Corporate Governance in Crown Corporations and Other Public Enterprises

Guidelines

Department of Finance and Treasury Board of Canada
Ministère des Finances et Conseil du Trésor du Canada

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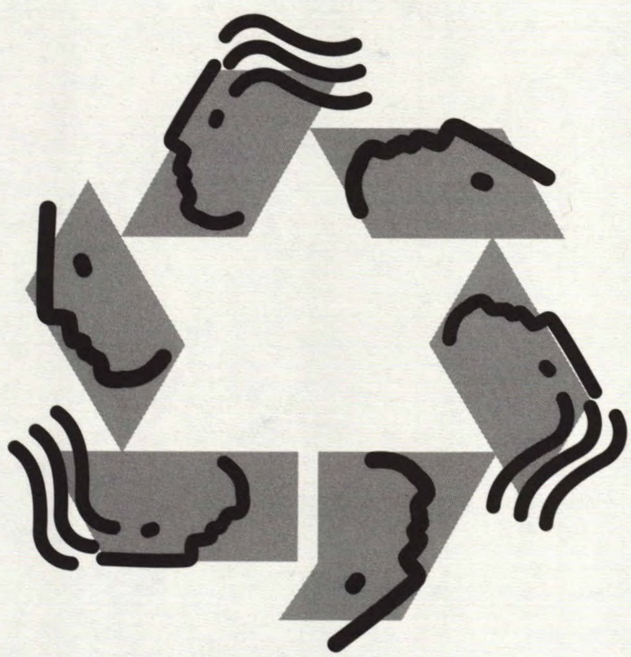

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Canada

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Message from the Minister of Finance and the President of the Treasury Board

In the current climate of change, all levels of government are exploring new alternatives for program delivery. The use of the corporate form as a vehicle of change is gaining increased importance. As well, corporate governance practices, involving the way we oversee the direction and management of public enterprises, have also gained importance.

Crown corporations operate in different sectors of the economy, vary greatly in terms of size and public policy purpose, and place different demands on the Crown for financial support. The government considers an effective board of directors to be a vital element of the corporate governance and accountability regime for Crown corporations.

We would like to express our sincere appreciation to the Advisory Group on Crown Corporations. The Group's membership comprises senior executives with a breadth of experience from both the public and private sectors. They have given generously of their time, and contributed wise and useful counsel. We believe that their work has resulted in Guidelines that will enhance corporate governance in Canada.

This document sets forth a number of ways in which the effectiveness of boards of directors can be strengthened. The *Guidelines for Corporate Governance in Crown Corporations and Other Public Enterprises* address important aspects of corporate governance — how the responsibilities and powers are divided among the Crown, the board of directors, and management; the board of directors' stewardship responsibilities; developing an appropriate and effective working relationship between the board and management; and ensuring there are mechanisms in place to achieve accountability.

These Guidelines serve as an important benchmark for the corporate governance practices in each Crown corporation. We support the Advisory Group's recommendation that each Crown corporation report on its corporate governance policies and practices in relation to these Guidelines in its annual report.

These Guidelines will also have applicability to other public enterprises. We think they will provide a valuable source of advice and guidance to those charged with the responsibility for corporate governance in Crown corporations, and will strengthen accountability.

We are confident that these Corporate Governance Guidelines will help the chairs, chief executive officers and individual members of boards of directors to appreciate the challenges that must be met by both the shareholder and boards of directors to enable corporations and public enterprises to fulfil their mandates.

Paul Martin
Minister of Finance
Ottawa, June 1996

Marcel Massé
President of the Treasury Board
Ottawa, June 1996

Message from the Advisory Group on Crown Corporations

Our Advisory Group was drawn together to assist the government in its use of Crown corporations and public enterprises to deliver services to Canadians. We welcomed the opportunity to help strengthen these important public institutions.

Crown corporations have a long history in Canada dating back to Confederation. They have acted as engines of industrial development, provided important goods and services, and contributed to developing our national identity. We anticipate that Crown corporations and other public enterprises will continue to be used to achieve national goals and deliver programs and services to its citizens.

These Guidelines reflect our belief that an effective board of directors is key to the functioning of Crown corporations and other public enterprises. Having each Crown corporation report on its corporate governance policies and practices in relation to these guidelines in its annual report will enhance the accountability of the boards.

