

Functions and Duties of the Chairperson of a Board

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Thursday 26 January 2017*

The position of Chairperson / Chairman / Chair exists apart from the law. Wherever there is a meeting, there will be an individual or individuals who will preside over all or parts of a meeting. That said, the position of Chairperson is found extensively in statute law and case law. A search on www.irishstatutebook.ie for the words "chairman" and chairperson" yield over 2,000 hits in the statutes and over 1,500 in the statutory instruments.¹

It will not be necessary for you to trawl through all those enactments. What they do illustrate is that the position of Chairperson is significant and merits particular attention in legislation. Most of those enactments deal with the bespoke governance of statutory bodies. Today we will be concentrating on the position of Chairperson in companies.

The number of business enterprises registered for value added tax (VAT) purposes as at 31 December 2014 – the most recent date for which there are figures publicly available – was 249,406 including sole proprietors, partnerships, companies and groups of companies.² If you correlate that figure against the number of companies on the register it is possible to extract an estimate that 4 out of every 5 enterprises are companies.

	2014	%	2015	%	(+/-)
LTDs & DACs	166,166	86.36	176,754	87.89	(+10,588)
PLCs	1,667	0.87	1,564	0.77	(-103)
Unlimited	4,401	2.29	4,506	2.24	(+105)
Guarantee	15,381	8.00	15,633	7.77	(+252)
EEIGs:	25		25		(-)
Limited partnerships	1049		1,137		(+87)
Co-operative societies	957		900		(-57)
Branches (EU)	1,692		1,781		(+89)
Branches (Non-EU)	459		828		(+369)
Place of business	2,619		-		(-2,619)

1. In the Irish Statute Book, between Acts and SIs it's 2,773 instances of "Chairman" and 1,418 of Chairperson. If we look at enactments from 2000 it's 441 for Chairman and 1,220 for Chairperson. So today we'll be gender neutral.

2. Enterprises engaged in the supply of goods and/or services will be required to register for VAT if the turnover from these supplies exceeds certain thresholds. The general turnover threshold is €75,000 in the case of the supply of goods and €37,500 in the case of the supply of services. VAT registration is obligatory where these thresholds are exceeded or are likely to be exceeded in any 12 month period.

Chairperson under the Companies Act

It is therefore to the Companies Act 2014 we turn in order to ascertain the statute law that will be relevant for the majority of businesses. The Companies Act contains the law that regulates the conduct of meetings and it is in the context of meetings that the position of Chairperson arises.

Section 160 of the Act introduces the position of Chairperson in the context of meetings of directors and committees.

- (1) The directors of a company may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (2) Questions arising at any such meeting shall be decided by a majority of votes and where there is an equality of votes, the chairperson shall have a second or casting vote.
- (3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
- (4) All directors shall be entitled to reasonable notice of any meeting of the directors but, if the directors so resolve, it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.
- (5) Nothing in subsection (4) or any other provision of this Act enables a person, other than a director of the company concerned, to object to the notice given for any meeting of the directors.
- (6) The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be 2, but, where the company has a sole director, the quorum shall be one.
- (7) The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Act as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company but for no other purpose.
- (8) The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.
- (9) The directors may establish one or more committees consisting in whole or in part of members of the board of directors.
- (10) A committee established under subsection (9) (a "committee") may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.
- (11) A committee may meet and adjourn as it thinks proper.
- (12) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present, and where there is an equality of votes, the chairperson shall have a second or casting vote.

Section 161(6), which deals with board meetings by phone provides that such a meeting is deemed to take place where the chairperson of the meeting then is, unless there is a place where the largest group of those participating in the meeting has assembled.

Section 166 gives special responsibility to Chairpersons in relation to minutes of meetings of directors

- (1) A company shall cause minutes to be entered in books kept for that purpose of –
 - (a) all appointments of officers made by its directors;
 - (b) the names of the directors present at each meeting of its directors and of any committee of the directors;
 - (c) all resolutions and proceedings at all meetings of its directors and of committees of directors.
- (2) Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.
- (3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
- (4) Where minutes have been made in accordance with this section of the proceedings at any meeting of directors or committee of directors, then, until the contrary is proved –
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings had at the meeting shall be deemed to have been duly had; and
 - (c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.
- (5) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with subsection (1) by it and shall give to the Director of Corporate Enforcement such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.
- (6) If a company fails to comply with subsection (1) or with a requirement made of it under subsection (5), the company and any officer of it who is in default shall be guilty of a category 4 offence.

