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Roles and responsibilities of executive
and non-executive directors



Guidance for Directors of Private Companies

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Business has a significant and important impact on society. The expectation of directors goes beyond the legal requirements. Behaving in the public interest and the public perspective is increasingly important.

Culture, values and ethics come from the tone at the top so directors play a critical role in setting an appropriate business culture, living the values and ensuring the right climate exists for principled, ethical decision making.

This publication from ICAS provides a very good comprehensive guide for directors which will provide a useful steer on both the statutory duties and wider expectations to help fulfil this important role more effectively.

Norman Murray CA, Chairman of The Edrington Group Ltd and past President of ICAS

Introduction

This guidance is for directors and non-executive directors in private companies. It aims to assist existing and potential directors, as well as shareholders/owners to help identify what you need to know and where you need to look to find good practice on effective boards. It also identifies key themes for boards, providing additional guidance on current issues.

The guide is designed to be viewed either as a printed copy or online and contains hotlinks to get to the sections you need quickly.

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The appendices include suggested information for inclusion in a director's appointment letter and topics to include as part of the induction process. It also provides an outline of company documentation, compliance matters and suggested questions to help consider how a company is governed.

This publication is for guidance only. It is not intended to be prescriptive and legal advice should be sought where appropriate.

Purpose of this guide

To identify:

- The key statutory duties and responsibilities of individual directors
- Operational responsibilities
- Expectations of a director and non-executive director from the board and shareholders/owners
- What a non-executive director can expect from the board/company.

To inform decision making by:

- The company evaluating whether to recruit a non- executive director
- The potential non-executive director on whether to accept an appointment.

To offer practical considerations to help directors:

- Fulfil their role more effectively
- Manage expectations and potential risks
- Evaluate whether and how they have fulfilled their duties
- Decide whether or not to accept a non-executive director position.

To share suggestions on good practice and signpost readers to sources of further information and guidance, especially around some key themes that boards face today.

Executive Summary

Responsibilities of Directors – the fundamentals

Company law

A fundamental principle of company law is that the company is separate and distinct from its owners and shareholders. It is not simply 'the owner's business'. This can be more of a concern for smaller private companies. Find out more about [keeping the business separate](#).

All directors on the board of a company, whether executive or non-executive, have additional duties compared to employees. In particular, individual directors are expected to understand and act within a legal framework of [7 general duties](#). These are separate to, yet underlie the approach to how directors discharge their [business operational responsibilities](#).

Another fundamental principle is that board directors share a [collective responsibility](#) for leading the company. This lies at the heart of a robust corporate governance model in the UK and is known as the unitary board. It encourages challenge and scrutiny as all board members are collectively responsible for the success or failure of a company.

Corporate governance

Good practice on corporate governance in the UK is articulated by the Financial Reporting Council (FRC). Although primarily targeted at listed company boards, it uses a principles based approach which enables it to be applied proportionately to a wide variety of organisations. These key components of effective board practice have filtered through to private companies as well as organisations in the not for profit sector. It is based on the underlying principles of all good governance:

- Accountability
- Transparency
- Probity
- Focus on the sustainable success of an entity over the longer term.

For further information, click on the boxes below:

FRC guidance on corporate governance

The main principles

[UK Corporate Governance Code](#)

Supporting guidance for boards

[Guidance on Audit Committees](#)

[Risk management, Internal Control & Related Financial & Business Reporting](#)

[Guidance on Board Effectiveness](#)

Responsibilities of directors

The evolution of governance in larger companies has seen the creation of two types of director, recognising the collective responsibility noted above.

The unitary board

Executive Director

Management of the company on a daily basis and the internal running of the company

Non-executive Director

Contribute to the board's strategic direction and risk control framework

Executive directors

The main areas of responsibility, other than running the business on a day to day basis, include:

- Setting an appropriate strategy
- Compliance and company administration
- Delegation of authority
- Risk management and internal controls
- Dealing with business difficulties.

Find out more in our detailed guidance [operational responsibilities of directors](#), including practical considerations and good practice suggestions.

For practical considerations on appointment matters (executive and non-executive) – see [appointing a director](#).

Non-executive directors

An effective non-executive director can strengthen boards by providing balance, independence of mind, additional skills and experience, an external perspective as well as greater scrutiny and challenge of CEO and other executives' decision making. However, the decision on whether to appoint one or more non-executives requires careful consideration of the costs, risks and benefits. The risk of recruiting the wrong individual could disturb the balance and effective functioning of the board which can be quite damaging and much more so than the cost of employing the non-executive director. For tips on what to look for, please refer to our detailed guidance [assessing whether to appoint a non-executive director](#).

The contribution of the non-executive to the board's functions includes:

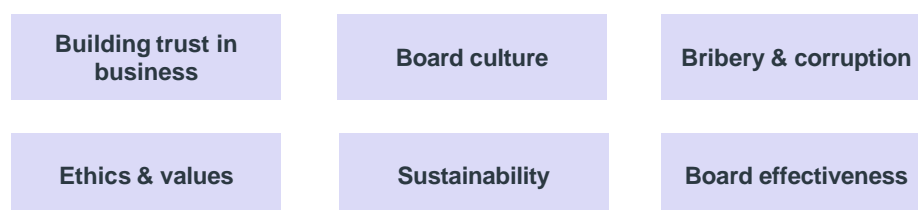
- Contributing to the development of its strategy and providing an effective challenge of management's strategic plans
- Providing independence and bringing an external perspective
- Adding to the balance of skills and experience
- Being an effective part of the board – sufficiently briefed and dedicating sufficient time to the role.

For non-executive directors, further details of their responsibilities including practical considerations to help manage potential risks are available in our [guidance for non-executive directors](#) which includes:

- [What the board expects from a non-executive director](#)
- [Assessing whether to appoint a non-executive director](#)
- [What a non-executive director should expect from a company](#) – the support and information which can be expected to help the non-executive fulfill their position.

Key themes for boards today

There are a number of key themes which impact board members' responsibilities. These are identified for additional guidance with web links to additional material.



Building trust in business

Companies have a broader social responsibility which extends beyond their legal responsibilities and have a varied group of stakeholders over and above the traditional owner/shareholder line of sight. Companies need to demonstrate an understanding of their impact on the economy, society and communities in order to build trust in business. This need to give appropriate consideration to the public interest and public perspective is increasingly important. Publicity around examples of unethical behaviour to staff, not treating customers or suppliers fairly and unsustainable business practices can have very serious consequences on a company's reputation and its financial condition.

Board culture

Embedding and communicating corporate values are an increasingly important facet of building a positive corporate culture, to help achieve trust and sustainable success.

It is the board which articulates the company's purpose, strategy, and behaviours to deliver its business strategy. The board's role is to articulate, influence, assess and monitor culture; whereas, the executives' role is to drive and embed culture throughout the organisation. The CEO has the most influence on culture, however he/she reports to the board who is responsible for holding the CEO to account.

