Guidance Note
A practical guide to good governance

The Hong Kong Institute of Chartered Secretaries
香港特許秘書公會

Nomination Committee - Terms of Reference

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NOMINATION COMMITTEE - TERMS OF REFERENCE

Introduction

The setting up of a Nomination Committee (“NC”) is a Recommended Best Practice (“RBP”) under the Code on Corporate Governance Practices (the “Code”) in Appendix 14 to The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“Main Board Listing Rules”). A RBP is for guidance only and companies listed on the main board are encouraged to adopt the practice but are not required to state whether they have complied with it in their interim and annual reports.¹

The recommendation that a listed company should set up a NC was made in furtherance of the Principle set out in paragraph A.4 of the Code which states that:-

“There should be a formal, considered and transparent procedure for the appointment of new directors to the board. There should be plans in place for orderly succession for appointments to the board.”

To run an effective board, it is important that a listed company should go through a formal, fair and transparent process of reviewing the balance and effectiveness of its board, identifying the skills needed and appointing those who can provide them to the board. The main objective of a NC is to lead the process for board appointments, and to identify and nominate suitable candidates for appointment to the board.

Reference to NC in the Main Board Listing Rules

A. The Code - Appendix 14

The following recommendations relating to NC have been made in Appendix 14:

A.4.4 Regarding the composition of the NC, it is recommended that a majority of the members of the NC should be independent non-executive directors. There is however no guidance on the size of the NC although clearly the minimum number will be three directors, two of whom must be independent non-executive directors.

A.4.5 To ensure that a NC is properly constituted and has a clear remit, it is recommended that there should be a specific written terms of reference which clearly set out its authority and duties. For the basic duties of NC which are recommended under A.4.5, please refer to

¹ There is the same recommendation for the issuers on the Growth Enterprise Market to set up a NC under the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (“GEM Listing Rules”). Reference can be made to Appendix 15 and Appendix 16 of the GEM Listing Rules which are the equivalents of Appendices 14 and 23 of the Main Board Listing Rules respectively.
Paragraphs 7.1.1 to 7.1.4 of the “Model Terms of Reference of a Nomination Committee” set out in Annex 2.

A.4.6 NC should make available its terms of reference explaining its role and authority by making it available on request and by placing it on the issuer’s website.

A.4.7 NC should be provided with sufficient resources to discharge its duties.

It is also recommended in A.1.10 that board committees should adopt, so far as practicable, the principles, procedures and arrangements set out in A.1.1 to A.1.8 of the Code which set out the Code Provisions governing board procedures.

B. Corporate Governance Report - Appendix 23

Appendix 23 to the Main Board Listing Rules, which requires a listed company to include a report on its corporate governance practices (“Corporate Governance Report”) in its summary financial reports (if any) and annual reports, makes reference to the NC.

The Corporate Governance Report shall contain all the information set out in paragraph 2 (g) of Appendix 23 which is related to the appointment and removal of directors. (See Annex 1).

Guidance on terms of reference of NC

As the setting up of a NC is a RBP, it is increasingly likely that listed companies will establish a NC as a further step towards better corporate governance practices. In view of this trend and in the belief that clear terms of reference are necessary for an effective operation of a NC, HKICS issues this Guidance Note proposing model terms of reference (as set out in Annex 2) which it considers as the best practice, for the reference of the listed companies which have the plan of setting up a NC. The model terms of reference are applicable to companies listed on both the Main Board and the GEM Board.

The relevance and applicability of some of the proposed terms, such as the size of the NC, its duties and the frequency of meetings, will vary from company to company. It is for the listed companies to decide the extent to which they will adopt the model terms of reference taking into account their own circumstances.

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References

ICSA Guidance Note (Reference Number: 031021)
Code on Corporate Governance Practices of the Rules Governing The Listing of Securities on The Stock Exchange of Hong Kong Limited (Appendix 14)
Corporate Governance Report of the Rules Governing The Listing of Securities on The Stock Exchange of Hong Kong Limited (Appendix 23)

This guidance note is only intended to provide a general guide on the subject matter and should not be regarded as a substitute for detailed advice in individual cases. HKICS does not accept any liability for loss or damage sustained by any person or organization as a result of reliance on the information or views stated herein.
Annex 1

Mandatory disclosure requirement as set out in paragraph 2 (g) of Appendix 23 of the Main Board Listing Rules

“Nomination of directors

The following information relating to the appointment and removal of directors:

(i) the role and function of the nomination committee (if any);

(ii) the composition of the nomination committee (if any) (including names and identifying in particular the chairman of the nomination committee);

(iii) the nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year;

(iv) a summary of the work, including determining the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year; and

(v) the number of meetings held by the nomination committee or the board of directors (if there is no nomination committee) during the year and the record of individual attendance of members, on a named basis, at meetings held during the year.”
Annex 2
(Model Terms of Reference of a Nomination Committee)

Reference to “NC” shall mean the Nomination Committee.

