

### Practice Guidance 1: Board Roles and Director Duties

#### **Board's Role**

The Board's role is to:

- (a) set strategic objectives, which should include appropriate focus on value creation, innovation and sustainability;
- (b) ensure that the necessary resources are in place for the company to meet its strategic objectives;
- (c) establish and maintain a sound risk management framework to effectively monitor and manage risks, and to achieve an appropriate balance between risks and company performance;
- (d) constructively challenge Management and review its performance;
- (e) instil an ethical corporate culture and ensure that the company's values, standards, policies and practices are consistent with the culture; and
- (f) ensure transparency and accountability to key stakeholder groups.

#### **Scope of Director Duties**

Directors should be aware of their duties at law, which includes acting in good faith and the best interests of the company; exercising due care, skills and diligence; and avoiding conflicts of interest.

While the duties imposed by law are the same for all directors, a listed Board will generally have different classes of directors (executive, non-executive and independent directors) with different roles:

- **Executive Directors (EDs)** are usually members of senior management, and involved in the day-to-day running of the business. Executive directors are expected to:
  - (a) provide insights on the company's day-to-day operations, as appropriate;
  - (b) provide Management's views without undermining management accountability to the Board; and
  - (c) collaborate closely with non-executive directors for the long term success of the company.
- **Non-Executive Directors (NEDs)** are not part of Management. They are not employees of the company and do not participate in the company's day-to-day management. NEDs are expected to:
  - (a) be familiar with the business and stay informed of the activities of the company;
  - (b) constructively challenge Management and help develop proposals on strategy;
  - (c) review the performance of Management in meeting agreed goals and objectives; and
  - (d) participate in the appointment, assessment and remuneration of the executive directors and key management personnel generally.
- **Independent Directors (IDs)** are NEDs who are deemed independent by the Board (see Provision 2.1 and Practice Guidance 2 on criteria for director independence). IDs have the duties of the NEDs, and additionally provide an independent and objective check on Management. In certain cases, Listing Rules require IDs to make certain decisions and determinations. However, IDs should avoid focusing solely on the duties relating to compliance with rules. As with all directors, they are to act in the best interests of the company as a whole and not of any particular group of shareholders or stakeholders.

#### **Conflicts of Interest**

The Board should have clear policies and procedures for dealing with conflicts of interest. Where the director faces a conflict of interest, he or she should disclose this and recuse himself or herself from meetings and decisions involving the issue. For instance, if the Board Chairman is a member of the Nominating Committee (NC), he or she may be conflicted on discussions relating to succession of the

Board Chairman and should thus recuse himself or herself from such discussions after providing his or her input to the NC.

### **Director Competencies**

There should be formal communication from the company to each director on their appointment of their roles, duties, obligations and responsibilities, and the expectations of the company. This includes each director developing his or her competencies to effectively discharge his or her duties.

To ensure that directors have the opportunities to develop their skills and knowledge, the Board should develop a policy and criteria for directors' development. The Board Chairman and the NC Chairman should jointly and regularly review and agree with each director his training and professional development needs.

### **Board Organisation and Support**

The Board may form committees, but should decide the scope and the matters delegated to the committees. Generally, all important decisions should be made at the Board level.

If the Board chooses to form an executive committee (EXCO) and delegate certain matters for the EXCO to decide, it is responsible for understanding the EXCO's discussions and endorsing the EXCO's decisions.

Management provides the Board with information for its meetings and decision making, including board papers and supporting information. In respect of budgets, any material variance between the projections and actual results should also be disclosed and explained.

Relying purely on what is volunteered by Management is unlikely to be enough in all circumstances and further enquiries may be required if the particular director is to fulfil his or her duties properly. Directors are entitled to request from Management and should be provided with such additional information as needed to make informed decisions. Management should provide the information in a timely manner.

The Board should be supported by the company secretary, the role of which should be clearly defined. The company secretary's responsibilities include advising the Board on corporate legal and administrative matters, as well as facilitating orientation and assisting with professional development as required. The company secretary should attend all board meetings.

## Practice Guidance 2: Board Composition and Guidance

### Director Independence

There should be a strong and independent element on the Board.

