



New Brunswick Innovation Foundation
Corporate Governance Guidelines

Introduction

This document has been developed by the New Brunswick Innovation Foundation (NBIF) to provide a general overview of corporate governance as it relates to the directors, prospective directors, and senior executives of its investee firms.

Good corporate governance is a key determinant of a company's long term viability and success. This document summarizes the principles and practices of corporate governance and is designed to assist in the development of a formal governance structure and to orientate new directors about that structure and process.

Although it is intended only to serve as a general guideline, this document may be used as a framework for the development of corporate governance policies and manuals.

Corporate governance is the practice that oversees, directs and manages the business and affairs of a corporation in order to ensure its financial stability and its focus on the advancement of shareholder value.

The corporate governance guidelines outlined herein are divided into the following major categories:

- I. Board of Directors Responsibilities
 - i. Selection of Management
 - ii. Strategy Determination
 - iii. Monitoring and Acting
 - iv. Policies and Procedures
 - v. Reporting
 - vi. Legal Requirements
 - vii. Miscellaneous Requirements
- II. Individual Director Responsibilities
- III. Chair of Board Responsibilities
- IV. President and Chief Executive Officer Responsibilities
- V. Board Meetings
- VI. Confidential Information

Please note that these guidelines have been developed mainly for start-up and early stage companies. As a company grows, corporate governance structure and process must expand. A company must continuously monitor and evaluate its governance structure and practices to ensure that each is suitable for the changing needs of the corporation.

SECTION 1 -- Board of Directors Responsibilities

A corporation is owned by its shareholders. It is the shareholders who ultimately decide the composition of the corporation's board of directors. The board of directors supervises the activities of the corporation's professional management. The objective of a for-profit corporation is to conduct its business activities in a manner that maximizes profitability and shareholder value.

The primary responsibility of a board of directors is to foster the long-term success of the corporation.

A board operates by delegating its authority to management and by reserving certain powers for itself. One example is authorized spending limits. Depending on the company's articles of incorporation, by-laws, and shareholder agreements, the board of directors is responsible for the management of its own affairs including its composition, selecting its chairperson, nominating candidates for election to special committees, and determining director compensation.

A director's responsibility is that of a fiduciary and is individually and collectively founded in legal imperatives. (See Section 2 Individual Director Responsibilities). A board of directors is responsible for the stewardship of the corporation (preserving and enhancing shareholder value) and as such, is accountable for the success of the corporation and the activities of its management. In summary, the board serves as trustee for the corporation's shareholders.

General responsibilities of a board include selecting an effective management team and assessing its performance, overseeing corporate strategy and acting as a resource for management in terms of planning and policy-making, and ensuring effective shareholder communication.

The principal duties of a board can be generally organized into seven major categories as follows:

I. Selection of Management

A board is responsible for:

- i. the appointment and replacement of a chief executive officer (“CEO”), monitoring CEO performance, approving CEO compensation and providing advice and counsel to the CEO in the execution of his or her duties;
- ii. approving the appointment, replacement and remuneration of all senior corporate officers upon the advice of the CEO, and the recommendation of a human resources and compensation committee;
- iii. ensuring that plans have been made for management succession.

II. Strategy Determination

A Board has the responsibility to:

- i. review with management the mission of the business, and its objectives and goals;
- ii. review and approve management’s strategic and business plans and develop a depth of knowledge of the business, understand and question the assumptions upon which the plans are based, and reach an independent judgment as to whether the plans can be realized;
- iii. review and approve the corporation’s financial objectives, plans and actions including significant capital allocations, expenditures, and the raising of capital.

III. Monitoring and Acting

A board is responsible for:

- i. monitoring corporate performance against strategic and business plans and overseeing the operating results to evaluate whether the business is being properly managed;
- ii. approving any payment of dividends;
- iii. ensuring the implementation and integrity of the corporation’s internal control and management information systems;
- iv. reviewing and approving material transactions not in the ordinary course of business;

- v. ensuring ethical corporate behavior and compliance with all laws and regulations, auditing and accounting procedures, and the corporation's corporate governance processes;
- vi. ensuring the fullest communication with the shareholders and approving all proposals to be submitted to the shareholders, including nomination of directors;
- vii. ensuring the implementation of appropriate systems for identifying and managing the principal risks of the corporation's business;
- viii. managing the board's affairs and assessing its effectiveness in fulfilling these and other board responsibilities.

