



PRACTICE NOTES

22/09/2017

The role of the Chair and Lead Independent

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Purpose

The purpose of this practice note is to:

1. provide further governance guidance on the King IV recommended practice 31 of Principle 7 that states “*the governing body should elect an independent non-executive member as chair to lead the governing body in the objective and effective discharge of its governance role and responsibilities*”. This guidance was considered necessary to elaborate on the core functions of the chair; and
2. provide clarity to the recommended practice 32 of Principle 7 that states “*the governing body should appoint an independent non-executive member as the lead independent...*” This clarity was considered necessary due to the change in approach from King III to King IV and attendant enhancement of the role.

Background

King III Practice 40 of Principle 2.16 contained elaboration on the core role of the chair. Due to the approach of King IV being more succinct and less prescriptive, detailed guidance on the role of the chair was not provided in the Code.

Furthermore, King III only recommended the appointment of a lead independent director in situations where the chair was not considered independent. This approach has changed in King IV, where a practice recommends that a lead independent member of the governing body should be appointed regardless of the independence of the chair (as outlined below), to fill specific functions.

This practice note should be read in the context of proportionality as well as any applicable sector supplement, where certain nuances as to both the appointment and role of the Chair may exist, by virtue of legislation and or other guidelines and codes.

1. Role of the chair

The primary role of a chair of a governing body is to provide leadership to the governing body of an organisation; set the tone for its performance and undertake the management thereof. The chair should play an active role in engaging governing body members and building upon their strengths and addressing /developing any weaknesses.

The chair ensures focus is maintained by the governing body on what is best for the organisation; and that the tone for organisational success is set.

The chair is accountable to the governing body. Working with fellow members of the governing body, the chair sets the direction and priorities for the execution of the duties by the governing body and acts as the communication channel for governing body decisions where appropriate.

In addition to the above general role of the chair, refer to Annexure A for further specific duties.

2. Lead independent member of the governing body – the new approach

King IV's approach is that a lead independent (LI) should be appointed as a matter of course, **regardless of whether the chair is independent or not.**

This change in approach resulted from the view that aspects of the role that the LI plays are relevant and necessary, not only when the chair is conflicted, but in general, to perform certain specific duties primarily around strengthening the role of the chair, overseeing evaluation of the chair and being an avenue of communication for the other governing body members on any issues relating to the Chair.

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This change was considered necessary to, amongst others:

- give the other non-executive governing body members a stronger voice, particularly where there is a dominant chair but without undermining the authority of the chair ;
- achieve a balance of power and reinforce accountability mechanisms;
- mediate conflict/dysfunction on the governing body, where the chair is involved;
- be forearmed with a LI in place from the start, before things go wrong.

It is not envisaged that a deputy chair would be required, as the LI could fulfil the duties usually assigned to a deputy chair.

With regards to the role of the lead independent, Part 5.3, Principle 7, Practice 32 of King IV states:

The governing body should appoint an independent non-executive member as the lead independent to fulfil the following functions:

- a) To lead in the absence of the chair.*
- b) To serve as a sounding board for the chair.*
- c) To act as an intermediary between the chair and other members of the governing body, if necessary.*
- d) To deal with shareholders' concerns where contact through the normal channels has failed to resolve concerns, or where such contact is inappropriate.*
- e) To strengthen independence on the governing body if the chair is not an independent non-executive member of the governing body.*
- f) To chair discussions and decision-making by the governing body on matters where the chair has a conflict of interest.*
- g) To lead the performance appraisal of the chair.*

Annexure A – Specific duties of the chair of the governing body

In relation to the organisation

- represent the organisation at
 - the AGM and other shareholder meetings – particularly taking the lead in discussions with shareholders at such meetings or other interventions. The chairs of the various board committees may also be required to participate at such meetings on specific matters falling under the remit of their respective committees, such as governing body appointments (chair of committee responsible for nominations), remuneration policy and implementation (chair of committee responsible of remuneration), stakeholders matters (chair of social and ethics committee) and engagement of external auditors (chair of audit committee).
 - engagements with key stakeholders, where the intervention or engagement at the level of the governing body is needed in addition or instead of management engagement.
 - other functions/events where necessary and appropriate to represent the organisation
- being present/participating in industry conferences and the like where necessary and appropriate to represent the organisation

In relation to the governing body responsibilities

- providing overall leadership to the governing body
- overseeing that governing body leads ethically and effectively and that the governing body conducts itself in a way that cultivates and exhibits the characteristics of integrity, competence, responsibility, accountability, fairness and transparency
- participating in the selection process for governing body members (via a relevant governing body committee, if applicable), and overseeing a formal succession plan for the governing body, Chair, CEO and other executives
- taking the lead in the allocation of governing body members to committees including the appointment of the respective chairs
- ensuring clarity of mandate and effectiveness of such committees
- encouraging congeniality, team work and collaboration among governing body members without inhibiting candid debate and creative tension
- overseeing that conflicts of interest, incl. policy, declarations, recusal are addressed appropriately
- ensuring that governing body members contribute fully to the effective and objective discharge of the governing body's role and duties
- taking the lead in ensuring the evaluations of the governing body, its members, chair and committees and in addressing non-performance by members of the governing body and if necessary the removal of unsuitable governing body members from the governing body
- Mentoring new/young/less experienced governing body members to develop skill and enhance confidence
- ensuring that new governing body members are appropriately made aware of their responsibilities through an induction programme
- ensuring a formal programme for continuing professional education for governing body members is adopted and implemented
- keeping the members of the governing body suitably informed of significant issues between meetings
- ensuring that the governing body fulfils all its duty for steering and setting strategic direction (including same for the governance structures), approving policy and planning, overseeing the organisation and monitoring and ensuring accountability, which results in ethical culture, good performance, effective control and legitimacy
- ensuring that good relations are maintained with the organisation's major shareholders and other material stakeholders

In relation to management

- acting as the link between the governing body and the CEO
- being collegial with management while at the same time maintaining an arm's length relationship;
- perform the performance appraisal of the CEO and be informed of performance appraisal findings of other executives
- assesses whether the organisation is getting the full value from Executives
- Act as confidante/sounding board and provide counsel to CEO
- offer guidance during times of crisis
- overseeing the performance and acting as the contact/reporting point for the company secretary or the professional providing governance services to the governing body in respect of the discharge of statutory duties and other duties performed for the governing body

In relation to meetings of the governing body

- presiding over governing body meetings and ensuring that time in meetings is used productively
- exercising judgement as to when additional interventions and or additional meetings of the governing body may be required and the format thereof
- ensuring that complete, timely, relevant, accurate, and appropriately assured information is placed before the governing body to enable governing body members to reach informed decisions
- holding rigorous standards of preparation for governing body meetings, by for example, meeting with the Cosc and CEO before meetings and studying the meeting information packs prior to distribution
- formulating (with the CEO and company secretary/other professional providing corporate governance services) the yearly work plan for the governing body against agreed objectives, and playing an active part in setting the agenda for governing body meetings
- ensuring that sufficient time and effort has been devoted to preparation for meetings by members
- ensuring that those present constitute a quorum at meetings before decisions are taken
- ensuring that an effective company secretary or other governance professional is in place to support the governing body
- ensuring that decisions by the governing body are suitably recorded in the minutes and executed
- determining when independent professional advice may be necessary and ensuring that this is procured within the approved protocol