



Monetary Authority of Singapore

**RESPONSE TO FEEDBACK RECEIVED
CONSULTATION ON CORPORATE GOVERNANCE
REGULATIONS AND GUIDELINES
9 DECEMBER 2010**

RESPONSE TO CONSULTATION FEEDBACK ON CORPORATE GOVERNANCE REGULATIONS AND GUIDELINES

In March 2010, MAS published a consultation paper inviting industry and public comments on the proposed amendments to the Banking (Corporate Governance) Regulations 2005 and Insurance (Corporate Governance) Regulations 2005 (collectively termed as “the Regulations”) and Guidelines on Corporate Governance (“the Guidelines”).

After the consultation closed on 19 April 2010, MAS continued to engage the industry and other interested parties to clarify our proposed requirements and obtain their further feedback. This paper summarises the feedback received and sets out MAS’ responses. The list of respondents is provided in Appendix A.

MAS would like to thank all respondents for their submissions and comments.

The finalised Regulations and Guidelines can be found on the MAS website. The amended Regulations take effect no later than from the first Annual General Meeting of each Financial Institution (“FI”) held on or after 1 January 2011, with the exception of – (i) the amendment to the definition of “independent director” to introduce an additional criterion that a director will not be considered independent after he/she has served on the Board for a continuous period of 9 years or longer; and (ii) the composition requirements for members of the Board, Nominating Committee and Remuneration Committee, which take effect no later than from the first Annual General Meeting of each FI held on or after 1 January 2012. The amended Guidelines take effect immediately.

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1 CONTINUOUS DEVELOPMENT

Proposal 1: To introduce in the Regulations a requirement that the Nominating Committee (“NC”) shall conduct an assessment of the skills of the directors on an annual basis.

Most respondents agreed with Proposal 1. A respondent suggested that FIs disclose more information (such as names, qualification, and the NC’s assessment) on the directors on their websites.

Some respondents requested for more guidance on the criteria that would be used as a basis for NCs’ assessment of the skills of directors, while other respondents felt that the NC should be responsible for determining the criteria. One respondent suggested the use of standard industry-wide criteria. Another respondent asked that MAS consider whether different criteria should be used in the assessment of executive directors and non-executive directors.

MAS’ Response

FIs currently already disclose information (such as name, age, qualifications, directorships, etc) pertaining to their directors in their annual reports and/or websites. As part of its annual assessment, the NC should identify areas which the Board or Board Committees lack skills in or need further training on, and address these gaps through the FI’s continuous development programme for its directors. Information on the FI’s continuous development programme should be disclosed in the annual reports and/or websites. MAS has included additional guidance on this aspect in the Guidelines. (Reference: Guidelines 1.16)

MAS agrees that there may be a need for different criteria to be used in the assessment of executive and non-executive directors; the Guidelines have been amended accordingly. (Reference: Guidelines 1.15)

Proposal 2: To include the following additional guidance in the Guidelines that the NC should:

- (a) establish a continuing development programme for all directors to ensure that they are equipped with the appropriate skills to perform their roles on the Board and the Board committees;
- (b) develop a framework to identify the skills that the Board collectively needs in order to discharge its responsibilities effectively; and
- (c) assess, at least annually, if the Board and Board Committees lack any skills to perform their roles effectively and identify steps to improve their effectiveness.

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Most respondents agreed with this proposal. Some respondents suggested a common platform for development and training of directors to ensure consistency. A respondent felt that continuing education programmes should be uniform across all FIs which are of similar nature and size while another respondent felt that such programmes should be tailored to each specific FI. Some respondents suggested requiring directors to attend certification programmes or accredited courses to improve the effectiveness of independent directors and the director community in general.

MAS' Response

Given that FIs differ in terms of the nature, scale and complexity of their businesses, using a standard set of assessment criteria may undermine the effectiveness of the NCs' assessments of directors' skills. Instead, NCs should take into account the FIs' strategies, plans, operations and products in various jurisdictions in deciding the appropriate criteria to be used to assess the type of skills the directors would need in order to perform their roles effectively.

2 TIME COMMITMENT

Proposal 3: To include in the Guidelines that the NC should set internal guidance on the time commitment expected of each director. This may include guidance on the number of Board memberships each director may hold, taking into account the competing time commitment faced when directors serve on multiple Boards. Any deviation from the internal guidelines should be explained and disclosed in the FI's annual report.