The Group's members have shared their diverse experiences from both the public and private sector. We trust that these Guidelines will be a valuable source of advice and guidance on corporate governance matters. We anticipate that they will be used by chairs, chief executive officers, and individual board members to enable them to function more effectively in meeting the expectations of the Government of Canada. We are hopeful that the Guidelines will be of use to the other public enterprises including those at the provincial and municipal levels of government in Canada.

We appreciate the review and feedback received from Crown corporation chairs and CEOs, as well as the Privy Council Office and the Office of the Auditor General. Their comments helped to improve the Guidelines.

Our thanks to the Crown Corporations and Privatization Sector, of the Department of Finance and Treasury Board of Canada, who undertook the logistical tasks of organizing our Group and overseeing the production and distribution of the Guidelines. We also acknowledge the support of The Conference Board of Canada in producing the final Guidelines document.

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Introduction

These Guidelines on *Corporate Governance in Crown Corporations and Other Public Enterprises* aim to assist those involved in overseeing the direction and management of public sector corporations to better appreciate both the nature and the importance of their corporate governance duties. The Guidelines build on the guidelines adopted by the Board of Governors of the Toronto Stock Exchange in 1995.

Corporate governance describes the process and structure for overseeing the direction and management of a Crown corporation so that it effectively fulfils its mandate. Good corporate governance can contribute to the corporation's achievement of both its public policy and commercial objectives. The process and structure defining the division of responsibilities and powers among the Crown, the board of directors, and management also establishes key accountability mechanisms.

The Guidelines present 10 recommendations categorized into three broad areas of responsibility for improving the effectiveness of corporate governance practices in Crown corporations: stewardship of the corporation; working with management; and the functioning of the board. They are recommended for application in all federal Crown corporations. As a source of advice and guidance on corporate governance matters to the chairs, chief executive officers and individual members of the boards of directors, they will help them meet the expectations of the Government of Canada in overseeing the businesses and affairs of Crown corporations. It should be recognized that these are guidelines. There may be circumstances, especially in corporations with quasi-judicial regulatory responsibilities, where the board may decide it is appropriate to tailor the Guidelines. The Guidelines are not intended to modify the legal requirements and framework within which boards of directors are required to carry out their responsibilities.

Each Crown corporation should include a description and assessment of its corporate governance policies and practices in its annual report.

These Guidelines benefited from a review by a selection of Crown corporation chairs and CEOs, as well as the Privy Council Office and the Office of the Auditor General.

The Crown Corporation Perspective

Canada has a long history dating back to Confederation of using Crown corporations to manage important public programs. Other levels of government in Canada have also used public enterprises in their pursuit of public interests.

The federal government's current portfolio of Crown corporations is highly diversified with corporations operating in many sectors of the Canadian economy. The corporations vary widely in size and differ in their demands on the government for financial support. The President of the Treasury Board's *Annual Report to Parliament on Crown Corporations and Other Corporate Interests of Canada* provides a consolidated report on the businesses and activities of all parent Crown corporations and other corporate interests of the Government of Canada.

Each Crown corporation's enabling legislation sets out in broad terms the Crown corporation's mandate. In serving the public interest, Crown corporations have greater managerial autonomy than the rest of government in order that they may operate in a commercial manner. The legislated control and accountability regime aims to balance the corporation's autonomy with accountability to both government and to Parliament. Part X of the *Financial Administration Act* (FAA) outlines the control and accountability framework for Crown corporations.

Crown corporations are distinct legal entities wholly-owned by the Crown. Boards of directors of Crown corporations oversee the management of their corporation and hold management accountable for the company's performance. The board of directors, through the chair, is accountable to the responsible minister. The responsible minister functions as the link between the corporation and both the Cabinet and Parliament.

Annually, the Governor in Council, on recommendation of the Treasury Board and, in some cases, the Minister of Finance, approves the corporate plan of each Crown corporation. Approval of the corporate plan by the board of directors and the government authorizes proposed actions and budgets for the upcoming year. The corporate plan describes the corporation's planned directions and actions over a five-year planning horizon and provides the framework for decisions and evaluation.

