An Introduction to Advisory Boards

A short Guide to Best Practice for the Design and Management of an Advisory Board for Privately Owned Businesses in New Zealand

Adapted by Dr Leith Oliver from a variety of National and International sources listed in the Appendix

Contents:

1. What Is An Advisory Board?

It may be best to start by establishing what Advisory Boards are not. They are not substitutes for statutory boards of directors and do not have authority over the governance of an organisation.

The selection and oversight of management, monitoring of performance, approval of strategy and assessment of risks are all subjects properly reserved for the main board. An Advisory Board can support the board by providing expert insight or contacts, but it must be clear where ultimate decision-making authority and collective responsibility lie.

“An Advisory Board is a group of select people who are retained for the sole purpose of providing strategic advice to a business entity. The role of an Advisory Board is non-binding and informal in nature. In most cases the Advisory Board may consist of people drawn from various walks of life, with diverse capabilities and expertise in various areas of business such as operations, legal matters, finance manufacturing and human resources. Businesses can then use this expertise to enhance their business capability”

The Advisory Board will meet at prescribed periods annually (typically four to six times) and after considering the main management issues it will give advice on suggested changes or improvements and may provide tools and methods on how to implement those changes. The network connections and links of the Advisory Board members can also add significantly to the value they can provide to the business.

Meetings should follow a set agenda (section 6) that is relevant to the business needs and all meetings must be recorded in meeting minutes that show the nature of the advice given and to show that the Advisory Board gave advice only and did not act with authority or direction on business decisions. This is important because it avoids any legal liability or fiduciary responsibilities falling to the Advisory Board relative to the management of the Company. (Section 8)

2. **Why Create An Advisory Board?** (cleverism.com)

Virtually any company or business can benefit from the perspective and wisdom of an experienced collective of outside advisors. Most businesses decide to create Advisory Boards when it is apparent that there is a subject area where expert outsiders can augment the knowledge, understanding and strategic thinking of the board and management team. Experienced Advisory Board members can provide technical or specialist advice and extend the range of skills and understanding of management and the board in areas beyond their day-today fields of expertise.

There is a critical balance to be struck, however. When considering the composition of the Advisory Board, the company should give thought to what skills and experience rightly belong to the Directors of the Company.

Individual Directors or Boards of Directors would certainly take advice and there would be directors who lacked particular industry experience, but collectively, the board should have the experience and skills to challenge the advice received at a sophisticated level."

Companies should seek Advisory Board members whose qualities complement the existing Directors and management team, while remaining mindful that an Advisory Board should not be used to mask gaps in knowledge or skill that rightly belong on any main board.

Advisory Boards can be a useful way for the main board to challenge its own assumptions, particularly on specialist or technical matters. As Bill Emmott, former editor of The Economist and a prominent Advisory Board member, points out: "They are there to give focus to or sometimes challenge research and intelligence work being done in the company, thus avoiding groupthink and giving direction on big picture issues."

Advisory Boards provide access to talent that boards would otherwise not be able to tap. Owen Jonathan from PricewaterhouseCoopers UK adds: "They are a way of getting expert advice from a range of experts whom you might not be able to source in a more formal capacity. They develop propositions and provide acquaintance with factual information that businesses don't have."

If the business is growing rapidly the Advisory Board can be a way of developing and testing advisors with an eye on selecting advisors to fill a possible future position on the formal Board of Directors. An Advisory Board can serve as a feeder group for a Board of Directors. Any newly formal Board of Directors will function well if it is comprised of individuals whose chemistry is good and who have the skills appropriate to the needs of the company. Although the development of a Board of Directors is a long-term project, it may be helpful in the shorter term to observe the nature of contributions that individuals can make and the extent of their commitment on an Advisory Board, before appointing them to a Board of Directors (Barry Reiter)

3. Advisory Boards Vs Consultants

A question sometimes arises on the difference between using an Advisory Board versus employing consultants for discrete situations where the CEO needs help on a specific issue.

