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## WHAT’S NEW?

### Summary of Significant Updates to the Owner’s Expectations Manual

<table>
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<th>Reference</th>
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<th>Year of update</th>
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<tbody>
<tr>
<td><strong>Chapter 4</strong>&lt;br&gt;The Monitoring Function</td>
<td>The chapter has been updated to reflect the significant changes that have occurred since 2007, especially in relation to COMU’s role and its engagement with the entities it monitors.</td>
<td>2012</td>
</tr>
<tr>
<td><strong>Section 5.2</strong>&lt;br&gt;Expectations letter</td>
<td>This section states that the expectations letters sent by the shareholding Ministers to the board are publicly released on COMU’s website, subject to commercially sensitive information being withheld.</td>
<td>2012</td>
</tr>
</tbody>
</table>
| **Section 5.6.1**<br>Quarterly reports | Bullet point 2, addition of the following sentence to Quarterly report section: “Commentary on the progress of any ongoing projects which meet the threshold for ministerial consultation. This should include a general summary of progress including significant changes to either budget or planned date of completion.”

Rationale for addition:
- Ministers/COMU are kept up to date with progress of large investments (time/cost/quality).
- Ministers/COMU have visibility of “abandoned” projects, which were previously hidden (eg, an SOE writing off a large capital investment).

Ongoing awareness of issues with large value projects rather than during a post-investment review 12 to 24 months after completion. | 2012 |
| **Section 5.6.4**<br>Table of key reporting dates | The table has been updated to include:
- post-investment review expectations that Ministers have of SOEs and TVNZ
- requirement for loading financials into the Crown’s financial reporting system, and
- companies’ ability to partially release financial information from half-yearly and annual reports before it is tabled in the House, whilst following the “no surprises” policy. | 2012 |
| **Section 5.7.1**<br>“No surprises” policy | While the SOE continuous disclosure rules refer to the “rules of a recognised stock exchange”, the OEM itself did not currently refer to the NZSX/NZDX Listing Rules.

The revised sub-clause states that “Shareholding Ministers’ expectations in relation to the ‘no surprises’ policy are not intended to detract in any way from directors’ statutory obligations, or the obligations of the SOE under the NZX Limited NZSX/NZDX Listing Rules.” | 2012 |
<table>
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<tr>
<td>Section 5.7.3</td>
<td>The previous draft of the OEM stated that “subject to commercial sensitivities, the information provided by SOEs [to COMU] under the post-investment review can be publicly disclosed under the OIA”. Based on legal advice, the revised clause now states that “[t]he information provided by SOEs under the post-investment review may need to be publicly disclosed under the OIA, subject to commercial sensitivities and any other relevant matters under the OIA”. A new section has been included to capture ministerial expectation of all SOEs and TVNZ to review and report on significant investments, post-commencement.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 5.7.4</td>
<td>A new section on business case reviews has been added to the manual.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 5.7.5</td>
<td>The continuous disclosure regime has been extended to all SOEs and TVNZ along with changes in the disclosure threshold.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 7.2</td>
<td>The standardised financial performance measures for SOEs, developed by COMU in 2010, have now been included in the manual.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 7.6.2</td>
<td>This section has been refreshed to reflect the shareholding Ministers’ expectations of SOEs’ dividend policy that:</td>
<td>2012</td>
</tr>
<tr>
<td></td>
<td>‣ translates to payouts that are commensurate with their listed peers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>‣ gives appropriate balance between dividend and re-investment, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>‣ shows a degree of consistency and improvement over the years.</td>
<td></td>
</tr>
<tr>
<td>Section 7.7.2</td>
<td>Under this section, entities are encouraged to consult with Ministers and officials if they are considering changes to the ownership control clauses, bearing in mind the Crown’s general position on ownership review clauses.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 8.1</td>
<td>This section has been updated to reflect Ministers’ expectations of boards on when they expect to be informed and consulted on significant initiatives and transactions.</td>
<td>2012</td>
</tr>
<tr>
<td>Section 8.2</td>
<td>The shareholding Ministers’ principles for assessing investment proposals have been updated to capture the size of the proposal and the proposal’s fit within the wider SOE portfolio and the Crown’s balance sheet.</td>
<td>2012</td>
</tr>
</tbody>
</table>

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6 | Owner’s Expectations Manual
<table>
<thead>
<tr>
<th>Reference</th>
<th>Updates</th>
<th>Year of update</th>
</tr>
</thead>
</table>
| Section 8.3  
Diversification | This section has been updated to take into account Ministers’ expectations that SOEs will need to demonstrate that any diversification will produce superior returns to the Crown. | 2012 |
| Section 8.6  
Joint ventures | This section has been updated to reflect Ministers’ support of SOEs entering into joint venture arrangements. | 2012 |
| Chapter 9  
Boards | The chapter has been substantially updated, and the most significant changes are as follows:  
- Sections 9.1.3, 9.1.4 and 9.1.5 have had a number of minor changes made to better describe the differing expectations between director, deputy chair and chair. A new section 9.1.7 has been added to comment on management’s role into governance positions (eg, subsidiaries).  
- The previously separate Directors’ fees and reimbursement guidelines has had a minor refresh and been included in the manual as an annex. The sections of the guidelines on Directors’ and officers’ liability insurance (9.2.2), Consultancy services provided by board members (9.3.5) and Executive directors (9.3.6) have now been included in the manual.  
- Section 9.1.4 has been amended to strengthen the role of the chair in the board appointment process.  
- Section 9.4.2 now stresses the importance of ongoing development of company knowledge.  
- Section 9.4.3 has been strengthened with regard to the need to act if there is an issue with director or chair performance.  
- A new specimen code of conduct and code of ethics have been added as annexes.  
- The previous separate default director and chair evaluation templates have now been included in the manual. | 2012 |
| Chapter 10  
Reporting and Other Expectations for Non-SOEs |  
- A chapter on ministerial expectations of Crown financial institutions and other Crown companies that COMU monitors has been added to the manual.  
- Dispute Resolutions Services Limited, a recently newly created entity, has been added to this chapter. | 2012 |
1 INTRODUCTION

- The Treasury’s Crown Ownership Monitoring Unit (COMU) has reviewed the Owner’s Expectations Manuals for the entities it monitors, and has consolidated these into a single, modular, streamlined Owner’s Expectations Manual (the manual).

- The manual outlines shareholding Ministers’ expectations of the companies fully or jointly owned by the Crown (which are set out in Annex 1). NZX-listed companies which the Crown has a shareholding in (such as Air New Zealand Ltd) are subject to separate requirements as established under NZX listing rules and are not subject to this manual. The expectations are targeted towards the State-owned enterprises (SOEs). Many of these principles and expectations can be applied to the following Crown-owned entities and companies, where appropriate:
  - Crown-owned companies
  - other Crown companies – ie, Crown entity companies and Schedule 4 companies
  - statutory entities
  - regional airports, and
  - Crown financial institutions (CFIs).

- The expectations for the above entities and companies are set out in Chapter 10. The expectations outlined in this manual do not apply to Crown research institutes (CRIs).

- The manual is designed to help boards operate effectively in their roles and to clarify their responsibilities. It also takes account of the particular expectations of board members, as opposed to private or publicly listed companies.

- The manual is complemented by the expectations letter sent by shareholding Ministers to boards at the outset of the annual business planning round. The expectations letter covers entity/company-specific issues and expectations.

- This manual should be read in conjunction with relevant legislation such as the Companies Act 1993 (Companies Act), Crown Entities Act 2004 (CE Act), Public Finance Act 1989 (PFA), State-Owned Enterprises Act 1986 (SOE Act) and other entity-specific legislation like the New Zealand Railways Corporation Act 1981 for KiwiRail Group, or establishment Acts for each Crown entity.

- Over time, as processes, policies and expectations change, COMU will update only those sections of the manual.

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1 A list of entities/companies that are covered by this manual is at Annex 1.

2 Crown financial institutions (CFIs) is a term used to describe Crown entities that have specific responsibilities relating to the management and investment of significant Crown financial assets
1.1 Who should read this manual?

- This manual is prepared to provide guidance to boards, chief executives, senior leaders and staff of companies and entities monitored by COMU. Some chapters, like Chapter 9 of the manual, are targeted more towards directors and Chairs. Those involved in the management of the companies are encouraged to read the entire manual to ensure that they understand the accountability requirements and the expected standards of reporting.
2 OWNERSHIP FRAMEWORK

- Commercial entities owned by the Crown provide a significant contribution to the wellbeing of the New Zealand economy. They provide a range of services and products covering areas such as electricity generation and transmission, postal and meteorological services, control of air traffic movements and property valuation. Their performance is important to the Crown’s overall fiscal and balance sheet position and its capacity to meet fiscal, social and other government policy goals.

2.1 Crown company model

- During the 1980s, the Government began using the company model as part of its broader State sector reforms. A key principle under the company model is the separation and maintenance of a clear division between the Government’s ownership, purchasing and regulatory interests.

- Under the company model, Crown-owned companies:
  - operate at arm’s length from the Government (unlike departments, Crown-owned companies are not part of the Crown, but are owned by the Crown)
  - have independent boards that are accountable for the companies’ performance
  - are separate legal entities, with directors being responsible for overseeing the management of the business and affairs of the companies, and
  - are subject to the financial reporting and other requirements applying to all companies, together with any relevant sector-specific legislation.

2.1.1 SOE model

- As part of the broader State sector reforms, SOEs were established as limited liability companies under and subject to the Companies Act\(^3\). Each SOE is also subject to the SOE Act. These Acts address the ownership, governance and public accountability arrangements for SOEs.

Under the SOE model:

- the principal objective of every SOE is to operate as a successful business and, to this end, to be:
  - as profitable and efficient as comparable businesses that are not owned by the Crown
  - a good employer, and
  - an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so

---

\(^3\) New Zealand Railways Corporation (trading as KiwiRail Group) is an exception. Though it is an SOE, it is a statutory corporation rather than a company. As such, the Companies Act does not apply. However, the Crown expects KiwiRail’s board and management to operate in a similar manner to that expected of a company.
Ownership Framework, Owner's Expectations Manual

2.1.2 Non-SOE model

COMU monitors a number of entities that are not SOEs. These include:

- Crown entity companies – Radio New Zealand Limited, Television New Zealand Limited and the New Zealand Venture Investment Fund Limited
- Some statutory Crown entities – Public Trust and the New Zealand Lotteries Commission
- Some PFA Schedule 4 companies – Research and Education Advanced Network New Zealand Limited, Health Benefits Limited and Crown Fibre Holdings Limited
- Airport companies (in which the Crown has joint ownership with City Councils) – Christchurch International Airport Limited (25% Crown ownership), Dunedin International Airport Limited (50%), Invercargill Airport Limited (45%) and Hawke’s Bay Airport Limited (50%), and
- CFIs – Accident Compensation Corporation (COMU monitors only the investment arm), Earthquake Commission, Government Superannuation Fund Authority and Guardians of NZ Superannuation Fund (statutory Crown entities); and National Provident Fund (a statutory board).

Ministers' expectations for the boards of these entities are outlined in Chapter 10. While the entities are not SOEs, many of the expectations in this manual for SOEs are applicable, where appropriate.

2.2 SOE accountability

The Crown is the sole owner of each SOE and acts to protect its investment on behalf of the people of New Zealand. Each SOE has two shareholding Ministers, the responsible Minister (in most cases the Minister for SOEs) and the Minister of Finance, each of whom holds 50% of the company's shares. The same principle applies for the other entities owned by the Crown4. However, in certain situations either Minister may delegate their responsibilities to another Minister.

Shareholding Ministers appoint a board of directors to oversee the management of the business and affairs of each SOE. Directors of SOEs are subject to a number of duties under the Companies Act, including the duty to act in the best interest of the company. The board generally delegates a number of its powers to the company’s chief executive officer (CEO) to enable him or her to carry out the tasks of managing the company.

COMU monitors SOEs on behalf of, and provides advice to, shareholding Ministers. The respective role of shareholding Ministers, boards and management is shown in the figure below. Refer to Chapter 5 and Chapter 9 for details on the scrutiny role.

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4 The exceptions are the airport companies. The Crown has 50% or less interest in the airport companies. The remaining interest is owned by the respective local councils.
2.3 Government ownership policy

- One of the underlying principles of the SOE model as it was conceived in the 1980s was that government-owned trading entities would operate according to normal commercial disciplines. These would include capital market disciplines.

- The Government’s policy in relation to SOEs has the following goals:
  - to be clearer with SOE boards about shareholding Ministers’ expectations of the companies
  - to provide shareholding Ministers with a greater understanding of, and therefore confidence in, the performance of SOEs, through enhanced benchmarking
  - to develop appropriate capital structures which impose financial disciplines on SOEs while ensuring they have sufficient capital to make operational investment decisions without recourse to the Crown, and
  - to ensure that requests for capital are considered in line with the business needs of the SOE, while recognising the Crown’s preference that major investments are considered relative to other demands for capital across the Crown by incorporating SOE requests for equity for significant investments into the normal budget process.
3 SHAREHOLDER ROLES AND RESPONSIBILITIES

3.1 Shareholding Ministers’ roles and responsibilities

- Each SOE has two shareholding Ministers – the responsible Minister and the Minister of Finance. The responsible Minister (normally the Minister for SOEs) generally takes the lead shareholder role, particularly in his/her capacity as the formal point of contact with boards.

- The role of the Minister of Finance as an SOE shareholder reflects the importance of the sector to the Crown’s economic and financial objectives. From time to time, shareholding Ministers may delegate some of their responsibilities.

3.2 Shareholding Ministers’ powers

- Under the SOE Act, shareholding Ministers are responsible to the House of Representatives for the performance of the functions given to them under the Act or the constitutions of the SOEs. In practice, shareholding Ministers’ responsibilities include:
  - appointing and removing directors (including chairs and deputy chairs)
  - commenting on the content of draft SCIs and business plans, including any aspects that may be inconsistent with statutory requirements
  - tabling final versions of SCIs in the House of Representatives
  - developing and communicating the Government’s ownership policies
  - monitoring board performance and taking necessary remedial steps should boards fail to meet the targets in their SCIs and business plans
  - consulting with boards as issues arise
  - tabling the SOEs’ annual and half-yearly reports in the House of Representatives
  - taking decisions as shareholder (eg, approving a major transaction under the Companies Act, or other transactions if such approval is required under a company’s SCI), and
  - deciding on resolutions at annual meetings (or special meetings) or agreeing to pass written resolutions in lieu of such meetings.

3.3 Shareholding Ministers’ statutory powers

- Shareholding Ministers’ statutory powers in relation to SOEs are set out in the Companies Act and the SOE Act.

- Generally, shareholding Ministers have statutory powers to:
  - exercise their rights as a shareholder under the Companies Act, and
  - subject to the requirements of the SOE Act:
    - direct the board of an SOE to alter certain provisions of the company’s SCI
Before shareholding Ministers use their power to direct a board to alter the company’s SCI, or to determine the level of dividend payable, they must have regard to Part I of the SOE Act and consult with the board. Within 12 sitting days of giving such a direction, shareholding Ministers must table a copy of the direction before the House of Representatives, and publish it in the Gazette, as soon as practicable.
4 THE MONITORING FUNCTION

- As 100% owner of SOEs, the Government is obliged to manage its investments in the best interests of New Zealanders. Shareholding Ministers’ monitoring function is similar to that undertaken by equity holders in the case of private sector companies. However, shareholding Ministers face certain constraints, including the following, which are not faced by private sector equity holders:
  - Shareholding Ministers cannot divest themselves of ownership of the SOE without empowering legislation.
  - Unlike listed companies, SOEs do not have a share price that shareholding Ministers can use to monitor company performance.
  - Both shareholding Ministers and the SOEs are subject to additional public scrutiny via select committees and the Official Information Act 1982 (the OIA).

- For these reasons, it is important that shareholding Ministers receive timely and relevant performance information from SOEs. The SOE Act, therefore, gives shareholding Ministers certain powers over and above those of ordinary shareholders; for example, the power to require information relating to the affairs of an SOE.

4.1 Monitoring performance

- The role of being a shareholding Minister can place heavy demands on Ministers. These demands can be eased by giving the Ministers access to advisors with an understanding of the key issues at the strategic, public policy and individual SOE level, and who can support the Ministers, and assist in the board appointment process. Shareholding Ministers receive advice on SOEs’ financial and non-financial performance from COMU. Final decisions on all SOE issues remain with shareholding Ministers or Cabinet.

4.1.1 COMU’s monitoring approach

- Under the legislative commercial framework arising from the SOE Act and the Companies Act, SOE boards are responsible and accountable for the individual company performance, are the primary monitor of performance and are the main mechanism that the Ministers have in holding the company to account. To support the boards’ accountability and monitoring roles, COMU’s approach is underpinned by the seven principles outlined below:
  - Our key engagements are with entity boards.
  - We prioritise our monitoring efforts in relation to the performance issues and risks within each entity.
  - We bring a portfolio perspective to our monitoring to ensure that the Crown’s balance sheet is fit-for-purpose.
  - We provide independent analysis, commentary and judgements to Ministers.
  - We provide performance information to the public through our website.
- We monitor international corporate governance changes and adjust our procedures as appropriate.
- We share our knowledge with other government agencies undertaking monitoring roles, both in New Zealand and internationally.

*Boards, particularly chairs, are expected to work closely and cooperate with COMU; as a conduit of information and advice to shareholding Ministers. Boards may wish to invite officials to be present during parts of board meetings or annual business planning sessions to discuss issues or to clarify shareholder expectations. Such invitations are entirely at the discretion of each board.*

*The figure below shows how COMU interacts with shareholding Ministers and boards.*

**COMU as the Minister’s monitoring agent**

4.1.2 COMU’s structure

*COMU has four teams that together provide shareholding Ministers with comprehensive advice. These teams are:*

- **Sector Monitoring teams** – The advisors within these teams monitor a range of entities. Each entity has a senior relationship manager as their key point of contact. The relationship manager should be sent all routine reporting (e.g., quarterly, half-yearly and annual reports), other process-related documents and other relevant updates. The Sector Monitoring teams focus on:
  - developing and reviewing ownership objectives for individual SOEs and the SOEs as a whole
  - advising on strategic issues, ownership policy issues, investment and diversification opportunities, restructuring issues and capital structure
  - analysing business cases where they are required to consult with, or seek the approval of, shareholding Ministers
  - commercial opportunities and risks
- Financial Analysis unit – This unit provides in-depth financial analysis on individual entity performance and on the overall portfolio. The unit also undertakes specific exercises for shareholding Ministers such as independent valuations, benchmarking performance (where possible) and authoring an annual portfolio performance report.

- Appointments and Governance team – This team supports and provides advice to the Ministers on appointments of boards and governance issues, oversees candidate management issues and provides targeted professional development opportunities. Refer to Chapter 9 for information on appointment and governance.

- Sector Performance and Balance Sheet team – The Treasury manages the Crown’s finances and is the Government’s principal advisor on economic, fiscal and financial issues. This team works to ensure that the Crown’s balance sheet is well understood, has a well-articulated strategy for change and is well managed, and contributes to better balance sheet management across the Crown’s portfolio. This work encompasses analysis and advice on issues across the Crown’s entire balance sheet, not just the entities monitored by COMU.
5 SOE REPORTING AND ACCOUNTABILITY

- Part 3 (Accountability) of the SOE Act provides a comprehensive outline of SOE requirements with regard to its key accountability document – the SCI – and reporting performance to shareholding Ministers and the wider public, through the House of Representatives.

- This section summarises the reporting requirements under the SOE Act, and outlines shareholding Ministers’ other reporting expectations and how this works in practice. It also addresses SOEs’ accountability to the House of Representatives through select committees. In the figure below, the performance cycle and the roles of the board and COMU are illustrated.

For information on what COMU does at each stage, refer to the COMU website.

Refer to Chapter 10 for reporting requirements and expectations of non-SOE companies and entities that COMU monitors.
5.1 The business planning process

- The business planning process, which culminates in boards delivering a final SCI to shareholding Ministers, is critical to maintain a strong and mutually supportive relationship between the shareholder and the company.

- Most companies have a 30 June financial year. The following outlines the key steps in the business planning round for SOEs. A table of key reporting dates is set out in Section 5.6.4.

- In the figure on the previous page, the innermost concentric circle illustrates the different stages of the strategic planning process.

5.2 Expectations letter

- Shareholding Ministers aim to send an expectations letter to each SOE board between October and January of each financial year detailing the information requirements, the timing and any specific issues the company is expected to address during the business planning round.

