CHAPTER 34

Corporate Governance Searches

I. WHY INVESTIGATE CORPORATE GOVERNANCE? [§34.1]

"Corporate governance" refers to the set of rules, practices, and processes by which a corporation is directed and controlled. These range from mandatory legal rules, to purely voluntary initiatives. Specific searches are conducted to confirm the company is complying with statutory and regulatory corporate governance requirements. The main sources of legal rules are: corporate legislation, securities legislation, stock exchange rules, and the common law. A review of corporate governance practices (not based on statutory and regulatory requirements) may be useful to expand the examination in order to consider whether, more generally, a company has sound structures and processes in place to make decisions.

[Editorial comment: The searches contemplated by the other chapters in this book tend to be narrowly focused inquiries generating objective results that reveal the existence or non-existence of a specific fact or state of affairs. In contrast, the investigations contemplated by this chapter tend to focus more broadly on systemic aspects of the target. They involve a significant assessment of systems, practices, and processes that are ongoing and often evolving.

Because of the dynamic nature of the subject matter of the inquiries contemplated by this chapter, and because this is a relatively new and evolving area of due diligence, assessing the results of investigations in corporate governance will be significantly more subjective than other searches. The concepts in this chapter may be less applicable to transactions involving privately owned companies.

In cases where the inquiries in this chapter are appropriate, they will often be done in conjunction with operational or other aspects of due diligence carried on by other professionals or by the client. A comprehensive assessment in this area may involve considerations beyond the scope of the acquisition transaction and will necessarily rely on business judgment as much or more than legal advice.**]**

The board of directors of a corporation play a key role in effective corporate governance practices. Directors have a statutory and common law duty to act honestly and in good faith with a view to the best interests of the corporation. The Supreme Court of Canada in *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 confirmed that directors must act in the best interests of the corporation, having regard to all relevant considerations, including, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen. *BCE* also confirms the business judgment rule. The directors' decisions will continue to be given deference, subject to only basic constraints.

The term "best practices", when used in this discussion, does not mean corporate governance practice standards that are imposed by statute or regulation, although many of the suggestions are founded on legal principles developed by our courts relating to the duties of directors and officers owed to companies, and the duties of companies to their shareholders and stakeholders. Further, shareholder activist and advocacy groups play a role in commenting on and influencing corporate governance best practices. Good governance systems include practices that lead to good decision-making processes and effective oversight of the company's financial, legal, and ethical requirements. However, aside from legal and regulatory compliance, there is no legal obligation that a company comply with the best practices discussed in this chapter.

A. LEGAL AND REGULATORY CORPORATE GOVERNANCE COMPLIANCE [§34.2]

The common law first defined the duties and fiduciary obligations of directors to a company, and companies to its shareholders. Legislators further defined those duties and imposed penalties for their breach in legislation such as the British Columbia *Business Corporations Act*, the *Canada Business Corporations Act*, and the British Columbia *Securities Act*.

In the case of a company with a class of shares that are publicly traded in a Canadian jurisdiction (no matter where the company was incorporated) (a "public company"), a search of the website of the System for Electronic Document Analysis and Retrieval (SEDAR) for corporate governance disclosure statements will determine whether the company is in compliance with corporate governance disclosure requirements. For information on the legal and regulatory framework from which such requirements arise, see "Legislation Governing Corporate Governance" in this chapter.

B. ADDITIONAL INVESTIGATIONS FOR COMPLIANCE WITH BEST PRACTICES IN CORPORATE GOVERNANCE [§34.3]

A comparison of the company's corporate governance practices to best practices may indicate whether or not the company has systems in place to help ensure that it is operating within its legal framework and environment, and that it is being managed in the shareholders' best interests.

On July 29, 2013, the British Columbia *Business Corporations Act* amendments allowing for a Community Contribution Company ("C3") came into effect. Community Contribution Companies must comply with their stated societal objectives, therefore it is important to ensure that decisions by C3s are made in accordance with those objectives.

C. HISTORICAL DEVELOPMENTS IN CORPORATE GOVERNANCE [§34.4]

Over time, the role of a corporation's board has been shifting from an advisory function to a monitoring function. Improved standards for financial audits and disclosure have also been implemented. In particular, the financial crisis that began in 2008 resulted in securities commissions taking steps to set standards for corporate governance practices, including executive compensation.

