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cutting through complexity

Nominating Committee Guide 2012

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Foreword

Calls for company boards to reform and improve their effectiveness have never been stronger.

In this push for more robust corporate governance practices, the Nominating Committee (NC) plays a significant role in ensuring that board composition, practices and processes are well-established, transparent and accountable. Therefore, it is of no surprise that expectations of the NC have been raised.

Navigating through the complexity of today's regulatory environment is no easy task. Company boards must be cohesive and forward-thinking if they want to harness talent and seek opportunities while leading their organisations through adversity.

The recent initiatives by the Monetary Authority of Singapore (MAS) and the Corporate Governance Council (CGC) in May 2012 to update Singapore's corporate governance code provide a timely reminder to consider the key issues surrounding NCs.

To increase their effectiveness in supporting the board of directors in discharging its fiduciary responsibilities, NCs should focus on the critical areas of structure, tasks, processes and performance. These form a framework by which the NC can be governed and this guide covers issues which NCs should consider in each of these four areas.

In this guide, we have outlined the practical concerns faced by NCs of listed companies and provided suggestions on how to address these challenges. Basic questions surrounding NCs, their typical responsibilities, composition and reporting processes are also addressed.

Understanding the role played by an NC is integral to understanding how interactions among the directors with their varied backgrounds can have an impact on decision-making and outcomes. This will enable the committee to build the right board structure and develop an effective functioning group, rather than as a group of independently operating individuals.

We trust that this guide will serve as a useful reference for the discussions you have with regard to NCs for your organisations.

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About this guide

The corporate governance reform agenda continues to evolve. Following the adoption of codes of corporate governance in many countries and fuelled by accounting-related scandals, much attention has focused on the audit committee and its responsibilities. This is not surprising given the rapid adoption of new accounting standards and the focus on internal controls over financial reporting as a result of the Sarbanes-Oxley Act. In January 2008, the Monetary Authority of Singapore (MAS), the Accounting and Corporate Regulatory Authority (ACRA) and the Singapore Exchange (SGX) established an Audit Committee Guidance Committee, which published the well-received Guidebook for Audit Committees in Singapore.

Despite years of reform and the best efforts of regulators throughout the world, corporate governance issues have again been singled out as an important cause of the recent global financial crisis. However, while accounting-related issues such as fair value accounting have been cited as a possible contributor to the severity of the crisis, most experts acknowledge that accounting and audit issues were not the primary causes.

For example, the report on lessons from the global financial crisis published by the Organisation for Economic Co-operation and Development[1] (OECD) identified four main areas of weaknesses:

- Governance of the remuneration process
- Implementation of risk management
- Board practices
- Exercise of shareholder rights

Recommendations for corporate governance reforms following the financial crisis, such as those proposed by the OECD, Basel Committee, and Sir David Walker in the United Kingdom (UK), urge boards to improve their composition and effectiveness by:

- considering a broader set of skills and experience for directors, particularly, financial industry experience, risk management and remuneration expertise
- paying greater attention to the leadership skills and industry experience of the board chairman
- improving the robustness of the assessment of skills gaps on the board
- improving the director search and nomination process
- including people who are more likely to have different viewpoints and are willing to express them
- improving diversity, especially gender diversity
- improving time commitment of directors
- being more robust in reviewing independence of directors
- paying greater attention to board succession planning and renewal, and to long tenure of independent directors (ID)
- extending board and director performance evaluation to include Chairman and committee performance, and
- improving the board and director performance evaluation process including the use of an external party as a facilitator.

[1] Organisation for Economic Co-operation and Development (OECD), Corporate Governance and the Financial Crisis: Key Findings and Main Messages, June 2009.

The issues raised in these international reports are relevant to Singapore-listed companies as Singapore regulators seek to benchmark local corporate governance practices to international best practices. They are also relevant to boards of directors of Singapore-listed companies for improving their effectiveness to enhance their contribution to the long-term value of their companies, and attract global investors.

As these recommendations generally focus on board composition, practices and effectiveness, many of them are directly related to the Nominating Committee (NC)'s responsibilities. While the reports and recommendations have focused on financial institutions, they are also relevant to companies in general. The revised Code of Corporate Governance (2012) in Singapore issued by the MAS and based on the recommendations of the Corporate Governance Council contains some significant changes. A number of these changes would affect the Nominating Committee.

Clearly, the expectations of the Nominating Committee have been raised. To assist Nominating Committees of listed companies to better fulfil their responsibilities and contribute to the building of more effective boards, the KPMG Board and Governance Institute has collaborated with Associate Professor Mak Yuen Teen of the National University of Singapore to develop this Nominating Committee Guide.

This guide focuses on practical issues faced by the nominating committees of listed companies in discharging their responsibilities and provides practical suggestions in addressing these issues.

Caveats

This Guide is based on the authors' interpretation of the latest Singapore Code of Corporate Governance (2012) as approved by MAS, as well as laws and listing rules which are generally applicable to companies with a primary listing on the Singapore Exchange. It is also based on the authors' views, informed by international best practices for the nominating committee.

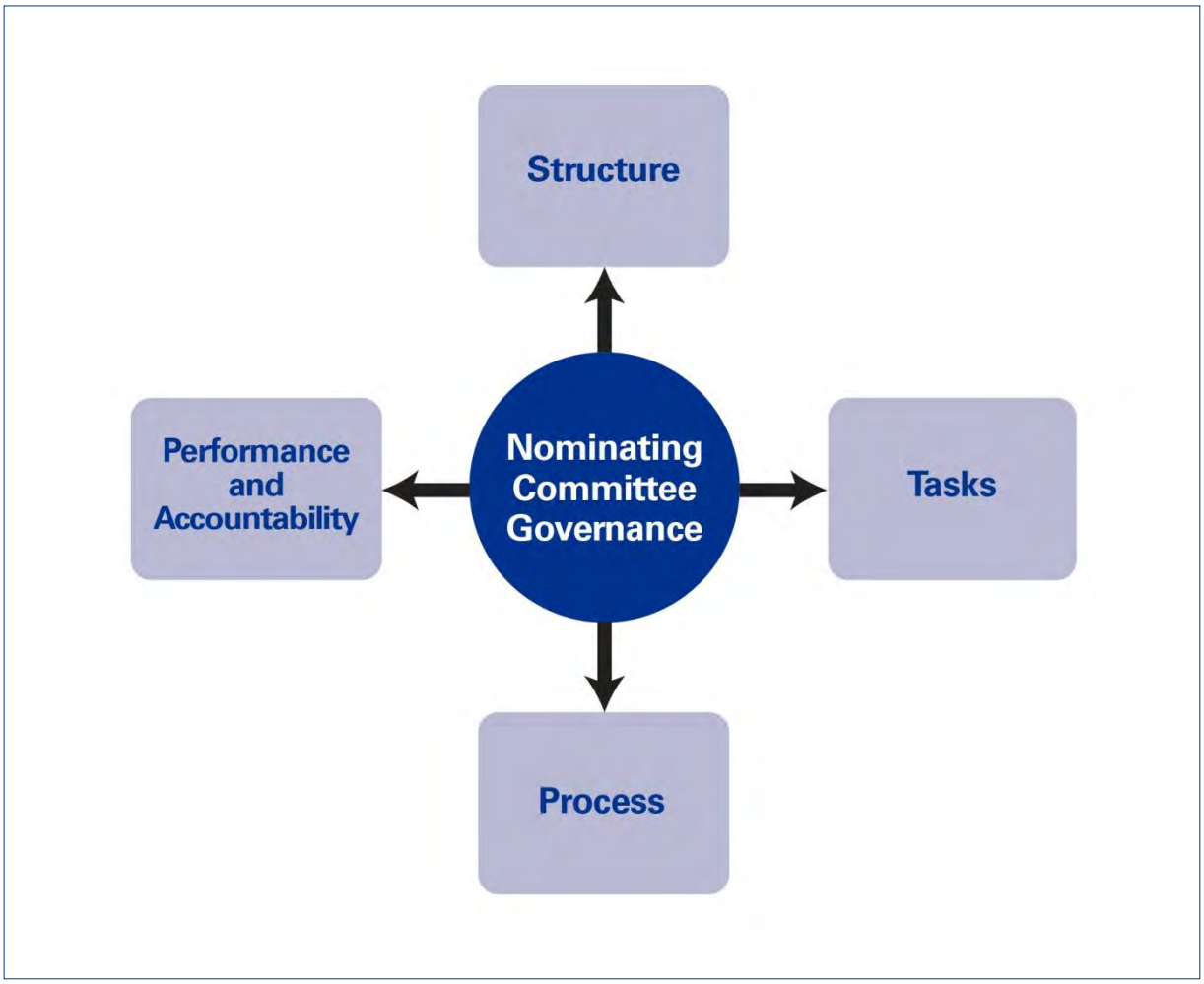
Financial institutions in Singapore[2] are also subject to corporate governance regulations and guidelines imposed by MAS. While this guide also explains some requirements specific to nominating committees of financial institutions, it is not intended to address all of the regulations required of these institutions.

List of Abbreviations

AC	Audit Committee
CGIO	Centre for Governance, Institutions and Organisations
CGC	Corporate Governance Council
ED	Executive Director
ICSA	Institute of Chartered Secretaries and Administrators
ID	Independent Director
MAS	Monetary Authority of Singapore
NC	Nominating Committee
NED	Non-Executive Director
RC	Remuneration Committee
SC	Securities Commission of Malaysia
SGX	Singapore Exchange
SID	Singapore Institute of Directors

[2] The MAS Insurance (Corporate Governance) Regulations are currently applicable to Singapore-incorporated direct life insurers with total assets of at least $5bn or equivalent in its Singapore Insurance Fund and Offshore Insurance Fund. The MAS Guidelines on Corporate Governance for Banks, Financial Holding Companies, and Direct Insurers are restricted to only direct insurers incorporated in Singapore. In March 2012, MAS has proposed that the corporate governance regulations and guidelines be extended to all locally incorporated insurers and reinsurers.

Figure 1: Nominating Committee Governance Framework



We have developed the above framework for the governance of nominating committees, which covers four critical areas of structure, tasks, process, and performance and accountability. Nominating committees need to pay attention to all four areas to ensure that they are effective in supporting the board of directors in discharging its fiduciary responsibilities.

"Structure" refers to the composition of the committee, including its leadership and the independence and competencies of members. "Tasks" refer to the specific responsibilities of the committee as recommended by codes of corporate governance and other responsibilities which may be assigned by the board. "Process" refers to proper procedures which should be followed by the board in determining the membership and responsibilities of the committee and by the committee in discharging those responsibilities. "Performance and accountability" refers to how the committee assesses its own effectiveness and reporting to the board and stakeholders.

This guide covers issues which nominating committees should consider in each of these four areas.

Guide Outline

This guide is organised into the following five sections:

- Basic Questions Surrounding Nominating Committees
- Typical Responsibilities of the Nominating Committee
- Putting Together and Running an Effective Nominating Committee
- Discharging the Responsibilities of the Nominating Committee
- Reporting by the Nominating Committee

We have also undertaken research on matters related to the Nominating Committee by reviewing the annual reports of 200 companies listed on the Singapore Exchange. The 200 companies we examined included all 71 companies with a market capitalization of at least S$1 billion as at 31 August 2011, and another 129 randomly-selected companies with market capitalization below $1 billion. We excluded secondary listings, real estate investment trusts, business trusts and funds.

A. Basic Questions Surrounding Nominating Committees

Board committees serve two main purposes. First, to help the board make better decisions, and second, to enhance the objectivity and independence of decision-making processes during which other directors (such as executive directors or directors affiliated with major shareholders) may face significant conflicts. These conflicts could be in matters relating to financial reporting, selection of auditors, setting remuneration of executive directors, or appointment of directors. The recommended composition of board committees reflects the need for objectivity and independence. This is so because these committees are generally expected to be chaired by an independent director and to comprise of a majority of or all independent directors.

Is there a need for a Nominating Committee?

In our research on a sample of 200 SGX-listed companies, comprising 71 large companies with a market capitalisation of $1 billion or more, and another 129 randomly-selected medium and small companies, we found that only three companies did not have an NC (see Table 1). All 71 of the large companies have an NC.

Table 1: Presence of a Nominating Committee

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	197	98%	71	100%	126	98%
No	3	2%	0	0%	3	2%
Total	200	100%	71	100%	129	100%

Boards may be tempted to form a Nominating Committee just so as to comply with the Code of Corporate Governance, rather than to focus on the purpose of such a committee and its responsibilities. For example, if a board of directors has only four or five directors, does it make sense for the board to form a Nominating Committee? Could the same objectives not be achieved by having the full board undertake the responsibilities of the Nominating Committee, and if necessary, having conflicted board members left out of the decision-making process when the relevant issues are discussed?

Informed investors and commentators are likely to form positive impressions of a company which does not merely tick the boxes but, rather, is able to demonstrate that it has a thoughtful approach to applying the Code and provides clear explanations for its decisions.

In our research, we found that one of the three companies which do not have an NC did not explain why. The other two explained that the Board is small and the responsibilities of the NC are carried out by the Board.

Should the Nominating Committee be stand-alone?

Most codes of corporate governance recommend a stand-alone NC. This helps ensure that the relevant issues receive adequate attention. However, a proliferation of board committees can have the effect of governing in silos. Board committees often do have overlapping responsibilities and there is a need for information exchange amongst the committees. For example, succession planning for the CEO is often included as a responsibility of the NC, but this is part of the issue of talent management, which ought to be considered together with the issue of senior executive remuneration under the remuneration committee (RC). Similarly, the search and appointment of directors, which is under the NC, will be affected by the competitiveness of directors' remuneration, which is considered by the remuneration committee.

In considering whether to combine the NC with the RC for example, the board would need to ensure that the focus on the committee is not diluted. The terms of reference or charter would need to be comprehensive enough to incorporate all the necessary responsibilities. The committee must meet regularly and allow sufficient time to discharge their responsibilities. The board also needs to clearly explain its rationale for combining the two committees.

In the US, the nominating committee is usually called a Corporate Governance and Nominating Committee, which indicates the wide remit of the committee beyond nomination-related matters. Indeed, if we look at

the responsibilities of the NC set out in codes of corporate governance, they cover much more than nomination matters.

Table 2 shows that six of the 200 companies which have an NC in our study have an expanded NC[3]. Singapore Telecommunications Limited calls its NC a Corporate Governance and Nominations Committee, and Olam International Limited calls it a Governance and Nomination Committee. The other four companies refer to their NC as Nominating and Remuneration Committee or equivalent.

Table 2: Stand-alone versus expanded NC

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Expanded NC	6	3%	3	4%	3	2%
Stand-alone NC	194	97%	68	96%	126	98%
Total	200	100%	71	100%	129	100%

[3] Our initial sample of all large companies and randomly selected medium and small companies, totaling 200 companies, found that three of these do not have an NC. This was reported in Table 1. For the rest of this report, we replaced the three companies without an NC with another three randomly selected companies which have an NC, reinstating the sample to 200 companies.

B. Typical Responsibilities of the Nominating Committee

In general, the NC has important roles to play in supporting the board of directors on the following matters:

- Reviewing the size, structure and composition of the board
- Recommending membership of board committees
- Undertaking succession planning for the Chairman, CEO and other directors
- Searching for candidates for the board, and recommending directors for appointment
- Determining the independence of directors
- Assessing whether directors are able to commit enough time for discharging their responsibilities
- Reviewing induction and training needs of directors
- Recommending the process and criteria for assessing the effectiveness of the board and board committees and the contribution of the Chairman and individual directors to the effectiveness of the board and helping to implement these assessments

Although some of these responsibilities may not be specifically identified as part of the responsibilities of the NC in codes of corporate governance, our view is that the above encapsulates the key areas where the NC can assist the board.

Financial institutions, in particular banks and direct insurers, which are subject to regulations and/or guidelines set by MAS, need to carefully consider the responsibilities of the NC set out in these regulations and guidelines, some of which go beyond those specified in the Code of Corporate Governance for listed companies. These responsibilities are summarised in Extract 1.

Extract 1: Responsibilities of the Nominating Committee under MAS Regulations and Guidelines

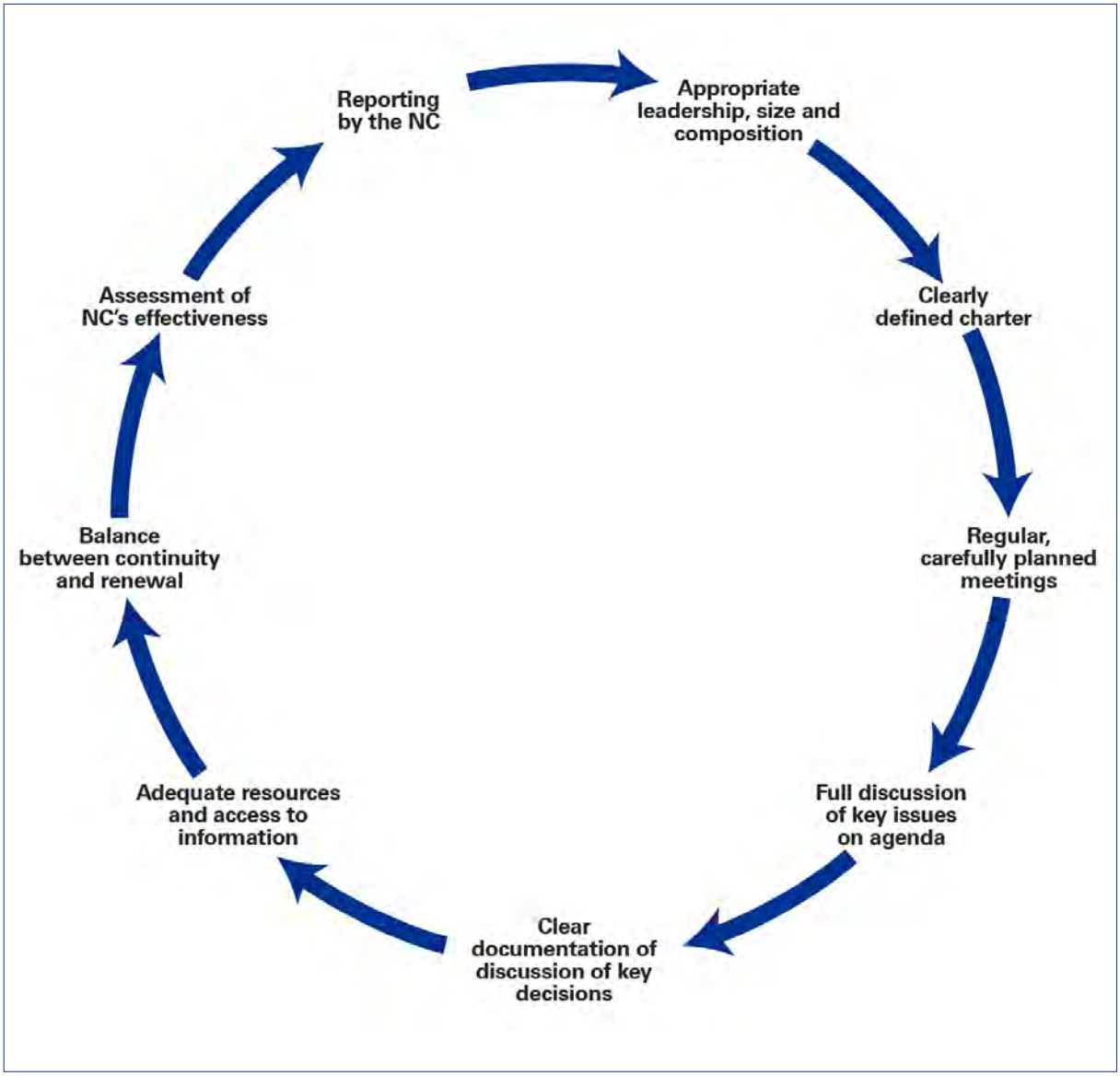
- Identify and review candidates for appointment to the board, board committee, chief executive officer, deputy chief executive officer, chief financial officer and chief risk officer.
- Develop a framework for identifying the skills that the Board collectively needs in order to discharge the Board's responsibilities effectively, taking into account the complexity of the Financial Institution's existing risk profile, business operations and future business strategy.
- Assess, at least on an annual basis, if the Board and the respective Board Committees and its members lack any skills to perform their roles effectively and identify steps to improve the effectiveness of the Board and the respective Board Committees.
- Propose an objective performance criterion for the Board and for individual evaluations.
- Review the nominations, re-nominations and reasons for resignations of key appointment holders such as directors, chief executive officer, deputy chief executive officer, chief financial officer, chief risk officer and relevant senior management staff.
- NC should include in its annual assessment a check as to whether there is any deviation from the internal guidelines on the number of directorships in the Financial Institution's annual report. The guidelines should consider the size of companies, complexity of operations and risk management controls, and whether these directorships fall within the same group and associated meeting frequency and job commitments.
- Determine annually if a director is independent.
- Carry out succession planning for the Board and the CEO.
- Maintain records of all its meetings, including records of discussions on key deliberations and decisions taken.