- In response to the expectations letter, the board may send a strategic issues letter to the shareholding Ministers by the end of January, outlining major issues the company expects to address during the business planning round.

- Subject to commercial sensitivities, the expectations letters are publicly released on the COMU website.

5.3 Submission and review of business plan and draft SCI

- Each SOE board provides shareholding Ministers with a draft SCI, supported by the company’s business plan. The business plan enables shareholding Ministers and COMU’s officials to assess the draft SCI.

- The SOE Act requires the board of each SOE to deliver its draft SCI to shareholding Ministers at least one month before the start of each financial year (ie, the end of May). Shareholding Ministers’ preference, however, is that SOEs provide their draft SCIs and business plans at the start of May to allow adequate time for meaningful review. If, for any reason, an SOE considers that it cannot meet this deadline, it should contact COMU as early as possible.

- Sections 14(2) and (3) of the SOE Act set out the information to be contained in each SOE’s SCI, including the objectives of the group, the nature and scope of its activities and the performance targets by which the group may be judged in relation to its objectives. Refer to Section 5.5 for more details. Each SOE’s SCI should clearly identify the information required by these sections of the SOE Act, and make clear linkages between objectives and performance targets.

- Shareholding Ministers expect the performance targets and measures in each SCI to be meaningful and related to the drivers of each SOE’s performance.
Once the business plan and draft SCI are received, officials prepare a report for shareholding Ministers outlining the key aspects of each SOE’s future strategy. As part of this process, advisors will engage with the companies to clarify any questions arising out of the business plan and draft SCI. To facilitate this, it is expected that each SOE will submit with its business plan a full set of financial statements (including a statement of financial performance, statement of financial position and statement of cash flows) for the planning period.

5.4 Finalising, tabling and releasing SCI

Under the SOE Act, shareholding Ministers may comment on the draft SCI, which may include a request for further information or clarification on certain matters. This may be in the form of a letter or, if required, in a meeting between shareholding Ministers, officials and the board. The comment may also include an extension to the date by which the final SCI must be delivered to shareholding Ministers for tabling.

Boards are required to consider any comments by shareholding Ministers on the draft SCI no later than 14 days before the start of the financial year and deliver a final SCI to shareholding Ministers on or before the start of the financial year or such later date that shareholding Ministers have determined.

The responsible Minister is required to table the final SCI in the House of Representatives within 12 sitting days of its receipt. The SCI should be made publicly available only once this has occurred.

Once tabled, COMU will place a PDF copy of each SOE’s SCI on the COMU website. SOEs are also encouraged to make their SCIs widely available.

The business plan is not a public document and is not tabled.

If the board of an SOE wishes to amend its SCI after it has been tabled, it must advise shareholding Ministers and consider any comments shareholding Ministers may have on the proposed modification(s). The SOE Act sets out the process for making amendments to an SCI during the year.

5.5 Key SCI content expectation

5.5.1 Objectives, and nature and scope of activities

The board of each SOE is required to specify in the company’s SCI the group’s objectives, and the nature and scope of the activities to be undertaken.

The board of each SOE may wish to consider separately defining, in relation to the nature and scope of the activities to be undertaken by the group, the company’s “core business activities”.

In this context, shareholding Ministers consider that:

- the “nature and scope of the activities to be undertaken by the group” defines the boundary outside of which the group may not carry out any business
- “core business activities” represents the core business-as-usual activities to be undertaken by the group in line with its core competencies, and
any business activities to be undertaken by the group that are not core business activities should be within the nature and scope of the company’s activities.

Ministers expect the board of each SOE to operate in such a way that it does not lose focus on the company’s core business activities. This does not preclude expansion into non-core areas. SOEs are encouraged to diversify where they can demonstrate spill-over benefits and effective utilisation of core competencies. Ministers will clarify such expectations with individual companies as part of the annual business planning round. Refer to Chapter 8 for detail.

5.5.2 Financial and non-financial performance indicators

The SOE Act requires every SOE to operate as a successful business and, to this end, to be as profitable and efficient as comparable businesses not owned by the Crown, to be a good employer and to exhibit a sense of social responsibility. Accordingly, shareholding Ministers expect SOEs to benchmark their performance against comparable businesses not owned by the Crown, either in New Zealand or overseas, and to demonstrate achievement of the non-financial dimensions of operating as a successful business.

Shareholding Ministers expect SOEs to provide benchmarking information in their SCIs and regular quarterly, half-yearly and annual reports. In particular, shareholding Ministers are interested in receiving information regarding the following areas of financial and non-financial performance:

- credit rating
- profitability
- service performance
- social responsibility
- commercial value, and
- other indicators that the board considers relevant or that shareholding Ministers advise from time to time.

Ministers are also interested in receiving other internal benchmarks that the board considers appropriate (eg, comparison with different business segments).

The performance indicators (financial and non-financial) must:

- be meaningful to the SOE’s business and the SOE Act
- be specific and measurable without ambiguity
- be timely and capable of being audited, where appropriate
- be within the SOE’s responsibility or power to control
- be consistent with and influence, as appropriate, the SOE’s purpose and principles of operation or business
- respect commercial sensitivity, where appropriate
- encourage and reflect best practice, and
- where appropriate, ensure employee participation in, and ownership of, these indicators.
All SOEs should include in their SCIs a glossary of the terms used for financial performance indicators.

5.5.3 Estimate of current commercial value

Section 14(3) of the SOE Act requires the SCI of each SOE to include the board’s estimate of the current commercial value of the Crown’s investment in the SOE and its subsidiaries, and a statement of the manner in which the value was assessed.

This is consistent with the expectation that the board has an ongoing fundamental understanding of the company’s value; what value drivers are; and the effect in terms of enterprise value.

Accordingly, shareholding Ministers have emphasised that the board of each SOE provides an estimate of current commercial value of the Crown’s investment in the SOE in its SCI. The suggested template for publishing the commercial values in the SCI is outlined at Annex 2. If requested, the board should be able to fully explain, and justify, to shareholding Ministers the methodology used for the assessment, and the basis for any assumptions made.

In general, shareholding Ministers prefer such valuations to be prepared using a discounted cash flow (DCF) methodology. However, it is recognised that this may not always be feasible and that alternative valuation methodologies may be more appropriate, particularly for smaller SOEs. SOEs should discuss this with COMU. SOEs may wish to consider having their valuations carried out or peer-reviewed by third parties with specialist valuation expertise.

Over the past few years, COMU has commissioned independent commercial valuation reports, based on publicly available information. By engaging equity analysts to conduct these independent valuations, and by publishing these valuations, COMU intends to provide boards with greater incentive to conduct more robust commercial valuation themselves.

Individual independent valuation reports commissioned to date by COMU are available on COMU’s website. Over time, most of the significant companies, by value, within the Crown’s portfolio will have an independent valuation report commissioned by COMU.

5.6 Reporting to shareholders

5.6.1 Quarterly reports

Quarterly reports are an effective mechanism for a board to communicate with shareholding Ministers on the company’s performance.

Although not required under the SOE Act, shareholding Ministers expect each SOE’s SCI to specify that quarterly reports will be provided to shareholding Ministers no later than the end of the month following each quarter. This is a standard reporting expectation that applies to all Crown-owned companies. Quarterly reports are confidential to shareholding Ministers and officials and are not made public, although Cabinet receives a summary report on each SOE’s performance and outlook prepared by COMU.
The shareholding Ministers expect the performance information and commentary in each SOE’s quarterly report to fully and accurately summarise the company’s performance against plan, company’s outlook of its performance for the end of the year, identify the cause of major variances, signal any potential developing issues, highlight major achievements for the quarter and a forward view of key results. This report is expected to include:

- a statement of financial performance, a statement of financial position and a statement of cash flows
- more detailed financial information covering the SOE’s component parts
- non-financial information, especially key performance indicators for the business
- any other performance measures shareholding Ministers have requested information on
- commentary on what the projected outcomes for the full year will be, how confident the board is that the outcomes can be met and what the key issues affecting meeting planned performance levels are as well as key opportunities, threats and management plans
- commentary on the progress of any ongoing projects which meet the threshold for ministerial consultation. This should include a general summary of progress including significant changes to either budget or planned date of completion
- full-time equivalent staff numbers, and
- more specifically, gentailers publish non-financial (operational) performance measures/indicators that are reported on a quarterly basis. Other SOEs are encouraged to do the same.

Quarterly information should be provided on a current quarter and year-to-date basis, with a comparison against budget for each. SOEs may want to include comparative (trend) information for the relevant period in the previous year(s) to give a fuller picture of long-term progress.

More recently, as part of the quarterly reporting process, SOEs need to upload their financial information to the Crown Financial Information System (CFISnet). Additionally, SOEs need to provide hard copies of their quarterly reports to the responsible Minister’s office and COMU.

5.6.2 Interim/half-yearly reports

SOEs are required to deliver their half-yearly reports to shareholding Ministers within two months of the end of the first half of each financial year (i.e., by the end of February). The SOE Act does not specify the information to be presented in half-yearly reports; rather, the content is specified in each SOE’s SCI. SOEs should deliver 60 copies of their half-yearly reports to the responsible Minister’s office.
The responsible Minister is required to present each half-yearly report in the House of Representatives within 12 sitting days of receipt. Half-yearly reports should be made publicly available only once this has occurred. However, SOEs can release financial information from their half-yearly reports as soon as the information is available, before the tabling, so long as the SOE complies with the “no surprises” policy before making the information public. Refer to Section 5.7.1 for details on the “no surprises” policy.

5.6.3 Annual reports

Each SOE is required to deliver its annual report to shareholding Ministers within three months of the end of each financial year (although shareholding Ministers’ preference is that each SOE will provide them with a draft version of the annual report before it is finalised). The required content is outlined in section 211 of the Companies Act and in section 15 of the SOE Act. The annual report should:

- contain information necessary to enable readers to make an informed assessment of the nature and scope of the SOE’s operations
- provide a comparison between the planned financial and non-financial performance set out in the SOE’s SCI and the SOE’s actual performance
- explain why any targets were not met, or why the actual performance varied significantly from the targets (if applicable), and
- strive to meet current best-practice disclosure guidelines including those relating to governance practice. Refer to Section 5.7.5 for details on public disclosure.

SOEs are encouraged to include comparative (trend) information for the relevant period in the previous year(s) to give a fuller picture of long-term progress.

The responsible Minister is required to present each annual report in the House of Representatives within 12 sitting days of receipt. For information on the requirements for reports presented to the House of Representatives refer to Footnote 6.

SOEs need to provide 60 copies of their annual report to the responsible Minister’s office. SOEs also need to provide three copies of their annual report to COMU a week prior to tabling/sending it to the Bills Office. COMU coordinates the process, and aims to ensure that all SOE annual reports are tabled on the same day, if practicable.

Annual reports should not be made public until after the reports have been tabled in the House of Representatives. However, SOEs can release financial information from their annual report as soon as the information is signed off by their auditors, before the report is tabled, so long as the SOE complies with the “no surprises” policy before making the information public. Refer to Section 5.7.1 for details on the “no surprises” policy.

5 The Bills Office manages the process for presenting reports to the House. The requirements of these reports (including size, numbers of copies and delivery arrangements) are outlined in the August 2010 Office of the Clerk circular Presentation of Papers to the House, available at http://www.parliament.nz/en-NZ/PB/PresentedPapers/e/1/c/00HOOOCBPBPresentedPapersPapers1-Presentation-of-papers-to-the-House.htm, or by contacting the Office of the Clerk. Any questions on the presentation of reports should be directed to the Bills Office.
5.6.4 Table of key reporting dates

The table below shows the key dates for the strategic planning round and regular reporting. The table relates to SOEs with a 30 June balance date.

### Table of key reporting dates

<table>
<thead>
<tr>
<th>Strategic planning</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>October–January</td>
<td>Shareholding Ministers send letters of expectations to boards. The letters detail shareholding Ministers’ expectations for the planning round, expectations for the SCI and the Ministers’ engagement expectations during the strategic planning phase. Refer to Section 5.2.</td>
<td></td>
</tr>
<tr>
<td>By 28 February</td>
<td>Boards, in response to the letter of expectations and their planning, submit a strategic issues letter to shareholding Ministers, setting out the major strategic issues faced by the company. Refer to Section 5.2.</td>
<td></td>
</tr>
<tr>
<td>By end of April</td>
<td>Boards submit the business plan and draft SCI to shareholding Ministers. Refer to Section 5.3.</td>
<td></td>
</tr>
<tr>
<td>By mid-June</td>
<td>Boards consider shareholding Ministers’ comments (if any) on the business plan and draft SCI.</td>
<td></td>
</tr>
<tr>
<td>On or before 1 July (or such later date as the shareholding Ministers determine)</td>
<td>Boards deliver the final SCI to shareholding Ministers. As part of this process, SOEs need to upload their financial information to CFISnet. Refer to Section 5.4.</td>
<td></td>
</tr>
<tr>
<td>Within 12 sitting days of receipt by the shareholding Ministers</td>
<td>The responsible Minister presents the SCI in the House of Representatives.</td>
<td></td>
</tr>
</tbody>
</table>

### Reporting

#### Quarterly reports

| | Boards deliver quarterly reports to the responsible Minister’s office and COMU. COMU prepares a consolidated performance report across the portfolio, which is presented to Cabinet. Quarterly reports are not made public. As part of this process, SOEs need to upload their financial information to CFISnet. |
| Within one month after the end of the quarter, ie, 31 October, 31 January, 30 April, 31 July | |

#### Annual post-investment review

| 28 February | Boards provide shareholding Ministers with an evaluation of past investment decisions. |
### Half-yearly report

**By 28 February**

Boards deliver 60 copies of half-yearly reports to the responsible Ministers.

Each report must include the information specified in the SCI. As part of this process, SOEs need to upload their financial information to CFISnet.

**Within 12 sitting days of receipt by the responsible Ministers**

The responsible Minister tables the half-yearly report in the House of Representatives.

### Annual report

**By 30 September**

Boards deliver 60 copies of the annual reports to the responsible Minister and three copies to COMU. As part of this process, SOEs need to upload their financial information to CFISnet.

**Within 12 sitting days of receipt by shareholding Ministers**

The responsible Minister presents the annual report in the House of Representatives.

### Annual meeting of shareholders

**By 31 December**

Each SOE is to hold an annual meeting no later than six months after its balance date and no more than 15 months may elapse between the date of one annual meeting and the next. Refer to Section 5.7.6.

## 5.7 Other expectations

- In addition to the above expectations, SOEs are also expected to take account of the following expectations shareholding Ministers have of the board. These expectations ensure that the board has greater accountability for the performance and activities of the SOE.

### 5.7.1 “No surprises” policy

- Ministers expect boards to be sensitive to their interests. Boards must be mindful that shareholding Ministers are accountable to a wider audience and the affairs of the companies, positive and negative, can impact on the responsible Minister. This is referred to as the “no surprises” policy, further detail of which is set out below. A failure to keep the Ministers informed on significant issues at appropriate times can create situations that may divert attention from a company’s day-to-day business.

- In considering the “no surprises” policy, shareholding Ministers expect boards to:

  - understand wider government policy issues as part of their decision-making
  - be aware that the Crown has interests that are wider than those of ordinary shareholders in private companies
  - be aware of the potential implications of company-specific issues on the Crown and/or its balance sheet, and
  - be sensitive to the demand for accountability placed on shareholding Ministers from both Parliament and the New Zealand taxpayers.
Under the “no surprises” policy, shareholding Ministers expect to be informed well in advance of any material or significant events, transactions and other issues relating to the company that may be contentious or could attract public interest, whether positive or negative. Examples of matters that could fall within the “no surprises” policy could include, but are not limited to:

- changes in the CEO
- potential/actual conflicts of interest by directors
- potential/actual litigation by or against the entity/company, its directors or employees
- fraudulent acts by the company’s directors or employees
- breaches of an SOE’s corporate social responsibility obligations (refer to Chapter 6)
- significant company restructuring
- large-scale redundancies
- industrial disputes
- significant acquisitions and divestments
- significant health and safety issues
- the release of significant information under the OIA, and
- imminent media coverage of any activities that could attract critical comment or on which the shareholding Ministers could be asked to express a view.

Shareholding Ministers’ expectations in relation to the “no surprises” policy are not intended to detract in any way from directors’ statutory obligations or the obligations of the SOE under the NZX Limited NZSX/NZDX Listing Rules.

Depending on the details or circumstances of the issue, communication can be by way of a telephone call, email, letter or a meeting between the board and shareholding Ministers. Boards should advise the details of the issue and what the board intends to do to respond. Ministers’ offices are the first point of contact for most issues.

5.7.2 Provision of official information

SOEs are subject to the OIA. In handling requests made under the OIA, companies are expected to respect the underlying principles of, and comply fully with, the Act in terms of making information available to the public within the stated deadlines unless there is good reason for withholding information.

SOEs are expected to inform shareholding Ministers’ offices when a significant, topical or potentially contentious OIA request is received and their proposed response to it, in accordance with the “no surprises” policy.

5.7.3 Post-investment review

In their dividend decisions each year, boards make an explicit decision either to return available cash flow to the shareholder by way of dividends or to invest such surplus back into the company. Shareholding Ministers are interested in the value companies are creating from these investment decisions. These decisions require greater visibility as to how successful past investments have been, and whether companies have a track record of making investments that meet the criteria that management has proposed in seeking board approval for such investments.
In 2010, shareholding Ministers decided to receive information on the outcomes of past investment decisions from SOEs and Television New Zealand (TVNZ). Neither shareholding Ministers nor COMU expect to be involved in any investment decisions (unless required by law). Shareholders hold the expectation that boards should be receiving such information in any event, so this requirement is not intended to impose an unacceptable additional burden on the company.

The selection criteria for identifying the potential investments for review are set out below, along with the required template for submission which is outlined in Annex 4.

COMU will use the information provided to advise the Ministers on the significant projects the SOEs have identified. The advice will assess the post-investment review projects at the individual company level and at the portfolio level. The information provided by SOEs under the post-investment review may be publicly disclosed under the OIA, subject to commercial sensitivities and any other relevant matters under the OIA.

**Selection criteria for post-investment review projects**

**Quantitative criteria**

- For SOEs with a book value of equity <$100 million: Investments >$5 million
- For SOEs with a book value of equity between $100 million and $1 billion: Investments >5% of book value of equity
- For SOEs with a book value of equity >$1 billion: Investments >$50 million

**Qualitative criteria**

- There may be instances where the shareholder would like to see the board’s review of a particular investment even if it is below quantitative thresholds.
- The shareholder would advise the board of any of these investments, as required.

**Timeframe criteria**

- Initially, investments commissioned from 1 July 2007 would be in scope for a post-investment review.
- On an ongoing basis the shareholder would like to see a post-investment review 12 to 24 months following commissioning (the first review) and a second review two years from the date of the first review.

**Information requirement**

- COMU has developed a template of information the shareholder would like covered for each post-investment review but encourages SOEs to disclose additional information that they consider relevant. The copy of this template is attached in Annex 4.
- Where boards have already conducted a post-investment review to determine whether the objectives and financial benefits of an investment are being achieved, it would be useful for the shareholder to receive a copy of it. This may also meet the shareholder’s information requirements.
- COMU would like to receive a single report on 28 February each year which covers all post-investment reviews conducted in the previous calendar year.
5.7.4 Business case review

- Companies are expected to consult in good time with shareholding Ministers on significant investments, irrespective of whether the company expects direct financial input from the Crown. “Significant” may be defined (eg, by a dollar value or a proportion of total assets) in the company’s SCI and is to reflect the thresholds for consultation set out in Section 8.1.

- In effect, if funds are retained in the business to finance capital projects, then the Crown has to effectively forgo dividends – it is equivalent to capital injection. Consequently, capital plans should be assessed by COMU with the same rigour whether or not explicit Crown funding is sought, and boards would be expected to apply the same rigour in their decision-making.

- Shareholding Ministers expect boards to seek from management a rigorous business case in support of a capital proposal, and to provide officials with the same as part of the consultation process. Officials expect any business case to have the components set out in the text box below. Refer also to Section 8.2 on Ministers’ business case assessment principles.