Most respondents agreed with Proposal 3, although there were different views on how the internal guidance should be set. Some respondents agreed that this should be in the form of internal guidance set by the NC while another suggested that MAS sets the minimum time to be committed by each director. A few respondents suggested factors that should be considered in setting internal guidance on time commitment, for example, whether the director has a full time job; whether directorships are of Boards of listed companies; positions held i.e. whether the director is a chairman; and number of board committees the director is on etc. A respondent suggested having a point system with varying weights on these different factors to assess if a director has committed adequate time to the FI. Another suggested time bands for minimum time commitment (e.g. 25 to 40 days a year for non-executive directors) could be set out in the Guidelines.

A respondent suggested elevating "time commitment" to be a factor that NCs should consider in the Regulations.

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MAS' Response

MAS is of the view that it would be arbitrary to set a quantitative amount of time expected from each director given that the nature, scale and complexity of each FI's business differs. Moreover, the capacity and ability of each individual director varies. Consequently, the amount of time needed by directors to effectively carry out their duties could vary. For instance, directors of highly complex banks may need to spend significantly more time in order to discharge their oversight responsibilities effectively. Therefore, the NCs are best placed to set out internal guidance on the time commitment necessary for their directors.

MAS agrees with the suggestions made by respondents that various factors should be considered by the NC in setting out the internal guidance on time commitment. The additional guidance has been included in the Guidelines. (Reference: Guidelines 4.10)

3 DIRECTOR INDEPENDENCE

Proposal 4: To introduce in the Regulations a new requirement for a director to be deemed non-independent after he/she has served for a continuous period of 9 years on the Board. With this proposal, a director who is independent from management, business relationships and substantial shareholders will no longer be considered independent after he has served for a continuous period of 9 years on the Board.

There were differing views on Proposal 4.

Respondents who were supportive of the proposal provided various suggestions. One respondent suggested using a more stringent calculation of this threshold with the use of "aggregated period of 9 years" instead of a "continuous period of 9 years" or qualifying the latter by excluding short breaks not exceeding a certain period from the calculation of this threshold. Agreeing that long-serving directors may have entrenched interests which affect their ability to act independently, one respondent highlighted that the implementation of this proposal should not have the unintended consequence of an enlarged Board if such directors continue to remain on the Board while more directors are appointed to meet the composition requirements.

Respondents who disagreed with the proposal felt that the 9-year period was arbitrary and were concerned that the requirement may lead to FIs losing competent directors prematurely. These respondents were also concerned about the difficulties in getting willing and suitable candidates to be appointed to FIs' Boards.

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A few respondents suggested that NCs be given the flexibility to rebut this presumption based on their own assessment while some respondents wanted to know how the threshold of 9 years was determined.

MAS' Response

NCs are currently required to assess annually the independence status of a director. While the length of service on the Board was not explicitly specified as a criterion to assess director's independence in the past, this would have been one of many factors which NCs considered in determining the independence status of a director. The 9-year period was derived based on a director having served three 3-year terms consecutively. Notwithstanding this new requirement, the NC should assess annually, regardless of whether the director is close to his ninth year of service, whether the length of service of a director has affected his/her independence.

In assessing the implementation of this requirement, MAS has considered the potential impact on FIs and recognised that FIs may need time to reconfigure their Boards and Board Committees to meet this new requirement. Therefore, FIs are given more time to comply with this requirement, which takes effect after the first Annual General Meeting of each FI on or after 1 January 2012. A director who has served more than 9 years can still remain as a non-independent director on the Board, as long as composition requirements are met. Given the strong support from some respondents on the merits of this requirement and after due consideration of all the feedback received, MAS has decided to implement this proposal.

Proposal 5: To include in the Guidelines (i) that the FI should consider appointing a lead independent director if the Board Chairman has other relationships with the FI and (ii) additional guidance on the role of the lead independent director.

Most respondents agreed with Proposal 5. A few respondents who disagreed with this proposal were concerned that the appointment of a lead independent director ("LID") may unnecessarily diffuse Board leadership especially in a situation where the roles of the Chairman and Chief Executive Officer ("CEO") are held by separate individuals. One respondent suggested that the appointment of a LID is not necessary for a wholly-owned subsidiary FI since the main purpose of a LID is to provide a check and balance for the Board where the rights of minority shareholders are weak due to the presence of controlling shareholders on the Board. Another respondent proposed exempting FIs that are more than 50% owned by a single substantial shareholder from complying with this requirement.

