2025

GIBRALTAR CORPORATE GOVERNANCE CODE

GIBRALTAR ASSOCIATION OF COMPLIANCE OFFICERS

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Foreword

Dear Reader,

A corporate governance code is a guide for directors, company officers and business leaders, setting out how they should approach governance in their organisation. Of course, any of you will be conversant with all the principles contained here but we do hope it proves useful as a reminder.

Good corporate governance ensures that an organisation's Board of Directors meet regularly, retain control over the business and have clearly defined responsibilities. It also ensures a robust risk management system and hence is one of the cornerstones of any good business.

As a set of principles for the best practice in corporate governance, this is a guidebook recommending how directors and company officers should ensure the approach to governance is well established.

Whether the company is a startup or a long established organisation, no matter its size, ensuring adherence to a corporate governance code will give many advantages, whilst applying the principle of proportionality. The importance of good governance increases with the size of the business, the complexity of operations and the regulatory environment. For a small startup or a business with a sole owner, it's not unimportant, but the individuals will have a better knowledge of their business to maintain controls without a strict corporate governance in place.

This Code is a GACO initiative and has been created for the benefit of GACO members. This is a **voluntary Code** and does not create any binding obligations. **GACO has not requested, nor received, any approval of this Code** from Her Majesty's Government of Gibraltar, any Ministers of HMGoG, nor any regulators or licensing bodies (including but not limited to the Gibraltar Financial Services Commission, the Gambling Commissioner and the Office of Fair Trading).

<u>The Importance of Corporate Governance</u>

Corporate governance frameworks are an important part of any business. A proper management system will help with your company's continued success. Without it, you face a higher risk of losses, liabilities, and even legal issues.

We have created this code with the aim to provide the following potential benefits to your company:

- Mitigate many major risks to which your company will be exposed.
- Improve the quality of your products and services.
- Increase the attractiveness of your business to potential investors.
- Promote and improve reputation. This applies to clients, employees, and other stakeholders.
- Minimise the cost of your company's capital.
- Increase the efficiency of your operations and increase morale.
- Improve the quality of your products and services.
- Optimise the decision-making process that happens within the company.
- Create potential and give your company an edge over others.

The GACO Executive has commissioned this Corporate Governance Code to help Gibraltar companies. As referenced above, this is a voluntary code that we recommend, as far as possible, for every company to review against their current practices, and in a proportionate manner depending on size and available resources of the company.

In one sentence: Good corporate governance leads to producing the best version of your business!

GACO Executive Committee February 2025

Introduction

The Principles of Corporate Governance

Corporate Governance acts on a solid system of principles, the primary ones being:

- **Accountability –** A company's Board of Directors ("Board") must be held accountable for their actions. They should consider the interests of all stakeholders, with the priority of always acting in the best interest of their company.
- **Transparency** – A company must provide stakeholders with appropriate information as required. This can be done through timely and regular management information to the relevant stakeholders. Good news can be celebrated, of course, but also, be ready to share the bad news as soon as it arises.
- **Security and Reliability –** Corporate governance requires that a company must be secure, reliable, and adhere to applicable legislation and regulation. Your business strategy should consider all of these potential risks.

Understanding Corporate Governance

At its core, corporate governance refers to the system of rules, practices, and processes by which a company is directed and controlled by its directors. It encompasses the relationships among various stakeholders, such as shareholders, management, employees, customers, suppliers, and the community at large. The goal of corporate governance is to manage the business to maximise long-term value while safeguarding the interests of all stakeholders.

The Corporate Governance Institute defines corporate governance as follows:

> "*The term corporate governance refers to how companies are run and for what purpose. Corporate governance also defines an organisation's power structure, accountability structure, and decision-making process.*"

It is essentially a set of tools that enables management and the Board to run an organisation more efficiently and effectively. Environmental awareness, ethical behaviour, corporate strategy, compensation, and risk management are all aspects of corporate governance. A company's operation and profitability can be negatively impacted by poor governance.

Achieving good corporate governance practices helps companies achieve good outcomes such as:

- Operate more efficiently;
- Improve access to capital;
- Mitigate risk; and
- Safeguard against mismanagement.

Corporate compliance complements corporate governance. A corporate compliance program is a set of policies, procedures, and practices that ensure a business, and its employees and agents comply with applicable laws, regulations, and industry standards. While corporate governance is focused on management, corporate compliance is focused on ensuring proper conduct and adherence to applicable laws, rules, and regulations, as well as the policies set forth by the board. This Code is intended to provide guidance on corporate governance and not corporate compliance.

When governance and compliance are appropriately aligned, businesses function more effectively. Effective compliance programs enhance the positive outcomes of corporate governance, including mitigating legal and reputational risks and upholding the principles of transparency and accountability.

Compliance professionals, while not directly responsible for corporate governance, do play a critical role in assisting the Board. These professionals develop and implement compliance frameworks, monitor regulatory changes, provide guidance to management and employees, conduct training programmes, and establish mechanisms for reporting and addressing compliance concerns. With the interplay of governance and compliance, these actions go a long way in keeping a business compliant and well-managed.

This Code has been written to assist various types of financial and non-financial businesses in Gibraltar to implement best practices in corporate governance on a voluntary basis and in a proportionate manner.

Why Is Corporate Governance Important?

Effective corporate governance is crucial because it enhances the accountability of individuals within the organisation and improves trust amongst stakeholders by mitigating the risks associated with investments and mismanagement. According to the Organisation for Economic Cooperation and Development ("OECD"), good corporate governance should provide proper incentives for the Board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The Financial Action Task Force ("FATF") also highlights the role of corporate governance in combating abuse of financial systems, underscoring its importance in preventing corruption, fraud, and financial crimes. Effective corporate governance is crucial to an organisation's success.

Accountability

The Board is the key to good corporate governance. This body is responsible for overseeing the company's activities, setting strategic objectives, appointing and monitoring senior management, and representing the interests of shareholders. A well-structured and independent Board is crucial for effective corporate governance. The ideal structure of a board of directors for corporate governance will vary depending on the company's size, industry, complexity of operations, regulatory environment and ownership structure.

Directors have a duty to act in the best interests of the company and its shareholders. Their fiduciary responsibilities include making informed decisions, exercising due care and diligence, and avoiding conflicts of interest. By fulfilling their duties, directors contribute to the overall governance and success of the business.

The first step towards accountability is to fully understand and determine the nature and extent of the risks within the organisation, and to establish clear channels for decision making and communication.

Transparency is key to accountability. Open, clear and honest reporting will help a business build relationships with stakeholders including customers, employees and investors, and the annual financial statements allow the Board to communicate the results for the year and also to document their assessment of performance. Accountability needs to be embedded in a company's culture and be subject to review as an organisation grows, as the risk profile of the company changes and as key personnel change. A strong ethos of accountability, and applying principles for best practice, will undoubtedly serve to protect a director's and a company's reputation. With Boards facing increased scrutiny from stakeholders, the time taken to improve Board accountability processes ought to be a worthwhile investment.

Accountability is a crucial aspect of corporate governance that assists transparency, ethics, and integrity within a business. It holds key stakeholders responsible for their actions and decisions, promoting a culture of trust and reliability. In the context of corporate governance, accountability includes financial, ethical, and social accountability. These play a significant role in upholding the interests of shareholders, employees and customers.

When it comes to promoting accountability in corporate governance, two key options are as follows:

- Self-regulation involves companies setting their own standards and monitoring their compliance with these standards. While self-regulation provides flexibility and autonomy, it can also lead to conflicts of interest and a lack of impartiality.
- External Regulation, on the other hand, such as government-imposed regulations or industry-specific standards, can provide a more objective framework for accountability. However, excessive external regulation may stifle innovation and burden companies with unnecessary bureaucracy.

Striking a balance between self-regulation and external regulation is crucial to ensure effective accountability in corporate governance. Embracing accountability in corporate governance is not only a legal obligation and ethical consideration but also a strategic imperative for organisations committed to long-term success.

Scope and Application of the Code

This Corporate Governance Code is designed to assist all businesses carrying out activities as a relevant financial business as defined in Section 9 of the Proceeds of Crime Act 2015, as well as any type of business based in Gibraltar wanting to apply the best practices of successful and well managed international companies. Some examples of legislation in Gibraltar include the following: Companies Act 2014, and Insolvency Act 2011. Additional requirements may apply to specific sectors, notably in regulated financial services. Please consult a professional to ascertain what legislation and regulation might apply to you specifically. This encompasses a broad spectrum of entities, from large financial services corporations operating in a highly regulated environment to smaller businesses which may be subject to little or no regulatory supervision. Given Gibraltar's position as an international finance centre, companies operate in a diverse array of sectors, each with distinct challenges and governance needs. **This Code is intended to supplement, not replace, any existing rules and regulations in place**.

Some of the recommendations made in this Code may not be applicable on a one to one basis to micro companies and/or sole traders. The recommendations should be applied in a proportionate manner whenever it is appropriate and practicable. A regular review of those guidelines is recommended as the business grows, ensuring the business can adopt the relevant recommendation in a timely manner.

Proportionality: A Key to Effective Governance

This Code embraces the principle of proportionality and makes it integral to its application. The governance practices outlined here are intended to be adaptable to the nature of business, scale and complexity of each entity, as well as the regulatory environment within which they operate. This approach ensures that while all companies meet a high standard of governance, they are not burdened by one-size-fits-all requirements that could create a disproportionate level of administration and hinder their operational efficiency or competitive edge. Proportionality not only supports compliance with regulatory expectations but also facilitates governance that is both practical and effective, enhancing corporate success and sustainability.

Proportionality means adapting the application of this code to the nature of the business, scale, complexity, and overall impact in Gibraltar. It means a case by case approach as opposed to a blanket set of rules.

This code aims to establish a framework that balances rigorous expectations with flexible application, ensuring that all companies engaged in relevant financial and non-financial business in Gibraltar have robust and effective governance in place, which are tailored to their specific needs. By embracing these principles, companies demonstrate their commitment to integrity, accountability, and build trust with stakeholders.

Given the wide range of entities located in Gibraltar, this Code's application is based on the principle of proportionality. Rather than providing a rigid set of rules, the Code is comprised of principles, complemented by supporting provisions, with which local entities are encouraged to comply.

Section 1: Composition and Functioning of the Board

General Principle

This code is intended to capture the governance arrangements for all businesses irrespective of size, nature, scale and complexity of operations. There will inevitably be a different approach to Board conduct, composition and function where it is a smaller owner-manager business to where the business is a large corporate with many shareholders. These differences should be considered on how the code is adhered with.

The Board is fundamental to the governance structure of any company, entrusted with guiding its strategic direction and supervising its overall performance. This responsibility includes ensuring that the company not only complies with legal and regulatory mandates but also adheres to the highest standards of ethical conduct. The Board's decisions and oversight play a critical role in shaping the company's long-term success and sustainability. By setting policies, approving strategies, and monitoring execution, the Board helps ensure that the company can navigate complex business environments and achieve its objectives effectively. This overarching role requires the Board to be deeply engaged with all facets of the company's operations, from financial management and corporate strategy to risk management and corporate ethics, ensuring that the company's leadership acts in the best interests of shareholders and other stakeholders.

Boards are expected to represent independent and diverse perspectives. The main role of a Board is to perform the duties of strategic planning and oversight. While these terms are used often, it's important not to diminish these duties, as they are the backbone of successful business planning. It is important to remember that directors are individually and collectively responsible for all actions of the company.

Boards typically look for specific qualities in choosing their members to fill vacant seats. Board members expect their fellow directors to be willing to ask tough and probing questions to vet all sides of an issue. Board members need to be well-informed and fully engaged with all major issues that affect the company. Identifying and mitigating risks has become an integral part of Board work since risks are becoming increasingly numerous and complex.

Directors must be willing to act quickly and responsibly when they need to take action to comply with fiduciary responsibilities or to uphold good governance standards. A crisis may occur at any time. Directors should stand ready to thwart potential crises and to manage developing crises, so they don't adversely affect the company. This ensures that the directors are always acting in the best interests of the company.

For unincorporated entities Senior Management will have the responsibilities of the Board of Directors.

1.1 Agenda Management and Meeting Preparation

Directors are encouraged to actively contribute to meeting agendas to ensure a holistic approach to strategic and operational discussions. Proposals should be submitted to the Company Secretary in a timely manner before scheduled meetings.