An independent director (ID) should have no relationship (whether a familial, business, financial, employment, or otherwise) with the company, its related corporations, substantial shareholders or officers, which could interfere or be perceived to interfere with the director's independent judgment. Rule 210(5)(d) of the SGX Listing Rules (Mainboard)/ Rule 406(3)(d) of the SGX Listing Rules (Catalist) sets out the following specific circumstances in which a director should be deemed to be non-independent:

- (a) A director who is being employed by the company or any of its related corporations for the current or any of the past three financial years;
- (b) A director who has an immediate family member who is, or has been in any of the past three financial years, employed by the company or any of its related corporations and whose remuneration is determined by the Remuneration Committee;
- (c) A director who is a substantial shareholder or an immediate family member of a substantial shareholder of the company; and
- (d) *[A director who has served on the Board beyond nine years from the date of his or her first appointment] / [A director who has served on the Board beyond nine years from the date of his or her first appointment and whose appointment has not been approved in a two-tier vote by all shareholders and non-controlling shareholders]<sup>1</sup>.*

In addition to these, the NC and Board should consider the following circumstances in which a director should also be deemed to be non-independent:

- (a) A director, or a director whose immediate family member, in the current or immediate past financial year, provided to or received from the company or any of its subsidiaries any significant payments or material services (which may include auditing, banking, consulting and legal services), other than compensation for board service. The amount and nature of the service, and whether it is provided on a one-off or recurring basis, are relevant in determining whether the service provided is material. As a guide, payments aggregated over any financial year in excess of S\$50,000 should generally be deemed significant.
- (b) A director, or a director whose immediate family member, in the current or immediate past financial year, is or was, a substantial shareholder or a partner in (with 5% or more stake), or an executive officer of, or a director of, any organisation which provided to or received from the company or any of its subsidiaries any significant payments or material services (which may include auditing, banking, consulting and legal services). The amount and nature of the service, and whether it is provided on a one-off or recurring basis, are relevant in determining whether the service provided is material. As a guide, payments aggregated over any financial year in excess of S\$200,000 should generally be deemed significant irrespective of whether they constitute a significant portion of the revenue of the firm or person in question; or
- (c) A director who is or has been directly associated with<sup>2</sup> a substantial shareholder of the company, in the current or immediate past financial year.

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<sup>1</sup> The Corporate Governance Council is consulting on the approach for determining a director's independence after nine years from the date of his or her first appointment. Please refer to Key Recommendation 5 of the consultation paper for details.

<sup>2</sup> A director is considered "directly associated" with a substantial shareholder when he is accustomed or under the obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder in relation to the corporate affairs of the company. A director will not be considered "directly associated" with a substantial shareholder by reason only of his or her appointment having been proposed by that substantial shareholder.

The above examples are not exhaustive and the NC and Board should determine whether there is any circumstance or relationship which might impact a director's independence, or the perception of his or her independence. Except for the circumstances set out in the SGX Listing Rules, they are meant to illustrate likely non-independence and the NC and Board can still consider a director to be independent notwithstanding the existence of any of those situations. However, if it does so, it has to fully disclose the nature of the director's relationship, and why the Board has determined the director to be independent.

#### **Advisory Vote on Appointment of IDs**

Controlling shareholders, by virtue of their greater number of votes and influence, tend to have greater say in the appointment of directors, both independent and non-independent. It is however important that IDs have the support of other shareholders as well.

As a step towards ensuring this, the votes of the other (non-controlling) shareholders for IDs should be separately tabulated and disclosed at the general meeting. While the election of a director is still decided by the tally of all votes, separate disclosure of the aggregate votes of non-controlling shareholders for the election of IDs provides the Board and directors with an indication of the support by all the other shareholders for the ID, and encourages greater discipline and rigor in the assessment of the independence and appointment of directors.

#### **Proportion of Directors Independent of Business and Management Relationships**

A key duty of the Board is to set objectives and goals for Management, monitor the results, and assess and remunerate Management on its performance. Directors who are part of Management or involved in business relationships with the company may be conflicted in these areas. Hence, directors independent of business and management relationships with the company should comprise at least a majority of the Board.