The Advisory Board function is more related to the general management of the company and less related to operational issues. Because of the focus on the full direction of the company, the role of an Advisory Board will include significant attention on strengthening the company for the future. In contrast, consulting projects while being done for strategic reasons will be more functional and operational in nature rather than strengthening the general management of the company.

In a comment from Michael Dortch global IT industry analyst, consultant, journalist, and marketer, "Another distinction is that consulting services typically come from professional consultant companies, whereas advisory services come from professional whole-business advisors" - giving a more holistic level of advice.

Other specific differences are:

- Consulting Services are infrequent and discrete.
- The client "hands over" the problem to consultants and the solution is handed back.
- The client sometimes feels a lack of ownership and a reduced commitment to execute.
- Consultants are "gone" after the solution is developed.
- Necessary capabilities are seldom gained inside the company.
- The problem and its solution are fixed whereas the ongoing problems, challenges and context change frequently and the original solution may become obsolete at the end of the project.

In contrast Advisory Services:

- Are frequent and continuous.
- The solutions are grounded in best practices of all general management disciplines.
- The client leverages facts and advice of experts but retains ownership of the problem and the solution.
- Advisory Services can sometimes result in solutions which are not common practice or theoretically perfect but are much more likely to be implemented.
- The advice extends beyond the solution and includes ongoing implementation issues.
- Internal capabilities are gained and teams are upskilled with improved capabilities.
- Increased Agility – Agility is an iterative process and there is continuous learning by the company.

Reference: Michael Dortchl (https://www.techtarget.com/contributor/Michael-Dortch)

4. Governance - Board of Directors and Advisory Boards

The issue of 'Governance' is relevant to the best practice in management of business and in particular to the management of privately owned and managed businesses in New Zealand. If the management of the current business operations along with the strategic direction of the future business is solely in the hands of one person then there is a weakness of both future vision, strategy and operational knowledge.

While Advisory Boards are not legally responsible for 'Governance' in a company, they can have a significant input into the thinking and improvement of Governance in the privately owned business. Advisory Boards can provide valuable assistance to the Company but they have no fiduciary or legal responsibilities relating to the advice they provide.

Good Governance is defined in the following five steps provided by Sir Adrian Cadbury (Corporate Governance and Chairmanship: A Personal View 2002).

i. Determining the objectives of the organisation
ii. Determining the ethics of the organisation

iii. Creating the culture of the organisation
iv. Ensuring the compliance by the organisation – and
v. Designing and implementing the Governance framework for the organisation

In comparison to this definition, the Institute of Directors in New Zealand provides ‘The Four Pillars of Governance Best Practice’ which has similar elements but with a slightly different focus:

I. Determining purpose
II. Building an effective governance culture
III. Holding management to account
IV. Ensuring effective compliance with regulatory rules and fiduciary duties

So the responsibilities for governance are carried mainly by the company directors with full legal liability for the decisions and actions of the company and its management. Advisory Boards provide advice but do not make decisions and have no authority to govern or direct. Because of this fundamental difference Advisors escape the formal and legal responsibility for the company’s actions or any negative commercial effects on other stakeholders in the business environment.

In some situations there is a legal requirement for a Board of Directors and an Advisory Board can still be used to support the Directors. In this case Advisory Board advice tends to be more related to operational detail and expert opinion on specific issues while the Board of Directors is responsible for major decisions on the direction and future of the company and effective delegation of those decisions to the management of the Company.

The Advisory Board can provide advice on any situation that the Company faces but the Company Directors have absolute discretion and responsibility in accepting or disregarding the advice from the Advisory Board. This clearly delineates the role of an Advisory Board from a Board of Directors. This also emphasises the importance of keeping good minutes of Advisory Board meetings so that there are records of the advice given by the Advisory Board on all issues and the Directors/management responses. The Advisory Board cannot be held responsibility for bad decisions as long as the line between advice on one hand, and decision making and direction of the Company on the other hand, is clearly defined in the contractual relationship with Advisors, and this difference is observed in the standard operations of the Advisory Board.

