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FACTSHEETS

Letters of appointment for non-executive directors

16 Oct 2018

Confirmation of the arrangements agreed with a non-executive director (NED) may take the form of a letter or it can be in a standard written agreement with the names and addresses of the parties set out at the beginning of the document in the usual way.

Whichever style is used, provision should be made for signature for and on behalf of both parties.

The following core information will usually need to be included.

Conditions of the appointment

The name, registered address and registered number of the company to which the non-executive director is to be appointed.

If the company is part of a group of companies and it is likely that the NED will be asked to act as an NED for other companies in the group. This should be referred to although it may be prudent to enter into a separate agreement for each group company.

Details of when the appointment will start, the length of the initial engagement period, and conditions relating to the review of the appointment. Re-election may be required under the company's articles of association and if the company is subject to the UK Corporate Governance Code the NED will be subject to re-election on an annual basis.

Duties

According to 2018 Corporate Governance Code (https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf), "Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account."

Core duties and periodic **responsibilities** should be listed.

Typically these will include: attendance at **board meetings** and membership of any board committees. The NED should give appropriate assurances that they will have sufficient time to discharge their duties effectively. In accordance with the UK Corporate Code, significant commitments should be disclosed to the board before appointment with a broad indication of the time involved. Any changes should be reported to the board.

There should be a broad outline of the role involved and assurance that all duties will be undertaken to the best of the NED's skill and ability and in accordance with the Companies Act 2006.

Any limitations on the NED's authority to bind the company should be specified together with the NED's reporting line.

Appropriate arrangements for registration with HMRC under the Money Laundering Regulations (https://www.gov.uk/guidance/money-laundering-regulations-trust-or-company-service-provider-registration) should be specified.

Fees and expenses

Details of the fees should be specified. These should reflect the time commitment and responsibilities of the role. Dates for payment of fees should be specified together with the arrangements in relation to payment of expenses. The company's articles of association may be relevant in relation to directors' fees and these should be checked.

Confidentiality

The rules about non-disclosure of commercially sensitive information and/or any other types of information as specified by the company should be stated. If worded correctly these provisions can apply to the non-executive director not only while they hold office, but also subsequent to the appointment. It is advisable to specify the particular type of company information that is considered to be confidential. The legal protection given to confidential information is somewhat limited. If a company considers information to be confidential it is expected to have made this clear and to re-enforce the importance of confidentiality.

Other obligations

A pledge on behalf of the non-executive director that he or she will comply with:

- all statutory requirements relating to the company's register of directors and the register of directors interests
- the company's policies and procedures (so far as they are applicable to non-executive directors)
- for public companies, the Model Code for Securities Transactions by Directors

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Insurance Cover

Although only essential for companies subject to the UK Corporate Governance Code it is desirable for all companies to put directors' and officers' liability insurance in place.

Company's property and documents

Provision, in the event of a non-executive director's appointment being terminated, for the return of any property or documents relating to the company's affairs.

Termination

How the arrangements can be terminated on notice or immediately in the event of material breach by the NED.

Other provisions

Other provisions the company should include such as details relating to:

- induction process
- an obligation to disclose any outside interest which may cause a conflict
- access to independent professional advice
- consent for the company to hold personal data in accordance with its obligations under GDPR regulations

A model form providing terms of appointment for a non-executive director factsheet is produced by the IoD Directors' Advisory Service:

Terms of appointment for a NED Factsheet (https://www.iod.com/services/information-and-advice/resources-and-factsheets/details/Terms-of-appointment-for-NED)

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