



TERMS OF REFERENCE OF THE BOARD

This section provides a description of the role and responsibilities of the Board of Trustees (Board) of the International Vaccine Institute (IVI or Institute) as a whole.

Purpose

The Board is the ultimate decision-making body that ensures the oversight of the Institute and has financial and strategic fiduciary responsibilities. The Board governs IVI, and while the Board is the ultimate governing authority within the governance structure of the Institute, it can only act through the collective action of its individual members of the Board, who are required to meet on a regular basis and who are charged with making decisions in the best interests of the Institute.

The central purpose of the Board is to provide an effective governance, strategic and high-level leadership framework for the sustained success of the IVI's vision, mission, and operations. Among the most important governance responsibilities of the Board is the development of a constructive partnership with the Director General and the Leadership Team. (See Annex 1 for further description of "Constructive Partnership".) Strong governance is the foundation-stone for the Institute's successful operations. Accordingly, an effective governance framework is required for the Institute to remain sound, relevant, and resilient over time. The evolving governance framework should be periodically calibrated to be appropriate for the size, complexity, and endeavors of the Institute as well as the quickly changing environment affecting it.

The Composition of the Board

The Board shall consist of not less than nine members, selected as follows:

- a) up to ten members-at-large elected by the Board upon recommendation by the Governance and Nominating Committee. Regard shall be paid especially to proposed members' professional experience and qualifications, to appropriate geographical distribution, to agencies and countries which have concern for and provide substantial support to the Institute, or to countries where major facilities are located;
- b) two members appointed by the host country, Republic of Korea;
- c) one member appointed by WHO;
- d) members appointed by the Board upon recommendation of governments of the Parties to this Agreement. The Board shall establish appropriate procedures for appointing members from the governments of the Parties to this Agreement; and

e) the Director of the Institute as a member ex-officio.

Terms

Members-at-large shall be appointed for terms of no more than three years as determined by the Board in advance of the appointment.

The members of the Board are eligible for reappointment to a second term, but shall not serve more than two successive terms, except that the member elected as a Chairperson, Vice Chairperson, Secretary, or Treasurer may have her/his term extended by the Board in order to coincide with his/her appointment as Chairperson, Vice Chairperson, Secretary, or Treasurer, but for no longer than one full term. It is the intention of the Board to maintain a continuous renewal of Board membership. The option to extend a Board term beyond 9 years may be exercised by the Board in extraordinary circumstances and is not intended to create the ability to further extend a Member-at-large's Board term by appointment to sequential offices.

The members of the Board elected upon recommendation of governments of the State Parties shall serve for a term of three years and be eligible for re-election.

The term of office and the selection of the members of the Board of Trustees appointed by the Government of the host country and WHO will be determined by the Government of the host country and WHO.

Resignation, Removal and Vacancies

Any Board Member may resign at any time by delivering written or electronic notice to the Chairperson, DG or the Secretary, or by giving oral notice at any meeting of the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon delivery receipt by the Chairperson, DG or Secretary.

If a Board Member has two consecutive absences from Board meetings, the Chairperson will discuss with that Member the viability of his or her continued involvement on the Board. In the case of an appointed Member or a Member elected upon recommendation of governments of the State Parties, the Chair will also notify the appropriate State Party or Organization.

Other reasons for removal may include, without limitation, fraud, breach of fiduciary duties, or criminal activity. A Board member may be removed by a majority of the remaining members of the Board. In the case of an appointed Member or a Member elected upon recommendation of governments of the State Parties who is removed, the State Party or Organization shall be entitled to appoint or recommend a new candidate for the Board.

In the case of vacancy of members-at-large by reason of their retirement, death, incapacity, or any

other cause, the Board shall fill the vacancy in the same manner as the original appointment. A new member appointed to replace a member during the latter's term, may be appointed for the remaining term of the member being replaced. He/she is eligible to serve two additional terms. (Article IX, Constitution).

