



Energy for
generations

ESB Group

Board

Terms of Reference

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1. Role of the Board

The role of the Board is to provide effective leadership and oversight of ESB and to promote its long-term success, safeguarding its resilience, reputation and capacity to deliver on its purpose and strategic objectives. The Board ensures that strategy and culture are aligned with the defined Purpose and stated Values of the company.

In doing so, the Board seeks to balance the interests of ESB's various stakeholders, including its stockholders, employees, customers and the communities it serves.

The Board has adopted this Terms of Reference which sets out how the Board will fulfil its duties and functions. To the extent that there is any inconsistency between these Terms of Reference and the ESB Regulations¹, the ESB Regulations will prevail.

2. Composition of the Board and Committees

2.1 Appointment to the Board

The number of members of the ESB Board is set by the Worker Participation (State Enterprises) Order, 1978 (S.I. No. 186/1978) which provides that the number of board members shall be twelve, of which four will be worker directors appointed in accordance with the provisions of the Worker Participation (State Enterprises) Acts 1977 and 1988, and Regulations made under those Acts (together, the "**WD Legislation**"). These requirements are reflected in the ESB Regulations.

The Chairman and members of the Board (including the Chief Executive) are appointed by: -

- (1) the Government in accordance with Section 2 of the Electricity (Supply) Act 1927 (the "**Act**")²;

and in the case of Worker Board Members by: -

- (2) the Minister for Climate, Energy and the Environment, ("the Minister") in accordance with the Worker Participation (State Enterprises) Act, 1977 and the Worker Participation (State Enterprises) Act 1988 (the "**WD Legislation** ") ("**Worker Board Members**").

Normally, Board members serve for an initial period of up to five years, which may be extended for one further term up to a maximum of eight years in total (the precise duration of which is a matter for the Minister). Any exceptions require Ministerial approval.³

Worker Board Members' terms of appointment shall be in accordance with the provisions of the WD Legislation and shall be for a period of four years.

¹ The ESB Regulations are made under Section 6(1) of the Electricity (Supply) Act 1927 as amended by Section 5 of the Electricity (Supply) Amendment Act 2001, Section 21 of the Energy (Miscellaneous) Provisions Act 2006 and Section 16(4) of the Ministers and Secretaries (Amendment) Act, 2011 (the "**ESB Regulations**")

² References to legislative provisions in these terms of reference shall be read as references to such provisions as may be amended from time to time.

³ Code of Practice for the Governance of State Bodies: Annex on Gender Balance, Diversity and Inclusion

Board members are indemnified by ESB in accordance with the ESB Regulations. Directors & Officers Insurance covers risks associated with this indemnity.

The Board may invite an individual to attend the Board as an unpaid observer to promote diversity and inclusion on the Board or to access specialist skills if required. The precise arrangements for joining the Board in this way will be decided by the Chairman.

The Board shall ensure that on appointment, each Board member receive a formal letter of appointment from the Chairman setting out expectations in terms of time commitment, committee service and involvement outside of formal Board meetings.

2.2 Resignation from the Board

A Board member's term of office shall normally expire on the date set out in his or her letter of appointment (warrant) unless terminated earlier in accordance with the ESB Regulations, or where a Board member decides to step down early. The Board member should inform the Chairman and the Minister in writing of his or her intentions. It may also be necessary to update Offering Circulars/notify the Stock Exchange in these circumstances.

2.3 Board Committees

The Board may, from time to time, in accordance with the ESB Regulations, establish such committees (including ad hoc committees) to assist it in the performance of its duties by delegation of certain roles and responsibilities. The Board retains ultimate responsibility for the decisions, performance and outcomes of its committees and will monitor their effectiveness annually. Committees may include members who are not members of the Board in exceptional circumstances if specialist skills are required.

Where a committee is put in place:

- the terms of reference shall be specified in writing, approved by the Board and reviewed annually;
- membership shall be in accordance with Governance Codes⁴ as required;
- the Board, on the nomination of the Chairman, shall appoint its members; and
- the Board shall receive regular reports and/or minutes of their proceedings from the Board committees.

All protocols concerning the operation of the Board shall be applied to Board Committees.

2.4 Code of Conduct/Board Policies

The ESB Board Code of Conduct forms part of the Board Terms of Reference. On appointment, all Board members must sign their agreement to adhere to the Board's Code of Conduct.

⁴ Irish Corporate Governance Code

Specific Board Policies guide Board members in meeting their responsibilities.

