

# Appointing a Non-Exec Director? Terms to agree



## Why appoint a Non-Exec Director?

Bringing a Non-Executive Director or Chairman into a company can be a very smart move for CEOs, CFOs and for the Board, particularly at times of significant change or upheaval in the business. The objectivity and wise experience of the right Non-Exec will be a great asset for businesses of all sizes, and I mean from start-ups upwards.

A Non-Exec Director's experience in the following areas can be invaluable:

- industry contacts and knowledge
- strategic vision built on his/her past success as a Board director, for example – assessing new markets or a company acquisition or fund-raising. The recession in recent years has given directors a lot of invaluable knowledge and experience for dealing with distressed situations as well.
- intelligent questioning “Why is the Company doing that?” and gentle challenging of a Board-assumed strategy, to ensure the strategy is right for the business.
- sometimes it is a condition of a Private Equity funding round that a specified Non-Executive Director with industry experience is appointed.

## How do I find a Non-Executive Director ?

Try:

- your personal network
- recruitment consultants or a specialist NED appointment company – if you want to pay a fee
- professional or industry networking events and online communities such as [NEDs.com](#). [NEDs.com](#) is a community of NEDs built over the last 16 years whose membership is exclusive to graduates of the

Once you have found your NED, these organisations, and the [NEDs](#) can provide training and ongoing advice for non-executives. The Non-Executive Directors Association also advises companies on how to assist them in fulfilling their roles effectively.

Once you have agreed the terms here is the checklist of information you need to agree with the Non-Executive Director to prepare a letter of appointment to be signed by the company and the new Non-Executive Director.

## **Before you produce the Non-Exec Director Letter of Appointment...**

You will need to check the company's articles of association to check the precise method of appointment of new directors which must be followed, eg board resolution of the current directors.

If the NED will not be voting at Board meetings then there is no need to do this check or register their details at Companies House (see below).

## **What terms to include in the letter of appointment.**

- Decide if the individual is simply to be appointed as a Non-Exec Director or if he/she will also be appointed to the role of chairman.
- Set out the appointment start date.
- Confirm the length of the initial term so the company can then stop the appointment if it is not working or decide to renew it.

## **How can the appointment be terminated by the Company?**

Insert protections for the company to stop the appointment if there is breach of company procedures by the Non-Executive Director.

After the initial term insert what period of notice will be required to terminate the appointment from both the Company and the Non Executive Director.

## **What time commitment is fair for a Non-Exec Director?**

Agree with the Non-Exec:

- How many days a month the non-executive director will be required to work for the company eg 1 to 3 days or just a set amount of time each quarter
- How often he/she should attend at board meetings – once a month or quarter?
- Whether he / she will attend strategy days with the Company
- If the Non-Executive will be required to attend any site visits
- If the Non-Executive will be required to travel overseas.

## Non-Exec Director's role, duties & fees

Key questions to ask and agree with the Non-Exec Director are:

- What are the Non-Executive's duties?
- How much will the Non-Executive be paid a year and when will the fee be reviewed?

A payment of £1,000 to £4,000 per day is fairly common and sometimes in private limited companies (not PLCs) an equity incentive can also be part of the package.

As a director, a Non-Exec is legally required to know what's going on in the business. The Non-Executive Director should ask for, and receive, regular reports from the CEO, CFO and other relevant directors in a monthly board pack and be able to ask questions of the board. The Non-Executive Director will need to be fully up to date on company legal compliance and employment law and the other laws which apply to the business and the industry it operates in. Regularly reading the posts on this site will help!

## Can the Non-Exec Director have outside interests?

It is important to find out what are the Non-Exec Directors' outside interests so that the company knows what these other interests are and ensure there are no conflicts. Every Board Director who can vote at Board Meetings has a duty to disclose conflicts of interests.

It is good practice to ask the Non-Exec Director to write down what these interests are and to notify the company if any changes are made.

## Insurance - what is Directors & Officers Insurance?

Non-Executive Directors will always want to know this insurance is in place to protect them in case they are sued personally whilst acting lawfully in their role for the company.

The company is permitted in Company Law and in its Articles of Association to have this insurance.

## What to do after the letter of appointment is signed?

- Provide a welcome pack for the Non-Executive Director.
- Attend to the usual administration for a new company joiner, eg e-mail address & update the website to show the company has now got this experienced person on Board. Notify the company insurers.
- Within 14 days of the appointment, register the Non-Exec Director's appointment details at Companies House if he/she is going to have the right to vote at Board meetings. To do this, file the Appointment of Director on the . Companies House is the UK Government registry where all company and director details have to be filed - please note there are late-filing penalties!
- Update the company's Register of Directors contained in the Statutory Books also called Company Registers.

We hope you have found this guide helpful reading. As dedicated business lawyers we advise many CEOs and CFO clients on negotiating contracts with their Non-Execs. For further advice and guidance on getting the right contract with your NED please contact .