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Terms of reference for the nomination committee

Guidance note

The Chartered
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This guidance note has been prepared with the assistance of a working group comprising members of The Chartered Governance Institute and Slaughter and May.

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact The Chartered Governance Institute information centre: **020 7612 7035** | **informationcentre@icsa.org.uk**

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Terms of reference for the nomination committee

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Introduction

This guidance note proposes model terms of reference for the nomination committee of a company seeking to comply fully with the requirements of the UK Corporate Governance Code, published July 2018 (the Code). It draws on the experience of company secretaries and is based on good practice as carried out in some of the UK's largest listed companies. The Code is available at www.frc.org.uk.

The model terms of reference are intended as a guide for companies to adapt to their needs. In particular

- Companies with additional primary listing(s) may need to amend the terms of reference in light of additional requirements in the relevant country.

- Some responsibilities that are relevant to certain companies or sectors only are shown in square brackets.

The guidance notes on terms of reference for all board committees should be read together when allocating responsibilities to the committees. It is important to recognise the links and overlap between the responsibilities of board committees and consequently the need for each board committee to have full knowledge of the deliberations of other committees through reports to the board and, if possible, by appointing at least one member of a committee to each of the other committees.

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The UK Corporate Governance Code

The Code states that

'Appointments to the board should be subject to a formal, rigorous and transparent procedure and an effective succession plan should be maintained for board and senior management.'[1]

It also provides that

'The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession.'[2]

The Code also states that 'a successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company.'[3]

The board and its committees should have a combination of skills, experience and knowledge. Its membership should be regularly refreshed and non-executive directors should have sufficient time to meet their board responsibilities.[4]

As with most aspects of corporate governance, the company must be seen to be doing all these things in a fair and thorough manner. The terms of reference of the nomination committee, explaining its role and the authority delegated to it by the board, should be published on the company's website.[5] It is, therefore, essential that the nomination committee be properly constituted with a clear remit and identified authority.

1 Code Principle J
2 Code Provision 17
3 Code Principle A
4 Code Principles H and K
5 FRC Guidance on Board Effectiveness 2018, paragraph 63

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Notes on the terms of reference

The list of duties of the nomination committee is based on existing best practice from a number of sources. Some companies may wish to add to this list and some companies may need to modify it in other ways.

The Code states that the majority of members serving on the nomination committee should be independent non-executive directors although it gives no guidance on the overall size of the committee.[6] We have recommended a committee of at least three but companies with larger boards may wish to consider increasing this number. Unlike other board committees, the chair of the board can be chair of the nomination committee.[7] The Code provides that a majority of members should be independent, rather than all, therefore membership can include executive directors such as the chief executive.[8]

The company secretary is responsible for helping the board and its committees to function effectively.[9] The company secretary (or their nominee) should act as secretary to the nomination committee. The committee should also have access to the services of the company secretariat on all committee matters, including assisting the chair in planning the committee's work, drawing up meeting agendas, maintenance of minutes, drafting of material about its activities for the annual report, collection and distribution of information and provision of any necessary practical support. The company secretary should ensure that the nomination committee receives information and papers in a timely manner to enable full and proper consideration to be given to the issues.

The frequency with which the committee needs to meet will vary considerably from company to company and may change from time to time. It is, however, good practice to plan a minimum number of meetings each year to cover the review of items that form part of the regular cycle, such as directors subject to annual re-election or retiring by rotation, and senior management succession, and to review the statement of the committee's activities in the annual report. In addition there will need to be ad hoc meetings for the committee to consider new appointments.

6 Code Provision 17. Guidance on circumstances likely to affect independence is provided in Code Provision 10
7 Code Provision 17. However the chair of the board should not chair the nomination committee when it is dealing with the appointment of their successor as chair
8 Code Provision 17
9 FRC Guidance on Board Effectiveness 2018, paragraph 79

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Model terms of reference

Note: square brackets contain recommendations which are in line with best practice but which may need to be changed to suit the circumstances of the particular organisation.

1. Membership

1.1 The committee shall comprise at least [three] directors. A majority of the members of the committee shall be independent non-executive directors.[10]

1.2 Appointments to the committee are made by the board on the recommendation of the nomination committee and shall be for a period of up to three years, which may be extended for up to two additional three-year periods, provided the director still meets the criteria for membership of the committee.

