

Chairmanship of the nominating committee



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 4.7

The Nominating Committee is chaired by an Independent Director or the Senior Independent Director.



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 nominating committee is a key gatekeeper in the process of recruiting directors, evaluating their performance and driving the continuous performance of the board.

As such, objectivity is integral to avoid entrenching unconscious bias in the activities undertaken by nominating committee. It is no surprise that the aspect of independence in the composition of this committee is reinforced by **MCCG**, particularly for the chairman of the nominating committee.

This is because the effectiveness of the nominating committee to a large extent depends on the effectiveness of its chairman. In addition to leading the vetting of candidates, the chairman also has the responsibility of leading the assessment of the board, board committees and individual directors. Inevitably, the time will also come when directors will depart from the company and it is incumbent upon the chairman of the nominating committee to lead the necessary conversations around succession planning, particularly for the chairman of the board and chief executive officer.



What could go wrong:

- Lack of oversight by the nominating committee on the chairman of the board. This would particularly be the case if the chairman of the nominating committee is the same as the chairman of the board.
- Preferential selection of candidates in sourcing and nomination of directors (i.e. directors are appointed based on existing prior relationships or recommendations and do not go through the nomination process).
- Inability of the independent directors to add any tangible value to the corporate governance practices of the company.

How

The practice in substance

Bursa Securities Listing Requirements have reflected the composition of the nominating committee.

Paragraph 15.08A(1) of Bursa Securities Listing Requirements

Nominating committee

A listed issuer must establish a nominating committee which comprises exclusively of non-executive directors, a majority of whom must be independent.

A review of annual reports across the top 100 listed issuers (by market capitalisation) as at 31 December 2016 revealed that 85 listed issuers have already appointed independent directors as the chairmen of the nominating committees¹.

As with other board committees of a financial institution, **Standards 12.3 and 12.4 of Bank Negara Malaysia's Policy Document on Corporate Governance** also require the chairman of a financial institution's nominating committee to be an independent director and distinct from the chairman of the board.

The **MCCG** has consciously avoided naming only the senior independent director as the ideal chairman of the nominating committee, providing a degree of flexibility for companies.

This is because whilst the senior independent director is generally regarded as an ideal chairman of the nominating committee, there could be other circumstances that allow another independent director to act more effectively as the chairman of the nominating committee. For example, the senior independent director may regard being free of board committee duties as paramount to maintaining his neutrality and continuing to be an effective conduit for other independent directors to voice their concerns.

In another scenario, an independent director may be from a human resource background, and having gained experience and insights in recruitment, sociology and the dynamics of boardroom relationships, could contribute more effectively as the nominating committee chairman.

Q Point for reflection

Appointing an independent director as chairman is only the first step towards an effective nominating committee. It is just as vital for the chairman to discharge his duties in the manner envisaged.



Dos

- ✓ Assessing thoroughly the skillset required for the role as committee chairman and selecting the independent director most qualified to meet those expectations.
- ✓ Regularly considering if the individual remains suited for the chairman's role.



Don'ts

The following would render the application of this practice ineffective:

- × Being accustomed to receiving and carrying out instructions from controlling shareholders or a dominant chairman.
- × Viewing the board nomination process as a compliance requirement and the process is done mechanically, without any proper assessment of the board candidacy.

¹ Review undertaken by KPMG Management & Risk Consulting Sdn Bhd in 2017

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

Should the nominating committee be chaired by an independent director or a senior independent director?

This should be determined by the board after having considered the merits and disadvantages of either the independent director or senior independent director acting as the committee chairman based on, amongst others, the considerations as outlined in the preceding page.

Given that the senior independent director is commonly a confidant to the other directors, he or she would be well-placed to oversee the assessment of the board's chairman, taking into account a broad range of perspectives. Hence, in companies that have a senior independent director, it is commonplace for the senior independent director to be appointed as the chairman of the nominating committee.

In addition to chairing the nominating committee, what are the other common functions undertaken by a senior independent director?

The duties that are customarily performed by a senior independent director are outlined below (taking into account **Guidance to Practices 2.1 and 4.7 of MCCG**):

- acts as a sounding board to the chairman (e.g. offer counsel to the chairman on matters such as board dynamics and concerns of stakeholders);
- serves as an intermediary for other directors when necessary (e.g. facilitate confidential discussions with directors who may have concerns which they believe have not been properly considered by the board or which they feel may not be appropriate to raise in open forum or with the chairman directly);
- acts as point of contact for shareholders and other stakeholders particularly on concerns which cannot be resolved through the normal channels of the chairman and/or chief executive officer;
- provides leadership support and advice to the board in the event that the board is undergoing a period of stress (e.g. conflict between the chairman and chief executive officer or the strategy being followed by the chairman and/or executive officer is not supported by the board²);
- leads the succession planning and appointment of board members, including the future chairman and chief executive officer; and
- leads the annual review of board effectiveness, ensuring that the performance of each individual director is assessed objectively and holistically (i.e. the views of all the directors are obtained in an impartial manner).

Selection of a senior independent director

There is a widespread misconception on the definition of senior independent directors amongst companies which causes them to designate the longest serving independent director on the board as the senior independent director.

Factors such as **leadership qualities, expertise and industry or board experience** should actually be considered by the board in determining the eligibility of a director as a senior independent director. This definition is a matter for the board to determine in view of its nuances.

Some jurisdictions regard the term "senior" as a misnomer and have instead opted to designate such directors as a "lead independent director".

² *Guidance on Board Effectiveness* 2011, Financial Reporting Council (United Kingdom)

Where

Regional/international perspectives

Similar to Malaysia, a number of jurisdictions has called for the nominating committee to be chaired by an independent director.



Country	Provision(s)
Singapore	The nominating committee should comprise at least three directors, the majority of whom, including the nominating committee chairman, should be independent. The lead independent director, if any, should be a member of the nominating committee (Guideline 4.1) .
Australia	The board of a listed entity should: <ul style="list-style-type: none"> (a) have a nomination committee which: <ul style="list-style-type: none"> (1) has at least three members, a majority of whom are independent directors; and (2) is chaired by an independent director. (Recommendation 2.1)
United Kingdom	A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship (Provision B.2.1) . The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors (Provision B.6.3) .