On June 30, 2005, National Instrument 58-101 "Disclosure of Corporate Governance Practices" ("NI 58-101") was adopted by the Canadian Securities Administrators, a forum that represents Canadian securities regulators including the British Columbia Securities Commission ("BCSC"). NI 58-101 came into force in every jurisdiction in Canada as a regulation passed pursuant to the applicable securities legislation. NI 58-101 sets out disclosure requirements for corporate governance practices for public companies.

At the same time, National Policy 58-201 "Corporate Governance Guidelines" ("NP 58-201") was adopted by the Canadian Securities Association and the BCSC. These guidelines are not mandatory, but are intended to reflect best practices in corporate governance. See "Legislation Governing Corporate Governance" in this chapter.

A number of other non-regulatory bodies such as the Toronto Stock Exchange (TSX), the Canadian Coalition for Good Governance

(CCGG), Institutional Shareholder Services Inc. (ISS), Glass Lewis, and the Institute of Corporate Directors also regularly comment on or make recommendations on corporate governance standards.

II. HOW TO INVESTIGATE CORPORATE GOVERNANCE [§34.5]

In addition to a search for compliance with legal and regulatory requirements, this chapter describes investigations into a corporation's governance practices that surpass the bounds of a typical legal due diligence search. They are included because research demonstrates that there is a correlation between "good governance" and firm value and performance, including return on equity. (Anita Anand, Professor of Law, University of Toronto, "The Value of Governance" (February 1, 2013), available online at www.ccgg.ca; and Stijn Claessens and Burcin Yurtoglu, "Corporate Governance in Emerging Markets: A Survey" (January 15, 2012), available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988880.) Further, much of the litigation in Canada involving shareholders and stakeholders against corporations and/or their directors directly or indirectly stems from inadequate corporate governance rules or practices. Nevertheless, given the fact that best practices are not mandatory, counsel should determine and put in writing the client's objectives before conducting these further investigations at the client's expense.

(See chapter 1 (Introduction to Legal Due Diligence in Business Transactions) for a discussion of the distinction between legal and other types of due diligence, the role of legal counsel, the role of other advisors, and the need to obtain written instructions from the client.)

A. CORPORATE GOVERNANCE INVESTIGATIONS IN CONTEXT [§34.6]

The existence or absence of the systems described in "Corporate Governance Systems Review" may affect the degree of scrutiny a client may place on other key business performance indicators and influence the client's instructions to counsel regarding searches designed to uncover legal liabilities. Accordingly, in appropriate cases and with the client's instructions, it may be helpful to investigate corporate governance practices as follows.

B. IDENTIFYING BEST PRACTICES IN CORPORATE GOVERNANCE [§34.7]

Before commencing a search, it is helpful to identify the elements of best practices for corporate governance, for purposes of comparison and assessment. Best practices for corporate governance are evolving. An example is set out in "Example of Corporate Governance Best Practices", and a sample corporate governance checklist based on best practices is set out in "Checklist for Corporate Governance" in this chapter.

C. CORPORATE GOVERNANCE SYSTEMS REVIEW [§34.8]

The basic starting point for reviewing a company's corporate governance systems is a corporate registry search. This can be conducted through BC OnLine and by physically searching the company's registered records office (see chapters 4 (Corporate Registry Searches) and 5 (Corporate Records Searches)). These searches will provide basic information such as the total number of directors, the names of the directors and officers, what constitutes a quorum for directors' decisions and meetings, and any special provisions in the company's articles that may affect director appointment and succession, such as staggered terms.

Next, a search of the company's website may provide insight as to the governance structure. A number of companies post various aspects of their governance systems, such as codes of conduct or other ethical standards and business practices.

Public companies are required to report certain corporate governance practices pursuant to regulation. The filed disclosures are available for search and review on the System for Electronic Document Analysis and Retrieval (SEDAR) website at www.sedar.com. SEDAR is a filing system developed for Canadian securities administrators, and companies are listed alphabetically on the website. Corporate governance practices are disclosed in one or more of the company's filed documents, such as the Annual Information Form ("AIF") or Management Discussion & Analysis ("MD&A").

Finally, if the company is not publicly traded and there are no published sources of information, specific questions can be asked of the company based on, for example, the best practices guidelines set out in "Example of Corporate Governance Best Practices" in this chapter, in order to assess the board and company's governance practices. A checklist for this purpose is set out in "Checklist for Corporate Governance" in this chapter.