#### **Role of Lead IDs**

The Lead ID plays an additional facilitative role within the Board, and where necessary, he or she may also facilitate communication between the Board and shareholders or other stakeholders of the company. The company should clearly communicate to shareholders and other stakeholders on how the Lead ID can be contacted.

#### **Board Diversity Policy**

The Board is responsible for setting the board diversity policy. It may charge an appropriate committee (such as the NC) with the task of setting qualitative and quantitative objectives for achieving board diversity, and reviewing the company's progress towards achieving these objectives.

### **Practice Guidance 3: Chairman and CEO**

The separation of the role of the Board Chairman from that of the Chief Executive Officer (CEO) avoids concentration of power in one individual, and ensures a degree of checks and balances.

The overall role of the Board Chairman is to lead and ensure the effectiveness of the Board.

Externally, the Board Chairman is the face of the Board, and should ensure effective communication with shareholders and other stakeholders.

Within the company, the Board Chairman should ensure appropriate relations within the Board, and between the Board and Management, in particular, between the Board and the CEO.

In the boardroom, the Board Chairman's responsibilities range from setting the Board agenda and conducting effective Board meetings, to ensuring that the culture in the boardroom promotes open interaction and contributions by all.

## Practice Guidance 4: Board Membership

### **Selection, Appointment and Re-appointment Process**

The process for the selection, appointment and re-appointment of directors should take into consideration the composition and progressive renewal of the Board, as well as each director's competencies, commitment, contribution and performance (e.g. attendance, preparedness, participation and candour) including, if applicable, his or her performance as an independent director (ID).

To facilitate investors' understanding of its nomination process, the Board should disclose the following:

- (a) the channels used in searching for appropriate candidates, whether through search services or personal networks; and
- (b) the criteria used to identify and evaluate potential new directors, including whether only relevant experience and skillsets to the company's business are considered, or whether broader search criteria such as diversity and technological expertise are also included.

Boards are encouraged to go beyond their immediate circle of contacts, including using third party search firms and institutions, to identify a broader range of suitable candidates.

### **Appointment of Alternate Directors**

A director should take on a directorship appointment only if he or she is able to commit the time to discharge the duties of a director, one of which includes attending all Board meetings. Alternate directors<sup>3</sup> should only be appointed in exceptional circumstances. In particular, companies should not appoint alternate directors for IDs.

Alternate directors bear all the duties and responsibilities of a director. All rules and procedures that apply to directors similarly apply to alternate directors.

### **Multiple Directorships**

The responsibilities of a listed company director are complex and demanding. Directors need to make the substantial time commitment required to fulfill their responsibilities and duties to the company and its shareholders. A director with other major commitments can be, or perceived to be, ineffective because he or she is unable to allocate sufficient time to properly discharge his or her duties on the Board.

The Board and Nominating Committee (NC) should therefore take into account the number of directorships and principal commitments of each director in assessing whether he is able to or has been adequately carrying out his duties. The Board and NC should establish guidelines on what a reasonable and maximum number of such directorships and principal commitments for each director (or type of director) should be. For example:

- Full-time executives should generally not take on more than one or two listed company directorships.
- Retirees who are focused entirely on directorships may be able to handle up to five listed company non-executive directorships.
- A non-executive chairman of a listed company would likely require as much time and commitment as two to three (non-chair) non-executive directorships.

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<sup>3</sup> An alternate director is generally a person who is appointed to attend Board meetings on behalf of a director when the latter (usually referred to as the principal director) is unable to attend. Section 4(1) of the Companies Act defines a "director" to include alternate directors.

The NC should also consider other factors in determining the practicality of multiple directorships and principal commitments. For example, scheduling board and committee meetings may be challenging for a director sitting on four boards with similar financial year ends and/or reporting timelines.

## **Practice Guidance 5: Board Performance**

The Nominating Committee should decide how the Board's performance may be evaluated and propose objective performance criteria.

The evaluation should consider the Board's composition (balance of skills, experience, independence, knowledge of the company, and diversity), Board practices and conduct, and how the Board as a whole adds value to the company. The performance criteria should be approved by the Board. The Board should consider the use of peer comparisons and other objective third party benchmarks. These performance criteria should not be changed from year to year, and where circumstances deem it necessary for any of the criteria to be changed, the onus should be on the Board to justify this decision.

