

ORGANISATION

Role of chief executive officer (CEO) or managing director (MD)

The most senior executive in charge of day-to day-operations in an organisation is usually referred to as the chief executive officer (CEO). A CEO may or may not also be a director on the board of the organisation. If that person also is a director of the board, then commonly that person may also be accorded status as the managing director (MD). As most CEOs of listed public companies are also appointed as directors of the board of the company, these terms are often used interchangeably. However, there are differences in legal standing and authority between the different descriptors.

For simplicity the term CEO will be used in this document to refer to the most senior operational executive irrespective of whether or not they also be a director on the board.

Although often used interchangeably, and although the functional roles of CEO and MD are often held simultaneously by the same person, there are important legal distinctions between the two.

Generally, a CEO/MD is authorised and responsible for the management of the organisation and its operations by way of delegated authority from the board, or as expressed in the organisation's constitution. This delegation of authority generally includes responsibility for:

- developing business plans, budgets and strategies for consideration by the board and, to the extent approved by the board, implementing these plans, budgets and strategies;

- ensuring the organisation's operations and business are within the parameters set by the board from time to time and that the board is kept informed of material developments in the organisation's affairs, operations and business;
- where proposed transactions, commitments or arrangements exceed threshold parameters set board, referring the matter to the board for its consideration and approval;
- identifying and managing operational and corporate risks for the organisation and, where those risks could have a material impact on the organisation, formulating strategies for managing and mitigating those risks, including for consideration and endorsement (as applicable) by the board;

- managing the organisation's financial and other reporting mechanisms, and control and monitoring systems, to ensure that these mechanisms and systems capture all relevant material information on a timely basis, are functioning effectively and are founded on a sound basis of prudential risk management;
- ensuring that the board is provided with sufficient accurate information on a timely basis in regard to the organisation, its operations, business and affairs, and in particular with respect to the organisation's corporate performance, financial condition, operations and prospects, so as to reasonably position the board to fulfil its governance responsibilities;
- implementing the policies, processes and codes of conduct approved by the board and facilitating the monitoring and reviewing of, and reporting against, those policies, processes and codes of conduct.

The CEO/MD is accountable to the board for the performance of his/her responsibilities with expectations of the CEO/MD keeping the board informed of all events and circumstances which have, or may be likely to have, a material impact on the organisation.

The CEO/MD is expected to:

- provide management oversight and responsibility across the organisation to ensure the effective and efficient functioning of the organisation;
- provide strong and clear leadership internally to the organisation and its people and externally to the organisation's stakeholders.

The CEO/MD is also expected at all times to act and behave with integrity and in accordance with the organisation's code of conduct and values.

The scope of the CEO/MD's role, authority and responsibilities should be set out in the organisation's board or governance charter as well as in a formal job description in his/her employment contract or letter of appointment.

The CEO should propose from time to time for consideration and adoption (as applicable) by the board, a delegations policy and delegations register (or similar instrument) specifying the levels of delegated authority applicable at board, director, CEO/MD, company secretary, senior executive and other management levels (as appropriate).

What are the CEO's role and responsibilities?

The CEO is the head of the executive team and manages the day to day operations of the organisation, its people and resources. The CEO implements the strategy approved by the board and ensures that the organisation's structure and processes meet the strategic and cultural needs of the organisation.

Primary authority for the governance, direction, control and management of an organisation is usually constitutionally and legally vested in the board. Therefore, it is necessary for the board to resolve to delegate such parts of that primary authority to the CEO, so as to empower the CEO to take responsibility for the day to day operations and management of the organisation. The CEO can then sub-delegate certain of those delegated powers to other

executive officers and managers of the organisation. This is commonly effected by a delegations policy and delegations register proposed by the CEO and approved by the board.

In addition to the general responsibilities of a CEO mentioned above, the following further expectations commonly apply to CEO's:

- With respect to board accountability, the CEO should:
 - report to the board on the status of policies, strategies, directions and plans (business and otherwise) set or approved by the board;
 - inform the board of all events within, or which reasonably should be within, his/her knowledge or awareness, which may or do have a material impact on the organisation's activities or well-being;
 - observe limitations of authority as set from time to time by the board; and
 - regularly meet and consult with the chair (as the lead representative of the board) on all such matters.
- With respect to leadership, the CEO should:
 - provide a strong, clear leadership to the organisation;
 - ensure the organisation's code of conduct/values is a living document, regularly updated, monitored and communicated with ongoing training provided;
 - provide internal leadership direction, goals and energy to the organisation's personnel;
 - create and sustain a culture of innovation and enablement, underpinned by and expressing the values and philosophy of the organisation;

- monitor and interpret the external environment in order to continually position the organisation in its markets to best advantage;
- maintain awareness of political, governmental, business and industry components of the external environment, on a local, national and international level;
- participate in appropriate business and professional associations, networks and activities relevant to the organisation's interests;
- ensure relationship building with external stakeholders.