III. THE CORPORATE GOVERNANCE INVESTIGATION RESULTS [§34.9]

In the case of a public company, a review of filed disclosures of corporate governance practices will reveal whether the company is in compliance with NI 58-101.

In the case of public and privately held companies, a review of the company's corporate governance practices will give some objective measures of whether or not the company has systems in place to help ensure that:

(1) the directors are competent and have the diverse range of skills and experience reflective of the corporation's business and stakeholders;

(2) the board effectively oversees the management and strategic direction of the company;

(3) major risks and legal requirements are identified and managed;

(4) the directors understand their fiduciary obligations to act in the best interests of the company, and actual or potential conflicts of interest are managed;

(5) the directors are able to fulfill their obligations to scrutinize the company's financial performance and to confirm that the company's financial situation and results are accurately reported; and

(6) the value attributed to a company's shares can be verified independently.

IV. LIMITS TO CORPORATE GOVERNANCE INVESTIGATIONS [§34.10]

The purpose of a governance due diligence review is to provide some insight to an outsider and prospective purchaser of a company's strengths and weaknesses as they relate to corporate practices. Best practices guidelines are *guidelines*, not legal requirements. National Policy 58-201, "Corporate Governance Guidelines" ("NP 58 201"), adopted by the CSA and BCSC, applies only to public companies;

however, they too are guidelines. [Note, however, that Toronto Stock Exchange ("TSX") issuers must provide disclosure about their corporate governance practices with reference to the guidelines set out in the "Corporate Governance Guidelines".] Results from a review of corporate governance practices must always be considered in the context of other information about the company.

Not all companies follow or adhere to all best practices or even have a formal governance policy. Also, corporate governance practices that are appropriate for large or public companies may not be necessary for smaller, privately held companies.

In the majority of small, privately held corporations, the shareholders are often also the directors, officers, and/or management of the company. Such companies are less likely to have formal corporate governance policies; however, prospective purchasers of these companies may wish to inquire of the existing directors and officers their awareness of and compliance with best practices in board governance.

V. LEGISLATION GOVERNING CORPORATE GOVERNANCE [§34.11]

B.C. Reg. 241/2005 was passed pursuant to the *Securities Act*, R.S.B.C. 1996, c. 418, s. 184, and the *Securities Act*, S.B.C. 2004, c. 43, s. 170 (which is not in force). The regulation comprises NI 58-101 "Disclosure of Corporate Governance Practices", which was adopted by the CSA and the BCSC.

On December 31, 2014, the Ontario Securities Commission issued an amendment to NI 58-101, which, as of 2018 has been adopted in 11 provinces and territories. (While the British Columbia Securities Commission has not formally adopted NI 58-101, in February 2018 it issued a request for comment and consultation on the disclosure requirements in NI 58-101, relating to women on boards and in Executive Officer positions.) This amendment resulted in significant amendments to the disclosure requirements in Form 58-101F1, including whether or not the issuer:

- has adopted term limits for directors or other mechanisms for board renewal;
- has adopted a written policy relating to the identification and nomination of women directors; and

- considers the level of representation of women on the board and in executive officer positions when it identifies and/or nominates candidates for such positions.

Further, if the issuer is not able to confirm it has adopted or considered such matters, it is required to explain why it has not done so.

As well, the CSA and BCSC adopted NP 58-201 "Corporate Governance Guidelines", which are not intended to be prescriptive.

TSX-listed issuers must comply with the disclosure requirements in Form 58-101F1, "Corporate Governance Disclosure", which includes the requirement that TSX-listed issuers compare their corporate governance practices to the NP 58-201, "Corporate Governance Guidelines". TSX-Venture listed issuers must comply with the disclosure requirements in Form 58-101F2, "Corporate Governance Disclosure (Venture Issuers)", which requirements are less extensive than the Form 58-101F1 requirements and do not require a comparison to NP 58-201.

Effective October 31, 2011, the Canadian Securities Administrators amended Form 58-101F1, Form 58-101F2, and Form 51-102F6. The amendments to Form 51-102F6, "Statement of Executive Compensation", were substantive and included requirements to disclose the board's role and oversight of the issuer's compensation policies and practices for its directors and officers. [**Note:** Effective June 30, 2015, venture issuers have the option of completing a new Form 51-102F6V, rather than the more onerous Form 51-102F6.]