IV. Policies and Procedures

A board has the responsibility to:

- i. approve and ensure that there is monitoring of compliance with all significant policies and procedures by which the corporation is operated;
- ii. ensure that policies and procedures are in place so that the corporation operates at all times within applicable laws and regulations, and to the highest ethical and moral standards.

V. Reporting

A board has the responsibility to:

- i. ensure that the financial performance of the corporation is adequately reported to its shareholders, security holders and regulators on a timely and regular basis;
- ii. ensure that financial results are reported fairly and in accordance with Generally Accepted Accounting Principles;
- iii. ensure the timely reporting of any other developments that have a significant and material impact on the value of the corporation;
- iv. report annually to shareholders on its stewardship for the preceding year;
- v. ensure the corporation has systems in place which accommodate feedback from shareholders, customers, employees and the community.

VI. Legal Requirements

- i. The board is responsible for ensuring that all required policies and procedures are in place, and that any and all legal requirements have been met, that documents and records have been properly maintained and approved.
- ii. Canadian law, subject to amendment, identifies the following legal requirements of a board:
 - (i) to manage the business and affairs of the corporation;
 - (ii) to act honestly and in good faith with a view to the best interests of the corporation;
 - (iii) to exercise the care, diligence and skill that reasonable prudent people would exercise in comparable circumstances;
 - (iv) to act in accordance with its obligations contained in the *Securities Act* of each province and territory of Canada, other relevant legislation and regulations, and the individual corporation's act of incorporation and by-laws or articles of incorporation;
 - (v) to consider as a whole, and not in committee form:
 - a) the submission of a question or matter to the shareholders of the corporation that require their approval,
 - b) the filing of a vacancy on the board of directors or in the office of the corporation's external auditor;
 - c) the term for securities and the manner in which they are issued;
 - d) the declaration of dividends;
 - e) the purchase, redemption, or any other form of acquisition of shares issued by the corporation;
 - f) the payment of a commission to any person in consideration of the purchase of, or agreement for the purchase of, shares of the corporation from the corporation or from any other person, or for the procurement of, or any agreement to procure, purchasers for any such shares;
 - g) the approval of management proxy circulars;
 - h) the approval of any take-over bid circular or directors' circular;

- i) the approval of the interim and annual financial statements and management's discussion and analysis of the financial condition and results of operations ("MD&A") of the corporation;
- j) the adoption, amendment or repeal of any by-laws of the corporation.

VII. Miscellaneous Requirements

A board has the responsibility to implement a policy that prohibits personal loans to executive officers and directors of the corporation.

SECTION 2 -- Individual Director Responsibilities

There are general duties and responsibilities of directors in the common law and in the *Canada Business Corporations Act* (the "CBCA"), as well as the corporation's by-laws.

The relationship of the director to the corporation is a fiduciary one. A fiduciary is defined as a person who, in law, by his or her position, is able to affect the legal rights of others and has a degree of control over the property of others.

Corporation directors are "trustees" in the sense that, in the performance of their duties, they maintain a fiduciary duty to the corporation and are bound by all the rules of fairness, morality and honesty in purpose that the law imposes. From this fiduciary role comes the stewardship responsibility to preserve and enhance shareholder value and it is in this capacity that the board of directors serves as trustee for the investments of the shareholders.

As a group, a board of directors' role is to oversee the performance of executive management. In summary, this consists of selecting a successful management team, overseeing corporate strategy and performance, acting as a resource for management and ensuring effective shareholder communication. Individual directors share this responsibility collectively with the remaining members of the board.

Also, each individual director must, in connection with the powers and duties of his or her office, exercise the care, diligence and skill that a reasonably prudent person would exercise in a comparable circumstance. Part of this care and diligence is for all Directors to attend and participate in board discussion.

