



Legal and Fiduciary Responsibilities for IEEE SA Standards Board

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AGENDA

- **IEEE Corporate and Tax Structure and Governance Hierarchy**
- **Roles and Accountabilities for SASB Members**
- **Fiduciary Duties of SASB Members**
- **Liability as an SASB Member**

IEEE Corporate and Tax Structure and Governance Hierarchy



IEEE's Structure and Purpose

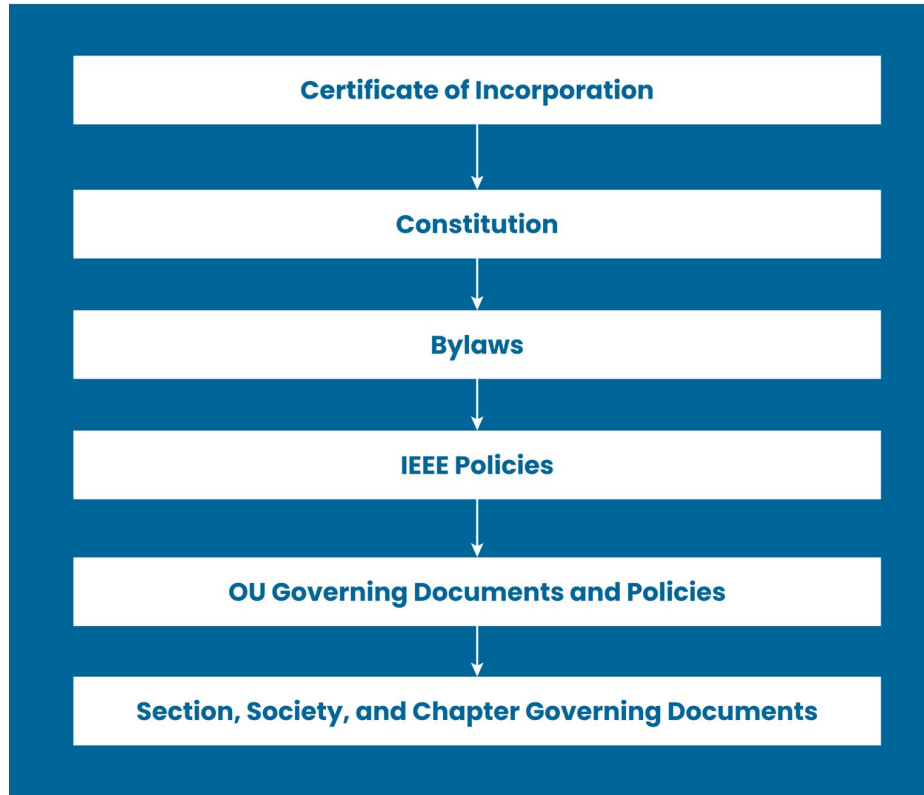
IEEE's 1963 Certificate of Incorporation

- A New York Not-for-Profit Corporation
- Tax-exempt under Internal Revenue Code § 501(c)(3)
- Purpose as stated in the IEEE Certificate of Incorporation:
“To engage exclusively in scientific and educational activities within the meaning of Section 501(c)(3)....for the benefit of the engineering community and the general public.”



IEEE is a New York Not-for-Profit Corporation and a U.S. Public Charity

IEEE Governing Documents



IEEE Tax Status

- 1993: IEEE converted from a Code § 501(c)(6) professional association (typically the tax status of an association of professionals, e.g., American Medical Association, American Bar Association, or an industry standards development organization) to a § 501(c)(3)
- Exempt as a public charity under Code § 501(c)(3)



§ 501(c)(3) - United States Internal Revenue Code (IRC)

- Requirements for public charity tax exemption:
 - “Organized and operated”
 - “**Exclusively**”
 - “For educational and scientific purposes”
 - “**No part** of the **net earnings** of which inures to the benefit of any private shareholder or individual” (same as NY requirements)
- Incidental benefit to private interests is permissible only if it is a by-product of the broad public benefit

§ 501(c)(3) - United States Internal Revenue Code (IRC)

- A charitable organization may engage in an “insubstantial” amount of **“unrelated”** activities
 - **“Unrelated”** activity is an activity that doesn’t substantially further the organization’s charitable purposes
 - Rule of thumb: 5- 15% of total resources (people, revenue and effort) can be spent on **all unrelated** activities
 - Revenue from unrelated activity may be taxable as unrelated business income, even if the organization uses the revenue to fund charitable activities

