

I HAVE BEEN INVITED TO JOIN A COMPANY BOARD.

WHAT DO I DO? A CHECKLIST

So you have been invited to become a director or stand for election as a director. Congratulations. Will you accept? What should you do now?

Much will depend on the size of the company. Here is a check-list of matters a prudent director would consider.

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DO I ACCEPT? CONSIDERATIONS BEFORE ACCEPTING

My personal liability as a director

Find out:

- Why has a vacancy or opportunity for election arisen?
- Is there any legal action by or against the company or individual directors?
- Has the company an up-to-date:
 - register of shareholders; and
 - interests register; and
 - register of directors' share dealings?
- Do any environmental liabilities arise which cannot be underwritten or avoided at a personal level?
- Do any taxation liabilities arise which cannot be underwritten or avoided at a personal level?
- Is Directors & Officers insurance provided for me? If so:

Who pays the premium?

Is it for the maximum cover permitted by section 140?

For more information on D & O insurance, see this site.

If insurance is not provided, how much would my own personal D & O insurance cost?

Has the company authorised the indemnity of directors permitted by section 140?

What is the term of office of a director?

Obtain

Advice from a professional adviser on:

the extent of my personal liability as a director;

any special level of care skill and diligence expected of me because of my expertise;

my fiduciary duties as a director;

consequences of breach.

A copy of any D & O insurance policy

Company image

Find out

How is the company regarded by:

the community?

the suppliers to it?

its clients - those who purchase from it?

other directors you know?

the registry?

What legal actions has the company been involved in during the past 5 years?

Has the company been the subject of any media reports? Favourably?

Examine:

Mission statement (or similar, if any)

Company functionality

Find out:

How many Board meetings has each Board member attended in the past year?

Am I confident that the Chairman will run productive meetings?

When was the last audit? As at what date?

Examine:

A copy of the last Annual Report lodged at the Companies Office. *This is a public document available to anyone, so it is reasonable to ask for it. If the latest one due has not been lodged, this should be a warning.*

A copy of the last Annual Return lodged at the Companies Office. *The same comments apply.*

Commitment

Find out:

How often are Board meetings?

What subcommittees will or might I be a member of?

How often does it (do they) meet?

What subsidiary companies have Boards of which I will or might become a director?

How often does it (do they) meet?

Are Board papers always available in good time before the meetings?

Am I expected to bring special expertise to the Board? Do I have that expertise?

Consider:

- Do I have enough time for proper preparation? *Expect preparation time of at least 3 hours for every 1 hour of meeting.*
- Will good communication with the Chairman and fellow directors between meetings be available?
- Do I feel committed passionately to the success of the company?

Remuneration

Find out:

- What is the remuneration, if any?
- What form does it take?
- Is it taxable?
- Is superannuation paid?

BEFORE THE FIRST MEETING

Legal and official structure

Understand

- Has the company adopted a constitution?
- What are the functions and purpose of any Board committees?
- What are the functions and purpose of any Board delegations?

Examine:

- A copy of the constitution
- If I am a director of any subsidiary, a copy of the constitution of the subsidiary
- For any committees, a copy of the Resolution, Terms of Reference or other definition of the role, responsibilities and accountability of the committee
- For any delegation of Board authority, a copy of the resolution etc defining the functions and limits of the delegation

Consider:

- Does the constitution authorise action taken by the Board where special authorisation is needed?
- Are the delegations ones which the Board must exercise itself?

Governance

Find out:

- Which Board members are executive; which non-executive?
- What is done about good governance?

Examine:

- A copy of the Code of Conduct, if the Board or company has one
- A copy of the written Governance Policy, if the Board or company has one

Identify:

- All stakeholders in the company's operations
- The roles (and the limits of the roles) of each of:
 - stakeholders;
 - individual directors;
 - Board;
 - chairman;
 - CEO and management
 - auditor
- The relationship between each of those roles and the proper lines of communication between them
- Means of monitoring statutory compliance

The business

Understand:

- What is the core business?
- What are the principal business segments?
- Where are the centres of business?
- What are the main issues currently concerning the Board and management?

Company performance

Examine:

- The 3 most recent annual reports and accounts
- The 3 most recent performance reports by management to the Board
- The last 6 months Board and committee minutes
- Industry and government reports
- Information on comparative performance in the industry
- History of the Board:
 - directors
 - Board conflict

Board strategy

Examine:

- Mission statement
- Corporate plan
- Business plan/operational plan
- All policy statements adopted by the Board or company *For example: risk management policy; policy for election of the Board, staff employment policy etc.*
- All procedures manuals adopted by the Board or company

My role as director

Read:

- "The Company Director - A Short Guide to being a Company Director in PNG" - booklet prepared by PNG Institute of Directors and available on this site and, in hard copy, from the Institute

Identify:

- Am I an executive or non-executive director?
- Am I a director because of some special area of expertise?
- In whose interests must I act? *The basic principle is: In the interests of the members as a whole.*
- Am I a nominee director or representative? If so, in whose interests may or must I act? *Note section 112(2) and (3)*
- What other roles, if any, do I have? How do these roles relate to or conflict with each other?
- What possible sources of conflict of interest may I have?
- What times must I set aside to honour the commitment?
- What external sources are there who may seek - properly or improperly - to influence the Board of directors

My meeting performance:

- Read: Rules for conduct and procedure at meetings, both specific to the organisation and generally. *See material on this site.*
- Find out: Procedure for notice of absence from meeting
- Procedure for alternate or substitute director, if permitted

Accountability framework

Find out:

To which of the following are the company's operations subject:
Companies Act 1997
tax statutes
criminal law
Ombudsman's legislation?
Leadership Code?
industrial legislation?
occupational health and safety legislation?
environmental legislation?
freedom of information legislation?
anti-corruption organisation/legislation?
Workers compensation legislation?

People to meet

Meet:

Chairman of the Board
Chief Executive Officer (by whatever name called)
company secretary (if there is one)
other non-executive directors
auditor

Understand:

Qualifications and expertise of other Board members
Roles of other Board members: executive; non-executive; nominee; alternate
etc.
Tenure of each Board member
Who are the external professional advisers?

Meeting preparation

Prepare

Collect the Board papers for the meeting
Study them and be prepared to contribute to discussion.

AT THE FIRST MEETING

People to meet

Meet:

All Board members
Key executives

Information

Find out:

Any matters listed above which are unresolved
Access of individual directors to:
Chairman
CEO
management
committees
auditor (internal and external)
System for reporting from committees to the full Board
System for reporting to the full Board from those who have delegated powers
System for internal audit
Arrangements for Board meeting papers
Are these adequate?

Compliance with Companies Act

Find out:

Have these compliance requirements been satisfied:
required records held in registered office? (section 164)
accounting records maintained (section 188)
share register (section 67)
interests register (section 164)
register/record of directors' share dealings (section 126)
notice of appointment of new director (section 137)
Are they adequately monitored?

Disclosure of interests

Disclose:

As an individual director, I declare my interests and request the disclosure be recorded in the minutes

Interests register

Request entry in interests register of:
interests disclosed above; and
material interests in transactions with the company (section 118)
information acquired as director which is disclosed (section 123)
share dealings in the company (section 126)
all payments and benefits received (directors fees, sitting fees, travel benefits etc section 139)

Compliance with other obligations:

Find out:

What compliance systems are in place for:
Occupational Health and Safety
environmental
Equal Employment Opportunity legislation
superannuation
workers compensation
others?

PERFORMING ON THE BOARD

Functions

Key functions of a director:
Be informed
Participate
Monitor
Manage opportunities and risks
Plan
Report to members

Non-financial performance

Monitor:

Management's performance:
Set measurable targets or benchmarks
Have they been achieved?
Is management reporting satisfactorily?
Are statutory requirements complied with?
Are the Board's policies being implemented? Is the testing of this adequate?

Plan:

Is there a corporate plan?

Is the Board strategy clear and understood by management?
Is there strategy in place for identifying opportunities?
Is there a risk management policy in place?
Is there a policy for transparency and reporting?
Are there defined measures for good corporate governance?
Are there directives from the Board to management concerning:
 staff employment - selection; contracts for senior executives. Is the form
 of contract approved?
 Industrial relations
 purchasing and pricing policy etc

Understand:

The interests of all stakeholders
Requirements for major transactions
The need for and advantages of good corporate governance
The importance of questioning management.

Financial performance

Monitor:

Management's performance:
 Is accounting up-to-date?
 Are reports given to the Board adequate for management?
 Are appropriate indicators applied?
Is management reporting satisfactorily for management purposes?
Are statutory requirements complied with?
Are the Board's policies being implemented? Is the testing of this adequate?
What unauthorised or non-budgeted outgoings have occurred?

Plan

The budgeting process:
 Is it adequate?
 What assumptions underlie the budget?
 What sensitivities impact on performance?
 Are variations explained?
Is the budget compatible with the corporate plan?

Understand

How to understand balance sheet, P & L account and Cash Flow statement
Key issues to monitor in the accounts
The financial reports to meetings and specific inclusions
Capital expenditure programme and planning
Statutory tests of insolvency and how to apply them.
Statutory requirements before distributions.
The importance of questioning management.

Committees

Types

Am I a member of any of these committees:
 compliance
 audit
 director selection and remuneration
 Board effectiveness
 good governance
 other?

Role of committee

Are these defined in my committee:
 functions

powers, if any,
responsibilities and duties
limits of authority and of enquiry
term (duration)
reporting to the board – how, when and to whom
accountability and responsibilities of any non-directors on the committee?

Governance

Disclosure – are necessary disclosures being made and recorded?
Transparency – is this in accordance with best practice?
Reporting to members – are systems agreed and being carried out?

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This is not a substitute for legal advice. Users should obtain professional advice.