The role of the board in articulating and embedding a healthy corporate culture is vital. It is important that the board sets the correct 'tone from the top'. Directors should lead by example and ensure that good standards of behaviour permeate throughout all levels of the organisation.

For more guidance on good practice see the [FRC board culture report](#) and [guidance on board effectiveness](#). This topic is also fundamental to the UK Corporate Governance Code.

Bribery & corruption

[A Common Sense Guide to the Bribery Act 2010](#) provides guidance to help those in organisations to ensure that they have properly assessed the risks to their business. Certain entities e.g. those doing business in the US, may also need to refer to the Foreign & Corrupt Practices Act (FCPA). For other jurisdictions there may be other legislation which will need to be referred to.

Ethics & values

Ethics in business is a combination of judgement regarding what is the right thing to do and having the moral courage to follow through with the appropriate actions. An organisation is perceived and remembered by the way its employees behave which is important for reputation.

Corporate values often have ethical connotations. It is good practice for organisations to articulate and even publish their corporate values to set clear standards of behaviour both internally for staff and externally in terms of interaction with customers, suppliers etc. ICAS has a [Code of Ethics](#) to set expectations for members publicly as well as across the membership. To highlight the importance of the individual in promoting ethics and integrity, and corporate values in the workplace, ICAS has

published a policy initiative called [The Power of One](#). Although it is focused on CAs, the principles can have wider applicability across business.

Sustainability

There is growing public interest in social and environmental responsibility which is driving buyer behaviour towards sustainable organisations. Accordingly, organisations which can structure their operations to promote sustainability should enhance their reputation and increase profitability and may also be able to improve efficiency and reduce costs.

Further information and examples of sustainability reporting for businesses of all sizes is available at [icas.com](https://www.icas.com).

Board effectiveness evaluation

Boards are encouraged to consider how they carry out their role and the behaviours that they display, not just focus on the structures and processes that they put in place.

Key principles include accountability and transparency. It is expected that roles and responsibilities are clear and that boards maintain an open and honest approach - for example, presenting a fair, balanced and understandable assessment of the company's position and prospects. A climate of transparency is relevant for each level in the organisation, as demonstrated by the board.

Challenge and teamwork are essential features. Diversity in board composition is an important driver of a board's effectiveness, to reduce the tendency for 'group think'. Skills evolve and it may be useful to review periodically the skill-set of all directors, executive and non-executive, and to consider whether further training is required. A balanced board is an important aspect of effectiveness – see more in our section [appointing a director](#).

A strong board is an essential component of robust corporate governance. Smaller companies are more likely to have a combined chair and chief executive which can increase the risk and impact of a dominant chief executive.

An independent board led by a strong chairman who can assess the CEO's performance in running the company is an important check. Where there is no chair, a strong functioning board is the important counter balance.

It is good practice to undertake a regular board evaluation. Further guidance is available in the FRC's [Guidance on board effectiveness](#).

Detailed guidance

Director's general duties and responsibilities

Keeping the business separate

An individual, or family, who owns shares is expected to know and respect the fact that the company is separate from their shareholdings and personal financial affairs. Directing the business on behalf of the company should be separate from conducting their own personal business affairs.

Practical considerations

- Payments to directors should consist of remuneration (such as salary, benefits, bonus) for work done on behalf of the company. Remuneration should be agreed by the board and recorded in the minutes or some form of contract of employment/ directors appointment letter.
- The directors have a duty to maintain the company's capital and can only pay dividends from distributable profits – see [ICAS guidance](#). Any other distribution is illegal. Dividends to shareholders should be properly discussed at a board meeting and minuted (note: not minuting dividends can lead to challenge by HMRC even where the director is the sole shareholder).
- In general, the position of a director is such that he or she should not obtain loans or credit from the company, or have substantial transactions with it. The Companies Act 2006¹ contains a prohibition against certain of these transactions unless shareholder consent is obtained in advance.
- A company must have at least one director. In a company with only one or two directors it is important to identify a delegate to make operational decisions if the director is not around/ in case of emergency. Alternatively, the owner manager could appoint a suitable person with a power of attorney to act for the director in case of emergencies. They should also identify a company secretary, who can undertake the necessary oversight and ensure that things are not going off track.

Collective responsibility

The board of directors is collectively responsible² for the success of the company and all directors share in that responsibility. Every director should be expected to fully understand the business of the company, how risks are managed and decisions taken, attend board meetings, ensure that they are fully briefed, and devote sufficient time to the role of director.

“It is legitimate, and often necessary, for there to be division and delegation of responsibility for particular aspects of the management of a company. Nevertheless each individual director owes inescapable personal responsibilities. He owes duties to the company to inform himself of the company's affairs and join with his fellow directors in supervising them.

It is therefore a breach of duty for a director to allow himself to be dominated, bamboozled or manipulated by a dominant fellow director where such involves a total abrogation of this responsibility... Similarly it is the duty of each director to form an independent judgment as to whether acceding to a shareholder's request is in the best interests of the company.”

Extract from the judgement of the Hon. Mr Justice Popplewell, Madoff Securities International Ltd v Raven & others (para 190)

Practical considerations

- Each director needs appropriate information and adequate notice of board meetings in order to fulfil the role.
- The company should have directors' and officers' liability insurance that is paid for by the company.
- A smaller company is usually run by its owner, who assumes a range of roles. As the company grows, it is best practice for various areas of responsibility in the company to be allocated clearly between several directors or management.

General statutory duties and responsibilities for individual directors

The Companies Act 2006 has codified seven general duties for all company directors.³

1. A director must act in accordance with the company's constitution and only exercise powers for the purpose for which they are conferred.

Practical considerations

- Each director should have read and understood all relevant documents and should act within their parameters. These would include the articles of association and, in a company formed before the Companies Act 2006 was implemented, the memorandum of association.
- In some companies there may also be shareholder agreements and bank facility agreements that contain restrictions on what the company may do without certain consents or approvals and/or impose financial conditions on the company.

2. A director must act in the way he or she 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 the likely consequences of any decision in the long term; the interests of employees, the community and the environment; and the desirability of the company maintaining a reputation for high standards of business conduct.

Practical considerations

- The board minutes should be an adequate reflection of discussions, decisions, the reasons decisions were made, and that they were taken in the interests of promoting the success of the company whilst giving appropriate consideration to the wider stakeholders.
- The board is collectively responsible.

3. A director must exercise independent judgement.

Practical considerations

- A director can obtain advice or information from others but the exercise of the judgement must be independent in the sense of it being his or her own judgement.
- A director may obtain independent professional advice to assist him or her, when necessary, in reaching a judgement. This should be at the company's cost and the ability to seek this should also be addressed in the letter of appointment. The director should inform the board or the chairman when such advice has been sought.

