

**ROLE OF THE NON-EXECUTIVE DIRECTOR (“NED”)
IN DIFFICULT MARKETS AND
ECONOMIC UNCERTAINTY AND
WHAT KEEPS HIM AWAKE AT NIGHT**

1. My definition of a good NED is one that ensures that the business is well run but does not run the business.

2. Qualities which are needed to be a good NED:-
 - 2.1 Good interpersonal skills and ability to manage conflict

 - 2.2 Sound judgment

 - 2.3 The ability to influence through clear communication

 - 2.4 Integrity

 - 2.5 The conviction to say things that need saying and, as a last resort, to vote with your feet

 - 2.6 To be commercially aware and to have board room experience!

- 3 Combined Code:-

The provisions of the Combined Code which sets out standards of good corporate governance, and the QCA Corporate Governance Guidelines, which assists in educating its members on best practice relating to NEDs - should be regarded as a benchmark for the standards required.

- 4 Other attributes and duties of a good NED:-
 - 4.1 The NED should be providing a helicopter view of the company and should not get entangled in the day-to-day operations.

- 4.2 He or she should be constantly challenging the MD and Executive Board. By asking the apparently simple questions about the business he or she can help the executive team to re-focus on the important issues.
- 4.3 Advise on strategy. A business without a strategy is a business without a direction or purpose.
- 5 In these difficult economic times and markets one reads of more fraudulent actions by companies and their executives and more hiding of price sensitive information etc.
- 6 For this reason NEDs should ensure more transparency with the executives, timely financial information and ensuring that internal control procedures are continually being reviewed.
- 7 Today, NEDs in the board room face an increasingly tough and challenging job.
- 8 New legislation under the Company's Act has ratcheted up the threat of legal action. Activist shareholders are all too ready to put NEDs under fire. This has made the role of the NED even more crucial and onerous.
- 9 Also, the NED sits around the table on an equal footing and with the same legal obligations as those who run the company on a full time basis.
- 10 Therefore, in these difficult economic times the focus of the NEDs should be on the various risks facing the business.
- 11 There should be an emphasis on:-
- 11.1 Internal controls
 - 11.2 Cash management/receivables
 - 11.3 Gearing of balance sheet
 - 11.4 Ensuring bank covenants are not breached
 - 11.5 Keeping customers and protecting markets
- 12 Non-financial risks should also be reviewed, e.g.:-

- 12.1 Retaining key personnel
- 12.2 Litigation
- 12.3 Environmental
- 12.4 Health and Safety etc.

13 The NEDs should ensure that the Executive Team fully understands the issues of the day and that they are complying with the Board's decisions at all times.

14 As they say you cannot beat experience and grey hair, as well as having the "scars and the T-shirt" and, hopefully, one can impart one's experience of difficult times to the Management Teams.

15 You might know of Sir Digby Jones who was once head of the CBI. He was a NED of a company called I-Soft and was criticised years ago in the Press. He said "We cannot be seen as Board Room policemen. NEDs can add value in so many ways but investigative policemen they are not".

16 In my opinion there should be a balance of being a policeman – ensuring there is good corporate governance and adding commercial value to the enterprise.

17 However, no-one has yet come up with a better way of dealing with the fact that the owners of businesses – the shareholders – have to hand control over to professional managers. Therefore, if corporate governance fails, capitalism fails. We therefore need to make corporate governance work.

18 The Combined Code and Corporate Governance which sets out standards of good practice in relation to issues such as -

- Board composition
- Remuneration
- Accountability
- Relations with shareholders

is seen in much of the world as the best model of corporate governance. The problem is not with the Code but the way it is applied.

19 Too often, people who should know better treat corporate governance as a matter of compliance with rules – but it is not.

The banks that have run into trouble complied and got ticks in all the boxes – so what?

20 Good governance is a complex mix but in simple terms it is dependent on two main things - the first is Board Room behaviour – are the difficult questions being asked? Is there effective challenge or is there an over-dependence on the Management's view?

21 The second, is making sure that the Board has a clear line of sight. If the Directors cannot see what is happening inside the business and are not getting good information, they will not know what questions to ask.

22 If the risk-management processes are not organised in a clear and methodical way then a handful of part-time non-executives do not stand much chance of overseeing them.

23 These two things, boardroom behaviour and connectedness to the organisation are inter-dependent. Therefore, there will be no real challenge for the Board Room unless the company makes it possible, which means that the Management needs to want it to happen.

24 In these difficult markets and economic times, I would like to share with you some of the concerns which keep me, as a NED, awake at night:-

24.1 It is impossible for a NED to know everything about a company in an average of 26.5 days per year. The issue here is therefore how does one accelerate both industry and company knowledge?

24.2 As Chairman of the Audit Committee, the depth and detail of the Audit Committee Agenda and getting to grips with risk assessment is particularly challenging.

24.3 Geographic diversity and cultural differences in many companies gives one cause for concern.

24.4 Technology and security risks in today's world is a worry.

24.5.1 Reputation risk – given that NEDs have to rely on others in the company and its control mechanisms, to keep matters under review, the fear of “what is not known” is an issue and a worry.

24.5.2 Legal proceedings against directors can result in reputational damage that can, in many cases, be irreparable.

I always try to have a legal representative at Board level to advise all directors on issues as they arise.

25 There are many challenges therefore being a NED, especially in an economic downturn.

Although we should not be policemen, NEDs need to be more vigilant and clearly understand our fiduciary duties, and need to clearly identify major risks of the company on whose Board we serve.