

MIoD

Mauritius Institute of Directors

Promoting Corporate Governance across the board

DIRECTORS FORUM

BEST PRACTICE GUIDELINES FOR THE APPOINTMENT OF DIRECTORS

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1. INTRODUCTION

1.1 The Board is responsible for the long-term success of a company and its first responsibility is to provide direction and leadership within a framework of prudent and effective controls. The purpose of this paper is to promote best practice through practical guidelines for the selection and nomination of directors in order to ensure that the Board consists of members with diverse skills and competencies, whilst ensuring a formal and transparent process for shareholders to recommend potential candidates.

1.2 The purpose of this paper is not to reiterate the Code of Corporate Governance (the "Code"), but rather to complement the Code and facilitate its application.

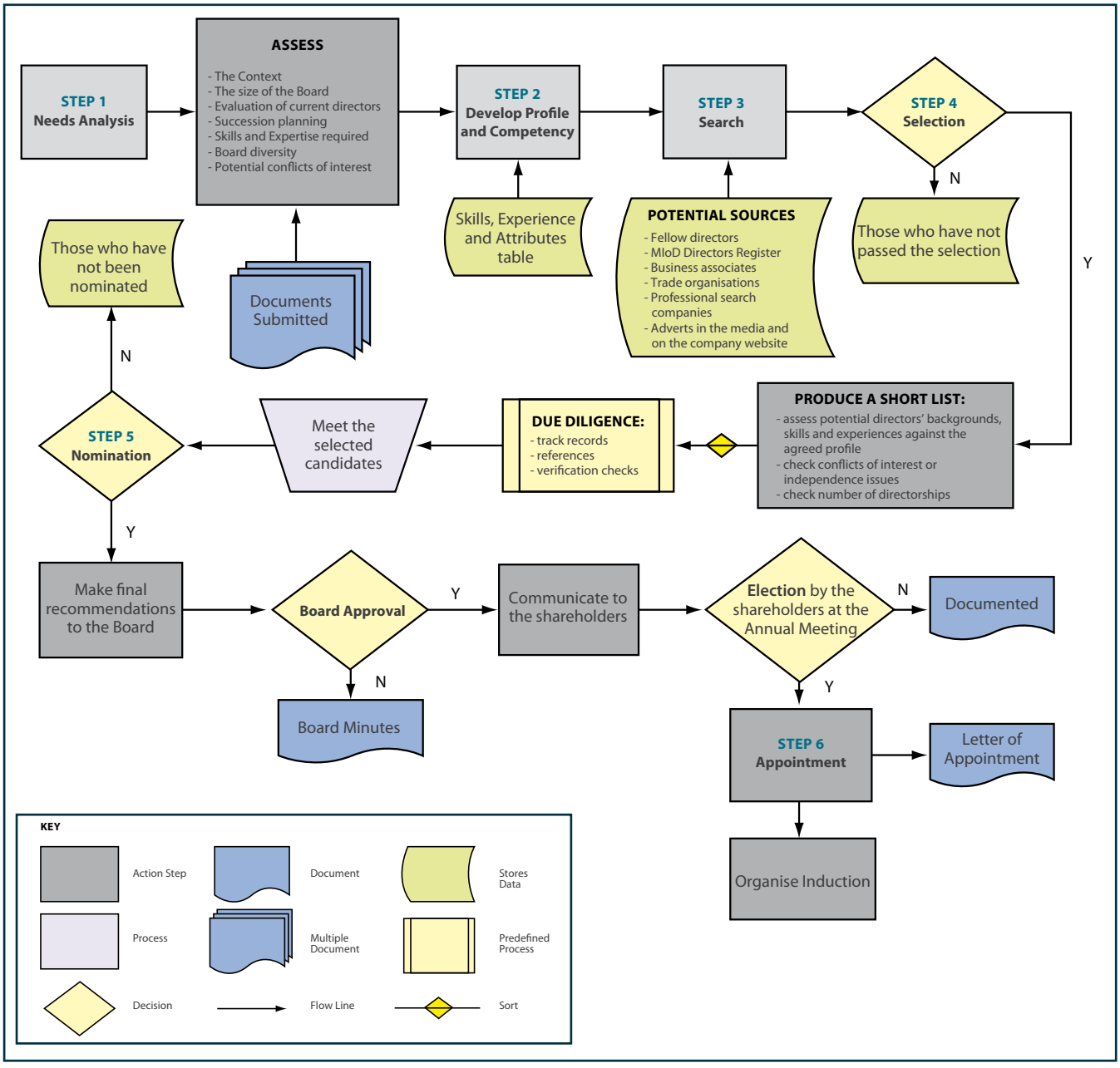
1.3 There is no one-size-fits-all approach and each company must determine the process that suits its size and needs. All companies can apply these guidelines.

