

Committees of the Boards Considerations and Options

INTRODUCTION

The purpose of this Appendix is to address issues and options with respect to Board committees of the Controlled Corporations. In doing so, this Appendix addresses the following key questions:

- What types of committees should the Boards have?
- What should the composition of those committees look like?

ISSUES AND OPTIONS

ISSUE #1: TYPES OF COMMITTEES

According to research, typical standing committees of non-profit boards are:

- Audit Committee.
- Executive Committee.
- Nominating Committee.¹

Typical special committees of non-profit boards are:

- Personnel/Human Resources Committee.
- Fundraising Committee.
- Programming Committee.²

Less frequent, but still common special committees are:

- Communications Committee.
- Compensation Committee.
- Volunteer Committees.³

The Remail Modern Board has requested a Corporate Bylaw amendment to require the establishment of the following committees: Executive Committee, Audit and Finance Committee, Governance Committee, Development Committee, Human Resources Committee, Collection Committee and the Nominations Committee.

Specifying the actual committees that must be established in the Corporate Bylaws would make it cumbersome to restructure or change committees. As these are separate legal entities, there is merit in allowing the Boards to decide the types and numbers of committees they should have. The one exception is an Audit Committee, which is a generally recognized practice of good board governance. Audit Committees

¹ Broder, Peter, Ed. *Primer for Directors of Not-for-Profit Corporations*. Industry Canada, 2002, online: [https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/Primer_en.pdf/\\$FILE/Primer_en.pdf](https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/vwapj/Primer_en.pdf/$FILE/Primer_en.pdf), pages 55-58.

² *Ibid*, at p. 54

³ *Ibid*

are already required by the Corporate Bylaws of the Controlled Corporations. However, City Council would have the option to specify the establishment of any or all committees of each Board. Appendix 5 also contains a recommendation to establish a CEO Recruitment/Performance Committee.

Committees should be advisory in nature. It should be clear that all decisions required must be made at the Board level. Decisions should not be delegated to committees. In addition, having a clear terms of reference for each committee would represent good governance.

OPTIONS

Option 1: Maintain Status Quo

This option would maintain the status quo. As currently required by the Bylaws of the Controlled Corporations, the establishment of an Audit Committee would be required. However, the establishment of other committees would be left to the decision of the Board. This option has no financial, legal or implementation concerns.

Advantages:

- Corporate Bylaw amendments are not required.
- Allows for creation of committees as needed by the Boards.
- Allows for flexibility and ease of change.

Disadvantages:

- Creation of committees will be left up to the Boards so no input by City Council.

Option 2: Amend Corporate Bylaws to Require Establishment of Specified Committees

This option would require amendment to the Corporate Bylaws to mandate the establishment of specified committees. Committees could include any or all of the following: Executive Committee, Nominating Committee, Personnel/Human Resources Committee, Fundraising Committee, Programming Committee, Communications Committee, Compensation Committee and Volunteer Committees. There are no financial or legal implications to this option.

Advantages:

- City Council has input into the required committees.

Disadvantages:

- Does not allow for committees to be created as needed by the Boards.
- Approach would be cumbersome if changes to committees were required.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that an Audit Committee be required to be established and that the Corporate Bylaws of the Controlled Corporations be amended to clarify that committees shall be advisory in nature only and that all decisions must be made by the Boards. (Option 1: Maintain Status Quo)

RATIONALE

The Controlled Corporations are separate legal entities. Their business needs may change with the passage of time. They should be provided with some flexibility as to how their Boards are structured. The creation of committees is part of that decision. The number and type of committees will vary depending on the current activities of each Controlled Corporation.

However, it is a best practice of good governance that all decisions must be made by the Board. Committees can provide recommendations, but all decisions must come to the Board for resolution. Committees should have no authority to make financial decisions, enter into contracts, or in any way bind the Controlled Corporations. We are recommending that the Corporate Bylaws of the Controlled Corporations be amended to make this clear. In addition, as part of the Board orientation, the need for clear terms of reference for each committee will be highlighted.

ISSUE #2: COMPOSITION OF COMMITTEES

Who sits on what committee will depend on the nature of the committee. It may be prudent, depending on their mandate, to include members other than Directors. However, as outlined above, the Corporate Bylaws should clearly identify that the decision or recommendation of a committee is not a decision of a Controlled Corporation until approved by the Board.

