

Public Governance Guidance Note

Board delegation and committees

This is the fifth in the series of guidance notes by the Institute's Public Governance Interest Group (PGIG). In the guidance notes that precede this one, we began with the requisite personal qualities of those running an NGO in delivering public good. We then discussed the possible legal structures to use for establishing an NGO, explained the concept of a social enterprise, and then honed in on detailed incorporation issues relating to a company limited by guarantee – the choice for more established NGOs. To reiterate, these are all part of the discussions relating to governance. That is, an NGO should have systems, principles and processes in place to ensure checks and balances on those in control, be aware of the complex socio-economic environment they operate in, add value to their stakeholders, and deliver 'public good' (that is, its mission). These would serve as risk mitigation to allow the NGO to fulfil its mission and also importantly to ensure the long-term sustainability of its operations, which is a key factor in attracting donor funds.

As to the operational perspective, the NGO will have a board of directors, and one of the directors will be elected as its chairman. Under the Model Articles under the Companies Ordinance (Cap 622) for a Company Limited by Guarantee (https://www.cr.gov.hk/en/companies_ordinance/docs/AA_Sample_D.pdf) – the day-to-day 'business and affairs of the company are managed by the directors, who may exercise all the powers of the company'. This means that the board of directors is also in charge of the day-to-day operational

governance of the NGO. As there are many tasks that the board of directors has to attend to, and as directors may not have expertise on certain matters, it is not unusual for the board of directors to delegate some of their roles and responsibilities to committees reporting to the board.

This is permitted. For example, under Model Article 4, it is stated that the directors may, 'if they think fit, delegate any powers that are conferred on them under these articles to any person or committee' on any terms and conditions they deem fit and to alter or revoke the delegation. However, the important point is that the directors are not allowed, under law, to delegate away all their responsibilities. They must at all times retain personal attention as to the overall workings of their NGO, including proper oversight of the delegated committees.

In a recent case, an NGO delegated the construction of certain building works to a member of a committee. It subsequently found that there were no requisite government building approvals prior to the work being undertaken. The government then demolished the building works. Members of the board are now being personally sued at the District Court for depletion of funds from both the building and demolition works (which was charged back by the government to the NGO). The action was framed on the basis that the directors were in breach of their director duties under the Companies Ordinance, which since 2014 allows a member to directly sue directors for their breach of director duties.

Therefore, do delegate, but remember that you will be judged by what a reasonable director in your position would have done. For example, in the above case, if there are building works to be done, a reasonable director is expected to ask for confirmation from a professional person, like an architect that all approvals have been obtained prior to engaging in the building work. In any event, the system of controls should have required the accounting department to ask for the requisite Government building approvals for commencement of building works. It is not known if these were done, which could have served as defences available to the directors in the case.

Also, please remember that there is no one-size-fits-all in terms of what are the committees that your NGO requires. The Hong Kong Council of Social Services (HKCSS) recently conducted a survey under its NGO Governance Platform Project, to which 77 NGOs responded. Based on raw data from the research, HKCSS has kindly analysed and provided the following information as to the NGOs having the following types of committee under their respective boards of directors, for which gratitude is expressed to HKCSS.

Types of committees	Percentage of respondents having these
Programme/Service	62.3%
Finance/Investment	59.7%
Human Resources	53.2%
Executive/Management Committee	45.5%
Fundraising/Resources Development	38.7%
Community Relations/Public Relations	25.3%
Governance/Nominating	23.4%
Audit/Compliance	19.5%
IT-related/Knowledge Management	18.2%
Research	10.4%
Members' Support/Members' Service	10.4%
Others	7.8%

From the survey results, as expected, most NGOs have committees dedicated to delivering on its public good or mission. That is, around 62.3% of the NGOs have various programmes and service committees. Leaving aside these core programmes and service committees, around half of the respondents also have committees relating to finance and investment, human resources and executive/management. Then there are also a lesser number of respondents (around half) having other external facing committees on fundraising and resources development, and a third on community and public relations. These latter figures appear on the low side and indicate that the board of directors may need also to think more about driving the overall strategic growth of their NGO for the longer term as they seek to ensure the shorter-term financial sustainability of their agencies. But then, these figures may simply indicate constraints on resources and/or difficulties in matching the right people to help the NGO.