In case of a vacancy of a State Party representative during his/her term, the Government may nominate a replacement for the remaining term. The new member replacing the former member is eligible to serve two additional terms if nominated again by his/her country and elected by the Board. (See, Charter of the Governance and Nominations Committee)

Vacancies in Board Officer roles or Committee Memberships shall be filled by the in the same manner in which the original individual was appointed.

Responsibilities

In a well-governed Institute, the overall governance responsibilities of the Board include but are not limited to:

1. Governance, and Leadership

- Effectively govern and lead the Institute in constructive partnership with the Director General and the Leadership Team.
- Act at all times in good faith and in a manner that the Board believes is in the best interests of the vision and mission of the Institute.
- Maintain Board composition with respect to needed expertise, monitor Board members' performance, and evaluate overall Board performance.
- Develop and continuously improve the Institute's governing policies and procedures.
- Maintain open communication and positive relationships among Board members, committees, Director General, Leadership Team, state parties to this Agreement, donors, and other key stakeholders of the Institute.
- Specify policies to be followed by the Director General in pursuing the specified objectives
- Ensure that the Institute acts ethically and with genuine integrity consistent with the values and principles of a non-profit institution.
- Perform all other acts that may be considered necessary, suitable and proper for the attainment of the aims of the Institute as set forth in Article IV of the Constitution.

2. Director General Support and Oversight

- Select the Director General and clearly determine his or her job duties, responsibilities and level of authority.
- Foster the Director General's effective leadership and management of the Institute's personnel, operations, and activities,

- Regularly evaluate the performance of the Director General based upon an agreed set of performance criteria.
- Approve of the Institute's broad organizational framework.
- Approve of personnel policies including scales of salaries and benefits.

3. Oversee Performance & Results

- Ensure the timely and effective gathering of pertinent data and distribution to the Board by the management.
- Monitor, analyze, and oversee the Board-level metrics, performance indicators, and ultimate results of the Institute's efforts.
- Be able to ask appropriate, substantive questions and provide high-level feedback, policy changes, and suggestions to the Director General and Leadership Team to enhance the Institute's performance and results.

4. Strategy and Planning

- Together with the Director General and Leadership Team, formally establish the vision, mission and strategic goals, objectives and metrics of success for the Institute and determine the priorities relating to major elements of the Institute's programs.
- Develop an effective ongoing process for strategic efforts to be discussed, agreed upon, and effectively monitored.
- Define objectives, approve plans to meet the Institute's aims and monitor the achievement of these aims.
- Consistently foster a leadership culture that encourage the Board to ask strategic questions as well as regularly engage in effective strategic thinking, learning, and dialogue.

5. Budget, Financial Integrity and Accountability

- Review and approve the annual budget of the Institute.
- Monitor the revenues, expenses, and key financial ratios of the Institute on a regular basis.
- Ensure the Institute's cost-effectiveness, financial integrity, and accountability.
- Approve financial policies, including an investment policy, and monitor their implementation.
- Ensure adequate resources are available to carry out the Institute's vision and mission.
- Appoint an external auditor and approve an annual audit plan.
- Ensure a clear delegation of authority policy is promulgated by the Board to clarify the authority of the Director General and Leadership Team to make expenditures as necessary by agreements, treaty, or contract.

- Working with the Director General and Leadership Team, help to develop an appropriate risk profile for the Institute and ensure policies, a budget, the strategic plan, and other relevant documents are consistent with that risk profile.
- Ensure the proper maintenance and security of all assets, accounts, and written information entrusted to the Institute.
- Ensure ongoing monitoring and compliance with all laws, rules and regulations applicable to the Institute and all its activities.
- Approve the Institute's fund raising and resource mobilization strategies, policies and programmes, and promote such fund raising and resource mobilization activities.

6. Membership & Outreach

- Act as active ambassadors to the community, thoughtfully represent the Institute's interests and the Institute's constituents on behalf of the Institute.
- Help to improve and communicate the Institute's brand, image, and benefits to stakeholders the international community at large.
- Assist the Institute in identifying and forming crucial partnerships with and securing funding from other organizations, companies, philanthropies, groups, etc.