The size and membership of Board committees will vary with the circumstances of the particular Controlled Corporation. However some general principles governing who should sit on Board committees is as follows:

“It is essential that specialised board committees be chaired by a nonexecutive and include a sufficient number of independent members. The proportion of independent members as well as the type of independence required (e.g. from management or from the main owner) will depend on the type of committee, the sensitivity of the issue to conflicts of interests, and the SOE [state-owned enterprise] sector. The audit committee, for example, should be composed of only independent and financially literate board members. To ensure efficiency, the composition of board committees should include qualified and competent members with adequate technical expertise.”⁴

⁴ Organisation for Economic Co-operation and Development, *Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 ed., online: <https://www.oecd-ilibrary.org/governance/oecd-guidelines-on->

The ideal composition of committees may vary depending on their function. Audit Committees for example, should be composed of independent and financially literate Board members.⁵ “The scope and definition of independence varies considerably according to national legal context and codes of corporate governance”.⁶ What is meant by “independence” in the context of a Controlled Corporation is obviously different than, for example, in the private, for-profit sector. So, for example, while a member of Council does not have any personal financial stake in the Controlled Corporations, they do represent the interests of the City, which is the sole Member. While the interests of the sole Member are a primary consideration in determining what is in the best interests of the Corporations, the best interests of the Member and each Controlled Corporation are not necessarily identical, and a member of Council may be at greater risk of incorrectly conflating those two interests than a more independent committee member would be.

This may be different for other committees. It may be appropriate to have a member of Council sit on a committee where they have particularly relevant expertise and where there are a sufficient number of seats available for other independent committee members.

Currently, the Corporate Bylaws of the Controlled Corporations do not speak to the composition of committees. In respect of TCU Place, however, the TCU Place Board Governance Manual (2019) provides that the Board’s Executive Committee shall consist of the Chair, Vice-Chair, Treasurer and Secretary, which positions shall be recommended by the Governance Committee of the Board from the citizen appointments. In other words, members of Council and the City Administration appointed to the Board would be precluded from sitting on the Executive Committee of the TCU Place Board. On the face of the information received from the other Controlled Corporations, no similar restriction could be found in respect of those facilities.

OPTIONS

Option 1: Maintain Status Quo

This option would maintain the status quo and let the Boards determine committee membership. This also permits the Boards to restrict committee membership, similar to what the practice is at the TCU Place Board. This option has no financial, legal or other implementation challenges.

Advantages:

- Provides flexibility to the Boards to determine appropriate membership to their committees.

[corporate-governance-of-state-owned-enterprises-2015_9789264244160-en;jsessionid=jkFK3yPniQ02mXygro4B93ke.ip-10-240-5-95](https://www.saskatoon.ca/corporate-governance-of-state-owned-enterprises-2015_9789264244160-en;jsessionid=jkFK3yPniQ02mXygro4B93ke.ip-10-240-5-95), page 74.

⁵ *Ibid*

⁶ *Ibid*, at p. 15

- Would not require Corporate Bylaw amendments.

Disadvantages:

- Composition would be left up to the Boards and City Council would not have control over the composition of committees.

Option 2: Set Parameters in the Corporate Bylaws for Committee Composition

This option would have City Council determine the particular composition of each committee for the Boards in their Corporate Bylaws. The Corporate Bylaws of each Controlled Corporation would need to be amended. This option has no financial implications.

Advantages:

- Establishes set parameters for the composition of committees.
- City Council would have control over the composition of committees.

Disadvantages:

- Provides no flexibility to the Boards to determine appropriate membership to committees.
- Composition changes would be cumbersome and require Corporate Bylaw amendments.

RECOMMENDATION

That the Governance and Priorities Committee recommend to City Council that the determination of committee composition be left up to the Boards. (Option 1: Maintain Status Quo)

RATIONALE

Composition of committees will change as the business needs of the Controlled Corporations change. The Boards should be left with the flexibility to determine who should be on what committee. However, it is important that the Corporate Bylaws specify that committees of the Boards cannot make decisions and that all decisions must be made by the Boards.