Governance in Small and Medium business
Maximising the effectiveness of your Board

Contents

I. Why establish a board

The overall objectives and purpose of a Board are to ensure that your company achieves the agreed targets set by shareholders, and that the long term interests of shareholders are protected for example by limiting exposure to risk and avoiding wastage of money through poor commercial and investment decision making.

This overall purpose should guide decisions on board membership and how your board functions.

Normally the specific objectives / responsibilities of a board are to:

- Provide strategic direction to the overall business, and thereby clear targets to the CEO. This includes providing clear growth targets, risk appetite and limits, guidance and direction on major strategic decisions such as diversification into new areas of business activity, acquisitions etc.
- Manage and monitor the delivery of those targets and the performance of the CEO
- Add complementing skills and industry expertise that your company does not have in-house. Ensure that your company has the right processes in place to manage growth and risk, focus your strategy, raise capital if relevant, and potentially prepare for a successful exit in a tax efficient manner at an optimal price.

- Guide and help on bringing in new talent—both at the board and management level—and help with succession planning at senior management level.
- Guide on other HR issues – ensure that a fit for purpose performance management system is in place for all members of the management team and that remuneration and reward systems are aligned to delivery of the agreed goals.
- Offer access to wider contact networks – e.g. access to potential new customers, distributors, funders, technology, potential buyers and other external entities who can benefit the business interests

The board of a business should add value to the business, and not replicate activities already handled by other managers of the company. For example, the board should guide, but not get involved in the day-to-day management of the company, as this is fundamentally the task of the company's management. Directors should have the necessary resources, information and freedom to oversee and challenge the decisions and other actions performed by the management team, particularly for significant decisions where they should be able to interrogate the decision before it is implemented, for example with bigger investments.

II. How to establish a board

You can choose to establish a fully legally constituted board whereby members of the board are directors of the company with voting rights. In that case you would be well advised to do this in the context of a well thought through shareholders agreement (See note on Shareholders Agreements) and get legal advice from a legal practitioner with experience in this specific field.

You can also choose to create an "Advisory Board" whereby the board has a mandate to offer advice and guidance but do not have any voting rights and therefore do not have any legal power to make decisions in the event that shareholders disagree with their decisions.

The arguments in favour of an advisory board are that it is easier, faster and cheaper to establish (no real need for legal advice) and that as the board has no legal power you have not diluted the power of the shareholders. It can serve as a quick way of injecting experienced professional skills into decision making with very little risk to the shareholders.

The main argument against is that in the absence of any legal underpinnings and power it is simply too easy for shareholders to ignore the advice of what is then just an outside professional. Such Advice may at times be seen as unpalatable, and therefore may be ignored. For example if a company has had weak financial management systems and is not fully compliant as a result, shareholders may baulk at the necessary investment to bring systems up to required standards. Likewise in the abssence of voting rights and legal basis the board can often drift into ineffectiveness and fall apart as meetings become less frequent and are seen as a waste of time.
The remainder of this document is relevant to either board format.

III. Membership of the Board: Profiles, roles and responsibilities

In the context of a smaller business, the main shareholders (i.e. with shareholding greater than circa 19%) will typically have representation on the board. This should be agreed in advance of establishing the board and documented in the shareholders agreement. Shareholders may choose not to sit on the board or it may be deemed appropriate to limit membership of the board on other criteria, but this must be discussed and agreed in advance and documented in the Shareholders agreement.

In an SME The Board should ideally have 2 to 3 external members chosen on the basis of expertise and a balance of skill sets should be represented which reflects the immediate and urgent priorities of the business. This might include expertise in Finance, International Business Development, Strategy, Operations, legal, R&D etc., depending on the immediate priorities of your company. This means that the board members should be appointed after shareholders have at least agreed the high-level parameters of a 3 to 5 year plan.

The responsibilities of board directors are enshrined in company law and usually further documented in the Shareholders agreement to reflect the specific circumstances of the company.

Key elements include:

Duty of Care*:* Before making a decision, directors must act in a reasonable manner and make a good faith effort to analyze and consider all relevant and material information available for their consideration. Under the duty of care, directors must:

- Carefully study any material information available to them before taking any decisions.
- Act with diligence and competence.
- Make decisions on an informed and deliberative basis.
- Regularly attend the board's meetings, come prepared to these meetings, and actively participate in them (this part of the duty of care is also referred to as the "duty of attention" or "duty of obedience").