Section 187 introduces the Chairperson to general meetings of companies, addressing how the Chairperson is to be appointed, his or her power to adjourn and casting vote.

- (2) The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the company, or if there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.
- (4) The chairperson may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (5) However no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, subject to that, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- (7) Unless a poll is demanded in accordance with section 189, at any general meeting –
 - (a) a resolution put to the vote of the meeting shall be decided on a show of hands; and
 - (b) a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (8) Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

Section 185, which deals with the representation of bodies corporate at general meetings of companies, gives the Chairperson a power to require production of evidence of a representative's authority.

- (1) A body corporate may, if it is a member of a company, by resolution of its directors or other governing body authorise such person (in this section referred to as an "authorised person") as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.
- (2) A body corporate may, if it is a creditor (including a holder of debentures) of a company, by resolution of its directors or other governing body authorise such person (in this section also referred to as an "authorised person") as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or the provisions contained in any debenture or trust deed, as the case may be.
- (3) An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the company, creditor or holder of debentures of the company.
- (4) The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this section to produce such evidence of the person's authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

Section 188, dealing with the votes of members at general meetings, whether on a show of hands or on a poll, the right to rule on any objection as to entitlement to vote.

- (7) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- (8) Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

Section 189 deals with the Chairperson's role with respect to a poll.

- (1) At a meeting, a poll may be demanded in relation to a matter (whether before or on the declaration of the result of the show of hands in relation to it).
- (2) A demand for such a poll may be made by –
 - (a) the chairperson of the meeting;
 - (b) at least 3 members present in person or by proxy;
 - (c) any member or members present in person or by proxy and representing not less than 10 per cent of the total voting rights of all the members of the company concerned having the right to vote at the meeting; or
 - (d) a member or members holding shares in the company concerned conferring the right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to not less than 10 per cent of the total sum paid up on all the shares conferring that right.

- (5) A poll demanded with regard to the election of a chairperson or on a question of adjournment shall be taken forthwith.
- (6) A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and any business other than that on which a poll is demanded may be proceeded with pending the taking of the poll.

Section 199 provides, in the same way that the Chairperson has a role with respect to minutes of meetings of the directors, he or she has a similar role in relation to minutes of general meetings of shareholders.

- (1) A company shall, as soon as may be after their holding or passing, cause –
 - (a) minutes of all proceedings of general meetings of it, and
 - (b) the terms of all resolutions of it,to be entered in books kept for that purpose; all such books kept by a company in pursuance of this subsection shall be kept at the same place.
- (3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
- (4) Where minutes have been made in accordance with this section of the proceedings at any general meeting of a company then, until the contrary is proved –
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings had at the meeting shall be deemed to have been duly had; and
 - (c) all appointments of directors or liquidators shall be deemed to be valid.
- (5) A company shall, if required by the Director of Corporate Enforcement, produce to the Director for inspection the book or books kept in accordance with subsection (1) by it and shall give the Director of Corporate Enforcement such facilities for inspecting and taking copies of the contents of the book or books as the Director may require.
- (6) If a company fails to comply with subsection (1) or with a requirement made of it under subsection (5), the company and any officer of it who is in default shall be guilty of a category 4 offence.

Whereas the above sections of the Act are optional, in that they can to a greater or lesser extent be varied by the company's constitution, **section 1107** is mandatory for traded PLCs. Under the section, the Chairperson has a right of veto of response to questions for the sake of good order.

- (1) A member of a traded PLC has the right to ask questions related to items on the agenda of a general meeting and to have such questions answered by the PLC subject to any reasonable measures the PLC may take to ensure the identification of the member.
- (2) An answer to a question asked pursuant to subsection (1) is not required where –
 - (a) to give an answer would interfere unduly with the preparation for the meeting or the confidentiality and business interests of the PLC;
 - (b) the answer has already been given on the PLC's website by means of what is commonly known as "a question and answer forum"; or
- (c) it appears to the chairperson of the meeting that it is undesirable in the interests of good order of the meeting that the question be answered.

