



**YUKON DEVELOPMENT
C O R P O R A T I O N**

YUKON DEVELOPMENT CORPORATION BEST PRACTICE GUIDELINES



YDC Governance and Disclosure Guidelines

Reproduced/adapted from Province of British Columbia Board Resourcing and Development Office publication Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations – Best Practice Guidelines found at <http://www.brdo.gov.bc.ca/governance/corporateguidelines.pdf>. Copyright Province of British Columbia. All Rights Reserved

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PREAMBLE

Yukon Development Corporation (YDC) is committed to achieving and maintaining exemplary standards of governance. This commitment is founded on the firm belief that while good governance does not, in itself, ensure organizational success, expected levels of performance are rarely achieved without the guidance and leadership provided by a sound governance structure.

Yukon Development Corporation has a sound structure that addresses not only board operations but also such collateral issues such as orientation, education and assessment.

Governance methodology continues to evolve and YDC has a responsibility to constantly review and update its practices to match opportunities and changing needs. It is hoped that the information set out in the *Best Practice Guidelines* will make a useful contribution in the discharge of this responsibility.

¹The presentation is organized in three parts. Part one describes the unique context in which the Yukon Development Corporation Board of Directors shall function. Part two sets out principle-based best practice guidelines. These guidelines are not meant to be prescriptive or to encourage a simple “tick the box” climate of compliance. They are meant to provide a reference for evaluating existing practices and to encourage change where change is justified. Part three presents a guide for board governance disclosure, which is a best practice standard for public accountability.

The Best Practice Guidelines are evolutionary in nature. They will be reviewed and updated from time to time in response to changing needs, experience and new developments in the “art” of good governance.

¹ A “public sector organization includes:

- a. A separate legal entity established pursuant to Yukon government legislation that is classified as being within the “government reporting entity” pursuant to the *Yukon Development Corporation Act* and *Corporate Governance Act*.

PART ONE:

CORPORATE GOVERNANCE IN YUKON DEVELOPMENT CORPORATION

1. INTRODUCTION

“Corporate governance” broadly refers to the structures and processes by which YDC is directed, controlled and held to account. It encompasses such things as who is in charge, who sets direction, who makes decisions, who monitors progress and who is accountable for YDC’s performance. The goal of effective governance is a robust, well-run organization that achieves peak performance and is accountable to the public it serves.

Corporate² governance is no less important in the public sector than in the private sector. YDC manages millions of dollars in assets and liabilities and oversees the delivery of core services such as public utilities by the subsidiary, Yukon Energy Corporation. Taxpayers, as both the source of funds and beneficiaries of these enterprises, expect YDC to be well governed and to perform well.

Corporate governance regimes are unlikely to be effective where there is lack of clarity about the participants involved, their relationships with each other and their respective responsibilities.

For YDC, the Legislature, the responsible Minister, the board and public stakeholders all play a governance role under the terms of its founding legislation, and annual protocol agreements.

The board of directors³ plays a central part in governance. Its general role is to cultivate the YDC’s short and long-term success consistent with the Corporation’s mandate and objectives, and to do so in an accountable manner. When discharging its responsibilities, the board oversees the affairs of YDC, supervises management through the president/chief executive officer (CEO)⁴, and sets standards for organizational conduct.

The board’s effectiveness depends in large measure on the people who serve on it. Ideally, the board is comprised of dedicated individuals who are motivated to play an active role, and who have the necessary competencies to carry out their responsibilities. A well-defined governance structure is a necessary prerequisite for effectiveness, but good process cannot make up for the absence of good people.

As a consequence of historical issues, board governance has been studied extensively over the last decade providing a legacy of normal reviews and scholarly volumes. As a result of this work, consensus has emerged regarding the types of practices that improve director performance as well as the performance of boards as a whole. These practices include such things as closely defined roles and responsibilities, efficient use of committees, clear codes of ethical conduct, informed

² The term “corporate” refers to a distinct legal entity, as distinct from and unincorporated association or department.

³ The term “directors” is used in a majority of public sector organizations.

⁴ The term “Chief executive officer” means the person who holds the principal management position of the organization. In Crown corporations, this person is most often referred to as the CEO.

approaches to policy and strategic planning, risk management, director orientations, ongoing professional development, and board and director assessment.

Closely associated with the growth in knowledge about governance practice has been accompanying growth in the requirement for accountability. Accountability is encouraged through disclosure. It is expected that adopting the Best Practice Guidelines will position YDC for public review and will add refinements to governance practices at the same time.

2. THE PUBLIC SECTOR CONTEXT

YDC is a public sector organization, like private sector companies, it is an independent legal entity governed by boards of directors. The duties of YDC are similar in many ways to its private sector counterparts, but there are significant differences in the legal, regulatory and operational environments that shape the responsibilities and expectations facing YDC. The corporation must take these differences into account when constructing YDC governance regimes and it is particularly important to understand both the context in which public sector organizations are created and the government's ongoing role in YDC's governance.

2.1 Creation of Public Sector Organizations and Their Mandates

Public sector organizations are established by government to serve the public interest and to advance overall public policy objectives. YDC has been given a specific mandate, which is communicated either its governing legislation, its annual protocol agreement and government policy.

For YDC, the mandate is likely to be more diversified than typically would be the case in the private sector. This requires YDC to perform in a business-like manner while at the same time pursuing objectives.

