

C KEY ATTRIBUTES OF GOVERNING BODIES

SIZE OF GOVERNING BODIES

The size of the governing body should be such that it can carry out its primary accountabilities effectively – too big and it can be unwieldy and at worse, paralysing; too small and it could lack the skills and experience necessary to fulfill its duties competently.

SKILLS, EXPERIENCE AND COMPETENCES

Most importantly, there should be a balance of skills, experience and competences among members sufficient to enable a governing body to meet its primary accountabilities and to ensure stakeholder confidence.

Normally, governing bodies have a majority of independent members, defined as both external and independent of the institution. Autonomous institutions should be free from political interference in order to ensure academic freedom.

INDEPENDENT MEMBERS

Independent, lay or co-opted governors need to bring particular behaviours to the governing body and its committees. They should question intelligently, debate constructively, challenge rigorously and decide dispassionately, and they should listen sensitively to the views of others, inside and outside meetings of the governing body.

APPOINTMENTS

Appointments to the governing body and its committees are managed by a nomination committee normally chaired by the Chair of the governing body, either convened by the state independently or by the governing body. Such processes must be transparent and the nominations committee should include independent members.

To ensure rigorous and transparent procedures, the nominations committee prepares written descriptions of the role and the capabilities desirable in a new member, based on a full evaluation of the balance of skills and experience of the governing body.

When vacancies arise they should be widely publicised both within and outside the institution. When selecting a new Chair, a full job specification should be produced, including an assessment of the time commitment expected, recognising the need for availability at unexpected times.

ROTATION AND RE-APPOINTMENT OF MEMBERS

Continuity of membership is important to an institution, but so is the need for new blood. Lay/independent members should be appointed for a given term, which should be renewable, subject to satisfactory performance. In some institutions, the period of the appointment may be laid down in the statutes, or left to the ordinances.

The renewal of any appointment should not be automatic, but should be recommended by the nominations committee as part of its report on filling vacancies – again subject to satisfactory performance. Continuous service beyond three terms of three years, or two terms

Singapore: Example of Nomination Committee:

Singapore's publicly funded universities were corporatized in 2006 to give universities greater autonomy to differentiate themselves, and compete effectively at the global level. This also required greater accountability and ownership, and a higher standard of corporate governance to safeguard the best interests of its stakeholders.

A Nominating Committee (NC) is formed as part of the university's Governing Board (GB). The NC has 5–8 distinguished members of society and industry captains who are usually members of the GB. Non-Board members can be co-opted to provide new perspectives.

Universities have the flexibility to determine the exact terms of reference of their NC. This usually includes:

- *Formally assessing the effectiveness of the GB as a whole*
- *Assessing the contributions and performance of each member as well as undertaking a periodic review of the independence of each member to ensure independence in the GB's decision-making process*
- *Developing and maintaining a formal and transparent framework for the nominations and re-nominations of the GB members*
- *Identifying the skills mix, expertise and experience required in the GB for effective decision making*
- *Staggering the timing for new and re-appointments so that there is a combination of old and new members. This ensures a healthy balance of institutional memory and fresh viewpoints.*

of four years, is not desirable (although exceptions, such as retention of a particular skill or expertise, may be permitted). After this time, the members should normally retire and be replaced by new members. There should be no bar to a particularly valued member returning to office after a break of at least one year if a vacancy occurs in future years. Where a member of the governing body is elected to serve as Chair of the governing body or to some other statutory office such as treasurer, he/she would automatically begin a new term of membership linked to the office.

The re-appointment or replacement of the Chair of the governing body should be considered carefully and in good time during the term of the appointment. There are variations of practice in the length of term for which the Chair is normally appointed. However, the re-appointment of a Chair beyond two terms of four years, or the equivalent, should be regarded as exceptional.

REPRESENTATION OF STAFF AND STUDENTS ON GOVERNING BODIES

The statutes of institutions in other countries normally provide for membership of the governing body by representatives of the academic staff and students (and in some cases non-academic staff); this is integral to the nature of governance in those institutions.

In some institutions these categories of members (i.e. staff and students) can be excluded by decision of the governing body. However, the representation of staff and students on the governing body is important in all institutions, and it is strongly recommended that governing bodies do not exercise their power to exclude such members. Nevertheless, if a governing body does decide to exclude them, it should record formally in its minutes the grounds for its decision, and should publish these grounds within the institution.

COMMITMENT

The governing body should normally meet not less than four times a year. The agenda and supporting papers should be circulated in advance. The decisions of such meetings should be properly minuted and circulated among all members and more widely.