For corporations governed by the *Canada Business Corporations Act* (*CBCA*), Bill C-25, 2018 (S.C. 2018, c. 8), includes amendments regarding the terms of and election of directors, diversity disclosure, rules regarding greater disclosure to shareholders. and other rules. The amending Bill received Royal Assent on May 1, 2018, although many provision will come into force by regulation. For more information on securities searches, see chapter 34 (Securities Searches).

VI. EXAMPLE OF CORPORATE GOVERNANCE BEST PRACTICES [§34.12]

There is no legal obligation that a company comply with best practices provided in this example, as the term "best practices" used here does not mean corporate governance practice standards that are imposed by statute or regulation.

A. BOARD [§34.13]

Board Mandate

The board should have a written charter or mandate that describes the board's responsibilities and specific accountabilities, and a description of any particular legal or statutory obligations or framework that the company must comply with or operate within. The board mandate acts as a guide to the board and its directors, as well as for management of the company. The board mandate also serves to inform shareholders of the board's mandate and function, as well as provide an opportunity to measure the actual performance of the board against the mandate. The board mandate should include:

(1) an explanation of how it makes its decisions and conducts business;

(2) dates and minimum number of board meetings;

(3) identification and composition of its permanent standing committees struck to assist the board;

(4) any limitations to the board's decision-making powers;

(5) a process for or ability to strike *ad hoc* committees to deal with unusual situations, such as takeover bids and special investigations; and

(6) a process by which directors can identify and declare conflicts of interest and so be excluded from any decisions where the director's personal interests are or appear to be in conflict with the interests of the corporation.

Board Assessment and Renewal

Boards should have an opportunity at least annually to participate in some kind of board assessment that can measure board performance against the elements of the board mandate and to plan for board renewal to ensure that new board members reflect best practices and company-specific requirements for diversity, skills, and experience. (Other factors to include in the assessment might be: the quality of discussion and conduct of meetings; the quality and quantity of information provided to directors from management; opportunities to speak freely and in the absence of management; and general management of board affairs.)

Skills Assessment and Succession Planning

One tool used to ensure a board has the appropriate collection of skills is a "competency matrix", in which all the required skills and experience for the business are identified. Existing board members' skills and experience that match the matrix criteria are identified, so that when the company and board are considering new directors or replacing former directors, they will have a clear understanding of the attributes required by the new director(s) to complement the existing board structure.

Boards should plan for succession, including retirements of directors and the board chair. To some degree, attention to the terms of office (for example, staggered terms) will assist a board in managing gaps or changes in boards that may occur from time to time (see below).

B. DIRECTORS [§34.14]

Every director has two basic legal duties to the company:

(1) a **fiduciary duty** *[acting in good faith and in the honest belief that the action(s) taken was in the best interests of the company]*, and

(2) a **duty of care** *[exercising the care, diligence, and skill that a reasonably prudent person would exercise in similar circumstances]*.

Whether or not a director has fulfilled his or her fiduciary duties and met the expected duty of care is predominately a question of fact. While the personal knowledge and experience of the director is relevant, a director's acts and/or omissions are measured against an objective standard. That said, if it can be shown that all directors lived up to the standards expected, our courts continue to confirm that they will not substitute their own business judgment for that of the directors. This latter principle is called the "business judgment rule".

Competency

Optimally, the board will consist of a group of individuals who, as a whole, have the appropriate skills and experience necessary to manage or supervise the management of the business and affairs of the company. What constitutes "appropriate skills and experience" will depend in part on the company and the nature of the business. It is advisable that boards have at least one director with some type of professional accounting designation or equivalent qualifications. In addition, boards should have directors with reputations for being persons of integrity and good judgment. A governance or other form of nominating committee is often in the best position to objectively select new directors and to ensure the appointment process is open and transparent.

Finally, even highly qualified directors may not be able to fulfill their fiduciary duties and/or meet the standard of care expected if they do not have the necessary time to prepare and exercise their board responsibilities properly, or have other board or employment positions that could reasonably be expected to place the director in a conflict or potential conflict of interest. Glass Lewis's opinion on the maximum number of boards a director should be on is six total boards (or five public company boards), and half that amount if the director is also serving as an executive officer of a public company.

