board meeting papers which will include the agenda and draft minutes of previous meeting shall be sent to each member in hard copy at least seven days in advance of each meeting, or by any other appropriate, secure electronic/digital medium subject to agreement."*
68. Standing Order 2.4 provides that *"[t]he agenda and order in which agenda items are taken shall be agreed by the Board at the beginning of each meeting. [Chairman to articulate this agreement at outset of meetings.]"*
69. Standing Order 2.5 provides that *"At all meetings of the Board the transaction of business shall be confined to the matters specified in the Agenda."⁴⁸*
70. Standing Order 2.6 provides that *"All notice from members of intention to place an item or a motion on the Agenda shall reach the Chair and Chief Executive at least 10 working days before the date of the next meeting and shall be accompanied by supporting documentation—sufficient to allow the Board to make a decision on the matter, if required. Under exceptional circumstances a notice may be submitted no less than 7 working days before the Board meeting date."*
71. From my review of matters, there is very helpful guidance across a range of documentation in dealing with disclosure requirements (potential conflicts, etc,) when members are present at a Board meeting. For example, the "Code of Business

⁴⁶ Section 20 IFA 2010.

⁴⁷ Section 20(10) IFA 2010.

⁴⁸ Underlining included in S.O. 2.5 as currently drafted.

Conduct for the Board of IFI (Incl. Policy on the Disclosure of Interests by member)” includes an extract from the Code of Practice for the Governance of State Bodies 2016 (5.8 Disclosure of Interest by Board Members) which provides for “(vi) *Documents withheld: Board or State body documents on any deliberations regarding any matter in which a member of the Board has disclosed a material interest should not be made available to the Board member concerned.*”

72. There does not, however, appear to be similar guidance as to what is to be done when, for example, correspondence is sent to a Board member and/or notified to the Department and there is a disagreement as to whether such correspondence should be put before the entire of the Board members in their plenary meetings. Such a scenario arose from matters raised in communications which occurred between 22 December 2021 and 24 February 2022.

73. In correspondence dated 22 December 2021 the Asst. Secretary General of D/ECC corresponded with the then Chairperson of the Board over *inter alia* alleged complaints by a Board member against the department and departmental official and requested that this matter be brought to the attention of the full Board.⁴⁹ While these matters were ultimately resolved, the issue of principle which arises concerns the circumstances of when correspondence sent to an individual Board member, whatever the subject matter, should be put before the Board when requested by a party, for example a department official, a stakeholder or a third party.

74. As stated, the subject matter of this correspondence appears to be now resolved. For the purpose of this review, the decision not to put the correspondence before the full Board (despite the request to do so by the Asst. Secretary General to contribute to good governance) was communicated orally by the then Chairperson to the Asst. Secretary General of D/ECC and an undated (and unsent) signed response from the Chairperson references a discussion on 22 February 2022 which states that the Asst. Secretary General disagreed with the decision not to bring the letter of 22 December 2022 to the attention of the Board but accepted the

⁴⁹ This was raised as the third issue in the Assistant Secretary General’s letter to the Chairperson dated 7 April 2022.

Chairperson's bona fides for arriving at that position. The Chairperson then records *inter alia* in an e-mail that he expressed his intention to send the undated (and unsent) signed response but it was indicated that this was not required. The undated (and unsent) signed response appears to have been sent by the then Chairperson to the Board's Secretariat & Compliance Manager "to place it on the Board record with this explanatory e-mail attached." The unsent (and undated) letter *inter alia* records (a) the Asst. Secretary General suggesting in conversation with the Chair on 8 February his opinion that bringing the letter of 22 December 2021 to the attention of the Board members would contribute to good governance and states that this did not allay the Chairperson's concerns; (b) the Chairperson having consulted with the Chair of the Board's Audit & Risk Committee who is said to have concurred with Chairperson's opinion that it would be unwise and counterproductive to put the letter in the Board's papers and that he had also received other professional advice to the same effect; (c) that the letter of 22 December 2021 would not be included in the Board pack as the Chairperson considered for a number of reasons *inter alia* that it would not contribute positively to good governance and that the matter had been resolved. The Chairperson stated that his primary duty and responsibility was to protect the Board and IFI from any potentially adverse consequences.

