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The Governance Institute

Guidance note

Sample non-executive director's appointment letter

Institute of Chartered Secretaries and Administrators

February 2019

Sample non-executive director's appointment letter

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Sample non-executive director's appointment letter

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Introduction

This sample letter is not intended to be a prescriptive template. It reflects the various practices of some of the larger companies and aims to provide an initial checklist of the elements a company may wish to cover in its appointment letters. It has been updated to reflect the 2018 versions of the UK Corporate Governance Code and Guidance on Board Effectiveness. The text and content should be adapted to suit the company's own circumstances.

As well as incorporating standard contract terms, the sample letter covers the reference in the Financial Reporting Council ("FRC")'s Guidance on Board Effectiveness 2018 to time commitment:

> "It is vital that non-executive directors have sufficient time available to discharge their responsibilities effectively. The time commitment to engage with shareholders and other key stakeholders and get to know the business can be considerable. It is advisable for non-executive directors to assess the demands of their portfolios and other commitments carefully before accepting new appointments. They should devote time to developing and refreshing their knowledge and skills to ensure that they continue to make a positive contribution to the board and generate the respect of the other directors."[1]

1 FRC Guidance on Board Effectiveness 2018, paragraph 76

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Sample letter

I am pleased to confirm that upon the recommendation of the nomination committee, the Board has approved your appointment as [an independent/a non-independent] non-executive director of [name of company] ("the Company"). This letter sets out the main terms of your appointment.

It is agreed that, on acceptance of this offer, this letter will constitute a contract for services and not a contract of employment.

1 Appointment

1.1 Subject to the remaining provisions of this letter, [your appointment is for an initial term of three years commencing on [date]] [your appointment is for an initial term, from [date] until the conclusion of the Company's Annual General Meeting ("AGM") occurring approximately three years from that date], unless terminated earlier by either party giving to the other party [one/three] month['s] [s'] written notice.

1.2 Your appointment is subject to the articles of association. Nothing in this letter shall be taken to exclude or vary the terms of the articles of association as they apply to you as a director of the Company. Your continued appointment as non-executive director is subject to election by the Company's shareholders at the AGM scheduled to be held on [date] and to re-election at any subsequent AGM at which either the articles of association of the Company require, or the Board resolves, that you stand for re-election.

[In accordance with Provision 18 of the FRC's UK Corporate Governance Code 2018 all directors will be subject to annual re-election at the AGM.]

If the shareholders do not re-elect you as a director, or you are retired from office under the articles of association, your appointment shall terminate automatically, with immediate effect and without compensation.

1.3 Continuation of your contract of appointment is also contingent on satisfactory performance and any relevant statutory provisions relating to the removal of a director.

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1.4 Non-executive directors are typically expected to serve two three-year terms but may be invited by the Board to serve for an additional period. Any term renewal is subject to Board review and AGM re-election. Notwithstanding any mutual expectation, there is no right to re-nomination by the Board, either annually or after any three-year period.

1.5 You [will/may] be required to serve on one or more committees of the Board. You will be provided with the relevant terms of reference on your appointment to such a committee. [You also [will/may] be asked to serve as a non-executive director on the board of any of the Company's subsidiaries or joint ventures, or as Senior Independent Director.] Any such appointment will be covered in a separate communication.

1.6 Notwithstanding paragraphs 1.1–1.5, we may terminate your appointment with immediate effect if you:

(a) commit a material breach of your obligations under this letter;
(b) commit any serious or repeated breach or non-observance of your obligations to the Company (which include an obligation not to breach your duties to the Company, whether statutory, fiduciary or common-law);
(c) are guilty of any fraud or dishonesty or have acted in a manner which, in the opinion of the Company acting reasonably, brings or is likely to bring you or the Company into disrepute or is materially adverse to the interests of the Company;
(d) are convicted of any arrestable criminal offence [other than an offence under road traffic legislation in the UK or elsewhere for which a fine or non-custodial penalty is imposed];
(e) are declared bankrupt or have made an arrangement with or for the benefit of your creditors; or
(f) are disqualified from acting as a director.

1.7 On termination of your appointment, you shall at the request of the Company resign from your office as a director of the Company [and all offices held by you in any Group company].

1.8 If there are matters which arise which cause you concern about your role you should discuss them with me [or the Senior Independent Director]. If you have any concerns which cannot be resolved, and you choose to resign for that, or any other, reason, you should provide an appropriate written statement to me [or the Senior Independent Director] for circulation to the Board.

