

3.1 Board composition - proposals at a glance

- *The board should be comprised of up to 9 members:*
 - *Up to 3 executive directors*
 - *Up to 3 elected non-executive directors and*
 - *Up to 3 appointed non-executive directors*
- *One director will be elected by the membership per year.*
- *Non executives will serve 3 year terms, and will usually stand down after 6 years.*
- *The Chairman will be one of the “appointed non-executive directors”.*
- *Appointed non-executive directors will be selected by the board, and the appointment ratified by the membership at the next Annual General Meeting.*

Question 1

Do you agree with the proposed changes to Board composition?

Answer: After giving this a great deal of thought and speaking with several people I have decided that I am not in agreement with all of the above. I'll take this in parts:

- *The board should be comprised of up to 9 members:*

I agree with this.

- *Up to 3 executive directors*

I agree with this.

- *Up to 3 elected non-executive directors and*

- *Up to 3 appointed non-executive directors*

I both agree and disagree with this. Initially I was of the opinion that the elected non-execs should be a minimum of 50% of the Board. I now think that this would be a mistake that could leave open the possibility of a strongly motivated or powerful (in voting rights terms) faction of the membership gaining effective control of the company. This is a real possibility when turnout is so low. I expect consolidation within the industry to continue over the coming years and to see a situation where a few players hold a large percentage of the voting rights in Nominet. Even assuming healthy competition between these companies there remains the risk that they will vote in non-execs likely to steer Nominet in a direction that suits their business models. This may not necessarily be to the benefit of other Nominet members & stakeholders. So I agree that the 3-3-3 split on the Board is an elegant solution that ensures that decisions made cannot be overly influenced by any one special interest group. However, I disagree with the 3-3-3 split because of

- *One director will be elected by the membership per year.*

I feel it will be a grave mistake to only allow for only one director to be elected per election. This has the risk that the preferred candidates of the most powerful (or most motivated) group of voters will always get elected. When two directors are elected per election then the preferences of a second group of members are catered for. STV (as far as I can understand it) works well in this way. So I would like to see one of the following:

- four elected non-execs to two appointed non-execs with two vacancies per election and elections taking place in two years out of three
- three elected non-execs to three appointed non-execs with three vacancies per election and elections taking place in one year out of three. This has the disadvantage that 3 new directors might all take office at the same time leading to a lack of experience on the board.

- *Non executives will serve 3 year terms, and will usually stand down after 6 years.*

- *The Chairman will be one of the “appointed non-executive directors”.*

- *Appointed non-executive directors will be selected by the board, and the appointment ratified by the membership at the next Annual General Meeting.*

I agree with this. I would add that a Director of Finance should also be an executive member of the Board.

NOTE: In the above clauses I'd like to see the words 'up to' removed. Alex Bligh has given a good explanation as to why:

“I note the same words “Up to” are used in each category; I disagree with this if the words are meant to mean the same thing in each case. I believe that the number of non-executive directors should be fixed (i.e. if a vacancy arises, there should be an obligation on the board to fill it); this should in particular be the case for elected non-executive directors” (Alex Bligh)

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3.1.1 Executive Directors

Current situation

- *2 executive directors, one of which is the managing director.*
- *The managing director shall be the Chairman.*

What we would like to do

- *Increase the number of executive directors to a maximum of 3 (one of whom will be the Chief Executive).*
- *Not require the chairman to be an executive director.*
- *The members' ability to remove any director from office would remain unchanged.*

Why change?

- *In companies of Nominet's size, it is usual for the chairman to be a non-executive role.*
- *As Nominet matures and develops, it may require more executive directors to have day-to-day responsibility for the business.*

Question 2

Do you agree with the proposed changes to executive directors?

Answer: I agree with all of this except

- *The managing director shall be the Chairman*

I assume this means the Chair of the Board as opposed to the Chair of the Company. I can see no reason why it should be mandatory for the MD to be the Chair of the Board.

