GLOBAL NETWORK OF DIRECTOR INSTITUTES

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PERSPECTIVES PAPER

Renewing the Board

The Global Network of Director Institutes (GNDI), founded in 2012, brings together member-based director associations from around the world with the aim of furthering good corporate governance. Together, the member institutes comprising GNDI represent more than 100,000 directors from a wide range of organisations. This paper describes the global perspective of GNDI on best practices to consider when renewing the board through changes to its composition.

As a collective of the pre-eminent governance associations around the world, GNDI plays an important role in providing leadership on governance issues for directors of all organisations to achieve a positive impact for companies, the economy and society. The following perspectives have been developed as part of a commitment to this goal and to guide boards in good governance beyond legislative mandates.

Introduction

A crucial component of an effective board is the set of tools it employs to renew itself. Modern boards are expected to take on complex organizational oversight and governance roles and the process of renewing them should involve corresponding thought and analysis.

GNDI believes that each board should build a renewal framework unique to its forthcoming challenges in order to maximize its effectiveness over the long term. While, in many jurisdictions, the board of directors is principally responsible for its own renewal, in others this is commonly achieved through greater input from major shareholders. In the Nordic countries nomination committees include significant representation from major shareholders. In these jurisdictions and others in Europe and some parts of Asia where concentrated ownership of companies is prevalent, it is the nomination committee that typically leads the board renewal process, taking into account shareholders' perspectives.

While there is no "one size fits all" renewal framework applicable to every organization or jurisdiction, rigorous, transparent and action-oriented renewal processes undertaken regularly offer significant advantages to the board. Formal renewal processes allow the board to more closely align itself with the organization's business strategy to effect long-term value creation. In turn, this allows boards the opportunity to effectively communicate to investors and other stakeholders through their disclosure channels the qualities of its directors and of its board and how these align to long term value.

While in some jurisdictions, outside pressures have led to mandated limits on director tenure, we have observed that at the core of many effective board renewal frameworks across our jurisdictions is a dedication to rigorous director evaluations driven by performance expectations. The best boards identify the skills and competencies that they need, evaluate the performance of existing directors against the strategy of the organization, identify gaps, and then make informed decisions about composition regardless of director tenure.

Drivers behind the renewal discussion

Global pressure on boards to focus on board renewal has come primarily from some large institutional and activist investors through tenure-limiting proposals or votes against particular directors. Although this pressure tends to surface during proxy or annual general meeting season, it is a year-round concern and, in a limited number of cases, has led to regulation regarding tenure length. This pressure has increased the focus on how – and how often – boards renew themselves, sending the implicit message that companies must renew their boards or investors – or even regulators – will seek to do it instead.

In some GNDI jurisdictions, questions have been raised regarding long-tenured directors' independence from management – the argument being that long-serving directors become too comfortable in their roles and too close to CEOs and other senior management and, therefore, do not ask tough strategic and operational questions.

Proxy advisory firms such as Institutional Shareholder Services (ISS)[1] have also begun to look at director tenure in the context of independence. For example, in its Quickscore 3.0 product, ISS considers length of tenure in its opinion of directors' independence. Given the high number of resolutions they must vote on, and their obligation in some jurisdictions to vote proxies in the interests of beneficiaries, institutions have turned to these advisory firms as key sources of guidance on proxy votes.

Discussion regarding board renewal has also arisen in the context of adding greater diversity around the board room table. This includes not only diversity of professional skills and experience, but also of thought and of personal identity, e.g. gender, ethnicity, nationality, cultural or socio-economic background, and age.

Tenure and Age Limits

In response to these outside pressures, discussion in some jurisdictions has focused on encouraging or requiring tenure limits for independent directors. Some countries have mandated the implementation of tenure limits by dictating that directors serving on a board for a certain period of time are no longer considered to be independent from management (12 years, for example, in France). In others, the board must publicly state

[1] http://www.issgovernance.com/

why it believes a director serving beyond a prescribed period of time is still considered to be independent. An example of the latter is the United Kingdom, where the disclosure obligation is triggered after nine years.

