

Sourcing of directors



MCCG Intended Outcome 4.0

Board decisions are made objectively in the best interests of the company taking into account diverse perspectives and insights.

MCCG Practice 4.6

In identifying candidates for appointment of directors, the board does not solely rely on recommendations from existing board members, management or major shareholders. The board utilises independent sources to identify suitably qualified candidates.



The internalisation and application of the content “Why” and “How” should be read in tandem with the line of sight outlined by the Intended Outcome.

Why

The case for change

The intensifying nature of globalisation, the emergence of novel technologies and the continuous pressure on companies to innovate have heightened the need for **professional boards**. Board members are now increasingly expected to possess a granular understanding of the business model, ability to challenge assumptions underlying the strategies proposed and scrutinise the risks that entail.

However, evidence from corporate governance failures has shown that the **influence of “informal networks” on board appointments and opaque selection criteria are significant barriers to the professionalisation of boards**.



Point for reflection

Anecdotal evidence suggests that controlling shareholders cum directors often nominate friends, former colleagues or relatives to the board regardless of their experience, qualifications or objectivity¹.

This is compounded by the general tendency for boards to source for directors who are well-known to at least one of the existing board members.

It is also common to come across the same group of directors forming a chain of network by holding directorships within a pool of companies.

Directors who are elected in the aforementioned manner are also likely to have a sense of loyalty to the controlling shareholders or the directors who have nominated them. In such a setting, the beholden directors are likely to be rubber



What could go wrong:

- The skills sets of the newly appointed directors do not meet the needs of the board.
- Inability of the board to draw fresh perspectives from the newly appointed directors due to the tendency of the said directors to conform to the views of the major shareholders or directors who have nominated them.

¹ *Board Member Nomination and Election 2012*, Organisation for Economic Co-operation and Development

stamping proposals in the boardroom without duly probing the matters under discussion².

In order to reduce instances of insular nomination methods, regulators are increasingly emphasising the importance of transparency and objectivity in directors' nomination and election processes.

Paragraph 2.20A of Bursa Securities Listing Requirements

Qualification of directors and other key officers

Every listed corporation, management company or trustee-manager must ensure that each of its directors, chief executive or chief financial officer has the character, experience, integrity, competence and time to effectively discharge his role as a director, chief executive or chief financial officer, as the case may be, of the listed corporation, or the collective investment scheme.

*Note: In order to enable directors to devote sufficient time to carry out their responsibilities, **paragraph 15.06 of Bursa Securities Listing Requirements** restricts a director of an applicant or a listed issuer from holding more than 5 directorships in listed issuers.*

Paragraph 15.08A(3)(b) of Bursa Securities Listing Requirements

The listed issuer must provide, in its annual report, a statement about the activities of the nominating committee in the discharge of its duties for the financial year. Such statement must include how the requirements set out in **paragraph 2.20A** of these Requirements are met and contain the following information:

- (b) the board nomination and election process of directors and criteria used by the nominating committee in the selection process.

Meanwhile, under **Standard 10.2 of Bank Negara Malaysia's Policy Document on Corporate Governance**, directors and potential directors of financial institutions must have been assessed by the board nominations committee to have complied with the fit and proper requirements shown below.



Fit and proper criteria for financial institutions³:

<p>Probity, personal integrity and reputation</p> <p>Person must have the personal qualities such as honesty, integrity, diligence, independence of mind and fairness.</p>	<p>Competence and capability</p> <p>Person must have the necessary skills, ability, experience and commitment to carry out the role.</p>	<p>Financial integrity</p> <p>Person must manage his or her debts or financial affairs prudently.</p>
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² *Corporate Governance Better Policies for Board Nomination and Election in Asia 2013*, Organisation for Economic Co-operation and Development

³ Bank Negara Malaysia's Guidelines on Fit and Proper Criteria for Key Responsible Persons

How

The practice in substance

A formal and transparent procedure should be established for sourcing and appointing new directors to the board, taking into account factors such as skills, experience, personal attributes and diversity required of directors, both collectively and individually.

Key considerations relating to the application of this Practice are discussed below:

What are the different approaches that the nominating committee can deploy in sourcing for board candidatures?