### Key components of a business case

In assessing a business case, COMU would advise shareholding Ministers on the aspects identified below. COMU would therefore expect business cases provided by SOEs to cover the following:

- full explanation of the intended investment, demonstration of its link to the entity’s purpose, core business and agreed strategy (as identified in the latest business plan/SCI)
- full assessment of the benefits, costs and risks of the proposal and a description of why the investment is considered necessary/priority
- full financial projections (statement of financial performance, statement of financial position and cash flow statement) to the same level of detail as the annual forecasted accounts in the business plan, and forecasted annually for an appropriate period for the type of investment (typically 10+ years)
- identification of forecasts of capital expenditure and funding (and sources of funding) over the projection period
- calculations should not only identify the expenses and returns for the project, but should also identify impacts for the whole of the organisation
- full identification of risks
- similar rigour applied to alternative scenarios (eg, status quo)
- full DCF analysis leading to net present value (NPV) for each scenario. This should clearly identify all relevant assumptions
- present the business case in a form that either conducts appropriate sensitivity analysis or enables officials to carry out such an analysis, and
- whether the proposal can be funded from the company’s balance sheet, or via another vehicle, without recourse to new equity injection from the Crown.
5.7.5 Disclosures

- All SOEs and TVNZ have obligations under the SOE continuous disclosure rules to continuously keep the public informed on:
  - matters that may have a material effect on their commercial value disclosed in their SCI
  - fundamental terms of each material transaction\(^6\) entered into, and
  - half-year and full-year financial results, plus a brief explanation, no later than 60 days after the end of the relevant period.

- The SOEs disclose this information only after ensuring that the shareholding Ministers are made aware of the information to be released, in accordance with the “no surprises” policy.

- The detail of what needs to be undertaken by each SOE to which the disclosure rule applies is outlined at Annex 3. All SOEs and TVNZ are subject to the disclosure rules.

- The shareholders expect that the SOEs pre-announce the date and time of their Preliminary Announcement, and provide briefings on their financial results to investment analysts and journalists if there is a sufficient level of interest.

- Further information on the public disclosure regime and associated guidance is available on the COMU website.

5.7.6 Annual general meeting

- Section 120 of the Companies Act requires all companies (including SOEs) to call an annual general meeting (AGM) each year, no later than six months after the company’s balance date and no more than 15 months may elapse between the date of one AGM and the next. Section 122 of the Companies Act permits companies to propose a resolution in lieu of a meeting, and in the past this has been used by some SOEs, but is now discouraged.

- Aside from statutory requirements, the AGM provides the full board and the shareholding Ministers (or their proxies if they are unable to attend in person) with a valuable opportunity to engage in free and frank discussion about the company, its performance and its future prospects. It also enables those accountable for running the company (ie, the board) to formally present and comment on the year’s results to the shareholders.

- SOEs are responsible for setting the date, agenda and resolutions for the meeting. Generally, the agenda (including any resolutions), proxy form, minutes of previous AGM and the annual report (if not already sent) are sent to shareholding Ministers and officials, giving sufficient notice to enable officials to advise Ministers on any relevant matters.

- Shareholding Ministers’ offices and COMU need to be advised of the schedule of board meetings, AGM and public meetings dates at the start of the calendar year, at the latest.

- The AGM is not intended to be a public meeting (though SOEs are encouraged to also hold public meetings at least once a year).

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\(^6\) Material transactions are transactions with a consideration of 5% of the SOE’s current commercial value or transactions with consideration of $100 million or more, whichever is the lesser (the exception is KiwiRail which has a threshold of $50 million).
5.7.7 Public meetings

- Shareholding Ministers particularly encourage SOE boards (especially the larger ones) to hold at least one public meeting per year to provide an opportunity for the performance of the SOEs to be scrutinised by their ultimate shareholder, the New Zealand public. This should be separate from the AGM, which is a meeting between the board and the shareholders (or their representatives).

- There is no specification for timing, format or content of these meetings. Each SOE should adopt an approach that best suits its stakeholders and interest groups it serves. The intention of the public meetings is to promote transparency and an understanding of the company.

- Under the “no surprises” policy, SOEs are required to inform the Ministers’ offices of the date(s) the public meeting is scheduled, along with the agenda for the meeting.

5.7.8 Visits by Ministers/MPs

- SOE boards and executives should be aware of the potential political implications of engaging with Members of Parliament (MPs), either through visits or briefings. Accordingly, companies should advise shareholding Ministers’ offices before agreeing to or organising any visits/briefings. Companies are encouraged to set an agenda before any such meeting and ensure that visitors adhere to that agenda.

5.8 Accountability

5.8.1 Select committees

- Select committees have wide powers to require witnesses (including SOE employees) and officials to appear before them and to give evidence. Among other roles, they play an important part in assessing the performance of SOEs.

- There are several reasons for which an SOE may appear before a select committee:
  - An SOE could be asked to advise a select committee on legislation under formation.
  - An SOE may wish to make a submission on a Bill as a witness.
  - A select committee may receive a petition from private citizens regarding an SOE, which may then be called in for a review.
  - Every select committee has the power to launch an inquiry, and could call an SOE in to provide evidence.

- In addition, SOEs are regularly required to appear before the Finance & Expenditure Committee (or another select committee delegated by the Finance & Expenditure Committee) for a financial review. Normally the chair and CEO of the SOE are expected to appear before the select committee. It is not usual for external legal representation to attend. SOEs should view these financial reviews as opportunities, rather than impositions, to emphasise the importance of what they do.

- Shareholding Ministers expect to be advised when an SOE is due to appear before a select committee. They also expect the boards and management of SOEs to be open and forthright in their dealings with select committees.
If the chair of an SOE has concerns about providing information to a select committee, shareholding Ministers expect these concerns to be raised with the committee, rather than refusing to provide the information. If, notwithstanding the SOE’s concerns, the select committee requires the information to be provided, the chair may request that the committee receive the information as private or secret evidence. Chairs are encouraged never to refuse to answer a question outright.

Shareholding Ministers expect SOE boards and management to be aware of, and to familiarise themselves with, the Standing Orders of the House of Representatives before appearing in front of select committees. Boards may wish to consider obtaining specific training in this regard.

In particular, the Standing Orders provide rules relating to parliamentary privilege. Parliamentary proceedings are subject to absolute privilege, to ensure that those participating in them, including witnesses before select committees, can do so without fear of external consequences. This protection, enshrined in the Bill of Rights Act 1990, is an essential element in ensuring that Parliament can exercise its powers freely on behalf of its electors. There must be no pressure placed on individuals to deter them, or action taken against them as a direct consequence of their giving evidence to a select committee. Any such action might be regarded as contempt of the House, with potentially serious consequences for those involved.

Further information on select committees can be found in the State Services Commission’s Officials and Select Committees – Guidelines and in the procedural guides – Natural Justice before Select Committees and Working with Select Committees on the New Zealand Parliament website.
6 SOCIOAL RESPONSIBILITY

- The SOE Act requires every SOE to operate as a successful business and, to this end, to be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these, when able to do so. Therefore, SOEs have corporate social responsibility (CSR) obligations that go beyond other companies.

- There are a number of leading international frameworks available to provide guidance on how SOEs could approach CSR. These frameworks emphasise that CSR is not just about visible programmes, but more importantly it is also about values and behaviours evident in an organisation’s day-to-day operations. Accordingly, prescriptive approaches to CSR are unlikely to be successful, and it is recognised that one size does not fit all.

- However, it is important to note that, in addition to having CSR programmes in place, SOEs have a fundamental obligation to behave in a socially responsible manner at all times. This obligation should therefore be reflected in all policies and be evidenced by company practices. To this end, shareholding Ministers are particularly sensitive to any breaches of an SOE’s obligation to act in a socially responsible manner.

- SOE boards must report any such breaches to shareholding Ministers as soon as practicable after any breaches are brought to the board’s attention. Likewise, breaches should also be disclosed in the companies’ annual reports. Robust procedures and accountabilities should also be put in place to ensure details of any breaches are communicated to boards in a timely way.

- The most effective and appropriate way to address the CSR obligations of SOEs is to integrate CSR into the existing business planning process, with officials providing guidance and monitoring input to help with the consistency and quality of CSR plans.

- Such an approach puts CSR objectives on the same footing as financial objectives. CSR targets and objectives are set in the SCIs, and subsequently reported against to help ensure transparency and accountability for CSR practices.

- Under the CSR framework, the onus is on each SOE to look hard at the way it conducts its business, and put in place appropriate values and objectives and monitor performance against them. Complementary to this, each SOE should assess its impact on the society and environment within which it operates, and adopt specific CSR programmes that are appropriate to that SOE’s impact on the environment and its interface with society in general.

- Shareholding Ministers expect each SOE to have the following in place:
  - specification of CSR values and behaviours, and how these are incorporated into the fabric of the company
  - objectives and performance targets reflecting good social responsibility practice
  - specific CSR programmes, and
  - the reporting framework to be used.
7 FINANCIAL GOVERNANCE

- All SOEs are expected to enhance shareholder value in their operations over the longer term, while managing risk to an appropriate level. The following sections set out shareholding Ministers’ specific expectations around related financial governance matters.

7.1 Financial targets

- All SOEs are expected to add to shareholder value in their operations over the longer term and to meet short-term financial targets specified in their SCI (refer to Chapter 5).

- The setting of appropriate financial targets aims to ensure that SOEs:
  - are focused on earning appropriate risk-adjusted rates of return over the business planning period
  - replicate the disciplines exerted over private sector companies that result from share market trading and the threat of takeover, and
  - operate in an environment that is competitively neutral with the private sector.

- This does not mean that a target in excess of the cost of capital needs to be achieved consistently every year as long as an appropriate average return is achieved over time.

7.2 Performance against targets

- COMU has established a standardised set of financial performance measures to measure shareholder return, profitability and solvency for SOEs. The aim is to promote transparency and consistency. The financial performance measures and the related definitions are set out at Annex 5. SOEs are encouraged to include these measures in their SCI, where relevant, and adopt the proposed calculation. COMU intends to incorporate the final set of measures in its reports to the Ministers on the financial performance of SOEs.

- If an SOE anticipates that it will not achieve its stated performance targets, shareholding Ministers expect advice from the board, including detail of the reasons for the expected shortfall and the actions to remedy the situation in the future. In general, this can be achieved through the quarterly reporting process. Where performance shortfalls are significant, however, shareholding Ministers expect more direct notification, including any remedial action proposed, and to be made aware of progress. In this instance, officials may interact more frequently with the board, depending on the circumstances at the time.

- In cases of serious underperformance or financial distress by an SOE, shareholding Ministers have a number of options, including:
  - seeking more detailed information from the SOE (eg, monthly accounts and cash flow forecasts)
  - working with the board with a view to improving its performance
  - reviewing the membership of the board
  - appointing a special advisor to the board, and
  - liquidating or re-capitalising the SOE.
Such measures, particularly the latter, would only be taken in extreme circumstances, and shareholding Ministers would consult with the board before taking such steps. Boards should not, in the absence of an express agreement to this effect from shareholding Ministers, assume that additional financial support will be provided by the Crown to an SOE.

7.3 Managing for value – value-based reporting

A core expectation for SOE boards is that there is a continual focus on managing for value. As outlined in Section 5.5.3, boards should understand the company’s value drivers and monitor enterprise value constantly.

To support this, in addition to reporting under the requirements of generally accepted accounting practice (GAAP), Ministers also encourage the use of value-based reporting methods such as Economic Value Added (EVA\(^7\)).

While each SOE is required to be as profitable and efficient as comparable companies not owned by the Crown, a number of SOEs have a few companies with which to compare their performance. EVA is a useful benchmarking tool in such cases. Put more simply, EVA is net operating profit minus an appropriate charge for the opportunity cost of all capital (debt + equity) invested in an enterprise. The resulting EVA is therefore the profit (or loss) in excess of (or below) an investor’s required return.

7.4 Managing risks

Boards are responsible for managing risks, and should establish processes and practices within the SOE to manage all risks associated with its operations.

Boards should also keep shareholding Ministers informed of risk management strategies through their business plans and other reports, when necessary and as per the “no surprises” policy.

7.5 Foreign exchange risk management

SOEs with exposure to foreign exchange risks should have policies and procedures for managing these risks and, if requested, report against these policies and procedures to shareholding Ministers.

7.6 Capital management

Shareholders expect SOEs to minimise the level of surplus capital on their balance sheets, without adversely affecting their ability to meet objectives under the SOE Act. SOEs are expected to return surplus capital to the Crown so that it may be used for other government priorities.

7.6.1 Optimal capital structure

Each SOE should have a target optimal capital structure (ie, the combination of financial liabilities and equity used to fund its assets). An optimal capital structure is one that, in light of economic,

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\(^7\) EVA is a registered trademark of Stern Stewart.
industry and company-specific factors, would provide for an appropriate credit rating, while at the same time imposing a discipline on the SOE to optimise efficiency.

- To this end, the Government has a credit rating benchmark policy whereby SOEs are expected to have a capital structure consistent with a BBB (flat) credit rating (unless the SOE can demonstrate good reasons for an alternative benchmark). This is to ensure that all SOEs have appropriate financial disciplines to manage capital efficiently at similar risk levels.

### 7.6.2 Dividend policy

- The level of estimated dividends (and forecast payout ratio) is set by the board after considering shareholding Ministers’ comments through the SCI and business plan consultation process. It should aim to maintain, or progress toward, the company’s optimal capital structure within defined and agreed timeframes.

- However, under section 13 of the SOE Act, shareholding Ministers have the power to determine the amount of dividend payable by an SOE by giving written notice to the board of the SOE. Before giving written notice to the board, the shareholding Ministers must have regard to Part 1 of the SOE Act and consult the board concerned as to the matters to be referred to in the notice.

- The level of estimated dividends is driven by each SOE’s desired capital structure, profitability and the level of future capital expenditure as outlined in the business plan and SCI.

- Shareholding Ministers expect SOEs to operate a dividend policy that:
  - translates to payouts that are commensurate with their listed peers
  - gives an appropriate balance between dividends and re-investment in the business, and
  - shows a degree of consistency and improvement over the years.

- An appropriate dividend policy should relate to an agreed proportion of free cash flow measure rather than net profit after tax (NPAT). This proportion will, no doubt, reflect the maturity of the business and the investment opportunities the business faces.

- The proposed dividend payout ratio and estimated dividend payment should be included in the business plan for each year covered by the plan.

- Ordinary dividends, if any, may be paid in two instalments: an interim dividend and a final dividend. Special dividends may be paid as seen fit by the board.

- Interim dividends, if any, are paid as soon as possible after the half-yearly report and final dividends, if any, as soon as possible after the annual accounts are finalised. The Treasury requests at least a week’s notice of the actual date and amount before payment, which should be accompanied by a shareholder dividend payment statement. Shareholding Ministers may agree on variations to those dates, after consultation with the board.
7.7 SOE borrowing

7.7.1 Explicit disclaimer of Crown guarantees and loan covenants

- For all SOE financing not provided by the Crown, there must be a disclaimer associated with the finance contract that the Crown does not guarantee or financially support any such SOE borrowings. The disclaimer aims to give a clear signal to third parties/third-party financiers of the nature of the relationship between the Crown and SOEs in respect of any such borrowings.

7.7.2 Ownership review clauses

- Some loan documents link the loan terms to the shareholder's identity, so that, if the control of the company changes, the lender reserves for itself the right to call up the loan. For SOEs, this would connect the terms of borrowing with the Crown, and could incorrectly give the appearance of an implicit Crown guarantee.

- Notwithstanding the Crown's current long-term hold policy, the position on such clauses is as follows:
  - It is acceptable to have loan provisions that require lenders to be informed whenever an SOE becomes aware that its ownership will change.
  - Shareholding Ministers prefer SOEs not to enter into loan agreements that provide for a review of the loan at the lender's discretion, in the event of an ownership change.
  - It is not acceptable to have loan provisions that involve a technical default at the lender's discretion in the event of an ownership change.

- If entities are considering changes to the ownership control clause, they are encouraged to consult with Ministers and officials, and are asked to bear in mind the above comments.

- There are alternative mechanisms that can provide lenders with the comfort they desire without the drawbacks typically inherent in ownership change clauses. These range from covenants concerning debt/equity ratio and interest coverage to lenders taking security over specific company assets. However, these mechanisms can place constraints on the company and must be designed to minimise the extent to which they frustrate any future restructuring of an SOE. Boards should bear this in mind when considering such mechanisms.

7.7.3 Tax planning

- SOEs are expected to conduct their businesses on the same basis as comparable businesses not owned by the Crown, including normal prudent planning of their tax affairs. SOEs are also required to act as good corporate citizens by exhibiting a sense of social responsibility where able to do so.

- These objectives are not served by tax planning that is outside the spirit of the law. While shareholding Ministers are comfortable with SOEs engaging in normal tax planning in accordance with tax law, they are not comfortable with companies leading the market in developing aggressive tax-planning strategies.

- Shareholding Ministers recognise that what might be considered aggressive may change over time and that there will always be an element of judgement involved. This is a judgement for SOEs' boards, not shareholding Ministers, to make.
The principles that shareholding Ministers expect boards to adopt when considering tax planning are as follows:

- Final decisions regarding whether to proceed with any single or series of related transactions are for individual SOE boards to consider, subject to the usual shareholder consultation requirements set out at Section 8.1.2 and in each SOE’s SCI, and thresholds specified in the Companies Act regarding major transactions.

- All transactions should be legal in all jurisdictions in which they have effect, and with respect to unusual or non-trivial tax issues, have sign off from professional tax advisors and appropriate tax authorities where possible (e.g., receiving a binding ruling on the transaction from Inland Revenue Department, where appropriate). Moreover, the tax-planning component of transactions should not be aggressive from a New Zealand or international corporate perspective, which should be confirmed in professional tax advice received by an SOE.

- Ownership risks arising from the transactions should be remote.

- The normal expectations regarding the “no surprises” policy and disclaimers on company financing apply.

- Boards are fully accountable for their tax-planning activities, and so they need to be able to explain their decisions to all stakeholders, recognising the obligations imposed on SOE directors through the SOE Act and other legislation, and shareholder expectations.

- When assessing performance, the Government views dividend payments as if they were a domestic resident taxpayer. This means imputation credits are treated as if they have value in the hands of shareholders, and should be reserved for attachment to dividends.
8 SHAREHOLDER CONSULTATION AND STRATEGIC INITIATIVES

8.1 Consultation, expectations and thresholds

- It is important to distinguish between “approval” and “consultation”. In the SOE environment, most consultation with the shareholder is just that (unless the board is required to seek approval and/or an equity injection is required) and the responsibility for decision-making lies with the board.

8.1.1 Approval

- Under the Companies Act, SOEs may not enter into a “major transaction” (as defined by that Act), unless it has been approved by a special resolution signed by shareholding Ministers, or is contingent on such approval.

8.1.2 Consultation

- Shareholding Ministers expect the board of each SOE to include in the company’s SCI the matters on which they will be consulted before certain transactions or strategic initiatives are entered into.

- Additionally, Ministers expect to be consulted on significant transactions and initiatives prior to being entered into and these should be reflected in the SCI, as appropriate. The thresholds for identifying projects that will require ministerial consultation are set out below. The threshold amount applies to a single investment or cumulatively to a series of linked investments.

- The thresholds under long-term review are to be consistent with the consultation thresholds listed below. This mirrors ministerial expectations around post-investment review projects. This threshold does not prevent Ministers from setting a higher/lower threshold for specific companies or projects, and the letter of expectation can specifically address this.

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<table>
<thead>
<tr>
<th>Thresholds for projects requiring ministerial consultation</th>
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<tr>
<td>- For SOEs with a book value of equity &lt;$100 million: Transaction &gt;$5 million</td>
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<tr>
<td>- For SOEs with a book value of equity between $100 million and $1 billion: Transaction &gt;5% of book value of equity</td>
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<tr>
<td>- For SOEs with a book value of equity &gt;$1 billion: Transaction &gt;$50 million</td>
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- Under section 14(2)(h) of the SOE Act, the board of each SOE is required to include in the SCI for the group the procedures to be followed before the group subscribes for, purchases or otherwise acquires shares in any company or other organisation. Shareholding Ministers expect these procedures to include an obligation to consult with them where the acquisition exceeds a threshold that is agreed by shareholding Ministers and the board as part of the annual business planning round.
Under section 14(2)(j) of the SOE Act, the SCI should also include any other matters agreed by shareholding Ministers and the board. Shareholding Ministers expect this to include an obligation to consult with them on matters such as the sale or other disposition of shares, the acquisition or sale of assets and any capital investment, where such transactions exceed a threshold agreed by shareholding Ministers and the board as part of the annual business planning round.

The board of each SOE may also wish to consider agreeing separate consultation thresholds with shareholding Ministers for transactions which relate to the SOE’s core business activities, and for transactions which are not core business activities but which fall within the nature and scope of the SOE’s activities as defined in its SCI.

