

The board chairman



MCCG Intended Outcome 1.0

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

MCCG Practice 1.2

A Chairman of the board who is responsible for instilling good corporate governance practices, leadership and effectiveness of the board is appointed.



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 chairman is a key pivot in board dynamics, being one of the three cornerstones of the board – the other two being the chief executive/managing director (representing executive directors) and the senior independent director/independent director who usually leads the non-executive directors.

The chairman can be regarded as a position, or it can be seen as a role. It may be just semantics, but each word implies different approach that fundamentally determines the success of the chairman.

A position is a point of reference about something or someone whereas a role is a position that comes with a great deal of responsibilities and an expectation that these responsibilities will be carried out.

American academic Jeffrey A. Sonnenfeld remarked that structurally and practically, everything is in place for the board – rules, policies, procedures, the need for committees and the number of meetings¹. Nevertheless, what has often been ignored is that the board is a social system and many of the key factors for a successful social system apply to the board as well. Clearly, this includes the need for an effective leader – beginning with the chairman.

It would be fair to say that the chairman's will and tenacity have more of a bearing on his impact than his status. The board can only be as effective as the chairman allows it to, and it can also be overrun by vested interests and personal agendas should the chairman allow this to happen as well.



What could go wrong:

- Lack of healthy discussions as dissenting views cannot be freely expressed and discussed.
- Agenda items and discussions of the board are detached from the core matters that relate to the board and company.
- Expectations on the company's culture, values and behaviours are not well articulated.
- Communication between board and management is inept, thus, leading to unhealthy tension.

¹ Jeffrey, A 2002, *What Makes Great Boards Great*, Harvard Business Review

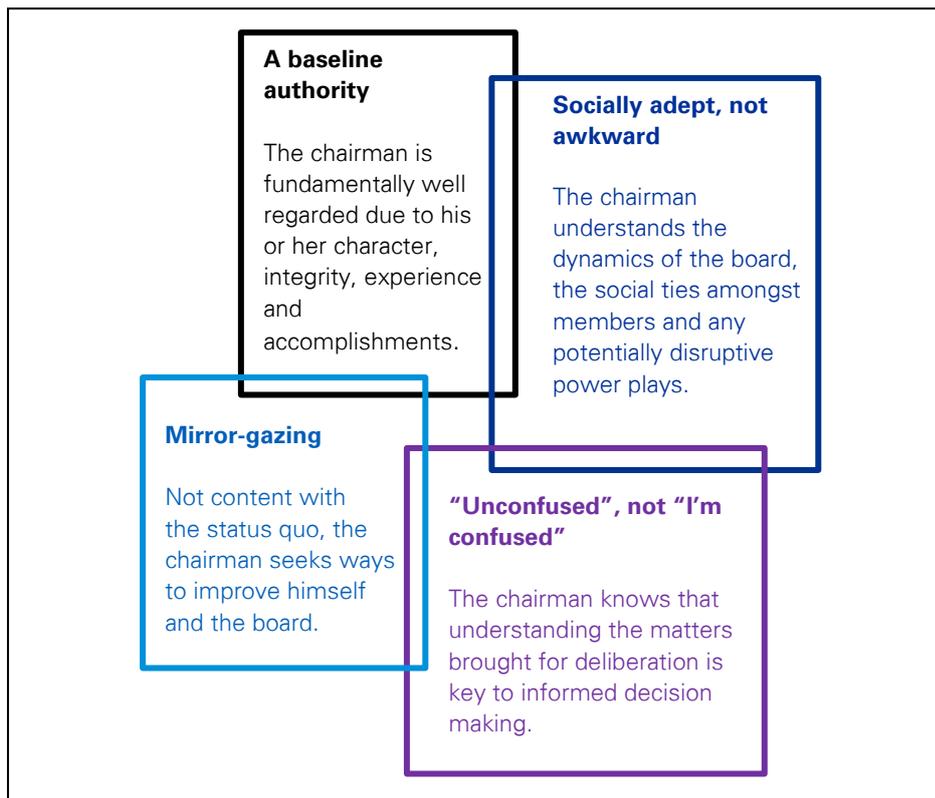
HOW

The practice in substance

The chairman should be appointed by the board and the chairman’s primary role is to preside over meetings of directors and ensure the smooth functioning of the board in the interest of good corporate governance.

Given the prevalence of the scorecard methodology and how easily it is now understood, it is perhaps helpful to present example traits of an effective chairman in the same manner.

The Chairman’s Scorecard



Activist and change coach Joan Garry coined an apt term for the chairman, concisely, she recognises that an effective chairman is a valued “thought partner” to the chief executive and the directors². Again, the theme behind this argument is that the chairman’s role is not a matter of procedure but a responsibility to encourage a high-performing board through continuous debate and challenge.



