

# The Boardroom Practice Limited

◆ Building Governance Best Practice ◆

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## General information about directorships

The following information has been designed to help candidates for governance positions to more fully understand their potential roles and the details of the appointment process. While the focus is on the realities of being a director in a Crown company or entity, the principles expressed will apply to any governance role.

### A. Becoming a director

#### What do boards do?

There are generally four key areas of focus for directors in their governance role. These can be loosely characterised as adding value, conformance, issues management and monitoring. In adding value, the board provides leadership in company direction including strategy, investment and divestment, as well as ensuring that there is both succession planning and a comprehensive human resources plan. Conformance relates to policies, compliance and risk management. Issues management is about stakeholder and shareholder communication and crisis avoidance and management. Monitoring is about regular operational and financial reporting against the business plan and budget; and board and CEO appraisals.

#### Why become a director?

- Most directors find being a member of a board stimulating, interesting and challenging. Not only are the directors exposed to different industry sectors, but they have the opportunity to contribute to the journey of an organisation and participate in its growth and development and ultimate goal (of a company) of increasing shareholder and stakeholder wealth (however that is measured).
- Directorships can be seen as another career where those previously in senior and professional roles have the opportunity to use their acquired skills, knowledge and wisdom and apply these to organisations in their role as a director.
- From a personal perspective, not only does one gain personal satisfaction, but there is intellectual stimulation and the opportunity to further learn and develop from other directors, the management, the company and the industry.

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## Risks and liabilities for a director

The following are some of the risks and liabilities directors face (with an added focus on the Crown as a shareholder):

- Endorsing decisions and recommendations that prove to be incorrect.
- Involvement in a board where insufficient attention is given by board and management to risk mitigation.
- Not having a sufficiently qualified or balanced board.
- A separately-appointed chair who perceives he/she is “bullet-proof” in the face of adverse board criticism.
- Some fellow directors with loyalties wider than the company’s best interests.
- Reputational risk increases the higher the profile of the company. As a Crown company board member, where the shareholders are elected representatives of the New Zealand public, there is also a perception that public money is being spent.
- Community lobbying on individual directors.
- Evaluating and/or resisting commercially unwise shareholder influences or wishes resulting from the shareholder’s own pressures from Cabinet and/or Caucus colleagues.
- Liabilities placed on directors under the Companies Act.
- Liabilities under other relevant Acts.

In the Crown domain, it is important that the directors understand that there is the greater sensitivity of the Crown as a shareholder – for the reasons outlined above. However, provided this is appreciated, the risk is not significantly higher.

Sound governance practice also needs to be applied and the principle of “no surprises” being given greater focus than may be the case in private sector companies.

Overall, Crown company directorship can be more challenging in that there are sometimes different and competing objectives, eg for the Crown Research Institute, one is balancing profitability, research and development, IT and endeavouring to act like a commercially focused organisation but with these other areas of focus.

## How does one get a directorship?

The key opportunities are as follows:

- Contact CCMAU and register your interest in being considered for Crown directorships
- Other government departments with a nominations or appointments function, eg the Ministry of Women’s Affairs, Te Puni Kōkiri., the Ministry of Pacific Island Affairs, the Office of Disability Issues, the Office of Ethnic Affairs
- Become a member of the Institute of Directors and become listed on their database.
- Via regional development agencies, eg Venture Taranaki has a database focused on potential directors for the Taranaki region. Further regions are likely to develop in this way.
- Human resource consultants – there are a number of these now specialising in director appointments.
- Ensuring you up-skill in relevant corporate governance competencies.
- Director database at [www.FindDirectors.com](http://www.FindDirectors.com).
- Newspaper/trade publications.
- Exploring the opportunities in Council controlled organisations
- Networking amongst directors – people are still comfortable with people they know.
- Consider advising your local MP of your interest and your attributes.