75. The documents do confirm that the matter was considered in some detail by the Chairperson and that he took advice on his proposed course of action.
76. Whatever about the merits of the matters considered, it is procedurally unclear what the purpose was, of placing the undated and unsent response "*on the Board record with [the] explanatory e-mail attached*". Presumably the document (and the other documents which it addresses) would become available to the other Board members being, as they were, on the Board record.
77. Also, it potentially placed the Board's Secretariat & Compliance Manager in a difficult situation in terms of their position vis-à-vis the Board.

78. The matter is somewhat procedurally complicated because the status of the document signed by the Chairperson is uncertain. It does not comprise the seal of IFI because the seal of IFI is authenticated by the signature of (a) the chairperson of IFI or another member of IFI or (b) a member of staff of IFI *authorised by IFI to act in that behalf*.⁵⁰

79. The seal of IFI is important because judicial notice is taken of the seal of IFI and every document purporting to be an instrument made by IFI and to be sealed with the seal of IFI (purporting to be authenticated in accordance with section 11(2) IFA 2010) is received in evidence and is deemed to be such instrument without further proof unless the contrary is shown.⁵¹

80. Helpfully, paragraph 1.5⁵² of the Code of Practice for the Governance of State Bodies (2016) in relation to the “Board Oversight Role” provides that the management of the State body has a duty to provide the Board with all necessary information to enable the Board perform their duties to a high standard. In addition, the Board of the State body should take all necessary steps to make themselves aware of any relevant information and access all information as necessary. The code further states that while the Board of a State body may establish an Audit and Risk Committee to assist with its consideration of issues relating to audit, governance and risk management, the Board of the State body maintains responsibility for and makes the final decisions on all of these areas.

Relations between the Board & its executive

81. In the letter dated 7 April 2022 from the Asst. Secretary General reference is made to the chief executive (“CE”) who is an *ex officio* member of the Board of IFI⁵³ being excluded from the element of the Board meeting of early March (2 March 2022) during which discussion centred on compliance issues, most of which had been brought to the Board’s attention by the CE. The letter referred to this exclusion

⁵⁰ Section 11(2) of the 2010 Act.

⁵¹ Section 11(3) of the 2010 Act.

⁵² Page 14.

⁵³ Section 23(7) of the 2010 Act.

raising concerns regarding the current state of the Board's relationship with the Executive.

82. The reference to the Board meeting at least twice a year without executive Board members or management present to discuss any matters deemed relevant formed the first part of the response in the letter dated 22 April 2022 to the letter of 7 April 2022 about the CE being excluded from the element of the Board meeting of March 2022 during which discussion centred on compliance issues, most of which had been brought to the Board's attention by the CE.
83. The practice of the Board meeting at least twice a year without executive Board members or management present to discuss any matters deemed relevant is found in paragraph 1.7⁵⁴ and the second half of paragraph 4.9 of the current Code of Practice for the Governance of State Bodies (2016). This refers to "Matters for Decision of the Board" and suggests *inter alia* that "*The Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant.*"
84. This also finds expression in Standing Order 4.5 in the March 2021 (Version 3.1) copy of Standing Orders of the Board of IFI⁵⁵ which provides that "[i]t is recommended in the Code of Practice for the Governance of State Bodies 2016 for the Board to meet at least on two occasions per annum without the Executive being present."⁵⁶ It is also noted that paragraph 4.2 (under the sub-heading "Frequency of Meetings") of the document entitled "Terms of Reference of the Board of IFI" (March 2022) states that "*the Board should meet at least twice a year without Executive Board members or management present to discuss any matters deemed relevant [4.9 Frequency of Board Meetings – CoPGSb16].*"

⁵⁴ Page 14. This version of the Code of Practice for the Governance of State Bodies (2016) was accessed on 27 June 2022 from www.gov.ie and is the version which appears to have been updated on 23 May 2022.

⁵⁵ Page 7.

⁵⁶ Underlining and bold in the original S.O. 4.5

85. It appears, however, that the letter of 7 April 2022 was more concerned with the Board's relationship with the Executive rather than the practice of the Board meeting twice a year without the executive Board members. This also appears to be confirmed in the second part of the response in the letter dated 22 April 2022 from the Board to the letter from the Secretary General dated 7 April 2022 where after referring to the fact that the non-executive meeting (of 2 March 2022) had discussed (a) Aasleagh Lodge and Cottages; (b) Uninsured vehicles; (c) Dormant Accounts Grant and that these matters were pending the completion of external reports and would be included in the Statement of Internal Control (SIC) before the March 31st deadline, added as follows:

"...At the conclusion of the meeting the matters discussed were fully conveyed to the CEO by the Chair and accompanied by the Board Secretary and Executive Assistant to the CEO. Fulsome support was expressed for the CEO in his dealing with legacy issues and recent issues we have encountered and there was an acceptance that the Board will provide any assistance necessary to the CEO (including, perhaps an executive assistant) to ensure that he has the resources to bring issues effectively and efficiently to a successful conclusion..."