YDC may be asked to participate in the review or provide input on specific mandate issues, but decisions regarding YDC's overall mandate always remains within the purview of the government.

Where appropriate, government may give YDC a specific direction on a particular matter. This type of direction is usually made only after discussion with the organization.

While it is the case that YDC is provided greater autonomy and flexibility in decision-making than government ministries, the board must nevertheless be alert to the government's broad public policy objectives. It must also ensure that YDC's strategic initiatives are aligned with the mandate set by government.

2.2 *Characteristics of Yukon Development Corporation*

YDC generally has some or all of the following characteristics:

- YDC is established by statute, the *Yukon Development Corporation Act* ;
- there is a territorial interest in the function or services, especially in:
 - YDC fulfilling its statutory obligations;
 - YDC managing its resources effectively; and/or
 - YDC maintaining appropriate standards of service;
- the government has controlling interest in the organization:
 - government appoints the governing board;
 - government may provide operating funds;
 - government may give sole authority to YDC to engage in commercial activity and generate revenues;
 - government directly owns; and/or
 - government has established the organization as an agent of the Territory.

2.3 *Performance Expectations*

In addition to setting the YDC's mandate, Yukon government provides YDC with documentation outlining performance expectations and accountabilities. This documentation is developed in consultation with the corporation.

A Letter of Protocol is issued annually to record a joint understanding between government and YDC over mandate, public policy issues, strategic priorities and performance. More specifically, the Letter of Protocol is intended to:

- confirm the corporation's mandate and core services;
- develop a common understanding between the government and YDC regarding the government's priorities, policy objectives and performance expectations for the corporation annually;
- achieve consistency and alignment between the government's priorities, policy objectives and performance expectations for YDC;
- serve as a key driver in the development of YDC's service and financial plans; and
- establish performance objectives and other expectations.

2.4 *Accountability in the Public Sector*

YDC is owned by the people of Yukon and is accountable to them. In practice, the ownership rights are exercised on the people's behalf by the Legislative Assembly and the government. The responsible Minister serves as the link between YDC, the Cabinet and the Legislative Assembly. As well Management Board may play a significant role in approving capital and operating budgets.

The following is a general overview of the accountability continuum:

- Government establishes YDC and its mandate through statute or other legislative authority and provides funding to the organization on behalf of the public.
- Government communicates broad objectives for YDC through the responsible Minister and empowers its board to oversee the corporation's affairs.

- The board oversees the affairs of YDC, works with management, which is responsible for day-to-day operations through the President/CEO, and sets the standards of organizational conduct.
- The President/CEO leads the development of the corporation's strategic initiatives, policies, operating and capital budgets; makes recommendations for their approval to the board; implements board-approved initiatives; and manages the day to day business of YDC.

Roles and responsibilities must be clearly defined and understood by all participants in the accountability continuum to ensure the orientation accounts for the effective pursuit of its mandate and for the expenditure of public funds.

It is important YDC defines its unique relationship with government, its subsidiary and with its other "shareholders", including the public. When doing so, the public interest is best served where government and YDC enter into a constructive exchange that ensures the open, timely and accurate flow of communications in both directions. Because the board occupies the mid-point in the accountability it is fundamental to the proper discharge of the board's responsibilities. Generally speaking, the Chair of the board undertakes this obligation on the board's behalf.

Accountability is strengthened where the board identifies its area of shared decision-making with authorities beyond YDC. By doing so, a board will better ensure effective leadership by removing ambiguities which might otherwise detract from its governance responsibilities or obscure its accountability.

2.5 *Regulatory Requirements and Other Legislation*

YDC operates within a complex legal framework. In addition to the legislation under which it is established, YDC is subject to many legislative requirements that do not apply in the private sector. These include provisions contained in the following Territorial statutes:

- *Access to Information Act*
- *Financial Administration Act*
- *Governance Act*
- *Business Development Act*
- *Yukon Development Corporation Act*

In addition, YDC is subject to statutes of general application such as the *Public Service Act*.

Every board member should be aware of the legislation and policies that apply to YDC and should recognize how they affect decision making.

2.6 *The Performance Culture*

YDC directors are motivated by the desire to fulfill a service mandate and/or achieve certain public policy objectives and must be diligent in monitoring the YDC's performance by carefully selecting appropriate performance measures against which the corporation's achievements can be measured. In addition to financial performance measures, these may include such measures as service quality, customer satisfaction, environmental compliance or other measures specific to YDC.

2.7 *Disclosure and Transparency*

As recipients of public funds and executors of the public trust, YDC is held to high standards of scrutiny and disclosure. YDC operations and decisions may be reviewed by such bodies as the Office of the Auditor General, the Ombudsman's Office, Select Committees or the Legislature.

Various "shareholders", including members of the public, often bring diverse viewpoints to their examination of the decision or decision-making processes used by YDC, sometimes relying on the *Access to Information and Protection of Privacy Act* (ATIPP) when making their inquiries. The scrutiny of YDC also may extend to board members. Therefore, individuals joining YDC should be aware that their actions are potentially subject to the same level of interest and inquiry as other members of the public sector, such as public servants and politicians.

For these and other reasons, YDC should have good systems in place to ensure that its operations and decision-making processes are consistent with public sector standards; and these systems should ensure that YDC reports appropriately to all interested parties through accessible avenues of disclosure. In the sections following, some practical guidelines are offered describing best practice on factors affecting good governance and disclosure.