Procedures of the Board

The Board shall adopt its own rules of procedure.

1. Meetings

The Board shall meet at least two times a year.

2. Quorum

A majority of the currently active members shall constitute a quorum for Board meetings having greater than 50% of the members present.

3. Board Alternates

A Board member representing a government or an organization other than the Director General may delegate his or her authority to a single subordinate, who shall be permitted to vote in any matter before the Board on behalf of the delegating member; provided that the delegating member shall inform the Board Chairperson and Secretary of the delegation in writing prior to the meeting and that the Chair approves the delegation of authority. Such notice shall clearly state the duration of the delegation of authority.

4. Decision-making and Voting

Each Board member shall have one vote. All decisions shall normally be reached by consensus, and the Board shall use all reasonable efforts to make decisions by consensus. If the Board cannot reach consensus, upon request by the Chairperson, any Board Member may

make a motion calling for a vote on the issue in question. If the motion calling for a vote passes by a majority of those Members present and voting, the Board then votes on the issue in question. Members who abstain from voting are recorded. Normally, a show of hands shall be used to register a vote. Decisions shall be made by a majority of members present and voting except as specified otherwise in the Constitution. All votes will be counted, and dissenting votes will be recorded, and conflicts noted. Once the Board has voted, it is the duty of each Board member to uphold that decision of the Board, regardless of his or her individual vote on the matter. It is preferred that major decisions are made at the face-to-face Board meetings.

In the event that a Board member (or an Alternate) who is acting as a representative of a government or organization reasonably believes that he or she cannot vote in good conscience without receiving instruction from his/her government or organization, the Board may postpone or suspend consideration of the pending motion, calling for a vote, for a short period of time, but in no case shall the vote be delayed longer than the majority of the Board considers reasonable..

Members who have a conflict of interest shall be recused from the discussion of the underlying matter by not reviewing any documents relating thereto, not discussing the matter with anyone at IVI and by not listening to or being physically present or viewable during the discussion of that issue.

When a decision is needed between Board meetings, the Board Chair may request approval on a “no objection” basis. The Board Secretary shall compile replies and inform the Chair accordingly. The Board Chair shall communicate the final result to the entire Board. Decisions made on this basis must be unanimous and in writing and recorded in the records of the Institute by the Secretary.

All interim actions of the Committees shall be reported to the Board and are subject to ratification by the Board unless specifically delegated in advance. In the event of any substantive disagreements which were not resolved at the Committee meeting, the matter(s) will be referred to the Board for discussion and decision.

5. Observer

Upon request by the Director General or a Board member to invite a person or an entity as an observer to the Board meeting, the Board Chairperson shall grant the concerned person or entity the observer status in consultation with the Board by informing via email or in person. If there is any objection by a Board member, the concerned matter shall be reviewed by the Executive Committee.

Annex 1. Description of the “Constructive Partnership” with Director General and Leadership Team

Effective governance requires a high level of collaboration between the Board and the Director General and the Leadership Team. Members of the Board must play an important leadership role with the Director General and the Leadership Team in establishing the mission, vision, and long-term strategic direction of the Institute, as well as share responsibility to put common efforts for establishing the Institute’s strategic goals, objectives and success metrics.

A well-governed Board will not be involved in day-to-day tactical, operational issues. Rather, the Board should oversee the Institute’s operations effectively and make informed decisions –without exercising the role of management. Knowledgeable oversight entails monitoring how well activities, decisions, and results align with the established governance framework, policies, and strategic plan of the Institute. Exercising knowledgeable oversight over the Director General and Leadership Team’s efforts does not normally entail getting mired in operational detail, although some operational knowledge is needed so that the Board may have informed discussions and make informed decisions.

In carrying out a Board member’s duty to manage the business and affairs, the Board member must exercise his or her own objective and independent judgment. This means engaging in robust discussions with other Board members, the Director General and Leadership Team and others – and even challenging recommendations at certain times, rather than simply deferring to others’ judgment. The most fundamental set of governance responsibilities of the Board include constructively partnering with the Director General and the Leadership Team.