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2 Time Commitment

2.1 You will be expected to devote such time as is necessary for the proper performance of your duties and you should be prepared to spend at least [number of days] days per [month/year] on company business after the induction phase. This is based on preparation for and attendance at:

- scheduled Board meetings;
- [Board dinners];
- [the annual Board strategy away-day(s)];
- the AGM;
- [site visits];
- meetings of the non-executive directors;
- meetings with shareholders;
- updating meetings/training; and
- meetings as part of the Board evaluation process.

[Meetings may involve you in some overseas travel.] Unless urgent and unavoidable circumstances prevent you from doing so, it is expected that you will attend the meetings outlined above.

2.2 The nature of the role makes it impossible to be specific about the maximum time commitment, and there is always the possibility of additional time commitment in respect of preparation time and ad hoc matters which may arise from time to time, and particularly when the Company is undergoing a period of increased activity. At certain times it may be necessary to convene additional Board, committee or shareholder meetings.

2.3 The average time commitment stated in 2.1 will increase should you become a committee member or chair, or if you are given additional responsibilities, such as being appointed the Senior Independent Director, [or] non-executive director on the boards of any of the Company's subsidiaries [or the designated Non-Executive Director in respect of 'workforce engagement' activities relevant to the Company].[2] Details of the expected increase in time commitment will be covered in any relevant communication confirming the additional responsibility.

2.4 By accepting this appointment you undertake that, taking into account all other commitments you may have, you are able to, and will, devote sufficient time to your duties as a non-executive director.

2 See Appendix A for reference to the FRC Corporate Governance Code 2018 and associated Board Effectiveness Guidance 2018.

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3 Duties

3.1 You will be expected to perform your duties, whether statutory, fiduciary or common-law, faithfully, efficiently and diligently to a standard commensurate with both the functions of your role and your knowledge, skills and experience.

3.2 You will exercise your powers in your role as a non-executive director having regard to relevant obligations under prevailing law and regulation, including the Companies Act 2006, the UK Corporate Governance Code 2018 and associated guidance[3] and the FCA's Listing, Prospectus, and Disclosure and Transparency Rules. [You are also required to comply with the requirements of the [New York/other Stock Exchange]. You will be advised by the Company Secretary where these differ from requirements in the UK.]

3.3 You will have particular regard to the general duties of directors as set out in Part 10, Chapter 2 of the Companies Act 2006, including the duty to promote the success of the company under Section 172 of the Act:

"A director of a company must act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to:

(a) the likely consequences of any decision in the long term;
(b) the interests of the company's employees;
(c) the need to foster the company's business relationships with suppliers, customers and others;
(d) the impact of the company's operations on the community and the environment;
(e) the desirability of the company maintaining a reputation for high standards of business conduct; and
(f) the need to act fairly as between members of the company."

3 The FRC's associated guidance comprises: i. Guidance on Board Effectiveness 2018 ii. Guidance on Risk Management, Internal Control and Related Financial and Business Reporting 2014 and iii. Guidance on Audit Committees 2016.

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3.4 You will have particular regard to the FRC's UK Corporate Governance Code 2018 and associated Guidance on Board Effectiveness in respect of the role of the board[4] and the role of the non-executive director.

In your role as non-executive director you will be required to:

- constructively challenge and help develop proposals on strategy;
- scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- satisfy yourself on the integrity of financial information and that financial controls and systems of risk management are robust and defensible;
- determine appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning;
- devote time to developing and refreshing your knowledge and skills;
- uphold high standards of integrity and probity and support me and the other directors in instilling the appropriate culture, values and behaviours in the boardroom and beyond;
- insist on receiving high-quality information sufficiently in advance of board meetings; and
- take into account the views of shareholders and other stakeholders where appropriate.

3.5 You will be required to exercise relevant powers under, and abide by, the Company's articles of association.

3.6 You will be required to exercise your powers as a director in accordance with the Company's policies and procedures [and internal control framework].

4 Excerpts on the role of the board have been appended to this contract in Appendix A

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3.7 You will disclose any direct or indirect interest which you may have in any matter being considered at a board meeting or committee meeting and, save as permitted under the articles of association, you will not vote on any resolution of the Board, or of one of its committees, on any matter where you have any direct or indirect interest.

3.8 You will immediately report to me your own wrongdoing or the wrongdoing or proposed wrongdoing of any employee or director of which you become aware.

3.9 Unless specifically authorised to do so by the Board, you will not enter into any legal or other commitment or contract on behalf of the Company.