PART TWO:

BEST PRACTICE GUIDELINES: GOVERNANCE

The purpose of this section is to gather in one place a board standard for corporate governance practices for Yukon Development Corporation and to provide a common benchmark against which governance arrangements can be understood and assessed.

The guidelines in this section have been organized into separate subject areas. They make no claim to be an exhaustive discussion of each topic. However, they will have served their purpose if they shed some light on best practices and assist the board on their current approach to governance. Each entry contains a commentary on the subject area with particular attention to public sector realities. The commentary is then followed by an abbreviated list of best practices.

1. BOARD COMPOSITION AND SUCCESSION

Most experts agree that a first requirement for effective governance is having the right people on the Board. This means putting together a group of individuals who have the appropriate combination of competencies (skills and experience) and personal attributes (behaviour and attitude) to support the organization's mission and contribute together as a highly motivated team.

The particular competencies sought will vary depending on YDC's mandate and the skills needed to complement its management team. The requisite skills and experience will change over time as YDC evolves to face changes in its operating environment.

The general practice in Yukon, is that all appointees to public sector boards are individuals who are independent of management and have no material interest in the organization. The ultimate selection of appropriate candidates remains solely within the prerogative of government.

Once board members are appointed, it is important that the public and all members of the YDC are informed. As part of YDC's communication strategy, the name, appointment term and biographical background of each director should be publicized and retained on YDC's web site.

Best Practice Guideline 1

- a) The Board is made up of individuals who, collectively, have the required competencies and personal attributes to carry out their responsibilities effectively.
- b) Board members are independent from management and have no material interest in the organization.
- c) The Board has a board succession plan to recommend to government the orderly turnover of directors.
- d) The Board publishes the name, appointment term and a comprehensive biography of each director.

2. BOARD RESPONSIBILITIES

The Board of Directors occupies a central position in the governance of Yukon Development Corporation. The Board's general role is to foster the YDC's short and long term success consistent with its mandated objective and accountability to stakeholders. In the discharge of its mandate, the board oversees the affairs of YDC, directs management, which is responsible for day-to-day operations through the President/CEO and, sets the standards of organizational conduct.

In carrying out these duties, the Board's role in policy-making, guidance of the strategic planning process, and performance monitoring, it is separate from responsibility of the day-to-day management of the corporation. This responsibility resides with the President/CEO who leads YDC in achieving board-approved directions and in turn recommends new initiatives to the Board.

The Board provides leadership with specific responsibility to:

- oversee development of and approve a strategic plan that takes into account the opportunities and risks facing YDC;
- approve YDC's capital and operating budgets and ensure the integrity of financial statements, internal controls, financial information systems, projections, forecasts and audited statements;
- approve the YDC's material policies; work with management to identify the principal risks to the corporation and ensure that systems to manage those risks are in place;
- monitor the YDC's performance against agreed goals and objectives;
- approve major transactions;
- ensure compliance with legal and regulatory requirements;
- ensure that reporting, monitoring and accountability obligations are met;
- ensure that controls, codes or guidelines are in place governing ethical conduct, conflict of interest, personal and public safety, equity and similar concerns;
- ensure that YDC has an appropriate communications strategy; and
- provide for the Board's good management and on-going effectiveness, including establishing of the committees, task forces and work groups required to assist the board in the effective discharge of its mandate.

The Board's responsibilities are clearly described in the Protocol Agreement between the Minister and the Board.

Best Practice Guideline 2

- a) The Protocol Agreement in which the Board's responsibilities are defined, is made available to the public through the YDC website.

3. COMMITTEES

YDC typically uses committees to undertake detailed reviews and to provide in-depth supervision in key areas of board responsibility. Task forces or other temporary working groups also may be established to address time-limited projects.

For committees or working groups to function effectively, their mandates should be spelled out in written terms of reference that define their purpose, composition and working procedure. The terms of reference for a task force or a working group should also set a termination date. All terms of reference should be published on the YDC's website.

The use of committees helps directors gain a more comprehensive understanding about matters requiring specialized decision-making or approval. The most common core committees of the governing board operate in the following areas:

- Audit
- Governance

The Board may establish other committees that are relevant to YDC's activities. The terms of reference for an individual committee may also be broadened to cover related board interests.

The Chair and membership of individual committees are generally as recommended by the Board Chair and confirmed by the Board as a whole. With the prior approval of the Board Chair, committees should have the authority to engage consulting advice and independent counsel.

Best Practice Guideline 3

- a) The Board has committees that address the Audit functions and governance, as well as any other committees relevant to board operations.
- b) Each board committee has written terms of reference that are available publicly and that outline its composition and responsibilities.
- c) Each committee keeps informed about emerging best practices in corporate governance relevant to its functions.
- d) Every board task force and working group established to address special board needs, has written terms of reference outlining its composition, responsibilities, working procedures and termination date.

3.1 Governance Committee

The Governance Committee oversees the board's governance activities. Typically, the Governance Committee is responsible to:

- review the relevance of individual committees and committee terms of reference;
- manage evaluations of board, committee, Chair and director performance;
- ensure appropriate board orientation and ongoing professional development;

- articulate roles and responsibilities for the board, its committees, the Chair and individual directors and recommend to the board any needed changes;
- prepare and update a board manual containing all documents relevant to the board's governance structure; and
- provide oversight to YDC's codes of conduct and ethics.

