SOE Board Talk

SOE Board Talk is an SOEMU initiative to engage with SOE boards and share important information and developments on SOE reform.

SOEMU has been busy developing useful guidelines and monitoring tools to support implementation of the SOE Act, 2015 (as amended). Each initiative and direction are underpinned by the Act and the overall aim for SOEs to be a successful business.

This week we focus on key responsibilities of SOE directors, as detailed in the RMI SOE Governance Manual section 3.1

Please contact SOEMU if there are any concerns or clarifications needed.

Directors are appointed by shareholders to manage the business on behalf of the owners. Directors may delegate this responsibility to "management", but they cannot delegate their accountability for the performance of the SOE or the performance of the duties and responsibilities that they have delegated.

Directors must establish systems and policies that will ensure that they remain sufficiently informed on the status and performance of the SOE so that they can properly discharge their responsibilities.

To be effective the board must provide leadership to the SOE within a framework of control, which enables the board to assess and manage risk. An effective board must develop and promote a unified vision of the SOE's purpose and culture and help the SOE conduct business by setting objectives and values. Thus, the board must:

- Provide direction for management,
- Demonstrate ethical leadership and act as a role model to management, to the workforce, to the stakeholders, and the public,
- Create a culture based on performance and results that increase the SOE's value without exposing the SOE to excessive risk,
- Make well-informed and high-quality decisions based on a clear understanding of the SOE, the business environment and its operating sector,
- Be accountable for its actions, and
- Think carefully about its governance and embrace evaluation of its (own) effectiveness.

An effective board should be clear on its role and responsibilities. A useful board governance checklist is attached.

Underpinning a Directors' role is his/her fiduciary duty to:

- Exercise good faith in all transactions related to the enterprise, and
- Act for the enterprise's benefit, not their own.

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Broadly, the responsibilities of the Board of Directors are summarized as follows:

- Corporate stewardship, where each director individually and as a group should:
  - Advance SOE interests and Board effectiveness by bringing knowledge and experience to bear on the strategic and operational issues facing the SOE,
  - Provide constructive counsel to both management and the board, and
  - Preserve the confidentiality of non-public and proprietary information.
- Integrity and loyalty, where each director should:
  - Act honestly and in good faith,
  - Uphold high standards of business conduct and ethics,
  - Disclose all potential conflicts of interest in order to resolve such conflicts before any interest of the SOE is jeopardized, and
  - Disclose to the chairperson before any board meeting if the board is deliberating on a matter that may affect the director's interests outside the SOE, so that consideration can be given to the director's abstention from discussion and voting.
- Diligence in preparation and knowledge of SOE issues, where each director should:
  - Prepare for each board meeting by reading the reports and background materials provided for the meeting,
  - Make all reasonable efforts to attend board meetings and board committee meetings, and
  - Exercise due care, skill and diligence in contributing to the board and the SOE.
- Effective communications, where each director should:
  - Participate fully and frankly in the deliberations and discussions of the board and to encourage free and open discussion of the SOE's affairs by the board,
  - Establish an effective, independent and respectful relationship with other directors,
  - Respect the chairperson and CEO roles as the chief spokespersons for the SOE and only make public comment at the request of the CEO or Chair, and
  - When conveying personal views in public, indicate that these views are personal and do not represent the views of the SOE or the board.
- Responsibilities of committee work, where each director should:
  - Participate on board committees and become knowledgeable about the purpose and goals of each committee, and

    - Understand the process of committee work and the role of management and staff supporting the committee.
- Responsibilities of knowledge acquisition, where each director should:
    - Become generally knowledgeable of the SOE's business and its operations,
    - Participate in director orientation and continuing education initiatives developed by the SOE from time to time,
    - Maintain an understanding of the regulatory, legislative, business, social and political environments within which the SOE operates, and
    - Become acquainted with the senior managers of the SOE, including visiting them at their workplace.

The board's primary role is to direct, which is why directors are so called.

All directors should be selected on the basis that they are best qualified to assist the SOE achieve its Primary Objectives, which is defined in Section 610 of the SOE Act 2015 to be a successful business and, to this end, to be at least as profitable and efficient as comparable businesses; and to maximize the net worth of the public investment in the State-owned enterprise.

Having the CEO sit as a board member is <u>not</u> good practice. It is very difficult for the board to hold its CEO to account if the CEO is also a board member. CEOs will often attend board meetings, through the mechanism of reporting to the board. All directors should have an equal vote as all directors have collective accountability.

As indicated, there are two basic duties that directors owe to the SOE. **The duty of trust**, or fiduciary duty, requires directors to act with integrity, honesty and fairly for the benefit of all shareholders. Directors must act within the powers in the SOE's constitution, articles or establishing legislation and other relevant legislation and promote the aims of the SOE to ensure its success. Directors should not treat the SOE as though it exists for their own personal benefit and even if a director is a shareholder, they have to respect the legal rights of creditors and other stakeholders. **The duty of care** calls for directors to exercise independent judgment with reasonable care, diligence and skill. What counts as "reasonable" usually hinges on the knowledge, skill and experience that a director can reasonably be expected to have: an accountant, lawyer or engineer would be expected to bring those skills to bear when acting as a director.

The standard of professionalism expected of directors today is generally higher than themselves the required standard to ensure that they are meeting their duty of care.

In regard to the duty of care, the basic level of knowledge expected of all directors encompasses several related matters:

- knowledge of the SOE and a clear understanding of the basis of power (who the shareholders are and where the power lies to appoint and dismiss directors and hold them accountable); the basis of law under which the SOE operates and what the governance rules and regulations are; the board structure, membership and personalities; and the board processes, such as the use of board committees and board information,
- knowledge of the business includes an understanding of the basic business of the SOE and its processes, its purpose and aims – as set out in legislation and the Statement of Corporate intent – its strengths and weaknesses and how it measures success; the extent of its operations; the strategies being pursued, and key factors needed to achieve the strategic objectives; the structure of the organization, its culture, management and people; and the form of management control and control systems,
- knowledge of the financials includes an awareness of how the SOE is financed; a sound appreciation of its annual financial statements and directors' reports; developing trends in key financial ratios; the criteria used in investment appraisals; and the strength of financial controls and who the auditors are. It is not necessary to be an accountant to be a good director, but an ability to appreciate the financial aspects of the SOE and to understand basic financial information is important.

Best wishes for this week in the boardroom

SOEMU