4. A director must exercise the care, skill and diligence of a 'reasonably diligent person' having the general knowledge, skill and experience reasonably expected of a director in his or her position (objective test), and also the general knowledge, skill and experience which he or she actually has (subjective test).

Practical considerations

- A director who is knowledgeable on a particular subject, whether through experience or qualification, is expected to provide a higher level of expertise on that subject than one who does not have that knowledge, and will have a correspondingly higher degree of responsibility.
- A director with specific professional qualifications such as a qualified accountant, lawyer, or banker should remember that he or she is one of a collective board and should ensure that fellow directors are made aware of matters for which they are responsible, e.g. the terms of financial instruments, potential legal issues, the possibility and impact of breaking a financial covenant, etc. Such a director may wish to ensure that on matters where it might be possible that the company is relying on him or her that appropriate external advice is obtained. A director with such professional qualifications is not engaged as a professional adviser to the board and should ensure the board is aware of this fact at all relevant times, particularly when advice is being sought.
- A director with specific qualifications, such as an accountant or lawyer, can have high and perhaps unrealistic expectations placed on him or her by both the company and the public – it is important that areas of expertise are identified and expectations managed as to what is reasonable.

5. A director must avoid a situation in which he or she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

Practical considerations

- Actual and potential conflicts of interest should be identified, managed and notified to the board, for example, other directorships or employments, appointments by a particular stakeholder group, or shareholdings in a supplier or competitor. The board can authorise conflicts if the articles allow this.
- Where one or two related people own and manage a company it should not be treated as their personal business. The company has a separate legal identity from the shareholders – they are not one and the same.
- Any possible conflicts should be declared before discussions start and, if need be, the director concerned should be excused from the meeting whilst the matter is discussed and there is any formal vote on the matter.
- An equity holding in the company of which a person is a director should not produce a conflict, but a loan or a preference holding could well mean that the director has a different interest from the owners of the company. This can be a potentially complex (and personal) area. Where any doubt or uncertainty exists, we suggest that appropriate advice should be sought.

6. A director must not accept any benefit connected with his or her role as a director from a third party unless it cannot reasonably be regarded as likely to give rise to a conflict of interest.

Practical considerations

- The critical factor is the scale of any benefit, and the potential external perceptions as to whether it might influence the director's behaviour. For example, it may be that a lunch is considered acceptable whereas a more substantial benefit such as a holiday is not.
- The board might wish to keep a list of any benefits received or put in place a process that no benefit over a certain limit can be retained or that pre-authorisation must be put in place before accepting any benefits. See also our section on Bribery and corruption and Ethics and values.

7. A director must declare the nature and extent of any personal interest in a proposed transaction with the company to the other directors before the company enters into the transaction.

Practical considerations

- In general, the position of a director is such that he or she should not have loans, credit transactions, or substantial transactions with the company. The Companies Act 2006 contains a prohibition against certain of these transactions, unless shareholder consent is obtained.³

For further information see [Company Documents](#) in Appendix A.

Other statutory duties

The seven general duties above are not the only statutory duties for directors, which can range from health and safety, insolvency legislation, duty of care to employees as per the Corporate Manslaughter and Corporate Homicide Act 2007, Modern Slavery Act 2015, the duty to pay tax, equality and diversity etc. This is a complex landscape and further legal advice should be sought. Government websites are also a useful source of guidance such as: [Company registration and filing](#) or [Running a limited company](#). Some of the other duties that a director should consider include:

- Duty of confidentiality
- Duty to devote time and attention
- Duty to account to shareholders
- Duty not to make 'secret profits'
- Stewardship of the company assets
- A general duty to act in good faith and "do the right thing"
- Duty to maintain books of accounts
- Duty to file accounts, annual returns, and tax returns
- Duty to maintain statutory books
- Duty to ensure the company is complying with legislation including, in particular, that involving risk to third parties and to employees, for example, health and safety at work.

Connected persons

Some directors' responsibilities extend to their 'connected persons', for example, the requirement to have their actual or potential conflicts of interest authorised. The Companies Act defines connected persons fully, but mainly this extends to a director's spouse, partner or children.⁴

The Small Business, Enterprise and Employment Act 2015 contains some provisions relating to directors which are aimed at increasing transparency of corporate control, building trust in UK companies by deterring those who hide their interest in UK companies to facilitate illegal activities and improving the accountability of directors for misconduct. Reforms include introducing a register of people with significant control and prohibiting the use of corporate directors. For an outline and links to sources of guidance on this Act, see [Compliance Matters](#), Appendix B.

Operational Responsibilities of Directors

Setting an appropriate strategy

It is the directors' responsibility to set an appropriate strategy, to implement it, and to revisit it to ensure its continuing relevance, and to provide leadership. A clear strategy and an eye open to identify potential opportunities and risks are vital, as are clear, strong messages about the business. In setting strategy, the directors should:

- Separate the task of setting the vision and strategy from the day-to-day management of the business
- Consider where the business is to be in one to five years' time and how it will get there. This needs to be simple and sensible, affordable and with a sense of purpose
- Prepare a strategy and test the resilience of the business by modelling adverse conditions
- Question the way in which decisions are undertaken, seeking an appropriate balance between creativity and control
- Have an understanding of customers and their needs so the company provides what they want and how they want it
- Decide upon the short, medium, and long term financial requirements, where the finance will come from, significant risks to achieving objectives and how/if they can be mitigated or managed.

Practical considerations

- In an owner-managed company it is good practice to set aside time for regular formal board meetings (and not just extend informal management meetings) to consider strategy and to fulfil statutory responsibilities such as approving financial statements.

Compliance and company administration

In practice, a private company often adopts little formality in the running of its meetings. Although there is no legal requirement for a private company to appoint a company secretary, the responsibilities remain. These consist of fulfilling the legal necessities and administration associated with running the company such as filing accounts and statutory returns at Companies House. These matters must be attended to as the directors are ultimately responsible for compliance and the company will be subject to fines and penalties if statutory obligations are not met. As an example, office holders, like directors, can be personally liable for penalties where a company makes incorrect returns through the deliberate error of a particular individual.

Practical considerations

- In an owner-managed small company it may appear unnecessary to appoint a secretary; however, all the associated tasks should be included on a compliance schedule and allocated to a specific individual or individuals. The compliance schedule should show when the various financial, legal, and regulatory requirements require to be completed. A sample compliance schedule is included at Appendix B.
- A private company with only one director should consider appointing a company secretary so these responsibilities are carried out should the director be incapacitated.
- Formal board meetings should have an agenda and supporting papers (as required) and these should be circulated with sufficient time to allow directors to prepare for the meeting.
- Formal minutes should be taken of the meeting, to ensure decisions are recorded and to give a flavour of the challenges and questioning raised by directors. A track record of formal board meetings which are adequately minuted can improve the chances of success when seeking to raise finance or when considering selling the company.
- Directors need to be supported by high quality information to help facilitate effective discussion and scrutiny at board level.
- The information preparation process should be efficient and responsive to evolving needs.