It is essential that the Governance Committee keep up-to-date with developments and emerging best practices in corporate governance.

4. AUDIT COMMITTEE

Following highly publicized scandals in the United States, the *Sarbane(s)-Oxley Act* and other regulatory measures were adopted. Other countries including Canada, kept pace by imposing stringent new requirements on the membership and responsibilities of Audit Committees. With heightened attention given to the area of governance, the work and responsibilities of Audit Committees warrant an extended discussion.

The Audit Committee's job is to assist the Board to fulfill its financial accountability and oversight responsibilities. The committee does this by reviewing the financial and performance information provided to the stakeholders, monitoring the systems of internal controls that management and the board of directors have established, and overseeing the internal and external audit process.

4.1 *Audit Committee Membership*

Audit Committee members should be independent and financially literate. At least one member of the committee should have a financial designation or relevant financial management expertise.

In this context:

- "independent" means having no material direct or indirect association with the organization, which could in the view of the organization's board of directors, reasonably interfere with the exercise of the member's independent judgment.; and
- "financially literate" means that the member has the ability to read and understand a set of financial statements which present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of the issues that can reasonably be expected to be raised by the organization's financial statements.

4.2 *Audit Committee Responsibilities*

Typically, the Audit Committee is responsible to:

- review and recommend for approval the financial information that will be provided to government and other stakeholders, and ensure that this information accurately represents the business activities of YDC;
- review and approve the systems of risk management and the internal controls established by management and the board to:
 - ensure YDC's sound financial performance;
 - ensure that YDC's internal controls have integrity and will lead to the production of accurate financial statements and performance reports;
 - ensure that management has appropriate systems in place to identify and manage risk,⁵ and
 - prevent financial mismanagement.
- work with the auditor to:
 - define the purpose of the audit;
 - formulate and approve the audit plan; and
 - review audit results;
- evaluate the need for an internal audit function and make appropriate recommendations to the board;

The external auditor is the Office of the Auditor General of Canada. From time to time, the Audit Committee should meet with the external auditors without management present. Any work to be performed by the external auditors in addition to audit duties should be pre-approved by the Board on the recommendation of the Audit Committee.

The Audit Committee should determine whether:

- the existing management processes are adequate to identify and monitor significant risks facing YDC, and whether the existing internal control system operates effectively;
- whether those who are responsible for managing risks and operating the control system take a wholly objective and systematic view of their own performance;
- whether the board receives the quality of information from management needed to support YDC's risk management and internal controls effectively.

The Audit Committee should have written terms of reference detailing the committee's composition and responsibilities.

⁵ While risk management has traditionally been a concern of the Audit Committee, there is an emerging recognition that the risks to the enterprise embrace not only financial issues, but also human resource, governance, and sometimes quality issues, and that the organization should have an integrated risk management system which has accountabilities to several or all committees of the board.

Best Practice Guideline 4

- a) Audit Committee members are financially literate and at least one member has accounting or related financial management expertise.
- b) Members of the Audit Committee are independent from the external auditors.
- c) The Audit Committee has written terms of reference that set out its roles and responsibilities.
- d) The Audit Committee annually reviews its terms of reference and assesses its effectiveness in meeting the needs of the board of directors.
- e) The external auditor reports directly to the Audit Committee, not management.
- f) The Audit Committee meets from time to time with the external and internal auditors without management present.
- g) The Audit Committee reviews any proposed changes to the position of YDC's Chief Financial Officer.
- h) The Audit Committee has the authority to engage independent counsel and other advisors, with prior approval from the board Chair.

5. THE BOARD CHAIR

The position of the Board Chair demands singular skills and abilities, and some experts argue that the Chair's leadership skills are the most important factor in determining overall board effectiveness.

The Chair should be a person who can set the board's agenda; run meetings effectively; control discussion appropriately; manage dissent; work toward consensus; communicate persuasively with colleagues, management, the public and government; and most important, establish a culture of active and constructive board engagement.

A typical position description for a Chair describes responsibility for:

- managing board affairs;
- effective board performance;
- regular board, Chair, committee and director evaluations (sharing responsibility with the governance committee);
- managing conflicts of interest should they arise;
- building and maintaining a sound working relationship with the President/CEO, the responsible Minister and other government representatives;
- working with management; and
- serving generally as the board's spokesperson.

Other than in exceptional circumstances, the Chair and President/CEO should not be the same individual. When this situation does occur, the Board should select an independent director (lead director) to act as an effective leader of the Board and ensure that the board's agenda will enable it to successfully carry out its duties. The lead director should have a position description that includes the responsibility to lead meetings of the directors without management present.

The Chair plays an important role as the main liaison between the Board and government. As designated spokesperson for the Board, the Chair should communicate regularly with the responsible Minister to build a positive working relationship and support two-way accountability through dialogue. The President/CEO should assist the Chair's work in this area and should participate in related discussions as appropriate.

Best Practice Guideline 5

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| <p>a) The position of Chair and President/CEO are separate.</p> <p>b) The Board publishes Terms of Reference that sets out in detail the responsibilities of the Chair.</p> <p>c) The Chair and responsible Minister communicate regularly to build their working relationship.</p> |
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6. INDIVIDUAL DIRECTORS

Individual directors, working together, execute the board responsibilities set out in the Protocol Agreement. Board effectiveness depends on all directors understanding their responsibilities and adhering to a high standard of performance.