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3.1.2 Elected Non-Executive Directors

Current situation

- 4 non-executive directors, elected by the membership.*
- 2 directors elected by weighted voting per year.*

What we would like to do

- Retain the membership vote for elected members at the Annual General Meeting.*
- Alter non-executive directors' term of office to 3 years – in compliance with corporate governance best practice.*
- Elected non-executive directors would stand down in compliance with corporate governance best practice, which would currently be after two terms (ie 6 years)*
- Decrease the number of elected non-executives to 3.*
- The net effect would be that one non-executive director would be elected in each year, simplifying one aspect of the election process.*
- Add the ability of the Board in the case of a vacancy arising on the Board to co-opt as a director a person who is willing to stand until the next Annual General Meeting*

Why change?

- The board believes it is important to retain direct membership influence at the heart of the business.*
- Corporate governance best practice emphasises the need to have the most effective board for the company. The balance of skills and experience on the board is a key element of this. To obtain the best board, the elected non-executives should be balanced with appointed non-executives.*
- The overall board size should remain small enough to be efficient and functional.*

Question 3

Do you agree with the proposed changes to elected non-executive directors?

Answer: I agree with this with the exception of

- Decrease the number of elected non-executives to 3.*
- The net effect would be that one non-executive director would be elected in each year, simplifying one aspect of the election process.*

for the reasons explained above in response to Question 1.

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3.1.3 Appointed Non-Executive Directors

Current situation

- *There are no appointed non-executive directors*
- *4 non-executive directors (2 per year) are elected by Nominet's membership*

What we would like to do

- *Introduce a new category of "appointed non-executive director", who would be selected by the board and the appointment ratified by the membership at the next Annual General Meeting.*
- *There would be up to 3 appointed non-executive directors.*
- *The Chairman would become an appointed non-executive director.*
- *Appointed non-executive directors would retire by rotation based on who had been longest in office.*
- *Appointed non-executive directors would stand down in compliance with corporate governance best practice, which would currently be after two terms (ie 6 years).*

Why change?

- *Corporate governance best practice is that a board should have a balance of skills and experience, sufficient for the company's needs.*
- *Few candidates through the election process in recent years have had experience of running a business the size of Nominet.*

Question 4

Do you agree with the proposed changes to appointed non-executive directors?

Answer: I agree with this.

3.2 Other proposals

There are numerous other provisions relating to directors, which we propose to change to bring them in line with corporate governance best practice, and legal drafting best practice. As part of this, it is proposed to incorporate Table A of the Companies Act 1985 (as amended by Table C so that it is appropriate for a company without a share capital). They are as follows:

3.2.1 Alternate Directors

- *Currently there is no ability to appoint alternate directors*
- *It is proposed to introduce the ability for directors to appoint an alternate director, for example if they are unable to attend a meeting. This is standard practice in company articles.*

Answer: I disagree with this. I can see no real need for alternate directors and am concerned that such alternates could become de facto directors merely on the authority of an existing director. If it is felt absolutely necessary for alternate directors to be used then I would like this to be qualified by a limit as to the number of meetings per year where an alternate can be employed by any one director. In this age of communication technology I can see no need for that to be higher than once per annum.

3.2.2 Committees

- *Currently, directors can delegate any of their powers to committees, comprised of other directors.*
- *It is proposed to introduce the ability for directors to delegate their powers to any committee comprised of one or more person. This is standard practice, and makes delegation to staff members more feasible. Of course, directors still retain responsibility for any delegated action.*

Answer: I agree with this

3.2.3 No age limit

- *Currently, our articles are silent as to age limits for directors, so company law applies.*
- *Company law requires that directors must stand down at the age of 70. It is common practice to exclude this provision in a company's articles.*
- *We propose to exclude any age limit for directors, on the basis that it is better to choose the right people for the job, than have potential candidates automatically excluded on the grounds of age alone. The Companies Act 2006 will introduce a minimum age for directors of 16.*

Answer: I agree with this

3.2.4 Disqualification

- *Currently, the articles set out an exhaustive list of circumstances when directors shall cease to hold office. The board currently has no ability to remove non-executive directors, which makes compliance with corporate governance best practice difficult.*
- *It is proposed to bring these in line with legal drafting best practice. This incorporates the usual wording set out in Table C, but makes small amendments, including the ability for directors to be "otherwise duly removed". This is because directors will have a contract of engagement, which will include usual termination provisions for the board.*