86. Further, (and as referred to earlier) by letter dated 26 April 2022⁵⁷ the CE had subsequently written to the Minister expressing his dissatisfaction with the manner in which IFI had responded to the letter of 7 April 2022 from the Asst. Secretary General in the period during 19 April 2022 to 20 April 2022 which resulted in the letter of response dated 22 April 2022. The Board had met on 20 April 2022 to inter alia respond to the letter of 7 April 2022. The CE also expressed concern about other matters, including that as of 26 April, 2022 the CE was of the view that the unauthorised disclosure of information had not been "officially communicated" to the Minister under the Code of Practice for the Governance of State Bodies by the Board of IFI.

⁵⁷ An e-mail to similar effect was sent by the CEO to the Asst. Secretary General on 22 April 2022 enclosing an e-mail in similar terms sent to Board members.

RECOMMENDATIONS

87. It is recommended that clear guidance should be given to the Board members when faced with a question of whether correspondence, whatever the subject matter, should be put before the Board in plenary session (and generally brought to the Board's attention) when requested by a party, for example a department official, a stakeholder or a third party.

88. This can be achieved by amending Standing Orders by including the following proposed Standing Order:

"Meeting arrangement....

1.8.1 All communications (including electronic communications) sent to a member of IFI or a committee of IFI, the chief executive or any other employee of IFI or a person engaged by IFI as a consultant or adviser (including its employee) concerning or relating to IFI in any way, shall be forwarded to the Chief Executive and the Secretary to the Board for consideration for inclusion in the Board papers for the next Board meeting and, if necessary, the Chief Executive Officer's Briefing Note, subject to the application of the provisions of these Standing Orders and any other codes, including provisions dealing with a potential conflict of interest..."

89. The Board should also consider a new Standing Order– for example, a proposed new S.O. 2.4 – which addresses responsibility for drawing up the items on the agenda before a meeting of the Board takes place and also sets out the documents which are to be included in the packet of papers that are furnished to each Board member prior to the plenary meeting. This is a separate and distinct requirement from "the

order in which the agenda items are taken" which is agreed at beginning of each meeting of the Board.

90. Third, the relationship between the CE (the executive generally) and the Board members is extremely important. The governance procedure which stipulates that "the Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant" should be formalised rather than being implemented in an *ad hoc* way.

91. It is recommended that these meetings should comprise an organised process where the dates for such meetings are agreed in advance by those members of the Board and each meeting should encourage an open discussion which gives the members who are present an opportunity to reflect and review on any matter(s) which they deem relevant.

Review

92. As part of a broader review, consideration should be given by the Board of appointing consultants to review the structural relationship between the Board and the CE including:

- an examination of the benefits of delegating certain functions of the Board to the CE⁵⁸ in addition to his or her responsibility (i) to carry on, manage and control generally the staff, administration and business of IFI⁵⁹ and, (ii) for the implementation of the policies of IFI⁶⁰ ;
- drawing a clear line of demarcation between the Board's functions and that of the CE;
- the use of the committees prescribed under the 2010 Act which allow, for example, the Board to appoint to a committee, persons who are not members of

⁵⁸ Section 16(1) of IFA 2010. See also the provisions of section 20(12) of IFA 2010 which provides that "[t]he Board of IFI may perform any of its functions through or by any of its' officers or servants or any other person duly authorised in that behalf, but nothing in Section 20(12) shall be construed as enabling any person to execute on behalf of IFI any document under Seal."

⁵⁹ Section 24(1) of IFA 2010.

⁶⁰ Section 24(2) of IFA 2010.