In addition to the above, shareholding Ministers expect the board of each SOE to consult with them in relation to any proposed activity that falls outside the nature and scope of the SOE’s activities as defined in its SCI, as this will require an amendment to the SCI.

8.1.3 Inform

Shareholding Ministers expect the board of each SOE to inform them, in advance, of any transaction that does not meet the consultation thresholds mentioned above in Section 8.1.2 and those specified in the company’s SCI, but which falls within the scope of the “no surprises” policy.

8.2 Process for consultation

Shareholding Ministers are, on occasion, consulted on or asked to approve investment proposals. This usually arises either because the investments are major transactions under the Companies Act, shareholding Ministers are being consulted by the board as required under the SCI and/or Section 8.1.2, or shareholding Ministers are being asked to consider an equity injection. In any case, the SOEs should provide the Ministers and officials adequate time to consider the proposal, regardless of whether the board has given its approval. This is in keeping with the early engagement principle.

The consultation process, as distinct from shareholder approval, is expected to be conducted in good faith and to involve the following steps:

- Based on advice from its management team, the board forms a view on the commercial merits of the proposal.
- The board advises Ministers of a relevant pending decision.
- The board provides information to Ministers.
- Reasonable time is given for Ministers’ consideration, depending on the circumstances of the particular decision.
- The board considers Ministers’ comments, with an open mind.
- The board proceeds to take the final decision for which it is responsible.

Key components of a business case that officials expect to see are outlined at Section 5.7.4. The shareholding Ministers will continue to assess investment proposals against the principles set out below:

- the business case for the proposal, including expected financial risk-adjusted returns and risks, and the sensitivity and volatility of returns to various alternative scenarios
- the size of the proposal and fit with the SOE’s core business
- the size of the proposal and fit within the wider SOE portfolio and the Crown balance sheet (ie, whether it would involve a greater concentration of risk)
- the company’s track record of success in similar expansions, and
- whether the proposal can be funded from the company’s balance sheet, or via another vehicle, without recourse to new equity injection from the Crown.

In addition, the provision of new capital is a decision for Cabinet, which will consider its relative fit within the Government’s overall investment priorities and other public policy objectives. Shareholding Ministers, accordingly, expect that any request for additional capital will demonstrate what shareholder value will be added, to assist them in prioritising demands on capital.

In order to assess investment proposals, shareholding Ministers prefer that sufficient information be made available to allow them to make an informed assessment of the proposal. If investment approval is being sought during the business planning process, the Ministers’ views on the proposals should be explicitly sought. In other words, inclusion in an annual business plan does not constitute consultation, and the Ministers may still choose to consider the proposals outside of the planning process.

8.3 Diversification

- SOEs may wish to broaden the nature and scope of their existing activities by diversifying their technological, product and market portfolios, and extending the time horizon over which they seek to capture a return on investments.
- SOEs will be responsible for establishing how they can achieve this, and for preparing robust business plans that can preferably be funded off their own balance sheet and that meet the relevant criteria.

The relevant criteria include:

- Diversification must be based on an effective utilisation of existing core competencies and into adjacent technologies, products and markets.
- New activities should have a demonstrated potential to enhance the competitive competencies of other firms and industries (ie, spill-over benefits).
- Other than in very rare circumstances, the diversification should be able to be financed off the SOE’s existing balance sheet.
- Any revised scope of business must be accompanied by robust evaluation processes using explicit performance indicators, leading to a clear exit route for ventures that do not meet expectations.
- Given that any investment utilises funding that may otherwise be available for distribution to the Crown, it should be demonstrable that any diversification will in due course produce superior risk-adjusted returns to the Crown.
8.4 Overseas expansion (including offshore investments)

Overall, shareholding Ministers have the following preferences for overseas expansions and investments (and expansions generally):

- The SOE should not lose focus of its core business.
- Expansion should not significantly increase the risk profile of the SOE and/or the Crown.
- Expansion strategies should tend to develop and leverage from domestic activities rather than developing entirely new products and services for international markets.
- Overseas expansion should not put at risk the SOE’s New Zealand operations or assets.
- The SOE should have some level of non-Crown private sector debt for expansion and should not seek total funding by the Crown (eg, through withholding dividends).
- Overseas expansion should not create a risk that the New Zealand Government may be associated with and held accountable for poor company actions and behaviour overseas.

8.5 Subsidiaries

In relation to subsidiaries, shareholding Ministers expect that:

- the parent company will comply with any restrictions in its SCI relating to the acquisition or formation of subsidiaries
- the powers and functions of each subsidiary will be treated in practice as if it is subject to the same statutory limitations as the parent company
- in establishing the governance arrangements for the subsidiary, the parent company will act in accordance with any relevant provisions of its SCI and accepted best practice in the identification and appointment of directors
- the parent company will be accountable to the Minister for SOEs (or the relevant responsible Minister) for the subsidiary’s activities and performance and will have appropriate financial controls, business planning and monitoring procedures in place, and
- public accountability documents for the parent company (SCIs, financial statements and annual reports) will include information on the subsidiary’s activities and performance.

8.6 Joint ventures

While shareholding Ministers are supportive of SOEs entering into joint venture (JV) arrangements as a way of leveraging expertise and capital, they expect to be informed at an early stage of any JV formation, particularly where the JV involves another New Zealand government entity or where it includes a foreign government or sovereign wealth fund.

Boards of SOEs should only seek partnering solutions that allow them to retain substantive control over their business activities. In general, shareholding Ministers will not support JVs that result in Crown-owned assets and capabilities being transferred or diluted.

This concern about dilution of control also extends to financial and budgetary controls. Shareholding Ministers expect that any JVs entered into by the board would be subject to at least the same level of financial budgeting and monitoring control as that which applies to SOEs and their subsidiaries.
9 BOARDS

Note: In this chapter of the manual, the terms "director" and "company" are used in a general sense. Except where noted with regard to board fees, the expectations contained in this chapter and associated annexes are generic to all companies and entities monitored by COMU (and therefore include "entities" and their board “members”).

9.1 Governance frameworks, roles and responsibilities

9.1.1 Company governance

- The governance structure for all Crown companies and Crown entities is essentially the same. The shareholding or responsible Ministers (the Minister or Ministers for the rest of this chapter) appoint governance boards to oversee the management of the companies and to appoint the company’s CEO. This is carried out under the terms of the Companies and CE Acts, Cabinet-approved appointment processes, the relevant legislation under which the company operates and the constitutions of each company. COMU advises Ministers on director appointments and monitors the performance of each company.

9.1.2 Directors’ duties

- The Companies Act sets out the legal duties of company directors, including the duty to act in good faith and in the best interests of the company, as set out in section 131 of the Companies Act. Board members of Crown entities must also familiarise themselves with the duties set out in the CE Act, notably Part 2 (Establishment and governance of Crown entities).

- Some of the other important directors’ duties set out in the Companies Act include the duty to:
  - exercise powers only for a proper purpose (section 133)
  - comply with the Companies Act and the company’s constitution (section 134)
  - not agree to the company engaging in reckless trading (section 135)
  - not agree to the company agreeing to incur an obligation that it cannot perform (section 136)
  - exercise the care, diligence and skill of a reasonable director (section 137)
  - comply with rules concerning transactions in which directors have a “self-interest” (sections 139–144), and
  - comply with rules relating to the use and disclosure of company information (section 145).

- The fundamental nature of a director’s position in relation to a company is that of fiduciary. This is a relationship of high endeavour and trust, and the obligations on a director are strict.

- Failure to diligently and properly discharge their duties can result in personal liability for directors. This applies as much in the public sector as it does to company directors in the private sector. The Crown’s liability for Crown companies is limited in the same way as for other shareholders and there is no guarantee, implied or otherwise, that the Crown will meet the liabilities of a Crown company should it become insolvent. If a Crown company were to become insolvent and the
Ministers did not wish to make any further investment in that company's business, a receiver or liquidator would be appointed pursuant to the Companies Act. In the event of liquidation, the liquidator will endeavour to make such recoveries as are available for the benefit of the company's creditors, which could include claims against directors for reckless or insolvent trading or other breach of duty.

9.1.3 Role of the board and its members

Under the Companies Act, the board of the company is responsible for managing, by or under its direction or supervision, the business and affairs of the company. The Companies Act requires boards, among other things, to:

- comply with the directors’ duties set out in the Companies Act, including the duty to act in the best interests of the company
- provide an annual report and annual financial statements to the shareholder
- comply with the solvency requirements set out in the Companies Act
- hold AGMs, except where the shareholder passes a written resolution in lieu of such meetings, and
- present special resolutions to the shareholder when necessary (eg, resolutions for the approval of “major transactions” as defined in section 129 of the Companies Act).

The duty to act in the best interests of the company is often referred to as “the First Duty”. Directors do not represent individual shareholders, stakeholders or “constituent” groups. They must also declare any interests that conflict with those of the company (see Section 9.2.4). The role of the board of a Crown company differs in some respects from the board of a privately owned company. For example, all decisions relating to the operation of a Crown company must be made by, or pursuant to, the authority of the board in accordance with its SCI or Statement of Intent (SOI). Further, under the constitution of each Crown company, the Ministers, rather than the board, appoint the chair and deputy chair and set directors’ fees.

A Crown company board's responsibilities include, but are not limited to, the following:

- appointing a CEO and managing and monitoring the CEO’s performance
- setting the CEO's remuneration and incentives, approving senior management remuneration and remuneration policy generally, and specifically determining the relationship between remuneration incentives and risk taking
- providing leadership and vision to the company in a way that will enhance shareholder value
- developing and reviewing the company strategy
- ensuring that the company has appropriate processes to identify, assess, monitor and manage risk and monitoring the performance of senior management
- reviewing and approving the company's capital investments and distributions
- ensuring compliance with statutory requirements
- providing leadership in its relationships with key stakeholders including, where relevant, industry groups, Māori and staff
- preparing annually a draft SCI/SOI and delivering it to Ministers, considering Ministers’ comments on the draft SCI/SOI, and submitting a final SCI/SOI for the Minister to table in the House of Representatives
- developing annually a business plan and delivering it to Ministers at the same time as the draft SCI/SOI
- holding management responsible for meeting the performance measures/milestones in the SCI/SOI and business plan
- establishing appropriate governance structures (such as board committees and clear lines of responsibility and accountability between the board and management) to ensure the smooth, efficient and prudent management of the company, and
- reporting to Ministers in accordance with legislative requirements and the expectations set out in this manual. Additional board requirements may be set out in governing legislations (eg, SOEs have additional reporting requirements under the SOE Act).

9.1.4 Role of the Chair (compared to the role of a director)

- All Crown directors are equally responsible and liable for the affairs of their companies. They must act in the best interests of their companies and in a manner consistent with the obligations of a director, as required by the Companies Act and other legislation.
- Specific leadership roles, such as chair or deputy chair, do not reduce the responsibilities and liabilities of other directors, but rather encompass critical functions that enable all of the directors to contribute fully and effectively to the board’s affairs.
- The chair role is often described as that of “first among equals”, entailing a number of specific responsibilities in the governance of the company. The key requirements of the chair’s role are to:
  - provide effective leadership and guidance to the board and company, consistent with the owner’s expectations, to maximise shareholder value
  - ensure effective accountability and governance of the company, consistent with the requirements of relevant legislation
  - develop and maintain sound relationships with Ministers, relevant officials and other stakeholders
  - meet Ministers’ expectations by ensuring a process is in place to undertake an (at least) annual performance review of the board as a whole, as well as of the chair and directors individually
  - maintain an ongoing review of the board’s membership profile, with regard to the skill needs of the board in relation to the successful governance of the company, as well as succession planning for both the chair and directors’ roles, and participate in the process to identify and appoint new board members
  - actively observe the “no surprises” policy (see Section 5.7.1)
  - ensure that the company’s governance arrangements are continually reviewed and updated to reflect current best practice
provide the necessary guidance and support to other members of the board to ensure they contribute effectively to the governance of the company (particular regard is to be given to the induction of new members), and

provide the necessary guidance and support to the CEO and his/her senior management team to ensure the company is managed effectively.

9.1.5 Role of the deputy chair

- Most, but not all, boards will have one member of the board appointed by Ministers as deputy chair. Naturally, the principal role of the deputy is to act in situations where the chair cannot be present to fulfil one or more of his/her duties. The deputy chair must be ready to stand in at short notice and perform these duties with a high level of proficiency. The degree to which the deputy chair takes on the authority and responsibilities of the chair will depend on the circumstances and, particularly, the length of the chair’s absence. In situations where no deputy chair has been formally appointed, the chair and board should develop a procedure to select a director to act during the absence of the chair (in accordance with the company’s constitution), or select in advance their choice for the role so as to enable the board member concerned to be prepared to act as chair, if required.

- The deputy chair may be delegated specific roles by the board as required (eg, a committee chair role) and, in general, will be expected to provide a level of leadership and guidance as would be expected of a senior director. The deputy chair will often lead the board’s periodic evaluation of the chair’s performance.

- Boards should not assume that the deputy chair appointment will inevitably lead to a subsequent appointment as chair.

9.1.6 Board committees

- Board committees exist to increase the overall effectiveness and efficiency of the board. These committees have no legal standing or distinction from the board itself, and all board members remain accountable for committee activities. It is best practice that board committees make recommendations for the approval of the full board, rather than have complete decision-making powers delegated to them. When a committee is established by a board, its terms of reference and powers, duties, reporting procedures, membership and duration of office should be clearly recorded.

- Board committees can be standing or ad hoc in nature, and might typically encompass such areas as audit (finance and risk) and remuneration. However, apart from the recommendation of an audit committee below, there is no prescribed or optimum number or type of committees, and boards should only set up new committees after consideration of the potential benefits to the governance of the particular company.

- The establishment of an audit committee is particularly important. It is expected that such a committee will give the board assurance in terms of risk management and compliance, as well as to probe in greater detail the company’s financial management, reporting and internal controls. However, in some companies of a specialist or technical nature, it may be appropriate for risk management issues to be dealt with by a separate risk committee.
Membership of an audit committee will include directors who are financially literate. Best practice dictates that the chair of the audit committee should not be the chair of the board.

9.1.7 Management responsibilities

Management responsibilities are extensive and, for the most part, defined elsewhere. It is worth noting, however, that the governance of the company relies on systems and processes that are an integral part of company operations involving many staff. Minute taking, board agenda and board paper preparation, performance reporting and higher-level matters such as strategy formulation must be based on accurate and timely information, and must be well executed.

Effective governance of Crown companies relies on proactive management involvement, and support for the board by the CEO. Active participation by the whole management team is required for the governance process to work well, including providing information and support required by the board and members of senior management who interact most frequently with it. The range of duties usually vested in the company secretary (or equivalent role) also forms an obvious and important foundation for the board’s activities.

Management should also expect, and welcome, examination of its analysis and recommendations by the board, and be prepared to be challenged. Challenge is a core dimension of effective governance that builds the trust and confidence necessary for effective decision-making.

9.2 Payments, board succession, conflicts of interest and related matters

9.2.1 Fees and expenses

Crown company and entity board members generally do not set their own fees, remuneration and allowances – but boards should understand how these are set and how to engage with the relevant fee-setting authority when fees are reviewed. The fee frameworks all have unique features and processes and are outlined in Annex 6.

The document “Directors’ fees and reimbursement guidelines” (attached at Annex 7) has comprehensive information on Ministers’ expectations with regard to the payment of directors’ fees and expenses in Crown companies. Boards must ensure that these guidelines have been considered and implemented, and any significant variance from expectations reported to the Minister.

Directors are also encouraged to refer to the Office of the Auditor-General’s guidelines on controlling sensitive expenditure.
9.2.2 Directors’ and officers’ liability insurance

**Note**: This section is to be treated as a guide only. Board members should ensure appropriate advice is obtained to reflect their own personal circumstances, and those of the company or entity of which they are a director.

- The Crown does not provide directors and officers with any indemnity against personal liabilities incurred while performing, or failing to perform, their duties. Directors and officers are personally responsible for many duties and obligations imposed by legislation, and their personal assets and professional standing are at risk. Individual liability can arise from the actions of fellow directors on the board. The cost of legal representation, both for themselves and where the claimant’s costs are awarded against them, can be substantial.

- The greater part of this liability is imposed by the Companies Act, while other applicable legislation includes the Financial Reporting Act 1993, the Resources Management Act 1991, the Health and Safety in Employment Act 1992, the Building Act 1991, the Employment Relations Act 2000, the Commerce Act 1986, the Fair Trading Act 1986 and the Privacy Act 1993.

- To protect against the exposures of directors and their company, a comprehensive risk management programme should be established. An essential component of this programme should be the right of directors to be indemnified by their company against liability to the extent permitted by law, coupled with insurance of the directors against liability.

- Directors should ensure that the insurance rating of the insurer is strong and that the cover and exclusions are acceptable.

- Directors’ and officers’ liability insurance is normally arranged by the company at levels and premium costs in keeping with the risks faced by the company. The cost of the premium can be paid by the company if the cover is within the limits and under the criteria prescribed by the Companies Act.

- The important procedural steps under the Companies Act are (in brief):
  - the indemnity and/or insurance must be authorised by the company’s constitution
  - prior approval by the board is given
  - the directors must sign a certificate to the effect they consider the cost of the insurance is fair, and
  - the existence of the policy must be disclosed in the interests register.

- Insurance may cover directors or employees against all liabilities, defence costs and settlement costs, except for:
  - costs involved in unsuccessfully defending criminal proceedings, and
  - any criminal liability actually upheld against a director or employee.
The risk profile of the company should be utilised in arriving at the levels of insurance for this purpose. Directors must comply with the requirements of the insurer to provide full and accurate disclosure concerning the company and the individuals insured. The same disclosure obligations remain in force throughout the entire period of insurance. The sum insured should take the following features into account (the list is not exhaustive):

- the nature and size of the company
- policies that other similar-sized comparable businesses are purchasing, and at what premium cost
- trends in litigation and settlements
- a cover applicable to all claims and defence costs for the period of the insurance
- the potential for class actions, and
- professional indemnity insurance for lawyers, accountants and other professionals does not necessarily cover them in their roles as directors.

If a director or the company become aware of any claim or of any circumstance or information which may give rise to a claim in the future, the interests of the insured parties must be protected by notifying the insurer and seeking legal advice immediately.

In the case of any indemnity provided by the company, it is important that a contract be entered into between the director and the company if the director is to be protected in this way, as such indemnities can only be entered into at the direction of the company and are not an entitlement to directors. The costs to the company or reimbursement under such indemnities are insurable.

9.2.3 Appointment process, terms of appointment and succession planning

Ministers make appointments of directors to the various Crown boards. The process is managed by COMU.

Crown company directors hold office at the pleasure of Ministers and, accordingly, under the constitutions of the companies, may be removed at any time by notice in writing to the board of the company.

Following interview, due diligence and background checks on the preferred candidate, directors are appointed through issue of a formal letter or notice of appointment, generally for a term of up to three years. They may be reappointed at the expiry of that term, subject to their contribution having been satisfactory and their skills continuing to be relevant to the board. In some circumstances, directors may serve more than two terms where a critical business need has been clearly demonstrated to Ministers. Each case is considered on its own merits. Directors need to be aware that elements of the same process that was followed for their original appointment may be applied again if they are eligible and available for reappointment at the expiry of their term.

Shareholding Ministers, board chairs and COMU are continually reviewing board composition and skills requirements as well as term expiry dates and succession. Each board, with the chair’s leadership, should periodically discuss its own composition and skills and assess what changes may be necessary. While the composition of boards is decided by Ministers, directors should use their best endeavours to ensure the board has the composition required to serve the existing and anticipated needs of the company. The chair and directors have a critical role in appointments, notwithstanding that the overall process is administered by COMU.
Where a director’s term is expiring, or a vacancy arises for other reasons, the above process will result in the development of a skills profile for the board and vacant position. The specification for the vacancy will be used by COMU to guide the search for suitable candidates for the Minister’s consideration.

If a director is to retire, he/she will receive a letter from the Minister confirming that decision in advance of the expiry of the term. If a director is reappointed, he/she will receive a letter from the Minister at the same time as new board appointees are advised of their appointment. This can be quite close to the end of the director’s term.

9.2.4 Conflict of interest

A conflict of interest arises when a director’s duties or responsibilities to the company could be affected by some other interest or duty. The other interest or duty may create an incentive for the director to act in a way that may not be in the best interests of the company.

