

GOVERNANCE MATTERS – Governance Roles and Responsibilities

Introduction

It is important to have clarity of roles and responsibilities for the Board and for an individual Director. This newsletter provides an example of a Board of Directors mandate and an example of a role description for a Director.

The Examples

BOARD OF DIRECTORS – EXAMPLE TERMS OF REFERENCE

The Board of Directors has the authority and obligation to protect and enhance the assets (tangible, intangible, human resources) of the organization in the interest of the stakeholders and is responsible for overseeing the CEO. Although Directors may be elected by the stakeholders to bring special expertise or points of view, they are not chosen to represent a particular constituency. The Directors are solely accountable to the organization in their capacity as a Director.

Duties of the Board

The Board operates by delegating certain of its responsibilities to management and reserving certain powers to itself. The Board's principal duties fall into six main categories

1. Adoption and monitoring of strategic and business planning processes and plans;
2. Appointing, monitoring and compensating senior management;
3. Effective communication with stakeholders;
4. Overseeing management of enterprise risk;
5. Integrity of corporate internal control and management information systems;
6. Establishing and maintaining effective governance practices.

Each of these duties creates the specific oversight responsibilities, described below.

Strategic and Business Planning

- The Board approves the mission, vision, and values of the organization, as well as its goals and the strategies by which it will reach those goals.
- The Board ensures congruence and compatibility between stakeholder expectations, organization plans, and management performance.
- The Board monitors the organization's progress towards its goals, revising and altering direction in light of changing circumstances, and taking action when performance falls short of its goals or special circumstance warrants such action.
- The Board approves the annual business plan and financial budget and any major changes thereto; and significant capital expenditures and corporate decisions.

Appointing, Monitoring and Compensating Senior Management

- The Board reviews and approves the organizational structure and officer positions.
- The Board ensures competent persons with high integrity are appointed and supervised.
- The Board assesses the CEO's performance against objectives established jointly by the Board and the CEO, and assesses his/her contribution to the achievement of the corporate strategy.
- The Board ensures that programs are in place to develop management and the Board also provides for the orderly succession of management.
- The Board sets the compensation philosophy for the organization; ensuring that compensation for the CEO and senior management is appropriate in relation to the organizational needs and sector comparables. (This includes incentive based compensation plans and ensuring appropriateness of what the compensation plans incent staff to do.)

Communications with Stakeholders

- The Board ensures there is policy and processes to provide for effective communication with its stakeholders.
- The Board provides for the financial performance of the organization to be reported to the stakeholders on a timely, regular and accurate basis.
- The Board provides for timely reporting to the stakeholders of any developments that have a significant and material impact on the value of the organization's assets.
- The Board reports annually on its stewardship for the preceding year.

Oversee Risk Management

- The Board understands the principal risks of the business in which the organization is engaged and strives to achieve a proper balance between risks incurred and potential returns.
- The Board gains assurance that there are policies and systems to establish an effective risk framework, and monitor and manage the risks with a view to the long-term viability of the organization.
- The Board ensures that there are processes to ensure that the duties of the Directors as stipulated in various Acts are understood and executed.

Integrity of Corporate Internal Control and Management Information Systems

- The Board approves and monitors compliance with significant policies by which the organization is operated.
- The Board is responsible for gaining assurance that the organization operates at all times within applicable laws and regulations, and to ethical and moral standards.
- The Board is responsible for ensuring control and information systems are in place to ensure the effective discharge of the organization's mandate.

Governance Practices

- The Board is responsible for ensuring its own effectiveness. This includes ensuring proper understanding of duties and responsibilities of individual directors, the Board as a whole and each Board committee, and that independent judgment is exercised in decisions at the Board table.
- The Board is responsible for ensuring its own succession, training and development, including the establishment of criteria for selection of Directors, effective orientation programs, and ongoing training and development.

Specific Functions

In addition to the broad duties set out above, the Board has other specific duties. These are outlined in policies of the Board and are from regulations, legislation and other pertinent guidelines. Other specific functions include:

1. Call stakeholder meetings as required
2. Oversee the business and affairs of the organization
3. Ensure compliance with the organization's articles and bylaws
4. Elect Board officers, appoint management officers in conjunction with the CEO
5. Receive reports from the CEO on operations and strategies and financial results
6. Receive reports from management as to compliance with various regulatory requirements
7. Authorize CEO to appoint employees to various positions and to fix their salaries
8. Establish the authorities of the CEO
9. Review compliance of the CEO's actions within requirements of Board policies
10. Make bylaws; and transact any other business
11. Appoint the External Auditor, fix Auditor's remuneration, and receive reports from the auditor
12. Ensure the External Auditor is provided full information and full cooperation
13. Approve the financial statements of the organization
14. Execute specific duties as articulated in governing policies set by the Board.

