

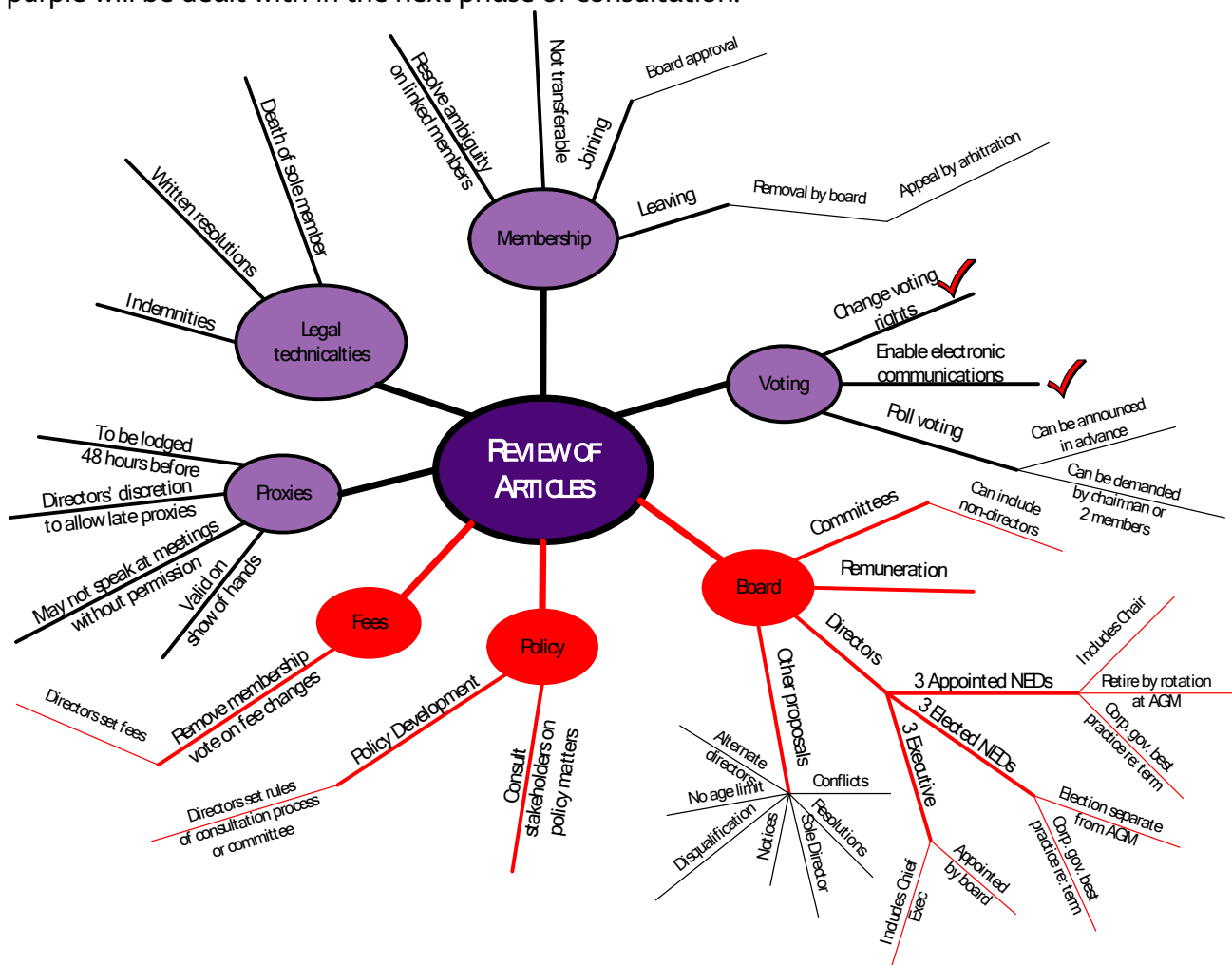
Articles of Association

Consultation paper

1. Executive Summary

Nominet is updating its Articles of Association, the document that describes how the company interacts with its members, and the way in which it is governed.

There are several issues which the board would like to address. They are all represented on the diagram below. Because of the number and complexity of the issues, we are dividing the issues between two consultations. Those shown in red are being addressed in this paper and those in purple will be dealt with in the next phase of consultation.



This first consultation deals with Board composition, policy and fees. We are proposing to:

- modify the composition of the Board – increase the board size, introduce a new category of appointed non-executive directors, and implement best practice with regard to length of service for non-executive directors
- enshrine the company's practice of consulting on policy issues in the articles

- give the Board the ability to regulate sale price as well as cost, by giving the directors the power to change all fees

The consultation will last for 3 months, from 2 February - 9 May 2007. Anyone can respond to this consultation. Please either respond to the online survey; attend the outreach events and give your feedback; or email your answers to the questions presented in this document to governanceconsultation@nominet.org.uk. We look forward to receiving your comments.

After this consultation has finished, we will start a second consultation period, also lasting 3 months, which will cover issues relating to the membership, proxies and legal technicalities. Our aim is to bring final proposals to an Extraordinary General Meeting by the end of 2007.

2. Background and introduction to the issues

Nominet's articles of association have been in place since the company was formed in 1996, apart from a couple of minor amendments. Whilst the articles have served the company reasonably well, they are unusually inflexible and restrictive and are no longer appropriate for a company of the size and profile of Nominet.

As a result of the changes to Nominet's scope which the members supported last November, the company will now be able to explore new business opportunities, such as ENUM.

It is vital that Nominet's corporate governance structures equip the company to face the challenges of the short and medium term. As a result, the board intends to propose extensive revisions to the articles for a vote of the membership later in the year.

This consultation focuses on issues relating to the board, policy and fees.

3. Board

Unusually, the articles stipulate precise numbers of directors, and that the chairman will be managing director. Given the growth of the .uk domain and the company itself, the original board size of six directors is now too small. Currently, the articles require the managing director to be the chairman, a provision which directly conflicts with corporate governance best practice.

Currently, our 4 non-executive directors are elected from the membership. The directors elected in this way have served the company very well over the years. However, having all our non-executive directors elected by the membership in this way presents the company with challenges in meeting corporate governance best practice, which emphasises: the importance of selecting directors based on experience and qualifications; the ability to ensure that the board has a balanced skill set overall; and the importance of having non-executive directors who are independent of the relevant industry.

Our proposals are to increase the board size, introduce a new category of appointed non-executive directors, and to implement best practice with regard to length of service for non-executive directors.

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?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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.
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Question 4

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

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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.

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.

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.

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.
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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.

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.

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.

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.

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.

Question 5

Do you agree with the proposed other changes relating to directors?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

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?

I agree with these proposals / I disagree with these proposals/ I would like to make comments

6. How to respond

This consultation will last for 3 months, from **2 February - 9 May 2007**.

Anyone can respond to this consultation.

If you wish to do so, please either respond to our online survey; attend our outreach events and give your feedback; or email your answers to the questions in the consultation document to governanceconsultation@nominet.org.uk.

We look forward to receiving your comments.

All responses will be published on our web site however we reserve the right to remove any materials that in our reasonable opinion are defamatory, offensive or unintelligible.