Crown corporations regularly provide Parliament with comprehensive and timely information on their plans and their actual performance. Each year Parliament receives a summary of the corporate plan, capital and operating budgets and an annual report.

More detailed information on the Crown corporation accountability regime is available in the publication *Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities.*

Stewardship of the Corporation

Boards of directors have a duty to oversee the management of their Crown corporation with a view to the best interests of both the corporation and the long-term interests of the shareholder.

To fulfil their overall stewardship responsibility for the management of the affairs of corporations, boards of directors are expected to exercise judgment in the broad areas of: the establishment of the corporation's strategic direction; the safeguarding of the corporation's resources; the monitoring of corporate performance; and reporting to the Crown.

Each Crown corporation is accountable to Parliament for the conduct of its affairs through a minister normally referred to as the responsible or appropriate minister. The minister, within the collective responsibility of Cabinet, represents the Crown. It is through the responsible minister that the Crown corporation reports to the government and to Parliament on its plans and its performance.

Guideline (1)

Board Responsibilities

The board of directors of every Crown corporation should explicitly assume responsibility for the stewardship of the corporation.

As part of the overall stewardship responsibility, the board should:

(i) approve the strategic direction and the corporate plan for the Crown corporation;

(ii) ensure that the principal risks of the corporation's business have been identified and that appropriate systems to manage these risks have been implemented;

(iii) approve management's succession plan including appointing, training and monitoring senior management; and

(iv) ensure that the corporation's information systems and management practices meet its needs and give the board confidence in the integrity of information produced.

Approving the Strategic Direction

Approving the strategic direction of the corporation is generally recognized as a primary responsibility of the board of directors. Management normally formulates the strategic direction and the corporate plan of the corporation, and the board has responsibility to assess and to challenge it.

The approval process for the corporate plan is the cornerstone of the government's control and accountability regime for most Crown corporations. The corporate plan encompasses the corporation's businesses and activities, including investments. It sets the corporation's objectives for a five-year period, the corporation's strategy to achieve those objectives, and performance indicators and targets.

The board should be satisfied with the strategic direction of the Crown corporation articulated in the corporate plan before approving it. The shareholder, when considering the corporate plan for formal approval, relies heavily on the board's assessment and prior approval of the corporate plan.

The perspective of the board of directors assists the chief executive officer (CEO) and management in their development of the most appropriate strategic direction for the corporation. By acting as a sounding board and by challenging the assumptions, the identified alternatives, and the assessments contained in the corporate plan, the board of directors arguably make one of their greatest contributions to effective corporate governance.

The annual submission of the corporate plan is a regular medium for the board and the appropriate minister to clarify their respective appreciation of the objectives for the Crown corporation.

Once approved by the board, the corporate plan is considered by the responsible minister for submission to the Treasury Board for its recommendation to the Governor in Council. With the approval of the Governor in Council, the corporate plan is the basis for both the board of directors and the shareholder to better judge subsequent decisions and to evaluate performance.

Identification of Principal Risks

The board must understand the principal risks inherent in the corporation's activities and its external environment. The presence of both commercial and public policy objectives in many public sector corporations often complicates risk management. The board should ensure that systems are in place to monitor and manage effectively the risks affecting how well the Crown corporation fulfils its mandate.

In managing financial risk, the board of a Crown corporation should ensure that an appropriate balance has been struck between incurring an acceptable level of risk and operating within the financial resource levels established by the shareholder. The shareholder's position should be protected and the financial exposure of the corporation should be contained within the authorized limits approved in the corporate plan.

Directors can often assist management to confirm the validity of their risk assessment by constructively sharing their views based on their specific knowledge and experience.

Succession Planning

The board should review and approve the corporation's management succession plan to ensure that skilled management will be available for the ongoing and longer-term fulfilment of the corporation's mandate. The succession plan should deal with the CEO's plans for the appointment, training, assessing and motivating of managers.

The board should review and discuss the CEO's proposals to appoint and to promote the key senior managers. In working with the CEO, the board must be satisfied that the corporation's programs to train and to develop management will provide for the orderly succession of management. The important role of the board in assessing and evaluating the CEO's position and performance is discussed in Guideline 6.

