

Introduction

The Senior Independent Director overview

- This document provides guidance around the role of the Senior Independent Director ('SID') which was introduced into Gibraltar through the Financial Services (Amendment No. 2) Act 2024. This Amendment included rules regarding the minimum number of iNEDs required on a board, that iNEDs need to be approved as regulated individuals and the function of an iNED. The revised regulations required, that, where a regulated firm has three or more non-executive directors, it must appoint one or more of them to be the SID. This Guidance focus on this role. It is intended to complement the existing legislation in Gibraltar on this matter, and is not intended to conflict with, amend or supersede such legislation.
- The SID, under the Amendment, is an independent non-executive director appointed by a company's board of directors to lead oversight of:
 - the performance of the Chair; and
 - the adequacy and quality of the resources provided by the firm to enable the Chair to fulfil that role.
- Beyond the Amendment, the rules are relatively unclear when it comes to the SIDs specific role, and this guidance therefore looks at the requirements for a SID in Gibraltar under the Amendment, and gives guidance of what may be expected of firms, and regarding the role of the SID, based upon the UK model but taking account of:
 - the fact that UK corporate governance is aimed at FTSE listed companies;
 - the different legal and regulatory environment in Gibraltar;
 - the nature of local firms and sector they operate in;
 - the size and complexity of local firms;
 - board dynamics; and
 - the extent of shareholder dispersion and ownership concentration (Gibraltar has a higher number of regulated firms which are owner managed).
- As well as overseeing the performance of the Chair, the SID will provide a sounding board for the Chair and serve as an intermediary for the directors and shareholders. The role of the SID will be more critically important during times of crisis and when board communications have broken down. All firms have the responsibility to comply with the requirements of the SID under the Amendment and suggested guidance in this respect is set out below.
- The SID should not be seen as solely a regulatory requirement, but in fact, an asset to all firms that can sensitively, but confidently uphold good corporate governance, board integrity and support to the Chair with the necessary independence.

Definitions

- In this Guidance, we use:
- **'Amendment'** – the Financial Services (Amendment No. 2) Act 2024;
- **'iNED'** - Independent Non-executive Director; and

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- ‘SID’ – the Senior Independent Director.

Governance Considerations pursuant to the Amendment

Performance of the Chair

- The SID should lead the Board in its assessment of the Chair. This should include, among other things:
 - a general assessment of the Chair’s performance, including whether the Chair has fulfilled their responsibilities as set out in their role description;
 - taking soundings via email, or holding annual meetings with the Non-Executive Directors, without the Chair present, to appraise the Chair’s performance. This should include the views of the Executive Directors;
 - where appropriate attending meetings with major shareholders and other stakeholders to listen to their views and develop their understanding of relevant issues and concerns; and
 - reviewing the effectiveness of board meetings, including the quality and timeliness of papers for the board as well as the conduct of the meetings themselves. Were all board members given an opportunity to speak, how were disagreements managed, how prompt and comprehensive were the subsequent board minutes?

Adequacy and Quality of Resources

- The SID should be responsible for supporting the Chair in ensuring there are sufficient resources as appropriate. This should include, among other things:
 - preparation for board meetings and the provision of sufficient board packs within a timely manner; and
 - an assessment into the quality, and sufficiency of the resources available to the Chair in fulfilment of this role.

Other Governance considerations

Chair succession

- When considering succession planning for the Chair, the Board should ensure that a nominations subgroup or the Nominations Committee is appropriately engaged. This group should be tasked with identifying the skills and experience required for future leadership, along with managing the evaluation of potential candidates in a structured and impartial manner. The SID should normally lead this process.
- Where a SID is a potential candidate for Chair, it is particularly important that the process remains objective, and any conflicts of interest are carefully managed. In this instance, the SID should normally recuse themselves from the process.

Acting as an internal liaison to the Chair

- In relation to any board, some directors may feel raising a concern formally may not always be the most appropriate route to take. In these instances, the SID can provide an independent and approachable channel for directors to discuss concerns, governance issues, or generally seek assurances. This would particularly be the case in instances where a director feels as

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though their concerns are not being adequately addressed by the Chair. In this manner, the SID can act as an internal liaison with the Chair in respect of reassurances and relationships with directors when necessary. An approach by the SID may be considered more acceptable by the Chair given it is considered part of their duties.

Acting as a Chair

- In some circumstances, such as when the Chair is temporarily absent the SID may be called upon to act as Chair unless it is believed that another individual would be more suitable.

Dispute Resolution and complaints

- The SID should act as an intermediary in disputes, or complaints that involve the Chair. Inevitably, any board will have situations whereby challenges may be seen as confrontational. It is up to the SID to determine if there is a risk of this occurring, and if there is, diffuse the situation before any destruction occurs, maintaining good corporate governance.