The Chairperson beyond the Companies Act

In Shackelton, on the Law and Practice of Meetings (13th Edition, 2014), it is stated, in response to the question as to what qualities are required of a Chairperson:

"The qualifications required in a chairman are hard to define. A pleasing presence, a good voice, while desirable, are not essential, but self-confidence, fair-mindedness, and the ability to arrive at correct decisions on the spur of the moment are absolutely necessary. While he should possess the power to express with facility and discretion the mind of the meeting on the particular question under discussion, he must avoid both garrulousness and secretiveness. As the representative of the meeting itself, chosen or appointed to preside, while he must be ready to guide it into decisions that will make for a successful result, he must at the same time be careful to subordinate his own views to those of the meeting, both of the majority and the minority. Careful preparation for each meeting and a full understanding of the relevant procedural rules are essential requirements.

As Sir Walter Citrine has written:

'You wouldn't want to get into a mess and find yourself being put right by some of the deadheads who have firmly declined to be pressed into service.'

The fundamental duties of the Chairperson

In the case of *Taylor v Nesfield* stated that where a number of persons assemble and put an individual in the chair, they devolve upon such individual, by agreement, the conduct of that body:

"They attorn to him, as it were, and give him the whole power of regulating themselves individually... The chairman collects his authority from the meeting"

Shackelton divides this into 4 elements:

- "1. to preserve order;
2. to ensure that the proceedings are properly conducted according to law and according to the standing orders or rules of the body concerned;
3. to ensure that all shades of opinion are given a fair hearing so far as practicable; and,
4. to ensure that the sense of the meeting is accurately ascertained and recorded."

To this I would add a fifth element, to ensure that a meeting is effective and efficient. On an Institute of Directors blog, I produced what I would call the 10 commandments of a meeting.

The most important skills required around the Boardroom table are:

- **Punctuality**

Your colleagues won't care about the rain, the parking, the queue at the meter, the lift under maintenance, the train stoppage, the blockage in the bus lane, all the other things that are on your mind. Arrive in advance of the meeting with papers read and ready, coffee poured and sleeves rolled up for engagement at the appointed hour.

- **Reading your materials (early)**

If there are typos on the minutes, get them to the Secretary before the meeting. Allow the Secretary to sort that out ahead of time.

- **Reading your materials (generally)**

Have them in order and have a prepared set of questions and points. Companies can help by ensuring Board members get a well indexed pack or a single pdf (not an email with 17 different kinds of attachments).

- **Avoiding furious agreements**

Be satisfied if a point you were going to make has been made by someone else. It's enough to say that you agree, you don't need to paraphrase what has been said for the satisfaction of hearing your own voice.

- **Curiosity and persistence**

Always always ask for an explanation of what is being spoken about that you do not understand. Persist with your question. You'll generally find that more than half the Board don't understand the point either.

- **Understanding of right and wrong**

When you come to make a decision at the Board, it might be legal, it might comply with accounting rules and everyone else might be doing it. But is it plain right? If your 10-year old daughter asks you to explain it would you be embarrassed? If you have to say "I know it looks bad but it's complicated," it's probably wrong.

- **Knowing your limitations**

In the film Dirty Harry, Clint Eastwood uttered the memorable line: "A man's got to know his limitations". This has two meanings at the Board table. First, if you have no view on a subject whatsoever, don't be embarrassed. If it appears to be ethically correct you can go along with it. However, if there is a technical issue (see Curiosity and Patience above), demand a technical explanation. In particular demand to know what can "technically" go wrong.

- **Ability to accept that the same is often good...**

The company may not have embarked on great adventures or "made a statement" or, heavens above, it may even not have rebranded. But if it keeps doing well what it's meant to do well, then don't complain.

- **...But knowing when you're going stale.**

If you haven't had a decent disagreement, if you are meeting all your fellow directors in the same social setting, if you are all the same gender, age, background, if you have all been there for years and if you yourself feel jaded, then it's time to freshen the Board.

- **Understanding of cashflow**

Don't allow your company to run out of cash. Ever.