Delegation of authority

Operational matters need to be delegated in order to ensure the smooth running of the business and to allow the directors time to focus on the key aspects of their roles. A schedule of delegations of authority should be established, which sets out the parameters of the delegated authority and particularly any financial limits. Areas that could be covered in the scheme of delegation include:

- Opening bank accounts and authorising payments
- General purchasing powers/budgets
- Signing of leases/contracts
- Signing of regulatory documents
- Powers of attorney
- External communication
- Staff recruitment and remuneration
- Health and safety operations
- Compliance with current legislation, in particular, employment, health and safety and tax.

Practical considerations

- In a smaller company the owner-manager usually retains responsibility for many of the above matters. It should be clear what areas are delegated, if any and to whom.
- As the company grows the owner/board needs to develop a systematic means of delegating authority and formalising this.
- Delegated authorities ought to be reviewed periodically to ensure that they are complied with and that the delegated authorities remain appropriate for the size of the enterprise and its management structure.
- Sometimes functions are delegated to a board committee. In this case, clear terms of reference are important to avoid overlap and ensure accountabilities are clear.

Risk management and internal controls

Risk is an inherent part of being in business, and risk management is concerned with identifying, assessing, monitoring and mitigating risk, not removing it. A board's responsibilities include the key elements of risk management and internal controls. It is essential that each director is comfortable that these are appropriate and operate effectively. Not only does he or she share collective responsibility for risk management but he or she is reliant upon the internal controls existing and working properly.

The risks that a business faces change regularly, and the process for managing risk must be able to adapt. Key issues and control breakdowns need to be escalated promptly and reported to the board as quickly as possible so that the board is fully aware, and can address the challenge.

An effective system of internal control is key to robust risk management. There should be a clear set of documented procedures as part of an effective control system. Regular checks are also needed to ensure that the procedures are operating effectively.

The FRC has published good practice [Guidance for risk management, internal control and related financial and business reporting](#). This aims to help boards consider how to discharge their responsibilities in relation to existing and emerging principal risks, encourage sound business practice and to embed risk management internal control in the business process by which a company pursues its objectives.

The most significant risk growth area recently has been cyber security. Breaches can have high reputational as well as financial costs. A robust information risk management regime is a central element of an organisation's overall cyber security strategy.

The government has published [10 Cyber Security Steps \(UK Gov\)](#) and a [version for small businesses](#) to help a business form its assessment. There is also the Government's [Cyber Essentials scheme](#) which sets out the five basic technical controls to protect an organisation against the common threats on the internet.

The risk of tax avoidance has also grown so tax planning and distinguishing it from tax avoidance, which can lead to loss of reputation and fines, has moved higher up the board's agenda.

Succession planning is a potentially significant issue for smaller private companies and one which needs to be considered sooner rather than later.⁵ It is well worth finding out about the tax and legal implications to help manage the risks and work out a successful succession plan.

Practical considerations

Listed below are some points that may be relevant to a business when considering risk. They are, in no particular order:

Managing risks

- How is risk management undertaken? Is there a structured process?
- Do the directors conduct a SWOT analysis⁶ periodically, which identifies key risks and opportunities?
- Are appropriate measures taken to mitigate the risks identified, and is there any assurance that these measures are effective?
- Professional advisers may be of assistance in identifying key risks and controls: has the company sought such assistance and, if so, acted upon it?
- Are key customers and suppliers regularly assessed for financial stability?
- What insurance cover is maintained and does it cover key risks?
- Are foreign exchange risks evaluated?
- Does the company have a comprehensive and tested business continuity plan in the event of physical or financial emergencies?

Compliance

- Is there a suitable process for tracking legislative developments, impacts and risks?
- Is there a compliance schedule and is it properly used?

Financial controls

- Is there regular monitoring of cash flows and forecasts? Note that cash flow pressures need particular attention during periods of growth or significant change.
- Is there adequate segregation of duties, particularly where purchasing, cash and stock are concerned? Has any such risk been flagged by the auditors?
- Are there suitable controls over incoming funds, expenditure and access to bank accounts?
- Are there regular accounting reconciliations?
- Has the risk of fraud been analysed and followed up?

People

- Are all related parties of board members known and potential conflicts of interest managed?
- Are there sound procedures for vetting and obtaining references for new employees?
- Are the key people identified, and their substitutes or alternates?
- What is the company's succession plan?

IT/cyber

- Who has responsibility for IT and cyber security?
- Is there suitable IT back up?

Dealing with business difficulties

This section looks at:

- Trading difficulties
- Wrongful trading
- Misconduct and director's disqualification.

A company may get into trading difficulties, either as a result of changing market conditions or through ineffective management and governance. These difficulties may lead to funding issues. Every director should be aware of the risks that arise in adverse trading circumstances and the impact of those risks.

Directors must remember that they have a duty to act in the best interests of the company, even if this can potentially cause conflicts with their personal positions. When facing insolvency, the

focus of a director's duty changes to the company's creditors. Seeking professional advice at an early stage from an insolvency practitioner ([see ICAS register of Insolvency Practitioners](#)) or other suitable professional is recommended. Seeking advice should assist the directors in the effective governance and management of the company and demonstrate that they have sought to avoid wrongful trading and other potential Insolvency Act offences.

Directors must avoid wrongful trading. Wrongful trading occurs when a company continues to trade beyond the point at which the directors knew, or ought reasonably to have known, that the company had no reasonable prospect of avoiding an insolvent liquidation. A company is insolvent if it cannot pay its debts when they become due, the value of its assets are less than the liabilities, or both. In these circumstances, directors may be held personally liable for the company's debts if they did not take every step with a view to minimising the potential loss to the company's creditors. There is a requirement not to give preference to certain creditors, not to dispose of assets at undervalue or otherwise act in a manner which may unfairly prejudice the creditors of the company.

Director's misconduct and disqualification

The recurring themes in corporate scandals over the last decade or so include false accounting, fraud by one or more of the senior staff or directors, tax avoidance, lack of internal controls, a dominant or charismatic CEO or Chairman, or major strategic blunders. A diligent non-executive director who takes proper advice should not find him or herself in the position of being disqualified as a result of failing to exercise his or her duties.

A new company director disqualification regime and increased compensation for creditors who have suffered from director misconduct have been introduced by the Small Business, Enterprise and Employment Act 2015 (the Act) - in force 1 October 2015. There are also new rules where a company becomes insolvent. Please refer to the [BIS factsheet - Directors Disqualification](#) for further information and ICAS' [update on directors disqualification and compensation](#).