1.4 These Best Practice Guidelines (the "Guidelines") should facilitate understanding of the roles of:
- Independent Directors;
- Non-Executive Directors; and
- Directors appointed by way of Recommendation.

1.5 The Guidelines are organised in 6 essential steps for the appointment of directors:
- Needs analysis
- Profile
- Search
- Selection
- Nomination
- Appointment

1.6 A special resource pack designed to assist with the practical implementation of these Guidelines can be downloaded from the MIoD website (www.miod.mu).

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Transparency and Disclosure

A formal and transparent selection and nomination process is critical to gain the confidence and trust of all stakeholders, improve the understanding and efficiency of the processes in practice, and essential to improving Board effectiveness.

In particular, four important aspects should be disclosed: Ownership Structures, adequate information on the Nominated Candidates, the Nomination Process and finally the Elections' Results.

Companies are encouraged to provide greater transparency of the processes which the Board adopts in searching for and selecting new directors for the Board and to report to shareholders on the processes. Such reporting should include the following:

- **details as to whether the company develops a board skills matrix or profile and uses this to identify any 'gaps' in the skills and experience of the directors on the Board;**
- **the process by which candidates are identified and selected including whether professional intermediaries are used to identify and/or assess candidates;**
- **the steps taken to ensure that a diverse range of candidates is considered;**
- **the factors taken into account in the selection and nomination processes; and**
- **adequate information on the candidates including full background and relevant experience; and why the Board believes they are suitable candidates.**

The timing of information is important as it should be disclosed prior to the Shareholders' Meeting, preferably with the Notice of the Shareholders' Meeting, giving the shareholders enough time to review the abilities and suitability of candidates. If, between Shareholders' Meetings, a director has been appointed by the Board to fill a casual vacancy, the shareholders should be advised immediately, with full details of the process of selection.

Apart from sending the maximum information with the Notice of the Shareholders' Meeting, companies can also use their websites for full information and disclosure as well as full disclosure in the company's Annual Report.

2. NEEDS ANALYSIS

2.1 The Context

The starting point for a Board in the recruitment of new directors is a review of the company's strategy and business. For example, a company looking to expand into new sectors may want someone with experience in mergers and acquisitions. It is important to review the context for each new appointment as strategy changes.

2.2 Size of the Board

2.2.1 The company's constitution normally sets out the size of the Board. The number of Board members depends on the size and complexity of the organisation, the type of business, industry and the operating environment.

2.2.2 Too few or too many directors may pose problems for effective decision making. A Board with too few members may not allow the company to benefit from an appropriate mix of skills and experience. A larger Board, on the other hand, is typically more difficult to manage. It can make consensus-building both time consuming and difficult, with a tendency to form cliques and core groups and there is a danger of loss of individual accountability.

2.2.3 The following factors should be taken into consideration:

- ensuring productive and constructive discussions with different perspectives;
- size of the quorum for making prompt decisions;
- enough members to easily manage the work load of the Board;
- the effective composition of Board committees composed primarily of and chaired by independent directors;
- engaging all Board members in a meaningful activity so they remain motivated and involved;
- the need for a separate Chairman and CEO;
- at least 2 executives on the Board;
- at least 2 independent directors. Ideally one third of the Board should be composed of independent directors;
- the right balance between executive and non-executive directors and independent directors so that no individual or small group of individuals can dominate decision making; and
- the appropriate mix of skills or specific experience required.

2.3 Conflicts of Interest

2.3.1 When selecting directors, the Board should be conscious of shareholder and public perceptions and seek to avoid situations where there might be a perceived or real conflict of interest. Candidates who have conflicting interests to the company should not be short listed.

2.4 Diversity

2.4.1 Numerous studies show that diversity in Board demographics provides companies with competitive advantage. Diversity should be factored into the equation when considering the selection and nomination of a new director.