What is surprising, from a governance point of view, is that only around a quarter to a fifth of the NGOs responding to the survey stated that they have governance, nomination and audit, and other compliance committees. In a commercial enterprise it is expected that there would be these types of governance-related committees. The disconnect is that an NGO seeking donor and third-party funds would be expected to demonstrate that they have proper audit, nomination and remuneration committees – as part of good governance. This would help to attract more funding and help to ensure the long-term sustainability of the NGO.

It is recommended that an NGO should at least have audit, nomination and remuneration committees to demonstrate commitment to good governance. To add a few more words on the audit committee, in terms of risk management of the NGO, there should be three lines of defence. The first is business practices – meaning staff need to have training in what is right and wrong in terms of their practices in fund raising and delivery of goods and services under the NGO's mission. The second is that the NGO should have policies and procedures that objectively set standards of behaviour for internal and external parties dealing with it. Finally, the third line of defence is that of the external audit function. That is, namely, where the external auditor audits the books and records of the NGO to applicable financial audit standards to test if there are any financial and non-financial reporting issues. This would bring out whether the NGO is adhering to the requisite accounting rules. The function of the Audit Committee is to manage the relationship with the external auditor.

Board committees – best practice

The Independent Commission Against Corruption (ICAC) has made the following observations in its 'Best Practice Checklist, Governance and Internal Control in Non-Governmental Organisations' as to the audit, nomination and remuneration committees (https://cpas.icac.hk/UploadImages/InfoFile/cate_43/2016/208ec0bd-878e-4dc0-b755-c4a230b39bdd.pdf).

Audit Committee

- Establish an Audit Committee to oversee all internal and external auditing activities, where resources permit.
- Appoint an independent board member who is not the chairman of the board or other functional committees as the Audit Committee's chairman.
- Appoint at least one member with accounting or auditing knowledge to join the Audit Committee.

Nomination Committee

Establish a Nomination Committee where resources permit,

preferably comprising both board and non-board members in the case of those NGOs with a wide membership base, to identify suitable candidates for the board vacancies, taking into account the membership mix policy formulated by the board.

Remuneration Committee

- Establish a remuneration committee where resources permit, or a mechanism to consider the NGO's remuneration policy, the levels of remuneration for individual senior executives, and the pay scale for other staff.
- Appoint only non-executive board members (that is, those non-remunerated members) to the Remuneration Committee to avoid conflicts of interest.
- Require the committee to review the remuneration packages of senior executives, taking into account their performance in meeting the organisation's objectives.

Board committees – terms of reference

The Main Board Listing Rules for companies listed on The Stock Exchange of Hong Kong have many provisions relating to the audit, nomination and remuneration committees, their appointment, functions and regulation. The following are simplified versions of the terms of references developed from the holding company of The Stock Exchange of Hong Kong itself (https://www.hkexgroup.com/About-HKEX/Organisation/Board-and-Committees/Terms-of-Reference?sc_lang=en) and taking into account the ICAC recommended best practices. Depending on your purpose you can add to or modify them.

[Name of NGO] ("Company") Audit Committee – Terms of Reference

1. Status. The Audit Committee (the "Committee") is a sub-committee of the board (the "Board") of the Company and is delegated to consider the matters set out in paragraph 4 below.

2. Purpose. The Committee is to serve as a focal point for communication between other directors, and the external auditor as regards their duties relating to financial and other reporting, internal controls, and external audits and such other matters as the Board determines from time to time. *[Note: it is assumed that there is no internal audit function for your NGO. If there is, the source document can be referred to for the relevant additions to the terms of reference.]*

3. Administrative structure

Composition. The Committee will be composed of at

least [three] individuals (excluding the secretary of the Committee). *[Note: it is always good to have an odd number.]*

All Committee members shall be non-executive directors. The Committee shall have at least one member familiar with the financial reporting principles and practices. *[Note: the reason why the Committee members are non-executive directors is to ensure an element of independence.]*

The chairman and members of the Committee shall be appointed by the Board after considering the recommendations of the Nomination Committee who should not be the chairman of the Board or other functional committees. *[Note: this is the ICAC recommended best practice.]*

Board committees – terms of reference (continued)

Reporting procedures and frequency of meetings. The Committee shall meet at least two times per year at appropriate times in the reporting and audit cycle and otherwise as required by the chairman of the Committee as arranged by the secretary of the Committee. External auditors will be invited to attend the meetings.