Duty of Loyalty*:* In performing their duties, directors must be loyal to the company, putting this loyalty ahead of any other interests. Directors cannot personally benefit from any action taken on behalf of the company. Under the duty of loyalty, directors must:

- Put the interests of the company above any personal or other interests.
- Immediately disclose any conflicts of interest to the rest of the board.
- Abstain from voting on matters that could involve a personal conflict of interest.

It is important to make sure that directors appointed to the board are fully informed of their responsibilities and expectations of their performance and that the process for removing non performing directors should be transparent and swift and not end up costing money to the company.

Board training is increasingly seen as a prerequisite for a board to carry out their duties effectively.

IV. Attendance of non members

The CEO and other operational managers of the company may be invited to attend for specific issues/ decisions and the board may decide to request specific reports in advance of a meeting on these issues/ decisions. The CEO/ CFO will normally present the monthly financial report as a standard agenda item and will be tasked to follow up on agreed corrective action as documented by the board.

Depending on the agreed number of members on the board it may be deemed useful to establish sub-committees for example a remuneration committee, risk management committee, audit committee etc.

A Secretary should be appointed for each meeting to ensure accurate minutes are taken. It is not advisable that the Chair should also take the minutes as this dilute effective chairmanship. Minutes should ideally be circulated no more than 3 working days after the meeting as otherwise memories may be blurred and important actions / decisions may be missed. Minutes should be written very concisely highlighting agreed actions, the individual responsible and agreed timing/ deadline for those actions and these should be followed up at subsequent meetings.

V. Chair: Appointment, Voting rights and Role

The appointment and removal process and exact voting rights of the Chair should be clearly defined in the Shareholders agreement.

The role of the Chair is to

- Provide leadership to the board, ensure that the board is effective in delivering on the remit and goals laid down in this charter – this includes assessing the composition, skillset and procedures of the board and strengthening these as appropriate
- Chair meetings and ensure that board meetings proceed in an effective and efficient manner with adequate information and appropriate processes to drive decisions
- Ensure that the underlying governance structures and measures are adequate across the organisation with regard to all risks
- Guide the company towards deliver on financial targets while mitigating financial risks

It is typically the responsibility of the Chair to ensure that

a) All parties are informed on a timely basis of the time and place of board meetings
b) The standard agenda items and all specific additional items are fully covered at the meeting in a timely manner
c) Standard Reports and any other relevant information are circulated in advance in a format that is easily understood by all board members
d) The board functions effectively including minute taking and timely circulation of minutes

e) The meeting is efficient and effective – for example information / data should be provided in advance in writing in a clear manner so that the meeting can focus primarily on decision making rather than recounting information verbally which should be better provided in writing in advance.
f) When items are brought to the board for decision making, decisions are made where possible, on adequate information, and that otherwise where a decision is deferred that information gaps are clearly identified and further information is systematically sought for the next meeting;
g) Decisions are made on clearly defined criteria where relevant in a transparent and time effective manner, for example CAPEX, R&D, New Product development decisions should be presented in the format shown in appendix A, and decisions to proceed should be based as indicated on Return on Investment, quality of the information and assumptions, and a comprehensive assessment of the risk involved in the decisions.
h) There is effective discussion by encouraging and enabling full participation by all members of the Board;
i) Ensure all company level governance structures are in place and adequate to address risks, as well as ensure that all appropriate relevant documentation in this regard is in place and updated on a timely basis. This might include Health and Safety policies, Human resource policies and documentation, risk registers etc.

VI. Frequency of Meetings

This really depends on what is happening in your company. If you are embarking on a radical change in strategy, a massive growth spurt or on the contrary you are in severe financial distress then it is a good idea for the board to meet more frequently to make sure your planned actions are implemented and have the right effect. It may be necessary to take corrective action very quickly in the event that things go wrong and if you have to wait 3 months for the next board meeting that may be too late. Monthly board meetings with provision for communication and if necessary decision making between meetings would be advisable.

On the other hand if the company is in a very stable steady state phase you may decide to have less meetings, say every 2 months.

