

Ask Mr Sid

Dear Mr Sid

Re: Decentralising to an Exco

Most of our board members attended the recent SID annual conference on *Directors in a 4D World: Digital, Decentralised, Decarbonised & Diverse*. After the hype at your event on the benefits of the current trend towards decentralisation, two of our directors, B and C, suggested that we implement decentralisation on our board by forming an executive committee (Exco). The chairman, A, agreed.

Let me explain our board setup. There are seven directors in our mid-sized listed company. A, B and C are non-independent non-executive directors (NI-NEDs) because they are also substantial shareholders. The remaining four of us are independent directors (IDs). I chair the nominating committee (NC).

My concern is that we already have four committees for the seven of us. In addition to the NC, we have an audit committee, board risk committee and remuneration committee.

My greater concern is B's recommendation that the Exco consists of the three NI-NEDs because they "have the most at stake".

C added that they (the NI-NEDs) understand the business more than the four IDs because they were from the same industry (which I have to agree) and can be "more effective in guiding the CEO who needs more support from the board".

The CEO, who is not a board member, has told me in confidence that he's worried he'll be swamped – even suffocated – by a laser-focused committee that sees itself as straddling the divide between directing and managing.

My fellow IDs have similar concerns but have not yet expressed their reservations to the three NI-NEDs. When I raised this issue, one of them said it's my job as chair of the NC to deal with this.

I was looking for regulatory guidance on the formation and functioning of ExcOs, but could not find any. Could you advise me on how I can respond to the three NI-NEDs?

Yours sincerely

Not-too-much-decentralisation-please

Dear Not-too-much-decentralisation-please

It is a red herring to discuss the formation of an Exco in terms of centralisation/ decentralisation, which is an organisational concept more applicable to the management of the company rather than the structure of the board.

In general, board committees are formed to help the board with its workload and fulfil key aspects of its mandate. Essentially, the board delegates (you could say "distributes") part of its work to the committees, but the board still retains control and accountability for all delegated matters.

If anything, the proposal by B is at risk of "re-centralising" the work of the board into the Exco, in effect, creating "a board within a board".

Guidance on ExcOs

You asked about regulatory guidance on ExcOs. Interestingly, of all the board committees, the Exco stands out for its influence and the conspicuous lack of guidelines regarding its governance.

You will not find any mention of ExcOs in the Listing Rules or Code of Corporate Governance provisions. However, the Code's Practice Guidance (which is not mandatory) advises that should the board choose to form an Exco, "it is [still] responsible for understanding the Exco's discussions and

endorsing the Exco's decisions" (Practice Guidance 1: Board organisation and support).

In addition, the Monetary Authority of Singapore's (MAS') Guidelines on Corporate Governance [for Financial Institutions] – which is based on the 2018 Code of Corporate Governance but extended to create a tighter regime – provides two guidelines on ExcOs (Guidelines 2.7 and 2.8).

You can also find some (non-regulatory) guidance on ExcOs in the SID Board Guide (see "Mr SID References").

Concerns regarding ExcOs

You and your fellow IDs, and the CEO, are rightly concerned about an Exco, especially in the form being proposed. Both the regulations and industry literature on ExcOs warn of risks and drawbacks because many ExcOs have not worked well with other directors and management.

The main risk is that the Exco becomes a "club of the select" that usurps the power of the whole board. This happens when the Exco conducts its proceedings in a manner that is less transparent and wields excessive authority. If the Exco becomes the primary platform where the Chairman and/or CEO takes every important decision, then the board is relegated to a "rubber-stamping" role. In such a situation, the full board is notified of decisions only after the fact, and directors not on the

Exco lack the means to meaningfully alter or reverse any of the Exco's decisions.

The other risk is the Exco becoming too executive. Instead of being a governance body that is a coach and sounding board to the CEO, it micro-manages the business. That is already the concern of your CEO.

Other disadvantages of an Exco include:

- There could be cannibalisation or duplication of board functions. An Exco's scope can be very wide and overlap with that of the other committees and the main board.
- When non-Exco members feel excluded, there could be a reduction in their ownership, sense of responsibility for decisions, and, eventually, their contributions.
- The cost of governance and coordination would be higher with an additional committee.