It is important to promote yourself and ensure that there is an awareness that you are wishing to take on directorships. However, this needs to be a balanced approach as in any situation. It also has to be remembered that there is a huge interest in directorships with a limited number of positions available, both in the public sector and in Crown organisations.

In summary, there are a number of pathways to becoming a director. It does require effort and pursuit, but at the same time this needs to be tempered to ensure that the pursuit is not regarded as annoying. Judgement is required.

### **Fees and expenses**

You may find that director fees in Crown companies are less than those paid in the private sector. If this is a major disincentive, Crown directorships are not for you. However, Crown directors generally report that they gain great satisfaction in contributing to government boards and that the fees, provided they are not derisory for the effort required, are a secondary consideration. Your due diligence will alert you to the fees paid. Fees are approved annually by the shareholding Ministers.

Expenses are met by the company and are not deemed to be a part of the fees structure. Boards will generally have a guideline in the board manual for the intending director's information.

All boards should have a budget set aside for director development. As part of board evaluation processes, directors can expect to have an individual development plan agreed.

## **B. Process for becoming a director**

Prior to being offered a director appointment, there is a process that is followed – either for Crown companies and/or general company boards. This involves meeting with the Chair and/or board sub-committee and, sometimes, the CEO and then, should the position be offered to you, reaching a decision for acceptance or not. On both sides, do you want the job and does the board want you?

The following outlines some areas of focus when embarking on this process.

### **Interview techniques**

Notwithstanding the position that a person currently holds (senior or otherwise), interview techniques, and knowing the correct questions to ask, is important. Some would liken the interview to that of a full time senior interview – and in my experience with some of the organisations of which I am a director, this has been more the style. In the Crown situation, this becomes less of a “job interview” and more of a general, wide ranging discussion on the company and governance.

### **Due diligence**

Due diligence on the company should be undertaken prior to your name being put forward, to ensure that you are in a position to understand the company situation and environment and/or be in a position to ask meaningful questions should you reach a short list for interview with the Chair. Prior to this you should also have an understanding the obligations of the directors under the Companies Act 1993 and the other relevant Acts, eg SOE Act CRI Act and CE Act.

Due diligence is also a key process to ensure that you have no unmanageable conflicts of interest. These may not always become apparent until you have this discussion. Not all conflicts are unmanageable and may not be an impediment to your appointment. Gaining a copy of the board's conflict-of-interest protocols is encouraged. Companies may provide access to their strategic and business plans and, although you may not be asked to sign a confidentiality agreement, the sensitivity of this information must be respected.

The following are some ways you may like to consider as a means of gaining further information about the company and the environment within which it operates:

- Look at the company website. This should provide background company information, financial information and information on the CEO and senior management and board.
- Internet search for any other news on the company and its position.
- Identify the specific directors on the company's board and then also search their backgrounds – possibly through further Internet searches.

For Crown company roles you will be given guidance on the process, the questions to ask, and a kitset of information about the company. However, the following are some key areas of focus to consider when meeting with the Chair.

- **Market environment**  
Questions around the market environment should include questions about company strategy, where the company is in its lifecycle, challenges for the company and industry sector it is involved in, any competitive advantage or comparative advantage that the company may have, any weaknesses the company may have, who the competition is.
- **Financial position**  
Questions associated with this would be anything you have identified from the set of accounts – assuming that access is available for this. Alternatively, questions regarding the financial position should include key financial measurements for the company, cash flow, equity and debt position and, depending on the industry, levels of capital expenditure.
- **Management expertise**  
Questions regarding the background and capabilities of the CEO and general understanding of the senior management team.
- **Board**  
Questions would relate to the board members, their length of time on the board and background, the Chair's style and expectations of directors, and the skills you, as a director, are perceived to be bringing to the board table.  
Further questions may also involve subcommittees, board meetings and time allocation.
- **Other areas**  
You should be prepared to discuss the key areas of your background that are relevant and meaningful to this particular board appointment.