2.4.2 While many directors feel that collegiality might contribute to a more collaborative working environment, it can also be an obstacle to increasing diversity and its attendant strengths. These strengths include bringing widely varied perspectives and experiences to complex issues of strategy and performance monitoring and the greater likelihood of the Board addressing the broad social impact of many business decisions. Selection should be made on merit against objective criteria, while taking into consideration age, gender and alternative backgrounds.

2.4.3 When diversity has not typically been a feature of a Board, it is now best practice to:

- establish diversity policies;
- report annually on diversity policies; and
- require diversity to be considered when evaluating Board effectiveness.

2.5 Skills and Expertise

2.5.1 An effective Board has a balance of well-chosen, competent directors who, with the Chairman's leadership and guidance, form a cohesive group to shape the company's destiny, safeguard its interests, and ensure its profitable performance.

2.5.2 The skills and expertise that may be valuable to a company can be varied and will likely depend on the industry and the company's particular circumstances. The needs and skills required will change from one Board to the next but there are a few common elements which should be borne in mind to create an effective board.

2.5.3 An effective Board has the right mix of director skills, experience and attributes and Boards need to widen their search parameters for directors, while taking into consideration the geographical location of the directors and other practical factors.

Role of Non-Executive Directors

A Non-Executive Director is not an employee and is not involved in the operational aspects of the company, rather he / she is involved in planning and policymaking and brings independent judgment, outside experience and objectivity on all issues which come before the Board.

Over and above their normal directors' duties, Non-Executive Directors are expected to monitor and challenge the performance of the Executive Directors and the Management, and to take a determined stand in the interests of the company and its stakeholders.

Non-Executive Directors should acquire and maintain a sufficiently detailed knowledge of the company's business activities and on-going performance to enable them to make informed decisions on the issues before the Board. At the same time, they should recognise the division between the Board and Management and ordinarily not become involved in management issues or in managing the implementation of Board policy.

Directors appointed by way of Recommendation

Regardless of who nominates a director, directors must serve the Board in their individual capacity, consistent with the responsibilities of a director, and not as the representative of any particular shareholder. The fundamental duty of any director is to act in the best interests of the company that he/she serves. All candidates, including those recommended by shareholders/stakeholders, should be considered using the process described in these Guidelines.



2.5.4 Below is a non-exhaustive list of the mix of skills, experience, attributes and characteristics that Boards may wish to consider.

SKILLS	EXPERIENCE	ATTRIBUTES
Practical wisdom and good judgment	Specialist knowledge in a specific area	Highest personal and professional ethical standards and honesty
Financial literacy; ability to read and understand a financial statement	A detailed knowledge of the industry / relevant industry experience	Integrity, independence and free of conflicts of interest
Specialised professional skills eg. Accounting, Finance, HR, Legal, ICT, Marketing	Expertise on global issues	An enquiring and independent mind
An understanding of key technologies	Experience in other industries using experience gained in one industry for the benefit of a company in another industry	Willingness and commitment to devote the required amount of time to carrying out the duties and responsibilities of Board membership, including time to gain knowledge of the industry, to prepare for Board meetings, and to participate in Committees.
Director education – a clear understanding of the duties of a director and knowledge of the Code.	High visibility in the field	Commitment to improving the business, its continued well-being and making a difference. Commitment to making this role a significant priority, not serving just for the money or for personal interests.
Good interpersonal skills and the ability to communicate clearly	Leadership and management experience, especially in related businesses	Willingness to represent the best interests of all stakeholders and objectively appraise board and management performance
Decision maker – exploring options and choosing those that have the greatest benefit to the organisation and its performance	International experience	Critical analysis and judgment
Risk Management	Personal networks and external contacts	Vision, imagination and foresight
Interpersonal sensitivity – a willingness to keep an open mind and recognise other perspectives		Strategic perspective, able to identify opportunities and threats
Ability to mentor other directors		Innovator - a willingness to challenge management and challenge assumptions, stimulate board discussion with new, alternative insights and ideas
Strong ability to represent the company to stakeholders		Curiosity - possessing an intellectual curiosity about the company and the trends impacting it
Agility to move from advisor to challenger as well as being a strong supporting voice when needed		Motivation – drive and energy to set and achieve clear objectives and make an impact
Advisory skills		Conscientiousness - clear personal commitment
		Engagement - full participation and proactive as a Board member
		Courage - willingness to deal with tough issues
		Maturity and discipline to know and maintain the fine line between governance and managerial oversight

2.5.5 Assessment should be widened to cover not only the board members as individuals, but also their composition as a group. "Group dynamics" can be both creative and productive, but also destructive under unfavourable circumstances. Is the Board too heavily weighted in favour of any one discipline? Are all the board members dynamic go-getters who might need a more restraining influence? It is therefore wise for boards to consider personal interactions when searching for candidates.