GNDI members note that while tenure limits for independent directors continue to be rare in most jurisdictions, they can act as a backstop against excessive tenure lengths. In this way, tenure limits can combat the perception of eroding independence and provide some predictability around director position openings.

Age limits are also used by some companies in some jurisdictions as an alternative to tenure limits. Age limits require that directors retire from a board when they have reached a mandated age. Proponents argue that a fixed retirement age makes it easier for the board to plan its composition and renewal and allow directors to more easily assist in succession planning and transition.

GNDI believes that relying solely on tenure or age limits, without providing flexibility to the board, can have the unintended consequence of eliminating effective and valuable directors. Indeed, the concept of maintaining continuity and institutional knowledge is why some jurisdictions, such as South Africa, have adopted staggered rotation of the board as a best practice. Many long-tenured directors have experience with and insight into the organization's strategy, operations, and culture that organizations often find indispensable. These directors may be more comfortable testing management than would board members with less experience and tenure.

On some boards, we have also observed that relying solely on term limits or age limits can also have the effect of replacing "tough conversations" with directors who either no longer add value to the organization or do not have the requisite skills the board has prioritized going forward. Boards should not "wait out" a poor director's term and, instead, should be prepared to ask them to resign before their terms are over.

Incorporating performance management into board renewal

GNDI members have observed that renewal frameworks that strive to achieve the right mix of skills and experience to create long-term value are centred on effective board evaluations set within a performance culture.

In other words, leading boards review themselves the way they do their management teams. This means instituting regular and substantive evaluations of board composition and board member performance, and following through when necessary by addressing underperforming members or directors whose skills do not align with the organization's strategy. This helps create a culture of accountability, and foster high performing boards.

Performance management

Performance management systems, characterized by objective-setting and supervisor evaluations are commonly applied to executives and other employees and are an effective way of ensuring quality throughout organizations and of making key staffing decisions. Indeed, boards regularly use performance management in their evaluations of CEOs. Importing this concept to the board is a useful way of building a framework for renewal.

To be sure, the practice of individual director evaluations is not new but, unfortunately, too often some performance reviews of directors are not sufficiently comprehensive or candid. Conducting evaluations within a performance management context helps to mitigate these challenges. It should be understood that individual director evaluations need to be conducted with great sensitivity in both personal and legal dimensions.

Board composition review

A crucial first element of any performance management system is a thorough and regular review of skills needs of the organization. At the board level, this means developing a matrix to assess which skills, experience and backgrounds the board needs to carry out its mandate and advance the organization in the long term. Core skills could include CEO or senior executive experience, audit/finance experience, or relevant industry knowledge.

Skills that are being added to matrices also include risk management, IT and social media experience. Skills matrices help identify gaps and achieve diversity of skills, experience and backgrounds across the board.

Of course, a strong and successful board is not simply an amalgam of skills and professional experiences. The best boards understand they will face varied and unpredictable challenges. The individual members of the board must also be able to work together effectively as a high-functioning and cohesive group. Assembling a group of leaders that clearly and consistently demonstrates qualities of integrity and trust, courage, and ethics best positions boards to govern in a manner that allows for long term success.

The skills and behavioural qualities the board determines it needs should be a primary input into its performance management and succession planning process, including the recruitment of new and/or replacement directors.

Board Evaluations

Once boards have gained a firm understanding of the skills, experience, backgrounds and behaviours it needs to create long term value, the next stage is an assessment of the strengths and weaknesses of the current board through either full board evaluations or individual director evaluations or a combination of both. This allows the board to assess whether there is alignment between the skills needed at the board level and those currently being offered by directors.

Full board evaluations require directors to focus on the functioning of the board as a whole, rather than on individual directors. Questions may, for example, focus on the board's understanding of the organisation's strategy, the composition of the board and the mix of skills around the table, the structure and organisation of board meetings and committee meetings, and other issues core to the execution of the board's mandate.

Individual director evaluations are typically a combination of self-evaluations and peer-to-peer evaluations using confidential questionnaires, surveys and, most useful, interviews with the chair, lead director or external consultant. Self-evaluating directors respond to a series of questions regarding their own board performance, including how their skills contribute to the effectiveness of the board, their commitment to the board, their preparedness for board meetings and other responsibilities.

