



THE ROLE OF THE NON-EXECUTIVE DIRECTOR (NED)

The role and prevalence of non-executive directors in UK companies have increased significantly. However, the legal duties and responsibilities should not be underestimated, either by those considering such directorships or the companies seeking to appoint them.

What is a non-executive director?

There is no legal distinction between executive directors and non-executive directors; the distinction lies in the role that they perform. Non-executive directors usually stand back from the day-to-day running of the business, drawing alongside the executive team as required to facilitate the strategic decision-making process. Exactly what this entails will vary from company to company, depending on what is required at each stage of a company's development.

In a new business a non-executive director might act as an entrepreneurial mentor, whose regular presence in the office provides inspirational leadership and an experienced voice guiding the company round the common pitfalls that result in many companies failing to fulfill their potential. At the other end of the spectrum, a non-executive director of a listed PLC may just attend board meetings a few times a year.

A company must ensure it recruits non-executive directors that compliment the balance of skills and experience of the existing board. A non-executive director does not necessarily have to know the industry in which a company is operating, as this knowledge and experience should ideally be provided by the executive directors. The value of a non-executive director lies in their ability to identify and advise upon new challenges, initiatives and market opportunities and to develop and re-focus strategic plans.

It is best practice for non-executive directors to be provided with contracts for service as opposed to a Service Contract, stipulating the hours to be worked, expectations, key performance indicators (if appropriate) and the notice period. This provides a framework and ground rules for the relationship between the company and the non-executive director, clearly defining the boundaries in relation to control of the company.

Since the role of the non-executive director varies from company to company, so do remuneration levels. Research carried out by The Institute of Directors found that an average salary for a non-executive director is £25,000 but this can vary according to the size

of the company. Though some organizations in the public and voluntary sectors do not pay a remittance, travel and some subsistence allowances are usually covered.

What are the responsibilities and duties of a non-executive director?

There is no distinction between the standard of care that non-executive directors must meet compared to other directors. The same level of commitment should be expected and shown. Every decision made by all directors must be in the best interests of the company.

The Companies Act 2006 places new statutory duties on executive and non-executive directors alike. Sections 170 -177 of the Companies Act 2006 state that all directors have:-

- A duty to act within power set out in the company's Memorandum of Association.
- A duty to promote success of the company.
- A duty to exercise independent judgement.
- A duty to exercise reasonable care, skill and diligence.
- A duty to avoid conflicts of interest.
- A duty not to accept benefits from third parties and,
- A duty to declare interests in proposed transactions or arrangements.

Finally, the Combined Code on Corporate Governance, issued in 2006 and 2008, gives some practical guidance specifically to non-executive directors stating that:-

“As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and where necessary, removing executive directors in succession planning”.

What liabilities are non-executive directors likely to face?

Although non-executive directors are not responsible for a company's day-to-day management, since they have the same legal responsibilities and duties as executive directors, they are similarly liable to disqualification under the Company Directors Disqualification Act, 1986. If a company's Board of Directors is investigated for 'wrong doing' then such an investigation will include the actions or omissions of non-executive directors.

In general, a director can be disqualified for general mis-conduct in connection with companies or for being unfit to act as a company director. The maximum period of disqualification is 15 years. However, there have been a number of cases that show that the courts may exercise their discretion and apply a lesser period of disqualification in recognition of the role and relative responsibilities on non-executive directorship.

What skills do NED's need?

The following are the skills which NED's need in order to perform their role:

- Integrity
- High ethical standards
- Sound judgement
- Willingness to challenge
- Interpersonal skills
- Confidence
- Understanding of how conflict occurs and how to deal with it effectively.
- Behavioural skills
- Listening Skills
- Ability to communicate ideas
- Sensitivity, openness and awareness of non-verbal communication.
- Persuasiveness
- Leadership and self-awareness, ability to gain respect and attention.
- Critical thinking, creativity and strategic awareness.
- Business acumen, ability to identify new business opportunities.
- Forward perspective, willingness to embrace change and innovation.
- An inquiring and inquisitive mind – with an ability to assimilate, assess and analyse information, especially financial information.
- Co-operation and team-working
- Facilitation skills
- The ability to take the wider, strategic view
- Political astuteness and ability to play the ‘diplomat’
- Determination with the tenacity and drive to succeed.
- Keenness to gain new knowledge and skills to develop competences further.
- Availability to prepare for and attend meetings
- An ability to identify potential problems and deal with risk and finally
- A sense of humour!

Non-executive directors and the structure of the board

As well as providing additional skills, expertise and perspective, the appointment of non-executive directors is an effective means of balancing interests in the board room. Non-executive directors bring a level of independence and detachment to discussions. Listed public limited companies within the FTSE 350, should have an equal number of executive and non-executive directors; companies outside the FTSE350 should have at least two non-executive directors.

The 2006 and 2008 Combined Code further recommends that the Chairman of the Board should meet with the non-executive directors separately, on an annual basis, to review and appraise the Chairman's performance. Non-executive directors should also be included on board nomination committees, responsible for evaluating, vetting and recommending the appointment of candidates for directorship.