The evaluation of individual director's performance should aim to assess whether each director is willing and able to constructively challenge and contribute effectively to the Board, and demonstrate commitment to his or her roles on the Board (including the roles of Chairman of the Board and chairman of a board committee). The Chairman should act on the results of the performance evaluation, and, in consultation with the NC, propose, where appropriate, new members to be appointed to the Board, or seek the resignation of directors.

To provide a greater level of objectivity in the evaluation process, the Board could consider the use of external facilitators in the performance assessment. Such facilitators should be independent of the company and its directors.

## **Practice Guidance 6: Procedures for Developing Remuneration Policies**

There should be written terms of reference which clearly spell out the Remuneration Committee's (RC) authority and duties. The Board should disclose in the company's Annual Report the names of the members of the RC and the key terms of reference of the RC, explaining its role and the authority delegated to it by the Board. While remuneration matters are deliberated in detail by the RC, its remit is only to make recommendations to the Board in relation to the framework of remuneration for the Board and key management personnel (KMP) and specific remuneration packages for each director and KMP.

The Board is ultimately accountable for all remuneration decisions. The RC considers all aspects of remuneration (including director's fees, salaries, allowances, bonuses, options, share-based incentives and awards, benefits in kind and termination clauses and payments) and should aim to be fair and avoid rewarding poor performance. The RC also reviews the company's obligations arising in the event of termination of the executive directors' and KMP's contracts of service, to ensure that such contracts of service contain fair and reasonable termination clauses which are not overly generous.

The RC should comprise NEDs, and the majority being independent directors to minimise conflicts of interest. If necessary, the RC should seek expert advice inside and/or outside the company on remuneration of all directors. A key aspect of remuneration is benchmarking with comparable organisations. Such data is often not available in-house. Where such advice is obtained, the company should disclose the name and firm of the remuneration consultant, if any, including whether the remuneration consultant has any relationship with the company that could affect his or her independence and objectivity.

## **Practice Guidance 7: Level and Mix of Remuneration**

A company's remuneration framework should be tailored to the specific role and circumstances of each director and key management personnel (KMP). This ensures an appropriate remuneration level and mix that recognises the performance, potential and responsibilities of these individuals.

Performance-related remuneration scheme should take account of the risk policies of the company, be symmetric with risk outcomes and be sensitive to the time horizon of risks. There should be appropriate and meaningful measures for the purpose of assessing executive directors' and KMP's performance.

Performance should be measurable, appropriate and meaningful so that they incentivise the right behaviour and values that the company supports. For individuals in control functions e.g. Chief Financial Officer, Chief Risk Officer, Head of the internal audit function, performance measures should be principally based on the achievement of the objectives of their functions. While long-term incentive schemes are generally encouraged for executive directors and KMP, the costs and benefits of such schemes should be carefully evaluated. In normal circumstances, offers of shares or grants of options or other forms of deferred remuneration should vest over a period of time. The use of vesting schedules, whereby only a portion of the benefits can be exercised each year, is strongly encouraged. Executive directors and KMP should be encouraged to hold their shares beyond the vesting period, subject to the need to finance any cost of acquiring the shares and associated tax liability.

The RC should also consider implementing schemes to encourage non-executive directors (NEDs) to hold shares in the company so as to better align the interests of such NEDs with the interests of shareholders. However, NEDs should not be over-compensated to the extent that their independence may be compromised.

Companies should consider the use of contractual provisions to allow them to reclaim incentive components of remuneration from executive directors and KMP in exceptional circumstances, including for example misstatement of financial results or misconduct resulting in financial loss to the company.

## Practice Guidance 8: Disclosure on Remuneration

A company's annual remuneration report should form part of, or be annexed to, the company's annual report of its directors. It should be the main means through which the company reports to shareholders on all forms of remuneration, other payments and benefits, for directors and key management personnel (KMP) from itself and its subsidiaries.

Remuneration disclosures for individual directors and the CEO should specify the names, amounts and breakdown of remuneration.

Remuneration disclosures for at least the top five KMP (who are not directors or the CEO) should specify the names, amounts and breakdown of remuneration in bands no wider than S\$250,000 (refer to illustrative example below).