Importance of Information

The board should receive the information it deems necessary to perform its work. The information regularly sent to the board should assist the board to participate in the formulation of strategic direction and to hold management accountable for achieving objectives. The information should report actual and forecasted results against established plans and performance targets. The board should be able to evaluate the corporation's progress and the appropriateness of its strategic direction.

One of the CEO's responsibilities should be to work with the board to develop an information system that meets the needs of the board. The board should discuss and define with management the parameters — the quantity, timing, frequency, and the usefulness of the information it receives.

Because the board's information needs will likely change over time and with experience, the usefulness of the information should be a periodic consideration for the board.

The board should be satisfied that the corporation's information systems and management practices meet its needs and give the board confidence in the integrity of information produced.

The Audit Regime

To obtain assurance about the integrity of the information it receives and the internal control systems in the corporation, the board also relies heavily on the corporation's audit system.

The audit regime for Crown corporations, as set out in Part X of the *Financial Administration Act* (FAA), prescribes both internal and external audits. External audit consists of an annual audit and, at least once every five years, a special examination.

The special examination, a type of value-for-money audit, provides the board of directors with an independent opinion on how the corporation's financial and management control and information systems and management practices give reasonable assurance that: the assets of the corporation are safeguarded and controlled; the financial, human and physical resources of the corporation are managed economically and efficiently; and the operations of the corporation are carried out effectively.

For many Crown corporations, the Auditor General has been appointed by legislation as auditor and examiner. The board of directors and management receive internal audit reports, the annual audit, and the special examination report.

Most boards will delegate responsibility for audit issues relating to these systems and practices to the audit committee.

Guideline (2)

Public Policy Objectives

The board of directors of every Crown corporation should examine its public policy objectives and periodically the legislated mandate to ensure their continuing relevance.

The board should:

(i) document the current public policy objectives of the corporation;

(ii) appreciate the contemporary trade-offs between the often competing public policy and commercial objectives of the corporation; and

(iii) assess the relevance of the Crown corporation's mandate, and, if appropriate, propose changes for the consideration of the appropriate minister.

Documenting Public Policy Objectives

The specific legislation creating each federal public sector corporation describes the corporation's mandate. This mandate outlines the rationale for the corporation's creation and provides the basis for the corporation's public policy objectives.

The identification and clarification of public policy objectives require the attention of the board because of their importance to the definition of the strategic direction of the corporation.

The board should ensure that all public policy objectives are clearly described in the corporate plan annually approved by the board and sent to the Crown.

Crown corporations should be sensitive to the government's general objectives such as wage restraint, official languages, and employment equity. When the corporation is requested to voluntarily comply with these objectives, the board must weigh the competing objectives and strike a judicious balance which best serves the fulfilment by the corporation of its statutory mandate.

Appreciating the Contemporary Trade-Offs

One of the recurring challenges that faces the directors of Crown corporations is the need to strike a balance between public policy objectives and commercial targets. Finding the appropriate trade-off of commercial objectives and public policy objectives is part of the board's fiduciary responsibility in the long-term interest of the corporation.

For example, pursuit by the corporation of commercial opportunities could lead to an expansion of the role of the corporation beyond its statutory mandate and to a possible compromise of the achievement of the important purposes for which the Crown corporation was created. Conversely, over-zealous implementation of public policy objectives can put the financial health of the corporation at risk.

Assessing the Relevance of the Mandate

Periodically, the fundamental purpose underlying the creation of the corporation should be assessed by the board of directors. This assessment should be done by the board in partnership with, and under the leadership of, the CEO.

Over time, the original raison-d'être of the corporation as described in its mandate may be gradually overtaken by shifts in policy directions, patterns of social consensus and economic changes.

The board of directors' efforts in approving the corporation's strategic direction and in reconciling the corporation's public policy objectives with its commercial objectives puts it in a unique position to comment on the continuing relevance of the corporation's mandate. This perspective allows the directors to question, in an informed and yet objective way, the continuing validity of the corporation and its relative contribution to the economic or social well-being of the country.

In rare cases, the board may consider that the legislated mandate of the corporation may be no longer valid in the current economic and/or social context. If so, the board should advise the appropriate minister of the situation. Where practical, the board should recommend an appropriate course of action.

