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Board Independence: Best Practice for Asia

(from Higgs Review and subsequent critiques)

Definition of Independence

- Independent in character and judgement with no relationships or circumstances which could affect, or appear to affect, the director's judgement.
- Cannot:
 - "represent" a significant shareholder
 - be a former employee of the company or group until five years after employment
 - have had, within the last 3 years, a material business relationship with the company
 - have received, or receives, additional remuneration (including shares/options/pension) from the company apart from a director's fee
 - have close family ties with any of the company's, Directors or advertisers
 - have cross-directorships or significant links with other directors through involvement in other companies or bodies

Chairman

- At the time of appointment the Chairman should meet the test of *independence*
- The roles of **Chairman** and **CEO** should be separated and the division of responsibilities set out in writing and agreed by the board.
- No individual should chair the board of more than one major company
- The Chairman should address the developmental needs of the board as a whole with a view to enhancing its effectiveness. Appropriate resources should be provided.

CEO

- A **CEO** or full time exec-director should not go on to become Chairman of major company.

Executive Directors (EDs)

- There should also be a strong executive representation on the board.
- A full time executive director should have max one non-executive directorship.
- Companies should provide appropriate directors' and officers' insurance
- Companies should supply details of their insurance cover to potential NEDs

Non Exec Directors (NEDs)

- On appointment NEDs should receive a letter setting out what is expected of them.
- A comprehensive induction program should be provided to new NEDs including meeting with major investors
- NEDs should undertake that they will have sufficient time to meet what is expected of them, taking into account their other commitments.
- NEDs should normally serve 2 x 3-year terms
- Longer terms can be appropriate in exceptional circumstances but should be no more than 10 years
- NEDs should meet annually without the Chairman or executive directors present



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- The Annual Report should include a statement on whether such meetings have occurred.
- If a NED is offered an appointment elsewhere, the Chairman should be informed before any new appointment is accepted.
- Resignation - Where NEDs have concerns about the way in which a company is being run or about a course of action proposed by the board, these should be raised with the Chairman and their fellow directors. NEDs should ensure their concerns are recorded in the minutes of the board meetings if they cannot be resolved. On resignation, a NED should inform the Chairman in writing, for circulation to the board, of the reasons for resignation.
- The remuneration of NEDs should be sufficient to attract and fairly compensate high quality individuals. Can be paid partially in shares but not options. It may comprise
 - annual fee
 - meeting attendance fee
 - fee for the Chairmanship of committees.

Independent Non Exec Directors (INEDs)

- Min 50% Board Members (ex-Chairman) should be INEDs
- A **Senior INED** should be identified who meets the test of independence. He/she should be available to shareholders, if they have concerns that have not been resolved through the normal channels of contact with the Chairman or chief executive.
- This **Senior INED** should attend sufficient of the regular management meetings with a range of major shareholders to develop a balanced understanding of the themes, issues and concerns of shareholders. He/she should communicate these views to the non-executive directors and, as appropriate, to the board as a whole.

Committees

- There should be separate Committees for audit, nomination and remuneration
- No one NED should sit on all three board committees
- Nomination committee (majority NEDs) conducts the process for board appointments and makes recommendations to the board. It may include the Chairman of the board, but should be chaired by an INED.
- The nomination committee should annually review the time required of non-executive directors.
- Remuneration committee should set the level and structure of compensation for senior executives and be responsible for appointing remuneration consultants.

Performance Evaluation

- The performance of the board, its committees and its individual members, should be evaluated at least once a year.
- The performance evaluation should assess whether non-executive directors are devoting enough time to fulfil their duties.

Company Secretary

- should report to the board as a whole, through the Chairman
- appointment and the removal of the Company Secretary should be a Board matter



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- responsibilities should include facilitating induction and professional development, ensuring good information flows within the board, its committees and between non-executive directors and senior management
- should act as a conduit for contact between major shareholders and NEDs
- should also be secretary to all board committees
- should not be the CFO/Finance Director

Desirable Governance Statements in the Annual Report

- Number of meetings of the board and of its main committees
- Attendance of individual directors
- Description of how the board operates and levels of delegation to management
- Whether performance reviews are taking place and how they are conducted
- Board rationale for an individual being appointed as a NED
- What steps have been taken to ensure that Board Members, especially NEDs, develop a balanced understanding of the views of major investors
- Composition, terms of reference, and activities of the nomination committee and the process used for appointments
- a description of the role and activities of the audit committee
- the NEDs considered to be independent and state the reasons why any director is considered to be independent despite the existence of relationships or circumstances which may appear relevant