1.3 Only members of the committee have the right to attend committee meetings. However, other individuals such as the chief executive, the head of human resources and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.[11]

1.4 The board shall appoint the committee chair who should be either the chair of the board or an independent non-executive director. In the absence of the committee chair and/or an appointed deputy, the remaining members present shall elect one of themselves to chair the meeting from those who would qualify under these terms of reference to be appointed to that position by the board. The chair of the board shall not chair the committee when it is dealing with the matter of succession of the chair of the board.[12]

2. Secretary

The company secretary, or their nominee, shall act as the secretary of the committee and will ensure that the committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

3. Quorum

The quorum necessary for the transaction of business shall be [two] [both of whom must be independent non-executive directors].

10 Code Provision 17
11 FRC Guidance on Board Effectiveness 2018, paragraph 64
12 Code Provision 17

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4. Frequency of meetings

The committee shall meet at least [twice] a year[13] and otherwise as required.[14]

5. Notice of meetings

5.1 Meetings of the committee shall be called by the secretary of the committee at the request of the committee chair or any of its members.

5.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the committee and any other person required to attend no later than [five] working days before the date of the meeting. Supporting papers shall be sent to committee members and to other attendees, as appropriate, at the same time.

6. Minutes of meetings

6.1 The secretary shall minute the proceedings and decisions of all committee meetings, including recording the names of those present and in attendance.

6.2 Draft minutes of committee meetings shall be circulated to all members of the committee. Once approved, minutes should be circulated to all other members of the board and the company secretary unless, exceptionally, it would be inappropriate to do so.[15]

7. Engagement with shareholders

7.1 The committee chair should attend the annual general meeting to answer any shareholder questions on the committee's activities.[16] In addition the committee chair should seek engagement with shareholders on significant matters related to the committee's areas of responsibility.[17]

13 Some small companies may not need more than one scheduled meeting of the nomination committee each year.
14 The frequency and timing of meetings will differ according to the needs of the company. Meetings should be organised so that attendance is maximised.
15 Guidance on Board Effectiveness 2018, paragraph 65
16 Guidance on Board Effectiveness 2018, paragraph 38
17 Code Provision 3

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8. Duties

The committee should carry out the duties below for the parent company, major subsidiary undertakings and the group as a whole, as appropriate.

The committee shall

8.1 Regularly review the structure, size and composition (including the skills, knowledge, experience and diversity) of the board and make recommendations to the board with regard to any changes.

8.2 Ensure plans are in place for orderly succession to board and senior management positions, and oversee the development of a diverse pipeline for succession[18], taking into account the challenges and opportunities facing the company, and the skills and expertise needed on the board in the future.

8.3 Keep under review the leadership needs of the organisation, both executive and non-executive, with a view to ensuring the continued ability of the organisation to compete effectively in the marketplace.

8.4 Keep up-to-date and fully informed about strategic issues and commercial changes affecting the company and the market in which it operates.

8.5 Be responsible for identifying and nominating for the approval of the board, candidates to fill board vacancies as and when they arise.

8.6 Before any appointment is made by the board, evaluate the balance of skills, knowledge, experience and diversity on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment and the time commitment expected. In identifying suitable candidates the committee shall

8.6.1 use open advertising or the services of external advisers to facilitate the search

8.6.2 consider candidates from a wide range of backgrounds

18 Code Provision 17

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8.6.3 consider candidates on merit and against objective criteria, having due regard to the benefits of diversity on the board and taking care that appointees have enough time available to devote to the position.[19]

8.7 Prior to the appointment of a director, other significant time commitments should be disclosed and any additional future commitments should not be undertaken without prior approval of the board.[20] The proposed appointee should also be required to disclose any other business interests that may result in a conflict of interest. These must be authorised by the board prior to appointment and any future business interests that could result in a conflict of interest must not be undertaken without prior authorisation of the board.[21]

8.8 Ensure that, on appointment to the board, non-executive directors receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside board meetings.[22]

8.9 Review the results of the board performance evaluation process that relate to the composition of the board and succession planning.[23]

8.10 Review annually the time required from non-executive directors. Performance evaluation should be used to assess whether the non-executive directors are spending enough time to fulfil their duties.