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MAS' Response

This proposal is a guidance note included in the Guidelines. MAS agrees with the views that the need for the appointment of a LID is mitigated when the Chairman and CEO roles are held by different individuals. However, even if the Board Chairman is not the CEO of the FI, the appointment of a LID should still be considered if the Board Chairman is not independent of the FI's management, business relationships and substantial shareholders. To address the concerns raised by respondents, MAS has provided more guidance in the Guidelines to emphasise that if a LID is appointed, the roles and responsibilities of the Chairman and LID should be properly spelt out so as not to diffuse Board leadership. (Reference: Guidelines 3.5 and 3.6)

4 COMPOSITION OF BOARD AND BOARD COMMITTEES

Proposal 6: To introduce in the Regulations a new requirement that the FI shall not appoint a person who is a member of the immediate family of the CEO as the Board Chairman. This does not affect existing Board Chairmen who do not meet this requirement, subject to annual approval by MAS.

Proposal 7: To amend the Regulations to raise the number of independent directors on the Board, NC and RC from the current one-third to a majority. A single substantial shareholder who holds 50% or more of a locally-incorporated bank or significant life insurer can continue to have majority representation on the Board, NC and RC provided the FI's Board comprise at least one-third of directors who are independent directors.

Respondents who commented on Proposal 6 agreed with it. Most respondents agreed with Proposal 7. A few respondents were concerned with the difficulties in finding independent directors with the relevant skills and experience. One respondent suggested that NCs be given the discretion to decide whether there is a need to have a majority of independent directors on their respective Boards and Board Committees. Another respondent highlighted that other than having a majority independent Board, the Board should comprise a good mix of directors with appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively.

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MAS' Response

MAS agrees with the respondents that it is important for a Board to comprise directors with an appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively. This is advocated in Guidelines 2.3 and 2.4.

In assessing the implementation of this requirement, MAS has considered the potential impact on FIs and recognised that FIs may need time to reconfigure their Boards and Board Committees to meet this new requirement. Therefore, FIs are given more time to comply with this requirement which takes effect after the first Annual General Meeting of each FI on or after 1 January 2012.

5 GOVERNANCE OVER REMUNERATION FRAMEWORK AND PRACTICES

Proposal 8: To include in the Regulations:

- (a) additional components and factors that the RC must consider in the design and operation of the remuneration framework;
- (b) that the RC must ensure that the remuneration practices of the FI are aligned and accord with the remuneration framework;
- (c) that the RC must review the remuneration practices annually; and
- (d) that the RC must have unfettered access to information in the FI for the purposes of carrying out its responsibilities.

Proposal 9: To include additional guidance in paragraph 7.6 under Principle 7 of the Guidelines for FIs to adopt the FSB Principles and Standards on Sound Compensation Practices.

Most respondents agreed with Proposals 8 and 9. A respondent suggested that the Financial Stability Board (“FSB”) Compensation Principles and Standards should not be adopted wholesale as the requirements in some areas are overly prescriptive. A few respondents also highlighted that the FSB Principles should be uniformly adopted by all major financial centres so that Singapore would not lag behind in its ability to attract talent.

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MAS' Response

The FSB Compensation Principles and Standards have been endorsed by the G20 and are being implemented internationally. The FSB has committed to ensure a level playing field, and reminded its members that the implementation standards must be rigorously and consistently implemented by significant FIs. The FSB will also be conducting periodic reviews of actions taken by firms and national authorities to implement the FSB Principles and Standards. Singapore is a member of the FSB, and is committed to the implementation of the FSB Principles and Standards.

In addition, MAS has defined the following terms in the Regulations to provide more clarity:

- “business functions” means the job functions in the FI that conduct risk-taking activities in relation to the business of the FI, i.e. functions whose actions have a material impact on the risk exposures of the FI. For clarity, ‘business functions’ has been defined in the Regulations.
- “control job functions” refers to functions such as risk control and management, finance, compliance, internal audit, human resources, and risk control related back office operations. In the case of significant insurers, this would also include actuarial functions. Where the executive officer works in a ‘control job function’, his/her remuneration should be determined independently of ‘business functions’. As for risk control related back office functions, this may include, but are not limited to credit administration and operations, treasury settlement, trade finance operations, and claims processing.

As each FI is structured differently, the Remuneration Committees should determine the departments, divisions, units or teams that are considered “business functions” and “control job functions” and ensure compliance with the Regulations.