A breakdown (in percentage terms) of each director's, CEO's and each of the other KMP's remuneration earned should include base/fixed salary, variable or performance-related income/bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives. The disclosures on employee share schemes should cover the important terms such as the potential size of grants, methodology of valuing stock options, exercise price of options that were granted as well as outstanding, whether the exercise price was at the market or otherwise on the date of grant, market price on the date of exercise, the vesting schedule, and the justifications for the terms adopted.

In addition to the disclosure in aggregate of the total remuneration paid to the top five KMP (who are not directors or the CEO), the aggregate amount of any termination, retirement and post-employment benefits that may be granted to directors, the CEO and the top five KMP (who are not directors or the CEO) should be separately disclosed.

For administrative convenience, the company may round off the disclosed figures to the nearest thousand dollars. The disclosure of remuneration in bands (no wider than \$250,000 for top 5 KMPs; and no wider than \$100,000 for employees who are substantial shareholders, or are immediate family members of a director, the CEO or a substantial shareholder respectively) only needs to be shown in the applicable bands.

### Illustrative Examples of Banding:

A company has five KMP: V, W, X, Y and Z. The KMPs' remuneration are as follows:

V is paid SGD 300,000; W is paid SGD 300,000; X is paid SGD 540,000; Y is paid SGD 650,000; and Z is paid 1,005,000.

| Applicable bands               | Top 5 KMP |
|--------------------------------|-----------|
| ≥SGD 1,000,001 - SGD 1,250,000 | Z         |
| ≥SGD 500,001 - SGD 750,000     | X, Y      |
| ≥SGD 250,000 - SGD 500,000     | V, W      |

### Disclosure of Relationships between Remuneration, Performance and Value Creation

To facilitate better understanding of the relationships between remuneration, performance and value creation, companies should disclose the following information:

- An overview of main performance metrics for the company, its business lines and key executives and directors (where relevant);
- An explanation on why and how the performance metrics have been chosen, and details on the discretion given to the Board under the company's incentive plan;

- (c) A discussion of how individual remuneration is linked to company-wide and individual performance, including the outcomes of business activities, the related risks and the time necessary for the business activities' outcomes to be reliably measured; and
- (d) A discussion of the measures the company will implement to adjust remuneration in the event that performance metrics are weak.

## **Practice Guidance 9: Risk Management and Internal Controls**

The Board is responsible for the governance of risk, including determining the nature and extent of the significant risks which the company is willing to take.

The Board ensures that Management maintains a sound system of risk management and internal controls.

The Board may delegate responsibility for risk governance to a board sub-committee, such as the Board Audit Committee or a separate Board Risk Committee.

The Board, through a Board sub-committee where established, should review, at least annually, the adequacy and effectiveness of the company's risk management and internal control systems and comment<sup>4</sup> on the same in the Annual Report. Such a review can be carried out internally or with the assistance of any competent third parties.

The Board should disclose that it has received assurances from key management personnel regarding the adequacy and effectiveness of the risk management and internal control system.

The Board's commentary in the Annual Report should include:

- (a) information needed by stakeholders to make an informed assessment of the company's risk management and internal control systems;
- (b) a description of the principal risks (including financial, operational, compliance and information technology risk categories) facing the company and how they are being managed or mitigated;
- (c) the company's risk hierarchy (or risk prioritisation approach); and management of the company's reputational risk; and
- (d) an explanation of how the Board has assessed the prospects of the company, over what period it has done so and why the Board considers it to be appropriate to use that period.

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<sup>4</sup> Refer to Rules 610(5) and 1207(10) of the SGX Listing Rules (Mainboard) / Rules 407(4)(b) and 1204(10) of the SGX Listing Rules (Catalist)

## Practice Guidance 10: Audit Committees

There should be written terms of reference which clearly spell out the Audit Committee's (AC) authority and duties. The Board should disclose in the company's Annual Report the names of the members of the AC and the key terms of reference of the AC, explaining its role and the authority delegated to it by the Board.

The AC should have explicit authority to investigate any matter within its terms of reference, full access to and co-operation by Management, full discretion to invite any director or executive officer to attend its meetings, and reasonable resources to enable it to discharge its functions.

