

Evaluating an organisation before joining

Board composition

Joining any board is an important step regardless of the type of organisation or your level of experience. Yet many directors take this step without sufficient reflection on the possible risks in terms of personal financial liability and reputational damage, and without sufficient investigation of the particular company, industry and people involved.

The level of due diligence directors are expected to undertake is not defined. As the law's expectation of directors' skills, knowledge and experience increases, so too should their level of investigation before accepting a position.

Aspiring directors are advised not to let feelings of flattery at being asked to override common sense in evaluating an organisation.

Why have you asked me?

Ideally, an offer will be made when a director can offer skills, knowledge or experience currently missing from the board, such as technical knowledge, industry knowledge, or experience in a particular geographic area.

What questions should be asked to help with your due diligence?

A board understands that a candidate for a vacant board position will have questions and need information to guide their decision-making. Information not publicly available may be given to you subject to a confidentiality agreement. Be wary of an organisation that does not supply basic company information such as the constitution or recent annual or financial reports.

The Australian Institute of Company Directors suggests that the following questions, and lines of enquiry, be considered. This is not an exhaustive list.

Research the organisation

- Understand the organisation's background and history by reading at least three annual reports and any newsletters, media releases, etc. supplied to shareholders or the public, or on the company website.
- Understand how board meetings are conducted and the information provided to directors by asking to review the last three or so board packs. Often a director candidate will be asked to sign a confidentiality agreement before accessing company information not on public record.
- What is the organisation's standing and reputation in the business world or community if a not-for-profit organisation?
- What is in the organisation's constitution? This can be purchased through the Australian Securities and Investments Commission (ASIC), if not supplied by the organisation.
- Who is in the management team? What are their qualifications, skills, knowledge, experience and reputation?

- At what stage of growth is the organisation?
Does this suit your interests and skills?
- For not-for-profits, what is the chief source of funding and how is it come by?
- Who are the shareholders/members? Is there any evidence of discontent by all or a sub group of member/shareholders?

Strategic direction

- Obtain and read the organisation's strategic and business plans. Does the organisation know where it is headed? Are its aims achievable? Do you support its aims?
- Will your skills, knowledge and experience assist in furthering the organisation's journey?
- Have there been any serious issues in recent years? How have they been handled?
- Does the organisation have comprehensive risk management processes in place?

The board

- How independent is the board? What is the proportion of executive to non-executive directors and independent directors? In a smaller organisation an independent board may not be as easily achieved as for larger companies;
- Who are the other directors? What are their skills and experience? How they were selected? How long have they held these positions? Have you met them?
- What board committees exist and who serves on each?
- What time commitment and skills are needed?
- Will there be an induction process?
- Does the board support professional development activities for directors?
- Is remuneration offered? What are the arrangements for reimbursement of expenses?
- Do the skills and experience already on the board match the strategy?
- What are the board's governance and risk policies?

- What information will be available to assist directors in performing their duties?
- Does the board evaluate its performance?
- Does the board work harmoniously as a team? Are there any factions?
- What is the board's working relationship with management like?

Legal matters

- What are the terms of your appointment? Will you receive a letter of appointment or job description confirming terms of appointments and the board's expectations of you?
- What are the indemnity and insurance provisions? Read the policy and understand any costs involved;
- What legal exposure does a board member of this organisation potentially face?
- What is the legal structure of the organisation?
- What is the organisation's legal history?
- Does the organisation comply with its legal requirements?
- Can directors obtain independent professional advice at the company's expense?
- Can you speak to the external auditors and solicitors?
- Is there a deed of access?
- Is there a shareholding qualification or other legal requirement in the constitution to fulfil before accepting the position?

Reporting

- Do the board papers and minutes contain the information you would expect? Are they distributed in a timely manner?
- Are there appropriate internal controls and policies for major processes?
- Can you see the most recent management letter form the external auditor?

Performance

- Are financial and non-financial performance indicators defined for the company, its employees and management?
- What is in the current budget? How is performance tracking against the budget?
- What is the current cash position of the company, and how has this trended over the past three or so years?
- Is there a cash flow forecast and, if so, what does it indicate?
- Is there evidence of financial stress in recent financial statements?
- Is the company up to date with its Pay As You Go (PAYG) and Superannuation Guarantee Charge (SGC) payments to the Australian Taxation Office (ATO) (directors assume individual liability for all amounts unpaid after 90 days 14 days after commencing as a director)?¹

Your fit with the company

- Why do you want this position? What do you want to get out of the experience? The reason should be better than 'they asked me' or 'the money was good';
- Do you want your name associated with this organisation?
- Are you comfortable with the directors and the way the organisation conducts business?
- Can you add value to the board? Do you understand your limitations?
- Does the chair's view of your skills, knowledge and experience match your view?
- If you accept this position, will you be able to take on other directorships?
- Can you devote sufficient time and energy to fulfil your duties and responsibilities?
- Do you have any conflicts of interest?
- Would you invest a significant amount of money in the organisation? If you have trouble answering this question, then ask more questions to better judge this. If you would not invest in it, then be cautious about joining the organisation.

Meetings with other directors and management?

Joining a board can bring stimulating professional challenges, rewards and opportunities, but also involves exposure to risks. As noted, directors need to make an informed decision about joining an organisation. This involves making appropriate enquiries to satisfy themselves of the organisation's position and practices as well as the calibre of its people prior to accepting a directorship. Under the *Corporations Act 2001* (Cth), directors are liable for decisions and actions taken during their term of office. Technically, a director joining a board today will not be responsible for decisions made prior to their joining. However, problems may arise in the future as a result of those earlier decisions. If the current board, including the new director, does not respond with proper care and diligence, there may be legal repercussions. For instance, the ability to rely on the business judgment rule as a defence could be compromised.

Therefore, as mentioned above, it is imperative to fully understand an organisation's financial position, risk exposures, control processes, etc. prior to deciding to join, as well as meeting with as many of the current directors and senior management as possible and discussing issues and concerns. The questions to ask are listed above. If a director has misgivings after his or her research is completed, it would be wise to refuse the offer.

The ability to trust fellow board members and work collegiality is crucial to the effective functioning of the board. Some potential directors, after signing a confidentiality agreement, ask to sit in on up to three board meetings to observe the board behavioural dynamics² and the current issues under discussion before finally making a decision as to whether or not to join the board. If time and circumstances allow, this is an excellent means of understanding both the company and the current director and management team.

¹ *Taxation Administration Act 1953* (Cth), Division 269.

² Kiel G, Nicholson G, Tunny J A, and Beck J, *Directors at Work: A Practical Guide for Boards*, Thomson Reuters Australia, 2012.

Where do I find more help?

The internet can provide a great deal of information about an organisation through looking at such things as the organisation's website, trade directories, industry association information and newspaper reports. Search engines can also often provide a lot of biographical information about other directors. Increasingly 'social network' sites such as LinkedIn, Facebook and Twitter are being used to gather information about a person or organisation.

ASIC can help with:

- purchasing documents lodged by the organisation, for example constitution, financial statements where available, details of a charge, changes to officeholders;
- purchasing a record of an individual director's directorships held over a long period of time;
- checking the official records of banned or disqualified directors.

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