Directors owe a fiduciary duty as well as a duty of care to YDC. The fiduciary duty requires directors to be loyal and to act honestly, in good faith and in the best interests of YDC. It requires directors to avoid conflicts of interest, maintain appropriate confidentiality with respect to YDC matters, to disclose to the corporation any information to consider in all matters coming before the Board and to spend the time necessary to make informed decisions.

The Board of YDC should have a Terms of Reference for individual directors outlining the board's expectations about their duties, responsibilities and performance.

A Terms of Reference for directors typically addresses:

- the director's fiduciary duty and duty of care to YDC;
- the expected standards of behaviour regarding:
 - communication and interaction with other board members and with management;
 - advance preparation for meetings and other duties;
 - attendance; and
 - confidentiality.
- compliance with YDC's code of conduct and ethics;
- commitment to be informed about YDC and its operating environment;
- commitment to represent the interests of YDC as a whole rather than the interests of individual constituents;
- commitment to director assessment;
- commitment to orientation and ongoing education; and
- commitment to disclose director attendance and compensation.

The terms of reference should be included in the orientation manual for new board members.

Not only should the Board rely on a terms of reference, directors also should be informed about the kinds of personal behaviour considered desirable when conducting the board's business⁶

- Directors should ask penetrating questions that ensure a full understanding of the issues in question and the consequences of the actions proposed.
- Debate among directors should be encouraged, and pressures for conformity to majority opinion should be acknowledged and guarded against.
- Directors should not put managers or other directors on the defensive. Instead, they should respect the opinions and expertise of others when engaging in the discussion of relevant issues, and they should be committed to the goal of reaching consensus.
- Directors should understand when to listen and learn from management and from each other, and when to stimulate discussion.

⁶ Adapted from: Jay Lorsch and Colin Carter, *Back to the Drawing Board*, Harvard Business School Press, 2004

- Any discussion between executives and directors should be two directional. Executives should be at liberty to disagree with directors if they believe the latter are misinformed or wrong, and directors should listen to management's views in such circumstances.
- Directors should respect the agenda. They should be aware of the agenda's schedule and understand the importance of staying focused on the important issues. Discussion should be encouraged, but everyone should recognize the limits imposed by time.

The Board should speak with one voice. Once debate in the boardroom is over and a decision is made, that decision stands as a united position of the Board. It is very important that board members respect issues of confidentiality and not disclose information they learn at board meetings.

Best Practice Guideline 6

- a) The Board publishes a terms of reference or similar document for directors that details the expectations of individual board members.
- b) The Board develops and publishes minimum attendance expectations for directors.
- c) Directors are compensated in accordance with Yukon government's *General Administration Manual* for category D board.

7. THE CHIEF EXECUTIVE OFFICER OR PRESIDENT

One of YDC's most important jobs is evaluating the President/CEO. The President/CEO is responsible for leading management, developing and implementing the organization's strategy and reporting to the Minister and Board of Directors.

The relationship between the board and the President/CEO is crucial to the ongoing success of YDC. Ideally, the relationship is one of trust and mutual respect where each party understands and appreciates the role of the other. Nevertheless, there can be tensions. On the one hand, the board provides oversight and holds the President/CEO to account for the YDC's performance and in so doing, must probe and critically evaluate management's proposals and decision. On the other hand, the board and its directors provide strategic advice and give support to the President/CEO. Should this dynamic relationship be adversarial, dysfunction and poor decision-making will invariably result.

In order to establish the proper relationship between the board and the President/CEO, the board should, with the input from the President/CEO, annually develop appropriate performance expectations and have a formal process in place to evaluate the President/CEO's performance.

7.1.1 Performance, Expectations and Evaluation

The process for setting the President/CEO's performance expectations and his or her subsequent evaluation should be agreed upon annually in advance by the Board and the President/CEO. The

annual review should provide an opportunity for open and frank discussion, and it should allow the President/CEO to talk to the Board about past performance assessments and to set goals for the upcoming year. The process should allow opportunity for the directors to discuss the President/CEO's performance among themselves, and feedback to the President/CEO should be delivered professionally in keeping with the nature of the review. While the evaluation might be managed by a Board committee, it should always involve input from the board as a whole.

President/CEO compensation and tenure should be tied to performance and measured against written performance expectations. It should be remembered that, in the public sector, CEO compensation is subject to the executive compensation guidelines and approvals within Yukon government.

7.2 Recruitment

Recruiting a new President/CEO is a major undertaking. In the public sector, boards should keep in mind that a President/CEO is chosen through the Yukon government hiring process.

Unless the governing legislation provides otherwise the President/CEO is not normally a member of the organization's board of directors.

7.4 Board Meetings without Management Present

It is now commonly accepted practice for members of a board to meet regularly without the President/CEO or other management representatives in attendance. This type of meeting is customarily held at the end of a regular board meeting and allows board members to explore freely any issues they wish to raise privately. At the end of every such meeting, the Chair should give the President/CEO feedback on the contents and results of the discussion.

The Board should describe the circumstances where the exclusion of a member is warranted such as *in camera* discussions of the President/CEO's annual performance review or situations governed by YDC's conflict of interest policy.

Best Practice Guideline 7

- a) The Board has a job description that sets out in detail the responsibilities of the President/CEO.
- b) The Board annually establishes performance expectations for the President/CEO.
- c) The Board annually assesses the President/CEO's performance against the position description and the performance expectations.
- d) The directors regularly meet together without Management present.

