

OLDMUTUAL



OLD MUTUAL LIMITED

**CORPORATE GOVERNANCE
AND NOMINATIONS
COMMITTEE**

TERMS OF REFERENCE

DATE: 30 NOVEMBER 2018

VERSION: 02



1. Introduction and Purpose

- 1.1 The Corporate Governance and Nominations Committee (the Committee) is a Committee of the Old Mutual Limited (OML or the Company) board of directors (Board), established to independently review and monitor the integrity of the Company's non-executive director nomination and appointment processes. The Committee further reviews and monitors the adequacy, efficiency and appropriateness of the corporate governance structure and practices of the Old Mutual group of companies (the Group), ensuring that the entities within OML over which it has oversight comply with the Group Governance Framework (GGF).
- 1.2 The deliberations and work of the Committee do not reduce the individual and collective responsibilities of the Board with regard to the fiduciary duties and responsibilities of the Company's directors, and the Board must continue to exercise due care and judgment in accordance with its statutory obligations.
- 1.3 These Terms of Reference are subject to the provisions of the Companies Act, 71 of 2008, as amended (Companies Act) and the Companies Regulations, 2011 (Regulations), the Financial Sector Regulation Act, 9 of 2017 and any standards issued pursuant thereto (FSR Act), OML's Memorandum of Incorporation (MOI) and any other applicable laws and regulatory provisions.
- 1.4 The duties and responsibilities of the members of the Committee as set out in these Terms of Reference are in addition to those duties and responsibilities that they have as members of the Board.
- 1.5 Consistent with the functions set out in these Terms of Reference, the Committee should encourage continuous improvement as well as compliance with the Company's policies, procedures and practices at all relevant levels.
- 1.6 The Committee should encourage open communication with assurance providers, which include but are not limited to senior management, the Compliance Function and the Board.

2. Mandate

- 2.1 The Committee's authority is derived from the delegated authority of the Board as contemplated in these Terms of Reference, in accordance with section 72(1)(b) of the Companies Act.
- 2.2 Aside from as set out herein, the Committee has no ultimate decision-making authority; it provides oversight and makes recommendations to the Board in respect of the matters within the scope of the Committee's functions as set out in these Terms of Reference for the Board's consideration and, if the Board considers it appropriate, ultimate approval.
- 2.3 The Committee will have oversight and will ensure that the Company and its subsidiary companies comply with the nomination processes to fill vacancies on their boards, as well as the group governance principles as set out in the adopted GGF.



- 2.4 The Committee must act independently (with accountability to the Board) and does not assume the functions of management, which remain the responsibility of the executive directors of the Company, prescribed officers and other members of senior management.
- 2.5 The Board supports and endorses the Committee, which operates free of any organisational impairment. The Committee acts in accordance with its statutory duties and the delegated authority of the Board as recorded in these Terms of Reference.
- 2.6 The Committee is authorised by the Board to:
- 2.6.1 Investigate any activities within the scope of these Terms of Reference.
- 2.6.2 Seek any information it requires from any employee, the chairperson of any Board or statutory committees of the Company, any of the Company's executive directors, Company officers, the Group Company Secretary (Company Secretary) or assurance providers, and all these parties are required to co-operate with any requests made by the Committee, to provide it with information or explanations necessary for the performance of its functions.
- 2.6.3 Form and delegate its duties to a sub-committee, sub-committees or to any one or more designated members of the Committee, to the extent that same is permitted by the Companies Act.

3. **Roles and Responsibilities**

The Committee shall perform the following roles and have the following responsibilities:

3.1 **Board Composition Matters**

- 3.1.1 Identify individuals qualified to be elected as members of the Board and Board committees, to recommend such individuals to the Board for appointment in terms of the Company's MOI and to establish procedures to ensure that the selection of individuals for such recommendation is transparent. The Committee shall consult with the Audit Committee in respect of the appointment, resignation or dismissal of the OML Audit Director (Head of Internal Audit) and with the Risk Committee in respect of the succession planning and appointment, resignation or dismissal of the OML Risk Director (Chief Risk Officer).
- 3.1.2 Identify successors to the chairperson of the Board, Lead Independent Director as well as the OML Chief Executive Officer and recommend such successors to the Board.
- 3.1.3 Establish formal and transparent procedures for the appointment of directors of the Company, including:¹

¹ Par 3.84(a) of the JSE Listings Requirements and King IV, principle 7.