Peer-to-peer evaluations require individual directors to respond confidentially to questions regarding their colleagues' board performance and commitment, including how their fellow directors' skills contribute to the board's effectiveness.

Interviews conducted by the chair of the board, lead director, or outside consultant can often elicit the greatest depth of responses. This practice provides directors an opportunity to expand on certain crucial issues (e.g. the mix of skills at the board) and bring areas for improvement into sharper focus.

Some boards also opt for a facilitated board discussion. While the relative anonymity provided by questionnaires, surveys and one-on-one interviews is no longer available in a group meeting, the iterative nature of these meetings can produce fruitful discussion regarding the direction of the board and the need for new skills or different experiences or backgrounds in the boardroom.

Ultimately, the goal of the evaluation process is for the board to achieve greater insight from its individual directors regarding their perceptions of the strengths of the group and its members and to identify areas for improvement.

Performance culture

Developing skills matrices and performing board and director evaluations are only of value if the process is set within a culture that demands high performance from individual directors and the board as a whole. A board operating within such a culture will act on the results of evaluations. This can and should mean that boards will seek to add skills by recruiting a new director and, sometimes, if directors who are not adding value or who do not have skills aligned to board and organizational strategies will be asked to resign.

Occasionally, tools such as skills matrices and evaluations will reveal a gap in terms of competencies at the board vis à vis organizational strategy but no obvious deficiencies in terms of individual director performance. Boards seeking to maximize their effectiveness must reconcile this by being willing to move out directors whose input may still be valuable but whose skills and experience do not align with where the organization is moving.

When it is decided that new skills, backgrounds or behavioural competencies must be added – either to supplement the existing board or to replace a director – GNDI encourages boards to cast a wide net and to utilize a structured and transparent process, including for example, through an external search firm and leveraging the board appointment registry of home directors' institutes. Directors' personal networks are often powerful but effective boards are conscious of diversifying their teams and explore every opportunity and channel to identify the best possible candidates aligned to their skills and strategic needs.

Role of the Chair or lead director

At the board, performance cultures are established primarily by the independent Chair or lead director who takes the lead in the evaluation process and sets a tone of accountability. If weaknesses at the board are identified, it falls to the independent Chair or lead director to address these with the relevant board members who are deemed by their colleagues to no longer be adding value regardless of the length of their board service.

A board that is subject to rigorous evaluation and that understands that it is accountable has every incentive to be effective. Stated simply, if a director is informed when he or she are first brought on board that he or she may subsequently be involved in a tough conversation, there is usually no need to have one.

Just as the board should be subject to a performance management-based renewal process, so too should the Chair be evaluated and held accountable. This should be done through a well-understood process managed by a delegated director (for instance the chair of a Governance or Nominations Committee) and that takes into account the Chair's unique role in setting the tone and fostering a performance culture.

Disclosure

A crucial element of board renewal is the manner in which the process is communicated. GNDI members believe that organisations should build renewal frameworks based on the concepts of performance management as described above and should disclose these policies and processes to its shareholders and other stakeholders. Such disclosure would ideally also include director profiles describing the experience, length of service, attributes and other relevant information of individual directors. In certain jurisdictions, for example Australia, listed entities are required to disclose on an "if not, why not" basis their board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership. Such disclosure allows for better engagement with stakeholders - primarily organization owners.

Conclusion

International jurisdictions have diverged in their approaches to encouraging board renewal, with some implementing rules around director tenure limits and others focusing on the role of renewal in encouraging diversity. While tenure limits can be a supporting mechanism, relying solely on them to renew the board may have the unintended consequence of resigning an effective director with institutional memory and strategic understanding. GNDI members have observed that strong boards across the world have developed renewal strategies that demand the board identify its strategic skills and behavioural competency needs and employ the concept of performance management within a culture that demands accountability of directors.

GNDI Recommended Practices

1. Boards should have formal renewal frameworks that are rigorous, transparent and action-oriented and enable alignment with the organisation's business strategy to effect long term value.

2. Boards should take a performance management approach to board renewal, which includes formal board evaluations to assess the quality and contribution of directors. The independent chair or lead director is responsible for establishing a performance culture.

