

The Roles of the Chairman, Chief Executive and Senior Independent Director under the Combined Code

Introduction

Corporate governance in the UK is regulated not by legislation but by the Combined Code, which is annexed to the UK Listing Rules and requires companies to either comply or explain why they are choosing a different course. This means that companies are entitled to have procedures that suit their business, rather than follow a prescribed legal structure, as long as they can give an adequate explanation in their annual report for not following the Code.

Some of the proposed changes to the Combined Code resulting from the Higgs review¹ which gave the most cause for debate related to what was seen as a weakening of the role of the Chairman. Many of these issues were resolved before the final version of the Code was produced in July 2003. This note looks to identify the respective roles of the Chairman, the Chief Executive and the Senior Independent (Non-Executive) Director.

The Chairman

The Higgs review sees the Chairman playing a pivotal role in the company, and creating the conditions for overall board and individual non-executive director effectiveness. The Combined Code clearly differentiates between the running of the company's business and the running of the board. The Code states that the chairman is responsible for:

- Leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda;
- Ensuring that the directors receive accurate, timely and clear information;
- Ensuring effective communication with shareholders;
- Facilitating the effective contribution of non-executive directors and ensuring constructive relations between executive and non-executive directors, and
- Acting on the results of board performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.²

To ensure that this happens the Combined Code now requires that the roles of the Chairman and Chief Executive be separated,³ in addition the board needs to agree a high level statement of which decisions are to be taken by the board and those that are delegated to management.⁴ Appendix 1 to this guidance note details a suitable outline statement for the board to adopt.

The Combined Code now suggests that a Chief Executive should not go on to become Chairman of the same company.⁵ This is because the detailed knowledge of the general running of the company will impede the handover of management responsibility to another individual. This may cause confusion among other executives and result in unwanted tensions between the Chairman and Chief Executive. It may also impact on the Chairman's ability to keep the non-executive directors informed, as they may take for granted that the non-executives have the same level of inside knowledge as they do.

¹ *The role and effectiveness of the non-executive director*, by Derek Higgs published January 2003

² *Principles of Good Governance and code of Best Practice* (The Combined Code as amended by the Higgs review), principles A.2.1 and A.6

³ Code provision A.2.1

⁴ Code provision A.1.1

⁵ Code provision A.2.2

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This does not mean that there may not be circumstances when, for a short period of time, the Chief Executive may be the best candidate to act as Chairman. For example this may be during a period of intense company reorganisation, where the board has promoted a new Chief Executive from within. The outgoing Chief Executive could provide valuable support to the new appointee, for a short period, before a new Chairman is found. This would be a clear example of the need to explain the company's non-compliance with the Code provision. In this case the Chairman could not be considered independent on appointment,⁶ which would need to be disclosed in the annual report.

The Chairman, under the Code, is responsible for ensuring the efficient use of the board's time and that the agenda is forward looking, concentrating on strategy, rather than approving issues which should have been delegated to management. They must allow sufficient time to discuss complex or contentious issues and if necessary arrange for pre-board preparation. This should avoid non-executive directors being faced with unrealistic deadlines for decision-making.

The company secretary has a clear role to play in supporting the Chairman in the design of the agenda and ensuring that the non-executive directors are comfortable with the amount of information that they receive. The Combined Code states "The company secretary should be responsible for advising the board, through the Chairman, on all governance matters."⁷

The Chief Executive

The revised Combined Code does not specify a corporate governance role for the Chief Executive, but notes that the board should have a clear division of responsibilities and the posts of Chairman and Chief Executive should not be combined in one individual.

To facilitate the division of the responsibility of running the board and running the company the Combined Code recommends that a clear division of responsibilities is set out in writing and agreed by the board.⁸ It is, however, recognised that there should be a strong executive representation on the board, so that power and information are not concentrated in one or two individuals.⁹

The Senior Independent Director "SID"

The Higgs review builds on the view expressed in Hampel¹⁰ and codified in the Combined Code that a senior non-executive director should be identified in the annual report. The SID should be available to shareholders, if they have a concern that contact through the normal channels of Chairman, Chief Executive and finance director has failed to resolve or where such contact is inappropriate.¹¹ To be in a position to undertake this role, the SID should attend "sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of their issues and concerns. The Chairman should ensure that the views of shareholders are communicated to the board as a whole".¹² It must be emphasised that these are meetings that management would have as part of their normal Investor Relations programme, they are not special events or one to one meetings with the institution and SID, unless the shareholder has raised a concern with the SID that has not been dealt with in the normal manner.