2.5 Board Composition, Succession Planning and Skills Matrix

The Board, led by the Chairman, with advice from the Remuneration and Management Development Committee, and supported by the Company Secretary, will maintain a forward-looking succession plan informed by a skills matrix and taking account of gender balance as required by the Annex to the Code of Practice for the Governance of State Bodies.

3. Responsibilities

3.1 Chairman of the Board

3.1.1 The Chairman is responsible for the leadership of the Board and ensuring its effectiveness in all aspects of its role. This includes:

- i. chairing its meetings, having agreed a balanced agenda with Company Secretary, and ensuring that adequate time is available for discussion of all agenda items;
- ii. constructive board relations and discussions at the Board which facilitate the effective contribution of all Board members and promotion of a culture of respect, trust and openness;
- iii. ensuring accurate, timely and clear information is provided to the Board to assist in effective decision making;
- iv. ensuring that the Board applies rigorous scrutiny and challenge to management proposals, particularly as regards risk and sustainability aspects;
- v. leading the process to select the Chief Executive;
- vi. keeping Management's achievement of agreed performance targets under continuous review;
- vii. ensuring that once a Board decision is reached, there is, where necessary, appropriate delegations of authority to the Chief Executive/ Executive Directors;
- viii. ensuring good information flows within the Board and its committees and between senior management and Board members;
- ix. leading on governance matters to ensure that there is a clear structure for, and effective running of, the Board and its committees.
- x. leading the annual review of Board, Committee and Board member effectiveness;
- xi. facilitating induction, mentoring and assisting with ongoing professional development of Board Members, as required;
- xii. updating the Minister on major issues facing ESB Group in the short to medium term;
- xiii. advising the Minister of any specific skills, experience and diversity requirements when Board vacancies are due to arise; and

- xiv. bringing to the attention of the Minister, in accordance with the obligation imposed under the Code of Practice⁵, non-compliance with any statutory obligations indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position.

The Chairman also acts as a sounding board for the Chief Executive and in particular in the formulation of strategy.

3.1.2 The Chairman shall carry out her/his functions in accordance with the relevant provisions of the ESB Regulations.

3.1.3 In the absence of the Chairman for all or part of a duly convened Board meeting the remaining members present shall elect one of the independent non-executive Board members to chair the meeting (or part thereof) in accordance with the ESB Regulations.

3.2 The Board

The Board is responsible for:

- i. setting ESB's purpose, values and strategy and ensuring that these are reflected in the strategic plans and culture of the organisation;
- ii. reviewing strategic and financial planning to ensure integration of climate, nature and sustainability considerations;
- iii. ensuring that ESB conducts its affairs in compliance with its legal and regulatory obligations and duties and in a socially responsible manner;
- iv. preparing the Annual Report and Financial Statements and in presenting a fair, balanced and understandable assessment of the Group's position and prospects as required by the ESB Regulations and applicable legislation;
- v. recommending to the stockholders at the Annual General Meeting the declaration of a final dividend;
- vi. reviewing on an annual basis and (as deemed necessary) revising and reissuing the Board Consolidated Authority Levels;
- vii. overseeing the Chief Executive's and Management's effective execution of strategy, performance and delivery against the Integrated Business Plan, achievement of key financial performance and sustainability targets, and the embedding of an appropriate culture throughout the organisation by providing clear support and constructive challenge;
- viii. making recommendations to the Ministerial stockholders in connection with proposed transactions for which the consent of either or both Ministers is required;
- ix. setting risk appetite and oversight of the Group's approach to risk, satisfying themselves that the systems of risk management are robust and defensible;
- x. the system of internal controls (including financial controls) and monitoring of its effectiveness. The Board shall review such controls on an annual basis;
- xi. immediately bringing to the attention of fellow Board members evidence they may have of non-compliance with any statutory obligations that apply to ESB, with a view to having the matter rectified; and

⁵ Code of Practice for the Governance of State Bodies (2016) (para 3.3) published by the Department of Public Expenditure & Reform – see Folder 6.1 BoardBooks Resources and gov.ie.

- xii. approving the appointment and removal of the Chief Executive, Executive Directors and the Company Secretary.

The Board shall: -

- i. make all decisions in respect of those matters specifically reserved to it in the Consolidated Authority Levels (except if and to the extent delegated by the Board to a Board committee or to Management);
- ii. demonstrate objective judgement;
- iii. act with integrity and fairness in the interests of ESB, asking the right questions and always challenging poor behaviours;
- iv. oversee cultural governance including setting the tone at the top on conduct and ethics;
- v. establish structures and procedures to facilitate the Board's independence from Management and to avoid conflicts of interest;
- vi. commit sufficient time and effort keeping up to date and informed about strategic issues and changes affecting ESB and the environment in which it operates;
- vii. keep under review and abreast of corporate governance, technology, industry, and market developments (including ethics-related matters) relevant to ESB;
- viii. ensure that the Company Secretary has the necessary skills to discharge his/her duties;
- ix. review, on an annual basis, its performance and that of its committees in carrying out their responsibilities (see Part 8 below); and
- x. avail of opportunities for continuous training and development provided to support them in their roles.