With respect to overall management oversight and responsibility of the organisation, take responsibility in:

- the appointment and management of key executive and management personnel;
- setting up, maintaining and reviewing organisational structure, systems, policies, processes and procedures, in order to guide, support, inform, service and monitor the prime functions of the organisation;
- ensuring legal, ethical and professional practices and boundaries consistent with the organisation's code of conduct/values are adhered to;
- ensuring financial activities are managed within agreed budgets and informing the board in a timely manner should the CEO become aware of any material adverse movements to the budget;
- ensuring effective and efficient functioning of the organisation and all its operating divisions.

- With respect to overall integrity, at all times personally behaving and conducting him/herself:
 - consistent with the organisation's code of conduct/values;
 - in such a manner so as not to bring the organisation into disrepute or disrespect.

What is a desirable working relationship between the CEO and the board?

A most important role of the board is to appoint and work effectively with the CEO. In practice the two are mutually dependent on one another. Boards rely on CEOs to provide input into strategic development, implement strategy, communicate management's perspective and alert the board to material issues that are relevant and material to the organisation. The CEO relies on the board for delegation of authority, clear direction, mentoring and support.

This relationship is crucial to the organisation's success. It can be hampered by a lack of clearly defined responsibilities/delegations or by either party stepping outside of those agreed terms. The respective roles and responsibilities of both the board and the CEO should be captured in writing, in the organisation's board or governance charter, and in respect of the CEO, in the CEO's employment contract or letter of appointment.

What should be covered in terms of appointment and executive service agreements?

The terms and conditions of the CEO's appointment plus the extent of the CEO's authority should be reflected in either a letter of appointment signed by both parties or in a more formal executive service agreement.

Typically, this will cover the CEO's:

- duties and responsibilities;
- delegations as per the delegations policy and register;
- length of contract and conditions for reappointment;
- structure of remuneration package, including incentives and other financial benefits;
- approval processes for expenses and travel;
- entitlements to leave and any special benefits;
- any special conditions to apply in the case of a takeover or merger with another company;
- any special requirements such as prohibition from having interests in competing organisations;
- frequency of performance evaluations;
- commitment to abide by company and regulators' rules;
- commitment to always promote the interests of the organisation and not to engage in any conflicting interests;
- obligation to return all organisational information to the organisation when leaving;
- confidentiality clauses;
- circumstances in which termination may occur, and associated procedures and entitlements.

What are the advantages of clear board expectations and delegations of authority?

The process of formalising the CEO's powers and responsibilities in writing will help the board to clarify its expectations. At the same time the board's responsibilities should be made clear in its own charter. These documents are meant to give both sides freedom to act within boundaries, rather than to constrain.

Conversely, not defining the boundaries of the CEO role means that a CEO has to regularly approach the board for approval of activities and plans. This can be an ineffective use of time, does not encourage high performance and risks misuse of the board's skills, knowledge and experience by making it a checker of operational matters. By communicating expectations and responsibilities, the CEO is free to work within these boundaries to achieve organisational goals, and the board is not left to make operational decisions which should be the domain of management.

An important clarification concerns matters which are within the domain of the board for decision or approval. As directors have specific duties under the *Corporations Act 2001* (Cth) (Corporations Act) they should retain control over some matters. This will vary from organisation to organisation and even from time to time within the same organisation depending upon circumstances then applying.

Delegations should be reviewed regularly as a matter of course but may need extra revision if unanticipated situations arise. For listed companies, the obligations of the board regarding continuous disclosure to the ASX about market sensitive matters requires clear delineation and understanding.

Ultimately, it should be noted that directors are generally responsible for the exercise by the CEO of any powers delegated by the board to that person.

How and when should a CEO report to the board?

Expectations regarding CEO communication with the board – for example, frequency and format – are also important. Generally, the CEO should write a report for inclusion with the board papers for each board meeting and invariably will probably speak at the meeting on matters arising. To use this opportunity effectively the CEO should focus on the role of the board – governance and oversight – and use the board's expertise to assist with experienced and skilled consideration and deliberation of such issues. The CEO should ensure that the board receives reports in time to consider them fully.