Source: MAS' Guidelines on Corporate Governance 2010; Banking (Corporate Governance) (Amendment) Regulations 2010

C. Putting Together and Running an Effective Nominating Committee

While most companies have established an NC, the key is to ensure that it is effective. The major attributes of an effective NC are shown in Figure 2.

Figure 2: Major Attributes of an Effective Nominating Committee



1. Appropriate Leadership, Size and Composition

The first issue to address is the structure of the committee. This in turn involves deciding on an appropriate Chairman, the number of members, and the composition of the committee. The Chairman and members of the NC should be appointed by the Board.

(a) Who should chair the NC?

Any chairman must have strong leadership skills. He or she should also be an independent director, as recommended by the Code of Corporate Governance. Beyond this, the issue of who would make a good NC chairman is less obvious than say for the chairman of the audit committee (AC), for which someone with strong accounting or finance expertise may be an obvious candidate.

However, the issue of having an appropriate chairman of the NC is no less important than for the AC, especially as it is increasingly recognised that the NC is at least as important as the AC.

Table 3 shows that only one company which has an NC did not have an independent director chairing the committee.

Table 3: Independence of the Nominating Committee Chairman

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
NC Chairman is independent	199	99%	71	100%	128	99%
NC Chairman is not independent	1	1%	0	0%	1	1%
Total	200	100%	71	100%	129	100%

One question which arises is whether the Board Chairman should chair the NC. Most codes are silent on this issue, but the UK Corporate Governance Code[4] (June 2010) states:

"The chairman or an independent non-executive director should chair the [nominating] committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship."(B.2.1.).

The Board Nominations Committee Charter[5] of the Westpac Group in Australia specifically states:

"The Committee will be comprised of the chairpersons (from time to time) of each of the other Board Committees and the Chairman and Deputy Chairman of the Westpac Board... The Chairman of the Board will be the Chairman of the Committee."

The Singapore Code is silent on whether the Chairman should chair the NC if he is an independent director. One view is that even if the Chairman is an independent director, he should not be the NC Chairman. This is based on the perspective that the Board Chairman may then be in too dominant a position, with too much influence over the appointment of directors. This is especially as the NC's recommendations on appointment of directors typically have to be approved by the whole board and the Chairman will already be able to exert influence at the board level.

However, whether the Chairman is on the NC or not, it would be expected that the NC will generally keep him or her apprised of the candidates who are being considered for appointment.

Table 4 shows that the scenario in which the Board Chairman also chairs the NC occurs in only 13 of the 200 companies studied. All the board chairmen who are NC chairmen are independent directors. As there are 29 companies in our sample with independent board chairmen, this means that approximately one out of every two independent board chairmen also chairs the NC.

[4] http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf
[5] http://www.westpac.com.au/docs/pdf/aw/BoardNominationsCommitteeCh1.pdf

Table 4: Board Chairman as Nominating Committee Chairman

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	13	7%	7	10%	6	5%
No	187	93%	64	90%	123	95%
Total	200	100%	71	100%	129	100%

Another possible candidate for chairing the NC is the lead independent director. However, of the 56 companies in our sample which have a lead independent director, just over one in four of them have appointed the lead independent director as the NC Chairman. This is consistent with our own experience with companies, whereby the lead independent director is more likely to chair the AC. We would recommend that companies consider having the lead independent director to chair the NC.

(b) How many members should there be on the NC?

The Code of Corporate Governance recommends that the NC should have at least three directors. Under MAS regulations, banks and direct insurers incorporated in Singapore with total assets exceeding $5 billion must have an NC with five members. For financial institutions which are only subject to guidelines but not regulations issued by MAS, the NC should have at least three directors.

The appropriate number of members on the NC would depend somewhat on the expected workload of the committee, the board size and the number of independent directors on the board.

Table 5 shows that just over 30 percent of NCs have more than three members. Some 36 percent of large companies have NCs with at least four members, compared to 27 percent for the smaller ones.

Table 5: Number of members on the Nominating Committee

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
2	2	1%	0	0%	2	2%
3	137	68%	45	64%	92	71%
4	37	19%	10	14%	27	21%
5	22	11%	15	21%	7	5%
6	2	1%	1	1%	1	1%
Total	200	100%	71	100%	129	100%

(c) What is an appropriate composition for the NC?

The Code of Corporate Governance recommends that a majority of the members on the NC should be independent directors, as do the MAS regulations and guidelines. Table 6 shows that 14 out of the 200 companies (seven percent) with an NC in our sample do not meet the recommended minimum proportion of independent directors. However, 45 percent of the companies have three-quarters or more of the members being independent, with one out of every four NCs having all members as independent directors.

Table 6: Percentage of Independent Directors on Nominating Committee

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
1/3 to 1/2	14	7%	2	3%	12	9%
>1/2 to 2/3	97	48%	37	51%	60	47%
3/4 to 5/6	39	20%	16	23%	23	18%
100%	50	25%	16	23%	34	26%
Total	200	100%	71	100%	129	100%

Beyond the percentage of independent directors, the Code of Corporate Governance as well as MAS regulations and guidelines do not specify the kinds of skills and experience which may be valuable to have on an NC.

Given the responsibilities of the NC in areas such as developing the competency framework for directors, skills assessment, recruitment, succession planning, and performance evaluation, individuals who have experience in human resource management and senior executive recruitment may be particularly useful to have on the NC.

2. Developing the Terms of Reference or Charter

The Institute of Chartered Secretaries and Administrators (ICSA) in the UK has published guidance on the terms of reference for nominating committees. This is available at the following link:

http://www.icsa.org.uk/assets/files/pdfs/guidance/Guidance%20notes%202010/Terms%20of%20Reference%202010/1010%20NomCo%20ToRs%20FINAL.pdf

The areas covered by the model terms of reference under the guidance, together with our suggested guidelines, are shown in Extract 2.

The terms of reference should be approved by the Board. Of particular importance are the duties of the NC, which should be clearly spelt out. Extract 3 is an excerpt from the ICSA model terms of reference for the NC which shows its duties.

Extract 2: Areas Covered in the ICSA Model Terms of Reference with KPMG's Suggested Guidelines

Membership: Number of members, proportion of independent directors, who can be chairman, term of appointment and renewability of term, and others who may be invited to attend meetings.

Secretary: This is usually the company secretary as the responsibilities of the nominating committee cover many corporate governance-related matters, including often reviewing the corporate governance statement. The company secretary is the key officer of the company advising on compliance and corporate governance.

Quorum: This should be 2 or at least half of the members, whichever is higher (i.e., for a committee with three members, the suggested minimum quorum is 2).

Frequency of meetings: While NCs currently often meet only once or twice a year, the increasing responsibilities of the NC may necessitate three to four meetings a year, and additional meetings as and when necessary.

Notice of meetings: Date of meetings should be planned in advance. Actual notice of meeting with agenda and papers should preferably be sent at least five working days in advance of the meeting.

Minutes of meetings: The secretary should minute the proceedings and resolutions of the meeting. Draft minutes should be circulated for comments promptly. Once approved, these minutes should be circulated to other members of the Board, unless it would be inappropriate to do so.

Annual general meeting: The committee chairman should attend the annual general meeting to answer shareholders' queries on the committee's activities. Attendance may also be necessary at extraordinary general meetings where resolutions proposed by shareholders to appoint or remove directors are considered.

Duties: These can be based on responsibilities recommended in the Code of Corporate Governance, together with any other responsibilities which the Board assigns to the committee. Extract 3 shows the duties in the ICSA model terms of reference, which are based on the UK Corporate Governance Code.

Reporting responsibilities: The committee chairman should report to the board on its proceedings after each meeting, or at least bring the attention of the board to the committee's meeting minutes and answer any queries the board may have. The committee should make recommendations to the board as it deems appropriate on any area within its remit. The committee should also provide a report summarising its activities for the year. This can be incorporated into the corporate governance statement/report in the annual report or included as a separate report.

Other matters: Examples of other matters which may be covered include the committee's access to resources and support; professional development and induction of members; and periodic reviews of the committee's performance and terms of reference.

Authority: The committee is authorised by the board to obtain, at the company's expense, outside legal and other professional advice on any matters within its terms of reference.

Source: Adapted from ICSA Guidance on Terms of Reference Nomination Committee

Extract 3: Suggested Duties of a Nominating Committee in ICSA's Guidance on Terms of Reference

The committee shall:

8.1 Regularly review the structure, size and composition (including the skills, knowledge, experience and diversity) of the board and make recommendations to the board with regard to any changes

8.2 Give full consideration to succession planning for directors and other senior executives in the course of its work, taking into account the challenges and opportunities facing the company, and the skills and expertise needed on the board in the future

8.3 Keep under review the leadership needs of the organisation, both executive and non-executive, with a view to ensuring the continued ability of the organisation to compete effectively in the marketplace

8.4 Keep up to date and fully informed about strategic issues and commercial changes affecting the company and the market in which it operates

8.5 Be responsible for identifying and nominating for the approval of the board, candidates to fill board vacancies as and when they arise

8.6 Before any appointment is made by the board, evaluate the balance of skills, knowledge, experience and diversity 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 committee shall

- 8.6.1 use open advertising or the services of external advisers to facilitate the search
- 8.6.2 consider candidates from a wide range of backgrounds
- 8.6.3 consider candidates on merit and against objective criteria and with due regard for the benefits of diversity on the board, including gender, taking care that appointees have enough time available to devote to the position

8.7 For the appointment of a chairman, the committee should prepare a job specification, including the time commitment expected. A proposed chairman's other significant commitments should be disclosed to the board before appointment and any changes to the chairman's commitments should be reported to the board as they arise

8.8 Prior to the appointment of a director, the proposed appointee should be required to disclose any other business interests that may result in a conflict of interest and be required to report any future business interests that could result in a conflict of interest

8.9 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

8.10 Review the results of the board performance evaluation process that relate to the composition of the board

8.11 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

The committee shall also make recommendations to the board concerning:

8.12 Formulating plans for succession for both executive and non-executive directors and in particular for the key roles of chairman and chief executive

8.13 Suitable candidates for the role of senior independent director

8.14 Membership of the audit and remuneration committees, and any other board committees as appropriate, in consultation with the chairmen of those committees

8.15 The re-appointment of any non-executive director at the conclusion of their specified term of office having given due regard to their performance and ability to continue to contribute to the board in the light of the knowledge, skills and experience required

8.16 The re-election by shareholders of directors under the annual re-election provisions of the Code16 or the retirement by rotation provisions in the company's articles of association, having due regard to their performance and ability to continue to contribute to the board in the light of the knowledge, skills and experience required and the need for progressive refreshing of the board (particularly in relation to directors being re-elected for a term beyond six years)

8.17 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 provisions of the law and their service contract

8.18 The appointment of any director to executive or other office

Source: ICSA Guidance on Terms of Reference Nomination Committee

Table 7 shows the percentage of companies which indicated that they have a terms of reference or charter for the NC in the corporate governance section of the report.

Table 7: Percentage of companies which disclosed having a terms of reference or charter for the NC

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes, TOR	147	73%	49	69%	98	76%
Yes, Charter	4	2%	3	4%	1	1%
No	49	25%	19	27%	30	23%
Total	200	100%	71	100%	129	100%

It is important that any authority that is delegated to the committee by the Board is made clear in the statement of duties in the terms of reference and conforms to the company's articles of association. The Code of Corporate Governance 2012 (Guideline 1.3) recommends that any delegation of authority to committees be disclosed. In some countries, prudential supervisors may limit or even prohibit the delegation of authority by the board to the committee for financial institutions. For example, in Malaysia, Bank Negara Malaysia guidelines for nominating committees of licensed financial institutions state: "The committee should not be delegated with decision-making powers but should report its recommendation to the full board for decision."[6]

We looked at companies which have included a specific statement that authority to make certain decisions is delegated to the NC. Our research suggests that NCs generally play an advisory role, making recommendations which are approved by the full board. Only about 16 percent of the companies appear to have delegated some authority to the NC. Interestingly, smaller companies are much more likely to have done so (Table 8).

Table 8: Delegation of authority to the NC

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	33	16%	1	1%	32	25%
No	167	84%	70	99%	97	75%
Total	200	100%	71	100%	129	100%

Clarity of responsibilities of the NC

One issue that boards and board committees, including the NC, are increasingly grappling with is the division of responsibilities between management and the board/board committees. It is important for boards and committees to remain focused on its oversight and advisory roles in order to be able to hold management accountable.

This is especially so in the case of financial institutions which are subjected to guidelines on corporate governance and remuneration published by bodies such as the Basel Committee and the Financial Stability Board. These guidelines require the board to assume responsibilities such as succession planning for key management below the CEO and directors, approve the overall organisation structure, and review remuneration of executive officers and those with "control job functions" throughout the organisation.

Committees sometimes end up creating tensions between the board and management because they encroach into areas that fall within management's responsibilities. In reviewing the terms of reference, the NC needs to ensure that its responsibilities are clear and that they are consistent with what have been approved by the board. It is also important that the NC does not cause the line between the board and management to be unintentionally crossed.

[6] Guidelines on Corporate Governance for Licensed Institutions, BNM/RH/GL 001-1, Prudential Financial Policy Development, Bank Negara Malaysia, 2010.

3. Meetings

Currently, NCs are generally inactive. Table 9 shows that just over two-thirds of NCs met only once or less during the last financial year, with four percent not having met at all. In five companies with an NC, the annual report did not disclose whether the NC met.

Table 9: Number of meetings

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
0	8	4%	4	6%	4	3%
1	127	63%	37	52%	90	70%
2	46	23%	20	28%	26	21%
3	8	4%	5	7%	3	2%
4	6	3%	3	4%	3	2%
Not disclosed	5	3%	2	3%	3	2%
Total	200	100%	71	100%	129	100%

Given the increasing expectations of NCs, we expect NCs to become more active. However, to be effective, it is not just a matter of meeting more regularly, but ensuring that meetings are well planned, with relevant matters discussed at appropriate times. For example, the NC will need to assess the skills and competencies on the board and consider if there is a need to appoint new directors. A proper search for directors may take some time and therefore needs to be initiated well before the general meeting. Extract 4 shows the possible agenda with key responsibilities for an NC which meets three times a year. Certain other tasks may need to be performed between meetings, such as interviewing potential director candidates.

Extract 4: Possible Agenda for Meetings of a Nominating Committee

Meeting 1
- Review terms of reference
- Review size, structure and composition of board and board committees
- Review competencies, independence and time commitment of directors
- Undertake skills gap assessment
- Review board succession plan
- Review induction/training undertaken and recommend types of induction/training for directors to attend

Meeting 2
- Initiate search for new directors if necessary
- Review process and tools for evaluating board, committee and individual director performance
- Initiate board, committee and director evaluations

Meeting 3
- Review results of performance evaluations
- Review candidates to the board for appointment
- Recommend directors for election/re-election
- Discuss NC reporting to stakeholders
- Plan schedule for NC meetings for the following year

4. Documentation of Discussion of Key Decisions

Directors are increasingly expected by stakeholders to be able to demonstrate that they have exercised due care and diligence in making key decisions and to justify their decisions. The Centro Properties Group case in Australia and the recent Airocean Group Limited case in Singapore highlight the need for directors to exercise their own judgement based on their knowledge of the facts and circumstances, rather than to rely completely on other directors, management or advisors.

Boards and board committees need to ensure that key issues are discussed in sufficient depth, and that minutes document the key factors that were considered in making a decision. If alternative points of views are expressed they should be documented and reasons for making a particular decision, particularly if there are dissenting views, should be made clear in the minutes. Minutes should also clearly indicate the decision taken and responsibility for follow-up action. When things go wrong, the ability to demonstrate due care and diligence through proper documentation of discussion provides a defence against both legal and reputational risk.

In the case of the NC, some key decisions that should be extensively discussed and clearly documented include the determination of independence of directors, assessing the time commitments of directors who have multiple directorships and key appointments, and the proposed appointment or re-appointment of directors. The revised Code (2012) recommends that the Board should determine the number of listed company directorships and disclose this in the annual report. The NC should advise the Board on such limits and clearly document its basis for setting these limits.

For financial institutions, prudential supervisors may seek access to the minutes to satisfy themselves that the committee and the board have carefully considered key decisions, including those relating to appointment of board members and key officers.

5. Access to Relevant People, Information, Advice and Professional Development

The most important resource for the NC is the secretary of the committee. This is likely to be the company secretary given his or her familiarity with corporate governance rules, regulations and code guidelines, and on issues relating to the appointment and election of directors. The secretary should be properly qualified and preferably should have the relevant legal knowledge. Table 10 shows that the company secretary is the NC secretary for all the companies which identified the secretary.

Table 10: Secretary for the NC

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Company Secretary	191	95%	71	100%	120	93%
Not specified	9	5%	0	0%	9	7%
Total	200	100%	71	100%	129	100%

The NC may find it useful to invite the CEO and relevant staff, such as the head of human resource, to attend meetings on an ex-officio basis, especially when matters such as succession planning of senior executives, determining competency framework and identifying gaps in competencies of directors are discussed.

The NC is also entitled to ask for any information necessary for it to discharge its responsibilities. This can include, for instance, comprehensive information on the background of directors and checklists completed by directors declaring their independence.

The NC should have access to appropriate advice to discharge its responsibilities. In countries like Australia, it is not uncommon for boards/nominating committees to have an external adviser assist with the interviewing of candidates for board appointments. This is to help better ensure that candidates have the right skills and knowledge for the board. An external adviser may also be helpful as the process of appointing or re-appointing directors is somewhat insular in nature, which can create the perception of a conflict of interest. This is because directors on the NC and the board are put in a position to appoint their

own successors or to propose themselves for re-appointment, even if a director was to recluse himself from discussions about his own re-appointment.