The law makes it clear a director must act in the best interests of the company and be free of conflicts of interest in order to do so. The identification of conflicts requires each individual director to engage, with good conscience, in identifying relationships that do or may give rise to a conflict – either their own or those of fellow directors. A conflict of interest can, therefore, be regarded as an ethical matter with a legal dimension.

There is nothing fundamentally wrong with conflicts of interest themselves and most directors will encounter them during their careers. When conflicts arise, however, they must be handled appropriately and promptly. When considering whether a conflict exists, directors need to consider issues of perception as well as matters of fact and should err on the side of caution when deciding what needs to be disclosed.

Directors must disclose any relationships and/or matters that give rise to an actual or potential conflict of interest. Directors should refer to sections 139 to 149 of the Companies Act and/or Part 2 of the CE Act, for further guidance on what may need to be disclosed. The board must have a process in place for disclosing and dealing with conflicts of interest, including the maintenance of an interest register, and should ensure that all board members are aware of the existence and nature of any disclosure of interest made. The board’s policy regarding conflicts of interest should form part of its Code of Conduct and determine expectations of behaviour throughout the company. Crown company constitutions provide that a director who is interested in a transaction may not vote on a matter relating to the transaction.

Relaxation of the rule prohibiting directors from voting on a matter in which they have an interest can only be exercised by Ministers.

In addition, Ministers generally expect that directors who are interested in a transaction will absent themselves from deliberation on the matter, unless the board or committee resolve that this is not required.

Further information, including examples of conflicts of interest and guidance on how to manage them, can be found in the Office of the Auditor-General’s publication entitled Managing Conflicts of Interest: Guidance for public entities.
9.2.5 Other issues to raise with Ministers

- It is possible that a director may be placed in a situation where, as a result of circumstances which are not related to a directorship of a particular company or entity, continuing to act as a director might nevertheless place the company or the shareholders in a position of embarrassment. A director who is placed in such a situation must take the initiative and raise the matter with the Minister, via the board chair. While there are no set criteria for such situations, examples of the types of issues the shareholders would expect to be advised on include:
  - where legal proceedings have been, or are likely to be, brought against the director
  - where the director has been, or is likely to be, subject to negative media or public scrutiny
  - where the director is placed in a situation of actual or perceived conflict of interest, or where a director's interests change in a way that could be interpreted as a conflict of interest
  - any issue affecting the director's ability to contribute to the board (e.g., as a result of other time pressures, extended overseas travel (i.e., more than two months) and illness)
  - where the director is appointed to any position as an employee of the Crown, or intends to undertake significant contract work for any Crown agency, and
  - any other similar circumstance which may place the company or the shareholders in a position of embarrassment.

- If any of the above circumstances arise, the director concerned should err on the side of caution and bring the matter to the attention of the board chair in the first instance. The board chair will then advise the Ministers, if appropriate.

9.2.6 Relationship with Ministers

- The board is appointed by Ministers, through the office of the responsible Minister. The chair and deputy chair are also appointed directly by Ministers. Although the responsible Minister may meet with the board as a whole from time to time, the usual conduit for communications is between the Minister and the chair, or through COMU.

- Ministers expect the board to be sensitive to their interests. Boards must be mindful that Ministers are accountable to a wider audience and the affairs of the companies, positive and negative, can impact on the responsible Minister. This is referred to as the “no surprises” policy, further detail of which is set out in Section 5.7.1 of this manual. A failure to keep Ministers informed on significant issues at appropriate times can create situations that may divert attention from a company's day-to-day business.

9.3 Board and director expectations

9.3.1 Board charter

- A board is expected to have a charter/code of practice to provide guidance to directors to assist them to carry out their duties and responsibilities effectively, and in accordance with the highest professional standards. A board charter should not be an exhaustive statement of obligations. If read in conjunction with the law applying to company directors and the constitution of the company, it should present a complete picture of the legal and ethical responsibilities imposed on
directors, including any specific requirements arising from the business of the company and the wider sector in which it operates.

- A sample list of contents for the charter/code of practice is set out in Annex 8. Some companies may choose to have separate documents; for example, covering board procedures in a charter and ethical behaviour in a code of conduct/ethics (Annex 9) that applies to the company as a whole. Whatever approach is chosen, the board’s particular responsibilities and leadership role should be clearly stated. It is also best practice for the charter and other key governance documents to be disclosed to interested parties, preferably via the company’s website.

9.3.2 Securities Commission principles of corporate governance

- The Securities Commission’s Corporate Governance in New Zealand: Principles and Guidelines (Principles) was published in 2004 after wide consultation, and reissued in 2011. While they acknowledge that different types of entities can take different approaches to achieving consistently high standards of governance, the Principles do provide comprehensive guidance on governance standards and disclosure. Although the Principles do not in themselves impose legal obligations, they are supported by Ministers. It is expected that a company’s board charter will be consistent with the Principles, with the minimum of adaptation necessary to fit the Crown environment and the particular company’s circumstances.

- It is also expected that annual reports will report fully on the companies’ corporate governance practices. The manner and style of such reporting should provide a report that incorporates a reference to each of the Principles set out below and explain any significant departure from guidelines supporting each Principle.

- Ministers expect the boards of Crown companies to comply with the Principles, as set out below:
  - Directors should observe and foster high ethical standards.
  - There should be a balance of independence, skills, knowledge, experience and perspectives among directors so that the board works effectively.
  - The board should use committees where this would enhance its effectiveness in key areas while retaining board responsibility.
  - The board should demand integrity both in financial reporting and in the timeliness and balance of disclosures on entity affairs.
  - The remuneration of directors and executives should be transparent, fair and reasonable.
  - The board should regularly verify that the entity has appropriate processes that identify and manage potential and relevant risks.
  - The board should ensure the quality and independence of the external audit process.
  - The board should foster constructive relationships with shareholders that encourage them to engage with the entity.
  - The board should respect the interests of stakeholders within the context of the entity’s ownership type and its fundamental purpose.
9.3.3 Board commitment and attendance

- Directorship involves significant responsibilities, borne equally by all members of the board. Meeting these responsibilities requires significant commitment of time and effort, of which attendance at board meetings is but one component.

- The membership of a board of directors is structured so as to ensure the balance of competencies and skills necessary to conduct the board’s affairs. As with most teams, the absence of a director can have a negative impact on board deliberations. It is, therefore, expected that boards will agree on a schedule of meeting dates before the commencement of the year, with the intention that directors manage their commitments to ensure attendance.

- There has been a general convention that missing two or more meetings in a year, whether consecutive or not, should at least raise initial questions over a director’s motivation and commitment to membership of the board. It is not intended to deny the board’s authority to allow a leave of absence where a director demonstrates sufficient justification for missing the occasional meeting. However, if a director misses three meetings through a year this is to be regarded as a trigger for signalling concern to the Minister. The Minister will communicate the concerns to the affected director and, unless extenuating circumstances can be demonstrated, will seek the director’s resignation.

- Partial attendance, if frequent, is more problematic. Not only is this disruptive to board discussions, it also means that the director may lose continuity in board outcomes and denies the board the benefit of his/her expertise. Whether the partial attendance is in person or via electronic media, the outcome is perceived to be the same. Boards are encouraged to raise this as an issue with COMU, if a solution cannot be found.

- Directors are expected to give their full attention to company matters at board meetings. While urgent matters will occasionally arise and need to be attended to, directors are not expected to regularly conduct non-board business (whether through using their Personal Data Assistants (PDAs) or taking calls etc) during board meetings. Boards should consider whether protocols are required to address such situations.

9.3.4 Appointment of directors to subsidiary boards

- Where a director appointed to the parent company board is also appointed to the board of a subsidiary, the normal expectation would be that such a directorship would be compensated by ordinary parent board fees. Where the subsidiary company operates as a stand-alone entity and the additional requirements on the parent directors are significant, additional director fees may be set at appropriately conservative levels for the subsidiary by the parent company board. Fees paid by the subsidiary to the directors in this circumstance do not require ministerial approval. Any fees paid by the parent company to the parent board director do require ministerial approval. Management appointed to subsidiary boards will not be separately remunerated for such directorships.

- Appointment of any external director (ie, one not already a member of the board of the parent company) to a subsidiary board requires the parent board to ensure that such an external appointee is a proper and well qualified person for the role. The “no surprises” policy should be considered in such appointments, and any areas of uncertainty discussed in advance of the appointment with the Ministers.
In the event of an external director being appointed to a subsidiary board, the parent company board remains accountable to the Minister for governance of the subsidiary and for the subsidiary’s activities and performance.

9.3.5 Consultancy services provided by board members

Ministers expect that no director on the board of a Crown company or entity will undertake consulting work for that company or entity. This is not intended to preclude a director from undertaking assignments for the board that properly fall within the scope of a director’s normal duties, but would preclude the director carrying out, for example, a consulting assignment that would normally be contracted to a third party.

In the event that an exception to this rule appears appropriate, the circumstances should be referred by the chair, in advance, to the Ministers for approval.

Ministers also expect that directors of Crown companies should not be placed in a conflict of interest situation through the involvement of an organisation with which the director has an ongoing substantial commercial or professional interest or employment relationship, with a Crown company of which they are a director, associate or similar.

Two situations that would create a conflict of interest where Crown companies engage organisations in which directors have such an interest are:

- where the organisation has been engaged for a one-off, specific assignment, and
- where the organisation engaged has an ongoing relationship with the Crown company.

With regard to the first situation, Ministers consider that, provided the concerned director declares their interest in the organisation to be engaged for the assignment and takes appropriate actions under the Companies Act and the company’s constitution (e.g., refraining from voting), it is unlikely that the organisation needs to be excluded from undertaking the assignment. To exclude the organisation could hinder the company by denying it access to skills, particularly in highly specialised areas. However, boards of Crown companies will also need to consider whether the affected director should be party to the service to be provided by their organisation to the Crown company. Ministers expect a director in this situation to distance themselves from the provision of the service or the advice although, in a highly specialised sector, this may not always be possible. The company’s board should give careful consideration to a director’s involvement in deliberations on the assignment.

The second situation referred to above causes responsible Ministers greater concern (e.g., legal, accounting, audit or other professional advice or services) and, accordingly, Ministers consider that Crown companies should not engage in an ongoing relationship with an organisation in which a director has a relationship of the nature defined above.
9.3.6 Executive directors

- It is a matter of policy that Crown-owned boards do not have executive directors. However, from time to time, it may be that boards decide that the best option is to appoint a director in an executive capacity when, for example, a senior executive resigns or becomes ill. Any instance where a board wishes to appoint a parent board member as an executive director requires the advance approval of the Minister.

- There have also been instances when boards have invited a particular director to resign from a directorship for an acting period to take on an executive role, and sought the Minister's confirmation that the director would be reappointed when the executive position was filled. Ministers cannot provide an unequivocal assurance that such reappointments will be made.

- In responding to a board’s request to appoint a serving director to an “acting” executive role, the responsible Minister takes account of the difficulties imposed on the director in regard to distinguishing between their governance role and their proposed executive role. Appointments normally have a time limit of three months.

- Ministers are aware that it is the board’s prerogative to appoint senior executives and agree their remuneration. However, it is usual for Ministers, in concurring with “acting” appointments, to recommend boards be conservative in remuneration setting and prefer the suggestion of a per diem amount intended to cover both governance and executive roles. If a per diem basis is used it is important to clarify the expectations of what “per diem” means in terms of hours, and the anticipated number of days per month that the director will act in an executive capacity.

- An appropriate performance monitoring regime must be in place for the duration of the acting appointment, including clear expectations and measurement against performance indicators.

- All matters related to the acting appointment must be minuted and approved by the whole board. An employment contract must be drawn up to cover the full details of the arrangement, including inter-alia, remuneration, expectations and performance. The board’s audit or remuneration committee should play a major part in the implementation of the monitoring regime.

9.3.7 Directors standing for Parliament

- The period before a general election has implications for the directors of Crown companies, particularly if they are selected as parliamentary candidates. Directors who have been selected to stand as a candidate in a parliamentary election should advise the chair of the board immediately and, equally, chairs need to advise Ministers, through COMU, as soon as any members of their boards have been identified as candidates.

- In order to ensure that governance of a company is not distracted by a director’s political activity, and to prevent the possibility of any conflicts of interests, real or perceived, arising during this time, any Crown company director who is formally selected to stand as a candidate for election to Parliament, or placed on any political party’s list, will be invited to stand down from his/her board position with effect from nomination day, or such earlier day as may be determined.

- Particular care around political neutrality needs to be exercised at election times. This is a time when behaviours, relationships and expectations among employees of publicly-owned entities, board members, the shareholding Ministers and other MPs that would otherwise be
unexceptional may be perceived as having greater significance. Chairs and boards should pay particular attention to the “no surprises” expectation during an election.

9.3.8 Gifts and other “favours”

- Directors are solely remunerated for their contribution to the board through the fees they are paid. They should not seek to financially benefit in other ways from their position as a director.

- No director, or any member of a director’s immediate family, may accept gifts, entertainment, discounts, loans, commissions or other favours from individuals or organisations, if they could influence, or be perceived as influencing, a business decision, or be considered to be extravagant or unduly frequent. This is especially important if the organisation or individual is soliciting business or information from the Crown company concerned. Any gift which has been received should be recorded in the company’s interests register, and a policy should be in place to assist directors in dealing with such situations.

9.3.9 Confidentiality and security of information

- Access to information from and about a company is a fundamental requirement for a director to carry out his/her duties. It is equally fundamental that the director has a duty of care with regard to the use made of the documents and their security. As electronic communication and network media proliferate, directors need to be increasingly vigilant to ensure that company information remains secure.

- Board papers remain the property of the company and it is usual for them to be returned to the company on the retirement of the director. Directors must ensure the security of board papers while in their possession.

- The following suggestions are offered in situations where board documents are provided to directors in electronic form. In agreeing to accept documents electronically, a director should certify that:

  - if on an individual’s personal computer, documents are electronically filed so that no unauthorised user can access the material either deliberately or inadvertently (this may require the director to seek technical advice on file storage to provide this certification)

  - if received and stored via another organisation’s IT system and server, the director has initiated the necessary steps to ensure internal file security and the means by which unauthorised access, deliberate or accidental, may be precluded or identified, and

  - on resignation, confirmation by the director that the electronic versions of the documents have been deleted to the same extent as if physically destroyed.

- Outside the formal documents (board papers, minutes and agendas), communications regarding company affairs should follow a formal policy adopted by the company to ensure the proper use and confidentiality of company information and to prevent unauthorised or inadvertent disclosure. This policy should cover the use of electronic mail and networks and clearly distinguish the approved communications channels and protocols for company business versus personal use.
9.4 Director induction and development

9.4.1 Director induction

- Directors are appointed to boards for the contribution they are expected to make to the board and the company. They have been selected for the governance competencies and industry-relevant skills they hold. However, it is recognised that even the most experienced new director will join without a full understanding of the company concerned and of the nature of governance in a Crown environment.

- Ministers expect that an appropriate induction plan will be put in place by the board for all new directors, to enable them to participate fully in board affairs from the earliest possible time following appointment.

- There are three parts to a director’s induction by the board:
  - A detailed introduction to the company, including its business components, the company’s business strategy and the roles of key members of the management team. This may include visits to key sites of the company’s operations. Equally important is that new directors receive an early understanding of the manner in which the board’s business is conducted, together with the roles and responsibilities of board committees. The chair is responsible for setting up this induction programme, with the necessary support from management, and a new director should expect a programme to be set in place within the first two months of his/her appointment.
  - The new director should expect to be provided with a director’s manual, or similar document, prior to the first meeting. The manual should, in addition to the over-arching business and governance policies and values of the company, include such detail as key contacts in the organisation. New directors may also wish to acquaint themselves with (say) the last year’s board papers and decision items.
  - COMU will also provide a briefing on the expectations of the Government as owner. Attendance at the COMU briefing, while strongly recommended, is not compulsory.

9.4.2 Ongoing board familiarity with the business

- Lack of board familiarity with the business of the company, particularly in the area of “hedged” exposures using derivative products, has been identified as a significant contributor to bank failure in the global financial crisis. The same lack of board familiarity with the business has been a factor in previous company and sector failures.

- For the board to be able to challenge and properly support management, a sound and current understanding of the business is necessary. This means induction is simply the beginning of a process by which directors become, and remain over time, knowledgeable about its staff, products and services, business model and approach to risk. The board, actively assisted by management, should consider the type of programme needed for ongoing familiarity with the business, including briefings by internal and external experts and exposure to critical business areas.
9.4.3 Board and director performance evaluation

- The Crown requires that each board undertakes periodic evaluation of its performance. The board evaluation is an important contribution to the process by which Ministers consider the skills make-up of each board when they deliberate on appointments and reappointments. It also serves as a basis for the constructive evaluation of the performance of directors by chairs and fellow directors and it, therefore, forms a vital element in the process of director induction and development.

- There is no one prescribed process for evaluation. However, there is a general requirement for Crown company boards to evaluate annually the performance of individual directors, the chair and the board as a whole.

- Individual boards are able to develop evaluation processes for themselves that best meet their needs – provided the minimum expectations (as set out below) are met. Boards may wish to access tools to assist them in this process and there are a number of third-party products available, including online appraisal systems, which Crown boards have found useful. Default evaluation templates are attached as Annex 11 and Annex 12 if required.

- In the evaluation process, the chair is expected to set an example in requiring open, honest and constructive feedback from fellow directors about his or her performance in the role. This in turn facilitates consideration of director performance and areas for improvement generally. Instances of significant performance shortfall should be brought to the individual’s attention at the earliest possible stage – if necessary, before a formal board appraisal takes place. The chair has a critical role in this regard.

- Should individual performance remain unsatisfactory, it is the role of the chair to take whatever action he or she considers necessary, including discussion involving the shareholder and the individual, to rectify the situation. In the event that the chair’s performance is the issue, the deputy chair or other directors should address this with the chair in the first instance, and initiate discussion with COMU should that be deemed necessary.

- Ministers expect that each board will have a process in place that meets the needs of the board and the minimum stated requirements. The key deliverables from this process will be:
  - a formal high-level board feedback report to COMU on overall board performance, key focus areas for continuing development and assurance that the process has been appropriately implemented, and
  - individual director performance assessments and development plans that will be implemented by the company (these plans are to be retained by the board and not shared with COMU), and a board succession plan which is aligned with company and board performance and the company’s strategic direction. The plan should be updated annually and advise the Minister of any gaps in current board composition and risks going forward as director rotation occurs.

- Boards are not required to submit individual director or chair evaluation reports to COMU. However, COMU does require written confirmation that an appropriate process has taken place. Chairs should anticipate a minimum requirement to report that a suitable evaluation has been undertaken, briefly describing what that process was and what the high-level outcomes were – with particular reference to overall board performance. The advice should include commentary on any significant issues that chairs consider should be brought to the attention of shareholding Ministers or COMU.
9.4.4 Director development

Crown boards are expected to be committed to their directors’ continuing learning and development in the profession of a directorship. As part of the performance assessment for individual directors, there should be a discussion and agreement between the chair and each director on areas of focus and development for the next 12 months. This includes situations where agreement is reached that nothing is required in the next year by way of formal training or development, as it is recognised that directors will have differing training needs. As part of the annual fee-setting process, boards can propose an amount as an allowance for director training and development that is submitted for approval by the Minister along with the requested board fees in any year.

