



Corporate Governance Principles, Practical Considerations and Best Practices



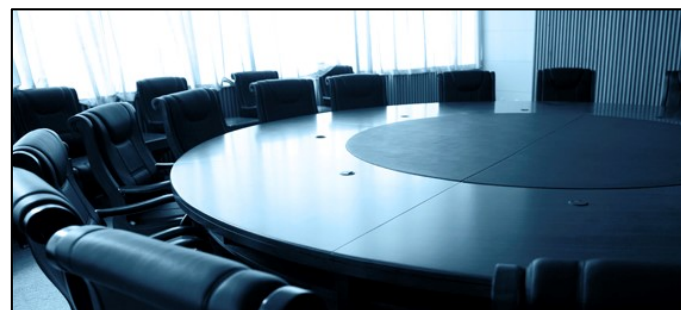
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Purposes of Corporate Governance

- Ensure the Board, as part of its fiduciary duties, establishes good governance principles (understands the organization's assets and resources; prioritizes the goals and mission in its governance).
- Ensure that those governing and managing an organization account appropriately to its shareholders/stakeholders.
- Enable shareholders and other stakeholders, as appropriate, to hold the Board accountable.



Principles of Corporate Governance

- Boards, shareholders, executive management and other stakeholders should share a common understanding of the purpose and scope of good corporate governance.
- As the guardian of the corporate conscience, Boards must lead by example, set the right tone and pay attention to the ethical health of their organization.
- Corporate governance must evolve, innovate and improve as the organization grows and matures.
 - Size, resources, culture, industry, legislative and regulatory regimes, etc. are variables that create diverse and dynamic environments – needs will vary.

Principles of Corporate Governance

- Boards appropriately empower executive management and committees by setting clear goals, accountabilities, structures, and policies, and properly delegating authority.
- Boards should ensure the organization's strategy actively and accurately considers both risk and potential reward over time.
- Boards need to understand the risks faced by the organization, satisfy themselves that the level of risk overall and in any particular undertaking or transaction is acceptable, and challenge executive management on risk management matters when appropriate.

Principles of Corporate Governance

- Boards should objectively review organization's risk management strategies and internal and external controls, independently of line management, by the appropriate use of internal and external audits.
- Boards should periodically review and assess their own performance and achievement of good governance objectives.
- Boards are accountable to shareholders and, where appropriate, other stakeholders, for their stewardship, the organization's success, and the appropriate prioritization and balancing of goals and resources.

How in-house counsel contributes to corporate governance

Provide support and advice to the Board and its committees

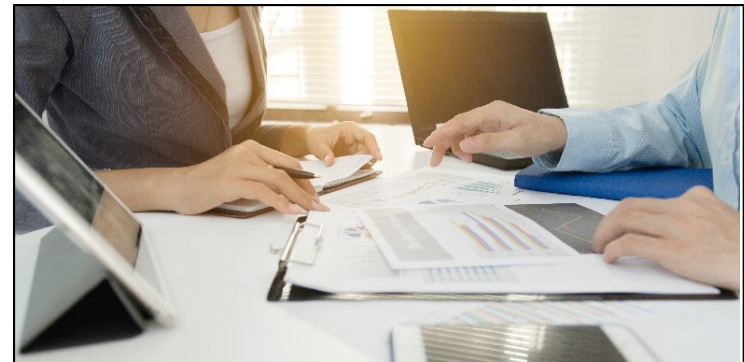
Understand various obligations and liabilities of the company; properly manage commercial transactions and contracting to ensure use of resources aligns with company budget and objectives

Develop and implement compliance programs

Manage/facilitate crisis response and investigations

Provide Support and Advice to the Board and its Committees

- Understand composition of the Board and its committees
- Understand the charters and scope of authority granted to Board committees and delegated to management
- Ensure corporate actions requiring approval of the Board or its committees are duly authorized and documented
- Understand role of the corporate secretary



Understanding Obligations and Liabilities of the Company

- Manage commercial transactions and contracting processes to ensure use of resources aligns with company budget and objectives
- Who can bind the company?
- Which expenditures require separate approvals?
- Consider creation of an approval and authority matrix
- Clearly communicate policies to employees
- Create system to maintain contracts and manage contractual obligations (e.g., to track expiration dates and automatic renewals)

Compliance Programs

- What constitutes compliance?
- Why have a compliance program?
- Factors impacting compliance program:
 - Regulatory issues
 - Industry issues
 - Safety and risk management issues
 - Depth/detail of compliance program policies



Elements of Compliance Program

- Appropriate personnel regarding oversight and reporting
- Written policies and procedures
- Training and education
- Lines of communication
- Internal monitoring of compliance
- Articulated enforcement standards
- Company response to potential compliance issues and corrective action
- Periodic risk assessment

Elements of Compliance Program

- **Appropriate Personnel**
 - Compliance officer or committee
 - Duties should be defined
 - Independent
 - Oversees investigations
 - Responsible for training
- **Written Policies/Procedures**
 - Level of detail
 - Accessibility
 - General better than complex
 - Use of examples

Elements of Compliance Program

■ Training/Education

- Provide/deliver to all employees (including management) and Board
- Timing for training
 - Upon initial hire
 - Annually
- Training records

■ Lines of Communication

- Reporting mechanisms
 - Internal or external
 - Means (e-mail, phone)
- Access to compliance officer or committee
- Focus on need to report issues promptly

Elements of Compliance Program

■ Monitoring Compliance

- Differences between monitoring and auditing
 - Monitoring generally not independent and focused on self-review
 - Auditing is more objective, usually done by outside entity

■ Enforcement Standards

- Articulated standards for non-compliance
- Consistency in enforcement
- Level of sanction matches behavior – use of flexibility

Elements of Compliance Program

- Response to Compliance Issues
 - Investigation
 - Potential discipline
 - Development of findings
 - Corrective action plan
 - Other actions (i.e., disclosure)
- Risk Assessment
 - Identify significant compliance issues
 - Coordinate with responsible parties
 - Adapt compliance plan as necessary

Compliance Policies

- General approach



- General policies

1. Code of business ethics/conduct
2. Confidentiality
3. Whistleblower
4. Privacy policy
5. Data security, IT security, use of IT resources
6. Document retention
7. Business/industry-specific policies

Investigation Considerations

- Who will conduct the investigation?
 - Company personnel
 - Outside counsel
- Who is the client?
- Document/communication preservation
- Privilege issues
- IT issues
- Report/conclusions

Annual Housekeeping Checklist

- Hold board and shareholder meetings regularly and in accordance with bylaws
- Address election of directors and appointment of officers and committee members, as appropriate
- Review and update governance charters and compliance policies on a regular schedule
- Hold annual trainings for employees (e.g., insider trading, security, anti-harassment, other compliance matters)
- Evaluate global issues and risks that may have an impact on the business (e.g., privacy considerations, cybersecurity, evolving practices with respect to environmental, social and governance factors)

Conclusions

- Although there are best practices for general corporate governance principles, good governance is unique to each company.
- Governance needs will vary depending on nature of the business and industry (e.g., public vs. private companies; regulated industries).



Questions

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