Provisions relating to the accountability of directors for misconduct include the introduction of two new grounds for disqualification as a director. The Act enables disqualification proceedings to be taken in the UK where there has been misconduct, or directors have been convicted, in overseas companies. It also enables proceedings to be taken against a person who has caused a director's unfitness.

There has been an expansion of the matters a court must take into account when determining an application for disqualification, including a person's track record, the nature and extent of any loss or harm caused and their activities overseas. When determining whether a person's conduct as a director of a company makes them unfit to be involved in the management of a company, conduct as a director of any overseas company must also now be considered.

Criminal offences

The following constitute criminal offences:

- Concealing, destroying property and records
- Falsifying company records
- Being privy to the above.

Practical considerations

- Companies in this situation require a significant time commitment from directors including the non-executive directors and this may be well over and beyond the guidance given when the non-executive joined the board.
- Cash flow management is essential and should be monitored daily if necessary. Forecasts should be monitored against actual results on a regular basis, and if available cash falls below pre-agreed monitoring levels the matter should be addressed immediately.
- Capital expenditure and working capital need careful management - only spend what is absolutely needed in these circumstances.
- Prospective sales should be analysed to establish how secure they are and where there is a heavy reliance on just a few customers, mitigation of risks is vital.
- Any banking covenants should be carefully monitored on a regular basis; any potential breach should be identified in advance and discussed immediately with the bank or banks. Consider (re)negotiating covenant conditions.
- Whilst the directors may be optimistic about the company's ability to survive a downturn, an external adviser is often very helpful as they can bring an objective, challenging perspective to the evaluation of a company's prospects.
- The company should discuss funding with the bank or investors to find out as early as possible if they are supportive and will continue to be supportive in the event of a downturn.
- If there is unlikely to be any further financial support, and the company is unlikely to survive independently, an exit strategy should be pursued as soon as possible, such as looking for a sale of the company, or parts of it.
- If there is any risk of insolvency the board should take early advice from an insolvency practitioner at the earliest opportunity. A wider choice of rescue options will be available when more time is available to consider and implement alternative rescue plans.

Appointing a Director

To support board effectiveness and achieve a balanced board, the board should have the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge their respective duties and responsibilities effectively.

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. Every director should have formal terms of appointment (for executive directors this is usually part of their contract of employment).

A director will:

- Be on the board and be expected to have significant influence over the company
- Be appointed for a specific (renewable) time period
- Normally be remunerated for the responsibilities undertaken. Non-executive directors are not usually employed as an employee although are increasingly, if not normally, paid through PAYE.

Practical considerations

- A letter of appointment/contract should be issued, detailing the functions and time commitment that is expected as well as the period of appointment. Consideration should be given to a notice period of, say, three months and an immediate removal process in specified circumstances.
- Each director (both executive and non-executive) should undertake an induction programme and, thereafter, ongoing training and development.

See [Appendix C](#) for an example appointment letter and further information on induction.

Finding a director

In general, the following are used:

- Recruitment agencies
- Informal business networks
- Recruitment advertisements e.g. on the web, in newspapers, specialist journals and professional bodies publications.

Non-executive directors

When a company reaches a certain stage in its evolution, the appointment of one or more non-executive directors is often proposed. To establish whether this would add value requires careful evaluation. The company has to decide what would be expected of the non-executive director, what the company can offer the candidate and what skill set and cultural attributes are needed. For further guidance to support decision making on whether to bring on board a non-executive see [assessing whether to appoint a non-executive director](#).

The principle that the board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) is set out in the [UK Corporate Governance Code](#) for listed companies. This principle is filtering down to the private sector and, also, frequently, lenders or external investors will want a non-executive director on the board.

An individual may already have one or two non-executive appointments and wish to add to this, or to extend his or her experience beyond an executive post. Working with a company may broaden and enrich the non-executive director's experience. It also associates that person with the company and the board, brings the same liability as for the executive directors and so carries risks for the individual.

Key messages

A non-executive director on the board of a private company can be very beneficial. He/she is expected to bring additional skills and experience as well as an external perspective to assist and, where necessary, challenge the board of a company. Non-executive directors are not involved in the management of the company on a daily basis, nor in the internal running of the company. They are expected to be independent of mind and rigorous in their analysis.

The non-executive can help to make sure that board decisions are balanced and not dominated by a single individual, or small group of executive directors.

It is important to remember that the board, which includes executive and non-executive directors, is collectively responsible for the success or failure of the company. It is therefore critical that non-executive directors fully understand how the company operates, how risks are managed and decisions taken and they are properly informed. High quality management information and board papers are essential (see also [Operational Responsibilities of Directors - Compliance and Company Admin](#)).

What a company/the board expects from a non-executive director

1. Contribution to strategic leadership

A non-executive director is expected to contribute to the development of that strategy and provide an effective challenge of management's strategic plans. The expectation is a non-executive director will:

- Bring an external, independent perspective
- Challenge executive recommendations
- Assist in setting and revising strategy and objectives
- Share collective board responsibilities including ensuring that there are proper risk management and internal control frameworks which are implemented across all aspects of the business

- Consider management's plans on succession planning.

Practical considerations for the company

- The non-executive director will need appropriate induction to the company, as well as continuing development, in order to understand the business fully (see more in [Appendix C](#)).
- As part of the business planning process, it can be very useful if a day is set aside off-site each year for a strategy session with the senior executives and the non-executive directors, with possibly an external facilitator being present.

2. Independence

A non-executive director is expected to be someone from outside the company, to bring an external perspective to the board. They are not involved in the internal running of the company, and do not have key relationships with the company, for example, as a supplier or customer.

Independence of mind does not mean that a director has to form his or her judgement in isolation. A director can obtain advice or information from others but the exercise of the judgement must be independent in the sense of it being his or her own judgement. The non-executive needs to be a strong enough character to be able to say 'no' and also credible so that he or she commands the respect of the board.

The company should expect the non-executive director to contribute to the delivery of the board's responsibilities by:

- Scrutinising the performance of management against the objectives of the company
- Sharing collective board responsibilities for ensuring there are systems which support the integrity and quality of management information
- Helping determine appropriate levels of remuneration of executives, possibly considering if there is a culture of excessive reward or 'reward for failure'
- Advising the board on the basis of his or her external knowledge and experience.

A non-executive director should not be expected to take on tasks for the company which might compromise their position. Although it is not unknown for non-executive directors in small companies to be used as consultants on occasion, careful monitoring is required to avoid compromising their independence. Care is also needed where a non-executive director may usefully mediate between factions in a family company.

Practical considerations for the company

- The board, and CEO in particular, needs to be open to challenge, questioning and possible objective criticism.
- The appointment of an individual who is another interested party's representative, such as a financier or minority shareholder, needs to be fully discussed. It should be noted that it is a statutory duty of any non-executive director to promote the success of the company rather than the interests of a particular interested party or parties.
- The board needs to be willing to listen and discuss the non-executive's contribution; and to know how it might react if the non-executive fundamentally disagrees with a proposed course of action.

