

## **The Non-Executive Director**

**Across Europe it is quite normal to have a two-tier board structure, with the Management Board overseen by a Supervisory Board. In the UK, however, this distinction does not exist. The UK has a one-tier board structure and the responsibility for oversight of management falls to the Non-Executive Directors.**

**Ian Gray, TMA UK Director and turnaround specialist, explains how the UK system works.**

### **What is a Non-Executive Director?**

A non-executive director (NED, also NED) in UK corporate governance is a member of the board of directors who does not form part of the executive management. NEDs usually stand back from the day-to-day running of the business. The NED must however be careful as there is no legal distinction between executive directors and non-executive directors under company law. In law, NEDs have the same legal duties, responsibilities and potential liabilities as the executive management.

The role of the NED has changed over the last 25 years. In the past NEDs were compared to trinkets on Christmas trees; board meetings tended to be amiable in nature and were often followed by a good lunch. The role today is much more professional. NEDs must challenge; to do so they must gain a detailed understanding of the company.

The input from NEDs will vary according to the ownership structure of the business. For example, in a new business, they might act as mentors. At the other end of the spectrum, a NED of a listed PLC may just attend board meetings a few times a year. Being a NED in a public sector organisation, such as an NHS Trust, may require further skills: often meetings of the board are held in public, in which case the ability to deal with unscheduled questions and communicate well are essential.

Within a private or private equity backed business, the NED can provide additional confidence to the shareholders that their investment is being used effectively. NEDs can also bring some broader commercial experience to what may be an enthusiastic and entrepreneurial, but commercially naïve, management.

### **Roles & responsibilities**

NEDs are the custodian of corporate governance. The governance structure determines the responsibilities and authority levels among within the company and specifies the rules and procedures for making decisions. However, most NEDs do not look for appointments to focus on corporate governance; that is a by-product of

their role. Even those privately owned and PE backed businesses that do not need to comply with UK Corporate Governance Code are obliged to ensure their businesses are run with the same rigour as those that do need to comply.

The key responsibilities of non-executive directors are:

- **Strategy:** constructively challenging and contributing to the development of strategy.
- **Performance:** monitoring and scrutinising the performance of management in meeting agreed goals and objectives.
- **Risk:** satisfying themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible.
- **People:** determining appropriate levels of remuneration of executive directors; having a prime role in appointing; where necessary removing senior management; and planning for succession.

NEDs must fully understand their time commitment, role and responsibility. Often they are not given a specific guide as to the amount of time required. The NED should allocate enough time for the job and get to know key people at board level and below. They must also leave adequate time to read and assimilate board papers. The time requirement is often more than expected, especially if the company becomes stressed or is involved in some form of corporate finance process.

## Pitfalls

Can the NED influence outcomes and add value without undermining the executive management? Certainly they should not be passive. ~~They must~~ They must ensure robustness in the board and both challenge and contribute to the decision making process. Initially this may be difficult; a good NED does not join the board and immediately criticise the business even if they have a valuable contribution to make. The best NEDs invest time in gaining the confidence and respect of the management team so that robust challenge is seen as constructive and not combative.

Moreover NEDs must understand the difference between executive and non-executive. It is the executives' job to run the business. If the management team are not capable, it is not for the NEDs to take over. Instead it is their job to ensure the correct management team is in place. People from similar backgrounds may think their approach is the only (right) one. For example, where the CEO and the Chairman come from similar backgrounds rather than working together in a challenging but constructive way, there is a risk of conflict with both parties thinking they know best

Appointing the wrong person as an NED can therefore have a terrible impact on both the individual and the company. The appointment of an NED should be seen by the board as a valuable, strategic appointment, not a box ticking exercise. The NED needs to have some empathy for the business but need not necessarily be steeped in the industry. However they should have excellent communication skills. Unlike an executive role, the NED is not a decision maker; they are a strong influencer and these softer skills are vital to ensuring a non-executive appointment works.

## **Conclusion**

Being a NED is a proper role with responsibilities; it is not a collection of part time jobs with a guaranteed income. Therefore anyone taking on this role must be committed to it and understand the legal obligations.

A key role is being able to challenge as well as support. The NED must be prepared to ask difficult questions and be persistent and stimulate debate. The NED must spend the time to understand the business and be well prepared for meetings. That is not just reading the board papers but possibly asking questions in advance of meetings. In fact they can often assist by ensuring the board pack is fit for purpose and thereby guide the board to focus on the issues that are important and require input from the directors.

If you are appointing a non-executive director, you need to articulate why, and assess what skills and experience you need on the Board to help you grow the business. Make sure you take the appointment process seriously and understand the value the right NED can bring to you as a management team (this includes personal development) as well as the business as a whole.

As a non-executive director, do not forget to pay heed to the taxation issues. Ensure there is a good induction programme and that you understand what your role as an NED in this business is. And do not forget to check there is sufficient D&O insurance in place.

| Most NEDs take on ~~on~~ the role to keep busy and give something back, not for the salary which may be risible. This should mean that you choose carefully the roles you take on. If you do, you will be contributing to something you enjoy.

Ian Gray  
Baronsmead Consulting  
ian.gray@baronsmeadconsulting.com