Every company incorporated in Gibraltar must appoint a Company Secretary. Both natural persons and corporate bodies are eligible to be appointed as Secretary. If a corporate body is undertaking this function, it must ensure that it is licensed by the Gibraltar Financial Services Commission (“GFSC”) in order to undertake such services. In the case of a public company, the Secretary must have specific knowledge and experience to discharge the functions of Company Secretary. The Company Secretary plays a vital role in Board meetings, often preparing agendas, preparing minutes, providing guidance on procedural matters and ensuring compliance with legal requirements, thereby supporting effective decision-making and governance. Therefore, a Company Secretary is more than just a legal requirement. It's a key role that can support your company in following the best practices and meeting the highest standards.

Successful companies use Board meetings to create and improve key business strategies. A similar approach can benefit smaller businesses for strategy meetings in general. Irrespective of the degree of formality of a business, its Board should be prepared to discuss results, strategy and risks.

Preparation is vital: from making sure you have the right Board members in the first place to preparing and circulating Board papers in advance, this will increase productivity of meetings and ensure discussions deliver what they need. Finally, a good Chairperson can then control meetings and help ensure that the decisions made are put into practice, by requesting and following up with an implementation plan. The first part of your Board meeting preparation is deciding when the meeting will take place. In addition to this, you will also have to consider a location (considering any potential tax repercussions on the company if this is held outside Gibraltar), and confirm that a potential meeting space is available, accessible, and has any equipment that your organisation might need. If your Board meeting is going to be remote, administrators need to create the necessary channels for the meeting and add in the relevant participants within the platform your organisation uses. Calendar features can help to schedule meetings that align with the schedules of internal participants, and reminders can be sent out automatically. If any Board member is unable to attend, appropriate apologies for their absence should be communicated to the Board prior to the meeting.

All Board members should come to the meeting well briefed. Board papers which should be succinct and relevant to the matter in hand should be distributed on an agreed date before the meeting. Endeavour to stick to an agreed format for any papers distributed, so those are easy to digest. Review the format regularly, maybe once a year, as your focus will change over time.

Board papers should include several standard elements which include the following:

- Agenda.
- Quorum, appointment of chair and declaration of conflicts of interest.
- Previous meeting minutes and any actions.
- Officer and Committee Reports.
- Relevant papers and correspondence.
- Supporting information for agenda items.
- Management information and key performance indicators including on risk factors.
- Any items of other business.
- Agreed date for next meeting.

Meeting materials may undergo multiple revisions to ensure clarity as well as brevity. It is important that all Board members and participants have the most up to date versions of your Board papers, with enough time for them to also prepare before the meeting starts.

A clear and solid agenda is a framework for running efficient and productive meetings, and should be developed and prepared for as early as possible. Reviewing the previous meeting's minutes is a good way to understand the objectives of the Board meeting ahead, ensuring any actionable items from the previous meeting are addressed. The agenda should focus on actionable and relevant matters for the Board to discuss in the meeting, and there should be sufficient information on each of these action items. Each matter should have a specific purpose, such as providing information, gathering data, or reaching a decision, to help keep the Board on track and ensure the best use of their time when tackling problems.

In the Board meeting minutes there should be the action tasks assigned to Board members. In larger companies, it may be helpful to contact those individuals to check in on progress so you know what to address in the upcoming meeting. This acts as both a reminder and a way to offer additional support for the assigned tasks. Additionally, when sending meeting materials, they should be sent with sufficient time for the participants to properly consider and prepare.

A typical Board meeting agenda

The agenda below shows a typical structure (not every item might be relevant to each meeting):

- Appointment of the Chair.
- Apologies for absence (ideal to have the full board, but a quorum will be detailed in the company's articles of association).
- Declare any conflicts of interest.
- Approval of the minutes of the last Board meeting.
    - This is a chance for Board members to note errors or to add points which have been left out.
    - Review progress on previous actions.
- Matters arising and not covered in the agenda.
    - Members are invited to raise issues which are not due to be covered in the published agenda.
- Procedural and compliance issues (standing item).
    - For example, this may include the appointment of a new director or the register of a share transfer. You would expect to consider and comment on a report from the MLRO/CO.
    - Consideration of any new or unmitigated risks.
- Finance director's report (standing item).
    - This is a review of the company's financial performance against budget.
- Managing director's report (standing item).
    - This covers progress against business plan, major new initiatives, the business outlook - including the order book - and foreseeable threats/risks and opportunities.
    - It includes a review of ongoing projects and operational issues.
    - Consideration of any KPIs.
- Update from any sub-committees/working parties (standing item).
- Strategic and operational Topics (standing item).
    - Matters for Board discussion/approval/decision/ratify/passing of resolutions/allocation of responsibilities.
- Any other business.
- Date of next meeting.

1.2 Regular Meeting Schedule

The Board would typically meet at least four times a year, i.e., quarterly ensuring regular and systematic oversight of the company's operations and strategic direction. This minimum standard supports effective governance by facilitating ongoing engagement and timely decision-making. For larger entities or those operating in highly regulated environments, more frequent meetings may be appropriate. The increased regularity ensures these companies can adequately address their complex operational needs and comply with stringent regulatory demands. The frequency of meetings for such entities should be assessed annually, or as circumstances change, to ensure that it remains appropriate to their scale and scope of operations. This approach helps maintain robust governance and adaptability to any shifts in business or regulatory landscapes.

1.3 Notification Protocols for Meetings

The notice period for calling a board meeting of the company will be determined by that company's Articles of Association. Absent any prescribed notice period in the articles, the Companies Act in Gibraltar model articles state a default position of 7 days' notice in writing. Having said that, and considering what we stated in the previous paragraphs in relation to Board members being well prepared for the Board Meetings, we recommend that Directors should receive the necessary information for regular meetings well in advance, which facilitates thorough preparation and ensures full engagement in governance processes.

1.4 Documentation and Record Keeping

All companies should maintain meticulous records of Board discussions and decisions to ensure transparency and accountability. This documentation process is essential for maintaining an accurate historical record of Board governance. Detailed minutes should capture the essence of the discussions and any resolutions passed, with these documents preserved as part of the company's official records.

Keep the minutes of the Board meeting succinct and relevant:

- Minutes should cover decisions made, the rationale for those decisions, actions agreed and responsibilities allocated.
- They also include any statements which were specifically requested to be minuted, active discussions conducted, active challenges and disagreements by any individual director.
- The minutes should demonstrate the directors' overall control of the business.

Distribute the minutes promptly. If appropriate, let employees (or others) know about any decisions made. This is part of the action plan agreed in the meeting.

If you are the minute taker, typically the Company Secretary, it is useful to draft the minutes soon after the meeting. Some minute takers sketch the first draft of the minutes before the meeting, simply to outline what may happen and then fill in the outline after the meeting. A good practice is to have the minutes first reviewed by the Chair, prior to distribution, and once distributed you should ask for further comments from all attendees. Draft minutes should be distributed to the Board as soon as feasible (ideally no later than1 week) following the meeting.

Effective Board Meeting Minutes
<u>Choose an appropriate minute-taker</u>
The person who will be taking the minutes, normally the Company Secretary, should be decided as soon as the Board meeting has been announced. Do not decide on the day or give the task to whoever happens to walk into the meeting holding a laptop, as the individual will require time to prepare. It is useful for the minute taker to

have an understanding of the topics on the agenda. Taking accurate minutes is also quite an involved process that requires attention. Because of this, we recommend picking a skilled individual within the company who will not have an active role in the meeting but is familiar with its inner workings. Furthermore, they must be trusted not to discuss any sensitive matters that may arise. If your company is a very small one, you may have no choice but to ask a director participating in the meeting to take minutes. This is fine but, again, give that person advance notice to ensure that they are ready.

Understand the job

Minutes are not transcriptions or verbatim representations of exactly what was said at the meeting. Instead, they should be a summary of what was discussed, and the decisions made. The Corporate Governance Institute has said that: "*The purpose of minutes is to provide an accurate, impartial and balanced internal record of the business transacted at a meeting" and that "minutes need to be written in such a way that someone who was not present at the meeting can follow the decisions that were made*".

However, it also notes that minutes should be reasonably concise. Think of Board meeting minutes as being like a plot synopsis for a play or film, rather than the actual script. Minutes do not need to specify what Person A said to Person B, how Person A responded and what Person C then added. Instead, they should be selective but neutral, with a breakdown of key points accompanied by conclusions and clear actions. The minutes should not include your personal comments or opinions [i.e., the ones of the note taker], unless these were expressed during the meeting and are objectively noteworthy.

As well as being legally required, Board meeting minutes are also genuinely useful documents. They can:

- Provide post-meeting clarification.
- Keep directors who were not present informed.
- Help directors recap what was discussed.
- Assist in resolving future internal disagreements.
- Act as a form of evidence/defence in legal cases.
- Demonstrate that the company and people within it take corporate governance seriously.
- Demonstrate the Directors have overall control of the business.

Don't approach the task from the perspective that you're doing it because you have to. Remember these potential purposes when drafting the minutes, so that the document you create provides real value to the company.

What the Board meeting minutes need to include

Given their purpose, writing minutes isn't a task that's associated with artistic flourishes. Although what should be included will vary from company to company, the following basic information is likely to be important:

- Company name.
- Company registration number.
- Registered office address.
- Date.
- Location.
- Attendees and their roles/titles – clear distinction between those directors attending in person, those attending remotely (and how they are doing so), those attending as an alternate and those who are not directors but are in attendance at the meeting.
- Absentees and their roles/titles (and confirmation that a meeting is quorate, if that is your company's practice).

- Any officer/manager/invitee joining or leaving during the meeting should be noted.
- Significant announcements.
- Declarations of the directors' interests in the matters being discussed, where required.
- Approval of minutes of the previous meeting.
- Resolutions discussed.
- Outcome of resolutions including the voting process, recording any director who disagrees.
- Abridged version of meeting point discussions.
- Action points with expected timescales.
- A note of any instructions to the company's officers (e.g. to make any filings with Companies House or any other regulatory authority, or changes to the company's statutory books and registers.)

When it comes to presentation, you'll find an array of Board meeting minute templates available for free online that can be used as a starting point and adapted to suit your needs.

<u>Other things to consider</u>:

- **Prepare for the Board meeting** – You should have a basic understanding of what is going to be discussed, so that you can focus on the day, take accurate notes, and write better minutes.
- **Sit in the right spot** – You need to find a location in which you can see and hear all attendees: both those who are physically present and those who are joining remotely. Arriving early will allow you to choose your spot and get prepared.
- **Use a minute-taking approach that suits you** – Using a laptop, rather than taking notes by hand, is likely to be the efficient way to write minutes. You could even record the meeting (let attendees know if you'll be doing this), transcribe it, and then knock it into shape as soon as the meeting has concluded.
- **Clarify when necessary** – If anything arises during the Board meeting that you're unclear on, do not be afraid to halt the meeting and ask for clarification, no matter how small that something may be. If in doubt, ask for further explanation or for someone to repeat themselves.
- **Distribute and then store the minutes** – Try and complete the minutes as soon as you can once the meeting has adjourned. Make sure the company stores the Board meeting minutes for as long as legally required. They can be stored either electronically or physically (or both).

<u>With respect to style, the following practices are suggested</u>:

- Do not use acronyms or jargon unless necessary.
- Minutes should be written so that those who are not present can follow the decisions made.
- Minutes should be written in reported speech (i.e. in the past tense).
- Maintain an impartial, third-party, objective tone. Avoid the use of opinionated language.
- Maintain a consistent writing style for Board minutes. Additionally, committee meeting minutes should follow the same tone and style of the Board minutes.

<u>If you are doing audio and video recordings, you might wish to consider the following potential issues</u>:

- It could stifle debate or drive discussion outside of the meeting.
- Individuals might be concerned of being quoted out-of-context.

- It is a security concern. The recording might fall into the wrong hands.
- It is disclosable in the event of any potential future litigation.

Minute-taking demonstrates that a company is compliant with company law, and the document itself provides an invaluable resource for looking back. Like any other skill, taking minutes takes time and practice.

1.5 Running the Board Meeting

It is vital that the Board members take the time to review any and all materials prior to the meeting. The Board members should review the agenda and Board pack, and make sure that all the necessary components are present. Any changes should be finalised and there should be a final revision of all information needed for the meeting. The Board members should anticipate any questions or issues other Board members might have and come up with solutions, as this will help the meeting to be run as smoothly as possible.