NC members should be properly inducted into the committee so that they understand their roles, especially if they have never served on an NC. The terms of reference of the NC should be made available to new members. NC members should also have access to appropriate professional development programmes on NC-related matters.

6. Balancing Continuity and Renewal

The revised Code (2012) recommends that a 'particularly rigorous review' be undertaken for directors who have served more than nine years when considering their re-appointment and to explain why a director should still be considered independent after nine years. This recommendation will have an impact on the NC as it is largely made up of independent directors. Regardless of whether there are guidelines, it is healthy for boards and committees to have periodic renewal of its members. It is equally important that there should be continuity, and therefore, there is a need to strike a balance between continuity and renewal.

Some boards and committees prepare a renewal schedule for its members. Such a schedule usually provides for staggering of terms of members, based around the maximum term that the board has set for itself and for committees. For example, if the maximum term is nine years, and all the members were appointed at the same time, the renewal schedule may provide for one member to rotate off after seven years and one each year thereafter. This is accompanied by the addition of a new member as each existing member is rotated off.

7. Assessment of Committee Effectiveness

In line with developments in other countries, the revised Code (2012) adds assessment of effectiveness of committees to the existing guidelines on assessment of effectiveness of the board and individual directors.

The issue of assessment of effectiveness of the board, committees and individual directors will be discussed later in this guide.

D. Discharging the Responsibilities of the Nominating Committee

As explained in Part B of this Guide, the typical responsibilities of the NC include assisting the board in the following areas:

- Reviewing the size, structure and composition of the board
- Recommending membership of board committees
- Undertaking succession planning for the Chairman, CEO and other directors
- Searching for candidates for the board, and recommending directors for appointment
- Determining the independence of directors
- Assessing whether directors are able to commit enough time for discharging their responsibilities
- Reviewing induction and training needs of directors
- Recommending the process and criteria for assessing the effectiveness of the board and board committees and the contribution of the Chairman and individual directors to the effectiveness of the board and helping to implement these assessments

In this part of the Guide, we provide suggestions on how the NC can discharge these responsibilities.

1. Reviewing the size, structure and composition of the board

(a) Determining the appropriate size for the Board

Most corporate governance codes make a reference to the board being of an appropriate size, but do not recommend specific size ranges. For example, Guideline 2.5 of the revised Code (2012) states:

"The Board should examine its size and, with a view to determining the impact of the number upon effectiveness, decide on what it considers an appropriate size for the Board, which facilitates effective decision making. The Board should take into account the scope and nature of the operations of the company, the requirements of the business and the need to avoid undue disruptions from changes to the composition of the Board and committees. The Board should not be so large as to be unwieldy."

The MAS guidelines for financial institutions include a similar recommendation.

A listed company would need to have at least three directors as there is a Companies Act requirement (section 201B) to have an audit committee with at least three members[7]. A financial institution subject to MAS regulations would require at least five members on the NC, and therefore, a minimum board size would be five members. These provide lower bounds in terms of board size.

Articles of association of companies may impose minimum and/or maximum board size requirements and will have to be complied with. Beyond these constraints, the board will have to decide what size works for it.

On balance, research evidence suggests that companies with smaller boards tend to have better performance. There is also some evidence that board sizes have declined in developed markets such as the United States of America (US), UK and Australia, although this is largely driven by the decline in number of executive directors on the board. The Code also states that "the Board should not be so large as to be unwieldy". However, clearly, as the Code also suggests, there is no "one size fits all" and the Board "should take into account the scope and nature of the company's operations, as well as the requirements of the business to avoid disruptions from changes to the composition of the Board and committees".

[7] This requirement is expected to be moved to the Securities and Futures Act after the review of the Companies Act.

A company which is more complex, such as one with multiple lines of business, or which operates across a number of countries or regions, may need a broader range of expertise on the board. It then makes sense for such a company to have more directors. Companies with more committees, or which strive to include more independent directors, may also have larger boards. If the board is too small, there may not be a sufficient diversity of knowledge, experience and viewpoints.

Research, however, shows that most companies, including those which are complex and global in nature, have no more than about 10 or 11 directors. For example, the 2011 Spencer Stuart Board Index shows that the average board size for S&P 500 companies in the US is just 10.7, compared to 11.5 in 2000. The 2010/2011 board diversity study by Korn/Ferry International shows that the average board size for the top 100 companies (by market capitalisation) in Australia, Singapore, Malaysia and Hong Kong (HK) were 7.9, 8.6, 9 and 11.5 respectively[8].

Under the Governance and Transparency Index published by the NUS Business School, CPA Australia and Business Times, companies are given points if their board size ranges from six to 11 members.

Table 11 shows that the average board size for the large companies in our sample is 9.5, with a range of board size from six to 22. For the smaller companies, the average is 6.7, with a range from three to 11.

Table 11: Board size

No. of Directors	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
3	1	1%	0	0%	1	1%
4	5	2%	0	0%	5	4%
5	25	12%	0	0%	25	19%
6	41	20%	5	7%	36	28%
7	32	16%	7	10%	25	19%
8	32	16%	14	20%	18	14%
9	27	13%	12	17%	15	12%
10	13	6%	10	14%	3	2%
11	15	8%	14	20%	1	1%
12	7	4%	7	10%	0	0%
13	1	1%	1	1%	0	0%
22	1	1%	1	1%	0	0%
Total	200	100%	71	100%	129	100%
Average	7.7		9.5		6.7	
Min	3		6		3	
Max	22		22		11	

Some international companies, especially those with global operations, have established an advisory board/panel. This allows them to tap on expertise about certain industries or markets, without adding more directors onto the board.

(b) Determining the appropriate composition for the Board

There are four main attributes related to the composition of the board:

i. the status of the chairman in terms of whether he or she is also the CEO, an executive director, a non-executive director or an independent director;
ii. the balance and diversity of skills, experience, gender and knowledge;
iii. the balance between executive, non-executive and independent directors; and
iv. the presence of a lead independent director.

[8] The Diversity Scorecard: Measuring Board Composition in Asia Pacific, Korn/Ferry International 2012

The Code contains principles and guidelines related to these attributes. Principle 2 in the revised Code states:

"There should be a strong and independent element on the Board, which is able to exercise objective judgement on corporate affairs independently, in particular, from Management and 10% shareholders. No individual or small group of individuals should be allowed to dominate the Board's decision making."

Rule 210(5) of the SGX Mainboard Rules requires "at least two non-executive directors who are independent and free of any material business or financial connection with the issuer". The CATALIST rules are similar except that it also requires a foreign listing to have at least one of these independent directors residing in Singapore.

The revised Guidelines 2.1 and 2.2 recommend that at least one-third of the board should be independent, but where the Chairman is not an independent director, the independent directors should make up at least half of the Board. However, MAS has allowed for a longer transition period for this particular guideline, and companies only need to "comply or explain" against this guideline for AGMs following the end of financial years commencing on or after 1 May 2016. In addition, what may have an even greater impact on many companies is the proposed enhancement of the definition of independence to include independence from 10% shareholders.

The revised Guideline 2.6 recommends the following with respect to board competencies and diversity:

"The Board and its committees should comprise directors who as a group provide an appropriate balance and diversity of skills, experience, gender and knowledge of the company. They should also provide core competencies such as accounting or finance, business or management experience, industry knowledge, strategic planning experience and customer-based experience or knowledge."

The circumstances under which a company should appoint a lead independent director have been expanded to include any situation where the chairman is not independent. In the previous Code, the recommendation for companies to appoint a lead independent director was included as a commentary. This meant that companies which do not comply need not explain. Under the revised Code (2012), companies without a lead independent director when they do not have an independent Chairman will have to disclose and explain.

Financial institutions, especially banks and large direct insurers which are subject to MAS regulations, already have to comply to more stringent standards, especially with regard to the status of the Chairman, definition of director independence, and the proportion of independent directors.

Status of Chairman

Table 12 shows that the CEOs of 33 percent of companies also hold the Chairman's role. Smaller companies are more than twice as likely as large companies to have the CEO also doubling up as Chairman. This is not surprising as smaller companies are more likely to be owned and managed by families or founders, who are often also major shareholders. Such companies often feel that they want a single person driving the company as it grows. Twenty six percent of companies have two persons holding the two roles, but the Chairman is an executive chairman. Only 15 percent of companies have an independent Chairman, with larger companies more likely to do so.

Table 12: Status of Board Chairman

Board chairman is..	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
CEO	67	33%	14	20%	53	41%
Executive Chairman	53	26%	16	23%	37	29%
Non-Executive, Non-Independent Chairman	50	25%	27	38%	23	18%
Non-Executive, Independent Chairman	29	15%	13	18%	16	12%
NA	1	1%	1	1%	0	0%
Total	200	100%	71	100%	129	100%

Proportion of independent directors

Table 13 shows the proportion of independent directors on the board. Four percent have less than one-third of independent directors, which is the recommended minimum proportion of independent directors in the Code. About one in 20 of the smaller companies are below the minimum recommended proportion. About one in three companies have more than half the board as independent directors, with larger companies more than twice as likely to do so as compared to smaller ones.

Table 13: Proportion of independent directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Less than one- third	7	4%	1	1%	6	5%
1/3 to 1/2	131	65%	36	51%	95	73%
More than 1/2 to 2/3	43	21%	17	24%	26	20%
More than 2/3	19	10%	17	24%	2	2%
Total	200	100%	71	100%	129	100%

Appointment of lead independent director

Increasingly, there is an expectation that boards appoint a senior or lead independent director. The revised Code (2012) recommends that the board should have a lead independent director as long as the Board Chairman is not an independent director.

Table 14 shows that 56 of the 200 companies (28 percent) have disclosed that they have appointed a lead independent director. Interestingly, smaller companies are twice as likely to have appointed a lead independent director compared to the larger companies.

Table 15 shows that only about one-third of the companies in our sample without an independent Chairman currently have a lead independent director. With the revised Code (2012) guideline on lead independent directors, a substantial number of companies would have to appoint a lead independent director to comply with the revision.

Table 14: Companies with a lead independent director

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
With Lead ID	56	28%	12	17%	44	34%
Without Lead ID	144	72%	59	83%	85	66%
Total	200	100%	71	100%	129	100%

Table 15: Companies without an Independent Chairman which have a lead independent director

	Chairman not independent	Percentage
With Lead ID	56	33%
Without Lead ID	115	67%
Total	171	100%

Table 16 shows that 51 percent of companies which do not have an independent Chairman currently have less than half of independent directors. After the transition period, these companies will have to increase the percentage of independent directors, or disclose and explain why they do not have at least half of independent directors on the board.

Table 16: Companies without an Independent Chairman and percentage of independent directors on board

	Chairman not independent	Percentage
Less than half of Board directors are IDs	87	51%
Half or more Board directors are IDs	84	49%
Total	171	100%

Representation of executives on the board

One issue which is not explicitly mentioned in the Singapore Code is the representation of executives on the Board. In contrast, the UK Corporate Governance Code[9] (June 2010) recommends "an appropriate combination of executive and non-executive directors".

The Board will need to make a decision as to the extent of representation of executives on the board. Most boards prefer to have the CEO on the board, although there are some examples of wholly non-executive boards both in Singapore and elsewhere. There are two main arguments for having the CEO on the board. The first is to impose a higher standard of accountability on the CEO as a director is subjected to common law and statutory duties[10]. The second argument is that the CEO is likely to take greater ownership, and is better motivated to implement and to be held accountable for board decisions, if he or she is directly involved in making these decisions.

The case for having other executives on the board is less compelling. In making the decision on the extent of executive representation, boards will need to consider the importance of having adequate separation between the board and management. The greater the representation by executives, the lesser the separation and independence the board will have from management. There is a trend towards lower executive representation on the board in a number of countries, although executive representation remains significant in countries like UK and HK.

Boards sometimes feel that having more executives onboard would offer greater insights into business, which would come in useful when making decisions. That said, the board can always decide to invite executives for meetings as and when necessary, rather than to make them board members.

[9] http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf

[10] The Steering Committee for Review of the Companies Act has recommended that the duty of directors to act honestly and exercise reasonable diligence under Section 157(1) of the Companies Act should be extended to CEOs who are not directors. If this is accepted, CEOs who are not directors will be held to a higher standard of accountability.

Table 17 shows that 13 percent of companies have more than half of the board being executive directors, with smaller companies almost twice as likely to do so compared to larger companies. More than 50 percent of boards have more than one-third of executive directors.

Table 17: Proportion of executive directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
None	3	2%	1	1%	2	2%
1/3 and less	93	46%	50	71%	43	33%
More than 1/3 to 1/2	78	39%	13	18%	65	50%
More than 1/2 to 2/3	25	12%	6	9%	19	15%
More than 2/3	1	1%	1	1%	0	0%
Total	200	100%	71	100%	129	100%

Board competencies

Although codes of corporate governance generally emphasise independence, competencies and diversity on the board, much of the debate has been around independence. While having a board which is sufficiently independent is very important, it is equally imperative that the board has the right mix of skills and experience, and has sufficient diversity of viewpoints. Table 18 shows that few companies currently disclose how the NC assesses the skills and experience needed on the board.

Most boards already have many of the skills and experience specified in the Code amongst its executive and non-executive (including independent) directors. Independent directors often bring skills and experience in areas such as accounting or finance, legal and general business or management. Executive directors often bring with them industry knowledge, strategic planning experience and knowledge about customers.

Table 18: Disclosure of how the NC assesses the skills and experience and gaps, as part of the process for appointing or re-appointing directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	36	18%	1	1%	35	27%
No	164	82%	70	99%	94	73%
Total	200	100%	71	100%	129	100%

There is an increasing expectation that non-executive directors should also possess skills and experience in areas – in particular, industry knowledge - where there is perhaps a traditional reliance on executive directors. In our many interactions with both executives and non-executive directors, lack of industry knowledge amongst independent directors is often cited as a weakness. Having someone amongst independent directors who has in-depth knowledge about the industry can result a more robust "challenge function" on the board especially with regard to the company's strategies. A strong understanding about the industry is also critical to risk oversight and management. One of the key recommendations emerging from the financial crisis is that boards, especially independent directors, should have financial industry experience, risk management expertise and executive compensation expertise.

We recommend that NCs should place more emphasis on industry experience when searching for independent directors. Industry experience should ideally be relatively recent and involve actual management experience, rather than non-executive directorships, in a relevant or closely-related industry.

Board diversity

Codes of corporate governance are placing more emphasis on diversity. Diversity here refers to a diversity in viewpoints, rather than just diversity in skills and experience. Diversity in viewpoints is more likely to exist if there is diversity in gender, nationality, culture and socio-economic backgrounds.

The revised Code (2012) incorporates diversity in gender as a desired attribute of board composition. The benefits of greater gender diversity are supported by research. We believe that greater diversity, particularly diversity in viewpoints, will ultimately lead to better decisions and performance.

NCs should therefore seek to improve diversity, particularly gender diversity. However, they should do so through a robust process which includes the identification of desired competencies on the board and gaps in these competencies, and the use of an open search for directors with these competencies. Some codes encourage boards to set diversity targets. This may be a good approach to help ensure that diversity is factored in as an important consideration when recruiting directors.

The Korn/Ferry International report on board diversity amongst large companies in Asia Pacific shows that only 6.4 percent of directors on the boards of the largest 100 Singapore companies are female, and only 5.2 percent of independent directors are female[11]. The study by the Centre for Governance, Institutions and Organisations (CGIO) at the NUS Business School reports similar statistics. Only 6.9 percent of all directors in SGX-listed companies are female and more than 60 percent of all SGX-listed companies do not have a single woman on its board[12].

Personal attributes and commitment

Above all else, directors must have certain key personal attributes such as integrity, courage, professionalism, good judgement and maturity. This will ensure that they will ask the right questions, appreciate other points of views, and are able to make decisions by consensus. It will also ensure that they are prepared to speak out if they believe something is not right, and to resign if they feel that they are unable to adequately discharge their responsibilities.

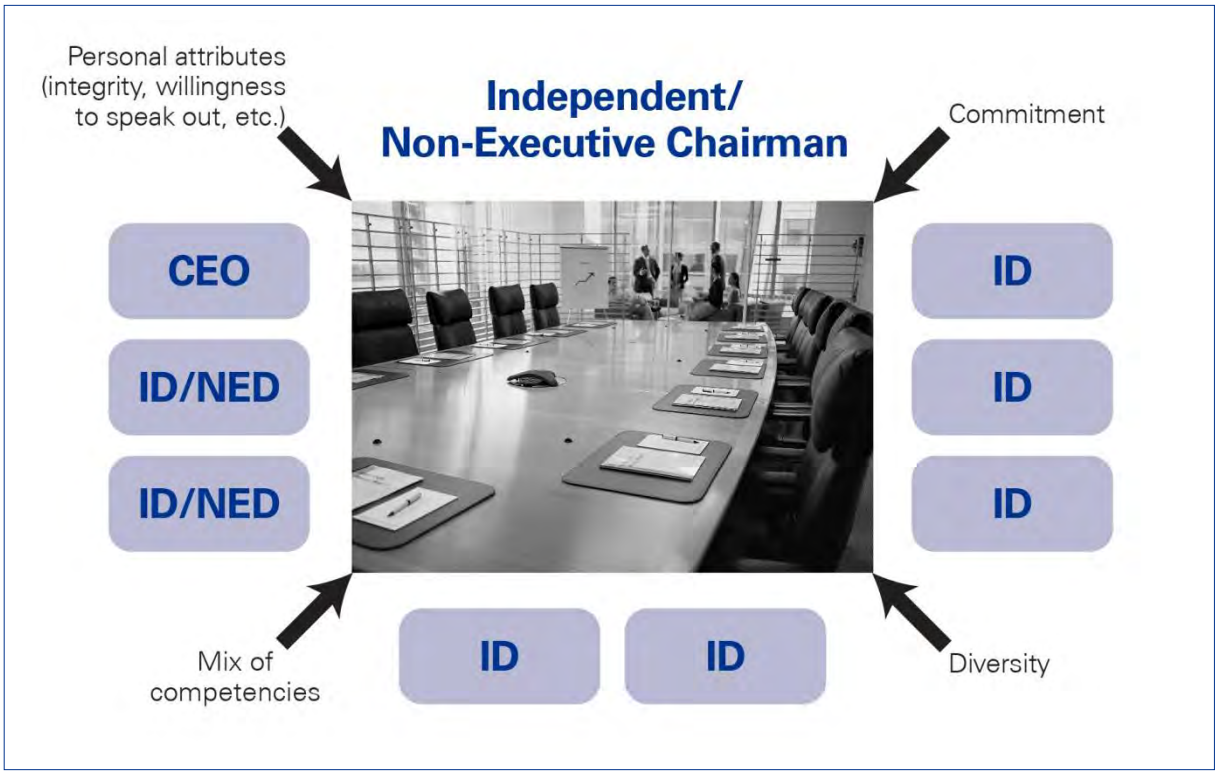
Directors must also be able to commit enough time to discharging their responsibilities. Good directors will not take on so many directorships and commitments such that they are unable to do a proper job.