5. The Advisor Profile

The composition of the advisory board will depend on an organisation’s goals and priorities. A board intended to give a company strong financial or operational acumen is likely to look quite different from one that offers insight on political change in emerging markets or an understanding of the latest medical or scientific research.

Denise Collis, a member of the Advisory Board to the business schools at both Leeds and Exeter Universities, says: "It's about context and expectation. The value that people can add should be commensurate with what the Advisory Board needs and aspires towards". Other concerns are related to the search for experienced people who have an understanding of all the challenges that come with running an organisation as well as working in a particular industry. After that, it is a question of the particular skills they have and where their speciality lies.

The main consideration for the composition of any Advisory Board is absolute clarity about what role it is intended to fulfil. Is it there as a business development tool, to raise profile and make introductions? - or to help fill gaps in the existing Director/management knowledge and understanding of specialist issues? In all cases, the Advisory Board's objective will determine its composition.

With any Advisory Board, a mix of experience and knowledge can help enhance the performance of a company. Advisors who understand different geographies and come from different intellectual disciplines can provide insight into key economic and geopolitical challenges. They can help the company 'think outside the box'.

Characteristics of the ideal Advisory Board members. (NZ Institute of Directors)

- Business experience – a successful business advisor will have been 'in the firing line', experiencing and learning from real life experience rather than seminars and books. They will most likely have:
    - experienced adversity, risk and possibly had to fight for the survival of their business
    - scars and 'war stories' to help you avoid making similar mistakes.
- All-round independence – an independent advisor will be someone who will not compromise loyalty. They are independent in every way:
    - intellectually
    - financially
    - politically.

Finally, and regardless of the expected role of the Advisory Board, it should be expected that every Advisor will have a real enthusiasm for the business. Advisory Board members can open doors and provide connections, but to make it successful, there has to be some genuine association and interest in the company and the industry.

6. How To Make Advisory Boards Work

Successful Advisory Boards are clear about their purpose. We have seen examples of companies forming Advisory Boards and only then thinking about how they wish to use them. This is unhelpful to all parties, and usually results in the organisation extracting little value from the board.

Clearly setting and communicating the roles and expectations of individual advisors and articulating the mandate and purpose of the board is essential. Where an Advisory Board is set up to support a main Board of Directors, an important first step is to ensure that the main board supports the concept of appointing an Advisory Board, and understands its purpose and remit. The balance of responsibilities between the main board and the Advisory Board should be clearly understood by all sides.

On appointment, it is important that the company and the Advisory Board have a shared view of the time involved. Having agreed the commitment, both sides must stick to it. At one extreme, it is easy for 'mission creep' to develop so that advisory directors are called upon far more often than anticipated, or more than the set remuneration. Equally, if there is too long between each contact, the individual advisors may become disconnected from the business and lose interest and focus.

It may be that most of the Advisory Board's work will be informal, carried out via phone and email contact or attendance at company events. Nevertheless, it is a good discipline for the Advisory Board to meet in person perhaps quarterly or bimonthly to bring together the participants in a boardroom setting and create a formal structure for the Advisory Board's work.

The organisation and Advisory Board must establish how they will work together. It should be clear who from the company's side can make contact with the Advisory Board, and on what issues. To ensure contact is kept focused and at a high level, it may make sense to restrict informal contact with the Advisory Board to the chair and the chief executive.

An Advisory Board should be seen as a resource that can usefully be tapped to aid the company's success. It is helpful, therefore, if the executive team have the opportunity to shape the agenda and highlight the topics on which they would like the Advisory Board's advice and insights.

