



# The role of the non-executive director

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Essentially the non-executive director's role is to provide a creative contribution to the board by providing objective criticism.

The 1992 Cadbury Report initiated a debate about the main functions and responsibilities of non-executive directors. Today, it is widely accepted that non-executive directors have an important contribution to make to the proper running of companies and, therefore, more widely to the economy at large. As the Cadbury Report said, they: "should bring an independent judgement to bear on issues of strategy, performance and resources including key appointments and standards of conduct."

There is no legal distinction between executive and non-executive directors. As a consequence, in the UK unitary board structure, non-executive directors have the same legal duties, responsibilities and potential liabilities as their executive counterparts. Clearly, it is appreciated that non-executive directors cannot give the same continuous attention to the business of the company. However, it is important that they show the same commitment to its success as their executive colleagues. It follows that non-executive directors are subject to the codified duties of directors contained in the Companies Act 2006 in the same way as executive directors.

All directors should be capable of seeing company and business issues in a broad perspective. Nonetheless, non-executive directors are usually chosen because they have a breadth of experience, are of an appropriate calibre and have particular personal qualities. Additionally, they may have some specialist knowledge that will help provide the board with valuable insights or perhaps, key contacts in related industries or the City. Of the utmost importance is their independence of the management of the company and any of its 'interested parties.' This means they can bring a degree of objectivity to the board's deliberations, and play a valuable role in monitoring executive management.

The Cadbury, Hampel and Higgs reports, some of whose recommendations are included in the revised Combined Code, stress that the board should include independent non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's deliberations. 'Independent' directors, are defined in the Cadbury Report as persons who "apart from directors' fees and shareholdings [are] independent of the management and free from any business or other

relationships which could materially interfere with the exercise of the independent judgement."

The Stock Exchange's Combined Code, that effectively codifies the main features of the Cadbury, Hampel and Higgs reports for listed companies, advises that the balance of executive and non-executive directors should be such that no individual or small group of individuals can dominate the board's decision-taking. Non-executive directors should comprise not less than half the board.

While much of the comment and discussion on non-executive directors tends to focus on listed companies, it is important to note that they can also make a valuable, albeit somewhat different, contribution to private companies. Indeed, there are a growing number of private companies, including relatively small ones, that are now actively searching for the 'right' non-executive director.

### The functions of NxDs

Non-executive directors are expected to focus on board matters and not stray into 'executive direction,' thus providing an independent view of the company that is removed from day-to-day running. Non-executive directors, then, are appointed to bring to the board:

- independence;
- impartiality;
- wide experience;
- special knowledge;
- personal qualities.

### The key responsibilities of NxDs

Chairmen and chief executives should use their non-executive directors to provide general counsel – and a different perspective – on matters of concern. They should also seek their guidance on particular issues before they are raised at board meetings. Indeed, some of the main specialist roles of a non-executive director will be carried out in a board sub-committee, especially in listed companies. The key responsibilities of non-executive directors can be said to include the following:

- Strategic direction

As an 'outsider,' the non-executive director may have a

# factsheet

clearer or wider view of external factors affecting the company and its business environment than the executive directors. The normal role of the non-executive director in strategy formation is therefore to provide a creative and informed contribution and to act as a constructive critic in looking at the objectives and plans devised by the chief executive and his or her executive team;

- Monitoring performance

Non-executive directors should take responsibility for monitoring the performance of executive management, especially with regard to the progress made towards achieving the determined company strategy and objectives. They are also responsible for determining appropriate levels of remuneration of executive directors, and have a prime role in appointing, and where necessary removing, executive directors and in succession planning;

- Communication

The company's and board's effectiveness can benefit from outside contacts and opinions. An important function for non-executive directors, therefore, can be to help connect the business and board with networks of potentially useful people and organisations. In some cases, the non-executive director will be called upon to represent the company externally;

- Risk

Non-executive directors should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible.

## Audit

It is the duty of the whole board to ensure that the company accounts properly to its shareholders by presenting a true and fair reflection of its actions and financial performance and that the necessary internal control systems are put into place and monitored regularly and rigorously. A non-executive director has an important part to play in fulfilling this responsibility whether or not a formal audit committee (composed of non-executive directors) of the board has been constituted.

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