Consequently, boards will want to know whether or not prospective directors have other board or work commitments that could preclude them from meeting the board's expectations. Given the increased expectations of directors and officers, the current trend is for directors and officers to take on fewer concurrent board appointments than they might have in the past. (In a survey done in 2014, Institutional Shareholders Services Inc. found that on average, the annual time commitment per director was 304 hours.)

Terms

There are no accepted guidelines as to what an appropriate term of office of a director should be. The company's constating instruments may determine whether directors must be reappointed annually and/or maximum terms of office. The value of having experienced directors must be weighed against the company's need to renew the board in order to gain fresh perspectives from time to time.

Director Assessment

The downside of fixed terms as the sole board renewal strategy is that a board can lose both performing and non-performing directors. Therefore, director performance should also be assessed on a regular basis. Assessment of individual director performance—including attendance at meetings, preparedness involving advance review of materials, participation in meetings, and compliance with conflict of interest or other ethical codes of conduct—is, if done properly, a useful way for a board to identify weaknesses in individual director performance that could lead to improvements in that director's performance or, ultimately, removal of that director.

Independence

The majority of directors on a board should be independent of management of a company (referred to as "outside directors") and have regular opportunities to meet in the absence of dependent or "inside" directors who also manage the operations of the company. This way, the board can ensure that it has the opportunity to engage in frank discussions, and to provide objective oversight of management and of the information presented to the board by management. Where the majority of the directors on a board are not independent, the board should have mechanisms for obtaining independent advice or review of annual compensation decisions, and including performance-based compensation.

Director Orientation and Continuing Education

It is important that all directors have orientation as to not only the business of the company but the various board charter, mandates, and procedures. Also, directors should have ongoing opportunities for education, both in the general areas of directors' fiduciary duties and responsibilities and more specific education with respect to various aspects of the company's business.

Compensation

Directors are typically paid for their services rendered to a company in acting as a director. In recent years, individual director compensation has increased dramatically, in large part due to increased expectations of directors and recognition of their role in good governance of the company. Further, there is an increased trend for shareholders to comment on executive compensation. Accordingly, compensation levels should be set by an independent committee of the board, or as noted above, if independent directors do not form the majority on the board, the board should have independent professionals assess and provide advice on compensation levels.

C. BOARD CHAIR [§34.15]

Ideally, the chair and CEO of a company should be separate positions. This ensures that boards have the independence and leadership necessary to provide oversight of management. Having a board chair charter or mandate also assists both the chair and the board to understand the particular or additional responsibilities of the chair to manage board affairs effectively, to review board and individual director performance regularly, and to generally ensure that directors are given the opportunity and the information required to perform their role.

D. BOARD COMMITTEES [§34.16]

Types of Committees

Boards typically have committees that provide detailed review and scrutiny relating to key areas of the board's mandate and oversight responsibilities. The most common standing committees of boards are audit, corporate governance, and human resources.

Committee Mandate

Each committee should have its own clear mandate or terms of reference and forward agendas that divide the work of the committee each year into various meetings so that, on an annual basis, all key areas are dealt with. These forward agendas are then used as guides for annual working plans for each committee.

Audit Committee

It is expected that one or more members of the finance and audit committee have some type of professional accounting-related designation. Further, the audit committee should have the opportunity to consult with external consultants, including external auditors, to ensure that management processes are adequately identifying and managing risks of the corporation, and that the quality and quantity of information received is sufficient to enable the audit committee to perform its tasks. The audit committee should have an opportunity from time to time to meet with its consultants, including external auditors, without management present. (Note: the external auditors should report directly to the audit committee, not to management.)

E. CHIEF EXECUTIVE OFFICER (CEO) [§34.17]

One of the most important duties of the board is to review the performance and compensation of the CEO and, when necessary, to hire or replace the CEO. Accordingly, a CEO should have a clear job description and performance objectives that are annually approved by the board, and on which at least part of the CEO's compensation will be based. Following the recent financial crisis, CEO salaries and bonus compensation formulas are now subject to more scrutiny, particularly if they encourage inappropriate risk-taking and other short-sighted decisions that are not necessarily consistent with the long-term best interests of the company.