In exercising objectivity in the selection process, the nominating committee should seek to have access to a wide selection of candidates. Above and beyond referrals from directors, shareholders and management, this may include utilising the following sources:

- directors' registry (e.g. Institute of Corporate Directors Malaysia);
- industry and professional associations (e.g. 30% Club);
- open advertisements (refer to the illustrative example on the following page); and
- independent search firms.

The nominating committee should clearly articulate the screening criteria to the relevant parties in order to maximise the effectiveness of the search conducted.

An illustrative example of an open advertisement for board member position is outlined below.



Illustrative example (Open advertisement)

Position: Board Member (Non-Executive Director)

Company background

Zotefoams PLC is a world leader in cellular materials technology. Using a unique manufacturing process with environmentally friendly nitrogen expansion, the company produces lightweight foams. Its technology gives rise to many potentially disruptive manufacturing solutions supplying a diverse range of clients including leaders in the aerospace, automotive, sports and leisure sectors. Zotefoams has a well-established global brand with subsidiaries and joint ventures in the US and Asia.

Specification:

As a Non-Executive Director of the Board, key responsibilities will include the following:



Dos

- ✓ Number of candidates recommended by the nominating committee to the board is greater than the available board seats.
- ✓ Providing shareholders with detailed background information⁴ relevant to the decision on whether or not to elect or re-elect a director.
- ✓ Notice convening general meeting to seek shareholders' approval on the election of a director is accompanied with details in support for or against the nomination.



Don'ts

The following would render the application of this practice ineffective:

- × Not disclosing the specific sources used in the selection of directors.
- × Not establishing a formal and transparent procedure for the appointment of new directors to the board.

⁴ Background information required under **paragraph 1, Appendix 8A of Bursa Securities Listing Requirements** includes personal details (i.e. name, age, gender, nationality, qualification, designation and independence status); working experience and occupation; directorships in public companies and listed issuers; details of any interests in the securities of the listed issuer and its subsidiaries; family relationship with any director and/or major shareholder of the listed issuer; any conflict of interests; and list of convictions for offences within the past five years (save for traffic offences) as well as particulars of any public sanction or penalty imposed by the relevant regulatory bodies during the financial year.

- Support the Chairman in ensuring that the Board provides effective direction for, and oversight of, the management of the Group and its compliance with its statutory and regulatory responsibilities.
- Provide input into the setting of the Group's strategic aims, the development of deliverable plans to achieve these objectives, and the assessment of the effectiveness of the delivery by the executive management of these plans.
- Help set the Group's values and standards and ensure that its obligations to its customers, shareholders, finance providers, regulators and others are understood and met.
- Attend and contribute to the effective running of meetings of other Board committees (e.g. Nomination, Remuneration) as required.
- Spend time with management as required providing input and advice on strategic and technology-related matters within the Non-Executive Director's own business experience and capabilities.
- Communicate effectively and build strong relationships with all key stakeholders.

Experience and skill sets:

- Recent experience as an Executive in an industrial business.
- Engineering or science based background.
- International operations and manufacturing.
- Selling internationally to multi sector business customers.
- Familiarity with components/materials businesses.
- Business for which intellectual property is highly significant.
- It would be beneficial for candidates to have some Board member experience of a Public Listed Company and as an Executive who have been involved in setting up manufacturing operations outside of the United Kingdom.

Source: Website of Zotefoams PLC of United Kingdom August 2017

How should the board inform stakeholders of their approach in selecting directors?

As mentioned above, **paragraph 15.08A(3)(b) of Bursa Securities Listing Requirements** requires the nominating committee of the listed issuer to set out a statement in the annual report on the board nomination and election process of directors and the criteria used by the nominating committee in the selection process.

In addition, **Guidance to Practice 4.6 of MCCG** calls upon the nominating committee to disclose in the company's annual report how candidates were sourced including whether such candidates were recommended by the existing board members, management or major shareholders.

If the selection of candidates was solely based on recommendations made by existing board members, management or major shareholders, the nominating committee should explain why other sources were not used.