Commonly CEOs provide a more general 'CEO's Report' to regular board meetings on a range of matters relevant to the organisation to help keep board members informed generally concerning the organisation, the environment in which it operates, its business and affairs. Matters requiring decisions or substantial discussion by the board are better placed as separate board agenda items. The CEO may also need to refer matters to the board at other times. In these cases, the chair is the main contact point for the CEO.

Do CEOs generally sit on boards?

CEOs as executive directors are common in the corporate sector, where they act as both head of the executive team and also sit on the board as a director. In the not-for-profit and public or government sectors, it is less common for CEOs to also be board members, although this is changing.

There will be times when it is important for the board to meet without any management personnel present. Executive directors in practice may also absent themselves from parts of board meetings in order to deal with real or perceived conflicts of interests. Executive directors are not usually present for board proceedings when the CEO's performance or remuneration are being discussed. They may also be invited to leave the meeting momentarily when the board or the relevant board committee is meeting with the auditor to allow the auditor to be frank with board members as to the performance of the finance executive team. It is also considered good governance practice for the board to meet from time to time in "closed session" without the presence of executives, again to facilitate open candour when the board may wish to critically reflect upon the performance of management.

Is the CEO a director or officer for the purposes of the Corporations Act 2001 (Cth)?

Whether an MD, an executive director or the chief executive officer (without also being a director), CEOs are considered to be either directors or officers for the purposes of the *Corporations Act 2001* (Cth) (Corporations Act).

The term 'director' is defined in s 9 of the Corporations Act to be mean anyone:

- appointed as a director or an alternate director who is acting in that capacity, regardless of the name given to their position;
- not validly appointed as a director but acting in that position anyway or a person with whose wishes or instruction the directors are accustomed to act.

An officer of a corporation is defined in the same section as:

- a director or secretary of the corporation;
- a person who makes or helps to make decisions that affect the whole or a substantial part of the business or who may significantly affect the company's financial standing;

- a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation);
- receivers, administrators, liquidators, trustees.

Are there any differences in legal responsibility between a non-director CEO and a managing director?

The question is sometimes asked whether a CEO who is not a director has different legal responsibilities from a CEO who is a director (that is, a managing director). In relation to the key responsibilities set out in the Corporations Act, the sections relating to the duty of care and diligence and the duty of good faith apply both to directors and officers (ss 180 to 184). Many other sections of the act also apply equally to directors and officers. A non-director CEO will always be regarded as an officer.

The one area where a non-director CEO has a different level of liability to a managing director is in relation to insolvent trading (s 588). This section specifically refers to directors and does not refer to officers.

Should a CEO sit on the board of another organisation?

This will be determined by individual boards as they see fit. Remembering that a CEO position generally is a full-time role, the board will place the needs of the organisation first in making its decision.

At the same time a CEO may gain significant insights and gain professional development from sitting as a non-executive director on the board of another organisation. Much may depend on the time required to fulfil the CEO's responsibilities in that other role, and whether that other role may present a potential future conflict of interest for the CEO. Many CEOs sit as non-executive directors on the boards of NFP or charitable organisations and in such manner also give back to the community.

About us

The Australian Institute of Company Directors (AICD) is committed to strengthening society through world-class governance. We aim to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. Our membership includes directors and senior leaders from business, government and the not-for-profit (NFP) sectors.

For more information **t: 1300 739 119** **w: companydirectors.com.au**

Disclaimer

This document is part of a Director Tools series prepared by the Australian Institute of Company Directors. This series has been designed to provide general background information and as a starting point for undertaking a board-related activity. It is not designed to replace legal advice or a detailed review of the subject matter. The material in this document does not constitute legal, accounting or other professional advice. While reasonable care has been taken in its preparation, the Australian Institute of Company Directors does not make any express or implied representations or warranties as to the completeness, currency, reliability or accuracy of the material in this document. This document should not be used or relied upon as a substitute for professional advice or as a basis for formulating business decisions. To the extent permitted by law, the Australian Institute of Company Directors excludes all liability for any loss or damage arising out of the use of the material in this document. Any links to third-party websites are provided for convenience only and do not represent endorsement, sponsorship or approval of those third parties, or any products and/or services offered by third parties, or any comment on the accuracy or currency of the information included in third party websites. The opinions of those quoted do not necessarily represent the view of the Australian Institute of Company Directors.

© 2020 Australian Institute of Company Directors