Role and Accountability of SASB Members

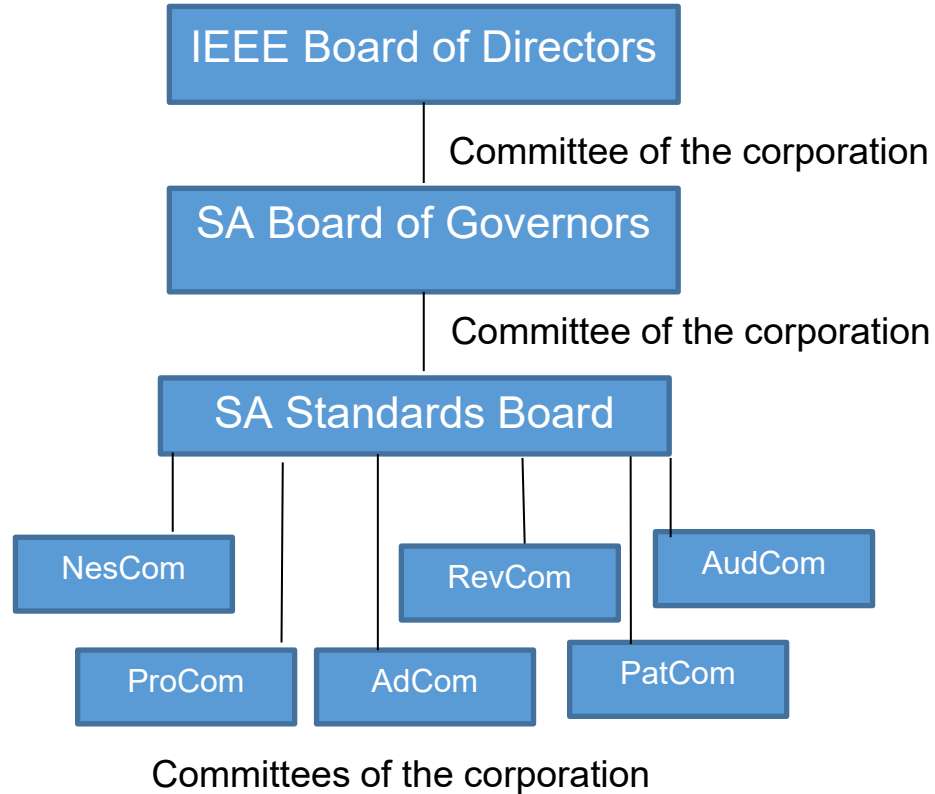
IEEE Corporate Governance

Standards Association's Relationship to IEEE

- The Standards Association is a Major Board/Organizational Unit (“OU”) of IEEE – no independence or autonomy to act separately from IEEE
- The BOG, SASB and other SA committees are each treated as a “committee of the corporation” subject to direction and control of IEEE Board of Directors, which can delegate certain responsibilities to it
 - ❖ subject at all times to direction and oversight of the IEEE Board of Directors
 - ❖ cannot have greater authority than the IEEE Board of Directors has
 - ❖ cannot represent IEEE in external bodies unless designated to do so
- IEEE's Board of Directors is ultimately responsible for actions



IEEE SA's GOVERNANCE WITHIN IEEE



Role of IEEE Board of Directors

- IEEE Board of Directors (Constitution, Article IX, Section 1):
 - Board of Directors is the “governing body of the IEEE”
 - The business and affairs of IEEE are managed under the oversight of the Board of Directors
- IEEE Bylaw I-306: Responsibility for staff, operations, and execution of strategic goals is largely delegated to the Executive Director as the chief operating officer of the IEEE



Standards Association

- IEEE Bylaws I-303
 - The IEEE Standards Association shall be responsible to the Board of Directors for standards programs that enhance the strategic initiatives of IEEE. **The IEEE SA shall establish, coordinate, develop, approve, and revise IEEE standards and conduct other standards-related activities in fields of interest to IEEE. The IEEE SA shall be the IEEE interface in standards related matters with external bodies.** The IEEE SA Board of Governors shall be the governing body of the Standards Association, and it shall reflect the technical and global standards interests of IEEE



Role of the IEEE SA Standards Board

Section 1 of SASB Bylaws

The **IEEE SA Standards Board** is responsible on an Institute-wide basis for a) Encouraging and coordinating the development of IEEE standards b) Reviewing all proposed IEEE standards to determine whether the proposed standards conform to the requirements established by the IEEE SA Standards Board and whether consensus has been achieved for approval of the proposed standards

Matters of standards policy, financial oversight, new directions in standardization, and other standards-related activities in fields of interest to the Institute as stated in the IEEE Constitution are the responsibility of the IEEE SA Board of Governors (BOG)



Fiduciary Duties of SASB and its Committees

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Duties of Care, Loyalty, and Obedience

- Prudent Person Rule: Act in **good faith**, and with that degree of **diligence, care** and skill which an **ordinary prudent person** would exercise under similar circumstances in a like position
- Business Judgment Rule: Good faith and full disclosure
 - You can **rely on information, opinions and reports** from others including experts (e.g., investment advisors, CPA firm, independent compensation consultants) and staff
 - If there is reason for suspicion, you should make an inquiry

Fiduciary Duties (cont.)