IFI but who have special knowledge and experience related to the purposes of the committee.⁶¹

Communications with the Minister for/Department of the Environment, Communications & Natural Resources

93. The role of IFI, in addition to its delegation powers, includes the mandatory provision that *"IFI shall inform the Minister of any matters that it considers require the Minister's attention."*⁶²

94. This is a function of the Board of IFI and gives a discretion to the Board in their consideration of matters which should be brought to the Minister's attention.

95. Paragraph 1.6⁶³ of the Code of Practice for the Governance of State Bodies (2016) in relation to "Advice to Minister" provides that *"[t]he Board should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body."* This places an obligation on the Board and the Chairperson.

96. Paragraph 3.3⁶⁴ (previously paragraph 3.4) of the current Code of Practice for the Governance of State Bodies (2016) addresses "Non-compliance" and provides that *"...if a Board member/Director finds evidence that there is non-compliance with any statutory obligations that apply to the State body, he/she should immediately bring this to the attention of their fellow Board members/Directors with a view to having the matter rectified. The matter should also be brought to the attention of the relevant Minister by the Chairperson indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position. It is the Chairpersons responsibility to make such issues known to the Minister."*

⁶¹ Section 21(2) of IFA 2010.

⁶² Section 16(3) of the 2010 Act.

⁶³ Page 14. This version of the Code of Practice for the Governance of State Bodies (2016) was accessed on 27 June 2022 from www.gov.ie and appears to be a version which was updated on 23 May 2022

⁶⁴ Page 21. This version of the Code of Practice for the Governance of State Bodies (2016) was accessed on 27 June 2022 from www.gov.ie and is the version which appears to have been updated on 23 May 2022.

97. The issue which arises concerns the process of seeking to achieve consistency in meeting the statutory and governance obligations of both the Board (and in governance terms the Chairperson) of informing the Minister of any matters which the Board considers require the Minister's attention and also the Board relationship with the Executive of the Board.

98. For example, correspondence from the Board of IFI dated 23 July 2021 expressly referenced the (then) Section 1.20 of the Code of Practice for Governance of State Bodies⁶⁵ in the context of two matters described in the letter of being of grave concern relating to first, a tender competition for Novice Angler Activation and use of Dormant Accounts Funding and second, the designation of the Great Western lakes as Salmonoid lakes and further stated that the general consensus was that the gravity and scope for reputational damage arising from both issues warranted the Chairperson contacting the Minister. However, subsequent correspondence⁶⁶ from D/EEC referred to the correspondence which passed between the parties in the period July to August 2021 and contrasted the inquiries into these matters and subsequent recommendations with how they were initially described as giving rise to grave concerns. Further, in the letter of 7 April 2022 from the Asst. Secretary General the point is further made that the alleged unauthorised disclosure (addressed in the earlier part of this report) had not been brought to the Minister or D/ECC's attention (pursuant to paragraph 3.3 of the Code of Practice for the Governance of State Bodies (2016)), in contrast to what was described as the less significant issues contained in the letter dated 23 July 2021.

⁶⁵ This provided for the duty of the Chairperson of a State Board "to keep the relevant Minister advised of matters arising in respect of the State body."

⁶⁶ 4 March 2022.

RECOMMENDATIONS

99. There is both a legal and governance requirement on the Board (including the Chairperson) to inform the Minister of any matters which the Board considers require the Minister's attention.

100. It is suggested that the following draft proposed Standing Order should be considered for adoption in order to reflect the dual obligation placed upon both the Chairperson and the Board for reporting and also to ensure that the matter is considered regularly:

"Ministerial Updates

[X.A.] At the conclusion of each meeting of the Board, the members of the Board will discuss with the Chairperson and the chief executive the list of matters, if any, which are to be communicated by the Chairperson to the Assistant Secretary General for the purpose of updating the Minister.

[X.B.] This standing order does not require ministerial updates to be provided after every meeting of the Board but does require the members of the Board, the Chairperson and the Chief Executive to consider same in the manner provided in Standing Order [X.A]..."