The duties of a director as established by the *Canada Business Corporations Act*, and its lawful interpretations may be summarized as follows:

- I. Duty of Honesty - In their dealings with fellow directors, directors must tell the whole truth and in good faith. For example, secret profits are forbidden to directors.
- II. Duty of Loyalty - A director is required to give individual loyalty to the corporation. Each director must exercise his or her powers honestly and for the benefit of the corporation as a whole.
- III. Duty of Care - A director is required to exercise prudence and diligence. The duty of care requires prudence based on common sense.
- IV. Duty of Diligence – The statutory requirement of diligence involves making those inquiries, which a person of ordinary care in their position or in managing their own affairs, would make.
- V. Duty of Skill – Originally, in the common law, a director was required to exercise no greater degree of skill than could be reasonably expected from a person with their particular level of knowledge and experience. The CBCA now requires every director to exercise the care, diligence and skill that a reasonably prudent person would exercise in all comparable circumstances.
- VI. Duty of Prudence – The duty of prudence requires that directors use common sense. Acting prudently is acting carefully, deliberately, and cautiously, trying to foresee the consequences of the corporation's activities. Directors must also consider the following guidelines when exercising their individual responsibilities:
 - a) to exercise their powers according to the purpose that they were conferred.;
 - b) to be sensitive to any sort of conflict of interest whether real or perceived. Where conflict cannot be avoided, declare the conflict and, based on the specifics of the conflict, refrain from voting and/or be excused from the meeting.
 - c) to not misuse information or position;
 - d) to ensure that appropriate records are kept and maintained and that proper distributions or payments are made;
 - e) with regard to corporation goals and objectives: to fulfill legal requirements and obligations of a director, represent the interest of all shareholders in the governance of the corporation, participate in review of corporate policies and strategies, and monitor their progress;
 - f) with regard to board activity: to exercise good judgment and act with integrity, and to use abilities, experience and influence constructively, be an available resource to the corporation's management and board, respect confidentiality, govern rather than manage, be aware of potential

conflict areas, evaluate the CEO and corporation's performance, and assist in maximizing shareholder value;

- g) with regard to preparation and attendance: to read mail-out materials, maintain a good attendance record, and acquire adequate information for decision-making;
- h) with regard to communication: to participate fully and frankly in meetings, and encourage free and open discussion, and to ask probing questions;
- i) with regard to independence: demonstrate interest in long term success of the corporation, and speak and act independently;
- j) establish an effective, independent, and respected presence and to foster a collegial relationship with other board members;
- k) with regard to committee work: become knowledgeable about the purpose and goals of the committee, understand the process and the role of the corporation's management, and staff supporting the committee;
- l) with regard to business: corporation and industry knowledge, remain knowledgeable of the corporation's services, facilities and industry, understand the corporation's role in the community, understand regulatory, legislative, business, social and political environments of the corporation, and become acquainted with its officers.
- m) to be an effective ambassador for the corporation.

This is a very brief summary of the duties of a Director. Further information can be found online at the Institute on Governance website, www.iog.ca.

The following is a checklist of items designed to assist directors when assessing and managing the risks they are exposed to in the fulfillment of their responsibilities:

- Attend board meetings as frequently as possible, and all minutes carefully.
- Pose probing questions to the management.
- Record dissenting opinions in writing.
- Make certain that the corporation's affairs are executed according to its constitution.
- Keep abreast of the corporation's activities and be well versed about its industry.
- Be knowledgeable of the laws pertaining to corporate offences.

- Ensure that any delegation of power to management is constrained within reasonable limits, and particularly administrative officers.
- Refrain from voting on questions that might compromise your duty to be independent.
- Review all resolutions passed and actions that are taken in your absence.
- Retain the right to advice from outside experts when warranted.
- Ensure that there is follow up on resolutions passed by the board.

Obtain assurances that demonstrate the timely payment of employee wages, payroll source deductions, corporate income tax installments, sales taxes, and the renewal of any relevant administrative officer certificates and licenses.

- Ensure that the corporation is in compliance with all environmental legislation, has an up-to-date environmental policy, and reports to the board frequently.

3. Chairman of the Board Responsibilities

The Dey Report, written by the Dey Committee in 1994, provides a general description of a chairperson's role in terms of managing the decision-making process of a board, its charge, and responsibility. The following are some specific responsibilities of the chairperson:

- Provide leadership to the board;
- Ensure that the board can function independently of management;
- Establish procedures to govern the board's work, through a member-represented corporate governance committee;
- Ensure that the board fully discharges its duties;
- Schedule board meetings and work with its committee chairs to coordinate and schedule committee meetings;
- Establish an agenda for board meetings as per the recommendations of other directors and the CEO;
- Ensure that management proposals and supporting information are delivered at a time that gives the directors adequate time to review and discuss such material;;
- Oversee the preparation and distribution of proxy material to shareholders, customers, employees and the community;