3.3 Senior Independent Director (SID)

The role of the Senior Independent Director (SID) is to:

- i. act as a sounding board for the Chairman and provide support;
- ii. act as an intermediary for the other non-executive directors when necessary;
- iii. lead the annual Chairman evaluation process, co-ordinating Non-Executive Director feedback on the Chairman's leadership, contribution, effectiveness and performance; and
- iv. ensure there is a clear division of responsibility between the Chairman and Chief Executive.

3.4 Chief Executive

The Chief Executive has responsibility for:

- i. executing the Board's strategy, reporting progress on execution against strategic goals and related performance metrics and ensuring, where appropriate, in the light of major developments that strategy is revised;
- ii. the day-to-day running of the business and for delivery of profitable and sustainable business performance in accordance with targets set by the Board including ensuring the adequacy and quality of resources;
- iii. keeping the Chairman and the Board informed through monthly reporting and ad hoc updates of significant business developments and emerging stakeholder priorities;

- iv. bringing investments, projects and proposals to Board for approval; and
- v. ensuring that appropriate management structures are in place to drive the long-term success of ESB.

The Chief Executive shall:

- promote ESB's culture, values and behaviours through leading by example and engagement;
- build and maintain an effective Executive Director team (ExCo) and effective management structures within the organisation;
- maintain on-going dialogue and consultation with the Chairman and the Board to ensure the information needs of the Board are met and timely decisions are made;
- engage with external stakeholders to understand their requirements and to promote the interests and strategy of ESB; and
- be accountable to the Board for all authority delegated to executive management.

3.5 Company Secretary

All Board Members should have access to the advice of the Company Secretary, who is responsible for:

- i. advising and supporting the Board on all Board governance matters including in respect of the Code of Practice for the Governance of State Bodies and the Irish Governance Code;
- ii. ensuring that Board procedures are complied with in full;
- iii. supporting good information flows within the Board and with its Committees and between the executive management and non-executive Board members to: -
 - enable full and proper consideration to be given to issues for review or decision by the Board; and
 - keep the Board updated on any significant matters arising between Board meetings;
- iv. capturing the essence of the Board's discussions and ensuring that decisions are accurately recorded in the minutes;
- v. facilitating Board members' induction;
- vi. assisting with Board members' ongoing professional development as required;
- vii. recording attendance at Board and Committee meetings;
- viii. managing the disclosure of interest processes for Directors, including reviewing and advising Board members on potential conflicts of interests

4. Meetings, Agendas, Minutes and Conflicts of Interest

Board meetings shall be convened, take place, and be conducted in accordance with the ESB Regulations.

4.1 Notice of Meetings

- i. Meetings of the Board shall be summoned by the Company Secretary of the Board at the request of the Chairman of the Board.
- ii. Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda of items to be discussed, shall be forwarded to each member of the Board and any other person required to attend no later than five working days before the date of the meeting. Supporting papers shall be sent to Board members and to other attendees as appropriate, at the same time.
- iii. Late papers or presentations will be provided on an exceptional basis.
- iv. From time to time, (i) emergency meetings of the Board or a Board Committee may be required subject to appropriate notice being given to all Board members and/or (ii) the Company Secretary may recommend that the Board members pass a written resolution as facilitated by the ESB Regulations.

4.2 Agenda

The Chairman and the Chief Executive, supported by the Company Secretary, are responsible for the effective management of the Board's agenda.

4.3 Attendance at Meetings

- i. Only members of the Board are entitled to be present at Board or Committee meetings. However, others (e.g., members of the Executive Director Committee, senior managers and/or external advisers) may be invited by or on behalf of the Chairman of the Board/Committee to attend for all or part of any Board meeting or Board Committee meeting. Any person so invited shall not be entitled to vote at such meetings.
- ii. The expectation is for full attendance at all Board/Committee meetings. Board members should send their apologies to the Chairman in advance of any meeting for which they are unavailable. Absences will be recorded by the Company Secretary in the minutes of the Board/Committee meeting.
- iii. Attendance at Board and Committee meetings is reported in the Annual Report.

4.4 Quorum

The quorum for a Board meeting is established by the ESB Regulations and is one third of the Board members.