Members must attend governing body meetings regularly and actively participate. The governing body should establish clearly the number, and if necessary, the category of members who constitute a quorum.

CONDUCT

Governing bodies are entrusted with funds, both public and private, and therefore have a particular duty to observe the highest standards of corporate governance at all times, and to ensure that they are discharging their duties with due regard for the proper conduct of public business. This includes ensuring and demonstrating integrity and objectivity in the transaction of their business, and wherever possible **following a policy of openness and transparency in the dissemination of their decisions.** Institutions receiving diverse funding sources are also required to adhere to the good practice appropriate to both public and private sector bodies.

TATA Code of Conduct 2008:

Ethical Conduct:

Every employee of a Tata company, shall exhibit culturally appropriate deportment in the countries they operate in, and deal on behalf of the company with professionalism, honesty and integrity, while conforming to high moral and ethical standards.

Conflict of Interest:

An employee or director of a Tata company shall always act in the interest of the company, and ensure that any business or personal association which he/she may have does not involve a conflict of interest with the operations of the company and his/her role therein.

GOVERNORS AS REPRESENTATIVES

Governors nominated by particular constituencies should not act as if they are delegated (only) by the group they represent. No member may be bound, when speaking or voting, by mandates given to him/her by others, except when acting under approved arrangements as a proxy for another member of the governing body.

Individual members of governing bodies and governing bodies themselves should at all times conduct themselves in accordance with the following standards of behaviour that the public should rightfully expect: *selflessness, integrity, objectivity, accountability, openness, honesty and leadership.*

Certain items discussed at governing body meetings may be declared to be 'reserved'; that is, business that for reasons of confidentiality is not open to discussion by the whole governing body. Such business should be kept to a minimum because of the general need for transparency and openness, but would normally include matters relating to an individual member of the higher education institution, or some commercially sensitive material.

It is central to the proper conduct of public business that Chairs and members of governing bodies should act and be perceived to act impartially, and not be influenced in their role as governors by social, political, or business relationships.

Good practice requires that a member of a governing body who has a pecuniary, family or other personal interest in any matter under discussion at any meeting of the governing body or one of its committees at which he/she is present shall, as soon as practicable, disclose the fact of his/her interest to the meeting and shall withdraw from that part of the meeting.

A member of the governing body is not, however, considered to have a pecuniary interest in matters under discussion simply because he/she is a member of staff or a student of the institution. Nor does the restriction of involvement in matters of direct personal or pecuniary interest prevent members of the governing body from considering and voting on proposals to insure the governing body against liabilities which it might incur.

Institutions should maintain a register of interests of all members of the governing body. The administrator to the governing body and any other senior officer closely associated with the work of the governing body, for example the finance director, should also submit details of any interests. **The register should be publicly available and should be kept up to date.**

Details of the terms of appointment should be set out as appropriate in the letter of appointment, and institutions should seek a signed agreement that governors will act responsibly.

The governing body should have the power to remove any member of the governing body from office, and must do so if the member breaches the conditions of his/her appointment.

EXPENSES AND REMUNERATION

Although a number of sectors now remunerate their non-executive directors for their services, in the higher education sector common practice internationally is to pay only such incidental traveling and subsistence expenses or other allowances to lay members as the governing body may determine. In exceptional circumstances, however, it may be deemed appropriate to remunerate a lay member. Before any decision to remunerate is taken, the governing body should consider:

- The provisions of any Trust laws
- The implications of the decision for the division of responsibilities and overall relationship between the governing body and institutional managers
- The public service ethos which should apply generally to governors
- The need to be explicit about time commitment and to apply a formal process of appraisal and performance management to the remunerated governor(s).

Where a decision to remunerate is taken, payments should be commensurate with the duties carried out and shall be reported in the audited statement of accounts.

THE PROPER CONDUCT OF PUBLIC BUSINESS

The main responsibilities of the governing body should be set out in an **institutional statement of *The Primary Accountabilities of the Governing Body***, which should be consistent with the institution's constitution.

To function efficiently, **a governing body must have rules for the conduct of its meetings**. Issues for which rules are required include, but are not restricted to:

- Procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved
- Requirements for a quorum
- Frequency of meetings.

The rules governing some of these issues may be specified in the statutes of universities, institutes and colleges. **Institutions should draw up standing orders to regulate those aspects of the conduct of governing body business that are not already prescribed by the statutes or articles**. Additionally, the institution's standing orders can usefully reiterate the relevant provisions of the statutes or articles in order to consolidate all such material for ease of reference.