Figure 3 shows what we believe to be the typical profile of an effective board, which incorporates the various considerations discussed.

[11] Korn/Ferry International, Asia's Boardroom Gender Gap, July 2011

[12] Singapore Board Diversity Report 2011: Gender Diversity in SGX-Listed Companies, Centre for Governance, Institutions and Organisations, 2011.

Figure 3: Profile of an Effective Board



2. Recommending membership of board committees

Given the responsibilities of the NC in reviewing board composition, identifying skills and experience needs, and proposing the appointment of directors, it is recommended that the NC should provide inputs as to who may be suitable candidates for board committee membership. The ICSA guidance suggests that the NC should make recommendations to the Board on membership of committees after consulting with committee Chairmen.

It is important that committees meet independence guidelines and also have the right balance of skills and experience. There is also the need to ensure that the workload of directors, including committee work, is equitably shared. Whenever possible, too much overlap in committee membership should be avoided. On the other hand, some common membership amongst committees can also help ensure adequate communication and coordination.

One common criticism of board committees is that the same directors commonly serve on all three key board committees. The Governance and Transparency Index applies a penalty to companies in this situation. Table 19 shows that more than one-third of all companies have three or more common directors on the three committees. Not surprisingly, this is far more common for smaller companies with relatively smaller boards, which often have only two to three independent directors. One possibility is for the smaller companies to combine the nominating and remuneration committees into a single committee, rather than have three separate committees with identical membership .Another option is to increase the number of independent directors. A third option is to co-opt non-board members. However, this practice - relatively common in not-for-profit organisations - is currently not accepted for listed companies as the three key committees are expected to include only board members.

Table 19: Common membership on the nominating, audit and remuneration committees

No of Directors	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
0	34	17%	26	37%	8	6%
1	31	16%	19	27%	12	9%
2	62	31%	16	23%	46	36%
3	66	33%	8	11%	58	45%
4	7	4%	2	3%	5	4%
Total	200	100%	71	100%	129	

3. Board Renewal and Succession Planning

Guideline 4.2 of the revised Code (2012) recommends "progressive renewal of the Board" as an important issue to be considered by the NC in the search and appointment of directors. The UK Corporate Governance Code[13]
(B.2 Supporting Principle) states:

"The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board."

Table 20 shows that few companies currently disclose information on succession planning for directors, the CEO and key management.

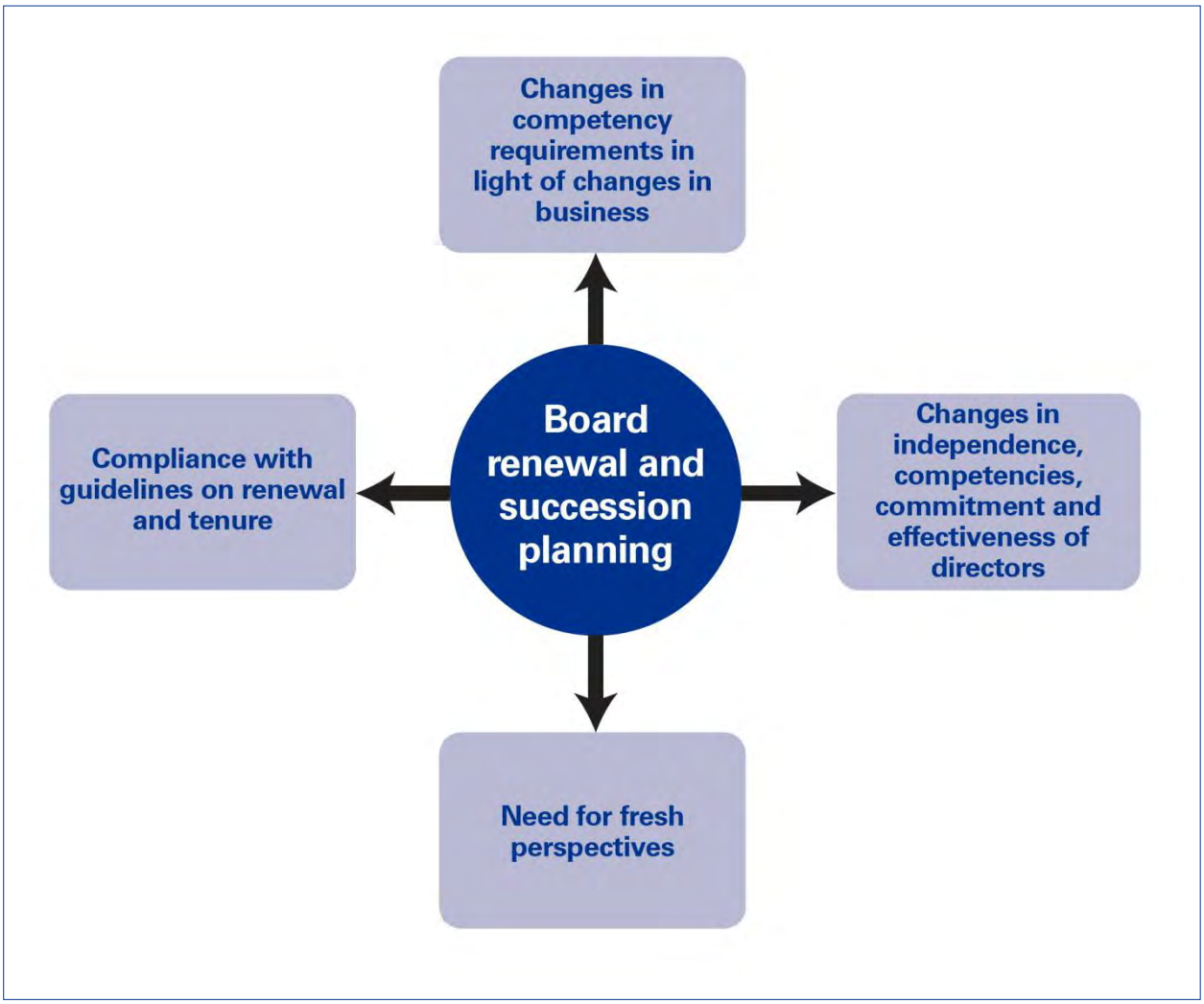
Table 20: Disclosure of information on succession planning

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
For directors	3	2%	2	3%	1	1%
For the CEO and key management	2	1%	1	1%	1	1%

Figure 4 provides an overview of the factors which are driving the need for board renewal and succession planning. As the business environment and business strategies change, companies need directors who have the right competencies to contribute to the company and the board. In some cases, such as in accounting or technology, skills and experience can become obsolete unless directors keep pace with changes. For example, even a retired senior partner in audit in a major accounting firm may find that his understanding of financial reporting issues is inadequate in light of today's complex financial reporting standards.

[13] http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf

Figure 4: Drivers of board renewal and succession planning



A director's independence, competencies and commitment may also change over time. A director who has been on the board for a prolonged period of time may develop a deep understanding of the business, but may also become too close to management. This may introduce "familiarity risk". They may also take on additional directorships and key responsibilities, reducing their ability to commit enough time.

It is also useful to have new people with fresh perspectives, who are able to look at issues with a new pair of eyes. They could ask questions which may have been overlooked by those who have been closely involved in the company for a long time.

Finally, in addition to directors having to get re-elected periodically, regulations and codes increasingly expect boards to renew themselves, often going to the extent of limiting the tenure of independent directors. In the UK, a director who has served more than nine years is prima facie not considered independent under the Code. In HK and Australia, long tenure is considered a threat to independence. MAS regulations in Singapore now consider a director to be non-independent if he has served more than nine years. The revised Code (2012) in Singapore recommends that a "particularly rigorous review" be done for directors who have served for more than nine years when considering them for re-appointment. The Board is also expected to explain why such a director should be considered independent.

NCs will need to ensure that board renewal and succession planning are on its agenda. Extract 5 provides suggestions of key steps to be followed by NCs in planning for renewal and succession.

Extract 5: Suggested key steps to be followed by NCs in planning for renewal and succession

- Make sure that the issue is discussed regularly (preferably annually)
- Develop a framework of the desired collective competencies needed on the board in light of the company's business, strategies and markets
- Develop a matrix of the key competencies of the current board and identify gaps
- Review the board, committee and individual director evaluation results for the identification of candidates for appointment or retirement
- Ensure that there is a good balance between renewal and continuity by developing a retirement schedule

Extract 6 shows the retirement schedule for directors published by a bank in Australia, Bendigo and Adelaide Bank Limited.

Extract 6: Example of a retirement schedule for directors

The renewal process for the four years from 2009 is set out below, together with the status at the date of the last review of this schedule.

Non-executive directors	Date of appointment	Number of years	Retirement	Status
Robert Johanson, Chairman	1988	22		
Jennifer Dawson	1999	11		
Terence O'Dwyer	2000[3]	10		
Kevin Roache	1992		Retiring 2009	Retired 2009
Deborah Radford	2006	4		
Tony Robinson	2006	4		
Kevin Osborn	2003	5		Retired 2009
Kevin Abrahamson	2000[4]	10	Retiring 2011	
David Matthews	2010	New		
Jim Hazel	2010	New		
Proposed new director	Proposed 2010			

Source: Bendigo and Adelaide Bank (Australia)
http://www.bendigoadelaide.com.au/public/corporate_governance/policies/board_renewal_policy.asp

Removing barriers to board renewal and succession planning

Boards need to pay more attention to renewal. Some boards equate the need for directors to stand for re-election periodically (usually every three years) as the renewal process for the board. The consequence is the lack of planned refreshing of the board.

In practice, board renewal needs to be properly handled. Recommending the retirement of a director who may not be ready to retire can be very awkward. If not handled well, it can result in ill-feelings, and worse, public escalation of an ugly boardroom dispute. We will discuss the issue of appointment and retirement of directors in greater depth in the next section.

Board renewal and succession is likely to be smoother if it is well-planned and understood by directors who then buy into the process. If there is formal board renewal and succession planning, directors are more likely to take a recommendation for them to retire in the right spirit. It is, however, important to bear in mind that the possibility of falling out with a difficult director who resists replacement should not be a deterrent for board renewal.

Some companies, both here and overseas, have found certain strategies to be useful for an effective renewal and succession planning process, including:

- a board policy requiring directors to inform the board when their personal circumstances change (e.g., new job, new directorship, retirement from full time job)

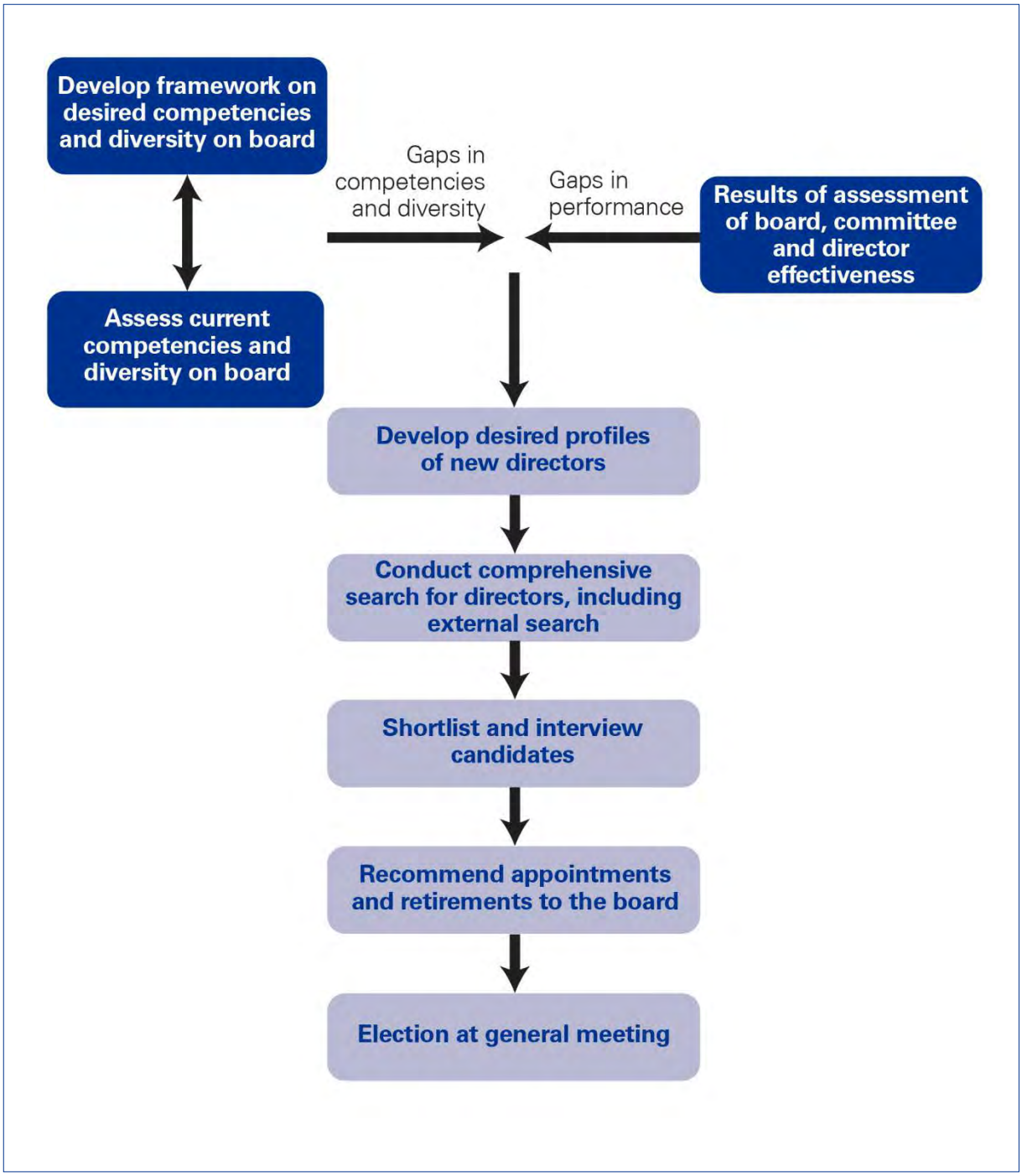
- a board policy requiring directors to offer their resignation to the board when their personal circumstances change

- term limits

4. Searching for candidates for the board and recommending directors for appointment

The resolutions proposing candidates for election by shareholders at the general meetings are the culmination of what ought to be a rigorous and integrated process, which brings together a number of activities undertaken or supported by the NC. Figure 5 shows how the different activities are linked.

Figure 5: An Integrated Perspective on Board Appointments



Under most companies' articles of association, the board can appoint directors at any time but the directors so appointed will have to be elected by shareholders at the next general meeting. For example, article 68 in the model articles of association in the Companies Act states:

"The directors shall have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with these Regulations. Any director so appointed shall hold office only until the next following annual general meeting, and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting."

Most companies' articles also provide for directors to retire by rotation. For listed companies, this generally means directors having to stand for re-election every three years if they choose to remain on the board. Many codes also provide that directors should participate in re-election at least once every three years.

In addition, codes of governance usually recommend:

- a formal and transparent process for the appointment of directors.
- the Nominating Committee, with majority of independent directors, to make recommendations on board appointments
- process for selection and appointment to be described, and search and nomination process to be disclosed (external searches through recruitment firms or advertisements are sometimes specifically encouraged)

The SGX listing rules also require a template to be completed and submitted to SGXNET when "key persons such as director, chief executive officer, chief financial officer, chief operating officer, general manager or other executive officer of equivalent authority" (rule 704(7) and 704(6) of Mainboard and CATALIST Rules respectively). Appendix 2 shows the announcement template to be used.

Election by shareholders

Directors who are appointed by the board under the provisions of the company's Articles of Association must be proposed for election by shareholders at the general meeting. Any director who is retiring must also be proposed for re-election by shareholders if he or she wishes to remain on the board. Under section 153 of the Singapore Companies Act, a director who has reached the age of 70 must be elected at a general meeting, and must stand for re-election every year. This section, however, is expected to be repealed when the revised Companies Act is passed.

Cessation of Directors

Directors generally cease their service to the company under the following circumstances:

- retirement at the annual general meeting
- resignation
- removal by shareholders at general meeting
- disqualification (e.g., become bankrupt; convicted of fraud or dishonesty, court order)
- death

The SGX listing rules require companies to announce the cessation of directors, regardless of the method of cessation, using the template in Appendix 7.4.2 of the listing rules (for Mainboard companies), which is reproduced in Appendix 3 of this guide.

Amongst the questions which the template requires the company to answer are the following:

- Are there any unresolved differences in opinion on material matters between the person and the board of directors including matters which would have a material impact on the group or its financial reporting?

- Is there any matter in relation to the cessation that needs to be brought to the attention of the shareholders of the listed issuer?

- Is there any other relevant information to be provided to shareholders of the listed issuer?

These questions reflect the concern that the cessation of directors may sometimes not be due to periodic board renewal, but rather be an indicator of problems within the company. Therefore, when there is cessation of a director, the NC needs to assist the Board in ensuring that the cessation and its communication are properly managed. The company should be ready to respond to questions which may arise.

(a) Retirement

Retirement at the annual general meeting is the most common means for directors to cease their service. This is when the director's current term is up and he does not stand for re-election.

(b) Resignation

Directors may resign during their term of service, rather than retire when their term of service ends. Directors may resign because of reasons such as other competing commitments or personal reasons related to health.

It is not ideal for directors to resign partway through their term. Firstly, the board may need to quickly find a replacement director (especially if the resignation results in the company failing to meet requirements or recommendations on composition of the board and board committees), resulting in the appointment of unsuitable candidates. Secondly, resignation can raise concerns about fundamental disagreement on the board, or worse, corporate governance-related concerns. This can have a negative impact on the company. Even if the company declares that there is no disagreement over material matters and there exists no matters to be brought to the attention of shareholders as set out in the cessation template, the market may still interpret resignations negatively.

Companies often mention personal reasons, without further elaboration, when directors resign. It is preferable for them to be as transparent as possible about the reasons, as the lack of sufficient disclosure may be interpreted as a cause for concern.

A study of resignations of independent directors from SGX-listed companies for the period between 1 October 2007 and 31 May 2009 reported the following:[14]

- There were 163 cases of independent directors in 117 companies who resigned or who were removed by shareholders

- Just over 17 percent of companies had one or more independent directors who resigned or who were removed by shareholders

- 69 percent of these cases cited personal reasons, including "other commitments" and "personal interests" and about 12 percent cited corporate governance-related reasons, such as differences of opinion and unsatisfactory information flow.

[14] Corporate Governance and Financial Reporting Centre (CGFRC), "Should I Stay or Should I Go: Resignations of Independent Directors in Singapore", Presentation at Roundtable Discussion, 2009.

Case: Resignation of Independent Director Citing Corporate Governance-Related Reasons

On 23 April 2008, China Aviation Oil(S) Corp Limited issued an announcement on SGXNET on the resignation of independent director Mrs Lee Suet Fern. In her resignation letter which was included in the announcement, Mrs Lee stated that "it has become, as a result of the Company's approach to information flow and the management of decision making, review and oversight, increasingly difficult for me to properly discharge my duties as an independent director of the Company". This triggered comments in the media.

(c) Removal by shareholders

Under the Singapore Companies Act, the board of a public company cannot remove a director. Section 152(8) of the Act states: "A director of a public company shall not be removed by or required to vacate his office by any resolution, request or notice of any of directors notwithstanding anything in the articles or any agreement." This is because directors are elected by shareholders at the general meeting and therefore, only shareholders should have the power to remove them.