The Chairperson has an important role on how the meeting is run. The Chairperson's is often expected to:

- Agree the final content of the agenda.
- Brief non-executive directors ("NEDs") (and others) in advance on any sensitive issues.
- Allocate time to agenda items according to their importance.
- Encourage open discussions by introducing each item in a balanced, positive way.
- Ensure all directors have the opportunity to state their opinion and prevent anyone dominating the discussion.
- Where the Chairperson has a view, it would be good practice to express it after the others have given theirs.
- Where appropriate, summarise what has been decided, to check there are no misunderstandings.
- Ensure that responsibilities and time scales are appropriately allocated.
- Check progress on actions from the previous meeting.

Board Meetings are divided into the following essential parts:

1.6 Director Indemnification and Insurance Coverage

Adequate insurance and indemnification provisions for directors (including NEDs) and officers is *highly recommended* and should be proportionate to the risk exposures and financial capabilities of the company.

1.7 Proportionate Governance and Oversights

Governance structures, including committee formations and review intervals, must be implemented in a manner that is directly proportional to the company's operational and regulatory landscape. This ensures robust oversight that is both practical and effective.

Committees can take various forms and perform specific functions. Some examples are as follows:

- **Board Committees/Subcommittees;** these should only be created in case issues are too complex and/or numerous to be handled by the entire Board.
- **Standing committees**; these can provide for major activities and should be included in the Governance Structure with clear reporting lines.
- **Ad hoc Committees;** these can be established for specific short-term activities to manage a specific issue and/or project.

It is recommended to review the various committees on a regular basis and re-consider whether all are necessary, have the right composition and whether the terms of reference ("TOR") need updating. Some or all of the Board members may also be members of the various committees, however there would typically be no more than one Board member on a committee. This will help to maintain the committees independent from the Board whilst ensuring sufficient Board guidance is present on the committee. Not every Committee needs to have a Board member. Consider having a relevant staff member as a member of the committee as well.

Further recommendations are: Be sure that a committee has documented TOR, which sets out a clear description of its purpose, time frame, authority and responsibilities. Require regular reports from committees so the Board is up to date on the committee's work. Committee Reports should be concise and should be circulated among Board members in a timely manner ahead of a meeting. Committees will report to the Board and/or other committees as determined by their TOR.

1.8 Conflicts of Interest, Ethical Standards and Decision-Making Integrity

Directors are subject to fiduciary duties which require them to act honestly, in good faith and in the best interests of the company. This commitment is critical for maintaining trust and accountability in all company dealings.

1.8.1 Disclosure of Conflicts of Interest: Under Gibraltar law, directors must disclose any actual or potential conflicts of interest as soon as they become aware of them. As a matter of best practice, perceived conflicts of interest should also be flagged in a similar manner. This includes any personal, financial, or other external interests that could unduly influence their decision-making. The disclosed conflicts should be thoroughly documented in the meeting minutes and if appropriate in the conflicts of interest register. A usual way to mitigate conflicts of interest is for the conflicted director to abstain from related discussions and decisions.

1.8.2 Managing Conflicts of Interest: The Board should have procedures for managing disclosed conflicts, including removing conflicted directors from decision-making on related matters. These procedures are vital for preserving the integrity of Board decisions and ensuring they align with both corporate and legal standards.

Best practices in managing conflicts of interest, suggest three effective steps: Identify, Declare and Manage. The process begins with identifying conflicts and acknowledging their existence. Subsequently, directors must make proper declarations, ensuring that all relevant parties are aware of potential conflicts. Finally, effective management of conflicts may involve recusing themselves from discussions and decision-making related to the conflicted matter. In cases where ongoing conflicts significantly impair a director's ability to contribute effectively to Board affairs, resignation may be necessary to uphold the collective interests.

Once a conflict is identified and declared, the entire Board assumes responsibility for determining the appropriate course of action and ensuring the decision-making processes and actions are documented in the Board minutes. It is good practice for the individual director to ensure the actions taken to manage the conflict are recorded.

Cultural change can be supported by ongoing education for Board members on how to manage conflict of interests and ethics. In fostering the right Board culture, it is essential to recognise that conflict of interests are not inherently bad. Rather, it is the manner in which conflicts are acknowledged, disclosed and managed that determines their impact on individual directors, Board dynamics and organisational integrity.

1.8.3 Ethics Training and Awareness: Training on ethical conduct and conflict management is encouraged. The depth and frequency of this training should be proportional to the complexity of the company's operations and the regulatory environment in which it operates. Larger or more complex companies may require more detailed and frequent training sessions to address their specific needs.

1.8.4 Ethics Committees: Companies, depending on their size and the nature of their business, may consider establishing an ethics committee to oversee ethical standards and conflict management. For larger or more regulated companies, such a committee should be a standard feature, equipped with the authority to monitor, review, and enforce ethical guidelines rigorously.

The committee's primary role is to:

- Ensure that the organisation's ethical standards are clear and documented.
- Ensure that the organisation's ethical standards are followed, both internally and externally, where applicable.
- Review policies and conduct, and provide guidance on any ethical issues that may arise.

In Summary: An ethics committee is tasked with aligning a company's activities with its own standards. It is integral to fostering an ethical corporate culture that aligns with the values and expectations of all stakeholders.

1.8.5 Decision Making Integrity: Disagreement resolution between Board members or between the Board and other parties, such as management, shareholders, or regulators, is referred to as Board disagreement management. In order to maintain trust and cooperation among Board members and stakeholders, effective Board performance, and decision-making, Board disagreement management is crucial. In addition to preventing or minimising potential legal disputes or reputational harm, Board disagreement management can also increase Board diversity, creativity, and innovation.

A Board disagreement can arise over a strategic, operational, or ethical issue that involves one or more Board members, or the Board and management. Depending on how they are handled and resolved, Board disagreements can have either positive or negative effects on the organisation.

Effective Board disagreement management practices involve a combination of communication, collaboration, and negotiation. The following are some effective Board disagreement management practices:

- Identify the Underlying Issues.
- When disagreements arise within the Board of Directors, it is important to identify the underlying issues. This involves understanding the perspectives of all Board members involved in the disagreement and determining the root cause of the disagreement.
- Encourage Open Communication.
- Encouraging open communication is essential for effective disagreement management.

In any organisation with a variety of viewpoints and interests, Board disagreements are unavoidable. Not all disagreements, though, have a negative impact on the effectiveness and performance of the Board. Some disputes can encourage original thought, frank discussion, and constructive transformation. These discussions should be recorded in the Board minutes. The challenge for Board members is to manage Board disagreements in a positive and ethical way, avoiding the negative effects of unresolved or escalated disagreements.

1.9 Improving Board Skills

Training can make a big difference to the performance of a Board. Individual training needs analysis may be helpful in revealing what is required:

- Which directors understand the general duties and liabilities of being a director?
- Which directors carry out their role to the required standard?
- Which directors lack experience?
- One way to learn is to talk to the equivalent director in another company. Find out what lessons have been learnt by this person, both individually and as a Board.

Additional training may be required by law/regulation where the director is carrying out a licensed activity. Where a directorship is taken on behalf of a regulated entity (for example trust and corporate services provider), additional legal/regulatory requirements may apply.

Being a good Chairperson demands skill:

- The Chairperson should consider supplementary training due to the additional responsibilities they hold.
- The Chairperson should request feedback from other Board members on what could be improved.

- There may be sensitivities that cause a risk of Board members not providing honest and clear feedback. Consider using a NED to collate and provide that feedback to the Chairperson.

NEDs, where appropriate, should receive induction training:

- Put together an information pack about the company's operations.
- Set up meetings with the key management.

Section 2: Board Leadership and Composition

General Principle

Effective Board leadership and composition are foundational to robust corporate governance. A well-structured board, characterised by a balanced mix of skills, experiences, and perspectives, ensures that the company is governed with a clear strategic direction and rigorous oversight. The diversity and independence of Board members are critical in facilitating objective decision-making and accountability, enhancing the Board's ability to safeguard stakeholder interests and promote corporate integrity. These principles support the Board in fulfilling its role not only as a strategic guide for the company but also as a crucial check on executive management, thus driving sustainable organisational success.

The Board composition should be carefully considered to ensure an effective mix of skills without its size becoming cumbersome. The Board should be large enough to carry out the Board's fiduciary and other duties effectively and efficiently.

Depending on the type of organisation, Boards are likely to consider several other factors in establishing their Board size:

- Diversity: How large (or small) does the Board need to be to include a wide range of backgrounds and perspectives?
- Independence: How many directors does the Board need to operate with autonomy?
- Functions: What will the Board be responsible for, and how many directors do they need to do so effectively?
- Skills, talents, abilities, areas of expertise: Which skills, abilities or experiences should be represented on the Board?
- Representational requirements: Does the organisation have any requirements for Board directors?
- Regulatory requirements: Does the industry or applicable regulators have any requirements for Board directors?

Boards should revisit their composition from time to time and consider whether it's prudent and wise to increase or decrease its members, taking into account the range of skill sets required to run the business. Boards may need to revisit their composition whenever there are major governance/operational changes or when the business grows in size and complexity.

As set out above, each business will need to consider the number and skill set of Board members that suit their own needs. To guide that thinking, below are some market observations on Board sizes.

- Large listed companies: 8 to 12 directors
- Medium-size listed companies: 6 to 8 directors
- Small listed companies: 4 to 6 directors
- Large charities/NFP Boards: 8 to 12 directors
- Small charities/NFP Boards: 6 to 12 directors
- Public unlisted companies: 4 to 8 directors
- Proprietary companies: 1 to 4 directors

- Public sector Boards: 6-12 directors

2.1 Division of Responsibilities

It is now common practice for the roles of the Chairperson and the Chief Executive Officer (“CEO”) [or managing director] to be undertaken by different people. The Chairperson is responsible for leading the Board and ensuring its effectiveness, while the CEO manages the company’s day-to-day operations.

2.1.1 Chairperson's Role: The Chairperson ensures the integrity of the Board's governance processes, facilitates effective contributions from all directors, and supports constructive relations between executive and non-executive members. The Chairperson is tasked with setting the agenda for Board meetings and ensuring that directors receive the necessary information to make informed decisions.

2.1.2 CEO's Role: The CEO is accountable for the daily management of the company and the implementation of Board-approved strategies. The CEO reports directly to the Board, providing updates on operational performance and strategic initiatives.

2.1.3 Separation of Roles: Given the different responsibilities, the roles of the Chairperson and the CEO should be distinct, particularly in medium to large companies. This separation ensures a clear division of responsibilities between the governance of the Board and the management of the company. In small companies, if these roles are combined, it is recommended that this is clearly justified and regularly reviewed to ensure governance effectiveness.

Companies have the liberty to find a balance of responsibility and authority between the CEO and the Board chairperson. For this reason, the balance of power between the CEO and chairperson varies substantially, even within similar industries. Since the Board chairperson generally has seniority, the CEO would ordinarily get the Board chairperson’s approval on any strategic proposals.

2.2 Board Composition and Balance

It is recommended that the Board should have a diverse and balanced composition, reflecting a wide range of skills, experiences, and perspectives. This diversity enhances the Board’s ability to provide effective oversight and strategic guidance.

The following should be noted: During the early years of the company’s existence, owner-managers may be uncomfortable about inviting outsiders onto the Board. They may not yet be ready to share sensitive company information and decision-making powers with external persons. Hence the Board often consists of an owner-manager’s colleagues, family members, or close friends. As the company grows, more focus will be placed on the Board, which is the key decision-making body of the company. As the success of the company will depend more and more on the Board, it is in the owner-manager’s interest to get the best possible people onto the Board.

It may make sense to create an additional advisory Board, which can fill the expertise gaps in these areas. An advisory Board should only be regarded as an interim step. Over time, NEDs should be added to the Board. Providers of external finance are also likely to insist on NEDs joining the Board.

2.2.1 Diversity and Inclusion: Diversity in terms of gender, ethnicity, cultural background, and professional experience can help to bring a wider perspective to the Board. The policy on diversity should be proportional to the company's size and complexity, with larger entities adopting more structured approaches.

2.2.2 *Requirements for regulated Businesses:* The composition of the Board may be impacted by the regulatory and legal requirements. For example certain regulated companies may be required to appoint a Director responsible for Compliance and a Consumer Duty Champion represented at Board which would typically be a NED (where applicable). This is not intended as an exhaustive list and regulated businesses should undertake a review of their own requirements.