Normally, members of governing bodies would refer to the administrator to the governing body for such information about the rules that may apply to their own institutions.

COMMITTEES

Most institutions will have committees dealing with finance, estates and facilities, and human resources/staffing. In particular, the *audit committee* and *human resources committee* should play a central role

in supporting the proper conduct of a governing body's business. All such committees should include independent members. Should the institution have authority to decide upon remunerations or nominations, a *remuneration* and/or *nomination committee* should be established to ensure adequate attention to these two important aspects.

Institutions should be required to have an *audit committee*, the role of which is covered in above paragraphs under *primary accountabilities*.

Governing bodies that have authority to decide upon remunerations should establish a *remuneration committee* to determine and review the salaries, terms and conditions. Membership of such a committee should include the Chair of the governing body, a few other independent members and the lay treasurer if such an office exists. The *remuneration committee* should seek comparative information on salaries and other benefits and conditions of service in the higher education sector. The remuneration committee must represent the public interest and avoid any inappropriate use of public or other funds. The remuneration committee's reports to the governing body should provide sufficient detail of the broad criteria and policies against which decisions have been made.

CLARITY OF RESPONSIBILITIES

The governing body should exercise its responsibilities in a corporate manner; that is to say, decisions should be taken collectively by all of the members acting as a body. Members should not act individually, or as representatives of a constituency or in informal groupings, to take decisions on governing body business on an ad hoc basis outside the constitutional framework of the meetings of the governing body and its committees.

The governing body will rely on the head of the institution to be responsible for the operational management of the institution, and to offer guidance to the governing body on issues coming before it. However, the governing body plays a key role in the strategic development of the institution.

It should be involved in the development and approval of the institution's strategic plan, which influences and Guides all decisions coming before the governing body. It should also approve an annual operating plan that identifies those aspects of the strategic plan being implemented in the year in question.

Strategic plans play an important role in informing the relationship between institutions and the regulatory and other bodies.

Role of the Chair

The Chair is responsible for the leadership of the governing body and ultimately to the stakeholders for its effectiveness. As Chair of its meetings he/she should promote its wellbeing and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business.

A Chair should take particular care that the governing body observes important principles of public life, and that committees which play a

central role in the proper conduct of the governing body's business report back appropriately. The Chair should also ultimately be responsible for ensuring that the governing body operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way.

Through leadership of the governing body, the Chair plays a key role in the business of the institution, but should not be drawn into the day-to-day executive management.

For the governing body to be effective, there must be a constructive and challenging working relationship between the Chair and the executive head of the institution. This relationship will depend on the personalities involved, but reports nationally and internationally have emphasised the need for both sides to recognise that the roles of Chair and executive head are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution. **Good governance would not be served if the head of the institution also acts as the Chair of the governing body.**

Lay or independent members of the governing body should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the staff and student members of a governing body, except that in the course of their employment or in their activities as students, they may have executive responsibilities within the institution.

Role of the Head of the Institution in Relation to the Governing Body

The head of the institution is responsible for the executive management of the institution and its day-to-day direction and leadership. The head of the institution should not seek to determine matters reserved for the governing body.

The specific responsibilities of the head of the institution in relation to governing body business include:

- Implementing the decisions of the governing body or ensuring that they are implemented through the relevant part of the institution's management structure
- Initiating discussion and consultation including, where appropriate, consultation with the staff and the academic board/senate on proposals concerning the institution's future development, and ensuring that such proposals are presented to the governing body
- Fulfilling the duty, as the officer designated by the governing body under the terms of any regulatory/financial agreement/contract/memorandum with a regulatory or funding body (as 'the designated officer'), and to alert the governing body if any actions or policy under consideration would be incompatible with the terms of such regulatory/financial agreements. If the governing body nevertheless decides to proceed, then the head of institution has a duty to inform either the chief executive of such regulatory/funding authorities, or other appropriate officer.