- 3.1.3.1 Identifying and participating in the selection of suitable candidates to be recommended to the Board for appointment as executive and non-executive directors of the Company.²
- 3.1.3.2 Review the results of background checks on potential candidates prior to their nomination taking into account the provisions of sections 69 and 162 of the Companies Act and the recommendations of the King IV Report on Corporate Governance for South Africa, 2016 (King Code) relating to the attributes of directors in general.³
- 3.1.3.3 Ensure that appointments of directors to the Board have been formalised through an agreement between the Company and the director concerned.⁴
- 3.1.4 Review regularly, the structure, size and composition of the Company's Board and its Committees, and make recommendations to the Board with regard to any adjustments that are deemed necessary to ensure the required mix of skills, experience, other qualities and diversity to ensure the effectiveness of those bodies.
- 3.1.5 Evaluate the effectiveness of management as a whole and report thereon to the Board.
- 3.1.6 Review the process for nominating, electing and appointing members of the Board and its Committees, and make recommendations to the Board in respect of any proposed adjustments thereto that the Committee deems necessary, in order that such processes may comply with applicable legislation and regulatory provisions.⁵
- 3.1.7 Be responsible for identifying and nominating candidates for the approval of the Board to fill vacancies on the Company's Board and its committees, taking cognisance of best practice, the Appointment and Board Diversity Policy and any legislated requirements.
- 3.1.8 Make recommendations, based on the Board and Committee evaluation results, to the Board for the continuation in service (or not) of any director as an executive or non-executive director.
- 3.1.9 Make recommendations to the Board in respect of directors, who will be retiring by rotation at the next annual general meeting of the Company, to be put forward for re-election, taking into account their terms of office and directors' evaluation outcome.
- 3.1.10 Consider the positions of the chairperson of the Board and the Lead Independent Director and make recommendations to the Board in respect of these positions, on an annual basis.⁶

² Provision formulated with reference to the now replaced King III, principle 2.16 par 40.3.

³ King III, principle 2.19 par 82.

⁴ King III, principle 2.19 par 87.

⁵ King IV principle 8, par 60(a).

⁶ King III, principle 2.16, par 37.



- 3.1.11 Assist the Board and the chairperson of the Board in reviewing the independence of non-executive directors and make recommendations to the Board thereon on an annual basis.⁷
- 3.1.12 Oversee the process for the evaluation of the performance of the Board and its individual directors.⁸
- 3.1.13 Oversee the appointment, dismissal and performance management of roles reserved for appointment by the Board.
- 3.1.14 Assist the chairperson of the Board to initiate and manage overall performance evaluations of the OML Chief Executive Officer and other directors (executive and non-executive), the Board and the Board committees on an annual basis with the assistance of the Company Secretary.⁹
- 3.1.15 Make recommendations to the Board for the continuation in service of any director who has reached the retirement age limit of their 70th birthday.
- 3.1.16 Be responsible for considering the composition and skills required for the optimal functioning of the Board and motivating proposed changes in this regard to the respective boards for consideration.
- 3.1.17 Perform an annual review of committee structures and composition across the Group to ensure committees are fit for purpose, efficient and aligned to Group requirements.
- 3.1.18 Implement and review on an annual basis the Company's succession planning which should include the identification, mentorship and development of future candidates in respect of the Board and identified key managers.

3.2 **Corporate Governance and Compliance Matters**

- 3.2.1 Implement a classification model and roll-out plan and define the classification monitoring process as outlined in the GGF.
- 3.2.2 Submit annually the entity classification in terms of the GGF as well as the acquisition and disposal register to the Board for review and approval.
- 3.2.3 Ensure the overall implementation of the GGF throughout the Group and assist the Board in its determination and evaluation of the adequacy, efficiency and appropriateness of the corporate governance structure and practices of the Group.

⁷ King III, principle 2.18, par 76 - 78.

⁸ King IV principle 8, par 60(c).

⁹ King III, principle 2.22, par 112, 117 and 124.



- 3.2.4 Provide guidance to the Board on strategy in regard to sound corporate governance in respect of the Group's investments, as deemed appropriate and relevant.
- 3.2.5 Make recommendations to the Board on sound corporate governance practices within the Group, and to the extent relevant or appropriate, in respect of its investments.
- 3.2.6 Keep abreast of best corporate governance practices both locally and abroad, making recommendations to the Board on the need, where appropriate, for Board participation in continuing education programmes.
- 3.2.7 Promote the overall effectiveness of corporate governance within the Group, and to the extent appropriate or relevant, its investments, in accordance with the recommendations of the GGF, King Code, and the Financial Reporting Council's Combined Code on Corporate Governance, and other requirements of good corporate practice, other than in respect of risk management, compliance and internal control which remain the remit of the Audit Committee and Risk Committee.
- 3.2.8 Annually review the Conflict of Interest Policy and the implementation thereof across the Group.