3. Skills and experience

An effective board should have a balance of skills and experience that is appropriate for the size and requirements of the business – often referred to as the ‘balanced board’. Non-executive directors should add to the skills mix on the board and have suitable experience.

Practical considerations for the company

- A decision to appoint non-executive directors should be made after identifying any skills gap on the existing board and considering the individual and collective skills and experience of the board.
- Cultural attributes are very important, by inviting a new member on to the board it is vital that the incoming director fits well with the cultural values of the company.
- The potential non-executive director needs to be informed of what the company hopes he or she will bring to the company.
- Skills evolve and it may be useful to review periodically the skill-set of all directors, executive and non-executive, and to consider whether further training is required. It is good practice to undertake a [regular board evaluation](#).

4. To be a part of the board

The board is collectively responsible for the success of the company so the non-executive director is expected to understand fully the business of the company, have a very good attendance at board meetings, be fully briefed, and to devote sufficient time to the role.

Practical considerations for the company

- The non-executive director cannot fulfil the role unless he or she is provided by the company with appropriate information, adequate time to consider it, and adequate notice of board meetings.
- A non-executive director is not there just for board meetings and should be consulted by the management as appropriate. While the non-executive director will not spend the same amount of time with the company as the executive directors, he or she will spend time on the company’s business outside meetings.

Assessing whether to appoint a non-executive director

Recognising what a non-executive director can bring to the company, there are a number of reasons why a private company may decide to bring a non-executive director on to the board of directors, including:

- A company may be too small to employ, or afford to employ, additional, full time executive directors and therefore the appointment of a non-executive director can widen and compliment the board's experience and skill-set in a relatively cost effective manner.
- For a young start-up company an experienced non-executive director may bring objective challenge and strategic advice without becoming too involved in the day-to-day running of the business.
- Lenders or external investors may insist on a non- executive director as a condition of funding. This is frequently the case in a growing family company where the non-executive may be instrumental in supporting a company towards its next stage.
- A company may wish to utilise the knowledge, skills and reputation of an expert within the industry and access his or her contacts as a means of reaching new business opportunities or capital, whilst managing carefully any conflicts of interest which arise.

Practical considerations for the company

- Is the board open to bringing someone in as a non-executive?
- What does the board want to gain?
- Is the board open to challenge and willing to take account of it?
- Are the executive directors willing to undertake further work to ensure the non- executive is appropriately briefed before being involved in the decision making process?
- What are the skill-sets and cultural attributes required and the expected time frame of the appointment?
- Has an appropriate role specification been prepared?
- How will the board evaluate the non- executive's performance?
- How will the board resolve ineffective performance?

Once a decision has been made to recruit a non- executive it is important that the company recruits the best person for the role as otherwise the benefits of such an appointment may well be lost.

Practical considerations for the company when evaluating candidates

- Will the appointee require special experience/sector knowledge?
- What is their reputation? Does this align with the culture of the company?
- Will their personality fit with others around the board table?
- Are there likely to be conflicts of interest?
- How many non-executive positions does the prospective appointee have?
- Will the prospective appointee have sufficient time to commit to the appointment?
- A potential candidate for a non-executive position should:
- be interviewed, by all or most current serving board members
- have references obtained and background checks undertaken, for example, has the candidate previously been disqualified as a director?
- Consider asking a prospective non-executive director to attend one, or part of, a board meeting as an observer before making the formal appointment.

The board should make a considered decision, minuting its reasoning, and conclude for or against appointing a non-executive director.

On appointment:

- A letter of appointment should be issued, detailing the functions and time commitment that is expected as well as the period of appointment. Appendix C contains further information on points to consider including in an appointment letter.
- Consideration should also be given to whether formal shareholder approval is required.

What a non-executive director should expect from a company

Working with a company as a non-executive director associates that person with the company and the board, bringing the same liability as the executive directors and so carries risks for the individual to his or her reputation and, potentially, legal and financial risks. There will be rewards in terms of experience and remuneration but these need to be evaluated in relation to any potential risks.

Why consider such an appointment?

An individual may consider an appointment as a non-executive director because it will broaden his or her experience and the non-executive director can often make a significant difference to the success and growth of a company. However, the potential non-executive director also needs to be diligent in deciding whether to be associated with a particular company.

Practical considerations for the non-executive director

When applying for the role

- Do you know what the company wants from you?
- Do you have the required skills and industry knowledge?
- Have you researched the company via publicly available information (e.g. web, press, annual report and accounts, marketing literature, personal network)?

On deciding whether to accept an invitation to join a board, the non-executive director should have a clear understanding of what is expected from him or her and what powers and responsibilities he or she has under company and other legislation, the skills and expertise that the company wishes to utilise, and also the time commitment. This should include:

- A clear description of the role in the letter of appointment
- An appropriate fee
- Director's liability insurance.

Questions to consider:

- Will the company value your input and listen to your recommendations, even if you are being appointed by an external interest such as the bank or a minority shareholder?
- Are you aware of the board dynamics and whether you will be expected to be an arbitrator between different interests (family interests and/or different perspectives on the strategic direction of the company)?
- Are you aware of the board culture, what is their approach to governance issues, for example. Does this tie in with your values?
- Are you confident and knowledgeable enough to challenge the executives/ managers who will always know more about the business than you?

Once an offer is made

- Meet with the company chairman, other directors, and senior management to discuss and agree the responsibilities before accepting the appointment.
- Talk to the company's advisers, e.g. the auditor or solicitor. Consider if it would also be beneficial to communicate with major shareholders (if different from the executive directors).

Once the non-executive has accepted the appointment

The non-executive director should expect to be treated as a full member of the board, be in a position to understand the business of the company and in a position to participate fully.

The board has collective responsibility for the success of the company; however, as the non-executive director is not involved in the company on a daily basis nor in the internal running of the company, it is essential that:

- Sufficient understanding of the business and the company background is gained and appropriate access to the business is given to the non-executive director.
- Sufficient confidence can be gained that robust management arrangements exist to ensure the [statutory duties](#) and [operational responsibilities](#) are met.
- Reliable management information is presented to the board, in good time, to allow the directors to make an informed assessment and judgement of the state of the business and the identification and management of key risks.
- Sufficient attention and effort is invested to ensure that the board (continues to) function effectively.

Practical considerations for the non-executive director:

Understanding the business

- Ensure that you are provided with suitable induction training as part of joining the company including site visits (as appropriate), non-executive training on powers and responsibilities (if necessary).
- Ensure that you can have independent access to the company's legal and accountancy advisers.
- Actively participate, and periodically go out and about around the company to understand its activities in order to be in a better position to assess what information is appropriate. It can be beneficial to talk to staff who are not board members or senior management and give insight to corporate culture. It may also be relevant to meet key customers and suppliers, although care is needed to avoid straying into executive territory. As an effective member of the board you should not simply expect that all relevant information will come to you.