Equally, dialogue must be two-way so that the advisors can alert the company to relevant developments or important contacts. The company secretary or administration manager can be a useful intermediary to ensure that communication flows are kept open and uncluttered.

In conclusion removal of the formal responsibilities and liabilities attached to a statutory board, an Advisory Board can be nimble, flexible and able to focus on a narrow set of issues.

An organisation may draw on an Advisory Board to strengthen its understanding on any number of topics, including technology, economics, demography, geopolitics, or the thinking of an individual government, to name a few.

An Advisory Board adds value by exposing the management and main board to new thinking, thereby broadening horizons, improving understanding of a company's markets, risks and future drivers of growth, challenging assumptions and guarding against groupthink. Advisors can widen the networks of contacts and opportunities available to the organisation and so directly benefit the bottom line.

There is no one way in which an Advisory Board should work. It may meet infrequently, providing high-level, long-term strategic insight to the board. Or its role may be more akin to that of business development, seeking to make introductions, open doors and generate new leads.

Either way, the Advisory Board must be clear about its purpose and mission from the outset. And the board should be structured, resourced and led accordingly. Jesse Torres offers the following eight steps towards creating an effective Advisory Board.

1. Have a clear and strong purpose to guide the focus of the board
2. Recruit 'doubters and challengers' to continuously test assumptions and complacency
3. Leverage the network power of the board and the company
4. Control the business relationship between advisors and the company with formal agreements
5. Provide appropriate compensation to advisors to keep them motivated and fully engaged
6. Keep the Advisory Board skills flexible to changing business contexts
7. Maximise the value of board meeting with rigorous management of agendas and full pre-meeting supply of all relevant information
8. Maintain ongoing communication between board meetings with advisors so that they are constantly up-to-date with critical issues and significant changes

With a clear mission and the right composition, an Advisory Board can be a powerful, value-adding asset in a changing business environment.

7. Meeting Format and Agenda

Running an effective meeting Reference: Nicholas J. Price 2017, Diligent Corporation; Enactus.org (2017)

Running Advisory Board meetings takes many cues from best practices for the larger board of directors. The key to getting the most out of the leaders on the board is similar to that of any corporate meeting.

- Have a clear agenda. Make sure you're focused on what will be covered in the meeting as well as the pertinent information, such as location and time, length of meeting, and topics to be discussed.
- Preparation is everything. Be sure to send out the agenda and relevant information to the advisors in advance (a week or even a month prior) to set expectations.

"Determine the meeting frequency. Advisors' time is precious, so make sure you maximize the time spent for Advisory Board meetings. The cadence of the meetings will be determined by your advisors' availability and how often you want their advice. Whether your Advisory Board meets once or several times a year, it's important to keep advisors informed of your organization's activities between meetings." Reference: https://www.allbusiness.com/

Consider how technology can help. Is there a way to distribute your materials securely before the meeting? Will you be able to record the meeting, or hold the meeting virtually? Is there a way for you to digitally inform the Advisory Board of any updates? A board portal can offer ways to securely collaborate with your Advisory Board even if they are dispersed around the globe.

- Put Advisory Board charters in writing. "While Advisory Boards are more informal than company boards of directors, they should still be governed by written agreements," It's imperative to meet with a lawyer before creating an Advisory Board in order to help draft charters, board responsibilities and logistics, and non-disclosure agreements, which all advisors must sign. (see Chapter 10 on a standard set of agreement contents)

Sample Advisory Board Meeting Agenda

What follows is an example of an Advisory Board meeting agenda. While each Advisory Board will have its own needs, the following is a high-level example of how an Advisory Board meeting can be structured.