2.6 Number of Directorships

2.6.1 The number of directorships held, beyond a certain point, is detrimental to the quality of service that directors may deliver and it is important to determine the threshold at which multiple directorships are a signal of quality or a signal of over commitment.

2.6.2 Whilst in some countries, there are legal limits to the number of directorships held, in Mauritius, no such limit is imposed, but the Board should clearly identify the workload required and the individual must be able to demonstrate that he/she is able to handle the work load and that he/she has the capacity and enough time to devote to all companies.

Independent Directors

Independent Directors are expected to be in a better position than other directors to make objective decisions and to assess management recommendations because they have no significant personal interest in those decisions and recommendations.

The Code devotes considerable attention to defining what constitutes an Independent Director because of the special role such directors may play as Chairmen and on Board Committees or through other mechanisms to review sensitive issues such as related party transactions, remuneration policies, or other concerns related to ensuring equal treatment of minority shareholders.

2.7 Succession Planning

2.7.1 Best practice is to undertake an annual review of the Board and develop medium-term succession plans that identify the balance of experience and skills that will be required over the next two to three years to maximise Board effectiveness. This time frame allows a broader view to be established by looking at the whole Board, not just individual director nominations. In doing so, the Board should take into account:

- Term limits;
- Staggering rotation for continuity – best practice is a 3 year term with one third of directors standing for election every year;
- Directors' independence; and
- Chairman and CEO's succession.

2.7.2 Term limits for directors help to prevent abuse of power and encourages more stimulation - organisations need new ideas and leadership. Term limits lead to more productive Boards, and may provide a solution to a director who is not performing. Term limits also allow the Board to plan ahead and select directors with new ideas and skills in line with the company's evolving strategy. Again there is no one size fits all solution and term limits depend on the complexity of the business and the need to maintain continuity while keeping the right balance of skills and expertise.

3. PROFILE

3.1 It is necessary to develop a detailed list of the criteria that the new director should possess. Decision-makers should gather input from multiple stakeholders, including the entire Board, the CEO and, in some instances, the Management team.
Through this exercise, the company aligns itself around what it needs and expects from this critical role. Soliciting feedback from a variety of sources both within and outside the company can provide clarity about the expectations. A clearly defined profile or competency matrix is thus developed, distinguishing between qualities that are needed and those that are merely desirable.

3.2 When developing the profile or competency matrix, it is important to consider what evidence you will look for to show that the person has the attributes required.

3.3 Re-Election of Existing Directors

In considering whether to recommend directors who are eligible to stand for re-election, the Nominations Committee (NC) may consider a variety of factors, including a director's contributions to the Board and ability to continue to contribute productively, attendance at Board and Committee meetings, as well as whether the director continues to possess the attributes, capabilities and qualifications considered necessary or desirable for Board service, the results of the annual Board self-evaluation, the independence of the director and the nature and extent of the director's non-company activities. No director has a "right" to sit on a Board, so there needs to be a transition from the typical practice of automatically re-nominating existing board members to a process of conducting annual Board appraisals and director assessments coupled with a NC process for director elections.

4. SEARCH

4.1 Having a large enough pool of candidates available is critical to achieving well-balanced, effective Boards. Prospective candidates may be sourced from recommendations of fellow Board members, business associates or trade organisations. Some companies use a professional firm for the search for new directors and others advertise in the press or on their website. The MIoD also has a Directors' Register available to help companies searching for independent directors. The NC should seek to canvas candidates from as many sources as is both possible and practicable in order to broaden the search and ensure that the list is not confined to the persons that Board members already know and are friendly with.

4.2 If using a search firm, best practice recommends a clear policy which lays out the steps to follow in order to address diversity issues.

