

# DIRECTORS' FEES AND REIMBURSEMENT GUIDELINES

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# 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 chairpersons, 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 (for example, 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 & 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 implementation of effective best practice in companies. Responsible 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
- 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.

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## 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, stakeholder management, and any other agreed tasks.

**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 CCMAU's area of responsibility (as at January 2004) this covers the New Zealand Lotteries Commission and the Public Trust. Details in regard to Crown entity fees can be found on SSC's website [www.ssc.govt.nz](http://www.ssc.govt.nz).

## 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 2003. This methodology allocates an annual unit rate for each director, and places each company in one of six fees 'bands'.

**Ordinary fees**, as approved in the lump sum, are calculated on the basis of:

- the designated level per director
- twice the designated director level for the Chairperson
- 1.25 times the designated director level for the Deputy Chairperson, 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 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.
- 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.

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 CCMAU 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) 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 CCMAU 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, Statement of Corporate Intent, 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 experience 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 (for example; 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.

CCMAU 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 arms-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 allocating 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
- Occasions when the board commissions a director to undertake a board specific assignment (as opposed to a consulting assignment, (see Section 7)), 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, 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/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 1993* 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
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## 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 Good and Services Tax (GST) & Accident Compensation Corporation Levies (ACC)

*The Goods and Services Tax Act 1985* 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, therefore, 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 (ie, some other business which is subject to GST), accepts a directorship in the carrying out of that activity.
- 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.

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 *Goods and Services Tax Act 1985*.

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*, the *Goods and Services Tax Act 1985*, 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 *Goods and Services Tax Act 1985* should support claims for reimbursement of expenditure.

Where the director directs that their fees be paid to a third party there must be documentation held on file by the company to support this direction.

## 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 process.

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## 5 BOARD EXPENSES AND CLAIMS FOR EXPENSES INCURRED BY DIRECTORS

### 5.1 Background

Section 161(1)(a) of the *Companies Act 1993* 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) 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 Chairperson, or Audit Committee Chairperson, 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 Chairperson 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 Chairperson 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 Chairperson 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) 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)
- training and development of directors (see 5.3.3)
- car parking, use of personal motor vehicles, rental vehicles and taxis (see 5.3.4)
- entertainment and hospitality (see 5.3.5)
- communications and telephone usage, including mobile telephones (see 5.3.6)
- professional and legal support (see 5.3.7)
- directors' and officers' liability insurance (see 5.3.8)
- medical insurance and key person insurance (see 5.3.9)
- membership of business organisations, airline club memberships (see 5.3.10)
- use of privately owned assets (see 5.3.11)
- expenses incurred that have an element of personal benefit (see 5.3.12)
- gifts, koha and donations (see 5.3.13)
- personal use of company assets (see 5.3.14)
- capital expenditure (see 5.3.15)
- expectations of the company when allowances are claimed from more than one entity (see 5.3.16)
- use of credit cards (see 5.3.17 & 6)
- secretarial support for board members (see 5.3.18 & 9)
- childcare, parental leave and care of dependents (see 5.3.19).

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)

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)

### 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



- policies for childcare or other dependents.

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 would include items such as director development and training.

From 1 July 2004 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 itemized 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 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 8 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 relatives' 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 useage), and the policy should cover this.

#### 5.3.15 Capital expenditure

The expectation is that the Chairperson 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).

5.3.18 Use of secretarial support

This should be covered by a policy (see 9).

5.3.19 Childcare, parental leave, care of dependents

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

6	Credit Card Usage by Directors
6.1	Background
6.2	Guidelines and expectations
6.3	Best Practice

## 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:

- (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 (see 5). 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.
- (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 (see 5). 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.
- (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 (see 5). 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.
- (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:

- 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
- 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	Consultancy services provided by a Board Member or the organisation of which they are a shareholder or employee
7.1	Background
7.2	Best Practice

## 7 CONSULTANCY SERVICES PROVIDED BY A BOARD MEMBER OR THE ORGANISATION OF WHICH THEY ARE A SHAREHOLDER OR EMPLOYEE

### 7.1 Background

Responsible Ministers expect that no director on the board of a Crown company or subsidiary company will undertake consulting work for the company. This is not intended to preclude a director from undertaking assignments for the board which properly fall within the definition of a director's duties, but would preclude the director carrying out, say, a consulting assignment for the management of the company.