⁶ Code provision A.2.2

⁷ Code principle A.5

⁸ Code provision A.2.1

⁹ Code principle A.3

¹⁰ *Committee of Corporate Governance: Final Report* (The Hampel Report) January 1998

¹¹ Code provision A.3.3

¹² Code provision D.1.1

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Under the revised Code the SID should also lead a meeting of the non-executive directors at least once a year, without the Chairman present, to appraise the Chairman's performance and on such other occasions as are deemed appropriate.¹⁵

The purpose of this guidance note is not to be prescriptive but to provide a starting point to help ensure that all the issues are addressed. As with most aspects of corporate governance one size does not fit all and the detailed division of responsibilities will vary from one company to another according to each company's specific circumstances and the nature of the individuals involved. Examples of such differences may be the reporting lines of some individuals or whether charitable donations are considered separately or as part of the Corporate Social Responsibility policy.

Appendices 2 & 3 provide separate specimen descriptions of the roles of the Chairman and Chief Executive respectively while appendix 4 provides an example of an alternative approach that some companies may prefer. Appendix 5 provides a brief suggested description of the role of the Senior Independent Director.

Additional reading:

Guidance Note 031119 – Matters reserved for the Board

Guidance Note 011101 – Reporting Lines for the Company Secretary

Guidance Note 02100 – Specimen job description for the Corporate Governance Role of the Company Secretary

September 2004

Replaces Guidance Note 040901

¹⁵ Code provision A.1.3

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APPENDIX 1

Role of Chairman

A. The Chairman is responsible for:

1. Meetings

- Chairing board and general meetings and those of the Nomination Committee.
- Running the board and ensuring its effectiveness in all aspects of its role, including regularity and frequency of meetings.
- Setting the board agenda, taking into account the issues and concerns of all board members. The agenda should be forward looking, concentrating on strategic matters.
- Ensuring that there is appropriate delegation of authority from the board to executive management.
- Ensuring that the directors receive accurate, timely and clear information, including that on the company's current performance, to enable the board to take sound decisions, monitor effectively and provide advice to promote the success of the company.
- Managing the board to allow enough time for discussion of complex or contentious issues. The Chairman should ensure that directors (particularly non-executive directors) have sufficient time to consider critical issues and obtain answers to any questions or concerns they may have and are not faced with unrealistic deadlines for decision making.

2. Directors

- Facilitating the effective contribution of non-executive directors and encouraging active engagement by all members of the board.
- Ensuring constructive relations between the executive and non-executive directors.
- Holding meetings with the non-executive directors without the executives present.¹⁴

3. Induction, development and performance evaluation

- Ensuring that new directors participate in a full, formal and tailored induction programme, facilitated by the company secretary.
- Ensuring that the development needs of directors are identified and, with the company secretary having a key role, that these needs are met. The directors should be able to continually update their skills and the knowledge and familiarity with the company required to fulfil their role on the board and its committees.
- Identifying the development needs of the board as a whole to enhance its overall effectiveness as a team.
- Ensuring the performance of the board, its committees and individual directors is evaluated at least once a year and acting on the results of such evaluation by recognising the strengths and addressing the weaknesses of the board. Where appropriate, through the Nomination Committee, proposing that new members be appointed to the board or seeking the resignation of others.

¹⁴ This corresponds to provision A.1.3 of the Combined Code however experience suggests that the scope of such meetings may need to be carefully defined and controlled to ensure that executive directors are not made to feel that decisions are being made without their involvement.

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4. Relations with shareholders

- Ensuring effective communication with shareholders.
- Maintaining sufficient contact with major shareholders to understand their issues and concerns, in particular discussing governance, strategy and remuneration with them.
- Ensuring that the views of shareholders are communicated to the board as a whole so that all directors develop an understanding of their views.

5. AGM

- Arranging for the Chairmen of board committees to be available to answer questions at the AGM and for all directors to attend.

The Chairman's direct reports are the Chief Executive and the company secretary.