Preservation of Order

Many of the provisions of the Companies Act are concerned with good order and the absence of disruption:

- ruling on objections to voting entitlement
- determining entitlement to attend
- ability to adjourn, e.g. where there is disorder or so as to give all persons entitled a reasonable opportunity of voting and speaking at the meeting.
- deciding if and when to conduct a vote on a poll
- facilitating a decision by casting vote

There is a common law right of exclusion of intruders into a meeting, provided that only minimum force is used. The Chairperson also has a residual common law power to adjourn a meeting.

Conduct of the Meeting

A Chairperson must ensure that the proceedings are properly conducted according to law and according to the constitution (e.g. memorandum and articles) and settled procedures (e.g. standing orders) of the relevant body.

- **Time-keeping.**

The Chairperson must ensure that the meeting starts on time with the required quorum. If it does not, the meeting may be considered to have been automatically adjourned, as would be the default for many companies. The Chair should also ensure that it finishes on time, within reason, subject to allowing a fair participation by all attendees.

- **Regulation of speakers.**

Speakers should be asked to identify themselves. The standing orders or rules may provide for the time allowed for speakers to speak or how often they may speak. For example, the Law Society Council provides that a speaker may speak only once on a motion and must not waste time repeating what someone else has said. All speeches must be addressed to the chair and the speaker must receive a fair hearing. Where the speaker wanders from the point, or is offensive, the Chairperson must stop him. All who wish to speak should be given a chance to do so, within reason.

- **Regulation of the agenda: motions and resolutions.**

The term "motion" is here used in the sense of a proposition submitted for debate as opposed to the term "resolution" used in the Companies Act. A motion does not become a resolution until it has been passed by the meeting. A motion must be properly before the meeting, by being on the notice of the meeting, by being within the scope of an agenda item or being of a character that the constitution of the organisation permits.

- **Rulings.**

The Chairperson must give rulings fairly and promptly and with authority. The Chair should not be too concerned with fine technicalities – the secretary can advise on those issues.

- **Points of order.**

The Chairperson will rule on questions relating to procedure. If his or her decision is challenged the proceedings will then be decided by the majority of those present. The Chairperson must disallow "points of order" that are points of substance in disguise.

- **Impartiality.**

The Chairperson has a duty to remain impartial. Strictly speaking, in a formal debate, if he wishes to address the meeting himself, he must leave the chair for that purpose. He is intended to be the representative of the meeting.

Ensuring a fair hearing for all shades of opinion

At a Board meeting or other small gathering, it is a reasonably straight forward task for the Chairperson to facilitate the expression of views. Frequently a Chair will literally go around the table inviting comments. It is important that the Chair does not stifle debate by seeking to rebut points as they are made.

In the case of a larger meeting, the role of the Chairperson is hugely important. If the matter on the agenda is known to be contentious, it is good practice for the Chairperson to ascertain, before the beginning of the debate, who wishes to speak; he or she will try to call upon all the speakers, alternating various points of view so far as is practicable.

All speakers should address the chair and preferably be asked to stand. This is a practice that is followed at the Law Society Council, to good effect. Everything said should be relevant to the issue and polite. Observance of these rules is necessary for the proper and prompt conclusion of the business before the meeting.

No person should be allowed to speak more than once on any motion, until every other member has had an opportunity of speaking, and then only with the permission of the chair. Again this is a practice that is adopted by the Law Society Council. Where the Chairperson feels that the debate has run its course, and there is other business to transact, then he or she should limit the number of further speakers.

The mover (but not usually the seconder) usually will have a right of reply at the end of the debate, to rebut on matters raised in debate. This is not an opportunity to introduce new arguments.

Where amendments to a motion have been moved, the mover of the original motion must be allowed a right of reply either at the close of the debate on the first amendment or after all the amendments have been moved.

Following a vote, the matter is closed and nobody is allowed to address the meeting.

Ascertaining the sense of the meeting and recording it accurately

- **Board meetings**

In a small meeting, such as a Board meeting, the sense of a meeting is fairly easily established. Formal votes are rare. A good Chairperson will seek to obtain consensus and, even where there is a disagreement, acceptance by an obvious minority of the will of the majority.