There may be occasions when the board could conclude that a major activity of the corporation is no longer necessary to achieve the corporation's objectives. In this case, the board should take action, including advising the appropriate minister.

Guideline (3)

Communications

The board of directors of every Crown corporation should ensure that the corporation communicates effectively, with the Crown, other stakeholders and the public.

Communications Responsibilities

The corporation should communicate effectively with the Crown, with the other stakeholders and with the public. These communications should focus both on plans and on progress in fulfilling them. Communications should also encompass the risks and challenges facing the corporation in fulfilling its mandate.

The shareholder is the key stakeholder for the corporation. The corporation should identify its other major stakeholders and how information should be communicated to this broader audience.

The corporation should have a communications policy in place. Boards should be assured that the corporation's systems supporting the communications policy will anticipate those issues likely to attract interest and, when appropriate, inform the shareholder in a timely manner.

Communications should reflect a sensitivity to the complex of accountabilities facing the shareholder. With the government as sole shareholder, boards need to pay particular attention to the "fishbowl" environment in which the shareholder operates. In addition to the regular periodic reports, the corporation, usually through the CEO or the chair, should inform the shareholder of any significant developments and decisions likely to have a major impact on the corporation or on public perceptions and attitudes towards it. Any significant direct communication between management and the shareholder should be brought to the board's attention.

Reporting Responsibilities

Reporting should be timely, comprehensive and include all information that would affect the corporation's financial viability and ability to fulfil its mandate.

The board of directors should ensure that the corporation's reports adequately communicate the significant issues confronting the corporation. The primary vehicle for communicating with the government is the corporate plan. In addition, the board must be satisfied with the main messages contained in the corporation's annual report and, where applicable, in the documents tabled in Parliament, namely, the corporate plan summary, the budget summaries and the corporation's annual report.

Working with Management

The ability of the board to work closely with management and at the same time function with a perspective independent of that of management is central to good corporate governance.

A clear allocation of responsibilities should assist both the board and management. In the exercise of their management activities, management should have the board's full confidence. Similarly, management should be sensitive to the board's need to exercise independent judgment.

Guideline (4)

Board and Management Relations

Boards of directors and management should develop an effective working relationship.

Boards of directors, in conjunction with the CEO, should ensure an appropriate allocation of responsibilities between the board and management. An effective relationship is key to how well directors fulfil their fiduciary responsibilities and to how well the corporation achieves its mandate. In addition, the board should establish an accountability relationship for the CEO to the board.

Allocating Responsibilities

There is no one correct prescription to allocate responsibilities; it depends upon the circumstances of each corporation. Openly clarifying and establishing a mutual understanding of roles and expectations will assist the board:

- in acting as advisers and as a sounding board for the CEO;
- in helping minimize the board's involvement in the corporation's day-to-day affairs;
- in helping ensure that the board's approval is sought on appropriate decisions;
- in helping the board oversee the management of the corporation; and
- in helping ensure that the board receives information on all significant developments and issues.

Building a Relationship

In a Crown corporation, the nature of the relationship between the CEO and the board is often critical. The board must work with the CEO to build a relationship of openness and trust. Position descriptions can assist greatly in the smooth functioning of these relations. The board of directors, the chair, and the CEO, should develop position descriptions for the board, the chair and the CEO.

Boards of directors, in conjunction with the CEO, should periodically review the allocation of responsibilities between the board and management. This review should focus on defining and describing both the board's principal responsibilities and the limits to management's authority.

Establishing Accountability

An important aspect of the board and the CEO's relationship is to establish a clear accountability relationship for the CEO to the board. The board and the CEO should develop a set of corporate objectives that the CEO is accountable for achieving.

Many of the board's responsibilities for the management of the business and the affairs of the Crown corporation are delegated to management. For this delegation to work effectively and without confusion about respective responsibilities, the board should avoid participating in the day-to-day management of the business of the corporation.

Boards should be concerned less with transactions than with setting the corporation's direction and objectives. The corporation's systems and practices should support the board in its role of monitoring and evaluating management's progress. Involvement in day-to-day management may be required in exceptional circumstances but as a general matter it is inefficient, hinders good management, and may preclude the board from discharging its obligation to take a longer-term view of the direction of the corporation.