Sample Advisory Board Meeting Agenda:

1. Meeting Opening:

- Roll call of Advisory Board members present
- Confirmation and review of previous action list
- Review of meeting process

2. Matters of Decision

- Major strategy decisions list
- Topics to be discussed

3. Matters for Discussion

- Advisory Board Chair report
- Current significant issues
- Matters for approval
- Update on previous minutes
- Update on action items
- Risk and compliance items
- Advisory Board vote (if applicable)

4. Meeting Finalization

- Review of actions to be taken
- Meeting evaluation
- Next meeting scheduling
- Meeting close

(Source: Enactus)

If the agenda or pre-meeting materials are not well-prepared, advisors might ask for clarification during the meeting, and this could derail the meeting.

Current challenges to Advisory Boards: Whether your organization is for-profit or non-profit, several obstacles and challenges may impact your Advisory Board, and thus, the efficacy of your Advisory Board meetings.

- The Advisory Board is disengaged and rarely meets
- Meetings lack a call to action and a clear process
- Advisors don't offer any advice
- There is a lack of communication with the Advisory Board
- Advisory Board lacks focus

To overcome some of these obstacles, a few best practices suggested by Enactus include:

- Meet at the start of each year to review the Advisory Board's plan
- Create a monthly update report to keep the Advisory Board informed
- Ask for particular advice and feedback from your advisors
- Consider increasing compensation or other incentive
- Keep the meetings short and focused

8. The Critical Role of The Chair

While the best Advisory Boards have a clear remit and are constructed accordingly, they will struggle to succeed if they lack the clear leadership of an effective chair.

Denise Collis (a member of the Advisory Board to the business schools at both Leeds and Exeter Universities), argues that the first priority for any chair is to determine the appropriate size of the Advisory Board: "In my experience, an effective Advisory Board works better with a smaller number of people on the board whilst requiring the same level of commitment as a public board. If you don't get that, you get members who dip in and dip out and you lose that sense of purpose and continuity."

Although Advisory Board meetings may not require the same level of preparation as a formal board meeting, Collis says that the chair must set the tone of Advisory Board discussions. "It's about creating a culture where there is a real expectation that the papers have been read and that the people who come along bring ideas to the table, shape what's happening and really get stuck in," she says.

To make the Advisory Board function effectively, it is important for the chair to establish and foster a good working relationship between the members of the Advisory Board, and between the Advisory Board and the main directors or the senior management team as appropriate.

9. Advisory Board Compensation

A carefully selected and well-structured Advisory Board can provide valuable insights and create a lot of value for a company especially during phases of business growth. However putting a financial assessment on that value has a wide variety of considerations. A significant influence on this assessment is the fact that setting fees at the right level enables the attraction and retention of candidates with the right skills and experience to deliver long-term value.

The New Zealand Institute of Directors gives a set of questions that may be relevant to a company considering remunerating Advisory Board members. Some of these are listed below:

• Is the company changing/growing? Does this create increased demands/responsibilities on directors and advisors?

• Is the company taking a new strategic direction? Does this create new challenges/requirements for directors and advisors to have skills and competencies relevant to changing business environments?

• Is the time commitment of the roles significant/increasing?

• What is the complexity and business risk involved for the Company?

• What are the remuneration policies and benchmark levels of remuneration in similar professions (e.g. accountants and consultants)?

Fees are generally paid in money. However, payment can be made in part or in whole by the issue of shares although this is rare with Advisory Boards and more normal with formal Directors.

Reviews:

Ideally, fees should be structured so that they are:

• calculated on an annual basis

• a permanent item on every board agenda for meetings at which annual draft financial statements are considered

• reviewed at least annually. Review dates would be an appropriate time to also undertake evaluations of the performance of individual advisors. Chairs should be conscious of the need to initiate reviews and to maintain dialogue on the matter with the CEO.

• flexible - all the components of remuneration are, in the normal course, a matter of negotiated commercial contract and, as such, require flexibility to suit each individual Advisory Board circumstance.

• designed to accommodate other payments. Payment for other work undertaken by Advisors outside their usual board/committee responsibilities may attract additional payments but should be subject to Director approval on a case-by-case basis.