3. Boards should use skills and competency matrices to help ensure they have the mix of skills, backgrounds and experience the board needs and to help determine if any gaps exist (across the board and on an individual director basis).

4. Boards should cast a wide net when adding or replacing a director, including using search firms and home director institutes' registries. Boards should consider the need for diversity of thought, skills and experience on the board when considering appointments.

5. Tenure limits can act as a backstop against excessive tenure length but they should not be the only renewal mechanism used by boards as they can have the effect of substituting for difficult conversations with underperforming directors or can lead to the replacement of effective directors.

Key Developments in GNDI Member Countries

Australia

Companies that are listed on the ASX are required to disclose against the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* 3rd ed. (Principles and Recommendations) which note that board renewal is critical to performance and that directors should be conscious of the duration of each director's tenure in succession planning. Principle 2 of the Principles and Recommendations states that "A listed entity should have a board of an appropriate size, composition, skills and commitment to enable it to discharge its duties effectively".

To support this principle, listed companies must disclose on an "if not, why not" basis whether the board has established a nominations committee or, it has not established one, if it does not have a nomination committee, "the processes it employs to address board succession issues and to ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively".[2] They must also disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership or, if the company does not use a board skills matrix, disclose why this is the case.[3]

ASX listed companies must also provide details of the directors that the board considers to be independent.[4] While they must also disclose the length of service of each of the directors on the board[5] the commentary to Recommendation 2.3 makes it clear that the mere fact that a director has served on a board for a certain period does not mean that he or she must no longer be considered independent. However, it does note that the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years.

Relevantly, the Australian Institute of Company Directors provides in its *Guiding Principles of Good Governance*[6] that boards of all organizations (and not just those listed on the ASX) should:

- Taking into consideration the scale and nature of the organisation's activities, comprise an appropriate number of directors who have a relevant and diverse range of skills, expertise, experience and background and who are able to effectively understand the issues arising in the organisation's business;
- Where practicable, have an independent chair, with the role of the chair being separate from the role of the CEO; and

[2] Recommendation 2.1 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* 3rd edition (2014).
[3] Recommendation 2.2 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* 3rd edition (2014).
[4] Recommendation 2.3 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* 3rd edition (2014).
[5] Recommendation 2.3(c) of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* 3rd edition (2014).
[6] http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/guiding-principles-of-good-governance

- Have their performance (including the performance of its chair, the individual directors and, where appropriate, the board's sub-committees), regularly assessed and appropriate actions taken to address any issues identified.

Brazil

- CVM (Securities and Exchange Commission) Regulation: Instruction CVM 480, from 2009, made it mandatory for companies to disclose annually, and keep up-to-date, a Reference Form, which includes , detailed information about the directors and officers, including profession, positions held, tenure, curriculum, potential conflicts and so on. Instruction CVM 481, also from 2009, make it mandatory for companies to disclose, prior to the Annual General Meeting, the same detailed information required by the reference form regarding the candidates for board positions.

- IBGC Code of Best Practice of Corporate Governance[7] recommendations:
    - Nomination process should be formal and consider the board's and company's needs regarding its strategy;
    - Recommends a set of skills, expertise, behaviours, attitudes for board members and candidates;
    - Age should not be a determinant issue for mandatory director retirement (effective contribution to the board and the organization should prevail);
    - Tenure should not exceed two years, but can be renewed;
    - There should be no alternate directors;
    - There should be a relevant number of independent directors.
    - Re-election of directors may be desirable to build an experienced board, but only if bound to a formal evaluation process of the board and the directors.

[7] Currently under revision.

Canada

In Canada, board renewal is most often discussed with a view to diversifying boards of directors.

Beginning in 2015, most provinces in Canada through changes to securities regulations require most public companies provide greater transparency regarding gender diversity policies in relation to director and senior management positions. On a "comply or explain" basis, organizations now must outline what policies they have adopted to increase gender diversity in their leadership teams and, if they have not adopted such a policy, explain why not. One new rule stipulates that companies disclose their director term limits policy or details of other board renewal mechanisms they employ.