The Concept of “Constructive Partnership”

The concept of constructive partnership as applied to nonprofit Boards was developed by Dr. Richard Chait a nonprofit governance expert at Harvard University. Chait suggests the best way to frame the relationship between a Board and management is focusing on effective collaboration - instead of focusing merely on control. Chait called a relationship in which the Board and management were effectively collaborating, working with each other, offering mutual support, and holding each other accountable in order to further the mission of a nonprofit, a “constructive partnership.”

Within the constructive partnership between Boards and management, Boards retain the primary legal responsibility for governance - the proper exercise of ultimate authority - of their organization.¹ Boards also exercise organizational oversight and ultimate policy setting.² They properly delegate

¹ The Source: Twelve Principles of Governance That Power Exceptional Boards, (Page 1 of Constructive Partnership Chapter) BoardSource, 2005.

² Id.

to the DG and his management team the responsibility for managing operations, personnel and day-to-day organizational resources.³ As the BoardSource publication *The Source: Twelve Principles of Governance That Empower Exceptional Boards* notes:

While respecting this division of labor, exceptional Boards become allies with the CEO in pursuit of the mission. They understand that they and the chief executive bring essential, complementary ingredients to the governance partnership that, when combined, are greater than the sum of their parts. Exceptional Boards recognize they cannot govern well without the CEO's collaboration and that the CEO cannot lead the organization to its full potential without the Board's unflagging support.⁴

The central question the Constructive Partnership governance model attempts to answer is "How can the Board and the DG (along with the Senior Leadership team) work effectively together?" The key to success of the quality of the partnership is in effective teamwork, genuine collaboration and mutual accountability - with both the Board and CEO creating maximum value to move the mission and strategic goals of an organization forward.

This central governance relationship was further developed by the work of Ram Charan - probably the leading governance expert in the world today. Charan's framework emerges from the central question, "When is it appropriate for a Board to "(1) take charge, (2) partner or (3) [delegate]?"⁵ Similar to Chait, the focus of Ram Charan's work is that the Board and the CEO should work strategically and collaboratively as a team for the good of an organization and its mission.

There are, according to Charan, appropriate situations where (1) it is the Board who should take charge and lead - such as the choice of the next DG. There are also circumstances where (2) the Board and Management should thoughtfully and consciously work to actively partner with each other - such as in the creation of an organization's vision, mission and strategy. Lastly, there are significant areas where (3) the Board should delegate appropriate management authority to the DG and his or her team - such as in nearly all tactical, personnel, operational and execution matters.

Application of the Constructive Partnership Model to the Leadership of the International Vaccine Institute

In a true constructive partnership, both the Board and the DG (including his senior leadership team) regularly engage in an interactive dialogue in which they strive to reach deeper insight and clarity about the Institute's goals, challenges, environment and opportunities. Such insights help them individually - and collectively - to ask better questions and make better decisions. As such, the

³ Id.