A majority of the absolute number of Committee members shall constitute a quorum for a meeting.

Minutes will be taken for all meetings and kept by the secretary of the Committee and distributed to the Board on the chairman of the Committee's instructions to other members of the Committee and/or the Board.

In any event, the chairman of the Committee will present an oral report to the Board on the activities and decisions of the Committee from time-to-time as required by the Board, and at least annually, a written report relating to its authority and findings for the year.

4. Authority

Financial reporting. The Committee shall monitor the integrity of the financial statements relating to its financial performance. Accordingly, the Committee shall review and challenge where necessary: (a) the consistency of, and any changes to, accounting policies and practices on a year-on-year basis; (b) whether the Company has followed appropriate accounting and auditing standards and made appropriate estimates and judgements, taking into account the views of the external auditors; (c) any significant financial reporting issues and judgements and all material information presented with the financial statements; and (d)

any significant or unusual items that are, or may need to be, reflected in financial reports and accounts.

Internal controls. The Committee shall: (a) monitor, and review with management, compliance, and the external auditor the adequacy and effectiveness of the Company's policies and procedures regarding internal controls; and (b) discuss with management the scope and quality of systems of internal control and review annually that management has discharged its duty to have an effective internal control system.

External audit. The Committee shall: (a) consider and make recommendations to the Board, in relation to the appointment, re-appointment and removal of the Company's external auditors, oversee the selection process for new auditors and investigate a resignation by the external auditors; and (b) oversee the relationship with the external auditors including but not limited to approval of their remuneration (to be negotiated by management); (c) review the findings of the external audit with the external auditors (if necessary in the absence of management); and (d) obtain comments of management regarding the responsiveness of the external auditor to the needs of the Company and communicating with the auditor thereon; and (e) produce an annual report on its activities.

Powers. The Committee is authorised to: (a) have access to any information, records or reports it requires from any employee of the Company in order to perform its duties and all employees are directed to cooperate with the Committee; (b) obtain, at the Company's expense, outside legal or other professional advice on any matter within its terms of reference; and (c) call any employee of the Company to be questioned at a meeting of the Committee as and when required.

[Name of NGO] ("Company") Nomination Committee – Terms of Reference

1. Status. The Nomination Committee (the "Committee") is a sub-committee of the board (the "Board") of [name of NGO] (the "Company").

2. Purpose. The Committee is to assist the Board in: (a) ensuring that the Board and its committees consist of directors with the appropriate balance of skills, diversity and knowledge of the Company to enable it to discharge its duties effectively; (b) nominating candidates for the role of Board directors; (c) succession planning for the Board and senior management; and (d) review the feedback in respect of the role and effectiveness of Board committees

arising from the evaluation of the Board and/or any Board committees, if any.

3. Administrative structure

Composition. The Committee will be composed of at least [three] individuals (excluding the secretary of the Committee). *[Note: it is always good to have an odd number.]*

The chairman of the Committee shall be a non-executive director. The chairman and members of the Committee, which may include non-Board members shall be appointed

Board committees – terms of reference (continued)

by the Board. *[Note: the reason why the chairman of the Committee should be a non-executive director is to ensure an element of independence. The ICAC recommended best practice is to allow for non-Board members also to be appointed to this Committee.]*

Reporting procedures and frequency of meetings. The Committee shall meet at least two times per year and otherwise as required by the chairman of the Committee as arranged by the secretary of the Committee. External experts may be invited to attend the meetings.

A majority of the absolute number of Committee members shall constitute a quorum for a meeting.

Minutes will be taken for all meetings and kept by the secretary of the Committee and distributed to the Board on the chairman of the Committee's instructions to other members of the Committee and/or the Board.

The chairman of the Committee will present an oral report to the Board on the activities and decisions of the Committee from time-to-time as required by the Board, and at least annually, a written report relating to its authority and findings for the year.