- **General meetings**

In a larger meeting, the sense of a meeting will be established by the vote. Even in the largest of PLCs, votes at general meetings are in the first instance taken on a show of hands – one person one vote – with the “real” proxy vote of the Chairperson announced after the vote on the show of hands. The Chair puts the motion or resolution to the meeting asking those in favour to raise their arms or voting cards, then those against, then declaring whether it is passed or not. Where there is an obvious majority, there is no need for there to be a count. Where there is any possible doubt or contention about the result, then the Chair must effect a count either personally or by sending tellers into the room.

- **Chairperson as proxy**

In the case of quoted PLCs, it is standard practice for the Chair to be the proxy for hundreds and thousands of shareholders not present at the meeting. Where shareholders have mandated the Chairperson, as proxy to vote both for and against a resolution, then the Chair must raise his arm or voting card both for and against the resolution. It is not for the Chair to apply a count of shares to which way he or she votes.

- **Voting on a poll**

Under the Companies Act, the Chair may call for a poll – that is one vote per share – either before or after a show of hands. When this occurs, the poll can take place either immediately or after the despatch of other business. Polling cards will be distributed by the registrars and collected and counted. They then report to the Chairperson when they have concluded the count and matched the votes cast to the register of members of the Company, with the forms of proxy in favour of the Chairperson carrying the most significant number of votes. The meeting can be closed by the Chairperson while the count continues.

- **Result of a Poll**

When the scrutineers of the vote on a poll have concluded their work they will report formally to the Chairperson. The Chairperson can then declare the result, usually by a letter or notice signed by him or her. In the case of quoted companies, that is published to the markets by formal announcement.

Where a matter is contentious, a prudent Chairperson will ensure that pressure points of controversy are minimised. So for example, it will make sense to announce in advance that a particular matter will be voted on by way of a poll. This avoids leadership on the issue of whether there is to be a vote on a poll moving from the top table to the floor. Another tactic sometimes followed is to invite key persons on each side of the debate to be scrutineers of the vote. This is not particularly suitable in the case of quoted PLCs, but I have seen't used to good effect at creditors' meetings, where there has been a contested vote on who should be liquidator of the company.

- **Legal requirements for a poll**

In some case, as a matter of law, there must be a vote on a poll. An example would be a “whitewash” under the Takeover Rules, to permit a shareholder to acquire 30% or more of a quoted company without making a takeover bid for it. In such a case, the Rules require that independent shareholders vote on a poll.

Similarly, in the case of a Companies Act scheme of arrangement, which requires a majority in number and 75% in value of shares held to vote in favour, it is necessary to have a formal poll in order to establish the attainment of these majorities.

- **Casting vote**

A "casting vote" is a second vote exercisable by the Chairperson of a meeting in addition to his own vote as a member of the board or the company or organisation, as the case may be. There is no common law right to a casting vote and it will be granted by law or by the constitution of a company.

Where a committee is presided over by a Chairperson who is not a voting member of that committee, he or she cannot as Chair assume the right to a casting vote in the event of an equality of votes.

Where the Chairperson, in the event of an equal division of votes, declares that the motion is not carried, that is not, unless he or she expressly states it to be, an exercise of his casting vote.

Where a Chairperson, in the event of an equality of votes, declines to exercise his or her casting vote, the motion is "not carried".

If he or she exercises his casting vote against the motion it will be "lost".

This distinction may be important, depending on the constitution of the relevant organisation.

I have seen provisions in constitutions requiring a Chairperson to exercise a casting vote one way or the other so as to ensure that a resolution is passed or lost and not "not carried".

A Chairperson may give a contingent casting vote.

- **Board minutes**

On 19 September 2016, the Institute of Chartered Secretaries and Administrators (**ICSA**) published guidance on the practice of minute taking following on from a consultation paper in May 2016 on the principal function of meeting minutes. The consultation paper had noted that board meetings are only lightly regulated by statute and by regulation and asked for views on the principal function of meeting minutes. ICSA sought views on its position that organisations should appoint a properly qualified company secretary and that the secretary is responsible to the Chairperson for the preparation and retention of minutes.

The ICSA guidance is principles-based and not prescriptive; it covers the following areas:

- The purpose of minutes.
- Responsibility for minutes.
- How to prepare minutes and the style and content of the minutes.
- How draft minutes should be approved and edited.
- Who should have access to minutes and for how long they should be retained.
- The last section of the guidance provides a summary of key points.