Reference to “the board” shall mean the board of directors of the company.

The square brackets contain recommendations which are in line with best practice but may have to be changed to suit the circumstances of individual company.

1. Membership
   1.1 The NC shall comprise not less than [three] members to be appointed by the board, the majority of whom should be independent non-executive directors.
   1.2 The board shall appoint the chairman of the NC who should [either be the chairman of the board or one of the independent non-executive directors sitting on the NC]. In the absence of the chairman of the NC or an appointed deputy, the remaining members present shall elect one of them to chair the meeting. For the avoidance of doubt, the chairman of the board shall not chair the meeting of the NC when it is dealing with the succession of chairmanship.
   1.3 Only members of the NC have the right to attend the NC meetings. However, any director, executive or other person may be invited to attend the meetings when the NC considers that their attendance can assist it to discharge its duties.
   1.4 Appointments to the NC shall be for a period of up to [three] years (subject to extension).

2. Frequency and proceedings of meetings
   2.1 The NC shall meet at least [twice] a year and at such other times as the chairman of the NC shall require.
   2.2 The quorum for meetings of the NC shall be [of such a number that the independent non-executive directors shall form the majority in the meeting]. A duly convened meeting of the NC at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in the NC.

3. Secretary
   3.1 The company secretary of the company or his nominee shall act as the secretary of the NC.

4. Notice of Meetings
   4.1 Meetings of the NC shall be convened by the chairman of the NC.
   4.2 Unless otherwise agreed, notice of each meeting setting out the venue, time and date together with the agenda of items to be discussed, shall be forwarded to each of the members of the NC and any other person required to attend at least [14] working days before the meeting date. Supporting papers shall be sent at least [3] working days before the meeting.
5. Minutes of the Meetings

5.1 Minutes of the NC meetings shall record in sufficient detail the matters considered in the meetings and decisions reached, including any concerns raised and dissenting views expressed. The minutes shall be circulated within [14] working days after the meetings to all members of the NC and unless there is a conflict of interest, to all other members of the board.

5.2 The secretary of the NC shall keep the minutes and resolutions passed at the NC meetings and they should be open for inspection at any reasonable time on reasonable notice by any director save when there is a conflict of interest.

6. Annual General Meeting

6.1 The chairman of the NC shall attend the Annual General Meeting of the company and be prepared to respond to shareholders’ questions on the activities of the NC.

7. Duties

7.1 The NC shall:

7.1.1 review the structure, size and composition (including the skills, knowledge and experience) of the board on a regular basis and make recommendations to the board regarding any proposed changes;

7.1.2 identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of, individuals nominated for directorships;

7.1.3 assess the independence of independent non-executive directors;

7.1.4 make recommendations to the board on relevant matters relating to the appointment or re-appointment of directors and succession planning for directors in particular the chairman and the chief executive officer;

7.1.5 make recommendations to the board on the membership of board committees e.g. Audit Committee and Remuneration Committee, in consultation with the chairman of the board and the chairmen of such committees, as appropriate;

7.1.6 before recommending an appointment, 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 NC shall:

(i) use such method or methods to facilitate the search as it may deem appropriate;

(ii) consider candidates from a wide range of backgrounds; and

(iii) consider candidates on merit and against objective criteria, taking care that candidates have enough time available to devote to the position.
7.1.7 make recommendations to the board on 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 law and their service contracts;

7.1.8 keep under review the leadership needs of the company, both executive and non-executive, with a view to ensuring the continued ability of the company to compete effectively in the marketplace;

7.1.9 keep up to date and fully informed about strategic issues and commercial changes affecting the company and the market in which it operates;

7.1.10 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; and

7.1.11 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. Reporting Responsibilities

8.1 The NC chairman shall report formally to the board on its proceedings after each meeting on all matters within its duties and responsibilities.

8.2 The NC shall make whatever recommendations to the board it deems appropriate on any area within its remit where action or improvement is needed.

8.3 The NC shall provide to the board all the information set out in Paragraph 2(g) of Appendix 23 of the Main Board Listing Rules to enable the company to prepare the Corporate Governance Report in its Annual Report in compliance with the said Appendix 23.

9. Authority

9.1 The NC is authorized to seek any information it requires from any employee of the company in order to perform its duties.

9.2 The NC may obtain, at the expense of the company, legal or other professional advice on any matters within its terms of reference.

10. Other

10.1 The NC shall review annually its terms of reference, performance and constitution and recommend any changes it considers necessary to the board for approval.