A board should be active in fulfilling its role of monitoring management. The board should be satisfied that the views of management have been questioned and tested. The board should not passively react to management proposals.

Guideline (5)

Board Independence

The board of directors should ensure that the board can function independently.

To be effective, a board of directors should have the ability to function independently of management. Appropriate structures, processes and procedures should be in place to allow directors to maintain this independent perspective.

The Roles of the Chair and the CEO

Independence in the relationship between the board and management can be enhanced by carefully distinguishing the roles of the chair and the CEO. The splitting of the roles of chair and chief executive officer is a favoured practice.

The government generally names part-time chairs and full-time CEOs for its Crown corporations. This practice anticipates that the chair manages the affairs of the board and is not a member of management while the CEO manages the day-to-day operations of the corporation. In cases where the chair is full-time it is even more important to distinguish their respective responsibilities.

Meeting as a Board

Boards usually function best when a few key members of executive management are regularly invited to attend board meetings. To enhance the capacity of boards to function independently, boards should establish a procedure for the board to meet at specific times without the invited members of the management team present. Any such meetings of the board should focus on particularly sensitive issues that the board and the CEO judge do not require further representations from management. Periodically, the board should meet without the CEO, to discuss issues such as an evaluation of the CEO's performance.

Public Servants as Directors

Some Crown corporations have public servants as directors on the board, occasionally in an ex-officio capacity related to the statutory positions which they occupy in the public service. The knowledge and expertise of these public servant directors, from the department of a minister with responsibility in key areas of the corporation's activities, can assist the board of directors to better appreciate government policy. Similarly, the involvement of these directors at the board level can assist the department to understand the philosophy and the direction being pursued by the corporation.

However, other directors may be inclined to defer to the views of public servant directors on the assumption that they are direct spokespersons for the shareholder. While directors who are public servants can help facilitate the board's understanding of the current thinking in government and the choices available, such directors do not serve on boards as a source of direction from their ministers. Directors who are public servants have the same statutory obligation as other directors to exercise independent judgment in ways that best fulfil their fiduciary responsibility to the corporation.

The Use of Committees

A board of directors may wish to fulfil some board functions through delegation to board committees. Examples include the formation of an executive committee, an audit committee, a corporate governance committee and a human resources committee.

Where a board of directors delegates to board committees, the board should ensure that:

- each committee, and its terms of reference, is established by a formal resolution of the board or through an appropriate corporate by-law;
- committee work be shared among board members. Committee members should be selected on the basis of their interests, expertise and availability; and
- board members are regularly informed of each committee's activities, findings, conclusions and recommendations.

When appointing a committee, the board should spell out carefully the committee's authority. Should the committee have authority to act on behalf of the board or should the authority be to examine a particular issue and report back to the board with a recommendation? Generally, committees examine issues and prepare recommendations for full board action. Authority to act on behalf of the board should normally be reserved for specific circumstances and should have prior approval of the board. Use of a committee does not absolve the board from responsibility for the committee's work or decisions.

Independent Advice

In unusual circumstances, individual board members may consider it appropriate to obtain independent financial, legal or other advice from an outside adviser at the expense of the corporation. The need for an outside adviser should be first considered by the appropriate committee and then be subject to the approval of the board.

The engagement of outside advisers should be done with the full knowledge of management and should be for the purpose of assisting directors to fulfil their responsibilities. The advice sought should not be for the purpose of enabling directors to participate in the day-to-day management of the business.

Conflict of Interest

Boards of directors and individual directors should be sensitive to the requirement that they have, and be seen to have, the ability to exercise judgment with a view to the best interests of the corporation.

The FAA requires directors of Crown corporations to disclose the nature and extent of interest in any material contract with the corporation. The government's *Conflict of Interest and Post-Employment Code for Public Office Holders* applies to full-time Governor in Council appointees including the CEO and, in some cases, the chair. Each board of directors should ensure that it has a conflict of interest code to guide the behaviour of its individual directors.

Guideline (6)

The Position of the CEO

In recognition of the importance of the position of CEO, the board of directors of every Crown corporation should periodically assess the CEO's position and evaluate the CEO's performance.

Assessing the CEO's Position

The fact that boards of directors function through delegation highlights the importance of high calibre management. The key to good management within the corporation is the CEO, the corporation's leader.