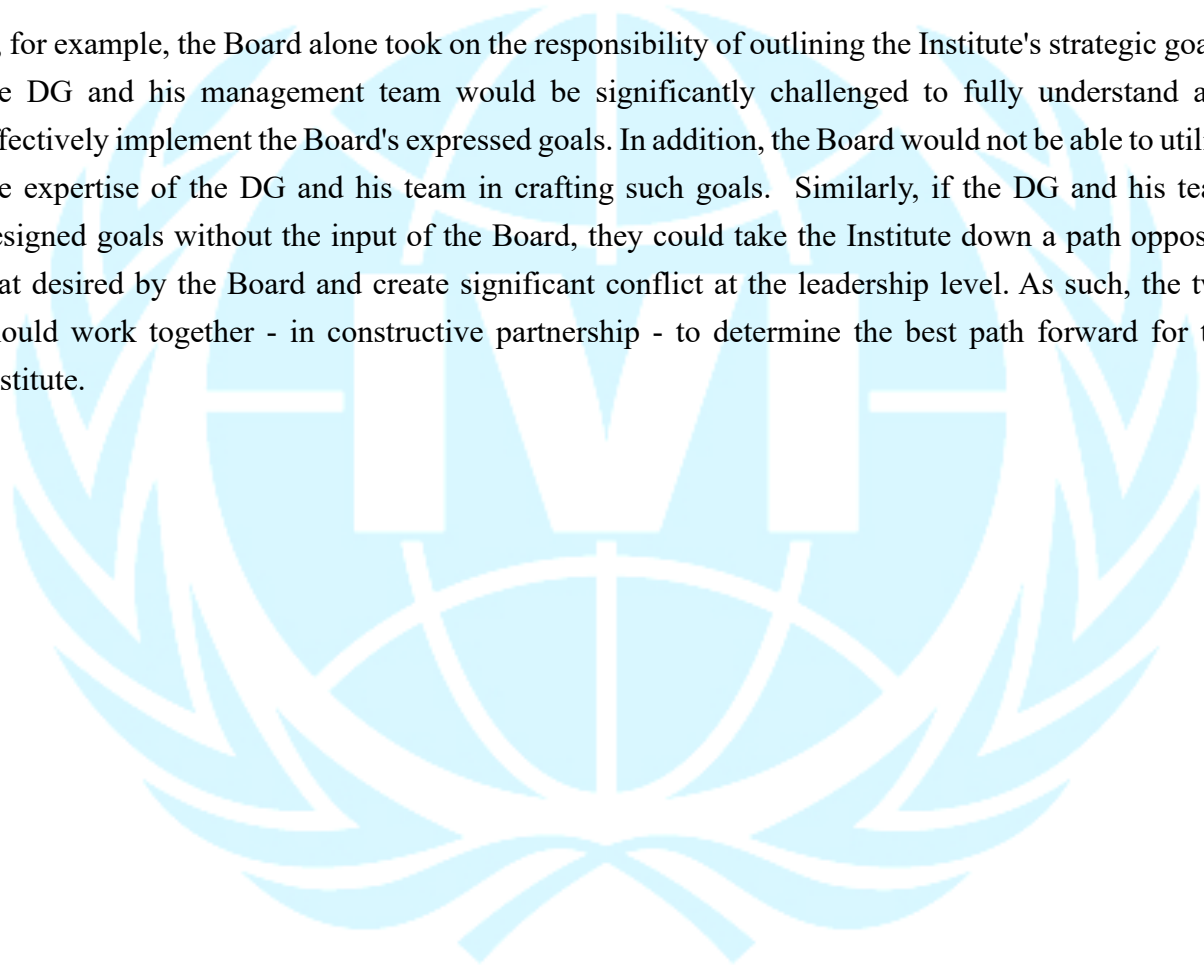
⁴ Id.

⁵ Ram Charan, *Boards That Lead*, p. 1.

Institute's Board and DG both play a vital leadership role through their combined stewardship and disciplined oversight of the Institute's performance as well as being ongoing strategic catalysts through their passion, experience and foresight.

In essence, while the Institute's Board and DG have their respective roles, there should always be an ongoing attempt to maintain the dynamic balance - and constructive partnership - between the Board and the DG. For example, the Board and the DG should work collaboratively to establish the Institute's vision, mission and strategic goals. Working effectively together - which maintaining their appropriate accountability roles - is the best means to ensure the Institute's ambitious purpose will be successfully realized.

If, for example, the Board alone took on the responsibility of outlining the Institute's strategic goals, the DG and his management team would be significantly challenged to fully understand and effectively implement the Board's expressed goals. In addition, the Board would not be able to utilize the expertise of the DG and his team in crafting such goals. Similarly, if the DG and his team designed goals without the input of the Board, they could take the Institute down a path opposite that desired by the Board and create significant conflict at the leadership level. As such, the two should work together - in constructive partnership - to determine the best path forward for the Institute.