Frequency is often set in the Shareholders agreement but should be open to change if circumstances change.

VII. Board Papers: Circulation of Information and Reports in advance of Meetings

Standard Board papers must to be circulated to all Board members in time for members to read these carefully and if appropriate ask for further background information. This would typically be a minimum of 2 working days in advance of board meeting, to include

a) **Agenda for the board meeting** which will include standard items as indicated in section IX below, and also any decisions to be made/ non standard issues that may arise from time to time such as special projects, discretionary opportunities to invest
b) **Monthly financial report** showing management accounts (P&L, Balance sheet and cashflow statement with reconciliation from profit to cashflow) accounts to show prior month, year to date and calendar year outlook vs. budget with clear explanations of variances for example full clarity on FX impacts
c) **Update on any risks** or risk management issues including Risk register updates if any
d) Summary of **financial and other information specifically relevant to decisions** to be taken, see appendix A for suggested format for presentation of a proposed investment decision
e) Any other relevant background information which is deemed relevant by a board member

Any member can place an item on the agenda if back up information/ documentation is made available to support the item and circulated 2 working days in advance. In an emergency/ urgent decision scenario this can be waived, but the member proposing the item should seek to ensure that adequate information is presented to members at the meeting itself to enable them to make an informed decision.

VIII. Management of conflicting views

The decisions of the Board will ideally generally reflect the consensus view of members of the board and it is expected that members will support the communication and implementation of that advice. In exceptional circumstances, decisions may be put to a vote in which case voting rights should be clearly defined in the Shareholders agreement.

Clarity of information to support decisions, decision making methods and criteria is crucial to minimise conflict by ensuring that decisions are made with the best possible information and on a clear basis.

IX. Standard Agenda/ Content of Meetings

Content of meetings will be guided by the defined objectives of the Board. The standard Meeting Agenda will include the following items as well as any special or ad hoc decisions or issues that emerge:

a) **Company strategy and Financial Plan** – It is the board's responsibility to agree the business plan for the company. The detail of the plan including the financial forecast will normally be prepared by the CEO and the finance manager who will present to the board. The board should seek agree a plan typically for the next 3 to 5 years and revise/ reforecast as and when appropriate. Normally a full revision of the 3/ 5 year forecast is done annually for the next period of 3 to 5 years. The board make also seek revision of the forecast for the remainder of current financial year when deemed

appropriate, for example if circumstances and performance are very different to expectations at the time the plan was prepared.

The plan should be examined, interrogated and signed off at board level on the basis of achievability, degree of risk, the impact on company value, the sustainability and funding implications of any growth elements, quality, customer satisfaction implications and above all on the whether or not it is coherent with the stated aims of shareholders.

b) **Delivery of the financial plan:** At each meeting the Board should monitor whether or not the plan and the financial forecast are delivered. This assessment will be done on the basis of a report examining whether or not the plan has been delivered to date (Actual vs. forecast), the reasons for any variances vs. the budget/ financial forecast and suggesting corrective action to get the company back on track.

   To ensure that balance is maintained in delivering on financial targets (for example that profits are not maintained by sacrificing R&D investment, it is advisable to track delivery of the plan using a balanced scorecard that monitors delivery on issues like quality targets, customer satisfaction, R&D project delivery etc.

   The board should agree on corrective action and discuss also any future risks that may impact the delivery of the plan in the remaining forecast period, Risks should be clearly identified and addressed. Actions agreed to get the budget back on track should be documented at each board meeting and followed up at the following meeting to ensure that action was taken and that such action had the desired effect of getting the business back on track as regards budget delivery.

c) **Financial Management: It is the responsibility of the board to** ensure that financial management systems, skills and resources in all areas of financial management are adequate and rigorous as appropriate to underpin strategy implementation. This includes monitoring the adequacy of financial risk management – FX risk, Interest rate risk, commodity price exposures, internal controls, and counterparty risks including customer credit, bank and supplier risk. The board should seek update reports on this from CEO/ CFO to get assurance that systems are fit for purpose on an on-going basis. In a larger company an audit committee may be established to ensure that accounting and other systems are rigorous.

d) **Business development: Assuming your company is seeking to grow revenues, there should be a plan presented and agreed on how to develop new business and grow the top line. The board should then systematically** Monitor the delivery of the business development plans and targets.