• allow for reimbursement of expenses. As a general principle, best practice requires that an entity should establish clear, written policies for paying or reimbursing reasonable expenses. This includes an outline of the kind of expenses payable and eligibility requirements. However the cost of travel and accommodation relative to board meetings attendance should normally be organised and paid for by the Company.

There are a number of options for remunerating Advisory Board members including:

• payment per meeting

• a monthly or quarterly retainer

• equity in the business

• a combination of the above. The right compensation option needs to fit the organisation.

A rough rule of thumb is to pay Advisory Board members about as much as you would pay formal directors. Market research shows payments ranging up to "about $25,000 per year at large corporates but more appropriate levels for Advisory Boards at smaller firms are lower." The average seems to be $1,000 to $4,000 per meeting, plus expenses, for an average of four to six meetings a year.

“Most Advisory Board members are paid on a per-meeting basis, but some companies encourage Advisory Board members to be paid more like company directors, with retainers, especially if you pay with "equity, which takes the place of a meeting fee. Reference Ralph Ward's Boardroom INSIDER

10. **Advisory Board Contracts:** Key Sections

Because the purpose and role of an Advisory Board is specific and distinct from those of a Board of Directors or a business consultant, the arrangement between a company and an Advisory Board member must be defined in a formal contract. Although members of a Board of Directors face legislated liabilities and fiduciary duties, this is not normally the case for members of an Advisory Board. Therefore it is important for all parties to understand clearly the formal nature of the relationship between the company and the advisor. The following is a brief outline of the contents in our Advisory Board contract. This outline is not a contract but recommendations of what contents are normally included in a contract.

i. Recitals

Recitals refer to the "whereas" clauses that precede the main text of a contract. They provide a general idea about the contract such as, what the contract is about, who the parties are, why they are signing a contract.

ii. Agreement to Engage an Advisor
Term: The term of the agreement will be specified with a commencing date and terminating date; and conditions of post contract obligations relating to non-disclosure of proprietary information. The term will be negotiable between the client and the advisor, with points of renewal built into the agreement.

iii. Position, Duties, Responsibilities: The Advisor will perform the services required of them by the Company in a proficient, timely and at a level of professional quality reasonably to be expected in a commercial advisory context. The responsibilities will include the number and duration of Board meetings per year, attendance and roles at Board meetings and the nature of any ‘special projects’ that the company may require from time to time.

iv. Independent Contractor: The Advisor will remain an independent contractor, and therefore will not be an employee, agent, or partner of the Company in way whatsoever.

v. Compensation, Benefits, Expenses: The Company will pay a level of compensation to be agreed as per individual agreements but should be relevant to the size and complexity of the Advisory task and the number of meetings outlined in section ii above. Additionally, all operational expenses incurred by the Advisor in performing the Advisory Board tasks (e.g. travel expenses) will be reimbursed or covered by the Company.

vi. Proprietary Information, Non-Disclosure: The proprietary information and rights of the business, as defined by the Company in the final contract, are protected by the contract. The Advisor is required to hold all such proprietary information in confidence and not to remove it from the company or use it in any way other than in the normal duties and responsibilities of the Advisory Board activities. The final contract will include full details and conditions applying to the protection of the Company’s proprietary rights.

vii. Non-Competing: During the term of the contract the Advisor is required to advise the Company of any intention to act as an employee, consultant or advisor to any person or organisation that competes directly with the Company. This condition may continue for a period after the termination of the agreement and such period in that case will be specified by the Company. Any permissions relative to the no-competing conditions of the agreement will be at the sole discretion of the Company.

viii. Miscellaneous: All contracts may include a variety of miscellaneous items and conditions agreed by the parties that relate to the unique concerns of the parties as they might apply to the formal relationship between the Company and the Advisor. Typically the list may include:

- Notices and Communications
- Waivers, Alterations, Amendments or Replacements
- Subject to Governing Law
- Publicity of Advisors Details

Appendix.

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