Welcome to the Boardroom

As a Director you have accepted a great leadership responsibility. You have chosen to play a key role in providing direction to the organization on whose board you serve. You may be a member of a corporate board which can be publicly or privately owned, you may be a director of a state-owned enterprise or an NGO, or you may be appointed to the board of a statutory body. Regardless of the type of board, all directors are expected to abide by some commonly held principles and standards some of which are codified in law or in the form of voluntary codes. This reference guide draws on both sources to offer some guidance on good practice that if followed, will ensure that your experience as a board member is a truly rewarding one.

You may have many questions about your role as a Director and the specific duties and liabilities that go along with that role. Naturally, you may also be curious about what rights, privileges and authority you have as a board member. This guide will provide answers to some of these questions and point you to useful sources for more detailed guidance.

For access to more information go to www.energy.tt

The Board

Under the Companies Act 1995 (Chapter 81:01, Section 60(b)), the Board of Directors is required to direct the management of the business and affairs of the Company.

The Board acts as a top-level advisor, monitor, reviewer and appraiser to the organization. The Board directs the executive to the mix of outcomes that constitute the vision of the organization and provides limits within which the outcomes are to be achieved.

Best practice boards ensure that there are distinct roles for the board and executive and do not usurp the authority of management by getting involved in day-to-day operations of the business.

The board operates as a collective and communicates its decisions to management with one voice. Directors are expected to exercise independent judgment but the board decides as one. Directors have no authority to instruct or advise management except through the board.

What You Should Know

As a new director, you should receive induction on joining the board and should regularly update and refresh your skills and knowledge. The formality of the induction process would depend on the size and complexity of the organization. The Chairman of the Board is responsible for the induction process and should consult with the Corporate Secretary and the CEO to prepare an induction plan for all new directors.

Specific areas of knowledge include governance, finance, strategy, risk and compliance. An understanding of legal issues including industrial relations would also be relevant.

To prepare for your first board meeting you should seek the following information through the Office of the Chairman.

1) On Business Operations:

- Structure of the organization including subsidiaries and joint venture arrangements as well as management structure
- Current strategic and /or business plan, market analysis and budgets including risk assessment, key strategies and performance indicators
- Latest annual report and accounts
- Summary of insurance policies, including Directors and Officers liability insurance
- Details of any major litigation (both current and potential) undertaken by the company or against the company
- Treasury issues , Funding position and Dividend policy

2) On Board Policies, Procedures and Protocols:

- Memorandum and Articles of Incorporation, By-Laws and/or Constitution
- Minutes of the last six board meetings
- Board's meeting schedule and board committee meeting schedule
- All board policies and procedures, including schedule of matters reserved for the board, access to independent professional advice, procedures for meetings and communications between board and management
- Brief biographical and contact details of directors, company secretary and key executives
- Board Charter and details of board subcommittees and their terms of reference

3) On Directors' Duties and activities:

- Outline of directors' duties
- Company procedures regarding director share dealings and the disclosure of price sensitive information
- Disclosure requirements and procedures
- Protocol, procedures and dress code for board meetings, general meetings, formal dinners, staff social events, site visits
- Policy on directors' expenses and method of reimbursement

Directors' Time Commitment

In keeping with their duty of care directors should always evaluate the demand on their time before allowing themselves to be considered for an appointment. Time considerations include time for board meetings and the associated preparation, time for strategy retreats, travel, reading, attendance at ad hoc and committee meetings. According to corporate governance experts, directors should ideally spend between 2 - 4 days per month for a single, non-executive director position. For members of the audit committee, this time commitment can be even greater.

Director Profile

Different boards require different skill sets, experience, perspectives and personalities to properly fulfill their roles. Best practice dictates that the skills and experience of board members should be appropriate to the requirements of the business

In general, the Board should include individuals with the following skills, experience and attributes:

- Financial expertise, including finance, accounting and audit procedures
- Relevant industry experience
- Legal expertise
- Representatives of key stakeholders
- International experience (if applicable)
- Honesty and integrity
- Gender distribution
- Age and tenure distribution

Director Evaluation

Best practice boards engage in a process of board evaluation at least once per year. A good board evaluation includes an individual director evaluation and would typically cover the following areas:

- *Knowledge*: *Governance, Finance, Strategy*
- Competence: *Critical thinking and analysis, decision making, interpersonal skills, communication skills*
- Behaviours / Attributes: *Commitment, motivation, responsibility, respect, honesty, integrity, independence*

What is a Conflict of Interest?

