



GENERAL GUIDANCE NOTE

Frequently used terms for directors and the governance role players

Purpose

For the purposes of the law and statutory requirements there is no distinction between the categories of directors. Therefore all directors, whether Executive or Non-executive, are legally liable in the eyes of the law. This is expanded further to the company secretary and prescribed officers.

However, for the purposes of governance within an organisation, differing terminology is used to refer to and distinguish between the different roles directors play as well as the other governance role players. It is of paramount significance for you to understand your role within an organisation in relation to your statutory obligations and governance role.

The purpose of this guidance note is to set out and clarify the different terminology used to refer to directors as well as the other governance role players.

Frequently used Terms for Directors

Director	An individual who is a member of the board of directors or an alternate director of a company and this also includes any person occupying the position of a director or alternate director, by whatever title designated. <i>The Companies Act, Section 1</i>
Executive Director	A director who is involved in the day to day management of the company or being in the full-time salaried employment of the company (which includes subsidiaries) or both. <i>“Executive directors should carefully manage the conflict between their management responsibilities and their fiduciary duties as directors in the best interests of the company.”</i> <i>King III Report Chapter 2, Annexure 2.2</i>

<p>Non- Executive Director</p>	<p>A director who is not involved in the management of the company.</p> <p>“Non-executive directors are independent of management on all issues including strategy, performance, sustainability, resources, transformation, diversity, employment equity, standards of conduct and evaluation of performance.”</p> <p>“An individual in the full-time employment of the holding company is also considered a non-executive director of a subsidiary company unless the individual, by conduct or executive authority, is involved in the day-to-day management of the subsidiary.”</p> <p><i>King III Report Chapter 2, Annexure 2.3</i></p>
<p>Independent Non-executive Director</p>	<p>An independent non-executive director is a non-executive director who is independent in fact and in the perception of a reasonably informed outsider. Although independence of mind is essential, perceptions of independence are important.</p> <p>An independent director should be independent in character and judgement and there should be no relationships or circumstances which are likely to affect, or could appear to affect this independence.</p> <p>Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company rather than any particular fact such as length of service or age.</p> <p><i>For further guidance on this role refer to the general guidance note on independence.</i></p>
<p>Lead Independent Non-executive Director</p>	<p>This is an independent non-executive director who is appointed if the Chairman of the Board is not an independent non-executive director. Therefore in instances where the Chairman is conflicted, the lead independent director would step in and assume the leadership role.</p> <p>Therefore their main function is to provide leadership and advice to the board of directors in instances where the Chairman is conflicted, without detracting the authority of the Chairman.</p> <p>The board of directors may combine the role of the lead independent director with that of deputy Chairman.</p> <p><i>For further guidance on this role refer the King III practice note on Lead independent director charter</i></p>

Representative Director/Nominee Director	<p>The representative director is a non-executive director who is appointed to the board of by either a shareholder, an investor, a creditor of the company or possibly even a financial institution or other third party.</p> <p><i>Refer to CGN paper on the representative director for further guidance.</i></p>
Appointed Director	<p>In the event that a company's memorandum of incorporation provided for the direct appointment or removal of any one or more directors by another person provided for in the memorandum of incorporation, such director may be referred to as an appointed director.</p> <p><i>The Companies Act, Section 66(4)(a)(i)</i></p>
Elected Director	<p>The instance of a profit companies, excluding state-owned companies, they must provide in their MOI for at least 50% shareholder elected directors as per the Act. The directors appointed as per such provision may be called an Elected Director.</p> <p><i>The Companies Act, Section 66(4)(a)(i) and (b) and Section 68(1)</i></p>
Alternate Director	<p>A person who is either elected or appointed to serve, as the instance requires, as a member of the board of a company in the substitution for a particularly elected or appointed director of such company.</p> <p><i>The Companies Act, Section 1</i></p>
Temporary Director	<p>The board of directors may appoint a person who meets the requirement for election as a director to fill a vacancy and to serve as a director of the company for a temporary basis – which is normally until the vacancy has been fulfilled or has been formally elected by shareholders.</p> <p>The company's memorandum of incorporation may provide that this is not permitted in the company.</p> <p><i>The Companies Act, Section 68(2) and (3)</i></p>
<i>Ex officio</i> Director	<p>An individual who is a director of the company as a result of that individual holding some other office, title, designation or similar status within the company</p> <p>The <i>ex officio</i> director has all powers and functions of any other director of the company unless specifically restricted in the company's memorandum of incorporation.</p> <p><i>The Companies Act, Section 1</i></p>
Divisional Director	<p>Is not legally a director of the company but they may fall within the ambit of prescribed officers as provided for in the Companies Act.</p>