F. CORPORATE SECRETARY [§34.18]

The role of the corporate secretary, besides maintaining records and ensuring the orderly administration of the directors' or the board's meetings, is to advise and assist the directors in the performance of their duties. Accordingly, it is useful to have a corporate secretary who has or who can procure the expertise needed to ensure that the board's business is conducted in compliance with all laws and within the policies and framework referred to in various charters, mandates, and procedures established by the board. Ideally, the corporate secretary should also be aware of or have access to advice on trends and best practices for corporate governance and changes to laws relevant to the company or its board.

G. RISK MANAGEMENT AND CORPORATE SOCIAL RESPONSIBILITY [§34.19]

Recent examples of new or emerging threats to corporations in the form of cyber security breaches, cryptocurrency thefts, and effects of climate change have highlighted the importance of having robust risk management practices as part of a corporation's governance framework. Further, in a world where public opinion, spread through social media, can affect corporations' business and stock value, corporate social responsibility issues have become important topics for boards and senior executives. Accordingly, depending on the business of the corporation, its corporate governance practices should include mechanisms to identify and respond to emerging business risks.

H. CODE OF CONDUCT AND ETHICS [§34.20]

The company should have a code of conduct for directors, officers, and employees. Depending on the nature of the business of the company, there may be specific conduct or ethical requirements in addition to standard expectations. The code should be brought to the attention of the directors and employees on a regular basis.

Hand in hand with the code of conduct, there should be a process for reporting real or perceived conflicts of interest or other breaches of the code of conduct, and a method for independent overview and investigation of such complaints. "Whistle blowers" have the opportunity to report breaches of code of conduct, and whistle-blower policies are seen as a way to facilitate this additional level of scrutiny. Directors and officers especially, because of their fiduciary obligations to the company, should confirm on an annual basis that they have at all times acted in accordance with the company's code of conduct (or in the absence of a code of conduct, in accordance with their fiduciary duty to act honestly, in good faith, and in the best interests of the company). Code of conduct policies should confirm that provisions are in place to identify and deal with real or perceived conflicts of interest that may arise from time to time, as a result of directors' other businesses or activities.

I. TRANSPARENCY AND ACCOUNTABILITY [§34.21]

Key principles of corporate governance are transparency and accountability. If the previously noted aspects of governance are understood by the board, and then disclosed to shareholders and the public, there is a presumption that boards have the tools and incentive to provide the appropriate oversight of the management of the company. Complex corporate structures and interrelationships that obscure which directors are accountable for decision making invites allegations of oppression. Also, failure to hold regular shareholder meetings or disclose timely financial and other key information to shareholders, even in the absence of bad faith, can and has been found to constitute oppressive conduct on the part of directors.

An important tool in disclosing this type of information is the Internet, which companies are increasingly using to disseminate information on their governance practices. With the disclosure of governance practices and performance, the board, individual directors, shareholders, and the public will have criteria for measuring performance, and thus some tools to assist them to hold the board accountable to ensure the company is in fact being governed in accordance with the company's best interests.

VII. CHECKLIST FOR CORPORATE GOVERNANCE [§34.22]

The following is intended as a starting point for an examination of a company's corporate governance practices. The relevance of the questions contained in this checklist is found in the best practices set out in "Example of Corporate Governance Best Practices" in this chapter.

Not all companies will follow or adhere to all best practices in corporate governance; the size and kind of company will affect legal requirements and expectations in this regard.

1. Board

- ☐ Does the board have a written mandate?
- ☐ Does the board have any legal or statutory restrictions affecting its governance structure (i.e., articles, memorandum of incorporation or other constating documents, statutes, and regulations)?
- ☐ Does the board have a minimum number of meetings annually, and did it comply with the minimum during the past five years?
- ☐ Are the majority of directors independent from management of the company, or if not, does the board regularly seek advice from third-party professionals on issues or decisions where there exists actual or perceived conflict of interest with the majority of directors?
- ☐ Does the board have an opportunity to regularly meet in the absence of management and non-independent directors?
- ☐ Does the board have any process for dealing with non-routine events such as takeover bids or board-initiated investigations?
- ☐ Is the board responsible for administering a pension plan for the corporation's employees? If so, is there a process to manage conflicts that might arise between the best interests of the corporation and the pension plan beneficiaries?
- ☐ Are the directors required to make annual conflict-of-interest declarations?
- ☐ Does the board have a mixture of skills, experience, and diversity to ensure the board is able to oversee the company's affairs and make decisions with the appropriate perspective and ability?
- ☐ Does the board have at least one director with a professional accounting designation?
- ☐ Does the board engage in an annual form of board assessment?