VIII. SUMMARY & CONCLUSION

101. The matters which gave rise to the opinion of 27 April 2022 that a review and report were warranted because the functions of IFI were not being performed in an effective manner can be categorised as follows: (i) alleged unauthorised disclosure and recommendations; (ii) collective responsibility and recommendations; (iii) internal and external correspondence and recommendations.
102. The documents examined as part of this review, particularly those in relation to the alleged disclosure of information, provide the basis for deciding on 27 April 2022 that an independent review and report was warranted arising from the opinion that the functions of IFI were not being performed in an effective manner.
103. There is not a basis, from the alleged disclosures and the information and documentation which has been reviewed, for the Minister to be satisfied that the functions of IFI are not being performed in an effective manner such as to effect the removal of all of the members of IFI from office.
104. Rather, there is a compelling case for the Board to consider giving effect to the following recommendations:

Recommendation in relation to the alleged unauthorised disclosure of information

105. It is recommended that section 36 of the 2010 Act be applied at the commencement of every meeting of the Board in the manner set out in paragraph 6 “Confidentiality” of the document Statement of Board Members’ Responsibilities. This will provide an *a priori* check on the unauthorised disclosure of *any* information from the Board and would allow for the giving of an appropriate sanction (including the termination of a person’s contract) by IFI as provided for in section 36 of the 2010 Act.

Recommendation in relation to ensuring collectively responsibility

106. It is recommended that the following proposed draft Standing Order be adopted by the Board to ensure the application of the principle of collective responsibility:

"...In order to give effect to the collective responsibility and authority of the Board and to afford all Board members the opportunity to contribute to its deliberations and decision-making, where any issue arises in relation to a communication received by IFI, any Board Member (including ex officio members) can request that such communication be set down, in the first instance, for consideration by the Members of the Board who after considering same can request the Chief Executive to draft a response as per the directions of the Board..."

107. It is recommended that Standing Order 3.5 of the Board's Standing Orders be deleted.

108. It is recommended that Standing Order 4.4 of the Board's Standing Orders be amended by the deletion of *"The Board speaks with one voice or does not speak at all."*

Recommendation in relation to meeting arrangements

109. It is recommended that clear guidance be given to the Board members when faced with a question of whether correspondence, whatever the subject matter, should be put before the Board in plenary session (and generally brought to the Board's attention) when requested by a party, for example a department official, a stakeholder or a third party.

110. This can be achieved by amending Standing Orders by including the following proposed Standing Order:

"Meeting arrangement....

1.8.2 *All communications (including electronic communications) sent to a member of IFI or a committee of IFI, the chief executive or any other employee of IFI or a person engaged by IFI as a consultant or adviser (including its employee) concerning or relating to IFI in any way, shall be forwarded to the Chief Executive and the Secretary to the Board for consideration for inclusion in the Board papers for the next Board meeting and, if necessary, the Chief Executive Officer's Briefing Note, subject to the application of the provisions of these Standing Orders and any other codes, including provisions dealing with a potential conflict of interest..."*

Recommendation in relation to the Board Agenda

111. It is recommended that the Board consider adopting a new Standing Order which addresses responsibility for drawing up the items on the agenda before a meeting of the Board takes place and also sets out the documents which are to be included in the packet of papers that are furnished to each Board member prior to the plenary meeting. This is a separate and distinct requirement from "*the order in which the agenda items are taken*" which is agreed at beginning of each meeting of the Board.

Recommendation in relation to the Executive

112. It is recommended that as part of a broader review, consideration should be given by the Board of appointing consultants to review the structural relationship between the Board and the Chief Executive ("CE") including: (i) an examination of the benefits of delegating certain functions of the Board to the CE in addition to his or her responsibility (a) to carry on, manage and control generally the staff,

administration and business of IFI and, (b) for the implementation of the policies of IFI ; (ii) drawing a clear line of demarcation between the Board's functions and that of the CE; (iii) the use of the committees prescribed under the 2010 Act which allow, for example, the Board to appoint to a committee, persons who are not members of IFI but who have special knowledge and experience related to the purposes of the committee.

Recommendation in relation ministerial/departmental updates

113. It is recommended that the following draft proposed Standing Order should be considered for adoption in order to reflect the dual obligation placed upon both the Chairperson and the Board for reporting to the Minister and also to ensure that the matter of reporting is considered regularly by the Board:

"Ministerial Updates

[X.A.] At the conclusion of each meeting of the Board, the members of the Board will discuss with the Chairperson and the chief executive the list of matters, if any, which are to be communicated by the Chairperson to the Assistant Secretary General for the purpose of updating the Minister.

[X.B.] This standing order does not require ministerial updates to be provided after every meeting of the Board but does require the members of the Board, the Chairperson and the Chief Executive to consider same in the manner provided in Standing Order [X.A]..."

CONLETH BRADLEY SC

12 July 2022