

Governance of responsible entities checklist

FEBRUARY 2022

BOARD COMPOSITION

- ☐ When considering the composition of its board, does the responsible entity evaluate:
 - executive and non-executive director representation;
 - the number of independent directors and non-independent directors; and
 - how aspects such as information flows and conflict management are undertaken?
- ☐ Does the responsible entity regularly review board appointment and removal processes to enable the board composition to be optimal for the responsible entity's circumstances?

BOARD COMPOSITION – TENURE OF DIRECTORS

- ☐ Does the responsible entity review, at least annually, the tenure profile of its directors to achieve a suitable balance between:
 - maintaining stability and knowledge in the board of the responsible entity's business; and
 - refreshing the board's make-up to obtain diverse perspectives and ensure the board's skills and expertise reflect changes in the circumstances of the business?

BOARD COMPOSITION – EXTERNAL COMMITMENTS OF DIRECTORS

- ☐ Do directors have adequate capacity to carry out their board duties, given the number, types and intensity of all their commitments?
- ☐ Are there guidelines on external business commitments for directors to ensure that the level of these commitments does not compromise a director's capacity to perform their role?
- ☐ Do guidelines apply to existing directors and a person that is being considered for appointment as a new director?

BOARD CHARTERS

- ☐ Is the board charter reviewed sufficiently regularly to ensure that it reflects changes in the environment (eg regulatory, business) and that the board has clear responsibilities?

BOARD MEETINGS AND COMMITTEES

- ☐ Does the board challenge and question recommendations from the committees to optimise the quality of decision making?
- ☐ Is the board supported by an appropriate number of committees with members who have the requisite skills and experience?
- ☐ Are the terms of reference for committees clearly documented, are the delegations clear (including whether the committee may sub-delegate) and are there established governance frameworks (eg committee support, reporting)?
- ☐ Is the framework for reporting by management of material information to the board and committees clear and prominent and is reporting performed in a timely manner?

BOARD PERFORMANCE REVIEWS AND SKILLS ASSESSMENTS

- ☐ Does the board undertake periodic board performance reviews and skills assessments to ensure that the board has the requisite skills, experience and level of performance to carry out its duties?
- ☐ Do board performance reviews include performance evaluations of individual directors as part of the overall assessment of the board's performance?
- ☐ Are review processes documented, including the frequency of the reviews and the functions of any external parties (eg consultants) in the review processes?
- ☐ Does the board consider the benefits an external firm may be able to bring to these review processes (eg mitigation of the risk of 'group think' or subconscious biases and bringing different perspectives)?
- ☐ When appointing a new director, does the board conduct a skills and experience assessment of the whole board and the individual directors, for both executive and non-executive directors?

BUSINESS MODELS AND REPORTING ARRANGEMENTS

- ☐ Are delegations of authority documented clearly and monitored?
- ☐ Do delegates understand the capacity in which they can act, and any associated limitations?
- ☐ For responsible entities that engage other entities within a group structure:
 - Are the arrangements documented and executed appropriately to ensure the directors and officers can meet their responsibilities?
 - Are these arrangements reviewed on a regular basis?
 - In light of the inherent conflicts of interest that may arise when powers or functions are allocated within the same corporate group, does the responsible entity have adequate quality arrangements to monitor a delegate that is a related party?
 - Are adequate arrangements in place to deal with conflicts of interest?

STAFFING ARRANGEMENTS

- ☐ How and on what basis does the board satisfy itself that, at all times, the responsible entity has adequate staffing resources to perform its duties to an acceptable standard? Are the responsible entity's assessments of the adequacy of staffing resources (including the basis for each assessment) documented?
- ☐ For responsible entities that use staff who are employed by other entities in the same corporate group:
 - Are staffing arrangements clearly set out (eg in a formal shared services agreement) to ensure adequate and qualified staff are available at all times so that the responsible entity can meet its duties under the Corporations Act?
 - What reasonable steps have been taken to identify and manage the conflicts of interest? (Reasonable steps might include staff being required to declare and manage any conflicts between the interests of their employer and the interests of the responsible entity.)
 - Does the responsible entity's risk and compliance function review the conflict declarations on a regular basis and ensure that an employee of a group entity is not deployed to work on a matter where a conflict of interest is reasonably apparent?

OUTSOURCED SERVICE PROVIDERS

- ☐ Are contract terms with outsourced service providers reviewed to ensure that these terms are in the best interests of members (eg are the agreements of a suitable duration and do they include appropriate termination clauses)?
- ☐ Does the responsible entity consider the frequency of contract reviews with service providers to ensure that these contracts reflect current servicing requirements?
- ☐ Does the responsible entity ensure that any applicable policies or procedures clearly articulate that the responsible entity remains responsible for the actions of the outsourced service providers, irrespective of whether the service is provided by a related party or the oversight is delegated to another party?
- ☐ How does the responsible entity evaluate the performance of outsourced service providers? For example:
 - Is self-assessment by service providers limited to objective measures (eg timeframes for taking specific action) as much as practicable?
 - Do parties that are independent of the service provider assess its performance?
 - Is the assessment carried out with reasonable frequency?
 - Is the assessment of material service providers brought to the board's attention in a timely manner?

RELATED PARTY TRANSACTIONS

- ☐ Does the board have oversight of material related-party transactions?
- ☐ When the responsible entity considers entering into a transaction with a related party, are the merits of the transaction carefully reviewed and are there processes and policies in place to ensure that, to the extent possible, the transaction is on arm's length terms?
- ☐ Are the responsible entity's conflicts management frameworks and processes for appointing, monitoring and terminating outsourced service providers designed to adequately deal with related party transactions?

USE OF INDEPENDENT EXPERTS

- ☐ Does the use of independent experts signal a potential skills deficiency at the board level, at the board committee level, or at the management level of the responsible entity?
- ☐ Does the board or board committee have the skills and ability to challenge and critically assess the information provided by independent experts?

CONFLICTS MANAGEMENT

- ☐ Does the responsible entity:
 - focus on the management of conflicts when acting in the best interests of members; and
 - emphasise the proactive measures that can be adopted, for example, around culture and having an ‘investor first’ mindset?
- ☐ For responsible entities that rely on staff from within a corporate group, does the responsible entity consider how it may best manage any potential conflicts and ensure those staff understand the capacity in which they are acting where they support wider group functions?

COMPLIANCE MANAGEMENT – COMPLIANCE COMMITTEES

- ☐ Are information flows to the compliance committee managed and communicated appropriately and in a timely manner, particularly when they occur through informal or indirect interactions?
- ☐ Where a responsible entity is part of a corporate group, does the compliance committee communicate directly to the board (ie communicating to a group entity is not used as a substitute communication avenue)?
- ☐ Is the number of compliance committee members appropriate taking into account the volume and complexity of scheme types and associated compliance plans?

COMPLIANCE MANAGEMENT – COMPLIANCE PLANS

- ☐ Are compliance plans fit-for-purpose for each scheme? Are they suitable for the types of underlying assets that a scheme invests in and the risks that relate to the scheme’s investments and operations?

COMPLIANCE MANAGEMENT – POLICIES

- ☐ For a responsible entity that uses, or adapts, a group-level policy, is the suitability of this approach regularly reviewed, especially when the group-level policy changes?

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