

SINGAPORE INSTITUTE OF DIRECTORS
STATEMENT OF GOOD PRACTICE
THE ROLE, DUTIES AND RESPONSIBILITIES OF THE INDEPENDENT DIRECTOR

This Statement has been superseded by the Board Guide.

1. Introduction

- 1.1 The Code of Corporate Governance (“Code”) AT Principle 2 recommends that 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.
- 1.2 The Code further provides that the independent directors should make up at least one-third of the Board. An “independent” director is one who has no relationship with the company, its related companies¹ 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. Examples of such relationships, which would deem a director not to be independent, include:
- (a) a director being employed by the company or any of its related companies for the current or any of the past three financial years;
 - (b) a director who has an immediate family member² who is, or has been in any of the past three financial years, employed by the company or any of its related companies as a senior executive officer whose remuneration is determined by the remuneration committee;
 - (c) a director, or an immediate family member, accepting any compensation from the company or any of its subsidiaries other than compensation for board service for the current or immediate past financial year; or
 - (d) a director, or an immediate family member, being a substantial shareholder of or a partner in (with 5% or more stake), or an executive officer of, or a director of any for-profit business organisation to which the company or any of its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments in the current or immediate past financial year. As a guide, payments³ aggregated over any financial year in excess of S\$200,000 should generally be deemed significant.
- 1.3 The Code makes it clear that 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 company 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. Role of Directors

2.1 The Companies Act and the Listing Manual, the two main legislation/regulation governing directors, do not draw a distinction between independent directors and other directors. In discussing the roles of directors, the Code at Paragraph 1.1 provides that the Board's role is to do the following, without drawing a difference between independent and executive directors:

- (a) provide entrepreneurial leadership, set strategic aims, and ensure that the necessary financial and human resources are in place for the company to meet its objectives;
- (b) establish a framework of prudent and effective controls which enables risk to be assessed and managed;
- (c) review management performance; and
- (d) set the company's values and standards, and ensure that obligations to shareholders and others are understood and met.

2.2 In setting out the Board's role as above, the Code further makes it clear at Paragraph 1.2 that '**All directors must** objectively take decisions in the interests of the company'.

2.3 Paragraph 2.5 sets out additional but not the only duties of non-executive directors which would include independent directors as well. Essentially the clause provides that non-executive directors should (note that it is not the mandatory must that has been used) constructively challenge and help develop proposals on strategy, and review the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.

3. Role of Independent Directors

General Role

3.1 The role of the independent director, who is by definition also a non-executive director, is no less than as stated in the preceding section, and to suggest otherwise would be inaccurate. What, however, is clear is that non-executive directors are not engaged in and not expected to be engaged in the day-to-day management of the company. Instead, they are expected to be vigilant guardians of the activities of the board as a whole.

3.2 The primary task of independent directors is to adopt an oversight role and to ensure that the corporate assets are used only for the company. This task includes:

- (a) become familiar with the fundamentals of the business in which the company is engaged and continue to be informed about the activities of the company,

- (b) reviewing the accounts of the company,
- (c) calling for additional information where the accounts show less than the full picture,
- (d) acting as a check on proposed corporate strategy bearing in mind the economics of any potential transaction,
- (e) regular attendance at board meetings to ensure ability to generally monitor of corporate affairs and policies and
- (f) participating in the appointment, assessment and remuneration of directors generally.

3.3 To this end, the independent director must ask for information about the company's operations and finances. If he does not get it, he must take steps to pursue the matter. A drastic form of such a step would involve obtaining an order for specific performance from court. This is not an automatic remedy and granted only in very exceptional circumstances. Independent directors who do face tremendous adversity in obtaining fair information about the company or in the discharge of their duties can also opt to give up their directorship, by giving the appropriate notice that is required by the particular company.

3.4 Where an error or negligence is discovered, whether on the part of the board or otherwise, the independent director cannot hide behind a cloak of ignorance. Independent directors cannot close his eyes to what is happening in the company and assume that the executive directors are performing their responsibilities to the company.

3.5 The independent director's primary role is not to protect the interest of the minority shareholders, but to act as a check and balance on the acts of the board and management of the company. His duty is to probe and query anything which has the appearance of being amiss in the company. Indirectly, of course, the role the independent director plays has the impression that it is promoting the best interests of minority shareholders; when in fact the reality is that it is promoting the interest of all shareholders as a whole.

Appointment As Lead Independent Director

3.6 The Code allows a company to appoint an independent non-executive director to be the lead independent director in the following circumstances:

- (a) where the chairman and the CEO is the same person, or
- (b) where the chairman and the CEO are related by close family ties, or
- (c) where the CEO and chairman are both part of the executive management team.

- 3.7 The Lead Independent Director performs a more enhanced function than the independent director as follows:
- (a) acts as the leader of the independent directors at board meetings in raising queries and pursuing matters, and
 - (b) leads meetings of independent directors, without the presence of the executive directors.

Appointment As Members Of Committees

- 3.8 The Code recommends the appointment of at least three committees to the board. These are the Audit Committee (which is mandatory for all listed companies under the Companies Act), the Remuneration Committee and the Nominating Committee.
- 3.9 As members of each of these Committees, an independent director must ensure that he acts objectively at all times in the interest of the company.

4. Duties & Responsibilities Of Independent Directors

- 4.1 Just as there is no difference at law in the roles to be performed by an independent director, there is also no legislative or regulatory rule providing that there is a different degree of duties owed by executive and non-executive or independent directors. In fact, the Companies Act draws no difference on this front. The Singapore High Court in the 2004 Vita Health decision made it clear that all directors owe the same degree of duties and responsibilities.
- 4.2 An independent director, like any other director, is responsible for the overall oversight of the company. He is not merely the guardian of the minority shareholders, nor is he only to focus on 'how they should act on questionable business practices and "related party" transactions involving a listed company, its management or major shareholder'. To focus only on these functions would render the independent director remiss in his duties and obligations.
- 4.3 Case law in other jurisdictions has developed in such a way to recognize that there could be a difference in the degree of duties owed by an executive and a non-executive or independent director. The degree or standard of due care and skill to be shown in the exercise of a director's duties depends in part on the role which he is expected to play in the company.
- 4.4 Generally speaking, where a director is actively involved in its day-to-day management, the standard of care and skill expected from him will be higher. But where he performs the role of a monitor, the standard is slightly lower. This is a balancing game for which no easy answer can be found.

4.5 Although the independent director has a less involved role to play than an executive director, he must nevertheless keep himself informed of what is happening within the company. This is so that he can assure himself that the company's best interests are protected. This is the minimum he must perform.

4.6 Where the independent director has turned a blind eye to the happenings in the company, he will bear the full brunt of liability. Where however, he has been diligent in calling for information, making relevant clarifications, and not acted with negligence, the independent director may not have to account as much depending on the facts of each case. But he nevertheless has a burden to discharge.

5. Conclusion

5.1 This Statement of Good Practice is intended as a broad guide for independent directors as regards their roles, duties and responsibilities.

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