e) **Operations:** The board should be fully informed on recent issues in operations and of issues arising over next 2 to 3 months including in particular any risks that might impact ability to deliver budget

f) **Research and Development/ New Product development/ CAPEX expenditure over an agreed level of expenditure:** As a core element of the budgeting process and budget sign off, R&D/ NPD/ CAPEX projects over an agreed threshold should be presented to the board and assessed on the basis of whether or not they deliver an appropriate Return on Investment. Any R&D/ NPD / CAPEX proposals that emerge

during the year and after the budgeting process above this threshold will be presented for approval by the board in line with standard templates and approval systems

g) **Other expenditure and purchasing systems:** The board should ensure that there are guidelines in place to ensure that purchasing decisions are made in the best interests of the company. If there is a purchasing protocol in place the board must ensure that checks are also carried out to ensure that the guidelines are consistently followed.

h) **Risk Management** - The board should establish clear guidelines on the overall risk appetite in the company and ensure all significant risks are identified and addressed in all aspects of the business. The board should ensure that an organisational risk management process is in place, that key risks are addressed, and that the risk register is updated in a timely manner. Typically risk registers to be examined and updated at least yearly.

i) **Governance and company guiding policies** – The board should ensure that the company establishes and maintains best practise policies where relevant. For example in the areas of Health and Safety, Human Resource Management, grievance procedures etc. The board should monitor the adequacy of such policies, adherence and compliance to the rules/ standards and should promptly address any issues arising. The board should also review the Shareholders agreement and the Board Charter annually to assess whether these need to be updated.

j) **Quality**: If quality is an important element of your company activities, the board should guide on what standards and certifications should be in place and should monitor the adequacy of quality systems and standards on an on-going basis. The Board should receive regular reports on quality scores and adherence to all standards

k) **Human resources**: The board should address any gaps in human resources/ skills by ensuring appropriate recruitment practises/ training programmes/ liaison with local colleges/ Public campaign to maintain positive company image as good employer. The board should also assess the senior management team to ensure that it is adequately skilled, structured and resourced to deliver the targets. The board should approve all senior recruitment decisions and appointments to the senior team

l) **Human Resources: Oversee management performance and remuneration**: ensure that there are clear deliverables and goals for all managers to get accountability at individual Management level for implementation of strategy, that there are adequate feedback systems in place to drive delivery and that remuneration and reward systems are fair and in line with market salary and bonus level.

m) **Monitoring delivery on Special projects** – your company is very likely to have specific projects underway at any point in time – for example s change in legal company structure; establishment of new Management information Systems, establishing a new subsidiary n a new business activity. The board should be fully

n) **Legal issues**: Customer contracts, patent protection, any other legal issues are in place in line with planned deliverables.

X. Board remit: Items that require sign off; thresholds for decisions to be brought to the board and format to present proposals for decision making

One of the key functions of a board is to ensure that strategically important decisions and major items of expenditure are examined before they happen to ensure coherence with strategic goals and priorities.

The following items must be submitted for review, comment and approval to the Board. This list is indicative and the remit of the Board is not limited to this list, which can be updated as required/ agreed at any time:

a) Overall company strategy and to be discussed and signed off by board including clarity on risk and growth appetite, new business development strategy, agreement on whether to diversify outside current core activities, acquisition strategy, risk management strategy, new product development strategy, and ultimately timing and strategy for EXIT
b) Governance Structures to be reviewed and updated as required by the board, for example ensuring that an adequate control environment is in place in all aspects of financial spending
c) The annual budget, and three-year financial forecast to be updated at least annually and in between if required and signed off by board in accordance with the relevant sections of the Shareholders Agreement.
d) Annual marketing plans and budgets and all other departmental plans to be presented to the board for approval as an inherent component of the presentation and sign off of the annual budget and3 year plan. This will include an annual plan showing planned R&D, NPD and continuous improvement projects as well as any other CAPEX to be included in the budget showing the cost and benefits by project using the template in Appendix A
e) Company, COO/ CEO and senior management Balanced Scorecards to be agreed, signed off and monitored by the board
f) All investment/ Capital expenditure / R&D project spend/ NPD project spend / Continuous Improvement spend / All other expansion proposals – e.g. overseas initiatives that require upfront investment in excess of €20,000 which have not been already approved in the budget process, to be presented and proposed for sign off by board using the summary template shown in Appendix A. That means where a discretionary opportunity emerges during the year which was not reflected in the budget plan a proposal should be brought to the board clarifying the cost of the proposal and the timing and level of benefits with clarity on underlying assumptions
   Non discretionary or emergency decisions in this category which must proceed immediately as otherwise the company business would be significantly impacted can proceed without a priori authorisation if necessary but the board should then be fully informed at the next possible meeting of the expenditure, the amount, purpose and the reason that a priori approval could not be sought.
g) All significant external funding decisions, including any Increase of bank loans or

