

## TREASURER'S INSTRUCTION 7

### CORPORATE GOVERNANCE

#### TREASURER'S REPRESENTATIVES - STATUTORY BOARDS, COMMISSIONS AND COMMITTEES

Issued: 18 November 2013

Effective: 31 January 2014

#### Scope:

- 7.1 This instruction:
- 7.1.1 applies to all Government Business Enterprises (GBE) (as defined in TI 7.6.4) which are public authorities for the purposes of the *Public Finance and Audit Act 1987*;
  - 7.1.2 applies to other public authorities having a Board as nominated in writing by the Treasurer (or delegate) or Under Treasurer from time to time (nominated authorities);
  - 7.1.3 collectively, GBEs and nominated authorities are referred to in this instruction as 'Designated Public Corporations';
  - 7.1.4 applies for all Meetings and Board agenda items (except in the rare instance where the entire subject matter of a Meeting or Board agenda item is in no way part of, or incidental to, and is wholly unconnected with, Financial Administration (refer to 7.6.3)); and
  - 7.1.5 is to be read in conjunction with the associated '*Boards, Commissions and Committees Representative Guidelines*' issued by the Department of Treasury and Finance and any specific governing legislation of a public authority to which this instruction applies under which the Treasurer is empowered to appoint a representative.

#### Objective:

- 7.2 To allow the Treasurer to appoint a representative to attend Board meetings of a Designated Public Corporation where there is no power to appoint a representative in the specific governing legislation of the Designated Public Corporation.
- 7.3 To prescribe the procedures to be followed in relation to Public Sector Employees acting as Treasurer's Representatives on the Boards of Designated Public Corporations.
- 7.4 To prescribe the role and responsibilities of the Chair of the Board in relation to the Representative.

**Interpretation and Definition:**

- 7.5 This instruction should be interpreted and applied in accordance with Treasurer's Instruction 1 *Interpretation and Application*.
- 7.6 For the purpose of this instruction:
- 7.6.1 'Board' means a board, commission or other governing body (except for a Minister) of a public authority as variously described in the governing legislation of the public authority and includes a committee or sub-committee thereof;
  - 7.6.2 'Designated Public Corporation' means GBEs together with any other public authority having a Board as nominated in writing by the Treasurer (or delegate) or Under Treasurer, from time to time;
  - 7.6.3 'Financial Administration' for the purposes of this Treasurer's Instruction means the receipt and expenditure of, and other dealings with, matters of finance or money;
  - 7.6.4 'Government Business Enterprise' (GBE) means Public Non-Financial Corporations and Public Financial Corporations listed in the Budget Papers, from time to time;
  - 7.6.5 'Meeting' includes an ordinary, extraordinary, formal, informal and in-camera meeting and includes meetings held in and out of session as well as strategic planning sessions, Board and executive performance reviews and any other sessions;
  - 7.6.6 'Member' of a Board means a person who is a member of the governing body of a public authority as that role is variously described in the governing legislation of the public authority (but does not include a Minister constituted as a governing body or a person who is entitled to attend but not participate in a Meeting of the Board);
  - 7.6.7 'Public Sector Employee' has the meaning given to 'employee' in TI 1; and
  - 7.6.8 'Representative' means a Public Sector Employee appointed to represent the Treasurer at Meetings of a Board.
- 7.7 Where the governing legislation of the public authority provides for a Representative to attend (but not participate in) any Meetings of the Board and/or to have access to Board papers, that governing legislation is the source of the authority for the Representative to attend the Meeting and/or access the papers. This instruction is in addition to those legislative provisions.
- 7.8 To assist in the interpretation and application of this instruction, the Department of Treasury and Finance (DTF) has issued the 'Boards, Commissions and Committees Representative Guidelines', which contains further guidance on the role and responsibilities of Representatives and of Board Chairs in relation to Representatives.

**Instruction:**

Authority to appoint Representative

- 7.9 The Treasurer may appoint a Representative to attend Board Meetings for the purposes of representing and conveying the views of the Treasurer to the Board, and for reporting the activities of the Board to the Treasurer.
- 7.10 The Treasurer may appoint as the Treasurer's Representative a Public Sector Employee who is already the representative of the responsible Minister<sup>1</sup> for the Designated Public Corporation. The existence of a representative of the responsible Minister does not prevent the Treasurer exercising his or her powers to appoint an additional Public Sector Employee to act as the Treasurer's Representative.
- 7.11 The Treasurer may delegate the power to appoint a Representative.

Role and responsibilities of Representatives

- 7.12 Subject to 7.1.4, the Representative:
- 7.12.1 is entitled to attend all Meetings of the Board and receive all Board papers and all other Board communications, materials and information provided to the Board Members;
  - 7.12.2 may provide information to the Board on government policies and processes, convey the Treasurer's views and engage in discussions as a representative of the Treasurer;
  - 7.12.3 must not participate in the business of the Meeting, being decision making, voting or determining Board procedures;
  - 7.12.4 is entitled to report about, and pass on, all Board activities, discussions, deliberations and decisions and all Board papers and all other Board communications, materials and information to the Treasurer and the Treasurer's other advisers and representatives; and
  - 7.12.5 will not disclose information obtained from the Board outside of government (which does not restrict the Representative disclosing information within DTF, to the Treasurer's (and other Minister's where relevant) office and elsewhere within Government according to their normal discharge of duties).

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<sup>1</sup> A Responsible Minister is, absent legislative bar, entitled to share with the Treasurer any information he or she has received from the Minister's representative on a GBE including by directing the Minister's representative to convey information to the Treasurer or the Treasurer's Representative(s).

Role and responsibilities of Board Chairs

- 7.13 The Board Chair is responsible for ensuring that:
- 7.13.1 there is full facilitation of the Representative exercising his or her role as described in this instruction;
  - 7.13.2 information provided to Members of the Board during the recruitment and induction process sets out that the Designated Public Corporation is an instrumentality of the Crown and the extent to which the entity is a body under the control and direction of the Minister;
  - 7.13.3 Board papers and all other Board communications, materials and information are provided to the Representative at the same time as they are provided to Board Members;
  - 7.13.4 the Board does not seek to declare that information prepared for the Board cannot be provided to the Representative or conveyed to the Treasurer (or other Minister);
  - 7.13.5 all Board Members are aware the Representative is authorised to attend all Board Meetings (including ordinary, extraordinary, formal, informal, in-camera meetings and meetings in and out of session as well as strategic planning sessions, Board and executive performance reviews and any other sessions);
  - 7.13.6 all Board Members are aware the Representative is not the sole mechanism for advising the Government on the activities of the Designated Public Corporation and does not relieve it of its statutory and other reporting duties. This responsibility lies with the Chair and the Chief Executive, or as otherwise required by the governing legislation of the Designated Public Corporation;
  - 7.13.7 the minutes of Board Meetings record that the Representative attended as a Representative of the Treasurer; and
  - 7.13.8 the Board Members are informed of the role of the Representative.

For queries contact:

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The Department of Treasury and Finance has issued a *Treasurer's Representative Guidelines* document which contains supporting information and guidance to assist Representatives and Boards to understand their roles and responsibilities.