4. Authority

Board composition and diversity. The Committee shall monitor, at least annually, the structure, size, composition

and the balance of skills, experience, knowledge and diversity (including as to gender and ethnicity) required of the Board and other factors which may be relevant to its effectiveness, and make recommendations to the Board with regard to its composition profile.

Recommendations with respect to the appointments. The Committee shall: (a) identify and nominate candidates to fill casual or other vacancies of Board directors; (b) Chief Executive; and (c) Board Committees and a chairman for each committee; and review the feedback in respect of the role and effectiveness of the Board Committees arising from the evaluation of the Board, if any, and/or any Board Committee and make recommendations for any changes.

Succession planning. The Committee shall give full consideration to succession planning for directors, Chief Executive and other senior management and make recommendations to the Board at least annually.

Leadership development and director training. The Committee shall keep under review the leadership needs and leadership training and development programmes.

Powers. The Committee is authorised to: (a) have access to any information, record or reports it requires from any employee of the Company in order to perform its duties and all employees are directed to cooperate with the Committee; and (b) obtain, at the Company's expense, outside legal or other professional advice on any matter within its terms of reference.

[Name of NGO] ("Company") Remuneration Committee – Terms of Reference

1. **Status.** The Remuneration Committee (the "Committee") is a sub-committee of the board (the "Board") of [name of NGO] (the "Company").

2. **Purpose.** The Committee is to assist the Board in: (a) overseeing the development and implementation of the framework and policies on the remuneration employees of the Company; (b) considering all matters concerning the remuneration and benefits of Company employees including the Chief Executive and other senior management; and (c) setting the framework for the evaluation of performance of the Company's employees including the Chief Executive, if any.

3. Administrative structure

Composition. The Committee will be composed of at least [three] individuals (excluding the secretary of the

Committee). *[Note: it is always good to have an odd number.]*

The chairman and all Committee members shall be non-executive directors. The chairman and members of the Committee shall be appointed by the Board. [Note: the ICAC recommended practice is that the chairman and members of the Committee should not be remunerated, and the practice is that non-executive directors are not remunerated. In any event, please select unremunerated non-executive directors.]

Reporting procedures and frequency of meetings. The Committee shall meet at least two times per year and otherwise as required by the chairman of the Committee as arranged by the secretary of the Committee. The Head of Human Resources and/or external experts may be invited to attend the meetings. The Head of Human Resources may also be designated as secretary of the Committee.

Board committees – terms of reference (continued)

A majority of the absolute number of Committee members shall constitute a quorum for a meeting.

Minutes will be taken for all meetings and kept by the secretary of the Committee and distributed to the Board on the chairman of the Committee's instructions to other members of the Committee and/or the Board.

The chairman of the Committee will present an oral report to the Board on the activities and decisions of the Committee from time-to-time as required by the Board, and at least annually, a written report relating to its authority and findings for the year.

4. Authority

Remuneration policies. The Committee shall: (a) formulate, for the approval of the Board, the remuneration structure and policy with respect to the Company's employees; (b) make recommendations regarding the remuneration structure and policy of the Chief Executive and other senior management; and (c) implement the remuneration policies as approved by

the Board and periodically review such policies.


Performance objectives and evaluation. The Committee shall: (a) determine, review and approve, as appropriate, the framework and criteria for assessing employee performance; and (b) review and approve individual performance objectives relevant to the remuneration of the Chief Executive.

Other matters. In carrying out its responsibilities, the Committee shall ensure that no director or manager, or any of his/her associates, shall be involved in any decision as to their own remuneration.

Powers. The Committee is authorised to: (a) have access to any information, record or reports it requires from any employee of the Company in order to perform its duties and all employees are directed to cooperate with the Committee; and (b) obtain, at the Company's expense, outside legal or other professional advice on any matter within its terms of reference.

Wrapping up

We would like to emphasise that whilst it makes sense and enhances board efficiency to delegate the workload of directors to board committees, the ultimate responsibility for decisions taken rests with the board of directors itself.

As such, directors should be vigilant in delegating their responsibilities to board committees, and having sound policies and procedures to guide the practices of the NGO does help. 

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