SOE Board Talk

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It has long been noted that governance and Board effectiveness can be increased by the establishment of **Board committees** to assist in managing particular issues and responsibilities that Boards are required to oversee.

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

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Section 625, SOE Act, 2015 provides for the creation of SOE board committees. While the board may make use of such committees to assist its consideration of audit, risk, remuneration and other matters, it retains responsibility for and makes the final decisions on, all of these areas. The chairperson should ensure that sufficient time is allowed at formal board meetings for reports and discussion of board committee activities.

Establishing a Board Committee

The SOE Act, may, in time, provide further guidance on the use of board committees, through the implementation of regulations to the Act. At present, no formal guidance is provided. The most common board committee in use in the private sector is the Audit committee and its use is regulated in some SOE Acts. Some entities broaden the remit of the Audit committee to deal with all finance related issues, beyond just external and internal audit matters and some organizations extend this to include oversight of risk management issues as well. In part it depends on the size and complexity of the organization and its products/markets, and partly on the capacity to engage suitably qualified individuals.

Other common board committees focus on remuneration, human resources policy, finance and risk and are discussed below.

Best governance practice is to make use of board committees are far as is practical and reasonable, based on “will the committee advance/enhance the business of the board and thus improve SOE governance”.

Committees can be

- Standing - an ongoing committee with usually an annual workload and programmed meetings. Finance Committees are often established as standing committees.

- Ad hoc – charged with a specific task. For example, there may be asignificant one-off investment coming up and the board decides toestablish a committee to work with management to evaluate theinvestment. Another example of an ad- hoc committee is when the CEO isbeing replaced. A sub-committee of the board is often established toundertake the search and selection of the replacement candidate.

The board determines the establishment and membership of a committee and sets the terms of reference. Every committee should have written terms of reference, approved by the full board. The terms of reference and composition of the committee should be reviewed every year, in conjunction with an assessment/evaluation of the outputs and performance of the committee. The first board meeting of the financial year is often a good time to undertake this task.

Size of committees is driven by the task and, of course, size of board. If a board comprises 4 directors or less, it is unlikely that there will be any significant administrative or governance gain by establishing sub-committees.

Often it is useful and appropriate to engage non-board members for enrolment on board committees. This may include experts or community members with specialist skills, experience or interests. Such committee members may need to be specifically remunerated and sometimes this is best managed on a per meeting basis.

For a Standing Committee a membership of 3 to 5 members meeting 2 to 6 times a year would be a good guideline.

Staff should attend committees at the request of the committee chair however staff should not be appointed as members of the committee. All directors should be given notice of committee meetings, a copy of agenda and minutes. Directors attendance at committee meetings, when they are not a committee member, should be covered by the committee terms of reference and board process protocols. Generally, while directors who are not members of the committee should be allowed to attend if they wish, their attendance should be the exception, and not the rule.

The board chair should be able to attend all committee meetings even when not a member, however, unless the committee’s rules specifically allow it, the chair, or any board member who is not a member of the committee, should not have a vote during committee deliberations.

It is important to note that the board remains liable for the actions of the committee. A board can delegate its powers and duties, **but it cannot delegate accountability**.

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- Actions of a committee should be limited to making recommendations to the board. A committee should not be allowed to make decisions binding on the full board unless the full board has expressly authorized it. However, it is recommended that delegation of decision making to a committee should be avoided unless the matter is operational, such a selecting a technical expert, and matters with limited financial impact on the SOE,
- Boards should always retain formal approval of any major decisions,
- Delegation of powers to a committee should be consistent with articles/constitution of the SOE and all relevant legislation. Section 637 SOE Act indicates that the board may delegate powers subject to the extent detailed in the instrument of delegation.
- Committees should report back to the board on a regular basis, keeping the board fully informed, and good practice is to do this for each board meeting, even if the report just confirms that there is no further business to report.

Next week we will consider the terms of reference of board committees and the role of an audit committee.

Good luck this week in the boardroom

SOEMU