Management information

- Information needs to be accurate, honest and concise (yet containing all important and relevant information) to support effective discussion and scrutiny at board level. Getting the right information in the right format to support decision making is critical – challenge management if you are not satisfied that you are getting the material needed to participate effectively at board meetings.
- It is useful to get occasional reports or presentations from senior managers who are not members of the board.

An effective and functioning board

- Advance notice of the board meetings should be given. There should be an annual programme of board meetings, with meetings held at regular, appropriate intervals.
- All board papers should be provided in sufficient time to read and prepare. You should be able to ask for additional information if necessary. Generally, board papers should be circulated at least one week in advance of the board meeting.
- Board papers should be of an appropriate length and quality, and provided in good time in order to prepare for meetings.
- Adequate time is given to each agenda item to enable full discussion and challenge
- Minutes should be circulated on a timely basis and adequately reflect the discussions and decisions taken at the meetings.
- Build a strong relationship with the Chairman. He/she runs the board and an effective Chairman will facilitate a lot of what a non-executive needs in order to be successful.

- A healthy corporate culture - is sufficient attention being given to how business is carried out across the organisation as well as its performance? Has the desired culture (including behaviour and values) been articulated and are board members setting the right tone and living the values?
- Is the performance and effectiveness of the board challenged and evaluated on a periodic basis?

Fulfilling your role effectively

- Provide an independent perspective - remember that no matter who has been involved in your appointment (e.g. a particular shareholder or the bank) the board is collectively responsible and that, as a member of it, you do not represent a particular interest.
- Ethical behaviour - have you the confidence, independence and personal courage to stand by your decisions and, if necessary, are you willing to resign if there is a fundamental disagreement?
- Is there a mechanism for identifying and responding to board member training needs, and supporting non-executive directors to keep up to date?

Management arrangements

- You need to evaluate how risks are identified and mitigated, and risk management strategies are properly implemented. Management information reported to the board should help you to make an informed assessment of the identification and management of the key risks.
- Check that a compliance schedule is in place and actively used so that the company fulfils statutory requirements, such as making company and tax returns on time.
- Review the audit management letter and/ or meet with the auditors, internal and external, each year. Does management have an appropriate attitude to audit and agreed actions to address audit weaknesses?
- Make sure that there is directors' liability insurance in place, with adequate cover, and that the premiums have been paid.
- Make sure that the risk of fraud has been analysed and appropriate safeguards put in place.

For further information on suggested questions for board members – see [Appendix D](#).

Endnotes

1. Companies Act 2006, from section 197.
2. Case law [Madoff Securities International Ltd v Raven & others](#) and also [UK Corporate Governance Code 2014](#) Section A - leadership.
3. Companies Act 2006, sections 170-181.
4. Companies Act 2006, section 252.
5. Further information on icas.com:
 - CA Magazine, June 2016, p34 (various articles) [Succession planning secrets and tips for family businesses](#)
 - [How to reduce succession planning risks](#)
 - [Survey - succession planning major worry for SMEs](#)
6. SWOT – analysis of strengths, weaknesses, opportunities and threats.

Appendix A

Company documents

Written statements, in the form of company documents, help the board to clarify what it is doing and provide essential communications to staff and others. This allows all interested parties to know what is expected of them, the company's objectives, and how each party is expected to meet the objectives. Equally, funders and external stakeholders may wish to see the company objectives. The following company documents may be helpful:

Strategy and planning

A statement of the company's strategy may set out the overall aims and objectives, and can be supported by a business plan with the key objectives for the coming year. A medium term, two to five year plan may also be considered. These plans may consist simply of business objectives and the specific actions required to achieve them, and they may also include the financial impacts of these actions.

Company manual

The company manual is a vital part of the internal control framework and should document all policies and procedures including:

- Operating policies and procedures
- Staff policies and procedures
- Job descriptions
- Organisational chart
- IT policies, procedures and backup procedures
- Business continuity procedures
- Health and safety policies
- Legal and regulatory compliance schedule – see [Appendix B](#).

Board statement

A board statement should consist of the board's responsibilities, reserved matters, and delegated authorities.

Appendix B

Compliance matters

The directors are responsible for ensuring that the company meets its legal and regulatory commitments so systems and timetables need to be in place. Reliance on advisers will not remove the directors' responsibility. Matters to be considered as part of developing a compliance schedule include the following:

Accounts

1. Preparation of annual accounts and identifying if an audit is required (see [audit thresholds update 2015](#))
2. Board review and agreement of accounts
3. Distribution of accounts to members
4. Filing of accounts with Companies House – within 9 months of year-end for accounting periods commencing on or after 6 April 2008 (previously, a 10 month deadline)
5. Filing of accounts and tax return with HMRC – within 12 months of year-end.

Annual return

For updates check with [Companies House](#)

1. Check, amend if necessary, sign and return to Companies House within 28 days of receipt, along with fee.

Tax compliance

For updates check with [HMRC](#)

2. Corporation tax – for small and medium sized companies, corporation tax needs to be paid within 9 months of the year-end and the return and accounts filed within 12 months. Large companies will need to make payments on account
3. VAT – quarterly returns to be prepared and paid within one month, unless one of the VAT schemes for smaller businesses is used
4. PAYE – by 19th of each month, plus annual compliance following tax year-end P11Ds by 6 July following the relevant tax year
5. Companies House compliance - details of the following need to be returned to Companies House within set deadlines:
 - Changes to the company's articles
 - Certain resolutions
 - Changes in directors and/or their details
 - Change in company secretary and/or his or her details
 - Change to the registered office
 - Allotment of any shares
 - Details of charges.

Banking facilities and covenants

Reporting requirements for company funding need to be met.

Health and safety compliance

1. A full health and safety policy must be in force at each location where the company operates with clear guidelines for staff and documentation of staff responsible for compliance.
2. Full risk assessments including fire risk assessment should be undertaken and reviewed at least annually.
3. Compliance with daily, monthly, and yearly safety checks e.g. first aid, fire alarms, relevant legislation e.g. Modern Slavery Act 2015.
4. Identify environmental regulations which businesses must adhere to.

Insurance

Annual review of insurance to ensure relevance to business and all areas covered, especially public and employer liability.

Small Business, Enterprise and Employment Act: Transparency

Reforms include:

1. Introducing a Register of People with Significant Control to increase transparency of who ultimately owns and controls UK companies. This requires UK companies to keep a register of people with significant control over the company available for inspection, known as a 'PSC register'. A 'person with significant control' is an individual who ultimately owns or controls more than 25 per cent of a company's shares or voting rights, or who otherwise exercises control over a company or its management. Implementation from 6 April 2016.
2. Prohibit the use of corporate directors – one company as the director of another – with limited exceptions (to be set out in regulations). The use of corporate directors in the UK will be restricted to situations of low risk and high value. New corporate directorships will not be permitted, and existing corporate directors will need to consider their position with respect to the exceptions, and potentially change their arrangements to become compliant. Likely implementation date October 2016.
3. Shadow directors (controlling all or the majority of a company's directors) will have legal duties on the same basis as individual directors. In force May 2015.

