

ICSA Guidance on Terms of Reference – Nomination Committee

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A 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 Combined Code on Corporate Governance (the Combined Code). It draws on the experience of senior company secretaries and is based on best practice as carried out in some of the UK's top listed companies.

B The Combined Code

The Combined Code states that:

‘There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.’¹

It also provides that:

‘There should be a nomination committee which should lead the process for board appointments and make recommendations to the board.’²

Previous guidance has permitted smaller listed companies to allow the board to act as a nomination committee. This is no longer the case and, although the Higgs Review recognised that it may take time for smaller companies to comply, it states ‘there should be no differentiation in the Code’s provision for larger and smaller companies.’³

The Combined Code recommends that companies go through a formal process of reviewing the balance and effectiveness of the board, identifying the skills needed and those individuals who might best provide them. In particular the nomination committee should assess the time commitments of the board posts and ensure that the individual has sufficient available time to undertake them.

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 chairman of the nomination committee is required to attend the AGM prepared to respond to any questions which may be raised by shareholders on matters within the committee’s area of responsibility.⁴ The Combined Code also requires the terms of reference of the nomination committee, explaining its role and the authority delegated to it by the board, to be made publicly available (e.g. by placing them on a website maintained by or on behalf of the company).⁵ It is, therefore, essential that the nomination committee be properly constituted with a clear remit and identified authority.

C Notes on the terms of reference

The list of duties we have proposed are based on those contained in the *Summary of the Principal Duties of the Nomination Committee* which ICSA drew up for the Higgs Review.⁶ Some companies may wish to add to this list and some smaller companies may need to modify it in other ways.

¹ The Combined Code, June 2006 A.4

² The Combined Code, June 2006 A.4.1

³ *Higgs Review of the Role and Effectiveness of Non-executive Directors*, January 2003, para. 16.8

⁴ The Combined Code, June 2006 D.2.3

⁵ The Combined Code, June 2006 A.4.1 (see also footnote 4 to the Combined Code)

⁶ The Higgs Report list of duties was originally appended to 2003 version of the Combined Code but is now incorporated in a document entitled *Suggestions for Good Practice from the Higgs Report*, available from the FRC website www.frc.org.uk as associated guidance.

The Combined 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.⁷ We have recommended a committee of three but companies with larger boards may wish to consider increasing this to four or five.

Although not a provision in the Combined Code, the Higgs review states as good practice, in its non-code recommendations, that the company secretary (or their designee) should act as secretary to the committee.⁸ In this regard, it is the company secretary's responsibility to ensure that the board and its committees are properly constituted and advised. There also needs to be a clear co-ordination between the board and the various committees where the company secretary would normally act as a valued intermediary.

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, clear that it must meet close to the year-end to consider whether or not directors retiring by rotation should be put forward for re-appointment at the annual general meeting (AGM) and to review the statement in the annual report concerning its activities. We would recommend that it should meet at least twice a year in order to discharge its responsibilities properly.

References to 'the committee' are to the nomination committee.

References to 'the board' are to the board of directors.

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.

D Model terms of reference

1. Membership

- 1.1. The committee shall comprise of at least [3] directors. A majority of the members of the committee should be independent non-executive directors. All appointments to the committee shall be made by the board.
- 1.2. 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.
- 1.3. Appointments to the committee shall be for a period of up to three years, which may be extended for two further three-year periods provided that the majority of the committee members remain independent.
- 1.4. The board shall appoint the committee chairman who should be either the chairman of the board or an independent non-executive director. In the absence of the committee chairman and/or an appointed deputy, the remaining members present shall elect one of their number to chair the meeting from those who would qualify under these terms of reference to be appointed to that position by the board. The chairman of the board shall not chair the committee when it is dealing with the matter of succession to the chairmanship.

⁷ The Combined Code, June 2006 A.4.1. The definition of independence is given in Combined Code provision A.3.1.

⁸ *Review of the Role and Effectiveness of Non-executive Directors*, para 11.30

2. Secretary

2.1. The company secretary or their nominee shall act as the secretary of the committee.

3. Quorum

3.1. The quorum necessary for the transaction of business shall be [2] [both of whom must be independent non-executive directors]. A duly convened meeting of the committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the committee.

4. Frequency of meetings

4.1. The committee shall meet [at least twice a year][quarterly on the first Wednesday in each of January, April, July and October] and at such other times as the chairman of the committee shall require.⁹

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 chairman.
- 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, any other person required to attend and all other non-executive directors, no later than [5] 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 resolutions of all committee meetings, including the names of those present and in attendance.
- 6.2. Minutes of committee meetings shall be circulated promptly to all members of the committee and the chairman of the board and, once agreed, to all other members of the board, unless a conflict of interest exists.

7. Annual General Meeting

7.1. The committee chairman shall attend the annual general meeting prepared to respond to any shareholder questions on the committee's activities.

⁹ The frequency and timing of meetings will differ according to the needs of the company. Meetings should be organised so that attendance is maximised (for example by timetabling them to coincide with board meetings).

8. Duties

8.1. The committee shall

- 8.1.1. regularly review the structure, size and composition (including the skills, knowledge and experience) required of the board compared to its current position and make recommendations to the board with regard to any changes
- 8.1.2. give full consideration to succession planning for directors and other senior executives in the course of its work, taking into account the challenges and opportunities facing the company, and what skills and expertise are therefore needed on the board in the future
- 8.1.3. be responsible for identifying and nominating for the approval of the board, candidates to fill board vacancies as and when they arise
- 8.1.4. before any appointment is made by the board, evaluate the balance of skills, knowledge and experience on the board, and, in the light of this evaluation prepare a description of the role and capabilities required for a particular appointment. In identifying suitable candidates the committee shall
 - 8.1.4.1 use open advertising or the services of external advisers to facilitate the search
 - 8.1.4.2 consider candidates from a wide range of backgrounds
 - 8.1.4.3 consider candidates on merit and against objective criteria, taking care that appointees have enough time available to devote to the position
- 8.1.5. 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
- 8.1.6. keep up to date and fully informed about strategic issues and commercial changes affecting the company and the market in which it operates
- 8.1.7. 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
- 8.1.8. 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

8.2. The committee shall also make recommendations to the board concerning

- 8.2.1. formulating plans for succession for both executive and non-executive directors and in particular for the key roles of chairman and chief executive
- 8.2.2. suitable candidates for the role of senior independent director
- 8.2.3. membership of the audit and remuneration committees, in consultation with the chairmen of those committees
- 8.2.4. the re-appointment of any non-executive director 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 the knowledge, skills and experience required
- 8.2.5. the continuation (or not) in service of any director who has reached the age of [70] if required by the articles
- 8.2.6. the re-election by shareholders of any director under the 'retirement by rotation' provisions in the company's articles of association having due regard to their performance and ability to continue to contribute to the board in the light of the knowledge, skills and experience required
- 8.2.7. 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
- 8.2.8. the appointment of any director to executive or other office

9. Reporting responsibilities

- 9.1. The committee chairman shall report formally to the board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 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.
- 9.3. The committee shall make a statement in the annual report about its activities, the process used to make appointments and explain if external advice or open advertising has not been used.

10. Other

- 10.1. The committee shall, at least once a year, review its own performance, 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.

11. Authority

- 11.1. The committee is authorised to seek any information it requires from any employee of the company in order to perform its duties.
- 11.2. The committee is authorised to obtain, at the company's expense, outside legal or other professional advice on any matters within its terms of reference.

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