4.3 The NC will thus draw up a wide list of candidates that meet some or most of the requirements of the profile. It is important to make it clear to candidates that there is no commitment to recommend them to the Board and at the Annual Meeting of Shareholders.

WHO IS RESPONSIBLE FOR DIRECTORS' SELECTION AND NOMINATION?

The task for selection and nomination is usually delegated to The Nominations Committee ("NC"). The standard terms of reference for the NC are available in the Code. Depending on the size of the company, the NC may be combined with another Board Committee e.g. Corporate Governance. Whatever shape it takes, it is important to have a NC responsible for making recommendations to the Board on all Board appointments.
It is important that the majority of the NC members are Independent Non-Executive Directors in order to ensure objectivity. It should not be the role of the CEO to search for new directors. However, in many companies, the NC involves the CEO in the selection process.
In State-Owned Enterprises and Parastatals, it is recommended that directors are selected in the same way by the NC and approved by the full Board. The NC should have a formal process in order to select and recommend the best director for the Board and in order to avoid stereotypes and assumptions. Clarity of process will ensure greater objectivity in finding the right director.





5. SELECTION

5.1 The list of potentials candidates should now be reviewed to narrow the search and produce a short list.

5.2 The NC should make an initial assessment of prospective candidates' suitability. A merit selection and appointment process requires an assessment of potential directors' background, skills and experiences against the agreed profile.

5.3 The NC should determine if there are any candidates that should be taken off the list because of conflicts of interest or independence issues or because they already sit on too many boards. With the pared down short list, the NC should then carry out detailed due diligence. Track records, references and profiles of candidates should be carefully assessed and it is also recommended that verification checks are made through alternative sources i.e. friends, bankers, business associates, etc.

5.4 When this process has been completed, the NC should meet with the candidates and, if possible, meetings with the CEO and other Directors should be organised.
Some companies may wish to invite the candidate to spend some time at corporate headquarters to get a feel for the organisation. It is important for both sides to make assessments of character, commitment and fit.

5.5 The NC should only recommend a candidate that has indicated his willingness to serve as a director and has agreed to comply, if elected, with the expectations and requirements of Board service.

6. NOMINATION

6.1 Upon completion of its assessment, the NC will recommend the best candidate(s) to the Board according to the number of seats available.

6.2 The Board should then consider, discuss and finalise the list. If, for any reason, the Board does not approve the NC's recommendation, then the NC will be asked to make another recommendation. However, if the NC has followed a formal process, done due diligence and worked through all the steps, this is highly unlikely.

6.3 The Board may wish to meet the selected candidate(s) before finalising its decision.

6.4 Candidates who are approved by the Board will stand for election at the Annual Meeting of Shareholders (Annual Meeting). Between Annual Meetings, directors may be appointed by the Board itself. Normally the constitution of a company will give the Board power to fill vacancies or to appoint extra directors provided the maximum number permitted by the constitution is not exceeded. Such directors will hold office until the next Annual Meeting.

6.5 Election and Re-Election at the Annual Meeting of Shareholders

6.5.1 Shareholders should have sufficient time and information on each Board candidate to make a considered voting decision. Companies should disclose information on the identities of each Board candidate, their core competencies, professional or other backgrounds, recent and current board and management posting with other companies, factors affecting independence, Board and Committee meetings attendance as well as their shareholding in the company so as to enable shareholders to weigh the value they bring or could bring. Directors should be present at the Annual Meeting at which they are being appointed to enable shareholders to put questions to them.
Unless otherwise provided in the company's constitution, a director is appointed by ordinary resolution, that is a resolution approved by a simple majority of votes of those shareholders entitled to vote and voting on the matter. For a public company, a person of the age of 70 years or more may be appointed as a director by an ordinary resolution as long as prior notice has been given at the same time as the Notice of the Shareholders' Meeting, and he/she may hold

office until the next Annual Meeting.
With regard to companies regulated by The Financial Services Act 2007, prior approval of the Financial Services Commission has to be obtained before the appointment of a Board director. Any appointment made in contravention of this regulation shall be invalid.
In the case of financial institutions (that is banks, non-bank deposit taking institutions or cash dealers licensed by the Central Bank), appointments must also take into account the Bank of Mauritius guidelines relating to fit and proper persons and prior notice.