2.3 Board Committees

For medium and large companies, the Board can find it beneficial to create committees to address specific strategic issues reporting back to the Board, such as Audit, Risk, Nomination, and Remuneration Committees. The structure and independence of these committees are crucial for specialised oversight. For some regulated companies, there may be specific requirements for establishment of committees that specialise in specific areas. Examples include: establishment of a risk committee, and committee responsible for oversight of new product design and launch.

2.3.1 Committee Structure: The size and function of each committee should reflect the company's scale and complexity. Larger or more regulated companies typically require more committees with specific focuses. It is recommended that for each committee TOR are set up. A committee's TOR provides guidelines and clear direction to committee members to help manage expectations and to enable the Committee to hold itself accountable for its activities. The TOR also provides a frame of reference that a Board can use to make informed decisions.

2.3.2 *Independence and Expertise:* Committees, especially those handling critical areas such as audit and remuneration, should include independent directors to ensure impartiality and objective oversight. These committees should also include members with the relevant expertise to effectively address their specific areas of focus

Considerations when establishing Board Committees:

<u>Reasons for establishment of Board Committees:</u>

- Committees can make better use of Board members' time, allowing certain tasks, issues or investigations to be delegated away from the full Board to leave it free to concentrate on the "big picture".
- Delegation to committees can also reduce the length of full Board meetings because the issues they deal with have been discussed and resolved to everyone's satisfaction beforehand.
- Committees can make better use of Board members' expertise, by allowing those with particular knowledge, interests or skills to concentrate on those areas.
- Committees can help broaden the knowledge and skills of Board members, particularly if members are rotated around the different committees during their term.
- Committees can help build leadership within the Board, allowing leaders to emerge and build their skills in this area.
- Committees can help to share the load, ensuring that all Board members can remain engaged and have an active role.
- Committees can help to build a better sense of camaraderie because often they will operate less formally than the full Board.

<u>Considerations to be taken by the Board when creating & maintaining a Committee</u>:

- While committees are often good time savers, too many committees can have the opposite effect. Board members who are required to sit on several committees may quickly start to feel time deprived.

- Similarly, effectiveness can be compromised if Board members are sitting on too many committees.
- Committee meetings can suffer from the same problems as other Board meetings. If not managed correctly, they can be ill-structured, ineffective and just plain boring. And if the full Board meetings are the same, that just doubles the pain.
- Having committees creates a requirement for more administrative support. Again, the time and resources saved by having the committee needs to be weighed up against that required to make them work especially for smaller companies.
- Sometimes, a committee will outlive its usefulness. For example, a Board may decide to set up a committee to oversee the group's major events and continue to meet – and swallow resources – even when the group has scaled back and there are only one or two minor events to organise.

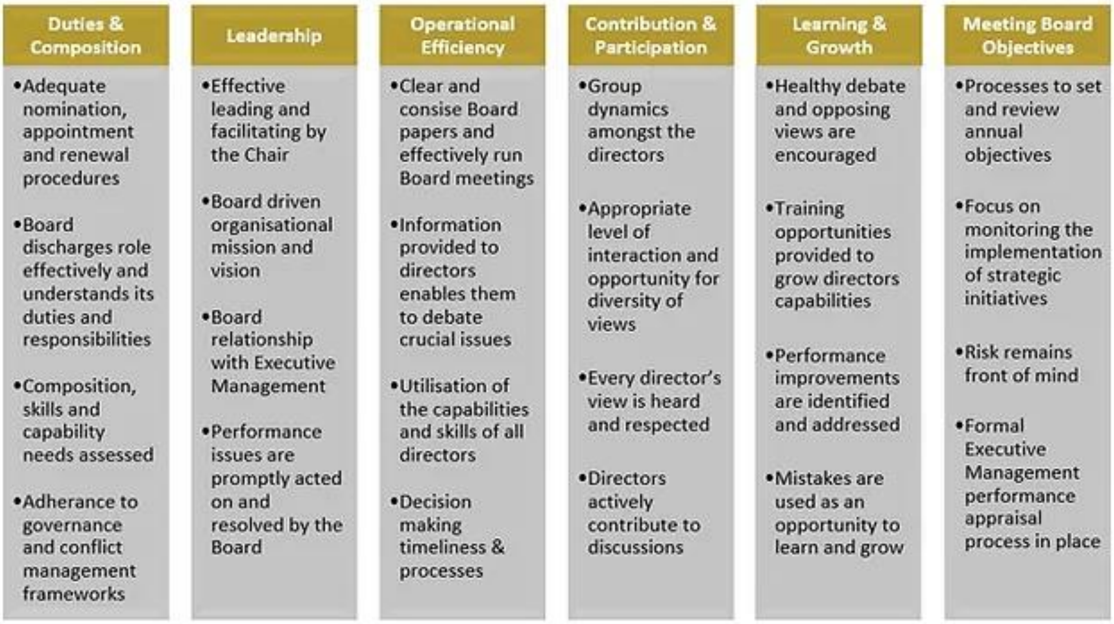
Unless a company is bound by regulatory or legislative requirements to set up Board Committees, it is up for each company to take their decision on this topic.

2.4 Review of Effectiveness

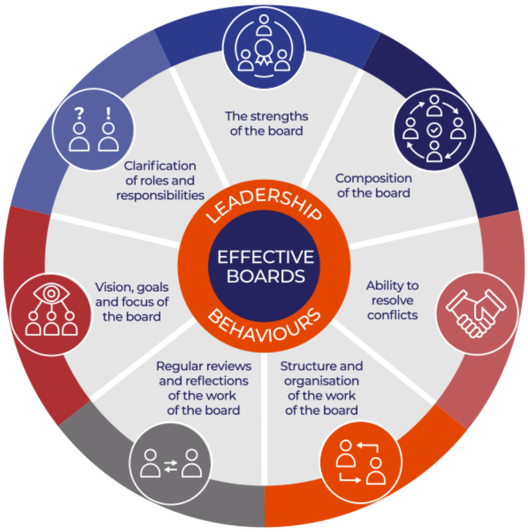
Regular evaluation of the effectiveness of the Board and any committees is necessary to ensure they meet their responsibilities and adapt to the company's evolving needs.

2.4.1 Performance Evaluation: These evaluations should be thorough and conducted periodically, assessing how well the Board and its committees are meeting their objectives and whether any changes are needed to enhance their effectiveness.

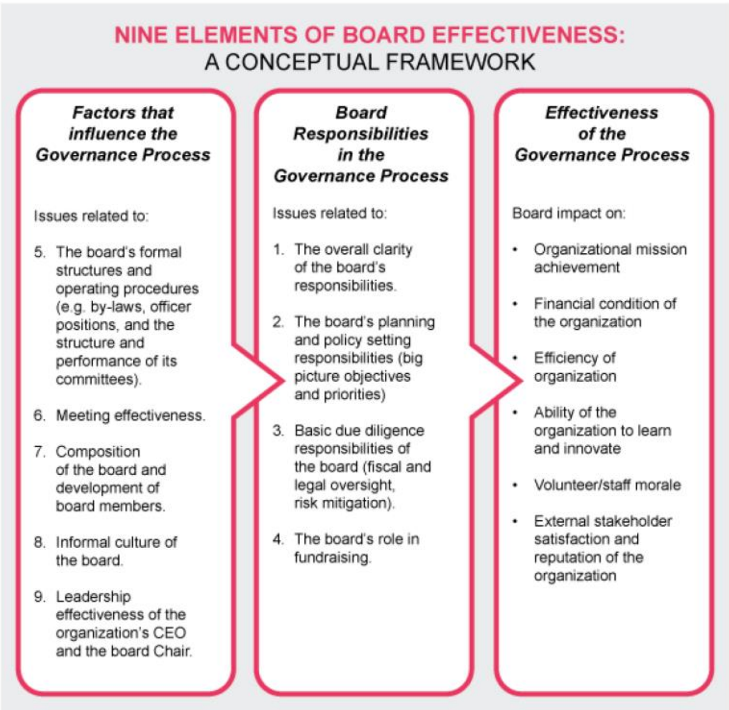
A common model used to assess the effectiveness and performance of the Board, is called the Hall Advisory's Model and consists of the following six dimensions:



Other popular models used in practice consider the following factors:



The 7-Hallmarks of Effective Boards is based on proprietary research by www.better-boards.com



Model: Guidelines for Improving the Effectiveness of Boards of Directors of Nonprofit Organizations, created by www.boardcheckup.com

Which model the individual company will use, will depend on the specificities of the companies and their Board composition. The above are suggestions, to assist you with your own assessment and evaluation.

Section 3: Appointment of Directors

General Principle

The appointment of directors is a critical component of corporate governance that directly influences the Board's effectiveness and the overall success of the company. A transparent, rigorous, and merit-based appointment process ensures that the Board is composed of qualified individuals who bring a diverse range of skills, insights, and perspectives to the table. This process is essential for maintaining a dynamic and responsive governance structure, capable of navigating complex business environments and upholding the highest standards of accountability and ethical conduct. By systematically and strategically managing the selection and appointment process of directors, companies can foster a governance culture that promotes stability, confidence, and long-term value creation for all stakeholders.

Determine the skills your business needs from directors

You could create a chart to determine what skills your business needs to move ahead and grow. List the skills that your management already has and those you need to bring on board. Identify your ideal selection criteria, eg x years' experience in y industry, qualified to z level etc.

Choosing the right person to join the Board can help ensure that it will make decisions that will encourage the long-term security and success of the business.

Before appointing a director, make sure you read the company's articles of association and follow the process described. Normally, the Board or the shareholders by an ordinary resolution (a majority in favour) decide the appointment. The articles may contain provisions that require more than 51% of shareholders to agree to the appointment. The articles may contain provisions for the shareholders to appoint a Director.

A director will normally be an employee as well as a company director (unless they are a NED). As such, you need to issue them with a contract of employment, sometimes known as a service agreement. If they are a NED, they are appointed with a letter of appointment.

Undischarged bankrupts, and certain people involved in ongoing bankruptcy or insolvency proceedings cannot become directors (depending on the jurisdiction of bankruptcy/insolvency). In addition, if you have been a director of a company that has gone into insolvent liquidation you cannot be a director of a company with a similar name within twelve months of those proceedings (as above depending on jurisdiction). In some cases, a court issues an order preventing someone from becoming a company director or being involved in its management.

Before accepting an appointment as a director, the individual should undertake appropriate due diligence to ensure they understand the governance and operation of the company. A prospective Director may request attending a Board meeting as an observer. This would help the individual to avoid inadvertently exposing themselves to a liability in their role as a director.

The company should likewise undertake due diligence on any proposed director appointments. Director checks, refer to the process of investigating and verifying information related to company directors. These checks are typically conducted to assess the suitability, integrity, and financial stability of individuals holding directorship positions. The director check investigates both current and past directorships and highlights whether your candidate has any previous disqualifications or is currently barred from being a director.

Important!: There is no legal distinction between executive and non-executive directors. Nearly all of the director fiduciary duties of executive and non-executive directors are identical, and so are the risks and liabilities.

Due care should be taken by an individual when accepting a NED appointment as they could be liable for any losses where they are unable to sufficiently discharge their duties.

3.1 Appointment Procedures

The process for appointing directors should be clear and rigorous, ensuring that the Board is composed of individuals who can effectively govern and guide the company. Directors should be selected based on objective criteria, including necessary skills, knowledge of the industry, and the ability to act in the best interests of the company. The selection process should align with the company's size, complexity, and the specific challenges it faces.

For public companies (and some large private companies) this process should be led by the nomination committee which will make recommendations or nominations: both to the full Board and the senior executive level below it. The nomination committee's work should be a continuous and proactive process of planning and assessment, taking into account the company's strategic priorities and the main trends and factors affecting the long-term success and future viability of the company. The nomination committee members usually mostly consist of NEDs. The Chair is also usually a member of the committee and may preside over its meetings. In smaller companies, the tasks of both the nomination and remuneration committees are often combined. Where the company does not have a remuneration and/or nomination committee due to its size, the nomination and appointment is undertaken by the Board and/or shareholders.

3.2 Terms of Appointment

Directors are appointed for specified terms, providing clarity on the duration and expectations of their service. This arrangement provides stability while allowing flexibility in Board composition to adapt to changing business needs. Directors should be subject to re-election at regular intervals to ensure they continue to effectively contribute to Board functions.