8. CORPORATE SECRETARY

The Board should have access to the advice and services of a corporate secretary. Normally, corporate secretaries combine their Board function with a senior administrative or managerial role in YDC, reporting to the President/CEO. YDC and the corporate secretary must exercise great care in maintaining a separation between the two roles.

A corporate secretary typically:

- organizes and records the activities of board and committee meetings;
- ensures YDC complies with its governing legislation, articles of association or bylaws;
- keeps and maintains all of YDC's corporate and historical records;
- coordinates publication of YDC's annual report and other governance related information;
- reviews and keeps up-to-date on developments in corporate governance and promotes strong corporate governance practices throughout YDC;
- advises and assists directors with respect to their duties and responsibilities;
- facilitates the orientation and ongoing education of directors (with direction from the governance committee);
- acts as a channel of communication and information for directors;
- administers YDC's Code of Conduct and Ethics; and
- advises the Chair on any matters where conflict, potential or real, might occur between the Board and President/CEO.

Best Practice Guideline 8

- a) The Board has a Terms of Reference that sets out in detail the responsibilities of the corporate secretary adhering the Yukon government HR policies.

9. CODE OF CONDUCT AND ETHICS

Directors of YDC are expected to demonstrate high standards of personal and professional conduct to maintain public confidence in their actions and their organization. These standards include the need to avoid real or perceived conflicts of interest.

The check for conflict of interest starts with the appointment process. As part of due diligence in director orientation, all directors are required to complete a Conflict of Interest Form designed to help identify potential conflicts.

Yukon Development Corporation should develop a code of conduct and ethics that fits its legislative mandate and institutional culture while complying at the same time with the minimum standards established by government.

A code of conduct and ethics for directors, officers and employees should address the following issues:

- conflict of interest;
- the protection and proper use of YDC's assets and opportunities;

- confidentiality of information obtained through the director's role;
- compliance with laws, rules and regulations;
- ability to grant waivers against the code; and, if the Board can be the process for considering and approving requests for waivers, the process for reporting publicly any waivers the board has granted; and
- the obligation to report to the Board any breach of the code of conduct and ethics, or any illegal or unethical behavior.

YDC's Code of Conduct and Ethics should be disclosed publicly on the corporation's website.

Best Practice Guideline 9	
a)	The Board has adopted a Code of Conduct and Ethics..
b)	YDC publishes its Code of Conduct and Ethics.

10. ORIENTATION AND PROFESSIONAL DEVELOPMENT

All new directors should receive a comprehensive orientation about YDC's mandate, its nature and operations, the role of the board, and the expectations for individual directors. The orientation's objective should be to help new directors become as effective as possible as soon as possible.

The orientation should⁷:

- ensure that each new member of the Board fully understands the formal governance structure, the constitution, bylaws, the role of the Board, its supporting committees and the expectations in respect to individual performance as set out in the charter of expectations or equivalent statement;
- build an understanding of the organization's nature, its operations and working environment including:
 - YDC's services;
 - summary details of YDC's principal assets, liabilities, significant contracts and major stakeholders;
 - YDC's structure, including any subsidiaries or joint ventures;
 - YDC's major risks and its risk management strategy;
 - key performance indicators;
 - any operational or regulatory constraints; and
 - requirements for reporting and public disclosure (eg. *Yukon Development Act*, *Budget*, *ATIPP Act*, *Financial Administration Act*, *Governance Act*...)
- build a link with the individuals who make up YDC including:
 - opportunities to meet and get to know fellow directors;
 - meetings with senior management; and
 - visits to the YDC's subsidiary's sites to learn about operations and to meet employees;
- build an understanding of YDC's main relationships, including those with:

⁷ Adapted from the Higgs Report (UK, 2003)

- the responsible Minister;
- key government representatives who deal with YDC;
- peoples served by YDC; and
- employee unions or associations.

The orientation should provide a comprehensive set of written briefing materials that directors may use as reference material. The following materials would be useful for this purpose:

- the Best Practice Guidelines;
- the Board's manual (which should include committee terms of reference; the directors terms of reference; the Code of Conduct and Ethics; and the organization's bylaws, operational policies and relevant legislation);
- YDC's most recent strategic plan;
- the Minister's most recent Letter of Protocol;
- the most recent annual and quarterly financial and accountability reports;
- an explanation of YDC's key performance indicators;
- a summary of director's liability insurance and indemnity;
- details of any major litigation involving YDC;
- minutes from the last three – six board meetings;
- a schedule of dates for the upcoming board meetings;
- biographical information and contact information for all directors and key executives
- the most recent Letter of Expectation issues to the subsidiary; and
- details of Board committees and copies of the minutes from the last three – six meetings if a new director will be joining a specific committee.

YDC's orientation program might be delivered over several days in addition to the time required for the review of written materials. A YDC orientation program should be customized to take into account the background and skills displayed by individual directors.

When new directors attend their first Board meeting, they should be welcomed and encouraged to start participating right away.

Beyond the initial orientation, the board should provide ongoing professional development to ensure that its members maintain or improve their skills, and that they continue to deepen their understanding of YDC and its operating environment. Professional development should include education in the area of director effectiveness.

The education program for directors should be funded by the organization. Ongoing education may take place as part of regular Board meetings, as part of the Board's annual retreat or in separate educational sessions.