7. APPOINTMENT

Upon appointment, the new director should be issued with a letter of appointment, written and signed by the Chairman. Such letter would set out the terms of his/her appointment and include:

- term of office
- the remuneration and benefits, if any
- duties and responsibilities
- expected workload and time commitment
- the manner in which the appointment can be terminated
- obligation to comply with any Board decisions
- confidentiality policy
- conflict of interests policy
- review processes
- provision of Directors' Liability insurance and professional indemnity
- access to independent professional advice
- committees
- details regarding any formal process of induction so that he/she is well informed about the operations of the company
- details regarding on-going directors' training and development; and
- policy and process of appointing alternates (if permitted)

7.2 Model letters are available in the resource pack on the MIoD website.

7.3 Executive Directors combine their Board duties with that of an employee and should be issued with a contract of employment detailing the terms of their employment and under whose supervision they will work.



ANNEXE 1

RELEVANT LAWS, REGULATIONS AND CODES

The legal framework that supports the Code is mainly the Companies Act 2001.This regulatory framework sets out the core provisions in relation to directors' duties, responsibilities and liabilities. The main provisions on directors' duties are laid down in S.143.

The Financial Reporting Act provides that Public Interest Entities should comply with the Code or, if not, to explain the reason for the non-compliance. The duty is placed on the Independent Auditors to report on the extent of compliance by the company.

The Listing Rules sets out additional provisions for listed companies which are bound to comply once listed. Apart from the pre-listing requirements, the Listing Rules provide on-going obligations for listed companies. Other key legislation includes:

- Financial Service Act
- Securities Act
- Banking Act
- Insurance Act
- Insolvency Act

In view of the Banking Industry's special position in the economy, Corporate Governance is a matter of paramount importance. The quality of Corporate Governance expected of banks is high. As such, the Bank of Mauritius has issued its own guidelines which apply to all banks, domestic and foreign, and non-bank deposit-taking institutions.

In every sector in Mauritius there will be various laws which pertain particularly to each enterprise. The website http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwemau.htm provides a useful guide to all legislation in Mauritius.

ANNEXE 2

SOURCES

- Code of Corporate Governance for Mauritius
- Combined Code on Corporate Governance, UK
- EU Company Law Action Plan – 15 February 2008
- Global Corporate Governance Forum-OECD – Achieving Effective Boards June 2011
- Global Corporate Governance Forum-OECD-IFC – Board Processes in Latin America – Board Nomination/Selection and Handling of Conflicts of Interest
- Higgs Report – Review of the Role and Effectiveness of Non-Executive Directors January 2033
- ICGN Global Corporate Governance Principles : Revised 92009)
- ICGN Non-Executive Director Remuneration Guidelines and Policies
- ICSA Guidance Note 110511
- International Finance Corporation and US Department of Commerce: The Russia Corporate Governance Manual
- India Listing Agreement on Corporate Governance
- McKinsey & Co – Is There a Payoff from Top-Team Diversity
- McKinsey & Co – Unlocking the full potential of women at work – Joanna Barsh and Lareina Yee – 2012
- McKinsey & Co – Women Matter - Women at the Top of Corporations – Making It Happen – Georges Desvaux, Sandrine Devillard, Sandra Sancier – Sultan – 2010
- New York Stock Exchange Corporate Governance Rules
- OECD – Using the OECD Principles of Corporate Governance – a Boardroom Perspective
- Securities Regulatory Commission – China (CSRC) Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies 2001
- Singapore Institute of Directors – Selecting Directors, Paying Them Fairly
- Singapore Institute of Directors – Statement of Good Practice SGP No. 2/2005 – Process for Appointment of New Directors



Directors' Forum

The Directors' Forum has been set up to act as an Advisory Council and Technical Committee to the MIoD. Its objectives are to:

- identify issues which are of most concern to directors
- produce position documents and, through consultation with Government and regulators, contribute to policy development
- be the voice for governance and directors' issues in Mauritius
- develop guidance on governance issues for directors.

Collectively, the Forum is made up of members with high level academic qualifications and professional backgrounds in law, economics, accounting, corporate and securities regulation, the public sector, business, and directorships.