8.11 Work and liaise as necessary with other board committees, ensuring the interaction between committees and with the board is reviewed regularly.[24]

The committee shall also make recommendations to the board concerning

8.12 Any changes needed to the succession planning process if its periodic assessment indicates the desired outcomes have not been achieved.[25]

8.13 Suitable candidates as new directors and succession for existing directors.

19 The Code Principle H and Provision 15. See also FRC Guidance on Board Effectiveness 2018, paragraphs 92-95 and The Chartered Governance Institute guidance on liability of non-executive directors: care, skill and diligence; joining the right board: due diligence for prospective directors; and sample non-executive director's appointment letter.
20 Code Provision 15
21 Companies Act 2006 section 175 and in accordance with the company's articles of association
22 FRC Guidance on Board Effectiveness 2018, paragraph 96
23 FRC Guidance on Board Effectiveness 2018, paragraph 109
24 FRC Guidance on Board Effectiveness 2018, paragraph 65
25 FRC Guidance on Board Effectiveness 2018, paragraph 97

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8.14 Membership of the audit and remuneration committees, and any other board committees as appropriate, in consultation with the chair of those committees.

8.15 The re-appointment of non-executive directors at the conclusion of their specified term of office having given due regard to their performance and ability to continue to contribute to the board in the light of knowledge, skills and experience required.

8.16 The re-election by shareholders of directors under the annual re-election provisions of the Code[26] or the retirement by rotation provisions in the company's articles of association, having due regard to their performance and ability, and why their contribution is important to the company's long-term sustainable success in the light of the skills, experience and knowledge required and the need for progressive refreshing of the board, taking into account the length of service of individual directors, the chair and the board as whole.[27]

8.17 Any matters relating to the continuation in office of any director at any time including the suspension or termination of service of an executive director as an employee of the company subject to the provisions of the law and their service contract.

8.18 The appointment of any director to executive or other office.

9. Reporting responsibilities

9.1 The committee chair shall report to the board after each meeting on the nature and content of its discussion, recommendations and action to be taken.

9.2 The committee shall make whatever recommendations to the board it deems appropriate on any area within its remit where action or improvement is needed, and adequate time should be made available for board discussion when necessary.[28]

9.3 The committee shall produce a report to be included in the company's annual report describing the work of the nomination committee, including

9.3.1 the process used in relation to appointments, its approach to succession planning and how both support the development of a diverse pipeline

26 Code Provision 18
27 Code Principle K and Provisions 10, 18 and 19. See also FRC Guidance on Board Effectiveness 2018, paragraphs 102-105
28 FRC Guidance on Board Effectiveness 2018 paragraph 62

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9.3.2 how board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has influenced or will influence board composition

9.3.3 the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives, and

9.3.4 the gender balance of those in the senior management team and their direct reports.[29]

9.4 If an external search consultancy has been engaged, it should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors.[30]

10. Other matters

The committee shall

10.1 Have access to sufficient resources in order to carry out its duties, including access to the company secretariat for advice and assistance as required.[31]

10.2 Be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members.[32]

10.3 Give due consideration to all relevant laws and regulations, the provisions of the Code and associated guidance, the requirements of the FCA's Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules sourcebook and any other applicable rules, as appropriate.

10.4 Ensure that a periodic evaluation of the committee's own performance is carried out.

10.5 At least annually, review the committee's constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the board for approval.[33]

29 Code Provision 23. Footnote 4 of The Code defines 'senior management' for these purposes as the executive committee or the first layer of management below board level, including the company secretary.
30 Code Provision 20
31 Code Provision 16 and FRC Guidance on Board Effectiveness 2018, paragraphs 79-85
32 FRC Guidance on Board Effectiveness 2018, paragraph 81
33 FRC Guidance on Board Effectiveness 2018, paragraph 63

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11. Authority

The committee is authorised by the board to obtain, at the company's expense, outside legal or other professional advice on any matters within its terms of reference.[34]

Further reading

The Chartered Governance Institute and EY report The nomination committee – coming out of the shadows May 2016 (www.icsa.org.uk/assets/files/policy/research/ey-nomination-committee-digital.pdf).

34 FRC Guidance on Board Effectiveness 2018, paragraph 83

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