Directors who serve for a long time risk losing their independence or appearing to and to have become too close to company management. Tenure limits can be a great tool for companies to appoint younger directors, with fresh perspectives and from diverse backgrounds, who bring a different approach. New perspectives and a healthy exchange of views is a key aspect of an effectively functioning Board.

Certain circumstances may favour a higher level of continuity and stability. And too much turnover may rob the Board of valuable experience, skills and corporate 'memory'. Identifying and recruiting the right candidates for Board roles is not an easy task and may take some time. When they've been appointed, the Chairperson or CEO may have to invest significant time to ensure that new directors properly understand the issues. Ultimately, the key requirement is that continued service on a Board must be adequately justified and explained. It is good practice to document and record the rationale for Directors retention on the Board meeting minutes periodically.

The Institute of Directors recommends a tenure limit of 9 years for the Chairperson. They do not state a recommended tenure for NEDs – although after a long period of time they may not be or appear to be considered independent. These recommendations are not mandatory although they are a good practice benchmark for companies to adopt. Where the term limit extends beyond the 9 years, it is recommended that the Board clearly document the rationale.

3.3 Induction of New Directors

Newly appointed directors should undergo an induction program tailored to their needs and the company's operational scale. This program is designed to equip new directors with the necessary knowledge to perform their duties effectively from the outset.

3.3.1 Induction Content: The induction program should include an overview of the company’s financials, strategic plans, IT systems, and corporate culture. The depth and breadth of the induction content should be adjusted based on the complexity of the company and the director's prior knowledge. Larger or more complex organisations may provide more detailed sessions covering various aspects of the business and its environment.

3.3.2 Meeting Key Personnel: New directors should meet with senior management and key personnel, which may vary in scope depending on the size of the company. In smaller companies, where members of senior management and key personnel will be smaller in number, these meetings might be more comprehensive, as these members of staff are likely to have a broader remit of responsibilities.

3.3.3 Site Visits: Where applicable, site visits should be included to give directors firsthand insight into the company’s operations. The extent of these visits can be adapted based on the relevance to the director’s role and the operational complexity of the company.

3.3.4 Review of Governance Documents: Directors should review critical governance documents such as the company’s constitution, recent Board meeting minutes, and reports from financial and audit committees. The extent of documentation provided can be tailored to focus on the most essential elements to their decision-making and oversight roles to ensure new directors are not overwhelmed.

Section 4: Responsibilities of Executive and Non-Executive Directors

General Principle

The responsibilities of directors are fundamental to the governance and ethical framework of any organisation. Directors are entrusted with not only guiding the company towards strategic success but also ensuring that all activities adhere to legal standards and uphold good governance practices. Their role is crucial in setting the company's culture, values, and approach to risk management. Proper execution of these responsibilities ensures transparency, accountability, and fairness, which are essential for building trust with stakeholders and maintaining the company's reputation. This dedication to responsibility supports the company in achieving its objectives while upholding the principles of good governance.

An executive director is a member of a company's Board who is actively involved in the day–to–day management of the company, while a non–executive director (NED) is a member of the Board who is not involved in the day–to–day management of the company. Running the day-to-day business of the company is the job of the executive directors and senior management. NEDs are on Boards to provide oversight, sectoral expertise, knowledge and new insights, and to constructively challenge management when the need arises. A NED must consider company strategy, performance, risk, people and they should actively monitor and as necessary challenge management executives' activities. It is important to note that NEDs have the same legal responsibilities as executive directors. NEDs have a legal responsibility to challenge bad corporate governance or ethical breaches.

4.1 Director Duties

Directors are tasked with overseeing the management of the company and steering it towards sustained success. They must act in good faith, exercise reasonable care, skill, and diligence, and make decisions that align with the best interests of the company and its shareholders.

4.2 Board Meetings and Participation

All directors are expected to fully participate in Board meetings, contributing actively to discussions and establishing decision-making processes across the company. They should prepare thoroughly for all meetings, reviewing materials in advance to engage effectively in Board deliberations. Consistent attendance at all relevant meetings is essential to fulfilling their role effectively.

4.3 Professional Development and Training

Directors should participate in continuous professional development to enhance their ability to perform their roles effectively. This includes induction training for new directors and ongoing training for all Board members to stay abreast of industry developments, governance best practices, and regulatory changes.

4.4 Role of Non-Executive Directors ("NEDs")

NEDs play a critical role in reinforcing the independence and objectivity of the Board. They provide oversight and constructive challenge to the executive management, are vital in scrutinising performance, and often chair critical committees such as audit, risk, remuneration, and nomination committees (also see below Section 4.5 for certain regulated firms).

Smaller companies do not typically appoint a NED, however the benefits of such an appointment should be kept under review as the company grows.

Decision making independence is essential to professionalism and professional behaviour. It refers to the avoidance of being unduly influenced by a vested interest and to being free from any constraints that would prevent a correct course of action being taken.

To enhance the independence of NEDs, the following points should be considered:

- To avoid a conflict of interest (or perceived conflict), NEDs should declare any business, financial or other connections with the company during the past few years. For example consideration should be given to impartiality if the NED has been a shareholder, an auditor, an employee, a supplier or a significant customer. However, prior knowledge of the business and workings of the company can be an asset.
- Cross-directorships should be avoided. This is when an executive director of Company A serves as a NED in Company B and, at the same time, an executive director of Company B serves as a NED at Company A. From a best practices perspective, such a relationship is considered to make the two Boards too intimately involved with each other and potentially may reduce the quality of the scrutiny that the two NEDs involved in the cross-directorship can bring.
- Restrictions or total bans on share options for NEDs should be considered together with performance based incentives. These are intended to help ensure that NEDs are able to stand slightly apart from the executive Board and offer advice and scrutiny that are unhampered by vested interests such as short-termism on the company's share price.
- NED contracts may allow them to seek confidential external advice (perhaps legal advice) on matters which causes them concern. This should be at the company's expense.

NEDs are usually time-limited appointments (typically a term of three years) and the number of terms that a NED can serve is also often limited, perhaps to three consecutive terms.

For companies within the scope of the Financial Services Act 2019 as amended in 2024 (amendment no. 2), the appointment of NEDs should consider provisions set out in Section 88A and Schedule 15.

4.5 The Difference Between Non-Executive and Independent Non-Executive Directors ("iNEDs")

A company may wish to appoint one or more iNEDs to its Board. Generally iNEDs have no other links with the company other than sitting on the board. Whereas a NED may be appointed by the shareholder or employed because of their specific industry knowledge, an iNED can provide unbiased oversight and advice and assist in managing conflicts. More precisely, they can evaluate strategic decisions and scrutinise fee structures, offering impartial opinions on matters such as fees paid to related parties.

Using their experience and industry acumen to drive meaningful outcomes, iNEDs bring clarity to complex scenarios, ensuring alignment with shareholder interests without compromising on corporate governance standards. Their insights bridge the gap between global aspirations and local realities and enrich the board's discussions by fostering a culture of accountability and transparency—and thus ensuring a high standard of governance.

The distinction of NEDs and iNEDs is particularly important in the context of certain regulated firms and listed firms. Firms in scope of the Financial Services (Amendment No. 2) Act 2024, or for example, banks and insurers to whom the Guidance Note on Corporate Governance: Board Responsibilities for Banks and Insurers applies, have specific requirements for appointment of iNEDs. Some firms may be required to appoint at least two iNEDs to its Board and a specific regulated firm may be required to appoint iNEDs to perform certain functions (such as the Regulated Functions of Chair, Chair of Audit Committee and Chair of Risk Committee). For listed firms, best practice (although not mandatory) is for at least half the board, excluding the chair, to be comprised of iNEDs.

4.6 Proportionality and Adaptation

The extent and nature of the roles undertaken by directors should be proportional to the size and complexity of the company, as well as the nature of its business. In smaller or less complex companies, directors might assume broader responsibilities across both strategic and operational aspects due to resource constraints.

There is no set, ideal Board size. The right size of a Board for your company will depend on your individual circumstances rather than on specific rules for Boards.

To achieve the most effective Board composition with all the skills and competencies that you require, you should consider putting a succession plan in place for the Board chair and directors. Prioritise your business goals and develop a talent pipeline that ensures there are high-potential candidates that are available to join the Board when required.

The most important part of Board composition is matching your Board's skill sets with your priorities and goals for the organisation. Rather than concentrating on any one metric, focus on increasing the overall effectiveness and cohesion of your Board.

Section 5: Supply of and Access to Information

General Principle

The supply of and access to accurate and timely information is crucial for effective corporate governance. Directors require comprehensive, relevant, and timely information to fulfil their decision-making and oversight responsibilities effectively. This ensures that all Board decisions are well-informed and reflective of both current operations and future strategies. Maintaining open channels for this information flow supports transparency and accountability, enabling directors to act in the best interests of the company and its stakeholders. Thus, establishing robust procedures for the distribution and accessibility of critical information is essential for fostering an environment of trust and informed governance.

5.1 Provision of Information

Directors should be provided with complete and timely information prior to Board meetings and whenever necessary to make informed decisions. This includes regular updates on financial performance, strategic initiatives, key risks faced by the company, significant operational changes, and regulatory developments.

5.1.1 Timeliness and Completeness: Information should be sent to directors in a timely manner to allow sufficient time for review before meetings. The information should include all relevant details needed to understand the topics to be discussed.

5.1.2 Accessibility: Directors should have unrestricted access to the information necessary for the discharge of their duties.

5.1.3 Quality of Information: The quality of the supporting documents should meet high standards to ensure that directors receive reliable, accurate, and clear data. Documents should be prepared with diligence, reflecting the complexity of the subject matter.

5.2 Proportionality in Information Supply

The extent and detail of the information provided should be proportional to the complexity of the decision at hand and the nature of the company's business. Smaller companies or those with less complex operations may provide more summarised information, while larger, more complex organisations might require detailed reports and analyses.

5.2.1 Adaptation to Business Needs: Information provision practices should adapt as the company grows or as its operational environment becomes more complex. Regular reviews of these practices can ensure they continue to meet the needs of the Board.

5.3 Confidentiality and Security of Information

Directors must ensure the confidentiality and security of the information provided to them. They should adhere to company policies regarding the handling of sensitive information, using it solely for the purpose of fulfilling their Board duties. Companies should implement appropriate security measures to protect sensitive information, both in physical and digital formats. Directors should be briefed on these protocols to prevent unauthorised access or leaks of information.

5.3.1 *Information Retention:* Board packs, notes and decisions should be retained in line with local legal and regulatory requirements (this is often for a minimum six years). This will ensure there is a clear audit trail on decisions taken.

Section 6: Delegation by the Board and Board Committees

General Principle

Effective delegation is essential in corporate governance, allowing the Board to operate more efficiently while maintaining oversight across various functions. By delegating specific responsibilities to Board committees, the Board can ensure that complex issues such as finance, audit, risk, and remuneration receive the focused attention they require from those with relevant expertise. This process is guided by the principle of proportionality, ensuring that the structure and extent of delegation are tailored to the size, complexity, and specific needs of the company. Smaller companies might adopt a more streamlined approach with fewer or no committees, while larger, more complex organisations may require a broader delegation to address diverse and intricate governance demands efficiently. This structured and proportional delegation supports effective decision-making and enhances the Board's capacity to focus on strategic decisions and govern effectively.

Please kindly see the comments on the pros and cons of setting up Board Committees in Section 2 of this Corporate Governance Code.

6.1 Delegation of Authority

The Board retains ultimate responsibility for the governance and strategic direction of the company, but it may delegate certain powers to individual directors, committees, or executives to enhance operational efficiency. This delegation must be clearly defined and documented to ensure adequate oversight is maintained by the Board.

6.1.1 Scope of Delegation: The Board should specify the limits of delegated authority, detailing what decisions can be made by those to whom authority is delegated. The Board's implementation of an authorisation and signatory policy supports effective decision making and enables smooth day to day operations of the business. It empowers employees by providing clarity as to who is authorised to make what decisions, which avoids unnecessary referrals up to the Board or senior management for every decision.

6.1.2 Nature of Delegation: Delegation should encompass financial limits, the authority to sign on the business' behalf as well as specific decisions that sit within a particular field of expertise.

Individual decisions that affect the wider organisation could also be risk factors unless they have been discussed and agreed upon internally. It is often recommended to delegate authorities to a role, not an individual.