Please refer to regulations 11(d) and 26(d) of the Banking (Corporate Governance) (Amendment) Regulations 2010; and regulation 11(d) of the Insurance (Corporate Governance) (Amendment) Regulations 2010 for the relevant amendments.

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6 GOVERNANCE OVER RISK MANAGEMENT

Proposal 10: To introduce in the Regulations a new requirement for FIs to establish a dedicated Board Risk Management Committee (“RMC”) at the Board level. The RMC must comprise at least 3 directors and a majority (including the chairman of the RMC) must be non-executive directors to ensure that there is a degree of independent oversight of the FI’s risk management function.

Respondents generally agreed with Proposal 10. A respondent suggested that the RMC should be granted unfettered access to information in the FIs, and be allowed to seek external advice for the purposes of carrying out its duties.

It was also suggested that the RMC comprise a majority of independent directors, as opposed to non-executive directors; and be chaired by an independent director.

MAS’ Response

MAS agrees with the need for the Board and Board Committees to have unfettered access to information and external advice and have incorporated these requirements in the Regulations. (Reference: regulations 6(c) and 21(c) of the Banking (Corporate Governance) (Amendment) Regulations 2010; and regulation 6(c) of the Insurance (Corporate Governance) (Amendment) Regulations 2010.)

MAS had considered subjecting the RMC to composition requirements similar to that of the Board or other Board Committees. However, a more stringent composition requirement may inadvertently prevent non-executive directors who possess relevant expertise from being part of the RMC. MAS will review the need to impose more stringent composition requirements on the RMC at the next review of the Corporate Governance Framework.

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Proposal 11: To introduce in the Regulations a new requirement for FIs to seek MAS' approval for the appointment of the Chief Risk Officer ("the CRO").

Proposal 12: To include additional guidance in the Guidelines on:

- (a) MAS' expectations on the roles and responsibilities of the Board in overseeing the FI's risk management system;
- (b) The appropriate skills that the Board should have in order to perform its role effectively;
- (c) Where an FI has appointed a CRO, the Board should ensure that the CRO has a direct reporting line to the Board; and
- (d) The RMC to comprise at least 2 directors with the relevant technical financial sophistication in risk disciplines or business experience, as the Board determines in its judgment.

Respondents generally agreed with Proposals 11 and 12. Some respondents also made further suggestions, e.g. that more guidance should be provided on the duties, obligations, and powers of the CRO.

MAS' Response

MAS has included more guidance on the duties, obligations, and powers of the CRO and articulated that the appointment or dismissal of the CRO requires the Board's approval in the Guidelines. (Reference: Guidelines 17.3 and 17.4)

7 OTHERS

MAS also received the following suggestions from respondents:

- (a) NCs should review all termination of directors, instead of solely nominations as per the Regulations;
- (b) Management should be defined in the Guidelines;
- (c) The remuneration of the Head of Internal Audit should be approved by the AC; and
- (d) The appointment of a Principal Officer should also be reviewed by the NC, similar to CRO and CFO appointments.

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MAS' Response

MAS accepts these suggestions and has incorporated them into the Regulations or Guidelines, where appropriate. (References: regulations 8(d) and 23(d) of the Banking (Corporate Governance) (Amendment) Regulations 2010; regulations 8(a) and 8(d) of the Insurance (Corporate Governance) (Amendment) Regulations 2010; and Guidelines 1.10 and 13.9)

APPENDIX A – LIST OF RESPONDENTS

Financial Institutions

1. Atradius Credit Insurance N.V., Singapore Branch
2. Aviva Ltd
3. Citibank Singapore Ltd
4. DBS Bank Ltd
5. The Great Eastern Life Assurance Co Ltd
6. Liberty International Pte Ltd
7. Manulife (Singapore) Pte Ltd
8. The Overseas Assurance Corporation Ltd
9. Oversea-Chinese Banking Corporation Ltd
10. Prudential Assurance Co. Singapore Pte Ltd
11. Royal & Sun Alliance Insurance PLC, Singapore Branch

Others

1. CFA Institute & CFA Singapore
2. Institute of Certified Public Accountants of Singapore
3. KhattarWong LLP
4. Ms M.K. Khoo
5. Norton Rose Group (Asia) LLP
6. Singapore Management University – Centre of Corporate Governance & Investor Responsibility
7. Ms Helen Tan
8. Mr Tan Kok Tim
9. Temasek Holdings Pte Ltd