The amount the board seeks for such a purpose is for the board to determine, and propose to the Minister – there is no set formula for boards to use in calculating professional development budgets, because each board’s needs will be different. COMU can provide specific advice in this regard if necessary.
<p>| Entity | SOEs | Statutory body (if a statutory body that is a company or not) | TNAV | Radio NZ | NZDF | Public Trust | Lotteries | Airports Companies (CIAL, DIAL, IAL, and Western Airway Airport) | REANNZ | Crisis Flow Holdings | Health Benefits | Dispute Resolution Services Limited | Accident Compensation (only investment arm) | Earthquake Commission | Government Superannuation Fund Authority | Guardians of NZ Superannuation Fund | Responsible Minister |
|--------|------|---------------------------------------------------------------|------|---------|------|-------------|---------|---------------------------------|-------|-------------------|-------------|--------------------------------|-------------------|----------------|-----------------------------|------------------------|----------------|----------------------|
| Governing legislation | SOEs Act, SOEs and New Zealand Parliament Corporation Act 1993 (NZPC Act) | SOEs Act and CIAL, DIAL, IAL and Western Airway Airport Corporation (only CIAL, DIAL, IAL and Hawke’s Bay Airport Corporation) | TNAV Act, CE Act, Companies Act | RNZ Act, CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | Local Government Act (LG Act), Companies Act | CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | Accident Compensation Act, CE Act | Accident Compensation Act, CE Act | Accident Compensation Act, CE Act | Guardians of NZ Superannuation Fund | Responsible Minister |
| Objectives and functions | All SOE Act (see note 1) | 46 SOEs Act and CIAL, DIAL, IAL and Western Airway Airport Corporation (only CIAL, DIAL, IAL) | TNAV Act, CE Act, Companies Act | RNZ Act, CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | Set out in NZDF Constitution | Set out in RNZ Act | Set out in Health Benefits’ Constitution | Set out in REANNZ’s Constitution | Set out in Dispute Resolution Services’ Constitution | 6200 Accident Compensation Act | 65 SOE Act | 65 SOE Act | NZPC Act | Responsible Minister |
| Ret of the board | SOEs Act and CIAL, DIAL, IAL and Western Airway Airport Corporation (only CIAL, DIAL, IAL and Hawke’s Bay Airport Corporation) | All SOEs Act and 7 NCPC Act | RNZ Act, CE Act and VOD CA Companies Act | RNZ Act, CE Act and VOD CA Companies Act | CE Act, Companies Act | CE Act, Companies Act | CE Act, Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Directors under Part 7 of the Companies Act | Responsible Minister |
| Shareholding/ Responsible Ministers | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister of Finance and Minister for SOEs | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Minister for ACC | Responsible Minister |
| Reporting requirements | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Part 3 of the SOEs Act and reporting requirements under the Companies Act | Responsible Minister |
| Expectations letters | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Bcr by Ministers between October and January | Responsible Minister |
| Boards status and strategic business review | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | By 20th February | Responsible Minister |
| Business plan and budget (SOE) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Submitted by end of May (ss130 SOE Act) | Responsible Minister |
| Constitution of Slovak SOEs | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | N/A (6) | Responsible Minister |</p>
<table>
<thead>
<tr>
<th>Entity</th>
<th>SOEs</th>
<th>State-owned (as SOE that is a statutory corporation and not a company)</th>
<th>TRANS</th>
<th>Radio NZ</th>
<th>NZMP</th>
<th>Radio Trust</th>
<th>Latitudes</th>
<th>Airport Companies (CIAL, DIAL, IAL and Hawke’s Bay Airport)</th>
<th>REANNZ</th>
<th>Cables Fault Holdings</th>
<th>Health Benefits</th>
<th>EnRoute Resource Services Limited</th>
<th>Accident Compensation Corporation (only investment arm)</th>
<th>Earthquake Commission</th>
<th>Government Superannuation Fund Authority</th>
<th>Guardians of NZ Superannuation Fund</th>
<th>National Provident Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Expectation that entity will have an explicit disclaimer of Crown guarantee for borrowings (refer to Section 7.7.1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expectation that entity will not engage in overly aggressive tax planning activities (refer to Section 7.7.3)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expectation that SCI / SOI will specify matters on which the entity will consult with shareholding / responsible Ministers (refer to Section 8.1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expectation that entity will act in a socially responsible manner (refer to Chapter 6)</td>
<td>Yes (s4 SOE Act)</td>
<td>Yes (s4 SOE Act)</td>
<td>Yes (s4 RNZ Act)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (s12 TVNZ Act)</td>
<td>Yes (s8 RNZ Act)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (s9 PTA and see also s50 CE Act)</td>
<td>Yes (s10 LGA)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (but no statutory reference)</td>
<td>Yes (but no statutory reference)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Expectation to appearances before select committees (refer to Section 5.8.1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Restrictions on financial powers</td>
<td>No</td>
<td>Yes (Part 3 NZRC Act and SOE Act)</td>
<td>Yes (s158 to 164 CE Act)</td>
<td>Yes (s158 to 164 CE Act)</td>
<td>Yes (s158 to 164 CE Act)</td>
<td>Yes (s158 to 164 CE Act)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
<td>Yes (justifi and dirth PPA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Subject to Official Information Act 1982 (see note 5 below)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Applicability of State Services Committee’s “State Services, Political Parties and Elections: Guidance for the 2011 Election Period” (see note 6 below)</td>
<td>No - but the principles still apply</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No - but the principles still apply</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Notes
1. Learning Media Limited’s principal objective is set out in s331 of the Education Act 1989 but this does not limit s4 of the SOE Act.
2. Television New Zealand and Radio New Zealand also have certain duties as “Lifeline Utilities” under the Civil Defence Emergency Management Act 2002.
3. From 2009/10 Ministers encourage Crown entities funded by the Crown to prepare their SOIs earlier than required under the CE Act, in order to enable the tabling of SOIs on the day after the 2009 Budget unless this is not practicable.
4. The SOI may be submitted later if the Crown’s Budget is introduced later than 30 days before the start of the Crown entity’s financial year (s146(2)(a)(ii) CE Act).
5. For guidance on how to respond to OIA requests, refer to the Ombudsman’s guidelines at [http://www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz)
Crown Research Institutes

- CRIs are established by the Crown Research Act 1992 and are Crown-owned companies, or Crown entity companies, whose purpose is to carry out scientific research for the benefit of New Zealand. CRIs are not fully commercial but need to ensure appropriate commercial disciplines are applied while their scientific purposes are fulfilled. As Crown entity companies, ownership must remain 100% with the Crown.

- Ministry of Science and Innovation (MSI) now has the lead responsibility for monitoring CRIs. MSI has published guidance for these entities titled the *CRI Toolkit: Guidelines for CRI Governance, Reporting and Relationships* which outlines the broad accountability and performance framework in which CRIs operate. The toolkit can be found on the [MSI website](#).

---

8 Although not a CRI, REANNZ will also be monitored primarily by the MSI.
# Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACE</td>
<td>Autonomous Crown Entity</td>
</tr>
<tr>
<td>AGM</td>
<td>Annual general meeting(s)</td>
</tr>
<tr>
<td>APR</td>
<td>Annual Portfolio Report 2009/10</td>
</tr>
<tr>
<td>CE Act</td>
<td>Crown Entities Act 2004</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief executive officer</td>
</tr>
<tr>
<td>CFIs</td>
<td>Crown financial institutions</td>
</tr>
<tr>
<td>CFISnet</td>
<td>CFISnet is the Crown Financial Information System. It is a secure website designed by the Treasury to collect forecast and actual information from government departments, Crown entities and State-owned enterprises (SOEs)</td>
</tr>
<tr>
<td>Companies Act</td>
<td>Companies Act 1993</td>
</tr>
<tr>
<td>COMU</td>
<td>Crown Ownership Monitoring Unit</td>
</tr>
<tr>
<td>CRIs</td>
<td>Crown research institutes</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate social responsibility</td>
</tr>
<tr>
<td>EVA</td>
<td>Economic Value Added</td>
</tr>
<tr>
<td>FTE</td>
<td>Full-time equivalent employee</td>
</tr>
<tr>
<td>GAAP</td>
<td>Generally accepted accounting practice</td>
</tr>
<tr>
<td>Gentailers</td>
<td>Gentailers is a group of SOEs that includes electricity generators and retailers</td>
</tr>
<tr>
<td>ICE</td>
<td>Independent Crown Entity</td>
</tr>
<tr>
<td>IFRS</td>
<td>International Financial Reporting Standard</td>
</tr>
<tr>
<td>JV</td>
<td>Joint venture</td>
</tr>
<tr>
<td>NPAT</td>
<td>Net profit after tax</td>
</tr>
<tr>
<td>NZX</td>
<td>New Zealand Stock Exchange</td>
</tr>
<tr>
<td>OEM</td>
<td>Owner’s Expectations Manual</td>
</tr>
<tr>
<td>OIA</td>
<td>Official Information Act 1982</td>
</tr>
<tr>
<td>PFA</td>
<td>Public Finance Act 1989</td>
</tr>
<tr>
<td>SCI</td>
<td>Statement of Corporate Intent</td>
</tr>
<tr>
<td>SOE</td>
<td>State-owned enterprise</td>
</tr>
<tr>
<td>SOE Act</td>
<td>State-Owned Enterprise Act 1986</td>
</tr>
<tr>
<td>SOI</td>
<td>Statement of Intent</td>
</tr>
<tr>
<td>SSP</td>
<td>Statement of Shareholder Preferences</td>
</tr>
<tr>
<td>The Principles</td>
<td>The Securities Commission’s principles of corporate governance</td>
</tr>
</tbody>
</table>
### Annex 1: List of entities/companies covered by the manual

<table>
<thead>
<tr>
<th>Entity/Company</th>
<th>Annex</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident Compensation Corporation (only investment arm)</td>
<td>1</td>
<td>Learning Media Ltd</td>
</tr>
<tr>
<td>AgResearch Ltd</td>
<td>1</td>
<td>Meridian Energy Ltd</td>
</tr>
<tr>
<td>Airways Corporation of New Zealand Ltd</td>
<td>1</td>
<td>Meteorological Service of New Zealand Ltd</td>
</tr>
<tr>
<td>Animal Control Products Ltd</td>
<td>1</td>
<td>Mighty River Power Ltd</td>
</tr>
<tr>
<td>AsureQuality Ltd</td>
<td>1</td>
<td>National Institute of Water &amp; Atmospheric Research Ltd</td>
</tr>
<tr>
<td>Christchurch International Airport Ltd</td>
<td>1</td>
<td>National Provident Fund</td>
</tr>
<tr>
<td>Crown Fibre Holdings Ltd</td>
<td>1</td>
<td>New Zealand Forest Research Institute Ltd</td>
</tr>
<tr>
<td>Dunedin International Airport Ltd</td>
<td>1</td>
<td>New Zealand Lotteries Commission</td>
</tr>
<tr>
<td>Earthquake Commission</td>
<td>1</td>
<td>New Zealand Post Ltd</td>
</tr>
<tr>
<td>Electricity Corporation of New Zealand Ltd</td>
<td>1</td>
<td>New Zealand Railways Corporation</td>
</tr>
<tr>
<td>Genesis Power Ltd</td>
<td>1</td>
<td>New Zealand Venture Investment Fund Ltd</td>
</tr>
<tr>
<td>Government Superannuation Fund Authority</td>
<td>1</td>
<td>Public Trust</td>
</tr>
<tr>
<td>Guardians of NZ Superannuation</td>
<td>1</td>
<td>Quotable Value Ltd</td>
</tr>
<tr>
<td>Hawke's Bay Airport Ltd</td>
<td>1</td>
<td>Radio New Zealand Ltd</td>
</tr>
<tr>
<td>Health Benefits Ltd</td>
<td>1</td>
<td>Research and Education Advanced Network</td>
</tr>
<tr>
<td>Industrial Research Ltd</td>
<td>1</td>
<td>New Zealand Ltd</td>
</tr>
<tr>
<td>Institute of Environmental Science &amp; Research Ltd</td>
<td>1</td>
<td>Solid Energy New Zealand Ltd</td>
</tr>
<tr>
<td>Institute of Geological &amp; Nuclear Sciences Ltd</td>
<td>1</td>
<td>Television New Zealand Ltd</td>
</tr>
<tr>
<td>Invercargill Airport Ltd</td>
<td>1</td>
<td>The New Zealand Institute for Plant &amp; Food Research Ltd</td>
</tr>
<tr>
<td>Kordia Group Ltd</td>
<td>1</td>
<td>Transpower New Zealand Ltd</td>
</tr>
<tr>
<td>Landcare Research New Zealand Ltd</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Landcorp Farming Ltd</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>
Annex 2: Commercial valuation model disclosure statement for use in statements of corporate intent

Example for the SOECorp Group

The board’s estimate of the current commercial value of the Crown’s investment in the SOECorp Group is $1.650 billion.

Key points about the manner in which that value was assessed are:

- The valuation was calculated as at [30 June 2011].
- The discounted cash flow (DCF) methodology was used to calculate a Net Present Value (NPV) of the entire SOECorp Group, including all subsidiaries, on an after-tax basis.
- The DCF/NPV was based on the nominal (i.e., not inflation-adjusted) future cash flows set out in the SOECorp Group’s three-year business plan, with forward projections then also made about years 4 to 10, and a terminal value of $500 million was included in the terminal year. The growth assumption assumed in the terminal value was [X%].
- A discount rate of [X%] was assumed.
- The valuation was prepared internally by the SOECorp Group’s finance team, and was externally peer reviewed by XYZ Corporate Finance Ltd, prior to approval by the board.
- The current commercial value of the Crown’s investment of $1.650 billion (often referred to as the equity value) was calculated by taking the enterprise value of $1.950 billion and deducting net debt of $300 million.
- Other material factors that are relevant to the determination of this valuation are [......................].

The valuation compares with a commercial value as at [30 June 2010] of $1.545 billion. The key reasons for the [increase] in commercial value as at [30 June 2010] of $1.545 billion. The key reasons for the [increase] in commercial value are:

- [An increase in year 1 to year 3 cash flows of $X million owing to changed expectations for the future price of x.]
- A reduction in year 4 to year 10 cash flows of $X owing to......................
- A reduction in the terminal value assumed of $X million owing to......................
- A change in the discount rate assumed from XX% to XX% because......................].

*These changes could be represented graphically in a waterfall (or similar type of) diagram.*
Annex 3: SOE continuous disclosure rule

Each SOE and TVNZ to which this rule applies shall:

a. once it becomes aware of any “material information” concerning it, immediately release that “material information” to the public after ensuring that shareholding Ministers are aware of the “material information” in accordance with the “no surprises” policy, provided that paragraphs (a) and (b) shall not apply when:

i. a reasonable person would not expect the information to be publicly disclosed, and

ii. the information is confidential and its confidentiality is maintained, and

iii. one or more of the following applies:

A. the release of information would be a breach of law (including a breach of an obligation of confidentiality), or

B. the information concerns an incomplete proposal or negotiation, or

C. the information comprises matters of supposition or is insufficiently definite to warrant disclosure, or

D. the information is generated for the internal management purposes of the SOE, or

E. the information is a trade secret, and

iv. a regulatory body or the rules of a recognised stock exchange require, or without an exemption granted by that body or applying under those rules would require, disclosure of the “material information”

b. disclose any “material information” to the Treasury for disclosure on the Treasury’s website once the “no surprises” policy has been complied with and the SOE has publicly released the “material information”

c. so far as reasonably possible, without materially affecting the business of the SOE, avoid entering into any obligation to any person which would have the effect of prejudicing the SOE’s ability to comply freely with this rule, and

d. make a public announcement no later than 60 days after the end of each half-year and full-year period, which shall include the following information:

i. the amount and percentage change up or down from the previous corresponding period of group revenue from ordinary activities

ii. the amount and percentage change up or down from the previous corresponding period of group profit (loss) from ordinary activities after tax

iii. the amount and percentage change up or down from the previous corresponding period of group net profit (loss) for the period

iv. the amount of final and interim dividends or a statement that it is not proposed to pay dividends

v. a brief explanation of any of the figures in (i)–(iv) necessary to enable the figures to be understood, and

vi. in respect of each half-yearly announcement, commentary on the outlook for the group for the remainder of the financial year, including whether the SOE considers it will achieve the financial performance targets in its SCI.

For the purposes of the Continuous Disclosure rule (set out earlier):

i. an SOE is aware of information if a director or an executive officer of the SOE has come into possession of the information in the course of the performance of his or her duties as a director or executive officer of the SOE

ii. “material information” means:

- the fundamental terms of a “material transaction”; or information that:
  - is not generally available to the public, and
  - relates to a particular SOE or SOEs, and

- an SOE estimates will have a material effect on its current commercial value, or

- information that relates to a declaration of a dividend or a decision that a dividend will not be declared in accordance with the SOE’s dividend policy in its most recent SCI

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9 Disclosure on an SOE’s website is sufficient for the public release of information under this rule.
iii. “material transaction” means a transaction for which the consideration payable or receivable represents 5% of an SOE’s current commercial value\(^{10}\) or transactions with consideration of $100 million or more whichever is the lesser.

iv. “current commercial value” means the estimate of an SOE’s current commercial value as set out in its most recent SCI, taking into account any announcements by the SOE after the publication of its SCI, and

v. “fundamental terms” means the material terms of the transaction including the counterparty, consideration and a description of the assets acquired or disposed of, and/or the commitments entered into by the SOE.

The information required in the above paragraph should as closely as possible be presented in the following tabular format.

<table>
<thead>
<tr>
<th>CO. LIMITED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Results for announcement to the market</td>
</tr>
<tr>
<td>Reporting period</td>
</tr>
<tr>
<td>Previous reporting period</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Amount ($000s)</th>
<th>Percentage change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue from ordinary activities</td>
<td>$NZ</td>
<td>%</td>
</tr>
<tr>
<td>Profit (loss) from ordinary activities after tax</td>
<td>$NZ</td>
<td>%</td>
</tr>
<tr>
<td>Net profit (loss)</td>
<td>$NZ</td>
<td>%</td>
</tr>
</tbody>
</table>

| Interim /final dividend |
| Dividend payment date |

Comments:

(including:

(i) a brief explanation of any of the above figures necessary to enable them to be understood, and

(ii) in respect of each half-year period, commentary on the outlook for the remainder of the financial year, including whether the SOE considers it will achieve the financial performance targets in its SCI)

---

\(^{10}\) A separate threshold of $50 million applies to KiwiRail.
Annex 4: Template for post-investment review

This template can be used by SOEs and TVNZ as a guideline for the information the shareholder would like covered in post-investment reviews.

Entity name

**Investment details**

- Investment (project) name:
- Planned commissioning date:
- Actual commissioning date:
- Date of post-investment review:
- Is this the first or second review:
- Brief description of the investment, including business objectives and expected benefits.

**Comparison of actuals vs forecasts**

**Costs to commissioning**

- Actual costs to commissioning date ($):
- Budgeted costs to commissioning date ($):
- Explanation for any material variance in the cost to commissioning.