- **The purpose of meeting minutes**

The purpose of minutes is to provide an accurate, impartial and balanced internal record of the business transacted at a meeting. The degree of detail recorded will depend on the needs of the organisation, the sector in which it operates, the requirements of any regulator and the working practices of the Chairperson, the board and the company secretary. Minutes should include the key points of discussion, decisions made, where appropriate, the reasons for them and the agreed actions. Minutes should be clear, concise and free of any ambiguity.

- **Responsibility for minutes**

ICSA regards the company secretary as being responsible to the Chairperson for the preparation and retention of the minutes. It is noted that it is not easy to take minutes and participate fully in a meeting. Therefore, the company secretary should be supported by a suitably skilled minute taker. It is a good idea for the person minuting to discuss with the Chairperson before the meeting any relevant procedural issues and how they can best support the Chairperson. For large groups of companies, it may be helpful to have a minute-taking policy or style guide to ensure a consistent approach.

- **Preparing minutes**

The guidance note sets out what preliminary information should be included in the rubric of all minutes. A quorum statement will usually only be necessary where there were a lot of absences or the company has a high quorum requirement.

ICSA suggests that it is up to each organisation as to how they decide to deal with conflicts of interest at board meetings but in their view, conflicts of interest should only be referred to in the minutes where:

- The Chairperson or another board member raises the issue of a conflict.
- A potential or actual conflict of interest is declared.
- A conflicts register is circulated, tabled or reviewed as part of the meeting or it is necessary to amend the conflicts register.

- **Style and content of minutes**

How exactly the minutes are written will be a matter of style and practice for the organisation but ICSA recommends:

- Minutes should be in reported speech format.
- It may be appropriate to name individuals in certain circumstances, for example where they are presenting a report to the board, have declared a potential or actual conflict of interest, abstain from a vote or are the subject of personnel issues under discussion.
- Minutes should not be a verbatim record but should summarise key points and focus on the decision. The reason for the decision should be documented and include sufficient background information for future reference.
- Minutes should allocate actions as they provide evidence of discharging duties, and ensure accountability and that agreed actions are not overlooked.
- Board papers should be retained but not with the minutes.
- Minutes should facilitate regulatory oversight but should not be drafted with this primarily in mind.
- Dissent should be recorded but how is a matter of organisational preference.
- Legally privileged advice may be discussed at board meetings but the minutes should clearly separate the privileged discussion from the rest of the minutes and mark it as private and confidential. Any decisions taken as a consequence of the deliberations around the privileged advice will not be privileged.
- It may be helpful to record any breaks or interruptions in the meeting.
- When drafting subsidiary board minutes, directors should be careful that they are promoting the interests of the correct company.

- **Role of the Chairperson**

The Chairperson should:

- draw attention to any pre-meeting comments received from board members who were unable to attend.
- work with the secretary so as to ensure that good practice is followed in the recording and reporting of meetings.

The Chairperson beyond Board and Company Meetings

The role of a Chairperson continues between meetings. In the case of the Chairs of major organisations, the role of Chairperson will typically occupy that individual at least one day a week, and several days before key meetings. They are the guarantors of good governance in such organisations.

It is unsurprising therefore that Governance Codes have things to say about their role and function.

UK Governance Code

The Code provides in relation to the Role of Chairperson:

- **Division of responsibilities – Main Principle**

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.

- **Code Provision**

The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board.

- **The Chairperson – Main Principle**

The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role.

- **Supporting Principles**

The chairman is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.

The chairman should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors.

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information.

The chairman should ensure effective communication with shareholders.

- **Code Provision**

The chairman should on appointment meet the independence criteria set out in B.1.1 of the Code. i.e., preferably falling outside the following:

- he/she has been an employee of the company or group within the last five years;
- he/she has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- he/she has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- he/she has close family ties with any of the company's advisers, directors or senior employees;
- he/she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- he/she represents a significant shareholder; or
- he/she has served on the board for more than nine years from the date of their first election.

A chief executive should not go on to be chairman of the same company.

If exceptionally a board decides that a chief executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report.

