



A Guide to being an effective, and compliant Non-Executive Director

Congratulations, your expertise has been recognised and you are about to join a board as a Non-Executive Director. We trust that you can now contribute positively using your experience and objectivity.

In order to help you in your new role, SRB is delighted to provide some key points of guidance.

“All for one and one for all”

There is no distinction, under company law in the UK, between an executive and non-executive director. This is sometimes misunderstood by NEDs, especially those taking on their first appointment. At all times the board, of which you are part, has to operate in compliance with UK company law and your duties are the same as executive members of that board.

The key director’s duties, as established under the Companies Act 2006 (“the Act”) are:

- Duty to act within powers
- Duty to promote the success of the company
- Duty to exercise independent judgment
- Duty to exercise reasonable care, skill and diligence
- Duty to avoid conflicts of interest
- Duty not to accept benefits from third parties
- Duty to declare interest in proposed transaction or arrangement

These duties are owed to the company rather than the shareholders of the company.

Do your research

It may be that the company engaging you is already known to you. However, due diligence is still important in all instances so that you may go into the engagement with your eyes wide open. The due diligence process is important to fully establish the liabilities you are leaving yourself open to by accepting the appointment as an NED. Proper due diligence allows you to mitigate your potential liabilities by taking out insurance, negotiating indemnities from the company or current directors or even rejecting the appointment altogether.

An Independent Voice

As described above, all directors have a duty to exercise independent judgment. This is especially important for NED’s who are commonly appointed solely for this purpose. As the NED is removed from the day to day running of the business they can offer independent, impartial opinions drawing on the wide experience and specialist knowledge that led to their appointment in the first place.

Conflicts

Even though not working full-time in the business, a NED is under the same duty to avoid conflicts of interest, and disclose interests in any transactions, as executive directors.

A NED taking up an appointment needs to consider carefully his or her other interests and whether there is any likely scope for conflict. If conflict should arise during your appointment you should notify the board in writing, preferably during a board meeting (where it should be recorded in the minutes)

Being reasonable

A court of law would not expect a non-executive director to have the same grasp and knowledge of detail that a full-time director should possess. However, they can expect that the non-executive director will have exercised all reasonable skill, care and diligence in performing their role.

The Law is here to help you

Our services are of course available in reactive circumstances but we strongly advocate working with us in a proactive manner. Ultimately it is cheaper to do things correctly than to deal with the uncertain consequences of following the wrong course.

SRB offer a full suite of Company & Commercial services and will be happy to advise either you as an individual or the company of which you are a part.