Generally, in the federal accountability regime, the appointment of the CEO is reserved to the shareholder, the government. In recognition of the important role the board can play in providing the shareholder with sound guidance in the selection of a CEO, the FAA requires the appropriate minister to consult the board of directors on this appointment.

Boards, in anticipation of this consultation, should consider their expectations for the position of CEO. The board should identify the skills and the characteristics it judges essential for the position of CEO relative to the performance of the corporation and the major issues, risks and challenges facing the corporation. By advising the responsible minister through their chairs, boards can assist the Crown in the selection of the chief executive officer.

Evaluating Performance

Annually, the board should formally evaluate the CEO's performance against the established duties and objectives that were agreed to by the board and the CEO at the start of the year. These criteria should include the CEO's contribution to the development and achievement of the corporate strategy as outlined in the approved corporate plan.

The results of the performance appraisal of the CEO can be key in the determination of the CEO's performance bonus. The board, through the chair, should communicate the results of this performance evaluation to both the CEO and to the Crown.

Functioning of the Board

A well functioning board will enable it to judge objectively the merits of management initiatives and the success of corporate performance.

To function effectively, the board of directors should assess: the renewal of the board, the effectiveness of the board's performance, the education program for its directors, director's compensation, and the administration of corporate governance.

Guideline (7)

Renewal of the Board

The board of directors of every Crown corporation should assess its effectiveness and initiate renewal of the board.

Assessing the Board

The board should have in place a mechanism for assessing its capacity and evaluating its performance.

The board, in consultation with the CEO, should attempt to identify the profile of skills that would best enable the board to fulfil its responsibilities. This "skill profile" would be based on the board's experience and knowledge of the corporation's mandate, strategy, level of performance, strengths and weaknesses, and the key issues and challenges facing the corporation. Because the skills needed on the board may change over time, the board should regularly update the skill profile to ensure its continuing relevance.

A board discussion of its existing skills relative to the profile of the desired board skills may assist new as well as experienced board members to understand better how they can more effectively contribute to the work of the board. These discussions might also lead to recommendations as to how pending vacancies might best be filled and to other actions such as specific briefings or learning programs for current directors.

The board should develop a process to evaluate annually the effectiveness of the board, its committees and the directors individually. Because this is a sensitive area, it will be necessary to proceed cautiously. Each evaluation process should be dealt with separately and the process should be phased in over time.

Renewal of the Board

The board of directors should contribute to its own renewal. The selection and recruitment of knowledgeable and skilled candidates to the board is of prime importance. Although the appointment of board members is the prerogative of the shareholder, recommendations by the existing board influences the selection and approval process. The board's experience in setting the strategic direction and monitoring the performance of the Crown corporation provides an ideal basis for the board to review the suitability of its composition and the effectiveness of its performance.

The board's self-assessment of the skills required can be a useful basis for recommendations on the appointment or replacement of directors as terms approach expiry.

The chair, on behalf of the board, should advise the appropriate minister and the Director of Appointments in the Prime Minister's Office, of the desired mix of skills useful for the board and, in particular, those skills that should be sought in filling upcoming vacancies.

Guideline (8)

Education of Directors

Directors of Crown corporations should receive orientation and education programs appropriate to their needs.

Directors ultimately serve the best interests of the shareholder by contributing their independent judgment to board decisions about the corporation. To better appreciate the importance of this fiduciary role, directors should receive, on an ongoing basis, orientation and education.

New Directors

Integral to the appointment of new directors should be education that assists them to understand clearly the importance of their fiduciary role, and orientation that helps them better understand the nature of their corporation and their duties within the corporation.

The Crown corporation's public policy role often leads the shareholder to appoint individuals with qualifications that do not include prior experience on a board of directors. Understandably, these appointees can initially be at a loss as to their role on the board.

New appointees to the boards of Crown corporations with extensive private sector directorship experience, often benefit from training that exposes them to the public policy environment and its decision-making processes. Sensitizing these appointees to the nature of the public sector will help facilitate their transition to the boardroom of the Crown corporation.