In most countries, including Singapore, directors can be removed by ordinary resolution at a general meeting, which means that only more than 50 percent of shareholder support is required to remove a director. The Companies Act also allows two or more shareholders holding not less than 10 percent of the total number of issued shares of the company (excluding treasury shares) to call an extraordinary general meeting at any time to propose the removal of a director. However, there are some procedural requirements in the Act (section 152) to provide some protection for the director. These include:

- Special notice, which means at least 28 days' notice, for any resolution to remove a director
- On receipt of notice of an intended resolution to remove a director, the company has to immediately send a copy of the notice to the director concerned, and the director is entitled to be heard on the resolution at the meeting.
- Where the director concerned makes representations in writing to the company, the company has to state the fact that representations have been made. The company also has to send a copy of the representations to all members, and if this is not done, the director may require the representations to be read out at the meeting, without affecting his right to be heard orally.

Copies of representations need not be sent out and the representations need not be read out at the meeting if the Court is satisfied that the rights conferred by this section are being abused.

The law in Singapore empowering shareholders to remove directors at any time without cause is designed for shareholders to be able to hold directors accountable and to remove non-performing directors. This is positive from the standpoint of good corporate governance. However, this power also means that a major shareholder can propose to remove any director, including independent directors. This can have the effect of making the director beholden to the major shareholder, which may be detrimental to good corporate governance.

Case: Removal of an Independent Director by a Substantial Shareholder

On 9 April 2009, Kian Ho Bearings Ltd posted its notice of the annual general meeting on SGXNET. Resolution 10 under "Special Business" proposed the removal of Mr Tan Lye Huat as a director of the company with immediate effect. The resolution was proposed by a substantial shareholder, who is the daughter of the managing director of the company. Mr Tan was an independent director and Chairman of the Nominating Committee. This triggered an exchange of letters between the board and Mr Tan which were published on SGXNET and also came under scrutiny in the media. The major issue was whether the company had followed the correct procedures set out in the Companies Act. In the correspondence, Mr Tan alleged that he was first pressured by the managing director, the Chairman and another independent director to resign from the board. There were also questions as to whether the Executive Committee was involved in recommending Mr Tan's resignation, and if so, whether it had acted outside its powers.

Case: Removal of Multiple Directors by Shareholders

On 12 October 2011, at an AGM convened by Grand Banks Yachts Ltd, all four directors who were up for re-election were voted off the board by shareholders. These included the non-executive chairman, the CEO, and two independent directors. This left only two directors - an executive director and an independent director - on the board. The reason why four out of the six directors were up for election at the same general meeting was because two of the directors – the chairman and an independent director – were more than 70 years of age, which meant that they had to be re-elected by shareholders at every general meeting under the current Singapore Companies Act.

The removal of all four directors clearly surprised the company, and a few hours later, the company announced that it was re-appointing the four directors who had just been removed by shareholders. This triggered some negative comments in the media as to whether the company had violated the spirit of the law, and disregarded the shareholders' intent. Unfortunately, shareholders who had removed the four directors from the board did not propose alternative candidates. With two directors, the company would not have been able to comply with minimum requirements for board committees, which generally require at least three members. In particular, the company would not be able to comply with the Companies Act requirement for listed companies to have an audit committee of at least three members, a majority of whom have to be non-executive.

The company subsequently issued another announcement that it was only re-appointing the CEO to the board, as the two directors who were above 70 years old cannot be re-appointed by the board under the Companies Act, while the other independent director has declined the re-appointment.

In response to a SGX query as to why the company is re-appointing the CEO to the board even though he had been voted off by shareholders, the company provided a detailed explanation for its decision.

(d) Disqualification

The Companies Act in Singapore contains very minimum requirements in terms of the qualifications of directors. Any natural person who is at least 18 years of age and who is of "full legal capacity" can become a director. The Steering Committee currently reviewing the Companies Act had considered whether to impose minimum academic or professional qualifications or mandate training for directors. The eventual recommendation was against imposing any requirements in these areas.

There are a number of situations, however, where an individual may be disqualified from acting as a director. These include where a director is an undischarged bankrupt, is an unfit director by virtue of his involvement in the management of insolvent companies, is a director of a company which is wound up because of national security or interest, is a director who persistently defaults in the delivery of documents to the Registrar, or is a director who has been convicted of an offence involving fraud or dishonesty. In most cases, the disqualification is based on application to the Court, for example by the Minister of the Official Receiver. However, currently, a director who is convicted of an offence involving fraud or dishonesty punishable with imprisonment for three months or more is automatically disqualified for up to five years. The Steering Committee currently reviewing the Companies Act has recommended that such a director to be allowed to apply to the Court for leave to act as a director or to take part in the management of a company.

Case: Disqualification of Directors

In the case of Airocean Group Limited, four ex-directors were charged for offences under the Securities and Futures Act for insider trading and for consenting to the company's failure to disclose material information and its making of a misleading statement. They were convicted and sentenced and disqualification orders were imposed on all four in August 2009. However, in July 2012, three of the directors had their disclosure offences cleared and convictions overturned at the Supreme Court.

The fourth director, who was a non-executive director and audit committee chairman at the time of the offence, had earlier appealed the initial fine of $4,000 and a one-year disqualification imposed by the District Court. In May 2010, the Appeals Court increased his disqualification period to two years on appeal, as a stern reminder to company directors to properly discharge their responsibilities.

(e) Death

The most unfortunate cases of cessation of directors involve the death of directors during their term of office. While such cases are relatively uncommon, they nevertheless happen from time to time.

In some cases, directors who pass away during their term of office have had long-standing illnesses, which limited their capacity to contribute to the board. Yet, the board is often reluctant to replace a director who is facing significant health problems because of compassion. While this is totally understandable, it does raise issues about the effectiveness of the board when it retains a director who is unable to contribute. Shareholders may also feel that it is inappropriate to retain such a director and to continue paying director fees when a director is unable to contribute.

In the revised Code (2012), the issue of appointment of alternate directors is now dealt with. While the new Guideline 4.5 recommends that boards should generally avoid approving the appointment of alternate directors, it does provide for the appointment of such directors "for limited periods in exceptional cases such as when a director has a medical emergency". Therefore, where a director suffers from serious illness which prevents him from effectively contributing, the board can consider appointing an alternate director for a limited period of time. However, the board should note the Code's recommendation that such an alternate director "should be familiar with the company's affairs, and be appropriately qualified".

It is also important for the board is to ensure that the death of a director with a long-standing illness does not affect its effective functioning. Therefore, it should have potential suitably qualified candidates who can replace the director when the need arises.

Re-appointment of Existing Directors

Where a director has been effective and his competencies remain relevant, re-appointment is a relatively straightforward process although this should be underpinned by a robust process as described earlier in Figure 5.

It is important for the board not to take the re-election of directors by shareholders for granted, especially if the company has not been performing well. Some companies which vote by poll monitor the level of support shown by shareholders for the re-election of directors and on other resolutions, and when they see declining support, they are pro-active in engaging with major shareholders to understand why. This reduces the risk of a nasty surprise, such as the case of Grand Banks Yacht discussed earlier, where all directors proposed for re-election were rejected by shareholders at the general meeting. Shareholders are becoming increasingly demanding of directors and more willing to vote against resolutions, and it is important for companies to engage with shareholders on an ongoing basis.

The bigger challenge relating to the re-appointment of directors arises where a director is ineffective or where new competencies are needed, and he is unwilling to leave the board. This is especially if the board has not adopted any term limits and therefore the director can, in theory, remain on the board indefinitely. Even if there are term limits, the board may wish to replace a director before the maximum term limit is reached.

Consider the scenario below, which is not uncommon.

> Director A is not making constructive contributions to the Board. He questions every decision but does not offer viable alternatives. The relationship with other directors and with management is strained. However, he does not want to leave the board and threatens to complain to the regulator or go to the public that he is being punished for his "independence" if the Board makes any move to remove him or not put him up for re-election.

How should the board and NC handle such a situation?

A private conversation between the NC Chairman and the director should be the first course of action. If the director concerned is the NC Chairman, then the Board Chairman may be the best person to have this private conversation with the director.

In the event that the director decides to stand firm and not voluntarily leave the board, there are two scenarios. The first scenario is when the director is up for re-election. In this case, the board should inform the director that he will not be proposed for re-election. It is important for the board to engage with major shareholders so that they understand why the board is not proposing the director for re-election, if the director himself wishes to.

The second scenario is when the director is not up for re-election, and the board feels that it is important that he be replaced quickly. In this case, the board needs to be careful in not asking for the director's resignation because it may breach section 152(8) of the Companies Act which states: "A director of a public company shall not be removed by, or be required to vacate his office by reason of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement." In this case, the board should also engage with major shareholders who may then decide to call for a meeting to remove the director.

It is very important for the NC and the board to be able to justify its decision for wanting a director off the board against his wishes. In particular, where this involves an independent director, shareholders and the media may view such a decision as an attempt to get rid of a director who is really independent-minded and this can turn public opinion against the company.

The best advice we can give companies and boards is that they should ensure that they are transparent and practise high standards of corporate governance. Where there are major questions surrounding the quality of the board and corporate governance of the company, events such as the removal of an independent director are often interpreted in favour of the director.

Appointment of New Directors

The appointment of new directors should be the culmination of the process depicted in Figure 5, with the NC playing a major role in this process. Boards need to reduce their reliance on the traditional approach of using personal contacts and networks, or recommendations by legal advisers or auditors. This is because doing so limits the pool of potential candidates, may lead to proposed candidates who do not have the right competencies and may result in directors being too close to one another. They should consider using other sources for identifying potential candidates, such as recruitment consultants who specialise in director recruitment or "board match" type services offered by professional bodies, such as the Singapore Institute of Directors.

However, regardless of the sources used to identify potential candidates, the NC must ensure that there is proper due diligence undertaken of directors, including ensuring that they do not sit on boards of competing companies or are already sitting on many boards. It is often tempting to appoint well-known names, but such directors may not have the right competencies for the board or may already be overly-committed. The NC should interview every shortlisted candidate to ensure that he or she is the right fit for the board, before proposing to the board for appointment.

The revised Code (2012) Guideline 4.7 recommends that the resolution proposing directors for appointment or re-appointment at the general meeting should be accompanied by "details and information to enable shareholders to make informed decisions". Such information would include:

(a) any relationships including immediate family relationships between the candidate and the directors, the company or its 10% shareholders;
(b) a separate list of all current directorships in other listed companies; and
(c) details of other principal commitments.

There are instances where shareholders call meetings to propose the appointment of directors. This is a basic shareholder right which cannot be denied by the company. In this case, it would not be possible to adhere to the process set out in Figure 5. Therefore, while it is widely recognised that giving shareholders the right to propose directors for appointment at the general meeting is good for corporate governance, it does raise the issue of whether the candidates being proposed will enhance or undermine the effectiveness of the board.

The board needs to be objective and open-minded in evaluating candidates proposed by shareholders. If it feels that the candidates are not suitable, it should be clear in explaining why this is so. However, ultimately, it is for the shareholders to decide if the candidates should be appointed to the board.

Guideline 1.7 of the revised Code (2012) recommends that, upon the appointment of a director, the company should provide a formal letter to the director, setting out the director's duties and obligations.

Tables 21 to 23 show the disclosure of key information pertaining to the appointment of new directors by our sample of companies. Just over a quarter of the companies provide some disclosure of the process. Only 18 percent of the companies provided some disclosure of the criteria used in selecting new directors (Table 21). About 13 percent of companies disclosed that external sources may be used for recruiting new directors. Executive search firms are the most common external source cited, with SID and open advertisements being other potential external sources of candidates.

Table 21: Disclosure of process and criteria used in selecting and appointing new directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Process disclosed	51	26%	14	20%	37	29%
Criteria used	35	18%	9	13%	26	20%

Table 22: Disclosure of use of external sources for recruiting new directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
No	174	87%	60	85%	114	88%
May Engage	26*	13%	11	15%	15	12%
Total	200	100%	71	100%	129	100%

* For these 26 companies, external sources are cited as a possible means of getting the right director. These external sources include Singapore Institute of Directors and executive recruitment agencies.

Table 23: External sources which may be used for recruiting new directors

External sources (N=26)	Count	Percent
Professional executive search firm/agency	23	76%
Singapore Institute of Directors	3	10%
External help	2	7%
Open advertisement	2	7%
Total	30	100%

Case: Shareholder proposal for appointment of director

In 2004, a substantial shareholder of PSC Corporation, Clinton Ang, called an EGM in a bid to get himself elected to the board. He was seeking to move the company towards a fixed-dividend policy and giving priority to strengthening PSC's Econ grocery chain. He was unsuccessful after getting 24 percent of the votes. He did not have the support of the major shareholder, Rich Life Holdings.

Extract 7: Additional guidelines from MAS on appointment of directors in financial institutions

The MAS has added the following additional guideline on the appointment of directors for banks, financial holding companies and direct insurers incorporated in Singapore:

Guideline 4.7: In reviewing nominations, the NC should satisfy itself that each nominee is a fit and proper person, and is qualified for the office taking into account the nominee's track record, age, experience, capabilities, skills and such other relevant factors as may be determined by the NC. In addition, the NC should review, on an annual basis, that each existing director remains qualified for the office based on these criteria.

Source: MAS, Guidelines on Corporate Governance, Dec 2010

5. Reviewing Induction and Training of Directors

The revised Code (2012) recommends that new directors should receive comprehensive and tailored induction on joining the Board, which covers matters such as duties as a director and how to discharge those duties. New directors should also go through an orientation program to familiarise themselves with the company's business and governance practices. In Singapore, the Singapore Institute of Directors is the main body which provides support to directors.

The Institute of Chartered Secretaries and Administrators (ICSA) has published a useful guidance note on induction of directors which is available at http://www.icsa.org.uk.

Under this guidance note, information which can be provided to directors as part of the induction process is divided into three types:

- essential information to be provided immediately (e.g., directors' duties, company's business, board issues);
- additional material to be provided within the first few months (e.g., details of company's risk management procedures, recent press coverage and analysts' reports, major corporate governance guidelines which the company benchmarks itself against); and
- additional information which the company secretary might consider making the director aware of (e.g., policy and procedures on reimbursement of expenses, procedures for approval of matters outside of board meetings).

The revised Code also recommends that the company should provide training for first-time directors in areas such as accounting, legal and industry-specific knowledge as appropriate. It also recommends that all directors should receive regular training, particularly on relevant new laws, regulations and changing commercial risks.

The revised Code (2012) includes a new guideline recommending that the company be responsible for arranging and funding the training of directors. It also tasks the NC to make recommendations to the Board with regard to training and professional development programmes for the Board.

All directors can benefit from training that focuses on new developments relevant to their role as directors, such as changes in laws or listing rules and corporate governance codes, and business-related issues, such as industry trends. In addition, directors who serve on key committees, such as the audit committee or nominating committee, can benefit from more specialised training related to the responsibilities of these committees. In addition to training provided by the Singapore Institute of Directors (often in collaboration with other partners), directors can avail themselves to director training programmes offered by other institutes of directors, such as the Australian Institute of Directors, and to a wide range of courses, conferences, seminars and workshops run by professional bodies, professional services firms, and universities.

The NC can assist the board in aligning the recommended training for directors to the assessment of the competencies of the board and the results of performance assessment. It is important for directors, the NC and the board to be selective when it comes to training for directors, given the proliferation of training programmes in the market.

The revised Code (2012) recommends that the company discloses the induction, orientation and training provided to new and existing directors in the Annual Report. Table 24 shows that 53 percent of the companies in our sample disclosed that they have a formal induction program for new directors, and 21 percent disclosed that they provide a letter and/or briefing to new directors.

Table 24: Disclosure of induction programmes for new directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	106	53%	35	49%	71	55%
No	54	26%	21	30%	33	26%
Briefing	21	11%	5	7%	16	12%
Letter	19	10%	10	14%	9	7%
Total	**200**	**100%**	**71**	**100%**	**129**	**100%**

Of the 37 companies in our sample which had first-time directors on the board, only six of these specified the training attended by these directors (Table 25). This training mostly involved attending seminars organised by the SGX and SID.

Table 25: Training for first-time directors on the board

	All		Top Tier		Remaining	
Responses	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Not specified	31	16%	18	25%	13	10%
Specified*	6	3%	0	0%	6	5%
NA	163	81%	53	75%	110	85%
Total	**200**	**100%**	**71**	**100%**	**129**	**100%**

Forty percent of the companies in our sample disclosed that they expect or require their directors to go for continuing education/training (Table 26). However, only 12 percent of the companies disclosed the specific continuing education/training attended by directors (Table 27). For example, SMRT Corporation Ltd disclosed that the company secretary informs directors of upcoming conferences and seminars relevant to their roles as directors, and listed some of the seminars attended by directors during the past year. However, only three companies disclosed which directors had actually attended continuing education/training. To our knowledge, most boards in Singapore currently do not have budgets allocated for directors to attend training. The revised Code (2012) recommends that the company should be responsible for arranging and funding the training of directors, which we fully support.

Table 26: Continuing education/training for directors as a requirement or expectation

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	80	40%	30	42%	50	39%
No	120	60%	41	58%	79	61%
Total	200	100%	71	100%	129	100%

Table 27: Disclosure of specific continuing education/training attended by directors

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	24	12%	5	7%	19	15%
No	176	88%	66	93%	110	85%
Total	200	100%	71	100%	129	100%

Extract 8: Additional guidelines from MAS on professional development of directors in financial institutions

The MAS has added the following additional guidelines on the professional development of directors for banks, financial holding companies and direct insurers incorporated in Singapore:

Under Guideline 1.15, the Board should develop a continuous professional development programme for all directors to ensure that they are equipped with the appropriate skills and knowledge to perform their roles on the Board and Board Committees effectively. Such programmes may include providing the directors with a detailed overview and risk profile of the Financial Institution's significant or new business lines and an update on regulatory developments in jurisdictions which the Financial Institution has a presence in. The Board may develop separate programmes for executive directors and non-executive directors.

Under Guideline 1.16, the Financial Institution should disclose the type of continuous professional development programme established for its directors and how the programme incorporates the types of skills which the NC assesses that the Board and the respective Board Committees should have in order to perform their roles effectively.

Therefore, the NC of a Financial Institution needs to assist the board in determining what are the "appropriate skills and knowledge" needed for directors to perform their roles on the board and board committees and to develop a continuous professional development programme around this.

Source: MAS's Guidelines on Corporate Governance 2010

6. Determining Director Independence

Guideline 4.3 of the revised Code (2012) states:

"The NC is charged with the responsibility of determining annually, and as and when circumstances require, if a director is independent, bearing in mind the circumstances set forth in Guidelines 2.3 and 2.4 and any other salient factors. If the NC considers that a director who has one or more of the relationships mentioned therein can be considered independent, it shall provide its views to the Board for the Board's consideration. Conversely, the NC has the discretion to consider that a director is not independent even if he does not fall under the circumstances set forth in Guideline 2.3 or Guideline 2.4, and should similarly provide its views to the Board for the Board's consideration."