- **Other Code provisions**

- The Chairperson should hold meetings with the non-executive directors without the executives present.
- Led by the senior independent director, the non-executive directors should meet without the Chair present at least annually to appraise his or her performance and on such other occasions as are deemed appropriate.
- The Chairperson or an independent non-executive director should chair the Nominations Committee, but the Chairperson should not chair the Committee when it is dealing with the appointment of a successor to the Chair.
- An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of the Chair or a non-executive director.
- For the appointment of a Chairperson, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A Chair's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and their impact explained in the next annual report.
- An executive director of a listed company should not be the Chair of another listed company.
- The Chair should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.
 - o The Chair should therefore ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, directors should avail themselves of opportunities to meet major shareholders.
 - o The Chair should regularly review and agree with each director their training and development needs.
- The Chair is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.
- Under the direction of the Chair, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.
- The company secretary should be responsible for advising the board through the Chair on all governance matters.
- Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the board, its diversity, including gender, how the board works together as a unit, and other factors relevant to its effectiveness. The Chair should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.
- The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the Chair, taking into account the views of executive directors.

- When proposing a resolution to elect a non-executive director, the board should state why they believe an individual should be elected. The Chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual’s performance continues to be effective and to demonstrate commitment to the role.
- The board should establish an audit committee of at least three, or in the case of smaller companies two, independent non-executive directors. In smaller companies, the company Chairperson may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as Chair.
- The Chairperson should ensure that the Remuneration Committee chair maintains contact as required with its principal shareholders about remuneration. The company Chairperson may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as Chair.
- Whilst recognising that most shareholder contact is with the chief executive and finance director, the Chair should ensure that all directors are made aware of their major shareholders’ issues and concerns.
 - o The Chair should ensure that the views of shareholders are communicated to the board as a whole.
 - o The Chair should discuss governance and strategy with major shareholders.
 - o Non-executive directors should be offered the opportunity to attend scheduled meetings with major shareholders and should expect to attend meetings if requested by major shareholders.
 - o The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.
- The Chairperson should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all directors to attend.

Investor Protection Bodies and Proxy Agencies

The UK Governance Code is then supported and affirmed by investor protection bodies such as the Investment Association, the Irish Association of Investment Managers, the Pensions and Lifetime Savings Association and Hermes. The proxy agencies such as ISS, Glass Lewis, Manifest and PIRC add their own colour to the Codes requirements.

PLSA: “The challenge for a board and its Chair is to demonstrate to shareholders the effective application of good corporate governance. Shareholders will naturally look at financial results as one measure, but will also look for wider evidence that the Chair and the board as a whole are adhering to the spirit of the Code’s Principles.”

“A company’s board should present a fair, balanced and understandable assessment of the company’s position and prospects. This reporting should cover both the financial and non-financial, and outline how the board has fulfilled its responsibilities. Boilerplate disclosure should be avoided. In the event of limited or boilerplate disclosure about the corporate governance arrangements, shareholders may wish to vote against the adoption of the report and accounts; In extreme circumstances shareholders may wish to vote against the re-election of the Chair, or submit a shareholder resolution.”

In the case of persistent flouting of good practice in a number of other areas – bad disclosure in the accounts, remuneration policy, a Chair declining to meet shareholders, lack of diversity policy, absence of Board evaluation policy – the PLSA state that shareholders may consider voting against the Chair and/or submitting a shareholder resolution.

Glass Lewis: “If we find that a board’s explanation for non-compliance [with the Code] is lacking, or there are significant director concerns that shareholders are unable to address due to staggered director elections, we may recommend that shareholders vote against the chairman of the board.”

- PIRC:** “PIRC considers a Senior Independent Director SID or equivalent to be an important element of the corporate governance structure of a company and where no director has been appointed to this role we may consider advising a vote against the chairman or a member of the nominations committee. Similarly, expect the SID to be considered independent, based on PIRC’s own assessment, otherwise PIRC does not have confidence that the elected SID will be able to fulfil his/her duties as intended.”
- “PIRC does not consider it acceptable that the board chairman be a member of the nominations committee.”
- “PIRC considers poll voting to be the most appropriate way for listed companies to undertake business at general meetings. Insertion of an article provision mandating poll voting on all resolutions at general meetings will avoid the need for a chairman to decide on use of his powers to call a poll in the event that those present at a meeting decide on a different voting outcome to that suggested by the postal proxy vote.”