3.3 **General Matters**

- 3.3.1 Recommending to the Board a suitable candidate for appointment as the Company Secretary.
- 3.3.2 Annually evaluate the competence, qualifications and experience of the Company Secretary. Confirm that the Company Secretary is not a Board member and has maintained an arms-length relationship with the Board.¹⁰
- 3.3.3 Arrange for directors' and officers' liability insurance coverage for all OML directors and officers and for such insurance premiums to be paid by OML. The adequacy of such cover should be reviewed by the Committee and the Risk Committee from time to time, and should be as extensive as is permitted by law and the MOI, including cover for all risks relating to legal costs.
- 3.3.4 Annually review the notice of the annual general meeting of the Company and make recommendations to the Board in regard thereto.

¹⁰ Par 3.84(i) and (j) of the JSE Listings Requirements.



4. **Operation of the Committee**

4.1 **Appointment and Tenure**

4.1.1 The Committee shall, under guidance of the chairperson of the Board or Lead Independent Director, be appointed by the Board from amongst the directors of the Company.

4.1.2 Notwithstanding 4.1.3 below, the Board may at any time remove a member of the Committee and shall from time to time review and, where appropriate, propose revisions to the composition of the Committee, taking into account the need for an adequate combination of skills and knowledge.

4.1.3 The maximum tenure for Committee members is three terms of three years.

4.2 **Composition and Quorum**

4.2.1 The Committee must comprise at least three members. All of the members of the Committee shall be non-executive directors and the majority shall be independent. The chairperson of the Board shall be a member of the Committee and, provided that he or she is an independent non-executive director, the chairperson of the Committee (Committee Chairperson). In the event that the chairperson of the Board is not an independent director, the Lead Independent Director shall be appointed as Committee Chairperson, in accordance with best practice governance.

4.2.2 The Board shall from time to time review and, where appropriate, revise the composition of the Committee in accordance with recommendations received from the Committee (and in particular, the members of the Committee who are not conflicted in respect of such recommendations), taking into account the need for an adequate combination of business skills and knowledge, together with their governance experience.

4.2.3 The quorum at any meeting of the Committee shall be a majority of members.

4.3 **Attendees**

4.3.1 The OML Chief Executive Officer will have a standing invitation to attend all meetings of the Committee.

4.3.2 The Committee may invite any executive management team members or other individuals to attend meetings of the Committee as they consider appropriate.

4.3.3 Individuals in attendance by invitation may participate in discussions, but do not form part of the quorum for Committee meetings.

4.3.4 The Company Secretary or his/her designated representative shall be the secretary of the Committee.



4.4 **Frequency of Meetings**

4.4.1 Meetings of the Committee shall be held at least four times a year prior to scheduled OML Board meetings, at which Board meetings the Committee Chairperson will present a report on the activities of the Committee.

4.4.2 The Committee Chairperson may within the framework of any relevant directives set by the Board, convene a meeting of the Committee at any time and at his/her discretion.

4.5 **Participation and resolutions**

4.5.1 Committee members who are unable to attend Committee meetings shall inform the Committee Chairperson or Company Secretary at an early date.

4.5.2 Committee meetings may be conducted entirely by electronic communication or a Committee member may participate in a meeting by electronic communication, as contemplated in section 73(3) of the Companies Act (including by means of, inter alia, telephone, closed circuit television, webinar or video conferencing), so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

4.5.3 Committee members should participate fully and constructively in discussions and other activities and contribute by sharing their knowledge, skills and abilities.

4.5.4 Each Committee member has one vote on a matter before the Committee.

4.5.5 A majority of the votes cast on a Committee resolution is sufficient to approve that resolution and, in the case of a tied vote, the Committee Chairperson shall not have a casting vote and the matter being voted on fails.

4.5.6 A Committee resolution in writing (round robin resolution) signed by the majority of the Committee members shall be as valid and effectual as if it had been passed at a Committee meeting.

4.5.7 The passing of Committee round robin resolutions must not detract from the requirement for frequency of Committee meetings as set out in these Terms of Reference.