In respect of appointments and re-appointments of external auditors, the AC should evaluate the performance of the external auditor, taking into consideration the Audit Quality Indicators Disclosure Framework published by the Accounting and Corporate Regulatory Authority (ACRA).

The AC should make recommendations to the Board on establishing an adequate, effective and independent internal audit function. For the avoidance of doubt, the internal audit function can be in-house, outsourced to a reputable accounting/auditing firm or corporation, or performed by a major shareholder, holding company or controlling enterprise with an internal audit staff.

The AC should ensure that the internal audit function is adequately resourced and staffed with persons with the relevant qualifications and experience. The AC should also ensure that the internal auditors comply with the standards set by nationally or internationally recognised professional bodies.

The AC should report to the Board how it has discharged its responsibilities and whether it was able to discharge its duties independently. The activities the ACs should report to the Board include:

- (a) the significant issues and judgements that the AC considered in relation to the financial statements, and how these issues were addressed;
- (b) the AC's assessment of the adequacy and effectiveness of internal controls;
- (c) the AC's assessment of the adequacy, effectiveness and independence of the internal audit function;
- (d) the AC's assessment of the independence and objectivity of the external auditors, taking into consideration the requirements under the Accountants Act, including but not limited to, the aggregate and respective fees paid for audit and non-audit services and the cooperation extended by Management to allow an effective audit;
- (e) the AC's assessment of the quality of the work carried out by the external auditors, and the basis of such assessment, such as the use of ACRA's Audit Quality Indicators Disclosure Framework;
- (f) the significant matters raised through the whistle-blowing channel.

## **Practice Guidance 11: Shareholder Rights and Engagement**

While companies are required to meet the minimum notice period for general meetings, companies should consider providing longer notice for meetings, especially when dealing with complex transactions, or where the company has numerous overseas shareholders.

Management is encouraged to make a presentation to shareholders to update them on the company's performance, position and prospects at general meetings. Presentation materials should be made available on SGXNET and the company's website for the benefit of shareholders.

In order to enhance shareholder participation in general meetings, companies should use their best endeavours to avoid scheduling meetings during peak periods when the meetings could coincide with those of other companies, especially if they have a large shareholder base. Companies should consider other avenues of engaging shareholders, such as through townhall meetings, briefings and roadshows, or webcasting meetings and allowing electronic online voting of shares.

In general, resolutions should not be bundled or made inter-conditional on each other. This is to ensure that shareholders are given the right to express their views and exercise their voting rights on each resolution separately. However, in situations where resolutions have to be inter-conditional, such as in meetings to approve a reverse takeover, the company should clearly explain.

Companies should provide the necessary information on each resolution to enable shareholders to vote. For resolutions on the election or re-election of directors, companies should provide sufficient information on the background of directors, their contributions to the company, and the board and committee positions they are expected to hold upon election.

Directors should be present for the entire duration of meetings. The Chairman of the meeting should facilitate constructive dialogue between shareholders and the Board, Management, external auditors and other relevant professionals. The Chairman should allow specific directors, such as committee chairs or the lead independent director, to answer queries on matters related to their roles.

Directors should take the opportunity to interact with shareholders before and/or after general meetings.

### **Practice Guidance 12: Engagement with Shareholders**

Companies should provide a specific investor relations contact, such as through an online submission form, email address or contact number, through which shareholders are able to ask questions and receive responses in a timely manner. Where the company has a lead independent director (ID), the company should provide information as to how shareholders can contact the lead ID directly, rather than having to go through the company.

### **Practice Guidance 13: Managing Stakeholder Relationships**

In the execution of its duties, the Board should not only consider the company's obligations to its shareholders but also the interests of its material stakeholders. The relationships with material stakeholders may have an impact on the company's long term sustainability.

Stakeholders are parties who may be affected by the company's activities, or whose actions can affect the ability of the company to conduct its activities. Stakeholders include but are not limited to:

- (a) Shareholders;
- (b) Customers;
- (c) Suppliers;
- (d) Employees;
- (e) Regulators;
- (f) Creditors; and
- (g) Community.

Where companies have set policies and practices in relation to material stakeholders identified, they are encouraged to disclose these.