	Preferable for companies not to use this title unless such person is a formal director of the company.
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Other Governance Roles

CEO	<p>The CEO of the company is appointed by the board of directors.</p> <p>The CEO operates in accordance with the terms of the company's delegation of authority as provided by the board of directors.</p> <p>The CEO is the primary person involved in developing and obtaining board's approval of core aspects of the company, such as the company strategy, its business plans and budget.</p> <p>The CEO builds a management team and runs the company in line with the approved strategy.</p> <p>The CEO is an employee of the company and therefore has an employment agreement with the company.</p> <p><i>Refer to Principle 2.17 of the King III Report for further detail.</i></p>
Chairman	<p>The Chairman leads the board of directors and the King III Report recommends that the Chairman should not be the CEO of the company and that the Chairman should preferably be an independent non-executive director of the company.</p> <p>The Chairman is considered the link between the board of directors and the management in the company.</p> <p>The Chairman is normally elected in accordance with a company's board charter or its memorandum of incorporation and by the board of directors. When deciding whom to elect, they should look to electing someone who can provide direction for an effective board.</p> <p>The Chairman has many roles and responsibilities, such as directing board meetings and agendas, setting the ethical tone, providing overall leadership to the board, formulating the yearly work plan for the board (with the CEO), building stakeholders trust and ensuring the board's instructions are followed through.</p> <p><i>Refer to Principle 2.16 of the King III Report for further detail.</i></p>
Deputy Chairman	<p>The role of the deputy Chairman on the board of directors is primarily to assist the Chairman.</p> <p>In many companies the lead independent non-executive role and the deputy Chairman may be combined.</p> <p>The deputy Chairman will normally sit as Chairman in instances where the Chairman may be conflicted and recuses himself and also when assessing the Chairman's performance.</p> <p><i>Refer to Chapter 2 of the King III Report for further detail.</i></p>

<p>Company Secretary</p>	<p>The Company Secretary must be appointed for all public companies and state-owned Companies in accordance with section 86 of the Companies Act.</p> <p>The Company Secretary is generally appointed by the board of directors and is required to report to the board.</p> <p>In accordance with the King III Report, the Company Secretary plays a pivotal role and is required to provide guidance to the board and to the directors individually</p> <p><i>Refer to Principle 2.21 of the King III Report for further detail.</i></p> <p><i>Refer to Sections 86 and 88 of the Companies Act for further detail.</i></p> <p><i>Refer to King III practice note on Company Secretary Evaluation.</i></p>
<p>Prescribed Officers</p>	<p>Prescribed Officers have emanated through the Companies Act, being employees who:</p> <ul style="list-style-type: none"> • Exercise a general executive control over the management of the whole or a significant portion, of the business of the company and its activities and operations; OR • Regularly participate in the exercise of general executive control over and management of the whole or significant portion, to a material degree, of the business of the company and its activities. <p>Irrespective of title, if one falls with either of the above ambits, one is considered a Prescribed Officer of the company</p> <p>The Prescribed Officers of a company carry an extensive list of responsibilities and are governed by many sections within the Companies Act and in some instances they carry as much liability as directors. Companies are recommended to identify who their Prescribed officers are as failure to identify the Prescribed Officers may increase the risk of non-compliance with the Companies Act.</p> <p><i>The Companies Act</i></p>