Hong Kong

The principal company law of Hong Kong, the Companies Ordinance (Cap 622), does not specifically require companies to "renew their board", but by and large leaves matters such as appointment and removal of directors to companies to decide on their own through actions in general meetings. The law does require directors to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law.

Companies listed on the Stock Exchange of Hong Kong are in particular guided by the Exchange's Listing Rules and the Corporate Governance Code. Other governance best practices also form part of the guidance available to companies and their boards. In this regard, publications by The Hong Kong Institute of Directors, viz., the *Guidelines for Directors* (currently in its 4th edition) and the *Guide for Independent Non-executive Directors* (currently in its 5th edition) have been recognised as reference guidance to directors serving on the boards of issuers listed on the Hong Kong market. In relation to the discharge of duties and responsibilities, a specific note to the Listing Rules states that directors are generally expected by the Exchange to be guided by, inter alia, these two HKIoD publications.

On board composition, the Corporate Governance Code espouses the principle that the board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business. The board should ensure that changes to its composition can be managed without undue disruption. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board to effectively exercise independent judgment. Non-executive directors should be of sufficient calibre and number for their views to carry weight. The actual Code Provisions would require issuers, on a "comply or explain" basis, to identify the independent non-executive directors in corporate communications that disclose the names of directors, and to maintain an internet-accessible, current list of directors which identify their role, function and whether they are independent non-executive directors. Further, the Listing Rules mandatorily require at least three independent non-executive directors to fill at least one-third of the board seats. At least one independent non-executive director must have appropriate professional qualifications or accounting or related financial management expertise to lend sufficient experience with financial reporting and internal controls of public companies.

On the role of a nomination committee, the Corporate Governance Code also sets out certain principles and parameters. For Hong Kong listed issuers, the Code Provisions would, on a "comply or explain" basis, require a nomination committee to consist mostly of independent non-executive directors, and to perform the following duties which would be part and parcel to board renewal efforts:

(a) review the structure, size and composition of the board on a regular basis;

(b) identify individuals suitably qualified to become board members;

(c) assess the independence of independent non-executive directors; and

(d) make recommendations to the board on the above and other relevant matters relating to the appointment or re-appointment of directors and succession planning for directors in particular the chairman and the chief executive officer.

On tenure of directors, non-executive directors should be appointed for specific terms and be subject to re-election at regular intervals, at least once every three years. The Corporate Governance Code takes the view that serving more than 9 years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, his further appointment should be subject to a separate resolution to be approved by shareholders. The papers to shareholders accompanying that resolution should include the reasons why the board believes he is still independent and should be re-elected. Issuers are required to "comply or explain."

Executive directors are also subject to the Code Provision which requires all directors to be subject to re-election at least once every three years. Their employment terms would also operate as a check on their performance and tenure. The Listing Rules require directors' service contracts that are longer than three years in duration or that require payment of the equivalent of one year's emoluments or more in the case of termination to be subject to independent shareholders' approval. See HKIoD's *Guidelines for Directors* (at Part III, para 301-304) for a discussion on the considerations and treatment when a director is also an employee of a company.

On board evaluation, the Corporate Governance Code includes a Recommended Best Practice that the board should conduct a regular evaluation of its performance. HKIoD's *Guidelines for Directors* (at Part I, para 77A) recommends board evaluation which includes evaluation of individual directors. Upon re-election, the performance evaluation serves to present to shareholders the individual directors' effectiveness and commitment to the role.

On board diversity, the Corporate Governance Code includes a Code Provision to require the nomination committee to have a policy or otherwise explains why no such policy has been adopted (i.e., "comply or explain"). In addition, there is a mandatory disclosure requirement for the inclusion of such a policy, if one exists, in the corporate governance report. In connection with the principle on board composition described above, the nomination committee is expected to give adequate consideration to diversity, through consideration of factors such as gender, age, cultural and educational background or professional experience. Nonetheless, each issuer is also expected to take into account its own business model and specific needs, and to disclose the rationale for the factors it uses for this purpose.