Discouraging Exco formation

It seems like you would like to discourage the formation of an Exco on your board. You should first rally your fellow IDs to be behind you before you take the arguments to the rest of the board.

There are three sets of arguments you could use:

1. Regulators and industry experts have warned of the risks and drawbacks of ExcOs. You can expound on the information provided above on guidance and concerns, and elaborate using past incidents and your knowledge of the company and board. For example, you could add your observation of the many board committees and how an Exco would stretch the board and management.

2. Few and fewer boards have ExcOs. The fact is that ExcOs are not common and a declining trend. According to the *SID Board of Directors Survey 2022*, only 15 per cent of listed company respondents had an Exco. This is down from 16 per cent, 22 per cent and 32 per cent in 2019, 2017 and 2015, respectively.

3. An Exco is not necessary (anymore). With the wonders of modern technology (board portals, video conferencing, electronic mail and mobile communications), directors can be more involved in the affairs of a company than ever before. Thus, the traditional function of an Exco to meet between board meetings to deal with matters expeditiously without waiting for the next board meeting is redundant. There would be some functions (e.g. evaluating major transactions and crisis management) that are best done by a small, focused group of directors; these are best effected by special purpose ad hoc board committees rather than a standing committee such as the Exco.

Ensuring an effective Exco

Despite the concerns surrounding ExcOs, there can be value to having one. An Exco streamlines board decision-making, freeing up time on the full board agenda. ExcOs tend to promote more thorough oversight of strategic items and performance, and allow for quicker response in many situations. Properly managed, ExcOs can foster a closer working relationship between the board and senior management.

So, if you cannot dissuade the board from having an Exco, the next best course of action is to ensure that it is properly set up and implemented to realise the benefits. Most of the leading governance practices for the Exco are within the control or influence of you, as the NC chair.

The first is ensuring the appropriate composition of the Exco. As you acknowledge, three NI-NEDs overly skew it. You need a good mix of IDs and NI-NEDs. While you may not be a financial institution, you could point out that MAS Guideline 2.7 requires the Exco composition to mirror that of the board, which in your case, means a majority of IDs. The typical chair for an Exco is the board chair.

The second is to develop a proper, formal Exco Terms of Reference. The role and scope of the Exco should be clearly defined. Ensure that the Exco does not, in effect, replace the board as the central decision-making body and authority on corporate strategy. Generally, executive evaluation and remuneration, as well as approval of organisational policies and procedures, should be under the authority of the other board committees rather than the Exco.

The third is to ensure that the Exco's agenda and meetings are transparent to the rest of the board. Minutes of Exco meetings should be detailed and made available to the rest of the board promptly. The Exco should be required to submit most matters (except those specified otherwise in the Terms of Reference) to the full board for ratification.

Finally, the annual board assessment process should include the Exco and its directors.

Yours sincerely



Mr Sid ■

Who is Mr Sid?



Mr Sid is a meek, mild-mannered geek who resides in the deep recesses of the reference archives of the Singapore Institute of Directors.

Burrowed among his favourite *Corporate Governance Guides for Boards in Singapore*, he relishes answering members' questions on corporate governance and directorship matters. But when the questions are too difficult, he transforms into Super SID, and flies out to his super network of boardroom *kakis* to find the answers.

Mr Sid's References (for this question)

Board Guide

Section 2.6: Board Committees
Appendix 2B, Case Study 2B-1: Establishment of an Executive Committee
Appendix 2G: Guidelines for Executive Committees
Appendix 2H: Sample Terms of Reference for an Executive Committee

Boardroom Matters

Vol 3, Chapter 14: "The Exco and its Challenges and Relevance in a Digital Age" by Ng Siew Quan
Vol 4, Chapter 32: "The Winds of Change in Board Governance" by Ho Yew Kee

Directors Bulletin

2017 Q2: "ExcOs and the Balance of Power" by Ng Siew Quan, Alvin Chiang and Chua Hsieh Wen
2020 Q3: "SID Survey on Boards' Response to Covid-19" by Stephen Langton and Alvin Chiang

Singapore Board of Directors Survey 2022

Section 1 Board Structure and Directorship, Question 8: Type of Board Committees