4 Remuneration and expenses

4.1 The annual fee rate as at the date of this letter is £[amount] gross per annum, paid [monthly/quarterly] in arrears. This fee covers all duties, including service on any board committee or company subsidiary, with the exception of committee chair and certain additional responsibilities, such as taking on the role of Senior Independent Director. [In your case, a further fee of £[amount] is payable as at the date of this letter for taking on [chair of the [name of committee] Committee] [./and] [the role of Senior Independent Director].]

4.2 All fees will be paid through the Company payroll and are subject to income tax and other statutory deductions as required, based on your position as an appointed director and as such an officer of the Company.

4.3 Fees will be subject to an [annual/periodic] review by the Board.

4.4 [You will comply with the Company's requirements regarding the minimum shareholding level (agreed from time to time by the Board).]

4.5 The Company will reimburse you for all reasonable and properly-documented expenses you incur in performing the duties of your office. The procedure and other guidance in respect of expense claims is set out in [name of document].

4.6 On termination of the appointment you shall only be entitled to such fees as may have accrued to the date of termination, together with reimbursement in the normal way of any expenses properly incurred prior to that date.

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5 Independence and outside interests

5.1 [The Board of the Company has determined you to be independent, taking account of the guidance contained in Provision 10 of the UK Corporate Governance Code 2018.]

5.2 You have already disclosed to the Board the significant commitments you have outside this role. You must inform me in advance of any changes to these commitments. In certain circumstances the agreement of the Board may have to be sought before accepting further commitments which either might give rise to a conflict of interest or a conflict of any of your duties to the Company, or which might impact on the time that you are able to devote to your role at the Company.

5.3 It is accepted and acknowledged that you have business interests other than those of the Company and have declared any conflicts that are apparent at present. In the event that you become aware of any further potential or actual conflicts of interest, these should be disclosed to me and the Company Secretary as soon as they become apparent and, again, the agreement of the Board may have to be sought.

6 Confidentiality

6.1 You acknowledge that all information acquired during your appointment is confidential to the Company and should not be released, communicated, nor disclosed either during your appointment or following termination (by whatever means), to third parties without my prior clearance.

6.2 This restriction shall cease to apply to any confidential information which may (other than by reason of your breach) become available to the public generally.

6.3 You acknowledge the need to hold and retain company information (in whatever format you may receive it) under appropriately secure conditions.

6.4 You hereby waive all rights arising by virtue of Chapter IV of Part I of the Copyright Designs and Patents Act 1988 in respect of all copyright works created by you in the course of performing your duties hereunder.

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7 Price sensitive information and dealing in the Company's shares

7.1 Your attention is drawn to the requirements under both law and regulation regarding the disclosure of price sensitive information, and in particular to the Disclosure and Transparency Rules of the FCA and Section 52 of the Criminal Justice Act 1993 on insider dealing. You should avoid making any statements that might risk a breach of these requirements. If in doubt please contact me or the Company Secretary.

7.2 During your period of appointment you are required to comply with the provisions of the Market Abuse Regulations, as annexed to the Listing Rules of the FCA, in relation to dealing in the Company's listed securities, and any such other code as the Company may adopt from time to time which sets out the terms for dealings by directors in the Company's listed securities. A copy of the current share dealing code adopted by the Company will be provided to you separately.

8 Induction

8.1 Immediately after appointment, the Company will provide a comprehensive, formal and tailored induction [which will involve travel overseas]. You will be expected to make yourself available during your first year of appointment for not less than an additional [10] days for the purposes of the induction. The Company Secretary will be in touch with further details.

9 Review process

9.1 The performance of individual directors and the whole Board and its committees is evaluated annually. Further details will be provided as part of the induction process.

10 Development and training

10.1 On an ongoing basis, and further to the annual evaluation process, we will make arrangements for you to develop and refresh your skills and knowledge in areas which we mutually identify as being likely to be required, or of benefit to you, in carrying out your duties effectively. You should endeavour to make yourself available for any relevant development and training sessions which may be organised for the Board.

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11 Insurance and indemnity

11.1 The Company has directors' and officers' liability insurance (D&O) in place and it is intended to maintain such cover for the full term of your appointment. You have been informed of the current indemnity limit, on which the Board is updated from time to time. A copy of the policy and other details of the cover are available from the Company Secretary.

11.2 You will also be granted a deed of indemnity by the Company.

12 Independent professional advice

12.1 Circumstances may occur when it will be appropriate for you to seek advice from independent advisers at the Company's expense. A copy of the Board's agreed procedure under which directors may obtain independent advice will be provided by the Company Secretary. The Company will reimburse the reasonable cost of expenditure incurred by you in accordance with its policy.