4.5.8 All Committee round robin resolutions should be tabled at the next Committee meeting for noting.



4.6 **Agenda, meeting papers and minutes**

- 4.6.1 The procedure to be followed for the convening of meetings, notice of meetings, and preparing agendas and minutes of meetings (to the extent not regulated in these Terms of Reference) will be determined from time to time and managed by the Company Secretary, in consultation with the Committee Chairperson and the Board.
- 4.6.2 To the extent reasonably practicable, Committee papers will be circulated to all Committee members at least one week before the meeting and full and appropriate information will be supplied to Committee members by way of succinct position papers or reports with the Committee pack to enable Committee members to form an opinion on the issues on the agenda prior to the meeting and, if necessary, to request additional information before the meeting. Additional documentation may be circulated to Committee members prior to the Committee meeting and will, to the extent applicable and appropriate, be clearly labelled to indicate that such documentation constitutes additional but non-essential reading.
- 4.6.3 The Company Secretary shall keep appropriate records of all meetings of the Committee as well as minutes of the proceedings and all decisions made.
- 4.6.4 Minutes of the Committee meetings, signed by the Committee Chairperson, shall be sufficient evidence that the matters referred to therein have been fully discussed and agreed, whether by way of a formal meeting or otherwise.
- 4.6.5 The Company Secretary shall circulate the minutes of the meetings of the Committee to all members of the Committee and to the Chairperson of the Board. Any Director of the Company may, upon request to the Company Secretary, provided that there is no conflict of interest, obtain copies of the Committee's meeting agenda and minutes.

5. **Committee work plan**

An annual work plan will be prepared for the Committee and a list of issues which need to be considered by the Committee annually will be tabled at the first Committee meeting of each year. The agenda for discussion of these issues will be spread over the meetings of the year so that each of these issues are addressed at least once a year. The work plan will be formulated by the Committee Chairperson working with the Company Secretary.

6. **Training**

The Committee, via the Company Secretary, shall make available to new members of the Committee a suitable induction process and, for existing members, ongoing training, where appropriate and as discussed with the Committee.



7. **Committee Evaluation**

The Committee will be independently evaluated as required by legislation and/or best practice governance and actions from the evaluation should be agreed and implementation tracked and reported to the Board.

8. **Access to resources and information**

8.1 The Committee has unrestricted access to Company information falling within the committee's mandate and will liaise with management on its information needs and the appropriate reports and information that it should receive to enable it to review and oversee matters pertaining to Board and Board committee composition, as well as corporate governance and compliance matters within the Group.

8.2 With the prior notification to the Committee Chairperson or the Chairperson of the Board, the Committee or any of its individual members, may take outside legal, accounting or other independent professional advice on matters relating to matters within the Committee's mandate, at the expense of the Company, in accordance with any procedure developed by the Board for this purpose. A formal mandate is to be entered into between such independent advisor and the Company to be facilitated by the Company Secretary.

9. **Reporting**

9.1 The Committee Chairperson shall report to the Board at the first Board meeting following the last Committee meeting, on the activities of the Committee.

9.2 The Committee shall report on an annual basis to the shareholders through the Integrated Annual Report on the following items:

9.2.1 The Committee's overall role and associated responsibilities and function.

9.2.2 Its composition, including each member's qualifications and experience.

9.2.3 Any external advisors or invitees who regularly attend the committee meetings.

9.2.4 Key areas of focus during the reporting period.

9.2.5 The number of meetings held during the reporting period and attendance at those meetings.

9.2.6 Whether the Committee is satisfied that it has fulfilled its responsibilities in accordance with its Terms of Reference for the reporting period.

9.3 The Committee Chairperson shall be required to attend the Company's annual general meeting to answer relevant questions posed by shareholders.



10. **General**

- 10.1 The Committee members are obliged to disclose in writing any personal financial interest in terms of section 75 of the Act and any other interests they have within or outside the Company and the Group that may be of interest to the Company or that may interfere or conflict with the performance of their duties.
- 10.2 All Company and Group related information that becomes known to directors in the performance of their duties must at all times be kept confidential.
- 10.3 Except to the extent of legal or regulatory provisions to the contrary, Committee members, being non-executive directors, are entitled to rely on the executives of the Company and those of other entities within the Group in relation to matters within their area of expertise and may assume the accuracy of information provided by such persons, provided that the Committee member is not aware of any reasonable grounds upon which reliance or assumption may be inappropriate.

11. **Approval of the Committee Terms of Reference**

- 11.1 The Committee shall review its Terms of Reference annually and amend them as appropriate, subject to approval from the Board.
- 11.2 These Terms of Reference were recommended to the Committee for approval by the Committee Chairperson on 29 November 2018 and approved by the Board on 30 November 2018 and will be due for review in 30 November 2019.