leasing in excess of €50,000 to be proposed in advance and signed off by board, any third party equity investment or any other funding type to be proposed to and agreed by the board.

h) Hiring and firing of anybody in the senior management team or anybody paid in excess of €60,000
i) Remuneration of the senior management team and awarding of bonuses thereof – senior management team to include all managers reporting to the COO
j) Design of bonus schemes for senior management – i.e. clarification of precise criteria for partial/ compete payment of the designated bonus for each member of the senior team.
k) **Policy documents: HR, Health and Safety, Travel and Expenses policies etc.**: Clear policies should be agreed, documented and communicated to all relevant managers to pre-empt inappropriate actions or use of company funds.

l) **Succession planning for management roles,**
m) Dividend payments to shareholders to be agreed and signed off by the board in view of the cash available for distribution in the context of company profitability and investment needs
n) Partial or complete company sale

XI. Compensation and Expense Reimbursements for Members of the Board

Compensation for members of the Board will be as agreed in writing by the shareholders of the Company based on market level fees for directors of similar sized companies. Board members shall be entitled to reimbursement from the Company for reasonable expenses incurred by them in connection with their Board services upon the presentation to the Company of written documentation for such expenses. Expenses must be incurred within travel expenses policy as established by the board, and for travel authorised by the board.

APPENDIX A: Sample Template for NPD/ R&D project/ other expenditure proposal for Approval at Board

Summarise the proposed project under following headings with brief text:

a) Project title

Short title that conveys what the proposed product/process/service will be once the R&D / NPD project is complete.

b) Project summary

Non-technical description of the proposed product/process/service, the issues it will address, and its significance for potential customers. Why the project is important and how the results will impact YOUR COMPANY. Identify any key risks (technology, market, regulatory, operational).

c) Team and team experience

Who is needed to manage and deliver this project, what will they be doing and what previous experience to they/ Bellurgen have on delivering similar projects

d) Summary of equipment, machinery and/or facilities needed if relevant

Provide a description of the main equipment and/or facilities required during the project.

e) Key collaborators if relevant

Identify any key collaborators, alliances or other linkages that are relevant to the project.

f) Any work completed to date

Summarise work already completed leading up to this proposal, including any technical evidence that support the feasibility of the proposed project and clarify the current stage of development of the proposed project.

g) **Project Schedule/ timing**

When does the project start, finish, key milestones?

h) Regulatory / Customer Approvals required if any

If applicable, summarise any regulatory or customer approvals required with timelines and actions to achieve these

i) Commercialization Strategy

How the resulting product will be sold, how revenue will be generated including summary value proposition, pricing strategy, route to market to include:

- The need for this product;
- The size of the market and the targeted niche within the market;
- The potential competitors and competing products, processes or services;
- The market penetration objectives and the associated major challenges;

j) Project Costs and Financing

Provide summary of the proposed project costs in the format below, expand the detail if required, or for larger projects

Project Proposal Template: All amounts to reflect cash impact pof project

	Now	Year 1	Year 2	Year 3
Project costs				
Labour costs - total cost of Engineering hours*				
Machinery and equipment				
Other upfront investments for example investment in stock or other working capital(list)				
Incremental sales resulting from project**				
other cash benefits e.g. grant funding				
Direct cost of sales relating to product sales				
Incremental overhead if any				
Ongoing investment required for the project to compete				
Any other cash costs				
Total cash impact of project				

k) For key assumptions made above, e.g. total cost of engineering hours, incremental sales and incremental overhead provide a brief explanation of the basis for the numbers shown.