It would also be useful to take note of the signs that a chairman is not effective. They include the following:

- being unable to control board proceedings, either from an agenda perspective or from a time perspective, including allowing board papers to be submitted late or not at all;
- micro-managing;
- allowing factions to develop;

² Garry J 2017, *The Five Star Board Checklist*



Hot-button issue

Casting a long shadow

Should a retiring chief executive or managing director remain on the board as chairman? This is a corporate governance issue that many commentators have grappled with.

There is a great deal of debate with proponents arguing that such a presence “casts a long shadow” over the board whilst opponents counter-argued by valuing the leadership, advice and experience of these individuals.

The technology company Intel needs no introduction to all of us. Its products have permeated daily life for the last 50 years, but what is less known outside of corporate governance circles is that Intel’s four CEOs, starting from the legendary Andy Grove, went on to become chairmen of the board upon their retirement, in an orderly and announced succession plan.

The problem with this practice is that the chairman may think the company should be run in a certain way. When the strategy diverts from what they had implemented, the CEO-turned chairman, might influence the board to hinder the performance and strategy of the new CEO. It is important to complement the incumbent CEO with a balanced board that would not interfere with his or her strategy for the company.

- himself or herself joining a faction; and
- other directors developing alternative channels of communication with the management team, excluding the chairman.

Point for reflection

Although this may be apparent, it is worth noting that a company does not always stay in a normal, “business-as-usual” state of affairs. An effective chairman recognises that his or her company will be in a number of phases throughout its life, and adapts himself accordingly.

Below are examples of scenarios that the board chairman could find himself or herself in their course of duty³:

Planned change

Change is upon the company but this is known beforehand, (e.g. regulatory change, a new product or new market). Can the chairman ensure that management is fully prepared for the transition?

Turnaround

The company finds itself falling behind in its market and all of a sudden, things are no longer rosy. This is often a cumulative effect from inaction of the last few years. Can the chairman galvanise the chief executive officer and the board to “turn the ship” around?

Crisis

Events throw “a spanner in the works”. These could range from fraud, accidents, and regulatory investigations to hostile takeovers. Some events may cast doubt on ability of the company to continue. Can the chairman lead the company through the crisis?

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

What are the responsibilities of the chairman?

The chairman is primarily responsible for the workings of the board so as to ensure the smooth functioning of the board in the interest of good corporate governance. The key responsibilities that are customarily undertaken by the chairman based on **Guidance to Practice 1.2 of MCCG** are outlined below:

- Provides leadership for the board so that the board can perform its responsibilities effectively:
 - o Ensures that the board plays a full and constructive part in the determination of the company’s strategies and policies, and that board decisions taken are in the company’s best interests and fairly reflect board’s consensus; and
 - o Ensures that procedures are in place to govern the board’s operations.
- Sets the board agenda and ensures that board members receive complete and accurate information in a timely manner:
 - o Plans the board meeting agenda in advance alongside the company secretary and the chief executive officer. Other directors and key members of management may also be consulted;

Dos

- ✓ Have a leading influence on board agenda and matters reserved for the board.
- ✓ Manage the meeting time.
- ✓ Encourage feedback from all directors on the board, especially from directors whom the Chairman is aware has a passion in the subject.

Don’ts

The following would render the application of this practice ineffective:

- × Being overly rigid with time although a matter warrants serious discourse.
- × Suppress certain matters reserved for the board’s deliberation and decision.
- × Assume an executive role when he is not supposed to.
- × Consistently excuse misbehaving or recalcitrant directors.
- × Allow certain group of directors to dominate the boardroom discussion.
- × Devote minimal, if not no effort to lead the board.

³ *What Makes An Exceptional Chairman? Required Qualities For Challenging Times* 2014, Alvarez & Marsal

- o Ensures the provision of accurate, timely and clear information to the other directors; and
- o Ensures all directors are properly briefed on issues arising at board meetings in a timely manner.
- Leads board meetings and discussions:
 - o Ensures that adequate time is available for thorough deliberation of key issues; and
 - o Ensures that decisions are taken on a sound and well-informed basis, including by ensuring that all strategic and critical issues are considered by the board.
- Encourages active participation and allows dissenting views to be freely expressed:
 - o Promotes a culture of openness and debate whilst ensuring that no one director dominates the discussion; and
 - o Obtains suggestions and comments from directors and encourages those who are less vocal to be more proactive in providing views.
- Manages the interface between board and management:
 - o Acts as the main conduit between management and the board; and
 - o Develops a positive relationship with the chief executive officer.
- Ensures appropriate steps are taken to provide effective communication with stakeholders and that their views are communicated to the board as a whole:
 - o Acts as a spokesperson for the board; and
 - o Acts as the main representative of the company alongside the managing director at shareholders' meetings and on other occasions where key or major actions are taken or statements are made in the name of the company.
- Leads the board in establishing and monitoring good corporate governance practices in the company:
 - o Leads the creation of an effective corporate governance system, including the establishment of board and committee charters, a committee structure and induction as well as ongoing education programmes for directors; and
 - o Oversees and facilitates board, committee and board member evaluation reviews and succession planning alongside the chairman of the nominating committee.