Annex 2. Fundamental Duties of a Board Member and General and Legal Accountabilities

Fundamental Duties of a Board Member

The fundamental standard for Board members' and officers' conduct is that each Board member and Officer must perform his or her duties in good faith and in a manner, he or she believes to be in the best interests of the Institute.

Because a Board is comprised of individuals, and can only act as a collective entity, the duties of the Board and the duties of individual Board members are almost identical. Those duties are the duties of: (1) care, (2) loyalty, and (3) obedience.

Together, these three comprise the classic triad of a Board member's essential fiduciary duties:

- 1) **Duty of Care.** The duty of care means that the Board member will act as a similarly reasonable Board member would act. The duty of care primarily relates to the responsibility to become and remain reasonably informed in making decisions and overseeing the Institute's business. The duty of care requires Board members -- and senior management -- to make good faith, informed decisions, which they may do by attending meetings, examining material information and preparing in advance of meetings, asking questions of management, being curious and skeptical when reviewing information, requesting and obtaining professional expert advice and actively participating in the decision-making process.

Making informed decisions requires being informed and prepared for Board meetings. To be informed and prepared, Board members should ensure that management provides Board members with sufficient information to consider and take actions, request additional information when appropriate and ask questions necessary to understand the information provided. It means relying on information, opinions, reports, or statements, including financial statements and other financial data of others, including management, legal counsel, accountants, and other such experts, if the Board member reasonably believes the information is reliable and the person is competent in the matters presented.

Board members should establish clear expectations for management's provision of meeting materials and submission of those materials to Board members with sufficient advance time, so Board members understand the information before decision-making. In addition, important, time-sensitive information that becomes available between meetings must be promptly distributed and reviewed by Board members.

Delegation of matters to Board committees (e.g., governance, nominating, audit, etc.) does not relieve a Board member of oversight responsibility. Board members should keep informed about Board committee activities and information.

A Board member may fail to act in good faith if the Board member fails to be informed or

obtain necessary information to make a decision or has knowledge concerning the matter in question that makes reliance on such information unwarranted.

Duty of Care – to act as a similarly situated reasonable Board member would act:

- Actively engage, contribute, participate, and ask questions.
- Keep informed, prepare for and attend Board meetings.
- Participate in Board development and educational activities.
- Support and participate in the Institute’s outreach efforts and activities.
- Understand and monitor the Institute’s finances, safety, and soundness.
- Assist in shaping the vision, mission, and strategy of the Institute.
- Cast his or her vote independently of other Board members in the best interests of the Institute, relying upon his or her best judgment, knowledge and information.

2) **Duty of Loyalty.** The duty of loyalty focuses on avoidance of improper conflicts of interests and requires fair dealing by Board members involved in transactions where a personal or financial interest may arise. The duty of loyalty requires Board members to act in good faith and in the best interests of the Institute and not in their own interests or the interests of persons or Institute s with which they are associated.

Board members may not use their position for personal gain or advantage and should avoid conflicts of interest. Therefore, Board members must be sensitive to any interest they may have that might conflict with the interests of the Institute. When a Board member has a potential conflict of interest (e.g., contract, transaction or relationship affecting or opposed to the Institute) the Board member must (i) fully disclose his or her interests to the designated Board representative, and (ii) refrain or abstain from participating with the Board during any presentation, deliberation, or action on the issue.

A Board member may fail to act in good faith when the Board member fails to disclose a personal interest, intentionally acts with a purpose other than the Institute’s best interests or fails to act when they have a known duty to act.

Duty of Loyalty – A Board member’s ultimate duty is to the mission of the Institute:

- Promote and understand the mission of the Institute.
- Publicly support and defend the Institute as its ambassador in a highly professional manner, however, this duty will not be interpreted, nor will it be enforced, to restrict or prohibit the free expression of disagreement by any Board member.
- Demonstrate personal and sustained commitment to achieve the vision and mission of the Institute.
- Attend and actively participate in all Institute Board and/or appropriate committee meetings.