Members of the Forum

Pierre Dinan – Chairman

Clairette Ah Hen

Deva Armoogum

Sunil Benimadhu

Jean-Paul de Chazal

Prabha Chinien

Aruna Collendavelloo

Girish B.Dabeesing

Sean Ennis

Gerard Garrioch

Dr Raj Jugurnath

Georges Leung Shing

Cyril Mayer

Megh Pillay

Krish Ponnusamy

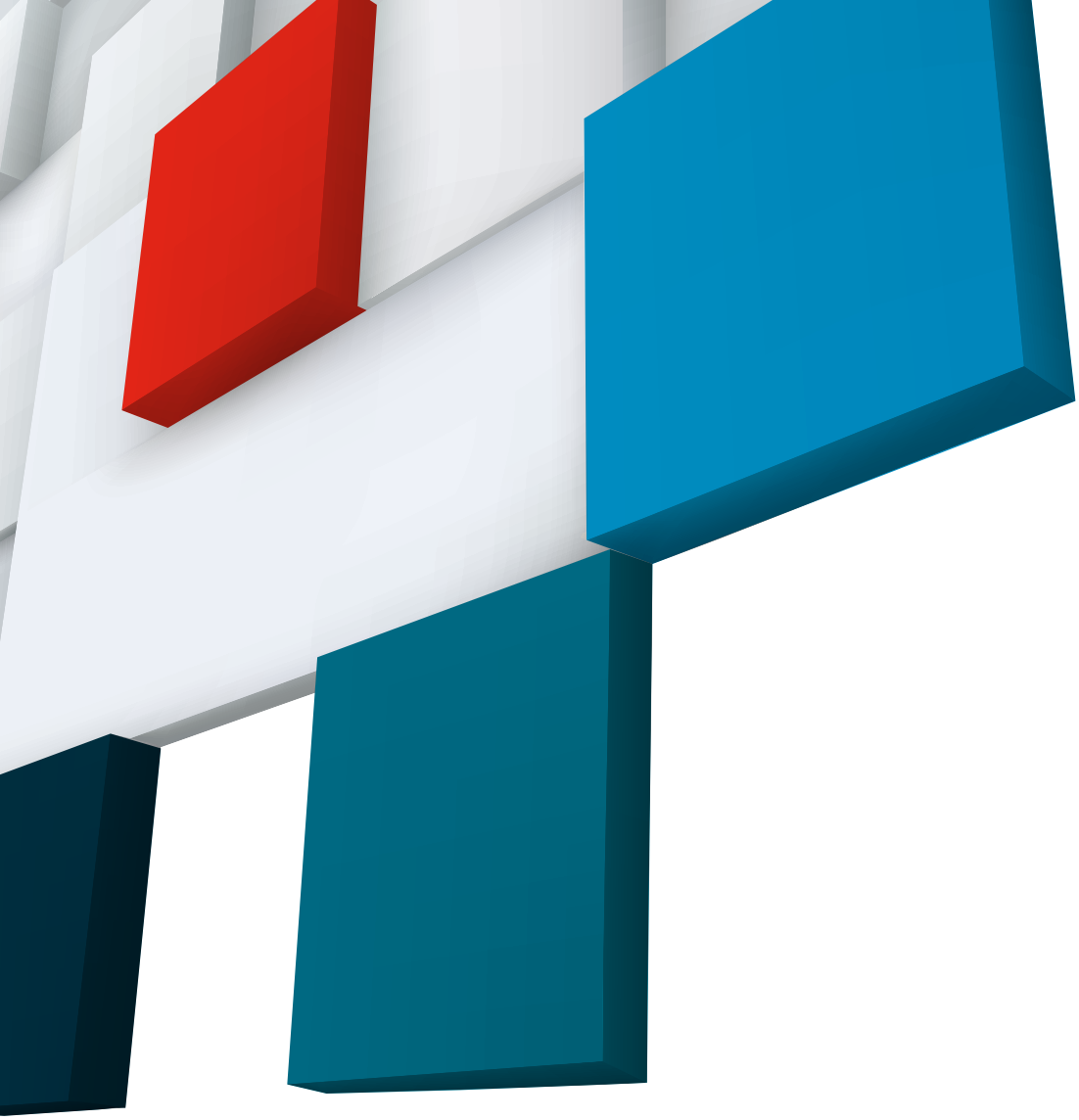
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