State Companies

The August 2016 Code of Practice for the Governance of State Bodies has its own distinct perspective on the duties and role of a Chairperson.

- **Principle**

The Chairperson is responsible for leadership of the Board and ensuring its effectiveness on all aspects of its role.

The Chairperson should display high standards of integrity and probity and set expectations regarding culture, values, and behaviours for the State body and for the tone of discussions at Board level.

- **Code Provisions**

- **Board’s Agenda:**

The Chairperson and the CEO are responsible for the effective management of the Board’s agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and the CEO should meet in advance of the Board meeting to agree the agenda.

- **Openness and Debate:**

Essential to the effective functioning of the Board is dialogue which is both constructive and challenging. The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of key management and all Board members.

- **Timely Information:**

The Chairperson is responsible for ensuring that the Board receive accurate, timely and clear information. The Chairperson should ensure effective communication with all relevant stakeholders.

- **Board Skills:**

Where a Chairperson is of the view that specific skills are required on the Board, he/she should advise the relevant Minister of this view for his/her consideration sufficiently in advance of a time when Board vacancies are due to arise. This is in order to seek to ensure that the process undertaken under the Guidelines for Appointments to State Boards identifies candidates with those skills and so that the Minister may take the Chairperson’s views into consideration when making appointments from qualified candidates from the stateboards.ie process.

- **Information Flows:**

Under the direction of the Chairperson, the responsibilities of the Secretary of the Board include ensuring good information flows within the Board and its committees and between senior management and non-executive Board members, as well as facilitating induction, mentoring and assisting with ongoing professional development as required.

– **Comprehensive Report to the Minister:**

The Chairperson of each State body should furnish to the relevant Minister and, where appropriate, NewERA in conjunction with the annual report and financial statements of the State body, a comprehensive report to the relevant Minister covering the State body.

– **Statement on Internal Control:**

The Chairperson's report to the relevant Minister regarding the system of internal control should be included in the annual report of the State body. This statement should be reviewed by the external auditors to confirm that it reflects the audited body's compliance with the requirements of paragraph 1.9(iv) [of the Code of Practice] and is consistent with the information of which they are aware from their audit of the financial statements. The external auditor should include their report on this matter in their audit report on the financial statements.

– **Oireachtas Committee:**

Persons being proposed by Ministers for appointment as Chairpersons of State bodies are required to make themselves available to the appropriate Oireachtas Committee to discuss the approach they will take to their role as Chairperson and their views about the future contribution of the body or Board in question.

European Union

There is a European Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC). It has some comments on the position of Chair, which have largely been superseded by intervening Codes and guidelines.

- The present or past executive responsibilities of the (supervisory) board's chairman should not stand in the way of his ability to exercise objective supervision.

On a unitary board, one way to ensure this is that the roles of chairman and chief executive are separate; in the case of unitary and dual boards, one option may be that the chief executive does not immediately become the chairman of the (supervisory) board.

In cases where a company chooses to combine the roles of chairman and chief executive or to immediately appoint as chairman of the (supervisory) board the former chief executive, this should be accompanied with information on any safeguards put in place.

Chairmanship and membership of the committees should be decided with due regard to the need to ensure that committee membership is refreshed and that undue reliance is not placed on particular individuals.

The chairman of each committee should be able to communicate directly with shareholders. The circumstances in which this should happen should be spelled out in the committee's terms of reference.

The remuneration committee should consult at least the chairman and/or chief executive about their views relating to the remuneration of other executive or managing directors.

The audit committee shall decide whether and, if so, when the chief executive officer or chairman of the managing board, the chief financial officer (or senior employees responsible for finance, accounting, and treasury matters), the internal auditor and the external auditor, should attend its meetings.

Conclusion

The position of Chairperson has been expanding in recent years. The economic and financial collapse, which had at least part of its origins in lapses of governance, has resulted in an increased reliance on good chairmanship. One might speculate that the unitary Board as we have known it may be evolving into the two-tier Board that appears to have served many continental companies well.

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