B. In addition, the Chairman should:

- Uphold the highest standards of integrity and probity.
- Set the agenda, style and tone of board discussions to promote effective decision making and constructive debate.
- Ensure that they are fully informed about all issues on which the board will have to make a decision, through briefings with the Chief Executive, the company secretary, and members of the executive management as appropriate.
- Ensure clear structure for, and the effective running of, board committees.
- Ensure effective implementation of board decisions.
- Promote effective relationships and open communication between executive and non-executive directors both inside and outside the boardroom, ensuring an appropriate balance of skills and personalities.
- Build an effective and complementary board, and with the Nomination Committee, initiate change and plan succession in board appointments (except that of a successor as Chairman) subject to board and shareholder approval.
- With the assistance of the company secretary, promote the highest standards of corporate governance, seeking compliance with the Combined Code. If full compliance is not possible, ensure that the reasons for non-compliance are fully understood, agreed by the board and explained to shareholders.
- Ensure an appropriate balance is maintained between the interests of shareholders and other stakeholders (employees, customers, suppliers and the community).
- Ensure the long term sustainability of the business.
- Ensure the continual improvement in quality and calibre of the executives.
- Establish a close relationship of trust with the Chief Executive and Finance Director, providing support and advice while respecting executive responsibility
- Provide coherent leadership of the company, including, in conjunction with the Chief Executive, representing the company to customers, suppliers, governments, shareholders, financial institutions, the media, the community and the public.

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APPENDIX 2

Role of Chief Executive

The Chief Executive is accountable and reports to the board and is responsible for running the group's business.

A. The Chief Executive is responsible for the following, within the authority limits delegated to them by the board:

1. Business Strategy and Management

- Developing group objectives and strategy having regard to the group's responsibilities to its shareholders, customers, employees and other stakeholders.
- The successful achievement of objectives and execution of strategy following presentation to, and approval by, the board.
- Recommending to the board an annual budget and [5 year] financial plan and ensuring their achievement following board approval.
- Optimising as far as is reasonably possible the use and adequacy of the group's resources.

2. Investment and Financing

- Examining all trade investments and major capital expenditure proposed by subsidiary companies and the recommendation to the group board of those which, in a group context, are material either by nature or cost.
- Identifying and executing acquisitions and disposals, approving major proposals or bids.
- Leading geographic diversification initiatives.
- Identifying and executing new business opportunities outside the current core activities.

3. Risk Management and Controls

- Managing the group's risk profile, including the health and safety performance of the business, in line with the extent and categories of risk identified as acceptable by the board.
- Ensuring appropriate internal controls are in place.

4. Board Committees

- Making recommendations on remuneration policy, executive remuneration and terms of employment of the senior executive team, including the company secretary to the Remuneration Committee.
- Making recommendations to the Nomination Committee on the role and capabilities required in respect of the appointment of executive directors.

5. Communication

- Providing a means for timely and accurate disclosure of information, including an escalation route for issues.
- Ensuring effective communication with shareholders.

6. Other

- Setting group HR policies, including management development and succession planning for the senior executive team and approving the appointment and termination of employment of members of that team.

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B. The duties which derive from these responsibilities include:

- Leading the executive directors and the senior executive team in the day to day running of the group's business, including chairing the Executive Committee and communicating its decisions/recommendations to the board.
- Ensuring effective implementation of board decisions.
- Regularly reviewing the operational performance and strategic direction of the group's business.
- Regularly reviewing the group's organisational structure and recommending changes as appropriate.
- Formalising the roles and responsibilities of the senior executive team, including clear delegation of authorities.
- Supervising the activities of subsidiary companies' most senior executives.
- Developing senior teams within subsidiaries and ensuring succession planning.
- Developing the following policies for board approval and then implementing them.
 - Codes of ethics and business practice
 - Share dealing code
 - Health and safety policy, risks and procedures (to be reviewed annually)
 - Communications policy (including procedures for the release of price sensitive information)
 - Investor relations policy
 - Corporate social responsibility policy (including environmental, employee communications and employee disability)
 - Charitable donations policy;
- Ensuring that all group policies and procedures are followed and conform to the highest standards.
- Together with the Chairman, providing coherent leadership of the company, including, representing the Group to customers, suppliers, government, shareholders, financial institutions, employees, the media, the community and the public.
- Keeping the Chairman informed on all important matters.

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APPENDIX 3

Role of the Chairman and Chief Executive – Alternative Approach

Statement of Division of Responsibilities between the Chairman and the Chief Executive