Reliance on Management - The Board can expect:

- Management will report all material information about the organization to the Board;
- Management will not act outside of their authority;
- Management will provide timely, complete and accurate information to permit the Board to make effective decisions, enable it to properly monitor the operations, and monitor compliance to policies and legislation.

DIRECTOR – EXAMPLE ROLE DESCRIPTION

Introduction

The Board will hold Directors accountable for fulfilling the expectations outlined in this role description.

A Director must be a person with ability, experience, judgment and integrity consistent with the needs of the organization. A Director must ensure he or she is in compliance with all governmental requirements including those set by the organization's regulators. A Director's duty is to protect the assets of the organization, honour the rights of the employees, stakeholders and creditors, and provide for financial health of the organization.

Standard of Care

Every Director, in discharging his or her duties, must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The determination of whether a Director failed to meet the minimum standard of care will depend on the facts of each individual situation.

The following is a non-exhaustive list of actions that should be taken by Directors in discharging their duties.

- Directors are not to delegate decisions or powers to management that should remain with the Directors;
- Directors are to attend all Directors' meetings. (Directors who do not attend Directors' meetings are deemed to have consented to the resolutions passed at those meetings);
- Directors are to prepare adequately for each Board and Committee meeting which they attend. This includes reading the material, analyzing the information, and conducting independent research if necessary to better understand the material;
- Directors are to make reasonable enquiries about information provided to them by management to ensure that the information provided is correct;
- Directors are to stay informed of the business and regulatory environment in general and in particular the events occurring in the sector in which the organization operates;
- Directors are to read critical documents issued by the organization to stakeholders;
- Directors should utilize the organization's products and services;
- Directors must comply with the organization's conflict of interest and code of conduct;
- Directors are to educate themselves on their governance duties and sound governance practices.
- Directors are to participate on and contribute to at least one Board Committee.

Fiduciary Responsibilities

The Director, in discharging his or her duties, must act:

- honestly and in good faith
- with a view to the best interests of the organization
- with the care, diligence and skill of a reasonably prudent person
- on behalf of and for the benefit of the organization.

The Director has a fiduciary duty to the organization. This duty recognizes that Directors are in a position of trust over the actions of the organization and can engage in activities that can harm the organization. The Director is responsible to act for another's benefit, rather than for himself/herself. Directors will be prohibited from:

- Engaging in activities that put their personal interests in conflict with the best interests of the organization;
- Engaging in activities that would provide the Director, or others, with a direct benefit that should have been earned by the organization;
- Failing to act in a situation where action would be in the best interests of the organization;
- Taking an opportunity for personal profit that the organization either could have obtained for itself or that it was actively seeking.

GOVERNANCE MATTERS

Governance Roles & Responsibilities



Authority

As an individual Director, the individual has no specific authority, but only has authority as a part of the Board of Directors. A Director cannot unilaterally operate, give direction to management, or authorize transactions unless specific authority has been delegated by the Board and is properly transacted.

When a motion has been decided by proper decision making protocol of the Board, every Director is expected to support the decision. If the Director is strongly opposed to the decision of the Board and cannot agree to support the decision, the individual can pursue options through legal means or resign from the Board.

Ongoing Learning

Every Director of the organization is required to invest time to pursue ongoing learning to better equip themselves in conducting their duties and making effective decisions.

Director Evaluation

Each Director agrees to being annually evaluated on their performance as a director. Results of the evaluation will be communicated by the Chair of the Board. Where the evaluation results identify that the Board member is not operating at a satisfactory level, a development program will be initiated or the Director may be terminated from the Board.

Agreed to by: _____
Signature of Director

Summary

A clear role description for the Board is necessary to provide for an understanding of duties. The responsibilities of the Board need to be consistent with the mandate of the organization and not overlap those of the CEO. The Board's role description should clearly state what the Board is accountable for. Ensuring there is clarity of role for a Director is equally important. Individuals assuming Director positions need to understand what their responsibilities as an individual Director are as well as the responsibilities of the Board as a whole. Holding the Board and individual Directors to these accountabilities is also important – this can be accomplished through Board and Director Evaluation - the subject of a separate newsletter.

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Also available are templates for: Board Chair Responsibilities; Committee Chair Responsibilities; Terms of Reference for Governance Committee; Terms of Reference for Audit Committee at a cost of \$45.00.

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