A conflict of interest occurs when an individual or organization has multiple interests, one of which could possibly corrupt their motivation in a transaction. Conflicts of interest commonly result from family interests, ownership of other companies, gifts from friends or business partners, multiple places of employment and self-dealing i.e. entering into a transaction with oneself or a related party

A director has a conflict of interest when

- he/she can influence the outcome of a transaction or decision for personal gain for the benefit of a related party.
- He /she is an officer or director of a company that conducts business with or is seeking to conduct business with the company on whose board he/she serves
- He/she is privy to confidential or insider information that can be used for personal gain or for the benefit of a related party

A related party may include:

- Board members of the company, its parent, affiliated or sister companies, and associates
- A parent, subsidiary, or affiliated company (except 100 percent or wholly owned subsidiaries and parent companies)
- The CEO, general manager, or key officers, including anyone who directly reports to the board or the CEO
- Any significant shareowner having the ability to control, or exercise a significant influence on, the outcome of resolutions voted on by shareowners or directors of the company, its parent, affiliated or associated companies
- The father, mother, sons, daughters, husband, or wife of any of the natural persons listed above
- Any business, and the directors, CEO, and key officers of any business, in which the natural persons listed above own jointly or severally at least 20 percent of the voting rights.
- Any person whose judgment or decisions could be influenced as a consequence of an arrangement or relationship between or involving themselves and any of the above persons

What you should do

Directors should disclose their interests to the Chairman and Secretary on becoming a Director. In addition, directors should recuse themselves from any board or committee discussion or decision where either an actual or potential conflict of interest may exist.

When in doubt as to the existence of a conflict of interest refer to your Board or Company Policy manual or consult the Corporate Secretary or Chairman. For directors of state-owned enterprises and statutory bodies, you should be guided by the Code of Conduct contained in Part IV of the Integrity in Public Life Act and Section IX of State Enterprise Performance Monitoring Manual 2011.

Duties of Directors

All directors are expected to comply with the following duties, often referred to as fiduciary obligations.

Duty of Care

The duty of care is an obligation imposed on the board that the directors act on and take decisions on a fully informed basis and with due diligence. The duty of care is embodied in law [section 99 (1) (b) of the Companies Act Chapter 81:01] and frequently also in the company's articles, bye-laws and board charter. The bye-laws, charter or other founding and guiding documents describe the information to which the board has a right.

Duty of Loyalty

The duty of loyalty means that directors act exclusively in the interest of the company. In deciding what is in the best interest of the company, the law specifies that they are to consider the interests of the company's employees in general and its shareholders. However, directors shall not allow their personal, or any other singular, interests to prevail. Sometimes referred to as a director's "fiduciary duty" this responsibility assumes the director takes the role of i). an agent acting on the company's behalf and ii). a steward who controls the company assets.

A breach by any Director or the Board of their fiduciary duties exposes the individual Director as well as the Board to liability.

Executive, Non-Executive and Independent Directors

Executive Directors

As an Executive Director you have operational management responsibility and are directly affiliated with or employed by the organization. A board with a majority of executive directors is more common in privately held companies.

Non-Executive Directors

As a non-executive director you are not an employee and you do not hold an executive/operational position in the company. Directors of state boards are usually all non-executive. Non-executive directors may or may not be independent.

Independent Board Members

An independent director is characterized as being independent in character and judgment and has no material relationship with the company beyond their directorships. Best practice boards tend to have a majority of independent directors.

Corporate Governance Orientation Guide for New Directors 2013

The Energy Chamber

of Trinidad and Tobago

Corporate Governance

Other Guides in the

Corporate Governance series:

The Corporate Governance Framework Guide

The Legislative Guide

Frequently Asked Questions

(Final Draft)