## Decision for a directorship if offered

Reaching the stage where a directorship is offered can sometimes be a long process. The company and board, at times, can be diverted during the process. For a Crown board the timing can appear quite open ended – until all of a sudden decisions will happen with urgency.

Should you be offered a position with the company, then you should consider the following:

- Review the information provided from the meeting with the Chair and identify any further major questions that require clarification (if any).
- Reflect on the meeting with the Chair, the Chair's style, the Chair's comments regarding the overall boardroom style.
- Reflect on whether you believe that the style and culture reflects and fits with your style.
- Reflect on the contribution that you can make.
- Undertake further discussions with people you know who may know the company and those associated with it.
- Ensure that you fully understand the expectations of you as a director. For example, in a smaller company there is sometimes a requirement for a director to, at times, act like an executive director/advisor as these companies may not have the funds available for external advice.
- Review your time commitments and whether you can meet the obligations.
- Be comfortable in regard to the company's director insurance cover.
- Be open about possible "negatives" in your background – the Crown is vulnerable to criticism over the appointment of "inappropriate" directors. CCMAU can guide you on this issue.

Once you have reflected on the above, this then puts you in a position as to whether to say yes or no.

If "yes" to the above, then say "yes". If "no", or you are unsure, identify what further information you require and/or say no. It is more important to say no if you are unsure but you need to be able to understand why and articulate why. Understand that "no" does not mean there will be no further consideration of your potential – it can demonstrate a careful consideration of the invitation and its relevance to your attributes. The appointing agency recognises and appreciates thoroughness in due diligence.

The letter of appointment is a key document. Not only does it formally invite you to accept the directorship, it provides a number of performance monitoring criteria, in addition to the conflict of interest expectations for the sector in which the company operates. Once signed and deposited to the Companies Office (by the Company Secretary) you are formally a director and personally accountable in terms of the Companies Act 1993 and the company's constitution. You should read the letter of appointment and the conditions and expectations carefully.

Finally, you may have undertaken all the steps asked of you and then find that the appointment has not proceeded. This can be personally disappointing but is not an indictment on your capabilities. It is your prerogative to enquire why your appointment has not proceeded, lest there be issues for you to address when next invited to consider an appointment.

## C. After the appointment

After you have been appointed to a board, it is important that you develop a more detailed understanding of the organisation so that you are in a position to contribute at the forthcoming board meetings.

### Induction

- Induction is important and it is equally important that you are prepared to give the time to this. Not only does it give you an opportunity to learn more about the company, but it is also an opportunity to meet with senior management and generally have the opportunity with the Chair and CEO again to ask further questions.
- Induction programmes will vary by company in their length but generally it is the responsibility of the Chair and the CEO to ensure a comprehensive induction.
- Likely reading associated with induction are: statement of intents, strategic plans, business plans, any detail on a functional basis that is important to that company, the last two to three board papers, one or two copies of the latest standing committee papers, eg audit and recent press clippings or related information.
- Meetings are likely to be scheduled with the CEO and perhaps other members of the leadership team. The induction may also extend to a visit to a site or location to experience the company in operation. The induction is likely to conclude with a meeting with the Chair.
- A soundly managed board will provide you with a detailed “Director’s Manual”, which provides information on, inter alia, key reports, committee memberships and terms of reference, management structure and the company’s Code of Conduct/Ethics..
- Other aspects you should expect in the manual and the induction is housekeeping, and it is likely the company will provide you with a list of directors and senior management with full contact details, a timetable of meetings, key points of contact within the company for fees and expenses, information on director’s liability insurance, a letter of appointment and a letter of expectations of a director.
- A good induction programme reduces the downtime for the board as generally new directors may be asking questions or seeking information that is based on historical decisions and at times this can be repetitive and reduce the effectiveness of the board.
- This does not mean that you should not ask questions for clarification, but it is important to recognise in the first couple of months of board meetings it may be better to ask the Chair and/or CEO for clarification at the breaks.
- In general, it is appropriate in the first board meeting or two to learn to understand the dynamics of the board, the Chair’s style, the management and board interaction and then identify the most appropriate way for you as a director to participate.
- Consideration, at the early meetings, should be given to spending additional time in the reading of board papers so that you, as a director, have brought good judgement to the board table. Meaningful participation in discussion is important, but this should not be just to prove your expertise.