6.1.3 Monitoring and Review: Delegated responsibilities should be regularly reviewed by the Board to ensure that they are being carried out effectively and in alignment with the Board's strategic objectives.

6.2 Reporting and Accountability

Committees are accountable to the Board and must report regularly on their activities and findings. This reporting is crucial for maintaining the integrity of the governance process and ensuring that the Board remains fully informed of important developments.

6.2.1 Regular Updates: Committees should provide the Board with updates in line with their TOR. It is important to align the frequency of reporting with the type of information being shared and the Board's need for regular updates. Financial reports, for instance, may be necessary monthly, while strategic planning updates may be suitable quarterly. Strike a balance between providing timely information and avoiding information overload.

Section 7: Financial Reporting

General Principle

Financial reporting is a cornerstone of corporate governance, providing critical information that influences decisions by stakeholders and reflects the financial health of the company. Effective financial reporting practices ensure transparency, facilitate accountability, and support the Board's oversight functions. These practices are shaped by the principle of proportionality, which tailors the financial reporting processes to align with the company's size, complexity, and stakeholder needs. Smaller organisations may implement simpler reporting systems provided they meet all applicable statutory and regulatory requirements and provide clear insights into their operations, while larger enterprises might require more detailed and frequent reports due to their complex structures and the broader scope of stakeholder interest. By adhering to high standards of financial reporting, companies of all sizes must uphold integrity and foster trust, thereby enhancing their long-term value creation.

7.1 Integrity of Financial Reporting

The Board has the primary responsibility to ensure the integrity of the company's financial reporting. This includes the oversight and approval of the financial statements, ensuring they accurately represent the company's financial position and performance in a true and fair manner. Financial reports should be accurate, complete, and prepared in accordance with the relevant accounting standards. The Board should not approve financial statements unless they are satisfied that they give a true and fair view of the company's assets, liabilities, financial position, and profit or loss.

All directors are jointly and severally responsible for the financial reporting of the company. All directors have responsibilities in law to ensure that the information provided is accurate. It is therefore incumbent on all directors to ensure they have the fundamental skills to understand the financial statements and are able to challenge and question these as appropriate.

Please bear in mind that regulated entities might, as part of their regulatory incumbencies, have additional specific financial reporting obligations that they need to comply with.

7.2 Transparency in Financial Disclosures

Transparency in financial disclosures is critical for maintaining shareholder and/or investor trust and confidence. The Board should ensure that financial statements and other relevant disclosures are made available to shareholders in a timely and understandable manner.

7.2.1 Timely Reporting: The company should ensure that financial statements are published within the statutory and regulatory deadlines or sooner, providing shareholders, the markets and regulator (where relevant) with essential financial information without unnecessary delay.

7.2.2 Clarity and Accessibility: Financial disclosures should be presented in a clear and straightforward manner, making it easy for shareholders to understand the financial status and performance of the company. The Board should also ensure that these disclosures are easily accessible.

7.3 Responsibility for Financial Controls

The Board should ensure that there are robust internal financial controls in place that are adequate for the company's needs. These controls are crucial for the creation and maintenance of proper accounting records, the protection of assets, and the prevention of fraud and error. The Board should periodically review the effectiveness of the company’s internal control systems and ensure there are mechanisms in place to report any weaknesses or failures in a timely manner.

Section 8: External Audits

General Principle

The role of external auditors is crucial for enhancing the transparency and integrity of financial reporting within a company. The engagement of external auditors is determined by the principle of proportionality, reflecting the company's scale, complexity, and specific regulatory requirements. For many companies, particularly those in regulated industries, external auditors provide an essential independent assessment of financial statements, ensuring accuracy and building trust with stakeholders. However, some companies may not be required to appoint external auditors if they fall below certain thresholds in terms of size or revenue, focusing instead on internal reviews to meet their auditing needs. In these cases, the Board itself must assume greater responsibility for financial oversight, potentially supported by internal audit functions to ensure that financial reporting and compliance are managed effectively. This approach ensures that the structure and intensity of audit oversight are tailored to meet the specific needs and circumstances of each company, balancing rigorous financial scrutiny with the flexibility needed by smaller entities.

Apart from the relevant legal obligations, and commitments to ensure tax compliance, an audit can bring financial discipline to your business. An external audit also enhances credibility to the financial statements of small and medium-sized enterprises ("SMEs") and provides a greater level of assurance to external stakeholders, for example Banks when assessing applications for credit facilities. For all kinds of companies, including SMEs, audit failure is a serious matter, with the repercussions potentially affecting business, brand, and value.

8.1 Role of External Auditors

External auditors are tasked with providing an independent assessment of the company's financial statements. This role is crucial in assuring stakeholders that the company's reported financial status is both accurate and fair. As with internal auditors (see Section 10 below), their role includes detection and prevention of internal and/or external financial fraud. External auditors must maintain independence from the company to avoid any conflicts of interest, ensuring their reports are objective and unbiased.

8.2 Appointment of External Auditors

The appointment of external auditors is mandated by law for certain types of companies, primarily to ensure transparency and integrity in financial reporting. In cases where the law does not require the appointment of external auditors, the Board should evaluate the benefits of engaging auditors independently. This evaluation should consider factors such as the complexity of the company's financial structure, the scale of its operations, and the potential to enhance credibility with stakeholders through audited financial statements. It is good practice to review the appointment of auditors periodically to ensure they remain fit for your business needs and remain suitably independent.

As set out in section 255 of the Companies Act 2014, auditors are appointed by passing a shareholder resolution. In practice, the Board often appoints the first auditor of the company (subject to the Articles of the company). Where there is an audit committee (see further below), that committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. Where there is no audit committee appointed, the Board retains full responsibility for the appointment and review of the auditor.

Entities Required to Appoint an Auditor in Gibraltar:

- All "medium" or "large" private limited companies (as defined in the Gibraltar Companies Act - for reference, as at the date of publication, this would typically include companies that meet two of the following three requirements: net turnover greater than £10.2m, net assets greater than £5.1m and more than 50 employees);

- Public limited companies ("PLCs");
- Companies licensed by the Gibraltar Financial Services Commission or regulated by another local regulatory agency; and
- Companies whose turnover is equal to or above the threshold as defined by the Income Tax Act (2024: £1.75m).

The following are areas a business should consider when appointing (or when reviewing for a re-appointment) an external auditor:

- **Expertise** – Your interview with prospective auditors and their answers to the right questions will point out the way for a successful selection. It would also be worthwhile enquiring whether the audit firm has expertise and knowledge in non-audit areas, such as taxation, and business advisory functions. The staff used in the audit will also be critical, and whether a firm ensures that on-job auditors are qualified and experienced is another factor to consider.
- **Reputation** – Having confidence in the people who will be carrying out your company's audit should be near the top of your list of selection criteria and is intrinsically linked to the expertise of the auditor. Reputation is clearly a key initial indicator. However, keep in mind that the initial discussions may be with a senior partner who may not be involved in the audit process. In this case, it may be prudent to meet the people who will be responsible for managing and conducting the audit – rather than just the partner in charge. Find out more about their strengths and potential weaknesses. Will their skills and personalities integrate efficiently with those of your financial or management team? Are these people you feel comfortable working with? Do you feel you can trust them? Can they guarantee that they have the capacity to handle your audit within the timeframe and deadlines you require? If the answer is 'no', then this firm may not be the right one for you. You need to feel confident that the audit partner you have in front of you is showing a genuine understanding of your business and industry. Are the questions being asked generic? Are they relevant to the size of your firm, the industry you work in, and the way you operate your business?
- **Relationship** – Getting to know a potential auditor well before entering into the relationship is essential—it is a window into how the relationship will hold up under stress (e.g. during the audit). If you have a good working relationship with the engagement partner, the audit will probably be smoother.
- **Cost** – It is understandable that cost would be considered an important factor when choosing an auditor; but cost should not be the only, or indeed, principal factor.
- **Audit approach** – Without being too technical, it is also worth asking the auditor about their audit approach. Does the audit firm embrace technology and have tools to increase audit efficiency and reduce audit cost? How does the auditor assess the internal control framework and what reliance will be placed on the strength of the internal control environment? How does this reliance impact the audit fieldwork testing? Does the audit firm have the expertise and technical resources to audit environments that are highly reliant on IT systems? What type of feedback does the audit firm provide to its clients on any weaknesses that it encounters and does it provide recommendations related thereto?
- **Transparency** – When sourcing your future auditor, you should also analyse how the prospective audit partner tackles questions relating to openness and transparency, especially when it comes to providing information about the audit process and quality control. Remember that you must have all the important information at your fingertips when you need it. Moreover, the right auditor should be able to communicate

to you and your team with clarity so that you will know where and how to improve. The first test for the auditor would be to help your team understand what it needs to do to prepare for the audit.

8.3 Establishment of Audit Committees

While the formation of an audit committee is generally encouraged to enhance financial oversight, it is not mandatory for all companies. The Board should consider establishing an audit committee based on the size of the company, the complexity of its financial operations, and the nature of its business. In some instances (e.g. regulated entities), it may be mandatory by law or regulation to establish an audit committee. In such instances, the composition of the audit committee may also be subject to specific requirements.

8.3.1 Role of Audit Committees: When established, an audit committee should monitor and oversee the integrity of financial statements, the financial reporting process, the effectiveness of the company's internal controls, risk management systems, the performance of internal audit function, appointment, performance and independence of external auditors and the audit process.

8.3.2 Composition of the Audit Committee: This committee should primarily consist of NEDs, with at least one member having relevant financial expertise. It is encouraged that the CEO and Chief Financial Officer ("CFO") should not be members of the audit committee.

8.4 Encouragement of Best Practices

Regardless of size, all companies are encouraged to adhere to best practices in financial governance. This includes regular reviews of financial controls, active engagement with external auditors (where applicable), and transparent financial reporting to stakeholders.

As your business grows in its complexity of operations, you may wish to review your relationship with your current auditor to ensure that it still meets your business needs and requirements. Some reasons for switching auditors are as follows:

- **Independence** – It can be difficult to make the break, especially if you have developed a strong relationship with your auditor over the years. You should consider whether the relationship with your auditor still offers the degree of independence that is required for your business.
- **Fresh Energy** – A new auditor can inject fresh energy into a company and improve the robustness of the audit. Risk areas are reassessed, and different questions are asked of the management team, as the new advisors get to grips with your company.
- **Growth** – Growth and complexity of operations may also be a deciding factor. What worked for you as a young company may not be the right fit for you now. You may now need an auditor with more experience of your industry.
- **Range of Services** – Assessing the balance between non-audit and audit services should be a high priority if considering making the leap. Ideally you would want to find a 'one stop shop' when it comes to audit, tax and advisory services.
- **Legal Requirement** – Since the introduction of the EU Audit Reform on 17 June 2016 (as applied and retained under Gibraltar law), credit institutions, public interest entities, and larger companies may be required to re-tender for audit every 10 years, and change auditor at least every 20 years.

We understand that the prospect of choosing a new advisor can be daunting but remember, a fresh pair of eyes could bring a new impetus to your business.

8.5 Auditors’ role in preventing financial fraud

Auditors play an important role in preventing financial fraud by identifying and reporting any potential fraud that they discover during the course of an audit. It is the responsibility of auditors to report any instances of fraud to management and the audit committee in order to take appropriate action.

In addition to reporting instances of fraud, auditors also have a responsibility to provide recommendations for improving internal controls to prevent fraud. This can include recommendations for implementing stronger financial controls, increasing transparency, and improving oversight.

For instance, a company might adopt stronger financial controls to ensure the accuracy of financial reporting, or implement an anonymous hotline for employees to report any potential instances of fraud. Other measures might include increasing the independence of the internal audit function, or implementing a training program to educate employees about the detection, prevention and impact of financial fraud.

Ultimately, the role of auditors in preventing financial fraud is to ensure that companies have the necessary safeguards in place to detect and prevent fraudulent activity, and ensuring the integrity of financial statements which are free from material misstatements caused by fraud or error. By working closely with management and the audit committee, auditors can help to protect the integrity of financial reporting and maintain the trust of investors and stakeholders.

