

Younger Marketing Management Ltd

Non-Executive Director Service

Aspects of Non-Executive Directorship

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Sources of Information:

Institute of Directors

Business Link

Nonexecdirector.co.uk

Aspects of Non-executive Directorship

In order that I can fulfil the role of a non-executive director in a satisfactory manner, it is useful for clients to understand the nature of a non-executive's duties and responsibilities - especially if you are considering a non-executive director for the first time.

Firstly, a few facts about nonexecs:

- 1 Non-executive directors are not employees of the company, they are paid **fees** not salary.
- 2 Non-executive directors are usually taken on for a specified period of **service**.
- 3 Non-executive directors are invariably appointed on a **part-time** basis only.
- 4 Non-executive directors are treated in law similarly to executive directors, having the same **responsibilities** to the company.
- 5 If the company **letterhead** states the name of any director, all directors including nonexecs must also be shown in full.

It is worth expanding on these items as questions inevitably arise from their consideration.

Fees -In companies with a turnover of less than £10M, fees typically range from £500 per day for a non-executive director to £2000 per day for non-executive chairmen.

As we are not employees, deduction of PAYE and NI are not normally the responsibility of the company.

There is a growing trend for nonexecs to be partly paid with shares in the company. This is certainly more common in the U.S.A.

Period of service - As with all directors, we retire by rotation and have to be re-elected. Typically a contract would be drawn up for 3 years and obviously this can be renewed at the appropriate time, by the board.

Days per annum -There is a wide variation in the number of days required by the company during a year. The most common attendance is 12 -15 for non-executive directors, but non-executive chairmen frequently work more than this.

Apart from days of attendance at the company, we also expect to spend time reading and preparing for board meetings to ensure possession of sufficient knowledge about the company and the industry in which it is involved. Time spent in this way would normally be subject to negotiation.

Responsibilities to the company - non-executive directors have an equal responsibility to the company as do executive directors. The Companies Act 1985 specifies four areas where this is manifest.

- 'A duty of care' in the way the director conducts him/her self during work for the company by showing loyalty and good faith.
- 'Fiduciary duties' whereby directors are required to act in the best interests of the company as they see it.
- A duty to act within the director's own powers, i.e. be guided by the company's Memorandum of Association.
- A non-executive director is also subject to the same liability as any other director in compensating the company for loss arising from breaches by directors of their duties, or if they are acting as a director whilst disqualified.

The company letterhead does not have to state the name of any director, however if any director is stated, all the directors' names must also be stated in full.

Other aspects of the role of non-executive directors.

Board meetings - clearly I would expect to participate fully in this forum and therefore must have access to the same information as our fellow executive directors, especially accounting records.

Although there is no legal requirement to hold board meetings, it is considered essential to have them on a regular basis to ensure proper control over the company. It is also important that the meetings should be structured and minuted.

All directors should be given adequate notice, the Agenda advised and accounts sufficient to allow an understanding of the company's financial position provided.

All Directors have a general duty to attend board meetings whenever possible.

Independence - non-executive directors should be, and be seen to be, independent of any faction within the board. This is a recommendation of the Turnbull report and underpins the whole reason for our existence. As independent persons, non-executive directors make valuable contributions in the boardroom. These should be in the areas of:

- Monitoring the company's internal controls and systems to ensure that its interests are safeguarded - especially if it is seen that a conflict may exist with other directors' personal interests.
- Strategic direction of the company - it is particularly appropriate to raise the implications of the arrival of e-commerce and effective use of the Internet, and modern marketing strategies.
- Helping establish Key Performance Indicators for the company's senior management and monitoring the results.

- Considering the interests of the company's employees, customers and general public, especially in such areas as safety and product liability.
- Raising issues such as Business Risk management, Financial management, compliance with laws and regulations, minimising risk of fraud and the safeguarding of assets - for listed companies, the directors have to report to the shareholders that they have reviewed them.

Financial Responsibilities - As with all Directors, we are required to ensure that proper financial accounts are prepared and submitted to the Registrar of Companies for each financial year. The minimum requirement consists of a Balance Sheet and a Profit and Loss Account. The accounts must be submitted to Companies House within 10 months (7 months for a plc) of the end of the company's accounting period.

Directors liability insurance - Many companies now take out liability insurance for their directors. This usually covers them against costs whilst contesting any liability arising from negligence, default, breach of duty, neglect and misstatement whilst acting as directors for the company. Liabilities arising from libel, slander and criminal proceedings would not normally be covered.

Separately, Younger Marketing Management Limited carries its own Professional Indemnity insurance for the services it provides to clients.

Appointment - If I am being appointed to an existing company, a form 288a or 288ab(l) must be completed and signed by myself. It should then be sent within 14 days to the Registrar of Companies at Companies House at Cardiff for England and Wales and Edinburgh for Scotland, stating the date of appointment.

The company's own Register of Directors and Secretaries must also be updated to show the appointment.

Resignation - There are many reasons why I may wish to resign from a non-executive directorship. These may be personal reasons, a point of principle that makes it an untenable position to continue to hold or I may believe the company is insolvent.

I can resign at any time providing I give notice to the company Chairman or Secretary. The same method can be used for retirement.

Dismissal - Dismissal from my post as a non-executive director can be performed by the shareholders at any time provided I am given notice of the resolution. I am then entitled to make written representations that have to be sent to all the shareholders in time for the meeting. For the board to be able to dismiss a director there must be provision in the Articles of the company.