Ongoing Education

The board should be sensitive to its ongoing education and training needs, including those identified as part of the board's self-assessment. Experienced trainers, other practitioners, legal counsel and directors' associations offer services to educate and to train both existing directors and newly appointed directors. The federal government offers a variety of orientation programs on public policy formulation, as do consultants. The board has a responsibility, often delegated to the chair, to ensure that the requisite education is acquired.

Guideline (9)

Compensation

The board of directors should review the adequacy and form of compensation for directors.

The compensation levels for directors in federal Crown corporations balances the importance of appreciable remuneration with the fact that many directors of Crown corporations serve in the tradition of public service to the citizens of Canada.

The Governor in Council sets the compensation levels for the directors, the chair and the full-time CEO of each Crown corporation. The government seeks advice from a number of sources in setting and revising directors' fees and CEO salaries. Advice from the chairs of Crown corporations is often a valuable part of this process.

Guideline (10)

Responsibility for Corporate Governance

The board of directors should assume responsibility for developing the Crown corporation's approach to governance issues.

The board of directors should assume responsibility for the corporation's overall approach to governance issues.

A corporate governance working agenda should be developed and approved by the board of directors. The agenda should focus on the corporation's corporate governance policies and practices including those required to implement these Guidelines. It should outline the activities to be performed and should prescribe reporting practices.

The board should know how well the corporation is progressing in fulfilling its governance responsibilities. The board should approve the substance and form of the corporate governance information conveyed both to the shareholder and to the public.

It is strongly recommended that each Crown corporation should describe its approach to corporate governance in the corporation's annual report. It is recommended that the corporation's system of corporate governance be described in reference to these Guidelines. Where the corporate governance system is different from the Guidelines, the corporation should provide an explanation for the differences.

The board may decide to delegate this responsibility to a governance committee or to an existing committee of the board. When the chair of the board is separate from the CEO, he or she would normally be the appropriate person to chair the committee with the corporate governance responsibility.

These Guidelines Are Signposts

These Guidelines aim to bring the issue of corporate governance to the forefront in the management regime for Crown corporations and other public enterprises. They suggest an approach to corporate governance for these institutions. This approach recognizes that corporate governance is not an end in itself but rather a means to assist these public enterprises to more effectively fulfil their legislative mandates and to contribute to the public interest.

The Guidelines are, as their name implies, designed to provide guidance — not to prescribe. As they are being considered for adoption by individual corporations, the application of some of the Guidelines may need to be tailored specifically to meet the needs of the corporation's particular circumstances.

We recommend that each Crown corporation report on its corporate governance policies and practices in relation to these Guidelines in its annual report.

Boards of directors should find that these Guidelines provide a useful framework for establishing and improving their corporate governance policies and practices.

References

Bowen, William G. *Inside the Boardroom: Governance by Directors and Trustees.* John Wiley & Sons, Inc. New York. 1994.

Department of Finance and Treasury Board of Canada. *Directors of Crown Corporations: An Introductory Guide to Their Roles and Responsibilities.* The Conference Board of Canada. Ottawa. July, 1993.

Department of Finance and Treasury Board of Canada. *Conference Proceedings. Corporate Governance: Improving the Effectiveness of Crown Corporation Boards, October 6, 1994.* The Conference Board of Canada. Ottawa. January, 1995.

Institute of Corporate Directors. *Guidelines for Corporate Directors in Canada: Recommendations and Guidance on Boardroom Practice.* Second Edition. Willowdale, Ont. 1992.

Monks, Robert A. G. and Nell Minow. *Corporate Governance.* Blackwell Publishers. Cambridge, MA. 1995.

Office of the Ethics Counsellor. *Conflict of Interest and Post-Employment Code for Public Office Holders.* June, 1994.

Osler, Hoskin & Harcourt. *Directors' Duties: A Guide to the Responsibilities of Corporate Directors in Canada.* Carol Hansell Obal, eds. Toronto. 1993.

The Canadian Institute of Chartered Accountants. *Criteria for Board Control—Guidance for Directors—Governance Processes for Control.* 1995.

The Conference Board, Inc. *Corporate Boards: CEO Selection, Evaluation and Succession.* A Research Report. Report Number 1103-RR-95. New York. 1995.

Toronto Stock Exchange. *"Where Were the Directors?": Guidelines for Improved Corporate Governance in Canada.* Toronto. December, 1994.