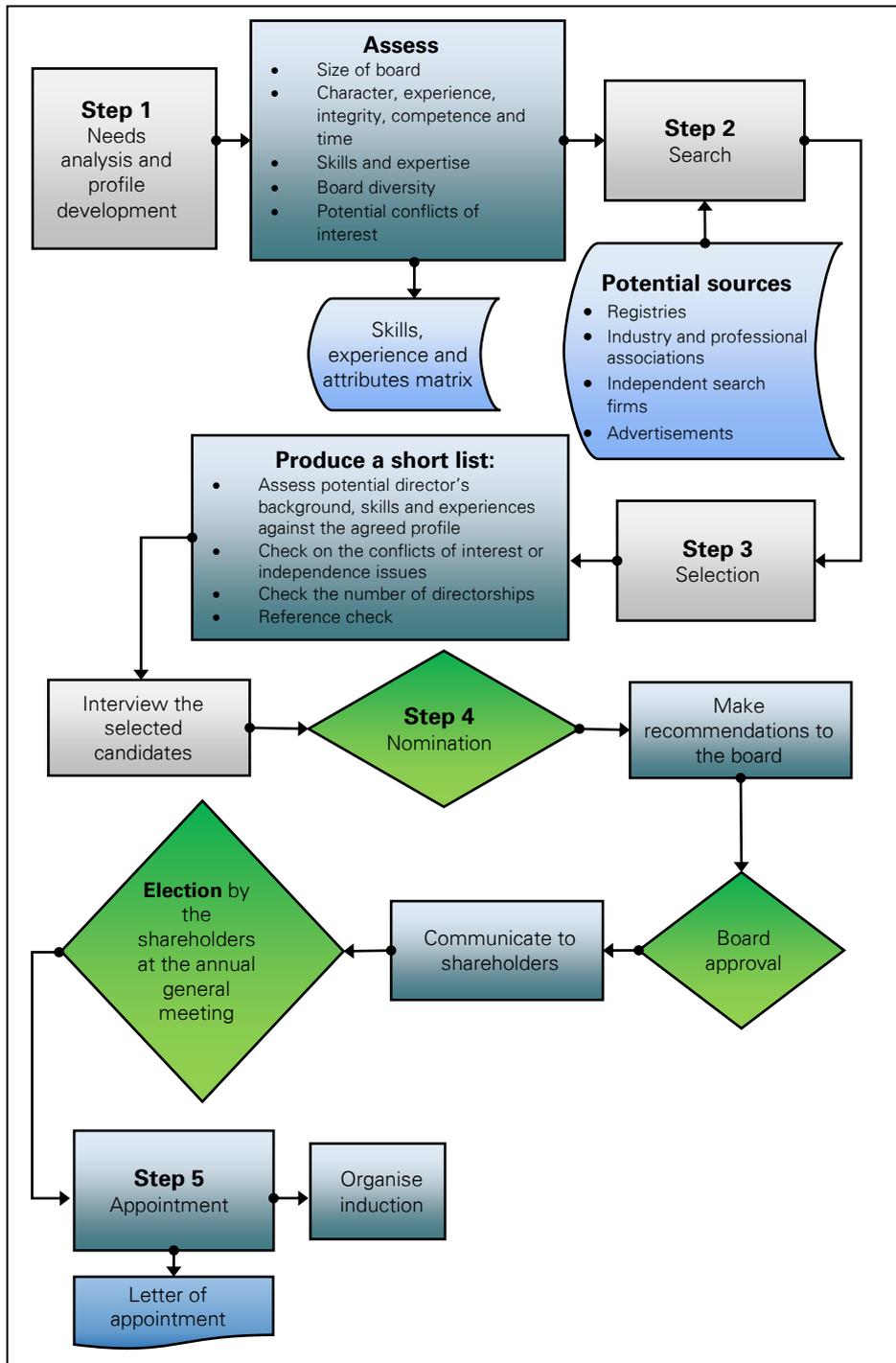
Hot-button issue

There are currently no overarching professional standards governing the operation of external search firms. In light of this, the rigour of the search process carried out by individual search firms may vary significantly.

It is therefore incumbent on the nominating committee to **assess the capabilities and independence** of the search firms in carrying out a robust and objective search process.

In the appointment of a new director, what are the steps that the board may undertake to appoint suitably qualified candidates?

The board may consider undertaking the following process as illustrated below.



Where

Regional/international perspectives

Similar to Malaysia, United Kingdom has placed an emphasis on the need for the boards to deploy a formal and transparent process for the selection of directors, including encouraging the use of external search consultancy or open advertising.



Country	Provision
United Kingdom	A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. This section should include a description of the board’s policy on diversity, including gender, any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director. Where an external search consultancy has been used, it should be identified in the annual report and a statement made as to whether it has any other connection with the company (Provision B.2.4) .