Best Practice Guideline 10

- a) The Board has a comprehensive orientation program for new directors.
- b) The Board has a culture that encourages new directors to participate fully and effectively in board activities as soon as possible.
- c) The Board provides ongoing educational opportunities for directors to learn about YDC, its sector and its corporate governance practices, and maintains a policy encouraging directors to take advantage of these opportunities.

11. BOARD, COMMITTEE AND DIRECTOR ASSESSMENT

The YDC Board requires feedback on how it is performing as a group, how its committees are functioning and how individual members are dispatching their responsibilities. The purpose of any assessment is to evaluate effectiveness and make improvements where required. There is no one correct way of carrying out an effective assessment, and the process should be modified over time to retain interest and relevance.

The assessment methodology for individual directors may include self-evaluation or peer evaluation. Whatever the approach, the assessment must be carried out against clear expectations. These expectations will come from the relevant charters and position descriptions.

It is generally recommended that boards introduce evaluation in stages, starting with the full board and committee evaluations, and then moving to assessments of the Chair and individual directors. The actual form of the assessment should be tailored to each board and there is no universal template that captures all boards regardless of their stage of development. It follows that an assessment process should be created individually by each board in order to best address its own issues.

Boards and committee assessments should cover such topics as:

- whether the Board or committee has adequately discharged its responsibilities (e.g., strategic planning, budgeting, CEO evaluation and compensation, risk management, etc);
- the adequacy of Board or committee operations and decision-making processes (e.g., adequacy of information, committee structure, board compensation, risk management, etc.); and
- board or committee effectiveness (e.g., board culture, opportunities for meaningful participation, communications with the responsible Minister and government representatives, communications with management).

Individual director assessment should be conducted with reference to the directors' terms of reference and should cover such topics as:

- the level of the director's skills, experience and demonstrated expertise;
- the level of a director's preparation for board discussions and the degree of participation in them;

- the director's knowledge about the organization, its strategic direction and its operational environment;
- the director's record of attendance;
- the director's ability to express views and hear the views of others; ethical standards; and
- the director's commitment to the best interests of YDC.

It is important that the assessment used by the board be robust and meaningful. It is equally important that there be appropriate follow-up. Once an assessment is completed, the Board should make certain that steps are taken where necessary to improve the effectiveness of individual directors, committees or the Board as a whole.

Best Practice Guideline 11

- The Board annually assesses its performance and the performance of each of its committees against their respective charters or terms of reference.
- The Board annually assesses the performance of the Chair against the Chair's position description.
- The Board annually assesses the performance of individual directors against the directors' Terms of Reference.

12. Communications Strategy

YDC should be accessible and responsive when communicating with their stakeholders, employees, the public and government. It follows that the Board should ensure that management has adopted an appropriate communications strategy. The communications strategy should reflect the fact that YDC is part of the public sector where transparency is an important feature of accountability. The Board should be satisfied that all salient information about YDC and its operations is made accessible by management. Web-based technologies are well suited for this purpose.

In addition to providing general access to information about YDC, its mandate and activities, a good communication strategy should promote two-way exchange between the corporation and government. This applies especially to communication with the responsible Minister who may be called upon to answer publicly for YDC's actions. Advance briefings are helpful in such circumstances and should be part of the regular dialogue. On these and other occasions, the Chair is the authorized spokesperson for the board and the President/CEO is the primary spokesperson for the organization.

Best Practice Guideline 12

- An appropriate communication strategy is in place that meets the needs of all stakeholders, employees and government and reflects YDC's requirement for transparency and accountability.
- The Board Chair is the authorized spokesperson for the Board and the President/CEO is the primary spokesperson for the organization.

PART THREE:

BEST PRACTICE GUIDELINES: DISCLOSURE

Disclosure is at the heart of best practice in corporate governance. The duty to disclose information on governance applies with special force to the public sector organizations such as YDC where there are high expectations for public service and accountability. The duty to make governance practice accessible to public view accompanies other disclosure requirements established by territorial legislation or policy.

The commentary which follows provides YDC with an easy reference guide to their disclosure obligations by enumerating them alongside companion statements about the best practices described in Part Two. The guide will help the Board determine whether or not they are meeting best practices in disclosure. Many of the required disclosure items refer to the publication of documents which will require amendment only if and when the document is revised. A few items will require a short paragraph annually to explain the preceding year's practices (e.g., board evaluation process used in the preceding year).

It will take time for YDC to review Best Practice Guidelines, amend practices where required, and develop documentation for publication.

1. Board Composition and Succession

Guideline 1	Disclosure Requirement
<p>a) The Board is made up of individuals who, collectively, have the required competencies and personal attributes to carry out their responsibilities effectively.</p> <p>b) Board members are independent from management and have no material interest in YDC.</p> <p>c) The Board publishes the name, appointment term and a biography of each director.</p>	<p>1. Disclose Board members' names, appointment terms and detailed biographies on YDC's website.</p>

2. Board Responsibilities

Guideline 2	Disclosure Requirement
<p>The Board's responsibilities should be clearly defined in the Protocol Agreement</p>	<p>The Protocol Agreement should be made available through the website.</p>