13 Changes to personal details

13.1 You shall advise the Company Secretary promptly of any change in address or other personal contact details.

14 Return of property

14.1 Upon termination of your appointment with the Company (for whatever cause), you shall deliver to the Company all documents, records, papers or other company property which may be in your possession or under your control, and which relate in any way to the business affairs of the Company, and you shall not retain any copies thereof.

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[15 Non-compete clause

15.1 By countersignature of this letter and in consideration for the fees payable to you under the terms of this letter, you now agree that you will not (without the previous consent in writing of the Company), for the period of six months immediately after the termination of your office, whether as principal or agent and whether alone or jointly with, or as a director, manager, partner, shareholder, employee or consultant of, any other person, carry on or be engaged, concerned or interested in any business which is similar to or competes with any business being carried on by the Company [or any company in the Group.]]

16 Data protection

16.1 By signing this letter you consent to the Company holding and processing information about you for legal, personnel, administrative and management purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 2018, incorporating the GDPR) including, as and when appropriate:

(a) information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to perform your duties;
(b) information about you that may be relevant to ensuring equality of opportunity and treatment in line with the Company's equal opportunities policy and in compliance with equal opportunities legislation; and
(c) information relating to any criminal proceedings in which you have been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties.

You consent to the transfer of such personal information to other offices the Company may have [or to a company in the Group] or to other third parties, whether or not outside the European Economic Area, for administration purposes and other purposes in connection with your appointment, where it is necessary or desirable for the Company to do so.

16.2 You will comply at all times with the Company's data protection policy, a copy of which will be provided to you.

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17 Rights of third parties

17.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this letter. No person other than you and the Company shall have any rights under this letter and the terms of this letter shall not be enforceable by any person other than you and the Company.

18 Law

18.1 Your engagement with the Company is governed by and shall be construed in accordance with the laws of [country] and your engagement shall be subject to the jurisdiction of the courts of [country].

18.2 This letter constitutes the entire terms and conditions of your appointment and no waiver or modification thereof shall be valid unless in writing and signed by the parties hereto.

If you are willing to accept these terms of appointment, please confirm your acceptance by signing and returning to me the enclosed copy of this letter.

Yours sincerely

_____

[name]

Chair

I confirm and agree to the terms of my appointment as a non-executive director of [name of company] as set out in this letter.

_____ _____

[name] [date]

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Appendix A

The UK Corporate Governance Code 2018 on the role of the board:

Principle A

A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.

Principle B

The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.

Principle C

The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.

The FRC Guidance on Board Effectiveness states:[5]

> An effective board defines the company's purpose and then sets a strategy to deliver it, underpinned by the values and behaviours that shape its culture and the way it conducts its business. It will be able to explain the main trends and factors affecting the long-term success and future viability of the company – for example technological change or environmental impacts – and how these and the company's principal risks and uncertainties have been addressed.
>
> Boards have a responsibility for the health of the company and need to take a long-term view. This is in contrast to the priorities of some investors, not all of whom will be aligned with the pursuit of success over the long-term. An effective board will manage the conflict between short-term interests and the long-term impacts of its decisions; it will assess shareholder and stakeholder interests from the perspective of the long-term sustainable success of the company.

5 Extracts from Guidance on Board Effectiveness 2018: Section 1 Board Leadership and Company Purpose

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Effective directors will understand their duties both collectively and individually. Directors' duties are formally set out in sections 171–177 of the Companies Act 2006. Directors are expected to act in a manner consistent with their statutory duties, and to uphold the highest standards of integrity and support the chair in instilling the appropriate values, behaviours and culture in the boardroom and beyond.

Complete versions of the UK Corporate Governance Code 2018 and the FRC Guidance on Board Effectiveness 2018 can be found at: www.frc.org.uk/corporate/ukcgcode.cfm

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The Governance Institute

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With over 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

ICSA is the professional membership and qualifying body for Chartered Secretaries, which includes company secretaries and governance professionals from a variety of sectors. Our dedicated training and qualifications support their professional development.

Guidance notes are prepared by the ICSA policy team to support the work of company secretaries and other governance professionals working in the corporate, not-for-profit and sports sectors, and in academy and in NHS Trusts.

Guidance notes offer authoritative advice, interpretation and sample materials for the many issues involved in the management and support of boards. As such, they are invaluable for those helping their organisations to build trust through good governance.

There are over 100 guidance notes available to ICSA members at **www.icsa.org.uk/guidance**

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