The responsibilities of the chairman of a financial institution in leading the board and being responsible for the effective overall functioning of the board are enumerated in **Standard 9.1 of Bank Negara Malaysia's Policy Document on Corporate Governance**⁴.

⁴ As stated in **Standard 9.1 of Bank Negara Malaysia's Policy Document on Corporate Governance**, the chairman must ensure that appropriate procedures are in place to govern the board's operation; ensure that decisions are taken on a sound and well-informed basis, including by ensuring that all strategic and critical issues are considered by the board, and that directors receive the relevant information on a timely basis; encourage healthy discussion and ensure that dissenting views can be freely expressed and discussed; and lead efforts to address the board's developmental needs.

Should companies appoint a deputy chairman?

Subject to the company's constitution, **Paragraph 1 of the Third Schedule of Companies Act 2016⁵** stipulates that the "directors may elect one of their numbers as chairperson of the board and determine the period for which he is to hold office".

There are no prescriptions that call for the appointment of a deputy chairman. However, it is not uncommon for companies to appoint a deputy chairman to deputise and assist in providing leadership to the board. In instances whereby the board is led by a non-independent chairman and the board intends to appoint a deputy chairman, it would be advisable for the board to appoint an independent deputy chairman. In the absence of the chairman, the deputy chairman usually chairs the meetings of the board. The deputy chairman also often acts as a "sounding board" and confidant to the chairman in the execution of his or her role.

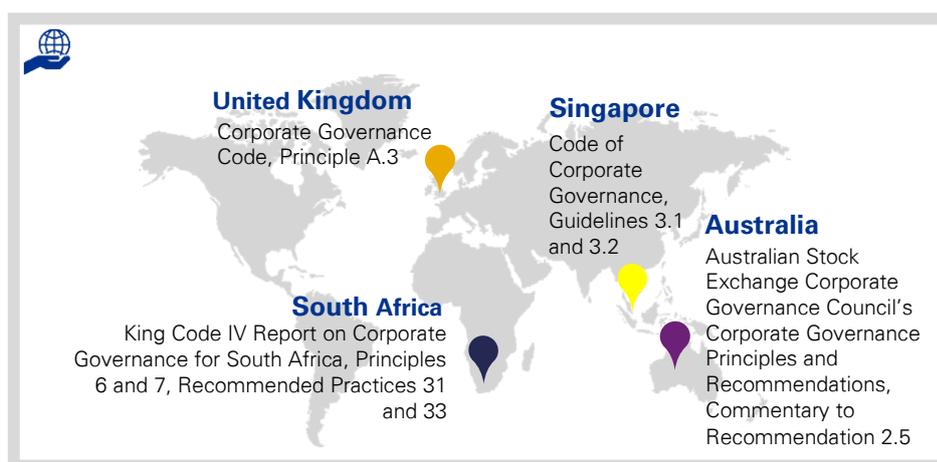
Examples of tasks or duties performed by the deputy chairman are shown below:

- assists the chairman in conducting meetings in his or her absence;
- ensures there is a strong relationship between the board and the chairman;
- promotes constructive dialogues between non-executive and executive directors;
- provides assistance and support to the chairman during meetings; and
- ensures the board and chairman are communicating well with stakeholders.

Where

Regional/international perspectives

As with Malaysia, the responsibilities of a chairman are well enumerated across other global jurisdictions.



⁵ The **Third Schedule of the Companies Act 2016** sets out the provisions governing proceedings of the board.

Country	Provision(s)
Singapore	<p>The chairman and the CEO should in principle be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the board for independent decision making (Guideline 3.1).</p> <p>The chairman should:</p> <ul style="list-style-type: none"> (a) lead the board to ensure its effectiveness on all aspects of its role; (b) set the agenda and ensure that adequate time is available for discussion of all agenda items, in particular strategic issues; (c) promote a culture of openness and debate at the board; (d) ensure that the directors receive complete, adequate and timely information; (e) ensure effective communication with shareholders; (f) encourage constructive relations within the board and between the board and management; (g) facilitate the effective contribution of non-executive directors in particular; and (h) promote high standards of corporate governance. <p>The responsibilities set out above provide guidance and should not be taken as comprehensive list of all the duties and responsibilities of a chairman (Guideline 3.2).</p>
Australia	<p>The chair of the board is responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations between directors and between the board and management (Commentary to Recommendation 2.5).</p>
United Kingdom	<p>The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role (Principle A.3).</p>
South Africa	<p>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 (Recommended Practice 31).</p> <p>The chair's roles and responsibilities and term in office, as well as that of the lead independent should be documented in the charter of the governing body or elsewhere (Recommended Practice 33).</p>