1. Reporting Lines	
Chairman	Chief Executive
1.1 The Chairman reports to the board (the "board").	1.1 The Chief Executive reports to the Chairman (acting on behalf of the board) and to the board directly.
1.2 The Chairman is not responsible for executive matters regarding the Group's business. Other than the Chief Executive and the company secretary, no executive reports to the Chairman, other than through the board.	1.2 The Chief Executive is responsible for all executive management matters affecting the Group. All members of executive management report, either directly or indirectly, to him/her.
2. Key Responsibilities	
Chairman	Chief Executive
2.1 The Chairman's principal responsibility is the effective running of the board.	2.1 The Chief Executive's principal responsibility is running the Group's business.
2.2 The Chairman is responsible for ensuring that the board as a whole plays a full and constructive part in the development and determination of the Group's strategy and overall commercial objectives.	2.2 The Chief Executive is responsible for proposing and developing the Group's strategy and overall commercial objectives, which he does in close consultation with the Chairman and the board.
2.3 The Chairman is the guardian of the board's decision-making processes.	2.3 The Chief Executive is responsible, with the executive team, for implementing the decisions of the board and its Committees.
3. Other Responsibilities	
Chairman	Chief Executive
3.1 Running the board and setting its agenda.	3.1 Providing input to the board's agenda from himself and other members of the executive team.
3.2 Ensuring that board agendas take full account of the important issues facing the Group and the concerns of all board members. There should be an emphasis on strategic, rather than routine, issues.	3.2 Ensuring that he maintains a dialogue with the Chairman on the important and strategic issues facing the Group, and proposing board agendas to the Chairman which reflect these.

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<p>3.3 Ensuring that the board receives accurate, timely and clear information on:</p> <ul style="list-style-type: none"> • the Group's performance • the issues, challenges and opportunities facing the Group and • matters reserved to it for decision. 	<p>3.3 Ensuring that the executive team gives appropriate priority to providing reports to the board which contain accurate, timely and clear information.</p>
<p>3.4 Ensuring, with the advice of the company secretary where appropriate, compliance with the board's approved procedures, including the schedule of Matters Reserved to the board for its decision and each Committee's Terms of Reference.</p>	<p>3.4 Ensuring, in consultation with the Chairman and the company secretary as appropriate, that he and the executive team comply with the board's approved procedures, including the schedule of Matters Reserved to the board for its decision and each Committee's Terms of Reference.</p>
<p>3.5 Arranging informal meetings of the directors, including meetings of the non-executive directors at which the executive directors are not present, as required to ensure that sufficient time and consideration is given to complex, contentious or sensitive issues.</p>	<p>3.5 Ensuring that the Chairman is alerted to forthcoming complex, contentious or sensitive issues affecting the Group of which he might not otherwise be aware.</p>
<p>3.6 Proposing to the board, in consultation with the Chief Executive, company secretary and Committee Chairmen as appropriate:</p> <ul style="list-style-type: none"> • a schedule of Matters Reserved to the board for its decision • Terms of Reference for each board Committee and • other board policies and procedures. 	<p>3.6 Providing input to the Chairman and company secretary on appropriate changes to the schedule of Matters Reserved to the board and Committee Terms of Reference.</p>
<p>3.7 Chairing the Nomination Committee, and, in that role, initiating change and succession planning in board appointments to retain and build an effective and complementary board, and to facilitate the appointment of effective and suitable members and Chairmen of board Committees.</p>	<p>3.7 Providing information and advice on succession planning, to the Chairman, the Nomination Committee, and other members of the board, particularly in respect of executive directors.</p>
<p>3.8 Proposing, in conjunction with the Nomination Committee, the membership of board Committees and their Chairmen.</p>	<p>3.8 If so appointed by the board, serving on the Nomination Committee.</p>
<p>3.9 Ensuring that there is effective communication by the Group with its shareholders, including by the Chief Executive, Finance Director and other executive management, and ensuring that members of the board develop an understanding of the views of the major investors in the Group.</p>	<p>3.9 Leading the communication programme with shareholders.</p>

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APPENDIX 4

Draft Board Responsibilities Statement

To achieve the maximum effectiveness of the board, the board accepts that the roles of Chairman and Chief Executive need to be split and clearly defined. The policy statement adopted by the board on xx yyyy 2003 defines the role of the Chairman and Chief Executive. The Chairman is responsible for leadership of the board and creating the conditions for overall board and individual director effectiveness, both inside and outside the boardroom. The Chief Executive is responsible for running the group's business.

It should be noted that this document does not supersede the authorities delegated in the matters reserved for the board document approved by the board on xx yyyy 2003.

APPENDIX 5

Role of the Senior Independent Director ("SID")

1. Shareholders

- The SID will be available to shareholders if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
- They will attend sufficient meetings with major shareholders and financial analysts to obtain a balanced understanding of the issues and concerns of such shareholders.

2. Chairman

- The SID will chair the Nomination Committee when it is considering succession to the role of Chairman of the board.
- They will meet with the non-executive directors at least once a year to appraise the Chairman's performance and on such other occasions as are deemed appropriate.

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