- Ensure that all business affairs of the Institute and affairs of members are kept in strictest confidence, and refrain from relationships that present a conflict of interest for the Institute.

3) **Duty of Obedience.** The duty of obedience requires a Board member to faithfully observe and comply with relevant legal requirements, as to ensure that the Institute is in legal and regulatory compliance. In addition, the duty of obedience requires a Board member to faithfully observe and comply with all properly promulgated policy and procedures of the Institute. Most importantly, it requires that the Board member ensure that the Institute is operating in observance of its stated vision, mission, and strategic direction. Board members can exercise their own reasoned judgment in how the Institute should best achieve its mission, but they cannot act in a manner that is inconsistent with the Institute's mission.

Duty of Obedience – to obey the laws and policies that pertain to the Institute.

- Exercise due diligence and oversight to assure compliance to all applicable laws, rules and regulations.
- Ensure compliance to the official Bylaws, policies, and rules properly promulgated by the Board.
- Participate on any committees or task forces as requested by the Board.

General Accountability

Under Article IX of the Constitution, except for ex-officio members (IVI DG and GAVI) and the members appointed by the host country and WHO, and the members elected upon recommendation of governments of the State Parties, each member of the Institute board acts in his or her individual capacity, and are not considered, nor do they act, as official representatives of any government, organization or constituency - be it a country, a region, a professional discipline, or other entity through which his or her membership is derived. Members bring to the Board particular knowledge and perspectives that are relevant to the Board; the Board nominating process has put its faith in the individual member's capacity to serve well as a Board member, not as a representative acting under instruction. Without this distinction, Board autonomy would be lost, and artificial divisions would arise.

While these standards may be obvious to Members-At-Large they are not so clear with Representative members. These members are frequently regarded by their parent organizations and government as its representatives on the Board. Such members have generally served their Boards well, and their status with their host organizations and government has been very important to the operation of the Institute. From the Board's perspective, however, while such members are expected to inform the Board of their organization's and government's views and concerns, they serve as individuals, not as directed representatives. Like all members of the Board, their accountability is

to the Board and to themselves, even while recognizing that, if their government is unhappy with their performance, it may have the right to replace them.

All Board members should see themselves as accountable to:

- The Institute's Mission
- The Institute's beneficiaries
- The Institute's external stakeholders, including Signatory Members
- Each other as Members of the Board
- The Institute's Director General and staff
- The host country, and
- The public at large

While there will always be a degree of conflict among these areas of broad accountability, Board members must use their own judgment in acting in particular circumstances to determine the Institute's best interest. It is the responsibility of each member to speak out on issues that he or she believes the Institute should address. Board members are expected to be enlightened international servants, who by their wise and prudent actions endeavor to advance the interests and the well-being of the groups and individuals that the Institute serves.

Legal Accountability and Liability

A Board member is legally accountable under the laws and statutes governing the Institute's establishment, or under the international agreement establishing the Institute and the host country agreement under which it operates. In general:

- Board members have a legal duty to ensure that the Institute keeps correct records;
- Business decisions made in good faith which turn out poorly do not constitute grounds for personal liability;
- Board members can be held liable for a breach of fiduciary care, if they fail to attend meetings or monitor the Institute's affairs; and
- Board members can be held personally liable if they vote for or assent to the improper distribution of the Institute's assets, or when they fail to dissent in writing when impropriety occurs.

Board members may be protected against the risk of legal liability: (i) under article XII of the Headquarters Agreement "Members of the Board of Trustees of the Institute" and article XIII "Purpose of Privileges and Immunities and Cooperation with Appropriate Korean Authorities"; (ii) through the articulation of policies and procedures to ensure good performance and (iii) through liability insurance.

In practice, because it is difficult to judge research-related performance in any clear-cut way, and because board members are not typically residents of the country of incorporation, legal liability of Board members is difficult to enforce. However, poor performance by a Board or major troubles at the Institute can have significant repercussions on the Institute's standing and the goodwill of

external stakeholders toward the Institute. Thus, Board members should recognize their accountability and meet their responsibilities accordingly.