4.5 Minutes of Meetings

- i. The Company Secretary (or his/her nominee) shall minute the proceedings and resolutions of all meetings of the Board and of its committees including recording the names of those present and in attendance.
- ii. Minutes of the Board meetings and minutes of Board Committees meetings (or alternatively a report by the Committee Chairman) shall be signed and filed electronically and provided to all members of the Board.
- iii. The Company Secretary will maintain a Register of Actions for follow up on behalf of the Board and Board committees.

4.6 Frequency of Meetings

In accordance with the ESB Regulations, general meetings of the Board shall take place on such dates and at such times and places as may be determined by the Chairman or the Board.

The Company Secretary will provide Board members with a schedule/calendar of General Board and Committee meetings, Board strategy meetings and engagements at the start of each year.

4.7 Conflicts of Interest

If a Board member considers that he or she has a conflict (or a potential conflict) of interest, he or she shall immediately disclose this to the Chairman and the Company Secretary as required by the Board's Code of Conduct. In accordance with the ESB Regulations, a Board member may not vote in respect of any contract, appointment or arrangement in which he or she is interested. The Board Code of Conduct provides further guidance in this regard.

5. Authority and Decision Making

5.1 Information and Advice

- i. The Board is authorised to seek all information it requires in order to perform its duties.
- ii. Board member(s) is/are authorised to obtain, at ESB's reasonable expense, outside legal or other professional advice where the Board judges that this is necessary to allow Board members discharge their responsibilities⁶.

5.2 Decision Making

The Board has adopted a Delegation of Authority Framework (**the "Framework"**) setting out matters in respect of which decision-making authority is (i) reserved to the Board (ii) delegated to management or (iii) as otherwise delegated in accordance with the Framework below.

- i. The Board shall retain responsibility for those matters reserved to it under the ESB Regulations and these Terms of Reference;
- ii. Under the Framework, the Board delegates all of the powers, authorities and discretions of the Board in so far as they concern the management and day-to-day running of the ESB Group to the Chief Executive in accordance with such policies and directions as the Board may from time to time determine with the exception of the matters reserved to the Board. These are set out in a single document titled *"The Consolidated Authority Levels reserved to the Board and Delegated to Management"*.
- iii. The Board may also delegate any of its powers, authorities and discretions (including the power to sub-delegate) to any Executive Director, Committee, person or persons for such time and on such terms as it thinks fit.
- iv. The Framework may be amended by resolution of the Board from time to time. For the avoidance of doubt, where, following the adoption of the Framework, the Board

⁶ Further guidance is available in BoardBooks Resources

approves authority levels in connection with a particular transaction or category of transactions, the authority delegated by the Board in such subsequent resolution shall, to the extent that there is any inconsistency with the approved Consolidated Authority Levels, prevail.

- v. In accordance with the ESB Regulations, decisions / resolutions of the Board shall be decided by a majority of votes. Where there is equality of votes, the Chairman will have a second or casting vote.⁷

6. Stakeholders

In carrying out its role, the Board seeks to balance the interests of various stakeholders to ensure that ESB has a successful and sustainable future, true to its purpose and values. The Board, through the Chairman and the Chief Executive, will seek opportunities to engage with, and encourage participation from, these parties.

7. Communication and Reporting

7.1 Communication

- i. The Chairman and Chief Executive, on behalf of the Board, shall ensure ESB reports to the Minister for Climate, Energy and the Environment as provided for in the ESB Regulations and /or in the Code of Practice and shall keep the Minister informed of any developments arising within ESB which they consider significant.
- ii. The Chairman and Chief Executive will report to the Board on formal meetings with the Stockholders.

7.2 Reporting

The Chief Executive shall report to the Board at each Board meeting on company developments, performance, key risks and provide insights into matters likely to impact the future prospects of ESB.

8. Effectiveness Reviews and Performance Evaluation

- i. The Board shall, at least once a year, review its own performance to ensure it is operating effectively. An external Board evaluation will take place every third year.
- ii. The Board shall review the results of the evaluation and agree improvements as required.
- iii. The Company Secretary will facilitate the Board in ensuring recommendations arising from evaluations are reflected in a Board approved implementation plan and actioned.
- iv. The Board shall review the effectiveness of Board Committees in fulfilling their responsibilities and duties as set out in their respective Terms of Reference.
- v. The Chairman will meet individually with Board members annually to discuss individual's development needs in their capacity as Board members.

⁷ Except where there are only four Board members present, in which case the Chairman does not have a casting vote and the matter should be adjourned to a future meeting of the Board if agreement cannot be reached.

9. Review

The Board will review these Terms of Reference at least annually and will approve such amendments as it deems necessary.