Section 9: Internal Controls and Risk Management

General principle

Effective internal controls and risk management are essential to safeguarding the assets and ensuring the sustainability of any organisation. These systems are designed to detect and mitigate risks that could affect the company's operations and financial well-being. The adoption and implementation of internal controls and risk management practices should be subject to the principle of proportionality, which encourages tailoring these practices to the size, complexity, and specific risks faced by the company. For smaller companies, the focus may be on establishing fundamental controls and straightforward risk management procedures that address their most critical risks. Conversely, larger, more complex organisations will require a more sophisticated and layered approach to manage the broader scope of risks inherent in their operations. This proportional approach ensures that each company can effectively manage its unique risks while maintaining operational efficiency and compliance with relevant regulations.

Companies use three types of internal controls – detective, preventive, and corrective controls:

- **Detective Controls:** Detective controls constitute internal controls that highlight any significant issues commonly involving legal compliance, quality control, and fraud prevention. Detective controls are implemented top-down.
- **Preventive Controls:** Preventive controls are a form of internal control that mitigate risks and are performed regularly to help with proactive prevention of errors and irregularities.
- **Corrective Controls:** Corrective controls are a form of internal control which aims to resolve any errors found by internal detective controls and help prevent future recurrence.

These forms of internal controls help prevent and react to company procedural issues before, during, and after processes are run.

9.1 Establishment of Internal Controls

The Board is responsible for ensuring that a robust internal control system is in place, tailored to the size, complexity, and risk profile of the company. In some instances, for example for businesses regulated by the GFSC, there are specific regulations requiring establishment of robust internal controls. In other instances, businesses must comply with the fiduciary duty of care, skill, and diligence but may not have explicit legal requirements to implement an internal control system.

9.1.1 Comprehensive Framework: The internal control framework should cover all key areas of the company's operations, including financial, operational, compliance, and information technology controls. The complexity of these controls should align with the company's scale and the nature of its business activities.

9.1.2 Regular Reviews: The effectiveness of the internal controls should be reviewed regularly by the Board to ensure they continue to be applied, and they continue to be effective and meet the needs of the company as it grows and evolves. Larger companies or those in more complex and regulated industries may require more frequent and detailed reviews.

Listed below are some examples of internal controls that organisations can implement in their operations:

- **Segregation of Duties** – Task delegation is a risk reduction method involving dividing work duties among multiple individuals.

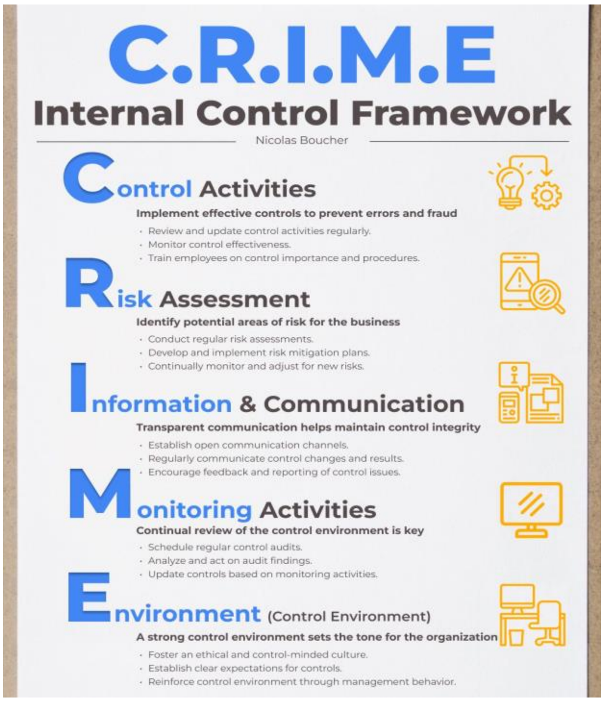
- **Physical & Cyber Controls** – Assets are physically secured using locks, safes, or environmental controls. Similarly, assets and information stored electronically should be secured using encryption and protected by passwords or dual authentication. The platform access should be secured from external access using appropriate cyber tools. For both physical and electronic assets, access should be restricted to authorised personnel, or those who strictly require access.
- **Reconciliations** – This ensures the accuracy of transaction details and proper recording across different individuals' records. Examples include reconciling bank statements to check register/records and balancing cash on hand to sales or transaction activity on cash register totals.
- **Policies & Procedures** – The organisation should have established policies, procedures, and documentation available at all levels to ensure consistent performance and built in controls in place to ensure the correct application of the policies and procedures.
- **Transaction & Activity Reviews** – Reviews of various reports, such as transaction, operating, and summary reports, help monitor performance, identify trends, and detect problems. An example of a specific review would be examining budget statements to compare actual expenses, analysing telecommunication misuse, and reviewing employee time cards.
- **Information Processing Controls** – Data processing involves internal controls to ensure transaction accuracy, completeness, and authorisation levels. The data is verified by comparing it to control files, checking numerical sequences, and comparing file totals to previous balances and control accounts.
- **Quality Controls** – This involves an input being reviewed by different individuals to ensure accuracy of information and to ensure systems continue to operate as intended. Typical examples are 4-eye-checking where a second person reviews the information input by another individual or double blind where two people input the information independently and checks are carried out for consistency between the two.

Organisations use internal controls to comply with industry standards and regulations governing financial risks.

Internal control weaknesses are failures in the implementation or performance of internal controls. Even the strongest security measures can be circumvented if a malicious actor identifies an internal control weakness.

Due to rapid technological development, and the ever-growing number of internal controls, organisations must continuously monitor security controls to ensure they are adequately protected. Regular monitoring of internal controls is essential in verifying their effectiveness and exposing weaknesses including those that a malicious actor could exploit. As set out in 9.1 above whether a legal obligation exists will depend on other factors such as the entity's regulatory status.

9.1.3. Implementing an Internal Control Framework: A commonly used Internal Control Framework is called CRIME:



9.2 Three Lines of Defence

To ensure the effectiveness of an organisation's risk management framework, the Board and senior management need to be able to rely on adequate line functions – including monitoring and assurance functions – within the organisation.

The 'Three Lines of Defence' is the most commonly adopted approach to manage risks across the business. The responsibilities are divided as follows:

First line of defence

Under the first line of defence, operational management (i.e. front office) as the risk owner has responsibility and accountability for directly assessing, controlling and mitigating risks. It is vital that managers clearly understand their areas of responsibility.

Second line of defence

The second line of defence oversee or specialise in risk management and compliance which may include: compliance, risk management, quality assurance, IT and other control functions. This line of defence monitors and facilitates the implementation of effective risk management practices by operational management and assists the risk owners in reporting risk-related information up and down the organisation.

Third line of defence

Internal audit (see further in Section 10), where in place, forms the organisation's third line of defence. An independent internal audit function will, through a risk-based approach to its work, provide assurance to the organisation's Board of directors and senior management. Where there is no internal audit function the Board takes ownership and responsibility as the third line of defence.

9.3 Risk Management

Effective risk management is vital for the sustainable success of the company. The Board should ensure that there is a systematic approach to identifying, assessing, and managing risks, with considerations given to the size and complexity of the company. The Board has a responsibility to identify and define the risk appetite of the company. A higher risk appetite would allow the business to undertake a broader range of activities but conversely should dedicate greater resources to manage those risks.

9.3.1 Risk Assessment: Formal risk assessment processes should identify the risks facing the company and evaluate the likelihood and potential impact of these risks. Larger companies or those operating in higher-risk environments might face more significant challenges and should have advanced risk identification and assessment mechanisms.

9.3.2 Mitigation Strategies: Appropriate mitigation strategies should be implemented for each identified risk. Mitigation of a risk may not eliminate the risk but leave a residual risk that can be managed within the risk appetite of the company and the resources the company is prepared to dedicate to managing the risk. Companies with extensive operations or those exposed to higher risks may need more sophisticated risk mitigation strategies, including comprehensive insurance covers, advanced operational changes, or extensive contingency planning.

9.3.3 Risk Reporting: Regular risk management reports should be provided to the Board, offering insights tailored to the scale and complexity of the company's operations. The Chief Risk Officer, if appointed, would have primary responsibility. In larger organisations or where mandated under legal/regulatory requirements, a Risk Committee will undertake this role, with summary reports provided to the Board. In smaller organisations with no Chief Risk Officer the person responsible for the second line (Compliance/MLRO) would retain responsibility for risk reporting.

9.4 Alignment with Strategy

Internal controls and risk management processes should be aligned with the company's overall strategy, ensuring that they support long-term goals and are adaptable to strategic changes.

9.4.1 Strategic Integration: The design and implementation of internal controls and risk management should consider the strategic objectives of the company. For larger or more strategically diverse companies, this might mean integrating controls into varied business units and functions across the globe.

9.4.2 Dynamic Adjustments: As the company's strategy evolves, so too should its approach to internal controls and risk management to ensure these elements continue to support and enhance strategic objectives.

9.5 Training and Awareness

It is the Directors responsibility to ensure that employees are aware of the major risks impacting the business and steps in place to mitigate those risks and this objective is best achieved by effective training. Training is part and parcel of fostering a company-wide culture of risk awareness and compliance.

Directors should have a strong grounding in the principles of risk management and internal control frameworks to be able to apply those principles within the business, to determine which risks and controls are material, to monitor and review the effectiveness of controls.

Effective training should ideally cover the principles and practical application of risk management and internal control frameworks. They should equip participants with the knowledge and understanding of the relationship between risk and internal control frameworks, and how they might operate effectively in their organisation and in line with their governance and reporting processes.

9.5.1 Employee Engagement: Training programs should be scalable, providing basic risk management principles to all employees and more detailed training to those in key control or risk-sensitive roles.

9.5.2 Leadership Training: Executives and Board members, particularly in larger or more complex organisations, should receive training focused on strategic risk management, internal controls, and compliance obligations.

9.6 Continuous Improvement

The company should commit to continuous improvement in its internal control and risk management practices, ensuring they remain effective as the company grows and the external environment changes.

9.6.1 Feedback Loops: Utilising feedback from audits, risk assessments, and stakeholder inputs should be part of a continuous loop to enhance and refine controls and risk management strategies.

9.6.2 Adaptation to Changes: Regular consideration of internal controls and risk management practices are necessary to address new risks and changes in the business landscape, with larger or more complex companies requiring more dynamic adaptation strategies.

Section 10: Internal Audit

General Principle

Where established, the internal audit function and the audit committee are integral components of a company's governance structure, playing crucial roles in enhancing the effectiveness of internal controls and the overall audit process. The establishment and operation of an independent internal audit function and an audit committee would be guided by the principle of proportionality, ensuring that their structures and functions are appropriately scaled to the size and complexity of the organisation.

In smaller companies, internal audit activities might be more focused and direct, possibly integrated within broader operational roles due to resource constraints. Executive Directors and Managers in small companies, where no audit committee is in place, should be considering the oversight of the company operations and controls as part of their day-to-day tasks.

In contrast, larger companies typically benefit from a dedicated audit committee that oversees a comprehensive independent internal audit department, capable of conducting detailed and frequent reviews across various functions and regions. This tailored approach helps ensure that regardless of size or sector, organisations maintain robust oversight and control mechanisms that support compliance, and risk management.

An internal audit strengthens corporate governance through risk-based audits that provide assurance and insights on the processes and structures that drive the organisation toward success. As the risks faced by the business become more complex, the internal audit's role is likely to expand in areas such as risk governance, culture and behaviour, sustainability, and other non-financial reporting measures. As organisations address the changing risks created by new technology, geopolitics, cybersecurity, and disruptive innovation, an internal audit function can help support sound corporate governance.

In accordance with the Proceeds of Crime Act 2015, a "relevant financial business" (as defined under this legislation) must undertake an independent audit function for the purposes of testing the anti-money laundering policies, controls and procedures, whilst having regard to the size and nature of the business.

10.1 Establishment of Internal Audit Function

Where appropriate, the company should establish an internal audit function to provide independent and objective assurance on the effectiveness of internal controls, risk management, and governance processes. The necessity and scope of this function should be aligned with the size, complexity, and risk profile of the company.

10.1.1 Scope and Authority: The internal audit function must have clear authority, duties, and unrestricted access to all relevant information, personnel, and assets necessary to fulfil its role.

10.1.2 Independence: To ensure impartiality, the internal audit function should have an independent status within the organisation, reporting directly to the audit committee or, if no such committee exists, to the Board directly.

10.2 Role and Responsibilities of Internal Audit

The internal audit function is tasked with regularly assessing and reporting on the adequacy and effectiveness of the company's controls, operations, and compliance with laws, regulations and internal policies.