A change that has been made in the revised Guideline 4.3 is that the NC should not only determine the independence of a director annually, but also "as and when circumstances require". This recognises that a director's circumstances may change during the year. Another change is for the NC to provide its views for the Board's consideration, where it considers a director to be independent despite the presence of one or more of the relationships specified in the guidelines on independence, or where it considers a director to be non-independent despite the absence of such relationships.

The principle and guidelines related to independent directors in the revised Code (2012) are reproduced in Appendix 4. The main changes are:

i. A stricter definition of independence to include both independence from management and independence from 10% shareholders.

ii. The replacement of the term "related companies" or "subsidiaries" with "related corporations" in Guideline 2.3 (a), (b) and (c).

iii. In determining independence of a director, where the director of the listed company is also a 10 percent shareholder, partner, executive officer or director of another organisation, material services or significant payments) made by the listed company or its subsidiaries to the other organisation or received by the listed company or its subsidiaries from the other organisation, would also be considered. There are several changes here: a change from substantial shareholder or partner holding a five percent or more stake to 10 percent, the inclusion of material services, and the extension of payments/services to and from for-profit organisations to any form of organisation.

iv. A new Guideline 2.4 which recommends that "the independence a director who has served on the Board beyond nine years from the date of his first appointment should be subject to particularly rigorous review".

There are a number of important points to note in relation to the determination of independence of directors:

i. the NC plays a critical role in determining the independence of directors and in advising the Board about special circumstances which may affect independence;

ii. the determination of independence should be revisited by the NC when the circumstances for a director change, rather than just once a year;

iii. the determination of independence is principles-based, rather than merely box-ticking;

In order to apply the spirit of the revised Code (2012) in determining the independence of directors, we recommend the following "principles-based" approach:

- The NC requests that all independent directors complete a self-declaration checklist indicating whether there is any of the relationships specified in the Code or any other relationship which may affect his independence, and whether the director considers himself to be independent (Appendix 5 provides a suggested checklist);
- The NC reviews the director's self-declaration and considers whether any relationship or factor disclosed by the director or any other relationship or factor it is aware of may influence the director's ability to act independently;
- Where an independent director has served more than nine years, the NC ensures that it is satisfied that the director remains independent;

- The NC considers whether the director actually displays independent judgement in the boardroom;
- If the NC considers a director to be independent despite the presence of any of the relationships or circumstances specified as threats to independence in the Code, or if it considers a director to be non-independent despite the absence of any of the relationships or circumstances specified in the Code, it prepares an explanation to the Board explaining why it considers the director to be independent or non-independent as the case may be; and
- Where a director is considered independent despite the presence of any of the relationships or circumstances specified as threats to independence in the Code, the NC prepares the proposed disclosure and explanation to be made in the corporate governance section of the annual report.

Table 28 shows that for the 200 companies in our sample, only 13 percent disclosed the process used in determining the independence of directors. Seventy-two percent of companies disclosed the definition of independence used – that is, whether independent directors are independent from management and business relationships, or whether they are also independent from substantial shareholders. Just over 80 percent of the companies indicated that they assessed the independence of directors annually or more regularly if necessary.

Table 28: Disclosure of the process, criteria and frequency used in assessing the independence of directors

Practice	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Annually or more regularly if necessary	163	82%	58	82%	105	81%
Process used	26	13%	4	6%	22	17%
Criteria used	144	72%	49	69%	95	74%

Of the 200 companies in our sample, only three companies have introduced a limit on the tenure of independent directors.

The independence of directors is increasingly subject to scrutiny by minority shareholders and other stakeholders, including regulators especially in the case of financial institutions. It is therefore important for the NC and the Board to ensure that it has a robust and defensible process for determining independence of directors and for decisions about director independence to be clearly documented. The determination of independence should not be a "box-ticking" exercise.

The NC is sometimes put in a challenging position in determining independence where there are relationships or circumstances that do not quite fall within the guidelines on independence spelt out in the Code, but which may nevertheless lead to directors not being perceived to be independent, as illustrated below.

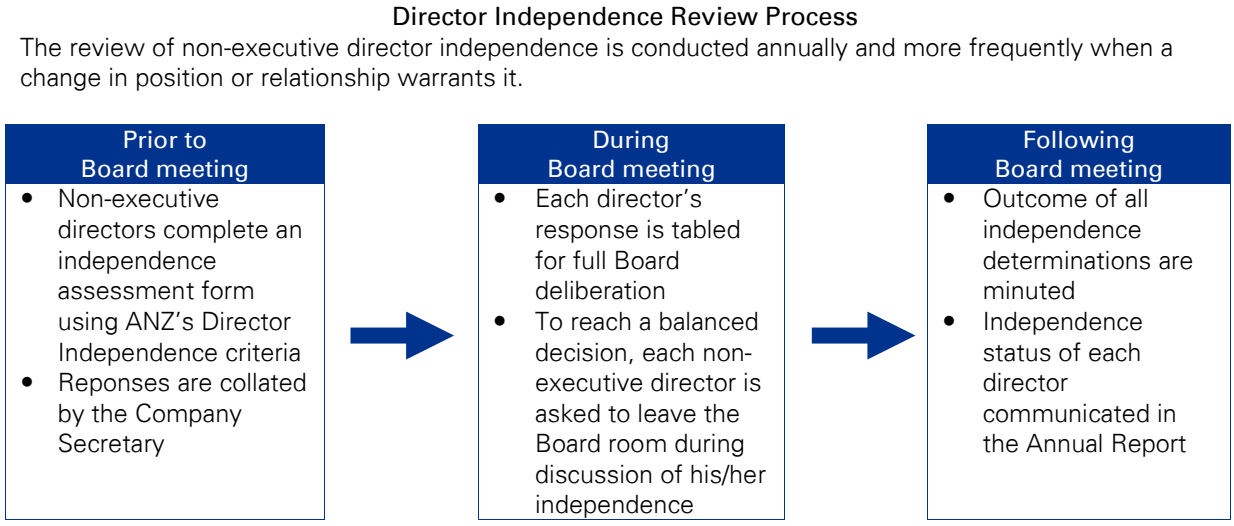
Examples : Grey areas in determining director independence:

1. Director A is proposed for appointment as an independent director by the controlling shareholder. Based on his declaration, he does not have any of the specific relationships specified by the listing rules and other guidelines which may deem a director as non-independent, but he was a long-time business partner of the controlling shareholder.
2. Director B is proposed for appointment as an independent director. He was a long-time senior executive in a related corporation but retired more than four years ago.
3. Director C was proposed for appointment as an independent director by the controlling shareholder. Based on his declaration, he has no present or past affiliation with the company, its management or the controlling shareholder. However, most of the directors feel that he always argue from the point of view of the interest of the controlling shareholder.
4. Director D is determined by the NC as independent. His brother is now proposed by a substantial shareholder for appointment to the board.

The above situations are not addressed specifically by the relationships and circumstances specified in the Code, but may nevertheless raise questions on the independence of the director. It is important for the NC to adequately consider the independence of the director and to be able to justify its determination if challenged.

Figure 6 shows the process used by ANZ Bank in Australia for reviewing director independence which is consistent with the principles-based approach to determining independence which we have described. In ANZ's case however, the full board is involved in this process.

Figure 6: Director Independence review process used by ANZ Bank in Australia



Source: ANZ website (http://www.anz.com/about-us/our-company/corporate-governance/)

Case: Interested person transactions involving independent director in China Sky Chemical Fibre Co Ltd

The SGX had asked China Sky to identify the director whose firm was reported to have provided professional services to the company under its disclosure of interested person transactions (IPTs). The company disclosed that the IPTs were for an independent director, Lai Seng Kwoon, who was the chairman of the audit committee. It was also revealed that Lai's accounting firm, SK Lai & Co, provided significant accounting-related services to China Sky. The payments for these services were recurring IPTs and amounted to some $112,000 in 2008, $183,000 in 2009 and $72,000 in 2010. The services related to assisting in the review of the company's internal, accounting and reporting controls, reviewing quarterly financial statements and results announcements, and providing consultancy and advisory services for various accounting procedures, including the consolidation of a subsidiary.

The 2010 corporate governance report of the company includes a statement that the independent directors have confirmed that they do not have any relationship that could interfere, or be reasonably perceived to interfere, with the directors' independent business judgment. The nominating committee, with Lai as one of its members, was reported to have reviewed and confirmed the independence of the independent directors. The query from SGX has resulted in a further statement that the board assessed Mr Lai to be independent despite his significant business relationships with the company, because of his 'unequivocal ability to exercise strong independent judgement', 'to act professionally', 'to maintain a high standard of duty and care' and to 'observe the ethical standards of his profession'.

This case escalated into a bitter exchange between the company and SGX, after the company refused to comply with the SGX's directive to appoint a special auditor to review the IPTs and other transactions, and SGX publicly reprimanded the company and each of the directors. SGX then applied for a court order to compel China Sky to comply with its directive, only to withdraw its application.

On 5 January 2012, all three independent directors resigned, and the reason given by each of the director was China Sky's 'non-compliance with Singapore Exchange Securities Trading Ltd's directive dated Nov 16, 2011'. Shortly after, its CEO Huang Zhong Xuan also resigned citing 'personal health reasons'. In February, it was reported that China Sky, along with its directors, is under investigation by the Commercial Affairs Department (CAD) for possible breaches of the Securities and Futures Act and in early March, Mr Lai was arrested by CAD and his passport has been impounded. Investigations are still underway. One of the independent directors reprimanded by the SGX filed a lawsuit to overturn the reprimand and lost.

7. Reviewing Director Commitment: The Issue of Number of Directorships

Guideline 4.4 of the revised Code (2012) states:

"When a director has multiple board representations, he must ensure that sufficient time and attention is given to the affairs of each company. The NC should decide if a director is able to and has been adequately carrying out his duties as a director of the company, taking into consideration the director's number of listed company board representations and other principal commitments. Guidelines should be adopted that address the competing time commitments that are faced when directors serve on multiple boards. The Board should determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's Annual Report."

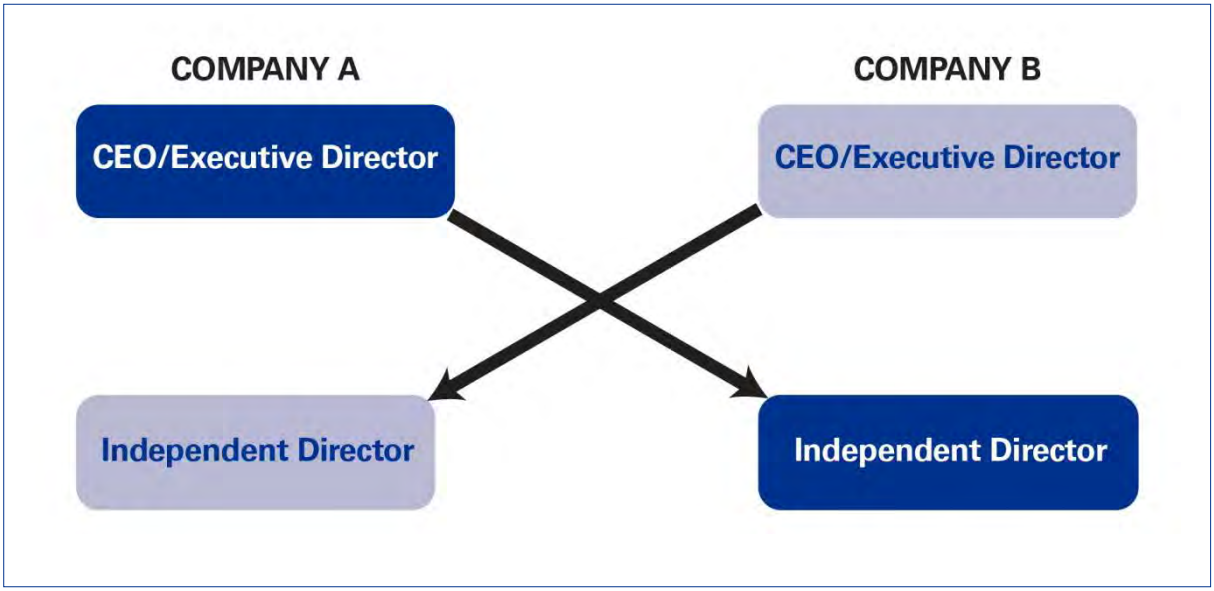
The term "principal commitments" is defined "to include all commitments which involve significant time commitment such as full-time occupation, consultancy work, committee work, non-listed company board representations and directorships and involvement in non-profit organisations. Where a director sits on the boards of non-active related corporations, those appointments should not normally be considered principal commitments."

One of the most hotly debated issues regarding directorship in Singapore and in many other countries is director commitment and specifically, directors sitting on multiple boards. Some corporate governance ratings, such as the one published by the international corporate governance rating agency, GovernanceMetrics International and the local Governance and Transparency Index, takes into account the number of directorships.

While it is generally accepted that the ability of directors to commit sufficient time to discharging their responsibilities is critical to the effectiveness of the director, views are divided on how to increase director commitment to companies.

In addition to director commitment, there are other risks associated with directors serving on multiple boards. One risk is conflict of interest, when a director serves on boards of different companies which compete or have significant relationships with each other. A conflict of interest can also arise where there are "board interlocks", such as where the CEO or executive director of Company A sits on the board of Company B as an independent director, and the CEO or executive director of Company B sits on the board of Company A as an independent director, as illustrated in Figure 7 below. Here, the conflict arises because the independent director is supposed to be on the board monitoring management and such an "interlock" may diminish the ability to do so. Another example of an interlock is where several directors on one board also serve together as directors on another board of an otherwise unrelated company. Such a situation is more likely to occur where directors serve on many boards, and this can lead to groupthink as the directors may be overly familiar with each other.

Figure 7: An example of interlocking directorship



Another risk associated with multiple directorships is where an executive director serves as a non-executive director on multiple boards of unrelated corporations. In this case, the executive director may be spending so much time in his non-executive directorships that he neglects his full-time role as an executive director. Shareholders are perfectly entitled to expect employees of a company to spend most of their time working for the company, rather than spend their time serving on other boards. In the UK, the corporate governance code specifically recognises this and recommends that an executive director of a FTSE100 company should not serve on more than one other board of a FTSE100 company.

There are diverse views as to how the issue of multiple directorships and director commitment should be addressed. At one end of the spectrum is the view that this is a matter which should be left to the director, the NC/board and the shareholders of the company, subject to appropriate disclosures on other listed company directorships and major appointments held by each director. At the other end is the view that mandatory limits in the listing rules, or at least guidelines in the Code, should specify the maximum number of listed company directorships which can be held. Malaysia has chosen to impose a mandatory limit in its listing rules and the recent Securities Commission Malaysia blueprint has proposed to reduce the maximum number of listed company directorships from its current 10 to five, by 2016.

The Corporate Governance Council has decided to adopt a middle ground. As indicated by Guideline 4.4, it recommends that the board determines the maximum number of listed company board representations which any director may hold. This maximum number will be disclosed in the company's annual report.

In our sample of 200 companies, only four companies have disclosed that they have introduced a limit on the number of other listed company directorships which can be held by its independent directors. Only one company has disclosed a limit on the number of external directorships in listed companies (i.e., outside the group) which can be held by its executive directors.

The NC needs to advise the board as to what limit(s) should be adopted. It may wish to consider having different limits for executive directors and non-executive directors, and also different limits for non-executive directors with or without full-time employment. Companies may wish to consider lower limits for executive directors and non-executive directors with full-time employment.

One way to approach the setting of limits is to consider the average number of days of commitment per year which are expected for each non-executive directorship. Various reports and bodies have suggested that twenty to thirty days is a reasonable time commitment, with those serving on boards of financial institutions expected to commit more time because of greater compliance demands. This includes time needed to prepare for and attend board and committee meetings; to continue professional development requirements, including training, site visits and briefings; to attend major company events, and so on. Assuming that a person without full-time appointment spends around 150 to 200 days a year on his directorships, this would translate to between five to 10 non-executive directorships.

Greater time commitment is generally expected where a non-executive director holds key positions on the board, such as chairman or deputy chairman, chairman of key committees, or lead independent director. For instance, it has been suggested that a chairman’s position is the equivalent of two to three ordinary non-executive directorships, while chairing the audit committee is equivalent to 1.5 ordinary non-executive directorships. Therefore, any guidelines adopted by the company on the number of directorships will need to include consideration of key board appointments held by directors.

Similar to the determination of independence of directors, the board should have a process for each director to disclose all listed company directorships and other “principal commitments”. This is required for the NC to be able to properly assess the ability of directors to adequately carry out their duties.

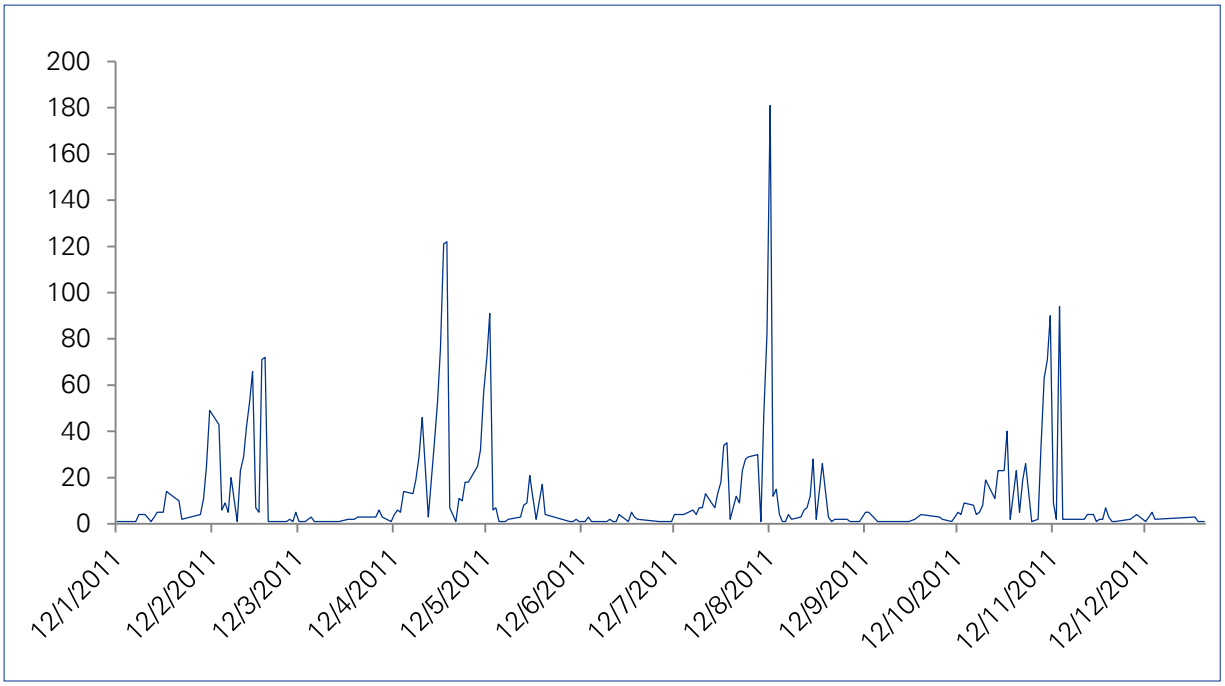
The NC needs to bear in mind that the time commitment expected may change over time. For example, if the company is facing financial difficulties, has an audit qualification, or has a major compliance breach, the board may need to become more active. Unfortunately, there have been many instances of directors resigning from the board when the company requires greater time commitment from them, during trying periods when their help is most needed.

