

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 order for the organization to be successful, the Board recognizes that the organization needs to be accountable to and strive to meet the needs of its stakeholders (including employees, suppliers, owners). The Board has a fiduciary duty to the organization as a whole.

Duties of the Board

The Board's principal duties fall into five main categories

1. Adoption and monitoring of strategic and business planning processes and plans;
2. Appointing, monitoring and compensating senior management;
3. Overseeing management of enterprise risk;
4. Upholding the integrity of organization, its system of internal controls and information;
5. Establishing and maintaining effective governance practices.

Each of these duties creates the specific oversight responsibilities, described below. The Board operates by delegating certain of its responsibilities to management and reserving certain powers to itself.

Strategic and Business Planning: the Board ...

- approves the mission, vision, and values of the organization
- approves the organization's goals and the strategies by which it will reach those goals
- ensures congruence and compatibility between stakeholder expectations, organization plans, and management performance
- 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 circumstances warrant action
- understands premise and assumptions to annual business plan and financial budget; approves any major changes
- approves significant capital expenditures and corporate decisions
- monitors progress on strategic plans and business plans by receiving reports from the CEO on the changing business environment, the organization's strategies, operations and financial results.

Appointing, Monitoring and Compensating Senior Management: the Board ...

- reviews and approves the organizational structure and officer positions, as recommended by the CEO
- gains assurance that competent persons with high integrity are appointed and supervised
- 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 and operational and financial strength
- gains assurance that programs are in place to develop management, gains assurance there can be an orderly succession of management, and controls the CEO succession plan
- sets the employment principles providing for the desired working environment at the organization for the employees including the compensation philosophy in general and handles compensation directly for CEO and his/her direct reports
- sets the authorities of the CEO including those for purchasing, signing contracts, corporate transactions.

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
- 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
- receives reports on the major sources of risk, and the consolidated risk position, makes enquiries to understand the level of risk, and that it is within the Board's risk appetite.

Integrity of Organization, System of Internal Controls and Information: the Board ...

- gains assurance as to the integrity of the CEO and executive management and that the CEO and other executive management strive to create a culture of integrity throughout the organization
- gains assurance that the organization operates within laws and regulations and Board approved policies
- gains assurance that control environment, internal controls and systems are in place to ensure productive use of assets and reporting of accurate information
- appoints Internal Auditor and External Auditor, fix Auditors' remuneration, receives reports from auditors
- ensures the Auditors are provided full information and full cooperation
- approves the financial statements of the organization and communicates results with stakeholders.

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
- 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
- establishes structures and processes which allow the Board to function independently of management.
- Ensures accountability reports (covering strategic, operational and financial performance) are provided to owners and other stakeholders annually and when significant events occur.

Specific Functions

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

1. Elect Board officers, appoint management officers in conjunction with the CEO
2. Make bylaws; and recommends changes to the members
3. Execute specific duties as articulated in governing policies set by the Board.

Reliance on Management - The Board can expect and will hold management accountable for:

- Management are subject matter experts in the sound and prudent operations of the organization;
- 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.

The Board need not rely entirely on its own expertise or those of management for all decision. The Board may and should call upon expert and independent advice to offer an opinion or guidance when required, in order to assist with informed decision making.

DIRECTOR – EXAMPLE ROLE DESCRIPTION

Introduction

The Board will hold Directors accountable for fulfilling the expectations outlined in this role description. A Director must operate at a level demonstrating ability, judgment and integrity consistent with the needs of the organization. A Director's duty, as a member of the Board, is to contribute to decisions which seek to protect the assets of the organization, honour the rights of the employees, achieve operational effectiveness, provide for organizational financial health, and be seen to be an organization that has integrity.

Standard of Care

Although Directors may be elected by the owners to bring special expertise or points of view, Directors are not chosen to represent a particular constituency. The Directors are solely accountable to the organization in their capacity as a Director.

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 following is a non-exhaustive list of actions to be taken by a Director in discharging his/her duties:

- Demonstrate a solid understanding of the role and responsibilities of a Director and the governance structure and protocols of the organization;
- Not act to delegate decisions or powers to management that should remain with the Board;
- Attend, and effectively contribute to discussions at Board and Board Committee meetings;
- Prepare adequately for each Board and Committee meeting, this includes reading the material, analyzing the information, and conducting independent research if necessary to better understand the material;
- Make reasonable enquiries about information provided to them by management to ensure that the information provided is correct;
- Stay informed of the business and regulatory environment in general and in particular the events occurring in the sector in which the organization operates;
- Read critical documents issued by the organization to stakeholders;
- Utilize the organization's products and services;
- Comply with the organization's conflict of interest and code of conduct;
- Interact with fellow Directors and management in a respectful way and with conduct that honours the organization's values;
- Take action to gain education on their governance duties and sound governance practices;
- Understand the difference between governing and managing, and not encroach on management's area of responsibility.

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 him/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;

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.

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 periodically 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 acting as Directors 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. It is also important to have a clear position description for the Chair of the Board and Committee Chairs.

Also available are templates for: Board Chair Responsibilities; Committee Chair Responsibilities; Terms of Reference for Governance Committee; Terms of Reference for Audit Committee.

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Booker & Associates provides services to support Boards in exercising good governance including governance education programs, governance coaching, Board and Director evaluation processes, governance policy writing, and strategic planning facilitation. We provide training on Enterprise Risk Management, facilitate risk workshops, and assist organizations in building risk frameworks, accountabilities, and measurements.

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