



## BOARDWORKS *International*

### **Should the Board Meet Alone?**

#### ***Do board-only sessions signal storm clouds on the horizon***

The long serving chief executive of a sizeable non-profit organisation is concerned about his board's increasing tendency to want to go into what it calls an 'executive session' (i.e. one that excludes the chief executive and other staff). The practice is causing a great deal of difficulty for the chief executive not least because the substantially new board in these sessions is making decisions without his advice and that of his specialist staff. Many of the decisions it has made are – in the view of the chief executive – poor decisions that either have, or will need to be, revisited at subsequent board meetings. In one or two cases the decisions have been so unfathomable as to leave the chief executive at a loss as to know where to start. The chief executive feels the board is deliberately excluding him from certain discussions because certain members see him as obstructing their ambitions for the organisation. The chief executive is concerned that if the practice continues the organisation could be put at risk and his own position will become increasingly untenable.

This scenario and its variations are not uncommon. The chief executive's concern about his board's so-called 'executive sessions' (more correctly termed board-only sessions – executives are excluded) may be indeed be justified. Any board takes a risk if it makes an important decision without the participation of its chief executive. A board is dependent on the chief executive to correctly interpret and successfully implement the board's policy directions. Sometimes a sudden inclination to meet on its own is also a sign that a board is seriously concerned about the performance of its chief executive. As in this case the practice may well lead to a diminishing level of trust and confidence between chief executive and board. This is a scenario that can rapidly become self-fulfilling.

On the other hand, given the newness of the board in this particular situation (it has a number of new members) it may simply indicate a desire to consider aspects of its development as a team. It may also reflect a perceived need by the board to do some thinking of its own away from the influence of a chief executive who has been in the role for over 10 years. There may also be other comparatively innocent reasons for the board desiring to take time out to consider matters on its own. It might, for example, be a practice that some of the new board members are used to in other organisations and they have not been sensitive to what this may signal in a different environment.

#### **Are board-only sessions an acceptable practice?**

It is not a question of whether or not the board should meet without the chief executive present – it has the right and, arguably, the need to do so from time to time. Leading US non-profit governance expert Professor Richard Chait at a recent

workshop for our New Zealand clients identified three important reasons why a board might choose to meet without its chief executive:

1. Because without a chance to discuss its own performance on its own a board will never 'self-correct'. It will feel able to have discussions on its own that it would never have (and should never have) with the chief executive present.
2. A board that does not discuss matters together concerning, for example, chief executive performance, will often find itself confronted by a form de facto 'decision' created by communication through what Chait described as the 'back channel'. Through a series of informal, one on one communications with other board members reporting, for example, that 'Joe (influential board member) and I agree that the CEO is not up to it any more' one board member can single-handedly create a false consensus. If the board discussed such issues in a shared session it is highly probable other views would be expressed to counter the impression that might otherwise be created.
3. If the chief executive leaves suddenly or becomes disabled in some way the board still 'owns' the organisation's performance. It has to avoid dependency. It has to be able to think for itself.

These comments suggest that the circumstances which might justify the board meeting on its own are most likely to be those where the chief executive's presence may be inappropriate, inhibiting, or perhaps even embarrassing. Most commonly that would relate to the following situations:

- aspects of the chief executive's performance evaluation
- chief executive remuneration
- aspects of board performance evaluation
- board member conflicts or relationship matters
- conflicts of interest involving either the chief executive or individual board members
- certain elements of the relationship between the board and chief executive
- scheduled meetings with the external auditor
- ad hoc meetings with board-commissioned independent reviewers of board or chief executive performance related matters.

Even though these are legitimate reasons for the board to meet without the chief executive present, because, board-only sessions tend to be convened only as required, when the board moves into a closed session it tends to spell 'danger' to the chief executive. Not surprisingly, therefore, many chief executives are very resistant to the idea that a board should meet on its own.

Given the importance of the partnership between the board and the chief executive a board should be aware of this natural anxiety and be very measured in its use of board-only time particularly if it is considering doing so on a regular basis. A board only session should, as far as possible, be signalled in advance and be instituted in accordance with pre-established expectations. If a board-only session is,

in a sense, routine it may be less threatening for the chief executive and less likely to signal to him or her, or more widely, that the board is 'plotting'.

## **What is the status of board-only sessions?**

Views on this vary. Some authorities argue that board-only sessions should not make decisions; that they should be essentially informal discussions subject to more formal procedure later, if required.

There are various ways that such sessions can be held on an informal basis. For example, some boards have off-site meetings over a meal before a formal meeting is held. Another option is to meet in the boardroom before the regular meeting is scheduled to begin.

On the other hand the topics for board-only consideration may justify, even require, greater formality. If that is the case the normal disciplines of notice, agenda, minutes etc, should be observed. To retain confidentiality – if that is the purpose of the board-only session – minutes of such a discussion should be kept and confirmed in a further closed session. Once having dealt with the matter the board may consider ‘declassification’ by briefing interested parties who were not present or by reporting its deliberations more generally.

If such sessions are held we suggest they be held before the board meeting proper gets underway. This allows appropriate action to follow during the ‘open’ meeting. It also avoids the awkwardness that is inevitable when the chief executive and others are asked to leave a meeting that is underway.

## **When are board-only sessions not a good idea?**

When ‘normal’ matters are under consideration. To exclude the chief executive and staff from board deliberations on normal business simply because, for example, they may be perceived to be resistant to particular board enthusiasms, denies to them the chance to do their job. The chief executive has a duty to ensure that the board is fully informed when it makes its decisions. The governing board is in partnership with the chief executive and staff. It must be very careful of any steps it could take that might undermine the mutual trust and confidence that is essential to a successful partnership. Board-only sessions, handled poorly, can undermine vital relationships.

## **What policies or protocols are appropriate?**

The board, as in other aspects of its job and processes, should be proactive. Rather than being ‘caught on the hop’ by unanticipated circumstances it should consider ahead of time the circumstances in which it may wish to meet alone and the manner in which it should handle such situations. It should adopt appropriate policy or protocols to ‘regularise’ and codify its intentions. These would be designed to remove any doubt as to the appropriateness and timing of board-only sessions and make it clear what procedures were to be adopted. Typically, for example, any board member should have the right to request a board-only session. It should always be up to the board as a whole, however, to agree whether or not to do so. Requests should always be directed through the Chairman who has the responsibility for guiding the board’s processes. One reason for this is to protect the Chairman, the board, and the chief executive from any hint of an ‘ambush’ by individual board members.

Ideally the chief executive would participate in the development of these procedures so he or she also has some forewarning of, and comfort with, the practices to be adopted.

## **Conclusion**

Board-only sessions are a legitimate component of the board's governance processes if it is to discharge its trusteeship responsibilities. While it must work in partnership with the chief executive it has responsibilities of its own – including the quality of its own self-management – to attend to. As far as possible, however, when it does meet without the chief executive present, it should be on the basis of that such discussions are 'normal'. Ideally board-alone sessions should be conducted on the basis of pre-established procedures and protocols that avoid the automatic signal that not all is well.