One challenge faced by directors of SGX-listed companies who sit on multiple boards is the relatively short time period allowed for interim and annual results announcements after the end of the financial period (45 and 60 days respectively), and the relatively short time period allowed for these companies to hold their AGMs (four months). A recent study by ACCA and KPMG reported the following:[15]

- 65 percent of all SGX listed companies have a December year end;
- 63 percent of all AGMs were held in April 2011;
- 47 percent of all AGMs were held in the last five business days of April 2011;
- 73 percent of all companies report quarterly, with the other 27 percent reporting half-yearly

The result of these rules and practices is a significant clustering of announcements and AGMs, as shown in Figure 8. A director serving on multiple boards is therefore likely to face conflicting schedules in terms of audit committee meetings, board meetings and AGMs around certain times during the year. NCs and boards need to recognise that time demands on directors are not evenly spread out during the year.

Figure 8: Clustering of results announcements and AGMs in 2011



8. Undertaking Board, Committee and Director Assessments

The Singapore Code has a specific principle dealing with board performance which covers board, board committee and director assessments.

Principle 5 of the revised Code (2012) states:

There should be a formal annual assessment of the effectiveness of the Board as a whole and its board committees and the contribution by each director to the effectiveness of the Board.

Therefore, the revised Code (2012) recommends that four types of assessment be undertaken:

- assessment of effectiveness of the board as a whole
- assessment of effectiveness of board committees
- assessment of contribution of the Chairman to board effectiveness
- assessment of contribution of each individual director to board effectiveness

The revised Code (2012) has added the assessment of the effectiveness of board committees and the Chairman to the assessment of the board and individual director under the previous version of the Code.

[15] ACCA-KPMG Report, Making stakeholder communications work: Stakeholder communication study 2011/12, May 2012.

This recognises the fact that much of the board's work is undertaken by committees and therefore the effectiveness of these committees will have a fundamental bearing on board effectiveness. It also recognises the critical role played by the Chairman in ensuring an effective board.

Guideline 5.1 recommends that the NC should carry out these assessments on behalf of the board. It also recommends that the board should state in the company's annual report with regard to how the assessment of the Board, its board committees and each director has been conducted. If an external facilitator has been used, the board should disclose whether the external facilitator has any other connection with the company or any of its directors. The company should also disclose the assessment process.

Extract 9 shows the MAS guidelines for financial institutions in the areas of board, board committee and individual director assessments (evaluations).

Extract 9: Undertaking Board, Committee and Director Evaluations (MAS Guidelines)

- The NC should decide how the Board's performance may be evaluated and propose objective performance criteria. Such performance criteria, which allow for comparison with industry peers, should be approved by the Board and address how the Board has enhanced long term shareholders' value. These performance criteria should not be changed from year to year, and where circumstances deem it necessary for any of the criteria to be changed, the onus should be on the Board to justify this decision.

- In addition to any relevant performance criteria which the Board may propose, the performance evaluation should also consider the company's share price performance over a five-year period vis-à-vis the Singapore Straits Times Index and a benchmark index of its industry peers.

- Other performance criteria that may be used include return on assets ("ROA"), return on equity ("ROE"), return on investment ("ROI") and economic value added ("EVA") over a longer-term period.

- The performance criteria proposed by the NC should include other qualitative measures such as setting of strategic directions and achievement of strategic objectives, quality of risk management and adequacy of internal controls. Performance criteria should reflect the responsibility of the Board to safeguard the interests of the depositors and policyholders. If necessary, Financial Institutions should consider engaging qualified external persons to facilitate such Board evaluations.

- Individual evaluation should aim to assess whether each director continues to contribute effectively and demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The Chairman should act on the results of the performance evaluation, and where appropriate, propose new members be appointed to the Board or seek the resignation of directors, in consultation with the NC.

- When the NC is deliberating upon the performance of a particular member of the NC, that member should excuse himself/herself from the discussions to avoid conflict of interests.

Source: MAS's Guidelines on Corporate Governance 2010

Board assessment

Guideline 5.2 of the revised Code (2012) states:

"The NC should decide how the Board's performance may be evaluated and propose objective performance criteria. Such performance criteria, which allow for comparison with industry peers, should be approved by the Board and address how the Board has enhanced long-term shareholder value. These performance criteria should not be changed from year to year, and where circumstances deem it necessary for any of the criteria to be changed, the onus should be on the Board to justify this decision."

A significant change in the revised Code (2012) is that all references to specific performance criteria for the board have been removed. In the previous version of the Code, "the company's share price performance over a five-year period vis-a-vis the Singapore Straits Times Index and a benchmark index of its industry peers" was recommended specifically as a criterion in the guidelines, and additional criteria of return on assets, return on equity, return on investment and economic value added over a longer-term period were suggested in the commentary.

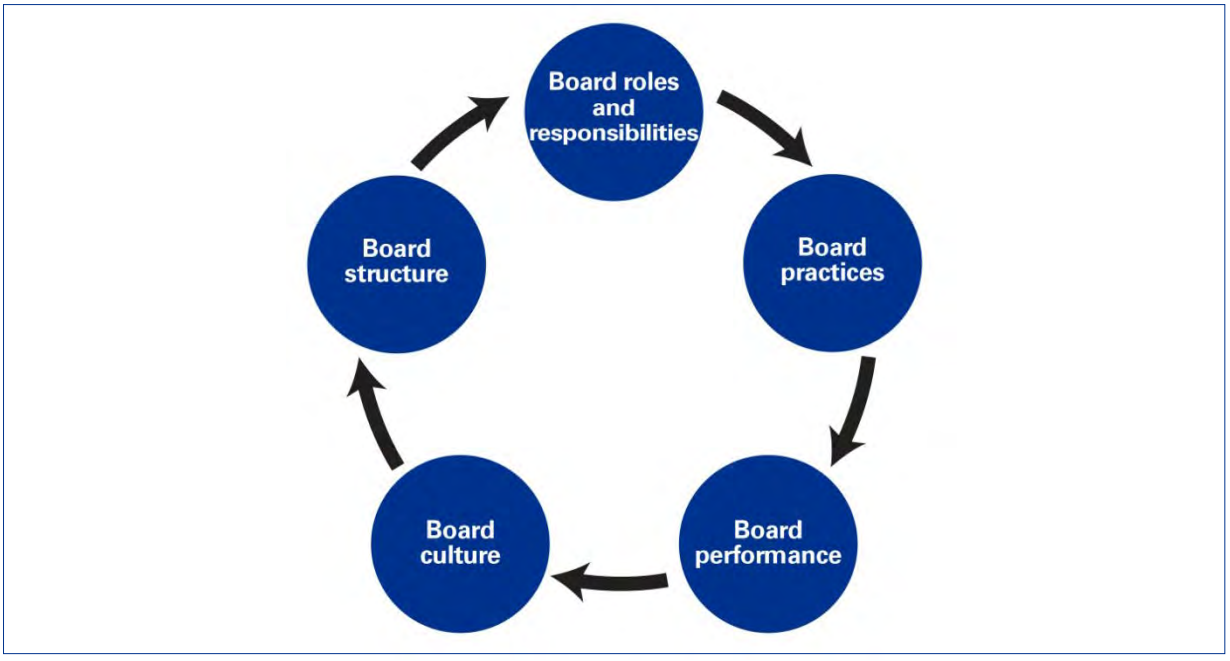
The guidelines on board assessment are now more principles-based. They also reflect the views expressed by some that the financial indicators specified in the previous Code are more appropriate for assessing management's performance than the board's performance. Removing the financial performance indicators is also consistent with the broader view of the board's role with respect to the interests of other stakeholders.

Nevertheless, the revised guideline continues to emphasise the importance of objective performance criteria and an assessment of how the board has enhanced long-term shareholder value.

In our view, there is a place for using certain financial performance indicators in assessing board performance because the board is ultimately responsible for the company's performance. Financial performance indicators are also amenable to benchmarking across companies. However, in light of the broader role of the board and the increasing emphasis on environmental, social, governance and sustainability issues, additional indicators may need to be developed and used by the board for a more holistic performance assessment. These additional indicators may include capturing risk; employee welfare, health and safety; customer satisfaction; and corporate responsibility. In addition, qualitative criteria should also be included in the board assessment.

Figure 9 shows the key areas which are typically covered in a board assessment. These areas are interrelated and affect the effectiveness of the board. The results of the board assessment should cause the board to review these areas, in turn leading to changes to improve board effectiveness.

Figure 9: Key areas which may be covered in a board assessment



In terms of the board's roles and responsibilities, an assessment will typically focus on the board's involvement in strategy and planning, performance monitoring, and clarity and understanding of the board and director responsibilities. In terms of board structure, issues such as the board independence mix of competencies and diversity can be assessed. Board culture refers to issues such as robustness and openness of board discussions, and relationships amongst board members and between the board and management. Board practices cover issues such as meeting and decision-making processes and access to information. Finally, board performance refers to the extent to which the board/company has achieved appropriate qualitative and quantitative performance indicators.

Table 29 shows that almost all companies reported that an annual assessment of the board is undertaken. Table 30, however, shows that only 11 companies, or about five percent, reported using an external party to facilitate board assessment. Of these, five companies reported using an external party annually, one company reported doing so every two years, while the remaining five companies did not disclose how often they used an external party. None of the companies disclosed the identity of the external party which facilitated the board assessment.

Based on our experience, a useful board assessment typically includes a combination of completion by individual directors of a structured questionnaire (with opportunities for directors to include additional comments) and interviews with individual directors to obtain deeper insights into perceived strengths and weaknesses of the board. An external party can be particularly useful to assist with interviews of individual directors and collation of responses. It can also improve the objectivity of the assessment and may also allow the board to benchmark itself against other boards. However, it may not be necessary for a company to use an external party for every board assessment, but only periodically when it seeks to obtain more detailed insights into areas for improvement. Of course, the use of an external facilitator for the assessment will impose additional costs on the company. The board also needs to ensure that the external party has the necessary experience to undertake the task.

Table 29: Disclosure of the frequency, process or criteria followed in conducting the board assessment

Practice	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Annual board assessment	193	97%	67	94%	126	98%
Process followed	63	32%	36	51%	27	21%
Criteria used	94	47%	19	27%	75	58%

Table 30: Use of external party to facilitate board assessment

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	11	5%	10	14%	1	1%
No	189	95%	61	86%	128	99%
Total	200	100%	71	100%	129	100%

Slightly less than one-third of the companies disclosed the process used for the board assessment and just under half disclosed the criteria used (Table 29). Table 31 indicates that slightly less than a quarter of the companies used financial criteria in the assessment of board performance.

Table 31: Use of financial criteria (such as total shareholder return and return on equity) in board assessment

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	46	23%	19	27%	27	21%
No	154	77%	52	73%	102	79%
Total	200	100%	71	100%	129	100%

Board committee assessment

The assessment of board committees can be undertaken in a similar manner to the board assessment by covering the five key areas mentioned. However, the assessment must be linked to the specific roles and responsibilities of the particular committee and the structural attributes (e.g., relevant accounting or remuneration expertise) expected of each committee. Further, performance criteria must be relevant to the particular committee.

Our research shows that only seven of our sample companies (four percent) reported undertaking an annual assessment of board committees (Table 32). This is not surprising as board committee assessment is a new recommendation in the revised Code (2012), although it has been recommended or required in countries such as the UK and US for a number of years.

Table 32: Annual assessment of the board committees

	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Yes	7	4%	2	3%	5	4%
No	193	96%	69	97%	124	96%
Total	200	100%	71	100%	129	100%

Individual director assessment

Guideline 5.3 of the revised Code (2012) recommends the following with respect to individual director assessment:

"Individual evaluation should aim to assess whether each director continues to contribute effectively and demonstrate commitment to the role (including commitment of time for meetings of the Board and board committees, and any other duties). The Chairman should act on the results of the performance evaluation, and, in consultation with the NC, propose, where appropriate, new members to be appointed to the Board or seek the resignation of directors."

Individual director assessment is often undertaken using a combination of self-appraisals and peer appraisals. Each director can be asked to assess their own performance in relation to the areas covered by Guideline 5.3, and also to assess the performance of their peers on the board.

The assessment of individual directors is understandably more sensitive than the assessment of board performance, and must therefore be handled with care and confidentiality. Otherwise, it may create friction within the board or become a meaningless ritual as each director provides positive responses to avoid offending their fellow directors.

A common practice is for the Board Chairman to be directly involved in the assessment of individual directors, rather than for the NC. The responses can be compiled on a confidential basis and used by the Chairman as the basis for discussions with individual directors. This discussion should include suggestions as to how the director can contribute more effectively to the board. In cases where a director is clearly unsuitable, the Chairman may need to discuss with the NC about the possible replacement of the director and how it should be handled.

Not surprisingly, our research indicates that fewer companies undertake an annual assessment of individual directors compared to an annual board assessment, with three-quarters of the companies in our sample reporting doing so (Table 33). Just over 16 percent of companies disclosed the process followed in conducting the individual director assessment, and just under a third disclosed the criteria.

Table 33: Annual assessment of individual directors

Practice	All		Top Tier		Remaining	
	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample	No. of Companies	Percent of Sample
Annual assessment of directors undertaken	148	74%	46	65%	102	79%
Process of assessing directors disclosed	31	16%	5	7%	26	20%
Criteria used in assessing directors disclosed	64	32%	17	24%	47	36%

Chairman assessment

Clearly, the most difficult form of assessment to undertake is the assessment of the effectiveness of the Chairman. The revised Code does not suggest how this can be undertaken.

The UK Corporate Governance Code[16] (2010) includes useful guidance in this regard. Code provision A4.2 recommends the following:

"Led by the senior independent director, the non-executive directors should meet without the Chairman present at least annually to appraise the chairman's performance and on such other occasions as are deemed appropriate."

The assessment of the Chairman can be done less formally, without the use of a questionnaire. However, it is important that any dissatisfaction with the Chairman's performance be clearly documented, especially if the non-executive directors feel that a replacement of the Chairman is warranted.

Our research indicates that only two of the 200 companies in our sample reported undertaking an annual performance assessment of the board chairman.

[16] http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf

E. Reporting by the Nominating Committee

The revised Code (2012) includes a list of items which principles and guidelines in the Code expressly recommend disclosure in the company's annual report. The list includes items which are specifically related to the responsibilities of the NC, and they are reproduced below:

Extract 10: List of NC-related matters to be disclosed in the annual report

No.	Reference in the Code	Reference in the Code
1	Any delegation of authority by the Board to the NC, to make decisions on certain board matters	Guideline 1.3
2	The number of meetings of the NC committees held in the year, as well as the attendance of every member at these meetings	Guideline 1.4
3	The induction, orientation and training provided to new and existing directors	Guideline 1.6
4	Identification of each director who is considered to be independent. Where the Board considers a director to be independent in spite of the existence of a relationship as stated in the Code that would otherwise deem a director not to be independent, the nature of the director's relationship and the reasons for considering him as independent	Guideline 2.3
5	Where the Board considers an independent director, who has served on the Board for more than nine years from the date of his first appointment, to be independent, the reasons for considering him as independent.	Guideline 2.4
6	Names of the members of the NC and the key terms of reference of the NC, explaining its role and the authority delegated to it by the Board	Guideline 4.1
7	The maximum number of listed company board representations which directors may hold	Guideline 4.4
8	Process for the selection, appointment and re-appointment of new directors to the Board, including the search and nomination process	Guideline 4.6
9	Key information regarding directors, including which directors are executive, non-executive or considered by the NC to be independent	Guideline 4.7
10	How assessment of the Board, its board committees and each director has been conducted. If an external facilitator has been used, the Board should disclose whether the external facilitator has any other connection with the company or any of its directors. This assessment process should be disclosed.	Guideline 5.1

The NC should ensure that the minimum disclosures above are made in the annual report. These disclosures can be made as part of the corporate governance section.

Some companies include separate sections within the corporate governance section covering the activities of each of the committees. In addition to the minimum disclosures above, NCs may wish to consider disclosing more information on the following responsibilities of the NC:

- how the NC reviewed the size, structure and composition of the board to ensure that they are appropriate
- whether succession planning for the Chairman, CEO and other directors is undertaken and, if so, how it is done
- the process and criteria used in determining the independence of directors
- the process and criteria used in assessing whether directors are able to commit enough time for discharging their responsibilities
- how the NC reviews the induction and training needs of directors
- whether external advisers are used and who they are
- how the NC assesses the mix of competencies, skills and diversity and gaps in these attributes

Some companies are providing additional disclosures, especially those that generally remain unchanged over short periods of time, on their websites in a separate corporate governance section.

To assist the NC to provide a comprehensive report which accurately reflects the key activities undertaken by the NC during the past year, the NC can task the committee secretary (who is usually the company secretary) to go through the minutes of the NC meetings and summarise the key activities and decisions.

For example, the Governance Committee in ANZ Bank in Australia, which is the name used for the NC, included the following disclosures in relation to its activities in the 2010 annual report:

Extract 11: ANZ Governance Committee's reporting of key areas of work in the 2010 Annual Report

Substantive areas of focus in the 2010 financial year included:

- Succession Planning – two long serving Directors retired during the financial year, and a new Chairman was appointed. Mr Morschel was appointed to succeed Mr Goode as Chairman upon Mr Goode's retirement in February 2010 following 19 years service as a Director and 15 years service as Chairman. In addition, Mr Ellis retired at the 2009 AGM after 15 years service as a Director. All current non-executive Directors are subject to the Director tenure policy which limits the period of service to a maximum of three 3 year terms after election by shareholders;

- Board governance framework – the Committee conducted its annual review of the Board's governance framework and principles including in relation to Board composition and size, Director tenure, outside commitments, Board and Committee education, nomination procedures and Director independence criteria;

- Board and Committee performance evaluations – the Committee reviewed the major themes arising from the annual Board performance review process, and considered whether any aspects of the Board's oversight framework could be strengthened. The Committee also received annual performance self-assessment reports from each of the other principal Board Committees; and

- Review and approval of Group policies – the Committee reviewed and, where appropriate, approved amendments to existing Group policies including the Continuous Disclosure Policy, Global Employee Securities Trading and Conflict of Interest Policy, Board Renewal and Performance Evaluation Policy, Fit & Proper Policy, Director independence criteria and assessment process, Shareholder Charter, Employee Code of Conduct and Ethics, and Policy on Provision of Banking Facilities to Directors and Senior Officers.

Source: ANZ Annual report 2010

For financial institutions in Singapore, MAS Regulations and Guidelines include specific disclosure requirements relating to the NC and these are shown in Extract 12:

Extract 12: Disclosure Requirements on NCs for Financial Institutions in Singapore under MAS Regulations and Guidelines

- Disclose membership in annual report, as well as number of NC meetings held each year and the attendance of each NC member. This includes disclosing any deviations from internal guidelines concerning the time commitments (and the explanation for the deviation).
- Disclose annually the number of directors which are executive, non-executive or independent
- Disclose annually key information regarding directors, such as academic qualifications, shareholding in the company and its subsidiaries, board committees served on (as a member or Chairman), date of first appointment as director, date of last re-election as a director, directorships or chairmanships both present and in the last three years of listed companies.
- Disclose the type of continuous professional development programme established for directors and how the programme incorporates the type of skills which the NC assesses the Board or Board Committee should have in order to perform their role effectively.
- Disclose the assessment process to determine an individual's effectiveness on the Board.
- Disclose the names of directors submitted for election or re-election to enable shareholders to make informed decisions.
- Disclose the process for selection and appointment of new directors to the Board, including disclosure on the search and nomination process.
- Disclose the written terms of reference that describes the responsibilities of the NC.