Role of the Administrator to the Governing Body

The administrator to the governing body has a key role to play in the operation and conduct of the governing body, and in ensuring that appropriate procedures are followed:

- a The administrator to the governing body should be appointed to that post by the governing body.
- b Normally the administrator would combine this function with a senior administrative or managerial role within the institution. The institution and the administrator to the governing body must exercise care in maintaining a separation of the two functions. Irrespective of any other duties that the administrator may have within the institution, when dealing with governing body business, the administrator will act on the instructions of the governing body itself.
- c In carrying out his/her role as administrator to the governing body, the administrator should be solely responsible to the governing body and should therefore have a direct reporting link to the Chair of the governing body for the conduct of governing body business (i.e. agendas, papers, minutes, etc.).
- d The Chair and members of the governing body should look to the administrator for guidance about their responsibilities under the charter, statutes, articles, ordinances and regulations to which they are subject, including legislation and the requirements of any funding bodies, and on how these responsibilities should be discharged. It is the responsibility of the administrator to alert the governing body if he/she believes that any proposed action would exceed the governing body's powers or be contrary to legislation or to the funding body agreements/contracts or memorandum.

(Note: the head of the institution is formally responsible for alerting the governing body if any action or policy is incompatible with the terms of the regulatory/financial agreements/contracts/memoranda but this cannot absolve the administrator from having this responsibility as well.)

- e The administrator should be solely responsible for providing legal advice to, or obtaining it for, the governing body, and advising the governing body on all matters of procedure.
- f The administrator should advise the Chair in respect to any matters where conflict, potential or actual, may occur between the governing body and the head of the institution.
- g The administrator should ensure that all documentation provided for members of the governing body is concise and its content appropriate.

If there is a conflict of interest, actual or potential, on any matter between the administrator's administrative or managerial responsibilities within the institution and his/her responsibilities as administrator to the governing body, it is the administrator's responsibility to draw this to the attention of the governing body. If the governing body believes that it has identified such a conflict of interest itself, the Chair should seek advice from the head of the institution, but must offer the administrator an opportunity to respond to any such question.

It is incumbent on the governing body to safeguard the administrator's ability to carry out these responsibilities. It is important that the administrator also both consults and keeps the head of the institution fully informed on any matter relating to governing body business (other than in relation to the remuneration committee's consideration of the head of institution's emoluments). **It is good practice for the Chair of the governing body, the head of the institution and the administrator to the governing body to work closely together within the legal framework provided by the charter, statutes or articles of government and the ordinances and regulations laid down by the institution and any regulatory/funding body agreements.** If this is not possible because of inappropriate conduct by one of the parties involved, it is the responsibility of the governing body to take appropriate action.

DELEGATION

Where permissible, the governing body may delegate authority or allocate some of its work to committees, grant delegated authority to the Chair or a committee to act on its behalf, and delegate responsibility to the executive head and officers of the institution. Such delegations must be clearly defined in writing and be formally approved by the governing body. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and has to accept corporate responsibility for the actions taken.

Delegation to the Chair

The governing body may grant delegated authority to the Chair to act on its behalf between meetings. Policy on this matter should be defined in the governing body's standing orders or equivalent. Action taken under delegated authority will normally consist of business that would not have merited discussion at a governing body meeting (such as the signing of routine documents, and detailed implementation of matters already agreed by the governing body).

Occasionally, matters may arise which are judged too urgent and important to await the next meeting of the governing body. The Chair then has the option of calling a special meeting, consulting the members of the governing body by correspondence, or dealing with the matter by Chair's action. The Chair should be careful not to take decisions by Chair's action where it is inappropriate to do so, and not to exceed the scope of the delegated authority granted by the governing body. Chair's action on matters of importance should only be taken where delaying a decision would disadvantage the institution.

The Chair is answerable to the governing body for any action taken on its behalf. Where Chair's action is taken, a report should be made to the next meeting of the governing body for ratification. It should be understood that by Chair's action having been taken, the institution may have become contractually committed, so it would be in the most exceptional of circumstances that a governing body would not ratify the Chair's action.

Delegation to Committees and Retention of Key Functions

It is common practice for a governing body to delegate some of its powers and to allocate some of its work to committees. In deciding which tasks or responsibilities should be delegated to committees, **governing bodies should retain a formal schedule of matters reserved to it for its collective decision.** Such matters are likely to include: final decisions on issues of corporate strategy; the review and approval of the institution's annual estimate of income and expenditure and audited financial statements; and the appointment and dismissal of the head of institution and the administrator to the governing body.

The articles of some institutions may list key powers that the governing body may not delegate. They may also state that the governing body must establish committees on employment policy (without delegating to them the essential decision-making functions in this area).

All committees must be provided with a clear remit and written terms of reference that state the extent and limits of the committee's responsibilities and authority. Committees must take care not to exceed their terms of reference and should be so advised by the administrator to the governing body. Committees should distinguish between issues on which they are empowered to take decisions, and issues that they must refer to the governing body for decision.

Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions that it has taken on the governing body's behalf.