In the event that exceptions to these measures appear appropriate, they should be referred, in advance, to responsible Ministers for approval.

Responsible Ministers also expect that directors in Crown companies should not be placed in a conflict of interest 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:

- a) where the organisation has been engaged for a one-off, specific assignment; and
- b) where the organisation engaged has an on-going relationship with the Crown company.

With regard to the first situation, responsible 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 1993* and the company's constitution (eg 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. Responsible 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 (eg legal, accounting, audit or other professional advice or services) and accordingly responsible 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.

## 7.2 Best Practice

Directors should not provide consulting services to the Crown company of which they are a director. Exceptions must be approved by the responsible Minister.

Written company policy should clearly address the issue of conflicts of interest. An interest register must record the interests of directors.



8	Directors' and Officers' Liability Insurance
8.1	Background
8.2	Guidelines and expectations
8.3	Best Practice

## 8 DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

### 8.1 Background

Directors and officers are personally responsible for many duties and obligations imposed by legislation. Their personal assets and professional standing are at risk. They cannot be relieved of responsibility by the company's constitution or by contract. Ignorance is no excuse. 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 1993*, 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' and Officers' liability insurance is normally arranged by the company at levels 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 1993*.

The criteria under the *Companies Act 1993* are: (in brief)

- the indemnity and insurance must be authorised by the company's constitution
- prior approval by the board is given
- the director must sign a certificate to the effect that they consider that the cost of the insurance is fair
- the existence of the policy must be disclosed in the interests register.

## 8.2 Guidelines and Expectations

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 personal disclosure.

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 size comparable businesses are purchasing
- 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
- professional indemnity insurance for lawyers, accountants and other professionals does not necessarily cover them in their roles as directors.

## 8.3 Best Practice

Boards of Crown companies should ensure that adequate and appropriate Directors' and Officers' liability insurance is in place which covers not only the parent company board but all subsidiaries, associated companies and trusts.

The board should ensure that a satisfactory contract of indemnity exists between the company and the director.

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

A comprehensive risk management programme should be established by all Crown companies.

9	Secretarial support for the Chairperson and directors
9.1	Background
9.2	Guidelines and expectations
9.3	Best Practice

## 9 SECRETARIAL SUPPORT FOR THE CHAIRPERSON AND DIRECTORS

### 9.1 Background

Board Chairpersons 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 Chairpersons 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.

### 9.2 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
- 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.

### 9.3 Best Practice

If the Chairperson of the Board, or any other director, requires secretarial support, the company should provide it.

10	Executive Directors
10.1	Background
10.2	Guidelines and expectations
10.3	Best Practice

## 10 EXECUTIVE DIRECTORS

### 10.1 Background

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.

There have also been instances when boards have invited a particular director to resign from directorship for an acting period to take on an executive role, and sought the responsible 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 the 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.

The Minister is aware that it is the board's prerogative to appoint senior executives and agree the remuneration (as stated in each company's constitution). However, it is usual for responsible 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 a *per diem* means in terms of hours, and the anticipated number of days per month that the director will act in an executive capacity.

If the situation has not been resolved in three months, it is necessary for the board to advise the responsible Minister of the situation and to seek an extension of the approval.

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

## 10.2 Guidelines and Expectations

In proposing the temporary appointment of a director to an executive position the board needs to consider the following issues:

- Is it the best option? Is there no current management member or external person capable of filling the role?
- Does the director concerned have the capacity to undertake the role?
- Is there a contract prepared that covers, inter alia, Key Performance Indicators, maximum and minimum hours of work in the executive role, and a defined end to the assignment?
- Is there a board-monitoring regime in place (as for the board's normal monitoring of the Chief Executive Officer)?
- Will the responsible Minister approve the appointment?

## 10.3 Best Practice

The appointment of an acting executive of the company and the remuneration in that executive role is the responsibility of the board.

The continuing appointment of the director and remuneration as a director is the responsibility of the Crown.

When a director is appointed as an acting executive, because of the dual role (director and executive) the appointment and the remuneration must be approved in writing by the responsible Minister on the recommendation of the board.

All matters related to the 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.