10.2.1 Risk-Based Audit Planning: Audit plans should be developed based on a thorough risk assessment and approved by the audit committee or the Board. These plans should remain flexible to adapt to emerging risks and changes.

10.2.2 Assessment and Reporting: Internal audits should frequently assess the company's risk management and control systems, reporting findings to the audit committee or the Board with recommendations for improvements.

10.2.3 Prevention of fraud: As with external auditors (see Section 8 above), the internal audit function plays an important role in preventing financial fraud. In addition to reporting instances of fraud, auditors also have a responsibility to provide recommendations for improving internal controls to prevent fraud. Ultimately, the role of internal auditors in preventing financial fraud is to ensure that companies have the necessary safeguards in place to detect and prevent fraudulent activity.

10.3 Audit Committee

See Section 8 above on establishing an audit committee.

10.4 Resource Allocation and Competency

Sufficient resources and skilled personnel should be allocated to the internal audit function to ensure its effectiveness. The company must also support the continuous professional development of internal audit staff, as internal auditors should possess the necessary qualifications and expertise to conduct audits across various areas of the company's operations.

The internal audit should have the authority to use external resources where a topic is complex and beyond the skills of the in-house team. If an internal audit practice requires additional skills or resources, it can look for expertise within the wider internal audit function, from another part of the business. Smaller companies might consider engaging external resources to perform an internal audit function. The typical models are to either outsource the internal audit function altogether (more often adopted by smaller companies), or to adopt a hybrid model of 'co-sourcing' where the external supplier provides additional skills and resources to compliment the internal audit team.

10.5 Evaluation of Internal Audit Function

The effectiveness of the internal audit function should be periodically reviewed by the audit committee or the Board. This review helps ensure that the internal audit remains aligned with the company's needs and any changes in its operational environment. Reviews should consider the audit function's ability to identify key risks, the impact of its recommendations on enhancing control systems, and the adequacy of its resources.

10.6 Internal audit's relationship with external audit

Internal auditors will investigate issues concerning the company's business practices and risks, whereas external auditors will examine the financial records and issue an opinion on the company's financial statements. Internal audits are performed throughout the year, whereas external auditors perform a single annual audit.

Internal and external audit are complementary functions within the assurance framework and both are essential for the effective governance of an organisation. The company's governance framework would benefit from the internal and external audit functions having appropriate and regular communication – a constructive relationship on this basis can be of benefit to the organisations they serve. However, it is vital that the two assurance functions maintain clear boundaries, as well as ensure they preserve their independence and objectivity.

Section 11: Compliance with Statutory, Regulatory, and Industry Standards

General Principle

Ensuring compliance with statutory, regulatory, and industry standards is fundamental to the integrity and success of any organisation. This compliance safeguards the company's operations and strengthens its reputation by meeting legal obligations and industry benchmarks. The implementation of compliance measures which exceed the minimum legal and regulatory requirements would be driven by the principle of proportionality, which dictates that the scope and rigour of these measures should be appropriate to the size, complexity, and specific regulatory status of the company.

For smaller firms, compliance efforts might focus on core statutory requirements and basic industry standards that are critical to their operations. Larger, more complex organisations or those that have specific regulatory requirements, may need to adopt more comprehensive compliance frameworks that address a wider range of regulations and standards applicable across different jurisdictions and sectors. This approach ensures that all companies, regardless of their scale, can effectively manage their compliance obligations while supporting their strategic objectives and mitigating risk where possible.

Failure to comply with statutory or regulatory requirements can result in financial penalties, legal action, damage to reputation, and even the revocation of a business's licence to operate.

Regulated businesses are expected to take a risk-based approach to mitigating risks. This means dedicating resources in proportion to the risks that are deemed more likely and/or having greater impact on the business. Businesses are expected to understand and assess the risks their business may face and implement policies, procedures and registers to manage the risks identified. These risks should be reviewed regularly and the assessment updated when the risk profile changes.

Staff should be trained on the procedures and understand how they apply in their specific roles. Management should lead by example in undertaking training and demonstrating a culture of compliance and a clear 'tone from the top'.

11.1 Commitment to Compliance

The Board is responsible for and must be committed to ensuring that the company complies with all applicable statutory and regulatory requirements, as well as industry standards that govern its operations.

11.1.1 Compliance Strategy: The company should establish a strategy that ensures compliance with legal obligations and industry standards. The strategy should detail the company's approach to monitoring compliance and addressing potential violations.

11.1.2 Regular Compliance Reviews: To ensure ongoing compliance, the company should conduct regular reviews, at least annually, and the frequency of each review will depend on the business and the risk. The output of such reviews should be recorded in a standard format for a clear audit trail. These reviews help identify potential areas of non-compliance and allow the business to initiate timely corrective actions.

Regulated entities are required to implement a compliance monitoring plan and non-regulated entities are encouraged to adopt similar reviews as best practice. There are several considerations when designing a compliance monitoring plan ("CMP"):

- Should be thorough — it needs to cover the key risks that your Business has identified along with the mitigating steps you put in place to address them.
- Needs to be proportionate to the size, complexity and nature of your business, and the nature and number of risks it faces.
- Should be approved by the Board.

The CMP should describe the following:

- The testing program.
- Who will be responsible for carrying it out.
- How often testing will take place.
- How you will record and evidence the testing conducted.

Businesses would typically follow these steps to design a CMP:

- **Conduct a Compliance Review:** Before creating a plan, you must comprehensively review the risks faced across your entire organisation. Gaining a clear and complete picture of your risk profile will provide your monitoring programme with a solid foundation and ensure there are no gaps in the areas you assess.
- **Identify Areas of Greatest Risk:** As well as being far-reaching, your compliance monitoring plan should be weighted to focus on the areas that pose the most significant risk. In this way, resources — whether financial or human — target the most crucial areas.
- **Align Compliance Reporting:** Your compliance reporting needs to support and enable your regulatory compliance strategy to ensure that the areas where you face the most risk receive the most attention.
- **Monitor the Results:** Once the plan is in place, you can start to measure the effectiveness of your current compliance approaches to discover the importance of compliance monitoring. Considerations include the methodology you will use and how you will make the right people accountable for each risk.
- **Enlist Subject Matter Experts:** Any areas that need specialist knowledge will require specific attention from appropriate internal experts. Are some risks related or interdependent? In these areas, can you produce collective reports and action plans that maximise efficiency and leverage synergies?

11.2 Ensuring Effective Risk Management

Risk management is integral to the company's compliance framework, providing mechanisms to identify, evaluate, and mitigate risks associated with non-compliance. For further details, please consult Section 9 of this corporate governance code.

11.3 Board Oversight and Responsibility

The Board has ultimate responsibility for ensuring compliance with all relevant laws and regulations. Boards are also expected to ensure that the company keeps up with all relevant industry standards. It should oversee the development and implementation of compliance and risk management systems to ensure they are effective and fit for purpose. Failure to do so may be a breach of the directors' fiduciary and statutory duties.

11.3.1 Training and Resources: The Board should ensure that all employees, especially those in key compliance roles, are well-trained and equipped with the resources necessary to fulfil their compliance duties effectively.

11.3.2 Accountability: The company should define responsibilities for compliance throughout the organisation and include provisions for addressing non-compliance in a manner that is consistent across the company. Clear reporting and escalation lines should be in place.

11.4 Transparency and Reporting

The company should provide relevant stakeholders clear and accessible information about its compliance policies, practices, and any significant issues. The company should, where appropriate, disclose its compliance activities in its annual reports or any other relevant communications, in line with industry norms and regulatory expectations.

Section 12: Remuneration of Directors and Executives

General principle

Setting appropriate remuneration for directors and executives is critical to aligning the interests of leadership with the goals of the company and its shareholders. Effective remuneration practices support the attraction, motivation, and retention of key leadership talent, while fostering accountability and driving company performance. The design and implementation of these remuneration systems are usually guided by the principle of proportionality, ensuring that they are suitable for the company's size, the complexity of its operations, and the competitive landscape in which it operates. Remuneration of NEDs would typically not include any performance based incentives, such as bonus payments.

In smaller or less complex companies, remuneration structures may be simpler, focusing primarily on direct compensation and basic performance incentives. In contrast, larger organisations may require more elaborate remuneration packages that include a variety of incentive mechanisms, such as long-term equity awards and complex performance criteria, to address the demands of diverse stakeholders. This proportionate approach helps ensure that remuneration practices are both fair and effective across different types of companies, promoting strategic alignment and long-term value creation.

Some remuneration practices are as follows:

- **Have a basic remuneration structure** – Even if you are a small business, it is still possible and worthwhile to formalise some of your practices. Some simple steps include determining at what point during the year you will be reviewing salaries, and/or whether it will be done in conjunction with performance reviews. Provide some direction for managers by setting minimum and maximum salary review guidelines, or take it a step further by also providing salary scales for different employee levels. The key is to ensure not only that the structure is easy to manage and understand, but that it is also perceived as fair within your organisation.
- **Train your managers** – Having a group of well-informed managers will ensure that they are able to clearly explain the remuneration policy to their employees, noting that managers and HR are the first to be engaging in these discussions. By providing them with the tools to explain how salaries are determined they will be able to support the decisions made, which helps give employees confidence in the process.
- **Communicate with employees** – Where possible, employees should be aware of the company's remuneration policy and salary scales. This will help eliminate rumours and false perceptions and will ensure better comprehension of the program and the decisional process.
- **Align with strategic objectives** – The values and culture of the organisation could be reflected in the company's chosen remuneration practices. It should be coherent with the challenges faced by the organisation and the strategic choices that are made. For example, if the company values qualification, then this could be a criterion that is used in determining compensation. Review the remuneration policy regularly to ensure it continues to be aligned with changes both internal and external.
- **Stand out** – Remuneration and base salary are one of the principal attraction factors from the employee's perspective so make sure that your company is competitive and find ways to differentiate yourself from other companies. It is important to be alert to external factors which could have an impact on both recruitment and staff retention.

12.1 Principles of Remuneration

The company should establish a formal and transparent procedure for setting the remuneration policy for directors and key managers. The policy should be designed to attract, retain, and motivate individuals whose role is to achieve the company's objectives, while aligning their compensation with the longer term interests of the company.

12.2 Remuneration Committee

The Board should consider whether a remuneration committee should be established to recommend frameworks and policies to the Board, ensuring that remuneration supports the strategic aims of the company and facilitates the recruitment, motivation, and retention of senior executives. The formation and scope of this committee may be mandated pursuant to applicable regulatory requirements and should be proportionate to the size, complexity, and regulatory environment of the company.

It is good practice to use benchmark data from public sources to support the Board's deliberations on remuneration packages. This can help minimise the risk of a Board taking a decision in a vacuum, i.e. without external references broader than the perspectives of the individual Remuneration Committee members. Benchmarking is only a factor to be considered alongside others (for example strategic aims of the company).

Smaller companies might consider selecting an external adviser to assist the Board in their deliberations. They offer insights into national, regional and international market practice, investor sentiment and regulatory changes, as well as providing benchmark data and other forms of analysis.

12.2.1 Composition and Independence: A remuneration committee should ideally consist of independent NEDs, where possible, to prevent conflicts of interest in setting the remuneration of executive directors and senior management. However, in smaller companies or those operating in less complex or regulated environments, forming a remuneration committee may not be practical due to limited personnel or resources. In such cases, these responsibilities should be managed directly by the Board to maintain oversight and governance integrity.

12.2.2 Function: Whether managed by a remuneration committee or directly by the Board in smaller companies, it is important to set specific remuneration packages for directors and key executives, which includes salaries, incentives and termination terms, ensuring these are aligned with corporate goals and financial sustainability.

12.3 Remuneration Policy

The remuneration policy should be consistently applied across the business, reflecting the roles and responsibilities of the executives and directors. This policy should be straightforward to administer and understand, ensuring they meet the needs of the business. Review the remuneration policy regularly to ensure it continues to be aligned with changes both internal and external.

12.4 Disclosure and Accountability

Where required or appropriate, it is good practice for the remuneration policy to be transparently disclosed at Board level.

12.4.1 Proportionate Disclosure: The detail and frequency of disclosures about remuneration practices should reflect the size, complexity and regulatory environment of the business. Larger companies, those listed, or operating in certain regulated environments, may be required to provide extensive details in their annual reports and other disclosures, while smaller companies are likely to adopt a more streamlined approach that still maintains transparency.

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