- Assist the board in the realization of its goals by assigning specific tasks to members of the board when necessary;
 - Act as liaison between the board and management;
 - Represent the corporation to external groups when requested by the CEO or the board.
 - Work with the corporate governance committee, and ensure proper committee structure, including assignments of members and committee Chairs;
 - Chair regular and special meetings of the board of directors;
 - Carry out other duties as required by the CEO and the board, depending on need and circumstances.
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SECTION 4 -- President and Chief Executive Officer Responsibilities

A corporation's by-laws define the duties of the CEO (President) and their power in terms of general control o, and supervision over, the corporation's affairs. The following are the responsibilities of the CEO:

- Fosters a corporate culture that promotes ethical practices, encourages individual integrity, and fulfills social responsibility;
- Maintains a positive and ethical work climate that is conducive to attracting, retaining and motivating a diverse group of top-quality employees at all levels;
- Develops and recommends to the board, a long term strategy and vision for the corporation that leads to the creation of shareholder wealth;
- Develops and recommends to the board, annual business plans and budgets that support the corporation's long term strategy;
- Determines the appropriate use of technology;
- Develops and recommends to the board, the allocation of capital necessary to achieve the corporation's business plan;
- Ensures that the day-to-day business affairs of the corporation are appropriately managed including evaluation of the corporation's operating performance and initiates appropriate action where required;

- Consistently strives to achieve the corporation's financial and operating goals and objectives;
- Ensures fair presentation of the financial condition of the corporation with continuous disclosure documents, and oversees and assesses the internal control of the corporation;
- Ensures that the corporation builds and maintains a strong positive relationship with its customers;
- Ensures continuous improvements in the quality and value of the corporation's products and services;
- Ensures that the corporation achieves and maintains a satisfactory competitive position within the industry;
- Ensures that the corporation builds and maintains a strong positive relationship with its employees;
- Ensures that the corporation has an effective subordinate management team and an active plan for its development and succession;
- Ensures, in cooperation with the board, that there is an effective succession plan in place for the CEO position;
- Formulates and oversees the implementation of major corporate policies;
- Serves as the chief spokesperson for the corporation;
- Builds and maintains strong relationships with the corporate community and general public;
- Ensures management support for board committees.

SECTION 5 -- Board Meetings

The frequency with which a board meets varies from one corporation to the next. Most companies schedule board meetings at regular intervals, such as each quarter, often coinciding with the need to deal with matters such as quarterly financial reviews.

All directors are entitled to receive notice of all meetings of the board and no director can be excluded from such notices or meetings. Notices are usually distributed that

specify such matters and include considerable detail and background. Unless notice is given in accordance with the corporation's by-laws or statutory requirements, the board meeting is not duly constituted and the business conducted at the meeting is of no effect. For this reason, where a board meeting must be called quickly and there is not sufficient time to give the required notice, the corporation may ask directors who were not present at the meeting to sign a waiver of notice. A director's presence at the meeting satisfies the waiver of the notice requirement. A quorum must be present at all board meetings in order for any business discussion, decisions and actions to proceed.

A director must always act with independence, objectivity, and impartiality, and be free of bias. Where a director is conflicted on a particular resolution, they should disclose the conflict recuse themselves (i.e., not participate in the discussions), and offer to exit the boardroom when the concerned matter is under discussion.

The corporation is required to keep minutes of all board meetings and directors are entitled to review them. Minutes provide evidence of who was present and what was done at a meeting. It is important that they accurately reflect the meeting and be circulated promptly. This allows directors who were present to confirm the accuracy of the minutes while the meeting is still fresh in their minds and permits directors who were absent to register any dissent immediately. Minutes are seldom an exhaustive record of everything said at a meeting. However, some description of the nature of the discussion is necessary to provide evidence that the board's consideration of a particular issue was thorough and thoughtful. If the board received advice from experts or advisors, this should be noted in the minutes.

6. Confidential Information

Directors must not appropriate any opportunity that belongs to the corporation. If directors take advantage of an opportunity of which they became aware by virtue of their position on the board and if that opportunity is one that the corporation might conceivably take an interest in, the director or directors have consequently breached their fiduciary duty to the corporation.