- If you are unsure about your level of contribution then discuss with the Chair who should be able to offer you guidance in this area.

A point to consider - Management recognises directors are not necessarily fully knowledgeable of the company and its business sector and there is a general expectation that a new director will participate in the induction. This should ideally be completed prior to the first board meeting or, certainly, the key papers having been read with perhaps follow up visits after the board meeting. Induction is time-demanding on management and every effort should be made to participate.

If the company or entity is monitored by CCMAU, there will also be a CCMAU induction programme which will encompass, inter alia:

- Government perspective and concerns
- “No surprises” convention
- Relations and communications between the responsible Minister
- Role of the monitoring and policy agencies
- Fees policy and reviews
- Appointment process – in regard to reappointments.
- Board, chair and director evaluation.

### **The hard parts of being a director**

Companies operate in a dynamic environment and with this can come unexpected situations or crises. It is in situations such as these that a board and management can demonstrate their effectiveness in how they work through these situations. These are the times that the common saying “a director works for their fees” is most appropriate. Whilst risk mitigation is part of a board’s role, it is only when a crisis occurs and the response that the company gives to this crisis that a true test on the board and management is realised. It is also during these times that the roles of the board and management need to be fully understood and that there is a united voice on these issues.

Other difficult parts of being a director can be, for example, when taking large decisions, there is not full board agreement and the board does not perceive themselves to be united as a team. There may also be times where there is friction between board and management or the CEO and chair, or alternatively where it is perceived that the board and management, or the CEO and Chair, are too close. As a director, these times can prove difficult and can lead to frustration on the part of you, as a director, and potentially impact the smooth operation of the board.

It is important that the board works to overcome these potential issues. It is equally important that the board speak with one voice. Disagreements or dissents remain in the boardroom.

In the event of irreconcilable differences over a proposed major policy, or you find yourself in dissension for many board decisions, then you may consider resigning, but this should be a last resort only. The shareholder has made a considerable investment in your appointment (and those of your colleagues) and resignation is best submitted in cases where you cannot accept a policy and/or you consider you are personally facing an unsustainable personal risk.

However, you may find that, in spite of your due diligence, membership of this board is not for you. This is not necessarily a reflection of your attributes but a situation wherein the appointing agency has misread your skills profile against the board’s requirements. Conceding the appointment mis-match is not an adverse reflection on you and, after discussing the situation with the Chair, a letter of resignation may be submitted.

## D Conclusion

Joining any board, and in particular a government board, has many positives. Besides the normal satisfaction of contributing to the governing and running of a company, there is the knowledge that you are also contributing to a major part of the New Zealand economy. A directorship also adds value to your personal attributes and expertise which will serve you well in other business and community endeavours. It may seem that there are stringent conditions to the appointment but, compared with the benefits, these are minor. Given that you are being asked to be a steward of the taxpayers' assets and liabilities, careful consideration by yourself and the appointing persons is understandable.

If you are asked to consider an appointment, it will be due to your attributes being seen as capable of adding value to an important part of the New Zealand economy. Be pleased to be approached, and, observation of the points made above, will serve you in good stead as you go through the appointment process.

From a personal perspective, I find the involvement in a wide variety of industries intellectually challenging and I enjoy participating and learning from the wide variety of different people with different expertise around the various board tables. I also enjoy the opportunity to observe the different management expertise and styles and best practice across industries.

Finally, understand why you want to be a director, understand how you can contribute within the specific company you have been approached about or you are pursuing, be prepared for participation in the process of becoming a director, and then enjoy.

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*The opinions expressed in this article are solely those of the author.*