3. Committees

Guideline 3	Disclosure Requirement
<p>a) The Board has committees that address the Audit functions and governance, as well as any other committees relevant to board operations.</p> <p>b) Each Board committee has written terms of reference that are available publicly and that outline its composition and responsibilities.</p> <p>c) Each committee keeps informed about emerging best practices in corporate governance relevant to its functions.</p> <p>d) Every Board task force and working group established to address special board needs, has written terms of reference outlining its composition, responsibilities, working procedures and termination date.</p>	<p>3.1 Disclose the members of each committee.</p> <p>3.2 Disclose the terms of reference for each committee. If the board does not have written terms of reference for any committee describe how the committee delineates its roles and responsibilities.</p> <p>3.3 Disclose the terms of reference, including the termination date, for all board task forces and working groups.</p>

4. Audit Committee

Guideline 4	Disclosure Requirement
<p>i) Audit Committee members are financially literate and at least one member has accounting or related financial management expertise.</p> <p>ii) Members of the Audit Committee are independent from the external auditors.</p> <p>iii) The Audit Committee has written terms of reference that set out its roles and responsibilities.</p> <p>iv) The Audit Committee annually reviews its terms of reference and assesses its effectiveness in meeting the needs of the board of directors.</p> <p>v) The external auditor reports directly to the Audit Committee, not management.</p> <p>vi) The Audit Committee meets from time to time with the external and internal auditors without management present.</p> <p>vii) The Audit Committee reviews any proposed changes to the position of YDC's Chief Financial Officer.</p> <p>viii) The Audit Committee has the authority to engage independent counsel and other advisors, with prior approval from the board Chair.</p>	<p>4.1 Disclose the members of the Audit Committee.</p> <p>4.2 Describe the financial expertise of audit committee members.</p> <p>4.3 Disclose the text of the Audit Committee's terms of reference. If the Audit Committee does not have written terms of reference, describe how the Audit Committee delineates its roles and responsibilities.</p>

5. The Board Chair

Guideline 5	Disclosure Requirement
a) The position of Chair and CEO are separate.	5.1 Disclose the text of the Chair's position description.
b) The Board publishes a position description that sets out in detail the responsibilities of the Chair.	
c) The Chair and responsible Minister communicate regularly to build their working relationship.	5.2 Disclose how the Board maintains its working relationship with the responsible Minister.

6. Individual Directors

Guideline 6	Disclosure Requirement
a) The Board publishes a terms of reference for directors that details the expectations of individual board members.	6.1 Disclose the terms of reference.
b) The Board develops and publishes minimum attendance expectations for directors.	6.2 Disclose the minimal attendance expectations of the Chair and each director.
c) Directors are compensated in accordance with the Yukon government <i>General Administration Manual</i> for Category D Boards.	6.3 Disclose the policy under which Directors are compensated.

7. The Chief Executive Officer or President

Guideline 7	Disclosure Requirement
a) The Board has a job description that sets out in detail the responsibilities of the President/CEO.	7.1 Disclose the text of the President/CEO's position description.
b) The Board annually establishes performance expectations for the President/CEO.	7.2 Describe the annual assessment process for the President/CEO. If there is no formal assessment process, describe how the board satisfies itself that the President/CEO is performing effectively.
c) The Board annually assesses the President/CEO's performance against the position description and the performance expectations.	7.3 Disclose the YDC's policy on board meetings without management.

d) The directors regularly meet together without Management present.	
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8. Corporate Secretary

Guideline 8	Disclosure Requirement
a) The Board has a terms of reference that sets out in detail the responsibilities of the corporate secretary adhering to the Yukon government HR policies.	8.1 Disclose the terms of reference for the Corporate Secretary.

9. Code of Conduct and Ethics

Guideline 9	Disclosure Requirement
a) The Board has adopted a Code of Conduct and Ethics.	9.1 YDC publishes its Code of Conduct and Ethics.

10. Orientation and Professional Development

Guideline 10	Disclosure Requirement
a) The Board has a comprehensive orientation program for new directors.	10.1 Describe what measures the Board takes to orient new directors regarding <ul style="list-style-type: none"> i) the relationship and division of responsibilities between the board and Government; ii) the role of the board, its committees and directors; and iii) the mandate and operations of YDC.
b) The Board has a culture that encourages new directors to participate fully and effectively in board activities as soon as possible.	10.2 Describe what measures the Board takes to provide members with ongoing education. If the board does not provide ongoing educational opportunities, describe how the Board ensures that its directors maintain the skills and knowledge necessary to meet their obligations as directors.
c) The Board provides ongoing educational opportunities for directors to learn about YDC, its sector and its corporate governance practices, and maintains a policy encouraging directors to take advantage of these opportunities.	

11. Board, Committee and Director Assessment

Guideline 11	Disclosure Requirement
<p>a) The Board annually assesses its performance and the performance of each of its committees against their respective terms of reference.</p> <p>b) The Board annually assesses the performance of the Chair against the Chair's position description.</p> <p>c) The Board annually assesses the performance of individual directors against the directors' terms of reference.</p>	<p>11.1 Describe the assessment process that was used in the preceding year for the Board, its committees and individual directors. If there was no formal assessment process for the board, its committees or individual directors, describe how the Board satisfies itself about effective performance.</p>

12. Communications Strategy

Guideline 12	Disclosure Requirement
<p>a) An appropriate communication strategy is in place that meets the needs of all stakeholders, employees and government and reflects YDC's requirement for transparency and accountability.</p> <p>b) The Board Chair is the authorized spokesperson for the Board and the President/CEO is the primary spokesperson the organization.</p>	<p>12.1 Describe the YDC's practice for reporting on financial and other affairs of the organization.</p>