Answer: I agree with this

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3.2.5 Remuneration

- *Currently, the memorandum allows for payment of directors, but the articles do not include any detail.*
- *In accordance with corporate governance best practice, the company has a remuneration committee, which reviews and determines the Nominet's policy on remuneration and advises on the specific remuneration packages of senior management.*
- *It is proposed to introduce some detail (following legal drafting best practice) to allow for payment of extra remuneration to directors who perform special services, such as travelling abroad on company business, and for reimbursement of expenses.*

Answer: I agree with this

3.2.6 Notice to directors

- *Currently, the articles have general notice provisions which apply both to directors and members. It is proposed to introduce legal drafting best practice to cover notice to directors.*

Answer: I agree with this

3.2.7 Sole director

- *Currently, the articles make no provision for a situation where there is only one director (The default position under Company law is that there are two directors). It is proposed to incorporate legal drafting best practice, so that the company could still operate if there was temporarily only one director.*

Answer: I agree with this

3.2.8 Resolution in writing

- *Currently, there is no provision allowing directors to pass resolutions in writing. Company law (Table A) allows this, and it is proposed to incorporate this ability. It is proposed to make it clear that a written resolution can be by letter or electronic communication.*

Answer: I agree with this

3.2.9 Directors' conflict of interest

- *Currently, there is no provision relating to directors' conflict of interest in the current articles.*
- *In compliance with corporate governance best practice, the board has a register of interests, and conflicts of interest are declared at board meetings.*
- *We propose that directors with a conflict may still count towards a quorum and vote. This complies with legal drafting best practice, and avoids deadlock. For example, all directors are members in their own right, and will have a technical conflict of interest on any membership matter, for example, the recent raising industry standards project. Unless they can also count towards a quorum and vote, there would be deadlock and the board could be unable to deal with such matters.*

Answer: I agree with this

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4. Policy

Current situation

- *Although Nominet always consults with relevant stakeholders, including the PAB, on policy issues, there is no requirement in the articles to do so.*
- *Currently the articles say that the membership will “consider technical issues relating to naming the .uk domain; and advise the [board] on such matters”. The articles also state that the board will “have regard to any regulations made by the [membership]”, but do not give any power for the membership to make regulations!*

What we would like to do

- *Enshrine the company’s practice of consulting relevant stakeholders on policy issues.*

Why change?

- *Consultation with relevant stakeholders is at the heart of our community orientated ethos, and is necessary for fulfilment of our mission “to excel in the management of the .uk domain and the provision of registry services in response to the needs of our customers and stakeholders”*

Question 6

Do you agree with the proposed changes to policy?

Answer: I agree with this

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5. Fees

Current situation

- *The board has no ability to change the level of registration fees or membership subscriptions. All other fees (eg DRS, tag change, transfers, DAC, PRSS) can and are implemented and changed by the board.*
- *A change in registration fees or membership subscriptions would require a ballot of the membership, and can only be implemented on a 75% majority.*

What we would like to do

- *Give the board the ability to regulate sale price as well as costs, by giving the directors the power to change all fees. Any fee changes would, naturally, be communicated with appropriate notice.*

Why change?

- *The Board needs to be able to respond swiftly to changes in the domain name market, be they competitive pressures, economic downturn, or other market changes that could impact the long-term performance of the Company. The current process for fee change is slow and cumbersome, and would place us at a considerable disadvantage to any competitors.*
- *Directors have a legal responsibility for running the company, but at present do not have the usual tools to allow them to do so, because they do not have the ability to regulate the company's income through setting the level of fees.*

Question 7

Do you agree with the proposed changes to fees?

Answer: Yes and No. I am happy for the Board to set the level of registration fees, with the proviso that this level will apply to all members. I would not be happy with a situation where any one class of member received favourable terms – e.g. discounts related to number of domains registered per month. I can also see no reason why the Board should need to react quickly in the case of membership subscriptions and feel that these should be separated from the registration fees issue and left under the control of the membership.

Hazel Pegg

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