Care Dos



Care Don'ts

- Spend sufficient time and energy to be reasonably familiar with matters requiring Board attention
- Access and review adequate information
- Rely on expert advice
- Monitor delegated activities
- Attend and ask questions at the meetings
- Make independent decisions based on “informed knowledge” and experience

- Don't delegate duties
- Don't engage in bloc voting
- Don't vote as representative of any constituency when acting as a Director
- Don't request information in the name of IEEE for your personal use

Fiduciary Duties of (cont.)

Duty of Loyalty: An undivided allegiance to IEEE and its mission when using power of position or information about IEEE or its assets

Loyalty Dos



Loyalty Don'ts

- Exercise powers in the interest of IEEE as a whole
- Make sure benefit accrues only to the public and the overall organization
- Disclosure potential related party transactions
- Don't undermine Board decisions, regardless of the role you're playing (e.g., member of Major Board or IEEE member)

- Don't act individually
- Don't act in a manner that undermines a decision of the Board of Directors
- Don't seize IEEE opportunities for yourself
- Don't act on a related party transaction prior to approve by the independent directors
- Don't engage in a conflict of interest



Fiduciary Duties (cont.)

Duty of Obedience:

SASB Members must be faithful to the mission and purposes of IEEE

Obedience Dos



Obedience Don'ts

- Know the purposes of IEEE as stated in the Certification of Incorporation
- Be aware of the IEEE Mission
- Note whether proposed activity is consistent with stated IEEE purposes and the legislative framework
- Uphold decisions of the board

- Act in a manner that violates law or governing documents (including policies)



Fiduciary Duties (cont.)

Duty of Loyalty - Conflict of Interest

- What is a Conflict of Interest?
 - “any situation in which a member’s decisions or votes could substantially and directly affect the member’s professional, personal, financial or business interests.” N-PCL Section 715 and Bylaw I-300(2)
 - actual, perceived, or potential conflict

Fiduciary Duties (cont.)

Duty of Loyalty - Conflict of Interest (cont.)

- **Disclose conflict before discussion or presentation to the SASB or committee and indicate whether you**
 - Are recusing yourself from discussion or vote
 - Believe you are able to separate those interests from your obligation to act in the best interest of IEEE
- **Duty of governing body's non-conflicted members to determine existence of conflict**
- **Conflicted person will be removed from the numerator and the denominator for purposes of quorum**



Fiduciary Duties (cont.)

Duties of Care, Loyalty and Obedience – Confidentiality

- Confidentiality
 - Derived from Duties of Care, Loyalty and Obedience
 - Obligation to keep Confidential Information confidential
 - What is Confidential Information?

Fiduciary Duties of Directors (cont.)

Duties of Care, Loyalty and Obedience – Confidentiality

- Requires that you keep information about your work on behalf of IEEE-SA confidential where directed to do so, including from your employer or any entity with whom you are otherwise affiliated.
- IEEE has a Guide to Classification of Documents which sets forth guidelines on confidentiality.
 - https://www.ieee.org/content/dam/ieee-org/ieee/web/org/about/whatis/information_disclosure_policy_guide.pdf

Fiduciary Duties of Directors (cont.)

Duties of Care, Loyalty and Obedience – Confidentiality/Executive Sessions

- Executive Sessions
 - Discussions are confidential only to those in the session
 - Agree on what will be reported out of session, if anything
 - General rule: maintain a high degree of confidentiality until public disclosure

Liability as a SASB Member

Governing Members Liability

Lawsuits

- SASB members can be sued by:
 - Third parties for violation of U.S. and non-U.S. laws
 - Members (including in a derivative suit representing 5% of membership (N-PCL Sec. 623))
 - New York Attorney General (N-PCL Sec. 720)
- If you receive a subpoena or other legal papers, call General Counsel
- Don't comment on ongoing litigation in your capacity as an SASB Member
- Note: IEEE is liable for actions of Standards Association



Governing Members Liability (cont.)

Indemnification

- What is indemnification?
 - A guarantee against any loss which another might suffer
 - Permitted by New York law – mandatory if defense is successful
 - IEEE Bylaw I-300.3 – “against judgments, fines, amounts paid in settlement and reasonable expenses..in connection with the defense of any suit or proceeding”
- Actions of SASB members are indemnified if:
 - Duly authorized
 - Acted in good faith
 - Not inconsistent with purposes or objectives of IEEE
 - Believed in the best interest of IEEE
 - No reasonable cause to believe conduct was unlawful



OBRIGADO
gracias
どうも
ARIGATO
grazas
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THANKS
qujan
PALDIES
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Gràcies
TACK
TEŞEKKÜR EDERİM
muchas gracias
obrigado
спасибо
MULTUMESC
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THANK YOU