

The logo for DCSL, consisting of the letters 'DCSL' in a bold, blue, sans-serif font.

DCSL Corporate Services Limited

FROM THE COMPANY SECRETARY'S DESK

A photograph of a modern conference room with a long, dark wooden table, several black office chairs, and large windows overlooking a city skyline.

WHO SHOULD
CHAIR THE BOARD
MEETING IN THE CHAIRMAN'S
ABSENCE?

The Chairman of the Board of Directors is “Primus inter pares” - first among equals in relation to other Non-Executive Directors. The procedure through which a Chairman is appointed is typically prescribed by the company’s Articles of Association or by the Board Charter. In some cases, this process is determined by the terms of a Shareholders’ Agreement or an Investment Agreement. Where the procedure is not clearly prescribed, selecting a Board chair should be a simple process as prescribed by Section 263(4) of the 2004 Companies Act - **“The Directors may elect a Chairman of their meetings and determine the period for which he is to hold office....” Section 263(4).**

The practice in many companies is that the business owner/Chief Executive Officer (CEO) identifies and appoints an individual with desirable characteristics to serve as the Chair. Prior to the formal inauguration of a typical Board, the person to be appointed as Chairman is usually pre-determined in advance by the majority shareholders. Very few organisations adopt the democratic approach

of leaving the choice of Chair entirely to the discretion of the Board by having Directors vote on whom amongst them will serve as Chair at the inaugural Board meeting. Regardless of how the Chair is appointed, it is important to ensure that the individual possesses a good understanding of the business, to be able to properly provide oversight to the CEO and the Board. The Chair must also be someone who will command a unifying presence on the Board and the ability to objectively guide the Board to a consensus on issues.

Typically, the Chairman is available to attend meetings given that in practice, meeting dates are pre-agreed for the year subject to the convenience or availability of all Directors and in particular the Chairman. It is however possible that due to supervening events or other business/personal commitments, one or two Directors may be unavailable to attend a particular board meeting.

Directors would typically inform the Chairman and the Company Secretary if they are unable to attend a meeting. Where the Board has in place a policy or practice that allows Directors to appoint alternates, the Director's alternate may attend the meeting in his/her stead.

Where all the Directors have confirmed their availability and the Chairman is the only one who has a conflicting engagement or for whatever reason is unable to attend a meeting, many Boards are not clear on how best to proceed. The typical reaction is to reschedule the meeting to a date convenient to the Chairman.

On the other hand, some Directors have argued that where a meeting has to be rescheduled at the instance of only one Director, it implies that that Director (regardless of whether he/she is Chair or not) has a **domineering influence** on the Board. While this view may sometimes be a little far-fetched, it is definitely the case on some Boards. Those who favor rescheduling a meeting if the Chair is unavailable argue that where sensitive matters are on the agenda for deliberation at the meeting,

the Chairman will be best able or suited to guide the Board to come to an objective decision. Respective Board dynamics and cultural undertones do not support proceeding in the absence of the Chair.

A company's Board Charter may provide for the position of (Executive) Vice Chairman with the provision that should the Chairman be unavailable, the (E)VC should chair such meetings. By corporate governance best standards, where the Vice Chairman is an Executive Vice Chairman and the MD/CEO, he/she should not chair a Board meeting if the substantive chair is unavailable. The Latin phrase "nemo iudex in causa sua" - "no one should be a judge in his own case" - aptly captures the scenario this creates. . The MD reports and is accountable to the Board and should therefore not preside at a meeting of Directors.

Some Boards permit the Chairman to nominate a Director to chair a meeting on his behalf if he will not be available.

The flaw with this practice is that the office of Chairman is not one which the holder of the office can delegate at his discretion. The Board should collectively decide on who should chair the meeting in the Chairman's absence.

It is possible to also adopt the practice in other jurisdictions such as the United Kingdom where companies have the option of appointing a Senior Independent Director (SID). The SID serves a dual function-: as a channel of communication between the Board and shareholders where normal channels of communication with the Chairman and MD are not as effective as they should be and also as the lead Director on matters relating to the Chairman's performance. Led by the SID, Non-Executive Directors are encouraged to meet at least once a year without the Chairman being present, to discuss the Chairman's performance and on other occasions as are deemed appropriate. This is however a practice that has not gained any grounds in Nigeria. The suspended FRC Code of Corporate Governance provided for the position of a SID. The revised exposure draft does not have a similar provision.

The simple response to the question of who should preside over the meeting in the Chairman's absence is found in the same Section of the 2004 Companies Act which spells out how the Chairman is appointed. It says **"....if no such Chairman is elected or if at any meeting, the Chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman of the meeting"- Section 263 (4).**

The Board should reserve the right to determine at each meeting where the Chairman is unavoidably absent, which Non-Executive Director is best suited or experienced to preside over its deliberations.



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