For a fuller outline of the reforms see the government factsheet:

[BIS factsheet - Small Business, Enterprise and Employment Act: Transparency.](#)

The Act includes various other reforms, please refer to additional factsheets available here: [Small Business, Enterprise and Employment Act 2015 factsheets \(BIS\).](#)

Appendix C

Appointment Matters

Letter of appointment

(i) Directors

The following aspects may be addressed in the director's letter of appointment:

- the date from which the appointment is effective
- whether there should be a fixed period of appointment and, if so, for how long (e.g. three years)
- state whether it is a contract for services (non-executive directors) or a contract of employment (executive directors)
- termination procedures, for example, at the discretion of either party with one/ three months' notice or immediate, and indicative circumstances where immediate removal would occur
- the expected time commitment, including attendance at all board meetings
- the legal responsibilities of a director
- the specific responsibilities expected in this appointment
- salary, any benefits and expenses
- whether and to what extent external professional advice may be sought at the company's expense
- outside interests, and management of any potential conflicts of interest
- confidentiality of information known during and after the period of the contract
- an anti-competitive clause for the duration, and a period after, the contract
- induction procedures and continuing education programme or requirements
- insurance arrangements: director's liability insurance.

(ii) Non-executive directors

The following aspects may be addressed in the non-executive director's letter of appointment:

- the date from which the appointment is effective
- the period of appointment (e.g. three years)
- state that it is a contract for services (non-executive directors) and not a contract of employment (executive directors)
- termination procedures, for example, at the discretion of either party with one/ three months' notice or immediate, and indicative circumstances where immediate removal would occur
- the expected time commitment, of x number of days per annum, including attendance at all board meetings
- the legal responsibilities of a director
- the specific responsibilities expected in this appointment
- fees and expenses, the basis of payment
- whether and to what extent external professional advice may be sought at the company's expense
- outside interests, and management of any potential conflicts of interest
- confidentiality of information known during and after the period of the contract
- an anti-competitive clause for the duration, and a period after, the contract
- induction procedures
- directors' liability insurance.

On appointment

(i) Compliance and admin

On the appointment of a new director the following should be addressed:

- announcement of appointment – e.g. press release, update the website, inform staff
- grant of share options – consider if any award is to be made and, if so, put in place
- register of outside appointments – ensure a record is kept and updated periodically
- notify Companies House of the appointment within 14 days
- there may be other regulatory requirements, for example, FSA requirements
- any background checks required, for example, Disclosure Scotland Form
- issue contractual terms of appointment
- complete a confidentiality agreement including a restriction on joining competitors
- check if there are any conflicts of interest or the possibility of related party transactions
- director's liability insurance – prepare and issue an indemnification certificate
- access to financial statements, previous board minutes, company strategy and plans etc.
- prepare any introductory meetings with staff, other directors, visits to the company (headquarters and operational sites).

(ii) Director's (executive and non-executive) induction

New directors should be aware of the responsibilities associated with their appointment and be given as much background information about the company as possible, including a tour of the facilities, site visits, meetings with key personnel/ stakeholders, understanding the competition, understanding the key customers and the services or products and their unique selling points, meeting providers of finance and advisers etc. This allows them to make an effective contribution as early as possible.

After induction, there should be a formal programme of training and development for directors.

Appendix D

How is the company governed? – Suggested questions for board members

Provided below are questions designed to encourage debate about how a company is run and whether oversight processes could be improved. The questions should be considered in relation to the size and nature of the company. Answers to these questions, together with a copy of the company's key policy statements, can be used to form the basis of a tailored company manual.

The board role

1. Is the board clear as to what the business is supposed to achieve for its owners?
2. Has it set goals to be achieved?
3. Has it determined the values and policies that will be adopted by the business?
4. Has it reviewed the strategic options available, selected those to be followed and decided how they will be implemented and resourced?
5. Does it ensure that policies and plans are implemented and reviewed regularly?

Responsibilities of board members

1. What is the job specification of each director?
2. Collectively, what skills does the board require to run the company effectively?
3. Are there any skills overlaps? Gaps?
4. Is any training required, how is this identified and organised?
5. How are new directors appointed, reappointed and, if necessary, removed?
6. Is there a succession plan?
7. Is there a person nominated to understudy key functions, as defined in the risk register?

Matters reserved for the board

1. Are corporate plans, operating and capital budgets prepared on a regular basis?
2. Who is responsible for instigating, preparing, reviewing and authorising of corporate plans and budgets?
3. Does the board undertake subsequent evaluations of plans to ensure they were adequately prepared, and follow up action for future plan preparation if necessary?
4. Is there a business plan, a budget, and forecasted cash flow for the company and are these regularly monitored and, when necessary, updated?
5. Are actual results compared to budgets with variances investigated?
6. What are the procedures for preparing the annual financial statements?
7. Are all covenants reviewed regularly to ensure that they are not breached?
8. Are borrowings as cost efficient as possible or should they be renegotiated?
9. Have corporate values been articulated and communicated?
10. Agreeing content and frequency of health and safety reporting to the board.

Delegated authorities

1. Are company policies current, clear and consistent, compliant with legal requirements and detailed in the company manual? Who is responsible for these policies?
2. Who can open bank accounts and sign cheques, and what are the limits on these authorities?
3. Which members of staff have authority for general purchasing, what are the relevant procedures, and what are the limits of their authority?
4. What are the procedures for recruiting staff?

Board meetings

1. Is the number of meetings appropriate and is there an annual calendar of board meetings?
2. How many directors are required for a valid (quorate) meeting?
3. Is the management of meetings satisfactory with agenda papers sent out on a timely basis, sufficient time given to discuss all business, and minutes circulated promptly afterwards?
4. Do the minutes provide an adequate record of each meeting?
5. Communication plan with shareholders (including those who are not also directors).

Compliance matters

1. Have external advisers and service providers, e.g. an accountant, pension adviser, auditor, been appropriately appointed with an engagement letter that details the required services, a commencement date, the basis of fees, and reporting requirements?
2. Is there a timetable and project plan in place for producing the annual report and (audited) accounts within the regulatory deadlines for their submission to Companies House and HMRC?
3. Do the timetables and project plans detail what is to be done so that any replacement person could undertake the tasks?
4. Do all the directors have sufficient opportunity to review the draft financial statements before they are signed?
5. Which government departments need to be dealt with, e.g. HMRC, Health and Safety, DWP, which director is responsible for these contacts, and what are the timetables for doing so?

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