HKIoD is firm on the principle that board diversity is about composing and maintaining a board with the right mix of skill sets that will increase board effectiveness and bring long-term shareholder value. This would entail an assessment of whether certain elements of diversity or attributes could enhance boardroom discussions and decision-making but were missing. Well-rounded assessment of individual skills and exposure relevant to devising and attaining a company's strategy and objectives is just as – probably more – important than aiming focus on identity such as age, gender or ethnicity alone.

Mauritius

The Mauritian legislations do not set any restrictions as to the age limit of directors except for a director of a public company or its subsidiary who reaches the age of 70.

In this case, Section 135 (4) of The Companies Act 2001 provides that "The office of director of a public company or of a subsidiary of a public company shall become vacant at the conclusion of the annual meeting commencing next after the director attains the age of 70 years". The law further provides that, a person of or over the age of 70 years may by an ordinary resolution be appointed or re-appointed as a director of that company to hold office until the next annual meeting of the company or be authorised to continue to hold office as a director until the next annual meeting of the company. In the case of an application for incorporation of a public company, the director can be appointed with the consent in writing of the proposed shareholders.

As regards the length of tenure of a director, the Code for Corporate Governance of Mauritius (2003) provides that each director should be elected (or re-elected as the case may be) every year at the Meeting of Shareholders by a separate resolution.

The Bank of Mauritius Guideline on Corporate Governance (2012) provides that the member of the board of a financial institution shall cease to be a member after having served on the board for an aggregate period of six years. However, an outgoing director may with the prior approval of the Central Bank, be reappointed as director on the board after having observed a cooling period of two years. The Central Bank may, where it deems it fit, approve the reappointment of those directors who have not observed the cooling period.

Furthermore, the limit to the term of office of directors is not applicable to Executive Directors of financial institutions and Non-Executive Directors of branches and subsidiaries of foreign banks. However in those cases, financial institutions are required every three years to submit for approval by the Central Bank, a Fit and Proper Person Questionnaire with the documents as required in the Guideline on Fit and Proper Person Criteria.

The Code for Corporate Governance provides that directors should be assessed both individually, and collectively as a board. The individual evaluations should be conducted annually, whereas an assessment of the functioning of the board could be undertaken less frequently, particularly if the composition of the board is stable. It is clearly stated that directors who fail to discharge their duties and responsibilities to the satisfaction of the board (including those who fail to attend meetings without acceptable explanation) should be removed.

New Zealand

There are no general legislative requirements about tenure and renewal of directors of companies registered in New Zealand. There are specific requirements for particular types of entities, for example about independent directors for listed companies on the New Zealand Stock Exchange (in Listing Rules) and in legislation about the terms for members appointed to Crown boards.

Good practice governance expectations in New Zealand focus on how well a director can carry out their duties and responsibilities, and that board membership remains properly balanced and aligned with organisational needs. Key areas of focus are composition and competency, taking into account skills, experience, leadership qualities and values, and diversity. Board evaluation and succession planning are encouraged to ensure that an active plan is in place for rotation and selection of board members.

The New Zealand Director Competency Framework sets out director competencies and provides a framework for measuring director and board performance. The needs and mix of competencies will vary according to the size, nature and strategic challenges of the organisation involved.

The Financial Markets Authority's (FMA) *Corporate Governance in New Zealand: Principles and Guidelines* includes a principle on *Board composition and performance*. It says boards should have rigorous, formal processes for evaluating performance. The FMA encourages boards to consider the length of service of each of their directors and the impact this has on the ability of directors to remain independent. It encourages boards to use a board skills and capability matrix to identify current and future skills, capability and diversity needs of the entity. The FMA says boards should report on board composition and succession planning as well as information about each director, including a profile of experience, length of service, independence and ownership interests in the company.

Pakistan

Renewal of directors under the Companies Ordinance 1984 is for a three year term. However, under the Banking Companies Ordinance 1962, a director of a banking company shall not hold office for more than a period of six consecutive years.

While the Code of Corporate Governance 2012 restricts the tenure of a director deemed as independent to three consecutive terms, the Public Sector Companies (Corporate Governance) Rules 2013 further restrict such tenure in the case of independent directors of public sector companies to two consecutive terms.