**Financials post-commissioning**

- Table showing, by financial year, a comparison of actual cash inflows and outflows (broken down by key value drivers where possible), and financial returns, with the forecasts in the business case.
- The latest view on the net present value/Internal Rate of Return/payback period and impact on shareholder value of the investment compared with what was projected in the business case.
- Explanations for material variances in actuals vs forecasts.
- Explanations for material variances in key value drivers/assumptions vs forecasts

**Conclusions and learnings**

- Overall, are the financial benefits and business objectives of the investment being achieved?
- If not, why not, and what is being done to address this?
- Optionally, what, if any, lessons have been learned and how will any learnings be incorporated in future investment decisions?
Annex 5: Financial performance measures

**Shareholder's return**

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total shareholder return</td>
<td>Performance from an investor perspective – dividends and investment growth</td>
<td>(Commercial value\textsubscript{end} less Commercial value\textsubscript{beg} plus dividends paid less equity injected)/Commercial value\textsubscript{beg}</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>The cash return to the shareholder</td>
<td>Dividends paid/Average commercial value</td>
</tr>
<tr>
<td>Dividend payout</td>
<td>Proportion of an SOEs net operating cash flows less allowance for capital maintenance paid out as a dividend to the shareholder</td>
<td>Dividends paid/Net cash flow from operating activities less depreciation expense</td>
</tr>
<tr>
<td>Return on equity</td>
<td>How much profit a company generates with the funds the shareholder has invested in the company</td>
<td>Net profit after tax/Average equity</td>
</tr>
<tr>
<td>Return on equity adjusted for IFRS fair value movements and asset revaluations</td>
<td>Return on equity after removing the impact of IFRS fair value movements and asset revaluations</td>
<td>Net profit after tax adjusted for IFRS fair value movements (net of tax)/Average of share capital plus retained earnings</td>
</tr>
</tbody>
</table>

**Profitability/efficiency**

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Return on capital employed</td>
<td>The efficiency and profitability of a company’s capital from both debt and equity sources</td>
<td>EBIT adjusted for IFRS fair value movements/Average capital employed</td>
</tr>
<tr>
<td>Operating margin</td>
<td>The profitability of the company per dollar of revenue</td>
<td>EBITDAF/Revenue</td>
</tr>
<tr>
<td>Generator efficiency\textsuperscript{11}</td>
<td>The efficiency and profitability of the company’s electricity generation</td>
<td>EBITDAF/MWh</td>
</tr>
</tbody>
</table>

\textsuperscript{11} This measure is only applicable for Genesis, Meridian and Mighty River Power.
### Leverage/solvency

<table>
<thead>
<tr>
<th>Measure</th>
<th>Description</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gearing ratio (net)</td>
<td>Measure of financial leverage – the ratio of debt (liabilities on which a company is required to pay interest) less cash, to debt less cash plus equity</td>
<td>Net debt/net debt plus equity</td>
</tr>
<tr>
<td>Interest cover</td>
<td>The number of times that earnings can cover interest</td>
<td>EBITDAF/Interest paid</td>
</tr>
<tr>
<td>Solvency</td>
<td>Ability of the company to pay its debts as they fall due</td>
<td>Current assets/current liabilities</td>
</tr>
</tbody>
</table>

### Definitions of key terms used in calculations

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital employed</td>
<td>Interest-bearing debt plus share capital plus retained earnings</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>Payments for the purchase of property, plant and equipment items taken from the cash flow statement</td>
</tr>
<tr>
<td>Commercial value</td>
<td>This is the board’s estimate of the current commercial value of the Crown’s investment in the Group as per the company’s SCI</td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>Depreciation expense per the profit and loss account</td>
</tr>
<tr>
<td>Dividends paid</td>
<td>Dividends paid to the shareholder during the financial year per the cash flow statement</td>
</tr>
<tr>
<td>EBIT</td>
<td>Earnings before interest and taxation</td>
</tr>
<tr>
<td>EBITDA</td>
<td>Earnings before interest and taxation, depreciation and amortisation</td>
</tr>
<tr>
<td>EBITDAF</td>
<td>Earnings before interest and taxation, depreciation and amortisation and fair value adjustments</td>
</tr>
<tr>
<td>Equity</td>
<td>Total shareholder’s equity taken from the balance sheet</td>
</tr>
<tr>
<td>Fair value adjustments</td>
<td>Includes unrealised fair value gains/losses on derivatives or all fair value gains/losses on derivatives where the entity does not separately identify unrealised items. Also includes changes in the fair value of biological assets and investment properties</td>
</tr>
<tr>
<td>Interest paid</td>
<td>Interest paid for the financial year on interest-bearing debt per the company’s cash flow statement</td>
</tr>
<tr>
<td>Net cash flow from operating activities</td>
<td>Taken directly from the cash flow statement – this is cash flows from operating activities less cash flows to operating activities. Ensure that interest paid is included in operating activities</td>
</tr>
<tr>
<td>Net debt</td>
<td>Interest-bearing debt such as loans, bonds and commercial paper plus interest-bearing finance leases less cash</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>Profits retained in the business (ie, after dividends to the shareholder)</td>
</tr>
<tr>
<td>Revaluation reserve</td>
<td>When an asset is re-valued to fair market value for accounting purposes the increase in the value of the asset is reflected in a revaluation reserve within equity</td>
</tr>
<tr>
<td>Revenue</td>
<td>Revenue from the operations of the business. Interest revenue should be excluded</td>
</tr>
<tr>
<td>Share capital</td>
<td>The amount of capital originally invested by the shareholder and any subsequent equity injections</td>
</tr>
<tr>
<td>Tax on fair value adjustments</td>
<td>This is the tax effect relating to the changes in the fair values of financial instruments</td>
</tr>
</tbody>
</table>
### Annex 6: Director fees framework

<table>
<thead>
<tr>
<th>Fee framework</th>
<th>Coverage</th>
<th>Applicability to COMU bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cabinet Fees Framework</strong> (where fees are set by Responsible Ministers)</td>
<td>The framework should be used for setting fees for all statutory or other bodies and committees in which the Crown has an interest, and in particular for bodies with responsible Ministers that are outside the Remuneration Authority's or other fee setting bodies' jurisdiction (subject to paragraphs 11 and 12 of the Cabinet Fees Framework). This includes Crown Agents, Autonomous Crown Entities (ACEs), District Health Boards, Tertiary Education Institutions and some subsidiary bodies, trust boards, statutory tribunals and authorities, advisory bodies and committees set up to advise Ministers and departments (and ministerial inquiries and taskforces). It also applies to appointments of individuals as statutory bodies or to other advisory posts, including tribunals and lay members of courts. Consultation with the Minister of State Services should take place on a case-by-case basis about fees when Trans-Tasman bodies are established.</td>
<td>Crown entities – EQC, GSF, Lotteries, NZSF, Public Trust</td>
</tr>
<tr>
<td><strong>Remuneration Authority</strong></td>
<td>Under the Remuneration Authority Act 1977, the Remuneration Authority is responsible for annually considering and determining the remuneration and allowances of MPs and the Judiciary, as well as specified statutory officers and members of local authorities and community boards. The Authority also determines the fees for the appointees to Independent Crown Entity (ICE) boards.</td>
<td>Productivity Commission (ICE)</td>
</tr>
<tr>
<td><strong>Cabinet-approved COMU Framework</strong> (where fees are set by responsible Ministers)</td>
<td>Crown entity companies (including CRIs) and SOEs</td>
<td>All others including Schedule 4 companies</td>
</tr>
</tbody>
</table>

Boards remunerated using this framework wanting to discuss remuneration issues should talk to their responsible Minister or monitoring department.

[www.dpmc.govt.nz/cabinet/circulars/co09/5.html](http://www.dpmc.govt.nz/cabinet/circulars/co09/5.html)
Annex 7: Directors’ fees and reimbursement guidelines

1 Introduction

- This information on shareholder expectations around the payment of directors’ fees and expenses in Crown companies has been prepared to provide a reference for the use of chairs, directors and management of Crown companies.

- The policies and procedures adopted by individual boards are an operational matter for each board to determine. However, the Crown as shareholder has expectations around the basic level of process that its companies will have in place. This material provides guidance on these expectations and, therefore, should be seen as a tool to check current practice against those expectations, rather than a manual of instructions and directions.

- For matters where delegation or approval rests outside the Crown company board, expectations and guidelines are set out to assist with the approval process (eg, the approval by responsible Ministers in certain circumstances).

- The format for each section of this guide contains a combination of the following elements:
  - **Background**: Where the issues surrounding the matters in question are set out and discussed.
  - **Guidelines and expectations**: Practical notes that will assist boards and provide direction, if necessary.
  - **Best practice**: Where recommended best practice is summarised.

1.1 Policy and Procedures Manual

- It is envisaged that these guidelines will be adapted to form part of each company’s Policy and Procedures Manual (or the equivalent document). Such a manual is a vital governance and management tool for the effective implementation of best practice in companies. Ministers expect the directors of Crown companies to ensure that there is one in place, that it is extensive, covering not only the internal matters of managing the enterprise but also the activities of the board and directors.

- Each board’s policy manual should clearly set out the core principles applicable to the Crown company and, in addition to the matters covered in these guidelines, should clearly set out the linkage with other important management documents including:
  - Code of Conduct
  - human resource manuals
  - information technology policy
  - employment contracts
  - planning and budgeting
  - legislative compliance
  - accounting manuals
  - security and privacy policy, and
  - financial delegations (including approval of board expenditure).

- The policy manual should clearly demonstrate the linkage with the risk profile of the company, internal audit and the internal audit programme. Finally, the processes of policy amendment, policy enforcement, training and the reporting of policy non-compliance should be clearly set out.
2 Directors’ fees

2.1 Background

As a matter of policy, Crown companies do not have executive directors. Exceptions to this policy are rare and would only be with the approval of responsible Ministers. For this reason the use of the word “director” in this material refers to non-executive directors unless otherwise specified.

Crown company directors receive fees for their contribution from the lump sum approved by the responsible Ministers for board fees each financial year. Fees are met from company resources.

Crown company directors’ fees consist of:
- ordinary fees – to cover the full “normal” contribution of each director for attending to their duties, including attending board and sub-committee meetings, meeting preparation and travel time, stakeholder management and any other agreed tasks, and
- special purpose fees – Crown companies may request approval for additional, special purpose fees in response to an identified business need, and each request is considered by the responsible Ministers on its merits.

2.1.1 Crown entities

Separate arrangements exist for the boards of Crown entities. The relevant department, with advice from the State Services Commission, retains the responsibility to advise Ministers on the fees for non-company Crown entities. Within COMU’s area of responsibility this covers bodies such as the CFIs, New Zealand Lotteries Commission and Public Trust. Details in regard to Crown entity fees can be found on SSC’s website. If you are unsure which methodology applies, please consult with COMU.

2.2 Guidelines and expectations

2.2.1 Ordinary fees

Ordinary fees are based on a methodology approved by Cabinet. The most recent consideration of this methodology was in December 2007. This methodology places each company in one of six fee “bands” based on factors such as company size and complexity in relation to equivalent non-Crown companies. The bands are periodically updated based on market movements. Each band has an annual unit rate for ordinary director fees. Ordinary fees, as approved in the lump sum, are calculated on the basis of:
- the designated annual unit rate per director
- twice the designated director level for the chair
- 1.25 times the designated director level for the deputy chair, to reflect either an actual appointment, or to provide the capacity for the responsible Ministers to later make such an appointment, and
- the actual, or expected, number of directors for the forthcoming year (including any known vacancies).

There are no additional fees for board sub-committee meetings. Ordinary fees are calculated to cover the full expected duties of a director, and incorporate a loading to cover directors’ involvement in standing sub-committees (or the like).
2.2.2 Special purpose fees

- Special purpose fees will be considered only where directors are required to contribute time over and above what would be considered an “ordinary” commitment, and with appropriate justification from the Crown company. Such fees are not the norm, and are only considered in advance, in exceptional circumstances as extraordinary requests. Examples of exceptional circumstances could be:
  - situations requiring significant director involvement in a specific and time limited major issue, such as establishing or restructuring a company or a major acquisition. Supporting requests for this type of application typically require a clear connection to the company’s business plan.
  - directors representing the company on relevant industry committees or boards, where the commitment is significant, and
  - additional contributions made by directors relating to lengthy travel requirements that are consistent with the Crown company’s business plan. It should be noted, however, that Ministers have agreed that Crown companies should not normally pay additional, special purpose fees to a director who travels on Crown company business unless the director’s presence is essential and the circumstances are exceptional.

- It would be expected that the request to the Minister would take the form of a proposed hourly or per diem rate and the total amount to be paid. The hourly or daily rate should be based on equivalent director fee levels, which can be advised on by COMU. Following consideration of a written request, the Crown company will be advised in writing if the responsible Minister approves a request for payment of special purpose fees.

- Special purpose fees may be used only for the purpose for which they were approved.

2.2.3 Annual process

- Towards the end of each financial year COMU will, on behalf of responsible Ministers, request confirmation of the ordinary fee requirements for each company, the expected expenditure on director development and training (see 5.3.3 of this annex) and detail of any additional, special fees requests for the forthcoming year. Responsible Ministers will, with effect from 1 July of each year, confirm the level of fees approved for the year. Changes to fee requirements, either through a change in board membership, or unexpected circumstances, can be considered throughout the year, and advice should be sought from COMU on the appropriate process before any additional fee liability is incurred.

2.2.4 Subsidiary company fees

- Additional fees for parent company directors’ membership of subsidiary boards are not expected to be paid unless the subsidiary company operates as a stand-alone entity and the additional requirements on the parent directors are significant (ie, where the board operates in its own right and has its own regular meetings, standing committees and separate management structure reporting to it).

- Unless there are specific limitations in the company’s statute, SCI/SOI, Constitution or the responsible Minister has specifically requested otherwise, the parent board will be responsible for appointing the directors of subsidiary companies. The prohibition on executive directors on Crown boards does not apply, and it will be up to the parent board to determine what skills and experiences are required by the subsidiary.

- The parent board will be responsible for determining the method of setting the fees to be paid to subsidiary company directors. While this is an operational matter, responsible Ministers expect that boards will be cognisant of the conservative approach adopted by the Crown in setting fees for all Crown appointed boards. Within that context, fees should be set based on an appropriate review of the scale of the subsidiary (eg, revenue, assets, size of board,
complexity of offering, market volatility), and the level of fees paid to the parent board and company boards of a similar scale in the Crown domain.

- COMU is available to assist in the identification of subsidiary company directors, and to provide guidance on fee levels, if requested.

2.2.5 Retirement allowances

- Crown company directors do not receive a retirement allowance or any equivalent fee at the end of their term of office. Directors do not receive fees for any period after they retire, even if the date of retirement significantly precedes the expected end-of-term date.

2.2.6 Loans and guarantees to directors

- A director of a Crown company should not receive loans from the Crown company of which they are a director, nor should the company provide any guarantees for loans to that director.

- An exception might be where the company in question provides loans as a service in the normal course of its business. However, in this case there must be clear policies in place regarding board members’ access to such loans, which must be at arm’s length from the board, and on the same terms as any general member of the public.

2.2.7 General comment

- Directors’ fees are deemed to remunerate the director for the full contribution made to the company and are only broadly time relevant.

- Fees apply to a director’s contribution irrespective of where that occurs.

- Notwithstanding that it is the board’s prerogative to decide the allocation of fees, it is recommended that consideration be given to not allocate the full lump sum at the beginning of the year. Directors should consider whether, in order to recognise unequal contributions that may arise as a result of having to deal with unexpected events or circumstances, a portion of the lump sum is retained, and that the balance is paid out in monthly directors’ fees. Examples of unexpected events or circumstances are:
  - a director travelling overseas to represent the board, where an additional, special purpose fee is not warranted, and
  - occasions when the board commissions a director to undertake a board-specific assignment (as opposed to a consulting assignment (see Section 9.3.5 of the Owner’s Expectations Manual), where an additional, special purpose fee is not warranted.

- In these types of instances it would normally be expected that any extra remuneration for the director would be met from the ordinary fees lump sum, without an additional, special purpose fees request.

- In order to make a claim for exceptional circumstances as outlined in 2.2.2 (of this annex), boards will be required to demonstrate, preferably when they submit their annual business plans, that the board’s involvement will both add value to the board deliberations and that the time required is substantially beyond that normally demanded of a director.

- As a guide, one week’s additional attendance beyond the two or three days’ expected attendance per month would be the minimum considered.

- Any additional, special purpose fees will not necessarily equate with the normal level of fees or with a director’s level of personally derived income.
Executive directors, if any, in both parent and subsidiary companies should not be paid directors’ fees. Recognition of their contribution as a director should be included in their remuneration package.

2.3 Best practice

It is expected the lump sum of board fees approved by responsible Ministers will be formally considered at the next board meeting following this advice. The board minutes should record the agreed disbursement of the funds to individual directors, and the amount, if any, retained for other purposes that may arise in the future. Any other matter related to board fees should also be resolved and minuted at board meetings.

Any rationale for application to the responsible Minister for additional, special purpose fees should be minuted in advance of the application.

Any subsidiary company directors’ fees payable to non-executive subsidiary board members should be considered in advance by the full parent company board and minuted accordingly.

The Companies Act requires that the total of the remuneration and the value of other benefits received by the directors or former directors during the accounting period be disclosed in the annual report of the company.

3 Payment of fees to directors

The following information is provided as a guide only. It is the responsibility of management and boards to ensure that advice is obtained as appropriate to meet the specific tax circumstances of the companies. Similarly, it is the responsibility of each director to ensure that advice is obtained as appropriate to meet their individual tax circumstances.

3.1 Background

Directors’ fees are payable to the directors themselves and not to third parties. Common practice is often that the fees are paid to an entity with which the directors are associated. This may occur in one of two ways:

- A director may make a payment direction to the company directing that the company pay his or her fees to a third party. This is merely a matter of convenience for the director concerned and does not affect the status of the fees, which are for personal services of the individual concerned.

- The company may enter into an arrangement with a third party (eg, an accountancy or legal firm) whereby that third party agrees to make a person available as a director of the company. In these circumstances, fees paid for the director’s services belong to the third party, rather than to the director. As the payment is made to secure the services of a director, from the company’s perspective the payment remains in substance a director’s fee and should be disclosed as such by the company.

The basic rule is that payments should be made to the director in their personal name. If the director chooses otherwise, documentation to that effect should be retained by the Crown company.

3.1.1 Tax deductions

In general terms, directors’ fees are withholding payments under the Income Tax (Withholding Payments) Regulations 1979. The paying company must deduct withholding tax from directors’ fees irrespective of whether or not the payee is registered for GST. Exceptions include the following situations:

- The director is an employee whose fees are incorporated in their remuneration package.

- A specific exemption applies (eg, the director holds a valid tax certificate of exemption).
The fees represent business income to a company for directorship services performed by the director.
- The director holds a valid special tax code certificate which varies the rate at which tax deductions must be made.

### 3.1.2 Goods and services tax and Accident Compensation Corporation levies

- The Goods and Services Tax Act 1985 (GST Act) expressly excludes from the ambit of taxable activity any “engagement, occupation, or employment under any contract of service or as a director of a company”. Whether a director is engaged under an employment contract or not, GST would generally not be payable in respect of directors’ fees. This is subject to the following exceptions:
  - where a person, who is already carrying on a taxable activity (i.e., some other business which is subject to GST), accepts a directorship in the carrying out of that activity, and
  - where fees are paid to a third party who is registered for GST and who makes an individual available as a director of the company.

- Accident Compensation Corporation (ACC) levies will be a specific cost to the director based on the fees paid.

### 3.2 Guidelines and expectations

- As part of the induction procedures for directors, it is the responsibility of the Crown company to make directors aware of the compliance necessary to satisfy the legislative requirements in respect of taxation of fees and ACC payments.
- The company can hold a tax invoice issued by the payee or the employer under the self-billing arrangement pursuant to section 24 of the GST Act.
- There should be advice within the Policy and Procedures Manual on how and when the directors’ fees will be paid.

### 3.3 Best practice

- Systems and procedures should be in place within the Crown company to ensure strict compliance with the Income Tax Act 1994, the Tax Administration Act 1994, GST Act, the Injury Prevention, Rehabilitation and Compensation Act 2001 and any other relevant legislation in respect of directors’ fees.
- Every director should complete documentation required by the relevant legislation and the internal policies of the Crown company.
- Tax invoices as required by the GST Act should support claims for reimbursement of expenditure.

### 4 Monitoring of expenditure

#### 4.1 Guidelines and expectations

- The practice adopted by each company and board to monitor the payment of directors’ fees and reimbursement of expenses will vary depending on the needs of the company, and will be a matter for the board to determine itself. As a minimum, however, shareholders would at least expect the following:
  - A budget for all expected board expenditure will be agreed before the commencement of the financial year.
  - Performance against that budget will be reviewed by the audit (or other delegated) committee (or board itself if there is no such committee) on a regular basis, at least on a six-monthly basis.
This review will include all payments made, for whatever purpose, to each director, and ensure that the company’s policy regarding these payments has been complied with.

Policies regarding directors’ remuneration will be reviewed on a regular basis and updated where appropriate.

Where appropriate, policies will include procedures for staff, management or directors to raise concerns about possible breaches of approved processes.

5  Board expenses and claims for expenses incurred by directors

5.1  Background

Section 161(1)(a) of the Companies Act allows a board to authorise the payment of remuneration or the provision of other benefits to a director for services as a director or in any other capacity. That ability may be restricted by the constitution of the company.

The constitutions of Crown companies contain a restriction (generally in Clause 27) on the remuneration that may be paid to directors. That clause restricts the remuneration and other benefits payable to directors (or in any other capacity) to that notified by responsible Ministers from time to time. However, the board may authorise the company to pay or reimburse reasonable expenses for directors to attend company meetings (director or shareholder) “or in relation to other affairs of the company”.

This means that the responsible Minister, by prior written notice, must approve all remuneration and benefits (which includes director development and training [see 5.3.3 of this annex] and reimbursement of directors for income forgone while overseas on company business), except for the payment or reimbursement of reasonable travelling and accommodation expenses and other business expenditure, when directors are attending to “the affairs of the company”, which the board may approve.

The board will set budgets for board expenses so that they can be dealt with through the normal channels of policies, authorisation and internal control within the company. The budget for board expenses is the responsibility of the board, notwithstanding that in practice it will be administered by management.

There is a distinction between the expense which may be incurred by the board and management. Board expenses should be limited to matters that concern board activity in matters of governance. While the chair, or audit committee chair, would be expected to authorise any reimbursement of expenses to the CEO, boards are otherwise not expected to authorise management expenditure other than that dealt with through formal board meetings or as required by other policies.

Professional/legal advice required to assist the board in making a decision or dealing with an issue that requires consideration independent of management should be authorised in advance by the full board. Where this is either impracticable or inappropriate the chair may initiate matters – in the expectation that the full board will be advised as soon as possible of whatever arrangements have been entered into. As a minimum, this should formally occur at the next board meeting. Any such request for legal advice would normally be followed up with written instructions from a designated director or the company’s counsel or equivalent. If the legal advice is required purely at governance level, it should be authorised in advance by the full board approval. The engagement of all other professional services is a management responsibility.