The importance of the SID role

- The SID provides an additional layer of independent oversight and helps promote transparency within boards in compliance with the Amendment.
- The SID can safeguard minority voices within companies, enabling all perspectives are heard and considered, mitigating any risk of power imbalances.
- Stability can also be achieved through the SID, particularly so in times of crisis, and general transition periods. This is often the case when the Chair is absent, or succession planning is occurring.

The importance of reviewing the SID role

- It is important that the SID's role be regularly reviewed. This helps ensure the role remains effective, proportionate and fit for purpose. This is especially the case where board dynamics can evolve relatively quickly.
- In Gibraltar's company environment, the responsibilities of the SID must be tailored to reflect the size, nature and culture of each firm. Conducting reviews of the SID's role helps to better determine whether the role adds value, or in some circumstances, needs to be refined to reflect a leaner, and more informal board structure.
- Such reviews need not only include discussion on the SID's role, but equally the resources available to them to improve good corporate governance.
- Reviews of the SID's performance may be undertaken as part of a routine Board appraisal process.

Conclusion

- Each SID will bring their own approach to the role. Any approach must, in outline, be defined so that no disagreements arise where the SID acts. Whatever the final role determined, this and the resultant responsibilities of the SID should be formally documented as part of the firm's corporate governance.

Senior Independent Director – Frequently Asked Questions ('FAQs')

- These FAQs are intended to assist the SID in facilitating effective board dynamics and support constructive challenges where needed to reinforce best governance practice.

1. How should a SID deal with conflicts?

Answer: As SID, you play a key role in upholding board integrity and independence. If a potential (or actual) conflict arises it may be (depending on the specific circumstances and details of conflict) appropriate for you to:

- raise the issue privately with the Chair in the first instance;
- ask for the matter to be discussed at the nomination's subgroup or the Nominations Committee if appropriate; and/or
- recommend the conflicted individual recuse themselves from relevant discussions or decisions.

2. Is the SID recognised as a regulated role by UK regulatory authorities and is there specific regulatory guidance for insurance companies that the SID should be aware of?

Answer: Yes, The FCA Rule Book and PRA Rules both set out the SID as a designated senior management function.

The Prudential Regulation Authority (the '**PRA**') published a Supervisory Statement on Strengthening Accountability in insurance which includes information on the role of the SID and as follows:

2.46 Insurance - Senior Management Functions 4.5 and Large Non-Solvency II Firms – Senior Management Functions 4.5 specifies a SID (SMF 14), which it defines as the function of having responsibility for leading the assessment of the performance of the person performing the Chair of the Governing Body function. Where a firm has a SID, the PRA expects their assessment of the Chair to consider, among other things: the extent to which the Chair has fulfilled their responsibilities under the SMR; and the quality and sufficiency of resources allocated to the Chair of the governing body's office.

2.85 Likewise, the PRA expects the SoRs of NEDs in scope of the SMR to be less extensive than those of executive Senior Managers. Nonetheless, it is important that the SoRs of NEDs in scope of the SMR provide at least some detail. Merely stating that an SMF10-13 is responsible for chairing a given board committee in accordance with its terms of reference is unlikely to provide an appropriate level of detail in many cases. The SoRs of non-executive SMFs should go into a somewhat greater level of detail and break down the chairmanship of these key committees into more granular key tasks (without allocating executive or quasi-executive responsibilities to the relevant NEDs). Examples of additional detail which firms would be expected to include, if applicable, in the SoRs of NEDs in scope of the SMR may include but are not limited to: the SID's (SMF14) responsibility for leading the board (and/or Nominations Committee) in implementing an orderly succession plan for the Chair of the governing body; and the Chair of the Remuneration Committee's responsibility for ensuring that the Committee discusses and approves buy-outs of variable remuneration (for new hires) and

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termination packages (for outgoing employees) in specific, pre-determined circumstances, such as when they exceed a certain amount.

3. What is the role of the SID in the orderly succession planning of the Chair?

Answer: Unless the SID harbours a desire to be the Chair then he/she should be responsible for leading the Board in implementing a succession plan for the Chair:

- this process should be agreed upfront and well in advance of required change of Chair; and
- initiates discussions at the nomination's subgroup or the Nominations Committee.

4. What type of governance considerations (including documentation) should you look to review to clearly define the role of the SID?

Answer: Firstly, the services agreement between your firm and the individual taking on the role SID should be reviewed to take into account the expectations and requirements of the role. Furthermore, you should consider:

- the governance framework documentation including Board and Committee TOR together with any documentation setting out the role of each of the iNEDs and the division of and statements of responsibilities and roles of the Chair, SID, Managing Director and other executive directors and iNEDs (including their services agreements with the firm) to be reviewed; and
- whether training on the requirements of the role is required by SID.