Source: MAS's Guidelines on Corporate Governance 2010 and Banking (Corporate Governance) (Amendment) Regulations 2010

F. Wrap Up and Looking Ahead

The importance of the NC to corporate governance is increasingly recognised because this committee plays the key role in ensuring that appropriate directors are appointed to the board. This will in turn significantly determine the quality of corporate governance in the company. The NC also undertakes many critical corporate governance tasks, such as those relating to the induction and professional development of directors, assessing the skills, competencies and diversity on the board and gaps in these attributes, determining the independence and commitment of directors, and undertaking board-related assessments.

Corporate governance scandals and recent financial crises have highlighted the deficiencies of many boards, and stakeholders expect considerable improvement in the makeup of boards and their effectiveness. The NC has a very important role to play in addressing such concerns, and therefore, must raise their game considerably. Stakeholders also expect increasing transparency relating to key activities and processes relating to the work of the board and its committees. Hence, more information needs to be disclosed. Regulators, especially of financial institutions, will focus more attention on whether the NC decisions are properly deliberated and documented, and are likely to scrutinise minutes of such deliberations

In some cases, additional responsibilities have also been imposed on the NC. To help the board improve governance, the NC will need to go beyond checking off the boxes for its responsibilities and make sure that their responsibilities are properly discharged.

In light of these developments, the days of NCs meeting infrequently are over. NCs will need to meet more regularly. We expect three to four meetings a year to become more of the norm for NCs. As a result, fees for chairing and for serving on NCs are likely to increase.

Looking ahead, we expect that the independence and competence of boards will continue to be questioned by shareholders and regulators. Boards and NCs will have to address the need to incorporate additional skills and experience, international directors, and greater diversity. There will be continuing emphasis on professional development of directors and greater impetus towards the establishment of directorship as a profession.

Appendices

Appendix 1: Sample Board Skills Matrix

Directors		Knowledge, Skills, and Experience Indicate where knowledge, skills, and/or experience is present for each director																				
Name	Status (ED, ID, NED)	Business/Management	Industry - Direct	Industry - Related	Relevant Overseas Markets	Strategic Planning	Risk Management	Legal – Corporate Finance	Legal - General	Accounting - Auditing	Accounting - Other	Finance - Corporate Finance	Finance - Other	Information Technology	Executive Compensation	Human Resource Management	Corporate Governance & Ethics	Customers	Other: _____	Other: _____	Other: _____	Other: _____

Note: It is recommended that the board first determines the knowledge, skills and experience that it needs in light of the company's business and strategies, including for example, major international markets the company operates in. It can then complete a similar matrix based on the current knowledge, skills and experience of board members. Comparing the two can then provide the board with a good understanding of current gaps in knowledge, skills and experience.

Appendix 2: Template for announcement of appointment of director (reproduced from Appendix 7.4.1 in Mainboard Rules)

Date of Appointment

Name of person

Age

Country of principal residence

The Board's comments on this appointment (including rationale, selection criteria, and the search and nomination process)

Whether appointment is executive, and if so, the area of responsibility

Job Title (e.g. Lead ID, AC Chairman, AC Member etc.)

Working experience and occupation(s) during the past 10 years

Shareholding interest in the listed issuer and its subsidiaries

Familial relationship with any director and/or substantial shareholder of the listed issuer or of any of its principal subsidiaries

Conflict of interest (including any competing business)

Other Directorships

Past (for the last five years)

Present

Information required

Disclose the following matters concerning an appointment of director, chief executive officer, chief financial officer, chief operating officer, general manager or other officer of equivalent rank. If the answer to any question is "yes", full details must be given.

(a)	Whether at any time during the last 10 years, an application or a petition under any bankruptcy law of any jurisdiction was filed against him or against a partnership of which he was a partner at the time when he was a partner or at any time within two years from the date he ceased to be a partner?	Yes	No
(b)	Whether at any time during the last 10 years, an application or a petition under any law of any jurisdiction was filed against an entity (not being a partnership) of which he was a director or an equivalent person or a key executive, at the time when he was a director or an equivalent person or a key executive of that entity or at any time within two years from the date he ceased to be a director or an equivalent person or a key executive of that entity, for the winding up or dissolution of that entity or, where that entity is the trustee of a business trust, that business trust, on the ground of insolvency?	Yes	No
(c)	Whether there is any unsatisfied judgment against him?	Yes	No
(d)	Whether he has ever been convicted of any offence, in Singapore or elsewhere, involving fraud or dishonesty which is punishable with imprisonment, or has been		

	the subject of any criminal proceedings (including any pending criminal proceedings of which he is aware) for such purpose?	Yes	No
(e)	Whether he has ever been convicted of any offence, in Singapore or elsewhere, involving a breach of any law or regulatory requirement that relates to the securities or futures industry in Singapore or elsewhere, or has been the subject of any criminal proceedings (including any pending criminal proceedings of which he is aware) for such breach?	Yes	No
(f)	Whether at any time during the last 10 years, judgment has been entered against him in any civil proceedings in Singapore or elsewhere involving a breach of any law or regulatory requirement that relates to the securities or futures industry in Singapore or elsewhere, or a finding of fraud, misrepresentation or dishonesty on his part, or he has been the subject of any civil proceedings (including any pending civil proceedings of which he is aware) involving an allegation of fraud, misrepresentation or dishonesty on his part?	Yes	No
(g)	Whether he has ever been convicted in Singapore or elsewhere of any offence in connection with the formation or management of any entity or business trust?	Yes	No
(h)	Whether he has ever been disqualified from acting as a director or an equivalent person of any entity (including the trustee of a business trust), or from taking part directly or indirectly in the management of any entity or business trust?	Yes	No
(i)	Whether he has ever been the subject of any order, judgment or ruling of any court, tribunal or governmental body, permanently or temporarily enjoining him from engaging in any type of business practice or activity?	Yes	No
(j)	Whether he has ever, to his knowledge, been concerned with the management or conduct, in Singapore or elsewhere, of the affairs of :—		
	(1) any corporation which has been investigated for a breach of any law or regulatory requirement governing corporations in Singapore or elsewhere; or	Yes	No
	(2) any entity (not being a corporation) which has been investigated for a breach of any law or regulatory requirement governing such entities in Singapore or elsewhere; or	Yes	No
	(3) any business trust which has been investigated for a breach of any law or regulatory requirement governing business trusts in Singapore or elsewhere; or	Yes	No
	(4) any entity or business trust which has been investigated for a breach of any law or regulatory requirement that relates to the securities or futures industry in Singapore or elsewhere, in connection with any matter occurring or arising during that period when he was so concerned with the entity or business trust?	Yes	No
(k)	Whether he has been the subject of any current or past investigation or disciplinary proceedings, or has been reprimanded or issued any warning, by the Monetary Authority of Singapore or any other regulatory authority, exchange, professional body or government agency, whether in Singapore or elsewhere?	Yes	No

Information required

Disclosure applicable to the appointment of Director only.

Any prior experience as a director of a listed company?	Yes	No

If yes, please provide details of prior experience.

If no, please provide details of any training undertaken in the roles and responsibilities of a director of a listed company.

Amended on 29 September 2011.

Appendix 3: Template for announcement of cessation of director (reproduced from Appendix 7.4.2 in Mainboard Rules)

Cross-referenced from Rule 704(7)

Name of person		
Age		
Is Effective Date of Cessation known?	Yes	No
If yes, please provide the date.		
If no, please advise when the date will be announced.		
Detailed Reason(s) for cessation		
Are there any unresolved differences in opinion on material matters between the person and the board of directors including matters which would have a material impact on the group or its financial reporting?	Yes	No
If yes, please elaborate.		
Is there any matter in relation to the cessation that needs to be brought to the attention of the shareholders of the listed issuer?	Yes	No
If yes, please elaborate.		
Any other relevant information to be provided to shareholders of the listed issuer? If yes, please elaborate.		
Date of appointment to current position		
Job Title (e.g. Lead ID, AC Chairman, AC Member etc.)		
Role and responsibilities		
Does the AC have a minimum of three members (taking into account this cessation)?	Yes	No
Number of Independent Directors currently resident in Singapore (taking into account this cessation).		
Number of cessations of appointments specified in Listing Rule 704(7) over the past 12 months		
Shareholding interest in the listed issuer and its subsidiaries		
Familial relationship with any director and/or substantial shareholder of the listed issuer or of any of its principal subsidiaries		
Other Directorships Past (for the last five years) Present		

Amended on 29 September 2011.

Appendix 4: Guidelines on Independent Directors in the Revised Code (2012) of Corporate Governance

Principle:

2 There should be a strong and independent element on the Board, which is able to exercise objective judgement on corporate affairs independently, in particular, from Management and 10 percent shareholders[1]. No individual or small group of individuals should be allowed to dominate the Board's decision making.

Guidelines:

2.1 There should be a strong and independent element on the Board, with independent directors making up at least one-third of the Board.

2.2 The independent directors should make up at least half of the Board where:

(a) the Chairman of the Board (the "**Chairman**") and the chief executive officer (or equivalent) (the "**CEO**") is the same person;

(b) the Chairman and the CEO are immediate family[2] members;

(c) the Chairman is part of the management team; or

(d) the Chairman is not an independent director.

2.3 An "independent" director is one who has no relationship with the company, its related corporations[3], its 10 percent shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement with a view to the best interests of the company. The Board should identify in the company's Annual Report each director it considers to be independent. The Board should determine, taking into account the views of the Nominating Committee ("**NC**"), whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. Directors should disclose to the Board any such relationship as and when it arises. The Board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including the following:

(a) a director being employed by the company or any of its related corporations for the current or any of the past three financial years;

(b) a director who has an immediate family member who is, or has been in any of the past three financial years, employed by the company or any of its related corporations and whose remuneration is determined by the remuneration committee;

(c) a director, or an immediate family member, accepting any significant compensation from the company or any of its related corporations for the provision of services, for the current or immediate past financial year, other than compensation for board service;

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[1] The term "**10 percent shareholder**" shall refer to a person who has an interest or interests in one or more voting shares in the company and the total votes attached to that share, or those shares, is not less than 10 percent of the total votes attached to all the voting shares in the company. "Voting shares" exclude treasury shares.

[2] The term "**immediate family**" shall have the same meaning as currently defined in the Listing Manual of the Singapore Exchange (the "Listing Manual"), i.e. the person's spouse, child, adopted child, step-child, brother, sister and parent.

[3] The term "**related corporation**", in relation to the company, shall have the same meaning as currently defined in the Companies Act, i.e. a corporation that is the company's holding company, subsidiary or fellow subsidiary.

(d) a director:

(i) who, in the current or immediate past financial year, is or was; or

(ii) whose immediate family member, in the current or immediate past financial year, is or was, a 10 percent shareholder of, or a partner in (with 10 percent or more stake), or an executive officer of, or a director of, any organisation to which the company or any of its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments or material services (which may include auditing, banking, consulting and legal services), in the current or immediate past financial year. As a guide, payments[4] aggregated over any financial year in excess of S$200,000 should generally be deemed significant;

(e) a director who is a 10 percent shareholder or an immediate family member of a 10 percent shareholder of the company; or

(f) a director who is or has been directly associated with[5] a 10 percent shareholder of the company, in the current or immediate past financial year.

The relationships set out above are not intended to be exhaustive, and are examples of situations which would deem a director to be not independent. If the Board wishes, in spite of the existence of one or more of these relationships to consider the director as independent, it should disclose in full the nature of the director's relationship and bear responsibility for explaining why he should be considered independent.

2.4 The independence of any director who has served on the Board beyond nine years from the date of his first appointment should be subject to particularly rigorous review. In doing so, the Board should also take into account the need for progressive refreshing of the Board. The Board should also explain why any such director should be considered independent.

2.5 The Board should examine its size and, with a view to determining the impact of the number upon effectiveness, decide on what it considers an appropriate size for the Board, which facilitates effective decision making. The Board should take into account the scope and nature of the operations of the company, the requirements of the business and the need to avoid undue disruptions from changes to the composition of the Board and board committees. The Board should not be so large as to be unwieldy.

2.6 The Board and its board committees should comprise directors who as a group provide an appropriate balance and diversity of skills, experience, gender and knowledge of the company. They should also provide core competencies such as accounting or finance, business or management experience, industry knowledge, strategic planning experience and customer-based experience or knowledge.

2.7 Non-executive directors should:

(a) constructively challenge and help develop proposals on strategy; and

(b) review the performance of Management in meeting agreed goals and objectives and monitor the reporting of performance.

2.8 To facilitate a more effective check on Management, non-executive directors are encouraged to meet regularly without the presence of Management.

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[4] Payments for transactions involving standard services with published rates or routine and retail transactions and relationships (for instance credit card or bank or brokerage or mortgage or insurance accounts or transactions) will not be taken into account, unless special or favourable treatment is accorded.

[5] A director will be considered "directly associated" with a 10 percent shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the 10 percent shareholder in relation to the corporate affairs of the corporation. A director will not be considered "directly associated" with a 10 percent shareholder by reason only of his or her appointment having been proposed by that 10 percent shareholder.

Appendix 5: Sample Declaration of Independence Form

XYZ LIMITED

DECLARATION OF INDEPENDENCE
(Based on Guideline 2.3 of Revised Code of Corporate Governance, 2012)

Answer the following questions to the best of your knowledge and provide additional details if necessary:

No.	Question	If No, Tick Here	If Yes, Provide Details Where Appropriate
1	Are you employed or have you been employed by the company or any of its related corporations[1a] for the current or any of the past three financial years?		
2	Do you have an immediate family member[1b] who is, or has been in any of the past three financial years, employed by the company or any of its related corporations as a senior executive officer whose remuneration is determined by the remuneration committee?		
3	Are you, or an immediate family member, accepting any compensation from the company or any of its related corporations other than compensation for board service for the current or immediate past financial year?		
4	Are you or were you, or your immediate family member, in the current or any of the past three financial years, a 10 percent shareholder of, or a partner in (with 10 percent or more stake), or an executive officer of, or a director of any organisation to which the company or any of its related corporations made, or from which the company or any of its related corporations received, significant payments or material services (including but not limited to auditing, banking, consulting and legal services) in the current or immediate past financial year?[1c] As a guide, payments aggregated over any financial year in excess of S$200,000 are to be deemed significant.		
5	Are you a 10 percent shareholder[1d] or an immediate family member of a 10 percent shareholder of the company?		
6	Are you, or have you been, directly associated with a 10 percent shareholder[1e] of the company, in the current or any of the past three financial years?		
7	Have you served on the board for more than nine years from the date of your first election?[2]		

8	Do you have any other business or other relationship with the Company or its related corporations or with any of its officers, or with a 10 percent shareholder of the Company or its related corporations?		
9	Do you consider yourself to be an independent director?		

Notes:

1) Under the Code:
   a) A "related corporation" means a corporation that is the company's holding company, subsidiary or fellow subsidiary.
   b) The term "immediate family" means the person's spouse, child, adopted child, step-child, brother, sister and parent.
   c) Payments for transactions involving standard services with published rates or routine and retail transactions and relationships (for instance credit card or bank or brokerage or mortgage or insurance accounts or transactions) will not be taken into account, unless special or favourable treatment is accorded.
   d) The term "10 percent shareholder" refers to a person who has an interest in one or more voting shares in the company and the total votes attached to that share, or those shares, is not less than 10 percent of the total votes attached to all the voting shares in the company. Voting shares exclude treasury shares.
   e) A director will be considered "directly associated" to a substantial shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder. A director will not be considered "directly associated" to a substantial shareholder by reason only of his or her appointment having been proposed by that substantial shareholder.

2) Although the revised Code (2012) does not include a term limit as a factor which may deem a director to be non-independent, it recommends that the independence of any director who has served more than nine years should be "subject to particularly rigorous review".

Name of director: _____

Signature: _____

Date: _____

Appendix 6: Role of NC requires greater attention

Business Times - 22 Jul 2011

Role of NC requires greater attention

The NC should not be just a shadow board committee that is merely a rearrangement of audit committee members, says IRVING LOW

THERE has been much discussion within the local corporate governance community about independent directors. Some of the issues often discussed include the qualifications and skills set of independent directors, the limit of their tenure, the number of company directorships held, and the effectiveness and performance evaluation of these independent directors.

All these discussions point to one important root question: Who selects and assesses the performance of these independent directors to the board? Without a doubt, the above roles and responsibilities reside with the nominating committee (NC).

However, the importance accorded and the attention given to this board committee seems to have fallen off the radar. This is even so in light of the recent proposed changes to the Code of Corporate Governance where little, if any, mention was made in relation to the importance of the NC.

A common misconception among stakeholders, and indeed often among NC members themselves, is that the NC only 'nominates', and does little else. Indeed, as is often the case, not only do NCs not formally assess their board members, they do not assess the training needs of the independent directors either.

But the actual role of the NC should extend way beyond just nominating board members. They should also assess the performance of their individual and board committees. The NC should also play a part in determining the independence of independent directors, as well as look after the training for directors.

In a recent case reported in Australia, the directors of Centro Properties were made liable and responsible for a failure in oversight. A key defence of the independent directors was the complexity of the organisation and its business. They asserted that it was impossible for them to know all the details.

In this case, the courts held that the directors were responsible for ensuring that appropriate measures should be undertaken to recognise the risks involved in the business. The directors were also held accountable for not taking other required action, such as seeking third-party assistance in the discharge of their responsibilities.

Let us take an external perspective and look at the issues cited in this case, which are similar to many other cases. Where independent directors lack the relevant skills, it becomes clear that the responsibility to assess the suitability and performance of each individual board member resides with the NC.

This being the case, it would suggest that the NC should be more important than, say, the audit committee since the NC also selects the members of the AC.

Compounding this issue in Singapore and elsewhere is the composition of the NC, AC and RC (remuneration committee). These three committees often consist of all the same members, with each person taking the chairmanship of the respective committees.

Then, how effectively and independently can these committees function?

One suggestion is that perhaps in a similar fashion to the Audit Committee Guidance Committee (ACGC) guidelines issued by the Monetary Authority of Singapore (MAS), Singapore Exchange (SGX) and the Accounting and Corporate Regulatory Authority (ACRA), the regulators should consider similar guidance notes for the NC.

The upcoming proposed revisions to the code suggest many good changes to redefine the independence of independent directors. However, what is still missing is a heightened awareness of the role and importance of the NC.

The NC should not be just a shadow board committee that is merely a rearrangement of members from the AC, which is like playing musical chairs. Instead, there needs to be more emphasis on the role of the NC and more substance in practice of what goes into NC meeting agendas.

It is not enough to make recommendations to address the symptoms and consequences resulting from poor quality and poor behaviour by some independent directors on a company board. Rather, the root issues need to be highlighted and addressed as well. This would be a positive and proactive move in strengthening the importance of the NC's role as a gatekeeper.

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