5.2  Guidelines and expectations

Any financial delegation of directors’ expenses should be approved by the board, which is responsible for control of the budget of board expenditure. In some cases the chair may wish to authorise board expenditure personally, while in other cases he or she may choose to rely on systems within the company.
The expenses of the chair should be authorised by the chair of the audit committee or a director of similar standing, or by two other members of the board.

5.3 Best practice

Sound policies and procedures should be in place as part of the company’s Policy and Procedures Manual (see 1.1 of this annex) to clarify all matters concerning board remuneration and benefits available, board expenditure and the payment and authorisation process for directors’ fees and expenses.

The policies and procedures for directors will include the following, where applicable (the list is not exhaustive):

- travel (domestic and international), accommodation and expenses (see 5.3.2 of this annex)
- training and development of directors (see 5.3.3 of this annex)
- car parking, use of personal motor vehicles, rental vehicles and taxis (see 5.3.4 of this annex)
- entertainment and hospitality (see 5.3.5 of this annex)
- communications and telephone usage, including mobile telephones (see 5.3.6 of this annex)
- professional and legal support (see 5.3.7 of this annex)
- directors’ and officers’ liability insurance (see 5.3.8 of this annex)
- medical insurance and key person insurance (see 5.3.9 of this annex)
- membership of business organisations, airline club memberships (see 5.3.10 of this annex)
- use of privately owned assets (see 5.3.11 of this annex)
- expenses incurred that have an element of personal benefit (see 5.3.12 of this annex)
- gifts, koha and donations (see 5.3.13 of this annex)
- personal use of company assets (see 5.3.14 of this annex)
- capital expenditure (see 5.3.15 of this annex)
- expectations of the company when allowances are claimed from more than one entity (see 5.3.16 of this annex)
- use of credit cards (see 5.3.17 & 6 of this annex)
- secretarial support for board members (see 5.3.18 & 7 of this annex), and
- childcare, parental leave and care of dependants (see 5.3.19 of this annex).

Sound practice notes on the standard of record keeping, diary records and documentation to support all claims for expenditure and the timing expected in making those claims should be in place (see 5.3.1 of this annex).

Sound systems of internal control and policies for authorisation for reimbursement of expenses should be in place. This should include periodic reports to the board or designated sub-committee, on expenses paid to directors, and on behalf of the board, against the budgets set for those expenses (see 4 of this annex).

5.3.1 Documentation and diary records

To support claims for reimbursement of expenses, supporting documentation should be produced at the time the claim for reimbursement is made. This applies whatever the method the cost was incurred – including credit card. These records should be complete and in the format that will meet both the requirements of the company and the Inland Revenue Department. They should clearly illustrate the relevance and business purpose of each item.
Guidelines should be in place describing the diary records/minutes documentation expected to record time and costs spent on company business. Claim forms should be in a prescribed format.

5.3.2 Travel

- Clear policies should be in place that set the parameters for directors’ travel expenditure and reimbursement of expenditure. These policies should include:
  - the approval process for travel, both local and overseas
  - the setting and approval of budgets for individual trips, particularly for overseas travel
  - cash requirements, both local and overseas
  - standards of hotels (eg, comfortable but not opulent)
  - process for air travel bookings and changes
  - class of travel (air travel of less than four hours’ uninterrupted duration should normally be in economy class and first class travel would not be expected)
  - category of tickets (particularly for local travel where there are savings for booking in advance), taking tickets that have severe penalties if changed, and non-peak flight times
  - meal/daily allowances
  - use of personal and hire cars
  - use of telephone for private calls, mini bars, alcohol and videos etc
  - accrual and use of air points
  - policies for accompaniment by partner on trips, including conversion of business class tickets to economy for this purpose
  - policies for apportionment between personal/other business costs, and Crown company costs, where multi-purpose trips are undertaken, and
  - policies for childcare or other dependants.

- There should be clear expectations of the reconciliation and approvals required when travel has been completed, including a comparison with budget. When travel is completed, all required documentation should be submitted on a timely basis. Standard forms and templates are helpful to assist this process.

5.3.3 Training and development of directors

- As pointed out above, responsible Ministers must approve, in writing, all remuneration and benefits, which includes director development and training. This is because there is an element of personal benefit (to the director) in any training received.

- Responsible Ministers will consider the total budget requested for director development and training as part of the annual fee-setting round.

- It is recognised that flexibility must be retained to enable boards to respond when opportunities for director training arise throughout the year, and to approve reimbursement of associated costs such as travel, course fees and accommodation. Ministers will therefore consider only the total training budget as part of the annual fee-setting process (but with any known specific item exceeding $5,000 itemised separately).
5.3.4 Car parking, use of personal motor vehicles, rental vehicles and taxis

- There should be policies in place that cover the use of company car parks or other parking. These will include the circumstances for use and any other relevant criteria.
- The circumstances for private motor vehicle use should be specified, including reimbursement, which is typically at a rate in line with that paid in the public sector. Where the trip planned could be undertaken by other, similarly convenient, and possibly less expensive means, the policy should also deal with the approval process (eg, where directors wish to drive when there is an aircraft service available).
- The class of rental cars which may be used should be outlined in the policy.
- The circumstances for use of taxis should be clearly set out.

5.3.5 Entertainment and hospitality

- There should be policies in place that give guidance to directors when hosting functions, or entertaining business stakeholders. Where applicable, the use of company facilities for this purpose (eg, use of a corporate box or other company assets) should be clearly set out.

5.3.6 Communications and telephones

- Communications and telephone costs including entitlement to and use of mobile phones, claiming for business use of own phone, private calls when away on business etc should be contained in a clear policy.

5.3.7 Professional and legal support

- See 5.1 of this annex for comment on professional advice to the board. The Policy and Procedures Manual should also deal with professional and legal advice required by directors.

5.3.8 Directors’ and officers’ liability insurance

- Refer to Section 9.2.2 of the main Owner’s Expectations Manual for detailed comment. The Policy and Procedures Manual should cover this matter.

5.3.9 Medical insurance and key-person insurance

- If there are any payments made for medical insurance for directors the matter should be covered by a policy and any payments made on behalf of a director should either be reimbursed by the director or deducted from payment of fees.
- Key-person insurance premiums fall into the same category if the beneficiary is the director concerned. Where the company is the beneficiary of the policy, the matter is one for management and will be dealt with as a company expense.

5.3.10 Membership of business organisations, airline club memberships

- The policy manual should be clear on this matter. There should be some measure of frequency and business reasons/necessity for use to support any expenditure of this nature.

5.3.11 Company use of privately owned assets

- Detailed policies need to be set for such situations and comparisons made with other available options. The policies should be very clear and describe the circumstances for use. Rates should be set to recognise the cost for the use of these assets by the company. If there are circumstances which involve multi-purpose or shared use, this should
be clearly covered. Reimbursement rates should be clearly set which reflect the benefits for both the director and the company. Situations where use is made of assets not owned by the company or the director (eg, use of a relative’s accommodation) should be covered by the policy.

5.3.12 Expenses incurred that have an element of personal benefit

- This includes items such as mobile phones, phone rentals, computer equipment, faxes etc. The company policy for these benefits must be clearly set out and address the value of personal benefits to the director.

5.3.13 Gifts, koha and donations

- These benefits should be dealt with in the policies, including restrictions, if any, on the maximum value of gifts permitted to be given or received at any one time, or during any given period.

5.3.14 Personal use of company assets, including office accommodation, computer equipment, use of internet and email, utilities, stationery and office equipment

- The company policy for these benefits must be clearly set out so that there is no misunderstanding. The expected practice, however, is that the use of company facilities to conduct private business is not appropriate. However, it is recognised that in some instances it may not be practical to separate out non-company expenditure (such as for mobile phones, or small-scale internet usage), and the policy should cover this.

5.3.15 Capital expenditure

- The expectation is that the chair and the directors will not authorise or activate any capital expenditure or similar activity on behalf of the company other than that approved by board minute at a board meeting, or where the board has made a specific delegation to a sub-committee.

5.3.16 Expectations of the company when allowances are claimed from more than one entity

- When a director has multiple appointments or conducts business on behalf of more than one entity, policy must be clearly set out that ensures there is no duplication of claims.

- It is the responsibility of the individual director to ensure they have the appropriate systems in place to allocate expenses between different organisations.

- It is the responsibility of the officer of each company responsible for making payments/reimbursements (within the policies that have been set) to ensure that they have been provided with supporting information that confirms any expenses paid only relate to the company against which they are claimed.

- It is recognised that it will not always be practical to differentiate explicitly between which entity is deriving all the benefit. Policies in this regard should ensure that the entity that gets the substantive benefit from the expenses pays for it.

5.3.17 Use of credit cards

- This should be covered by a policy (see 6 of this annex).

5.3.18 Use of secretarial support

- This should be covered by a policy (see 7 of this annex).
5.3.19 Childcare, parental leave and care of dependants

- Human resource policies within the organisation that address matters of care of children, dependants and parental leave should (where necessary) be specifically adapted for application to board members.

6 Credit card usage by directors

6.1 Background

- Practice varies between companies in regard to the issuing of credit cards to directors. This can happen in various ways. The four most common are:
  - **Option a**: The director uses his or her own credit card for company expenditure and claims reimbursement. The director complies with the internal policies of the company in respect of the claim. If the claim on the company is made in a timely way the refund will be received by the director before the credit card is due for payment by the director.
  - **Option b**: The director applies for an additional credit card in his or her own name, using his or her own credentials, and reserves the use of that credit card for company expenditure. At the end of the month the credit card is used as the basis for the claim of the director for reimbursement of expenses. The director complies with the internal policies of the company in respect of the claim. If the claim on the company is made in a timely way the refund will be received by the director before the credit card is due for payment by the director.
  - **Option c**: The company applies for a credit card in the name of the director for exclusive use on company business, and the director is responsible for payment of the card by due date. The company retains the overall responsibility for setting the credit limit on the credit card. At the end of the month the credit card is used as the basis for the claim of the director for reimbursement of expenses. The director complies with the internal policies of the company in respect of the claim. If the claim on the company is made in a timely way the refund will be received by the director before the credit card is due for payment by the director.
  - **Option d**: The company applies for a credit card in the name of the director for exclusive use on company business, and the company is responsible for setting the credit limit and payment of the card on due date. The director is required to supply vouchers and evidence of the authenticity of the expenditure on company business. Private expenditure is usually prohibited on the card, but the director undertakes to pay any portion of the expenditure that is private either directly to the bank or to refund the company if the company has made payment of the whole amount due.

6.2 Guidelines and expectations

- It is recommended that the use of company credit cards be limited to situations where there is real need, and no viable alternative exists:
  - Credit card use as described in 6.1 (a) and (b) above are the preferred options.
  - However, where significant credit limits are required to cover regular and material expenditure on company business (such as overseas travel), 6.1 (c) is recommended.
  - Option 6.1 (d) is not recommended. If adopted, private expenditure should be prohibited.

- Generally, cash withdrawals on credit cards should not be permitted, but if there is a need to draw foreign currency while on an overseas trip, the director must comply with company policy on accountability and documentation.
6.3  Best practice

- Each company should adopt credit card practice which best meets its needs. Responsible Ministers are aware that, for many companies, credit cards used appropriately – with appropriate systems for control and monitoring – are an expedient means of managing directors’ expenses. Nonetheless, the use of credit cards is also an area that, historically, has proven to be a source of problems around control and approval of expenditure. The easiest way to avoid this is to not have credit cards, or to make the individual director directly responsible for payments in the first instance.

- Whatever practice the company chooses, oversight systems must be in place that are rigorous and transparent. There should never be any confusion about whether any director was authorised to incur a particular payment, about what it was for and where the supporting documentation is located.

7  Secretarial support for the chair and directors

7.1  Background

- Board chairs normally carry a larger workload than other directors and not all have immediate access to company support staff. Individual directors may also be asked to carry out specific tasks that need secretarial support. This can sometimes result in chairs and directors using staff in their own or other business offices – raising the question of seeking reimbursement from the company they are serving for the time and cost incurred in using non-Crown company secretarial services.

7.2  Guidelines and expectations

- In principle, payment for outside secretarial support is not a practice that the Crown endorses. However, as a practical and operational matter, it is an issue for the board to resolve in the most appropriate manner. In considering the merits of alternative arrangements, the board should be convinced that:
  - it is cost effective in terms of the company’s own resource situation
  - the proposed cost is reasonable, and
  - the arrangement is transparent and can be monitored.

- There should be a clear board minute of any such decision, regular and transparent monitoring and regular review to ensure it is the preferred arrangement.

7.3  Best practice

- If the chair of the board, or any other director, requires secretarial support, the company should provide it.
Annex 8: Specimen contents of board charter/code of practice

1 Role of the board

- The key dimensions of the board’s role, covering duties and responsibilities under the Companies Act, Crown company legislation and relevant Codes of Practice should be covered in this section. It would include the generic duties and responsibilities set out in Chapter 9 of the Owner’s Expectations Manual, as well as particular responsibilities relating to the individual Crown company and its operating environment.

- The role of committees and the reporting relationship between committees and the board should also be described.

2 Role of management

- The charter should include key dimensions of the CEO’s role and how these relate to those of the board, including: providing the principal link between board and company management; responsibility for annual and long-term performance of the company; responsibility for acting within authorities delegated by the board; and regular reporting of company performance and other matters of significance.

- The charter should also include responsibilities of management generally in ensuring effective governance, including their role in agenda preparation, board papers and associated deadlines, minute taking and associated turnaround time and general support for the board.

3 Board procedures and protocols

- An account of how the board conducts its business, including matters such as frequency of meetings, nature of agendas (eg, balance between operational and strategic matters), role of the chair and expectations of meeting conduct (including levels of participation and openness of debate) should also be included.

- Expected standards of individual director conduct before and during meetings should also be included. This could include adequacy of preparation prior to each meeting, provision of adequate notice to the chair for any meeting absences (in part or whole), professional courtesy during meetings through uninterrupted focus on the business of that meeting (ie, not answering messages until breaks, not leaving the meeting temporarily to conduct other business etc).

- Protocols for communication between directors and management should also be explained; for example, where individual directors wish to be briefed by management outside board meetings on an aspect of company operations, to ensure proper adherence to the appropriate division of responsibility between management and board.

4 Induction and continuing education

- A description of the induction process and the means by which directors become, and remain, familiar with both the business of the company and the practice of governance should also be included.

5 Board evaluation

- A description of the process by which board and director performance is measured and managed should also be included.
6 Ethical responsibilities of board, management and employees

- This section should refer to the board’s role in setting both an example and expectations of ethical behaviour for the organisation as a whole. It should either include or refer to a code of conduct/ethics that guides the behaviour of all members of the board, management and employees in the running of the business.
Annex 9: Specimen contents of a code of conduct/ethics

1 Philosophy and commitment to the code
   ▶ This section of the code should include a clear statement of the philosophy of the code (eg, that it represents the core values of the company and is a fundamental aspect of good business practice) and commitment by the board and management to it.

2 Responsibilities to shareholders
   ▶ This section should include a statement acknowledging the objective to operate as a successful business, while adhering to the Crown’s expectations in all areas.

3 Responsibilities to stakeholders
   ▶ This should include a company’s approach to serving the needs of stakeholders (including employees, customers and suppliers) and the community generally (eg, through environmental protection policies or sponsorship).

4 Responsibilities to employees
   ▶ This section should provide an outline of the company’s practices in areas such as health and safety, diversity, training and further education.

5 Legal compliance
   ▶ The code should include policies that the company follows to ensure active compliance with legislation.

6 Conflict of interests
   ▶ This section of the code should specify how the company handles actual or potential conflict of interests, the individual’s obligation to disclose and the need to “err on the side of caution”.

7 Policies on gifts, bribes, commissions, use of company property and confidential information
   ▶ This section of the code should have an outline of the policies the company has in place to prevent unethical or unlawful behaviour in these areas and how the property of the company, its own and individuals’ information, are kept secure and confidential.

8 Reporting of unethical behaviour and code breaches
   ▶ The code should describe the process that the company follows to encourage the reporting of unethical behaviour and the measures taken to deal with breaches of the code.
Annex 10: Default agenda for whole of board performance review

Instructions

This agenda is to be distributed to all board members prior to the formal board forum to review performance. Prior to coming to the board, each board member should review the various items on the agenda and determine which areas need focus for the forthcoming period, making notes as appropriate. The chair will use the agenda to open the forum and ask individual directors to identify topic areas they wish to discuss if they believe they require improved performance.

The chair will then work through each of the areas of focus raised and board members collectively will give their input and determine:

- Is this in fact an area of focus going forward?
- If so, what action needs to be taken to improve performance further?

The chair/minute secretary will prepare a summary of the agreed areas of focus and actions for the forthcoming period. This agreed summary will be used in discussions between the chair/deputy chair (or another senior director agreed by the board if there is no deputy chair) and COMU in the annual review meeting and will also be reviewed by the board at regular intervals to monitor progress.

Key areas of focus for the board as a whole

1. **Defining governance roles**
   - role of board
   - role of chair
   - role of directors
   - role of committees
   - role of company secretary
   - role of CEO

2. **Improving board processes**
   - meetings, agendas
   - information – board papers, minutes, company and market information
   - committee charters, function and structure
   - annual work plan
   - board communication
   - director induction/orientation
   - conflict of interest

3. **Key board functions and responsibilities**
   
   Involvement and effectiveness in:
   - understanding the business
   - setting and understanding strategy framework
   - financial management
4. Other board functions/responsibilities

Continuing improvement
- director/board education/knowledge/development
- board succession
- director protection
- board evaluation

5. Other areas of continuing improvement

________________________________________________________________________

6. Are there any matters that owners of the business should be aware of relative to the function of this board?

________________________________________________________________________

________________________________________________________________________

7. What board composition/succession issues should be raised with the owner?

________________________________________________________________________

________________________________________________________________________

8. Other comments

________________________________________________________________________

________________________________________________________________________
Annex 11: Default template – individual director assessment

Director's name: ________________________________

Director (blue pen) X Chair (red pen) X

INSTRUCTIONS – For each question, the director places their score on the line with a blue pen. The chair then puts their assessment on the same line with a red pen.

Example

1. Understanding of company business/vision/strategy/risks/performance measures

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Questions

1. Understanding of company business/vision/strategy/risks/performance measures

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Comments: __________________________________________________________________________

2. Business acumen

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Comments: (any area requiring focus?)_______________________________________________________________________

3. Strategic perspective

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Comments: __________________________________________________________________________
4. Financial understanding

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Comments: __________________________________________________________

5. Contribution to effective board dynamics

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Comments: __________________________________________________________

6. Active participation/ability to put views across and good questioning at board meetings

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Comments: __________________________________________________________

7. Preparation

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Comments: __________________________________________________________

8. Independent thinking/wisdom/judgement/decision-making

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Comments: __________________________________________________________
9. Understanding director roles and responsibilities

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Comments: 

10. Understanding the role of governance versus executive

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Comments: 

11. Appropriate behaviour of individual director (integrity/ethics, conflict of interest, external communication etc)

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Comments: 

12. Shares the load in board activity

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Comments: 

Director to complete

1. Your assessment of your contribution to the board’s effectiveness over the past 12 months.

2. Any areas of difficulty/poor performance in the past 12 months.

3. Key strengths you bring to the board.

4. Any areas you would like to focus on over the next 12 months.

5. Your assessment of the support you get from the chair and board as a whole in your role as director.

Chair and director to complete

Agreed areas of focus for the next 12 months.

Director signature: ________________________________

Chair signature: ________________________________
Annex 12: Default template/agenda – board review of chair

To be assessed in addition to undertaking the individual director assessment.

Chair’s name: _______________________

Chair (blue pen) X  Deputy chair (red pen) X

1. Leadership

Poor | Excellent
---|---
1 2 3 4 5 6 7 | Not applicable

Comments: ________________________________________________________________

2. Relationship with individual directors

Poor | Excellent
---|---
1 2 3 4 5 6 7 | Not applicable

Comments: ________________________________________________________________

3. Relationship with CEO

Poor | Excellent
---|---
1 2 3 4 5 6 7 | Not applicable

Comments: ________________________________________________________________

4. Communication – internal

Poor | Excellent
---|---
1 2 3 4 5 6 7 | Not applicable

Comments: ________________________________________________________________

5. Communication – external

Poor | Excellent
---|---
1 2 3 4 5 6 7 | Not applicable

Comments: ________________________________________________________________
6. Board management (brings out best/contribution from all directors)

Comments: __________________________________________

7. Teamwork with board

Comments: __________________________________________