2. Directors

- ☐ Has the board identified company-specific skills and experience required for its directors, and, if so, are they used to recruit and replace directors?
- ☐ Are the directors:
  - ☐ as a whole, in possession of the specific skills, experience, background, and abilities to effectively oversee the management of that particular company, and to ensure diverse perspectives will be applied to decision making;
  - ☐ financially literate;
  - ☐ individually seen to have integrity, good judgment, and strong interpersonal skills?
- ☐ Does the company have a process in place (such as a "competency matrix") that identifies the overall specific mix of skills and experience needed for its board to determine if existing and prospective board members are matched to the needs of the business?
- ☐ Does the board have a committee comprising independent directors (or a process to strike such a committee) when it is necessary to recruit and recommend new directors or the CEO?
- ☐ Does the company have a program of orientation for directors? If not, how does the board ensure that its directors understand the respective roles of the board, board committees, and directors, and the nature and operation of the company?
- ☐ Does the company have a program of continuing education for its directors? If not, how does the board ensure that its directors maintain the skill and knowledge needed to meet their obligations as directors?
- ☐ Does the company have an annual form of assessment of director performance, contribution, and attendance?
- ☐ Are the directors compensated, and, if so, is the compensation related in part to director attendance?
- ☐ How is director compensation set? Is it reported, and, if so, is it commensurate with the responsibilities of the position?
- ☐ What is the record of director attendance at board and committee meetings?

3. Board Chair

- ☐ Is the position of an incumbent board chair distinct from the position of an incumbent CEO?
- ☐ Is there a mandate or description of the role and responsibilities of the board chair?
- ☐ Does the board chair take an active role in overseeing overall board governance, including annual board and director assessment, new director recruitment, and ensuring the directors have the skills, tools, and information required to effectively perform their roles and meet their obligations as directors?

4. Board Committees

- ☐ Does the board have audit, corporate governance, and human resources committees? If those specific names are not used, does the board have committees to provide oversight and information to the board relating to finance, governance, risk management (including environment and safety), and successions (including officer and director compensation) issues affecting the company?
- ☐ Do all committees have written mandates?
- ☐ Does the external auditor report directly to the audit or finance committee?
- ☐ Does the chair of the audit or finance committee have a professional accounting or finance designation?

5. Chief Executive Officer

- ☐ Does the CEO have a written job description?
- ☐ Does the board play an active part in setting and assessing the CEO's annual performance objectives and compensation, including variable pay based on those objectives?

6. Corporate Secretary

- ☐ Does the company have a corporate secretary role? If not, who ensures that:
    - ☐ board meetings, attendance, and decisions are recorded;
    - ☐ the board and its committees meet regularly to discuss the company's business;
    - ☐ the board considers, at least annually, all of those agenda items previously identified as requiring the board's attention; and

  - ☐ the board is kept informed of ongoing and/or changing legal requirements and corporate governance practices?

7. Code of Conduct and Ethics

- ☐ Does the company have a code of conduct and/or ethical practices that applies to its directors, officers, and employees? If there is such a code, how is it disseminated to directors, officers, employees, shareholders, and members of the public, and how does the company monitor compliance with the code?
- ☐ What steps are taken to monitor compliance with the code and encourage compliance and voluntary reporting of suspected infractions?
- ☐ What steps are taken to ensure that directors understand their fiduciary responsibility to the company?
- ☐ Are the directors required to sign annual conflict-of-interest declarations confirming they have not been in a position of actual or perceived conflict of interest?
- ☐ Does the board or company have policies in place to deal with situations where a director has disclosed a material interest, conflict of interest, or potential conflict of interest (whether arising from a transaction or agreement the company is involved with, or because of other directorships with corporations in the same sector or with competing businesses)?

8. Transparency and Accountability

- ☐ Does the company publish its corporate governance policies and objectives?
- ☐ How does the actual director performance compare with published policies and objectives?
- ☐ Do shareholders and other members of the public have access to information sufficient to monitor and assess board and director performance?
- ☐ How does the company report its financial results to shareholders and the public (frequency, level of detail, independent verifiability)?