South Africa

In South Africa the primary legislation governing boards of directors is the Companies Act of 2008, which does not have specific requirements regarding board renewal. We are then guided by governance best practice as espoused in the King III Report on Governance 2009 ("King III"), which provides that:

- Every board should consider whether its size, diversity and demographics make it effective.
- A programme ensuring a staggered rotation of non-executive directors should be put in place.
- At least one third of non-executive directors should retire by rotation yearly.

- Any term beyond 9 years for an independent non-executive director should be subject to a particularly rigorous review by the board, including independence assessment.
- The evaluation of the board, its committees and the individual directors should be performed every year.

Switzerland

The Swiss Institute of Directors in cooperation with the International Center for Corporate Governance recommends the use of the "Board Diversity Optima Disc" (www.icfcg.org see Board Consulting - Composition of the Board of Directors - click tool) for renewing the board periodically based on (1) strategic know how diversity, (2) strategic team role diversity, and (3) strategic social data (gender, age, and multinational) diversity.

Thailand

In Thailand, the issue of board renewal is mentioned both in terms of regulatory requirement and best practices. According to Public Limited Company Act, B.E. 1992, the main focus is placed on rules governing board election. It is mandatory that the entire board of directors needs to be elected simultaneously every three years if the company adopts cumulative voting. However, in case that the company does not adopt cumulative voting, 1/3 of directors shall retire each year.

With regards to the Principles of Good Corporate Governance for Listed Companies 2012, in order to enhance their level of corporate governance, there are a number of best practices in relation to board renewal process which require listed companies to adopt as follows:

- It is expected that terms of service of directors should be clearly stated in the company's CG policies especially for those who are independent directors. It is advisable for independent directors to be subject to particularly rigorous review of their continued independence if they have served on the board beyond nine years from the date of their first appointment.

- The board should be comprised of directors who as a group provide an appropriate balance and diversity of skills, experiences, gender and at least one non-executive director having prior working experience in the major industry the company is operating in.
- To ensure that directors have sufficient time to perform their duties, the board should consider the extent to which having multiple board memberships lessens the effectiveness of directors. Thus the board should set a limit of five board seats in listed companies, which an individual director can hold simultaneously.
- The board should set up the nomination committee, whose main responsibility is to set the criteria and process of nominating board members.
- Board self-assessment should be conducted regularly, at least once a year.
- New directors should be provided with all documents and information useful to perform their duties, including an introduction to the nature of the business and the operations of the company.

United Kingdom

There are no formal tenure limits for directors that are defined by regulation, although companies are free to define their own practices within their articles of association. However, the UK Corporate Governance Code does contain some Principles and Provisions that are of relevance to board tenure.

For example, Supporting Principle B.2 states that “The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board.”

Provision B.2.3 states that "Non-executive directors should be appointed for specified terms subject to re-election and to statutory provisions relating to the removal of a director. Any term beyond six years for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board."

The Code also addresses the issue of individual director evaluation. Supporting Principle B.6 states that "Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties)."

If a director has served on a board for more than nine years from the date of their first election, they are likely to breach the independence criteria defined by the UK Corporate Governance Code. The Code requires the board to explain in its annual report why such a director should still be categorised as an independent non-executive director. Such an explanation could potentially be challenged or criticised by investors or the media if it were not sufficiently justified by persuasive evidence of continued independence.

United States

The National Association of Corporate Directors (NACD) advises boards on director evaluation and maintains a directors' registry for boards seeking new directors. NACD also publishes annual survey data on a variety of governance topics, including board renewal and evaluation. The NACD's 2015-2016 Public Company Governance Survey showed that 85 percent of boards conduct full board evaluation, 75 percent conduct committee evaluation, and 41 percent have formal evaluation of individual directors. More than one in ten (12 percent) use outside consultants to help them conduct evaluations.

As for tenure-limiting mechanisms, the survey showed that 50 percent of boards require directors to resign upon reaching a stated age limit (typically either 72 or 75) and 32 percent require resignation upon a change in professional status. Only 9 percent have term limits—most typically for 10, 12, or 15 years. When asked whether the board had ever waived any of these tenure-limiting policies in the past year, 75 percent said no.