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TEN TIPS FOR CHOOSING A NON-EXECUTIVE DIRECTOR

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Hiring a Non-Executive Director is a big step for many smaller companies, especially when they have never had one before. What should you look for? Jeremy Thorn has been a Director of many boards, both large and small, in the UK and overseas, not only as 'a hired hand' but as a business founder and owner. He offers his thoughts

Most people don't hire Non-Executive Directors to be an extra 'boss' – and almost certainly, neither will you!

Rather, good NEDs will offer you sound independent counsel, strategic objectivity and even moral support when you need it, and indeed helpful challenge with no vested interests. They are bound by the Companies Act, just as any other Director is, to help ensure sound corporate governance to keep you 'legal'; not the least because they are 'jointly and severally liable' for your Company's legal compliance. More particularly, they might help stop you from falling into traps you didn't otherwise foresee, add another dimension to your business in terms of bringing in skills you thought you couldn't afford, and even introduce you to helpful contacts you never knew existed. And perhaps above all, they should help you to 'look around corners' while you and your team are focused on the day-to-day 'muck and bullets' of everyday business.

But how do you choose a suitable NED?

1. Decide what your business really wants from a NED

Some businesses primarily want access to new money, others specific technical advice, business skills they don't already have or new market entries and networks. These requirements of a NED must be your, your board's and your shareholders' choice. But I would encourage you to look a little further.

Many of the above requirements don't actually need a NED. Far more valuable to you may be much broader business experience in the round, interpersonal skills, sensitivity and emotional intelligence. And don't forget? If you appoint a NED, s/he is unlikely to provide immediate payback because you will have to invest some time in their deeper understanding of your business, just as they will. As with recruiting anyone, this shouldn't be a short-term relationship or you will never get the best out of it. And don't forget, 'people most usually get hired for what they know, and fired for how they behave!' (See Tip 10?)

2. Decide what *you* want from a NED

If you are wise, you will recruit someone whom you and your board respects and trusts. This could be somebody you already know, but it may just as likely be somebody you don't. (In fact, if you already knew them, perhaps you would already have invited them on your board if they were suitable?)

Note that you, your board and shareholders don't have to 'like' your NEDs! But you do have

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to be able to respect, trust and communicate well with each other as equals, with shared objectives and values. So personally, I would be very wary of appointing a leading light in your industry who wants to re-live their role as a past Executive Director or 'head honcho', or a specialist professional who wants to tell you how things 'should be done' from their past experience, and least of all anyone who focuses entirely on how it was in their old company. (You will know them when you meet them!)

3. Be clear what you expect

Most professional NEDs will hate finding out only after their appointment what was really expected of them. But you might be amazed how often it happens!

If you want access to money, say so. (Although I am personally very wary of the independence of a NED who is also a significant investor. Being a shareholder and a NED are very different roles, and being one of these doesn't necessarily assure the requirements of the other!)

If you really want specific skills or industry knowledge, say so, or you may have to kiss a lot of frogs before you find the person you want. If you want more available days in practice than you think may be welcome, say so early, or be prepared to be disappointed. (The public sector regularly falls foul of this by the way, just so you know and are ever tempted to apply yourself!)

If you may want your NED to make some accompanied visits to customers, suppliers or business partners to support you, especially overseas – all perfectly fair game by the way – then say so!

And if there are any 'black holes', in the accounts, in legislation pending, possible acquisitions (by you, or of you), or relevant family matters for example, say so!

The right NED candidate for you will be open to all your requirements and will reply honestly. Yes, they should have done their due diligence before joining you (see below), but it will be seen as a major breach of trust between you if you aren't as open as you can be.

4. Confidentiality

Building on the tip above, many companies will have their trade-sensitive secrets. But as any NED will be jointly and severally liable for the company's legal requirements once appointed, it would be a matter of serious bad faith to hide anything affecting these before appointment.

You can solve this issue easily by a Non-Disclosure Agreement, just as you would if you were seeking to buy or sell a business. If you have never seen one before, do ask your lawyer for a sample because they are usually readily available as standard 'boiler-plate' at minimal cost.

5. Due Diligence

You can often tell how professional a potential NED is by the questions they ask you.

Because a Non-Exec Director is seen in the eyes of the law as being just as responsible for the company's legal compliance as any other Director, be prepared for their formal 'due diligence' once they know they are at least in the running for appointment. Some questions may strike you as being quite sensitive. But if you don't answer openly and honestly, this may well lead to a failed relationship – and then you will have to start the process all over again. And if they *don't* ask you, you might well wonder if they are really up to the job!

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6. The NED Contract

As with Non-Disclosure Agreements, you will find that most lawyers can provide you with a standard NED Contract.

Most such contracts insist that the NED appointed is not an Employee, to protect you from the ravages of Employment Law, claims for unfair dismissal and the rest. There will also be, the usual safeguards about the NED's 'fitness to act' and provision for due notice of termination (most commonly 3 months). What you may not know though is that HMR&C requires all NEDs directly contracted in the UK to be put on the payroll and subject at least to Employer's NIC - even if they are not otherwise considered as 'employees'! You might be excused from this by hiring a NED through a service company, but note you will then certainly be liable to VAT for such services.

7. Induction

As with any employee, a NED should be properly inducted. Who is who in the business and is there a formal organisation chart? What is the company's stated purpose, vision and values? Who are the core customers and suppliers; what are the key products? What are the origins and company history? Where is the company going and what might stop it getting there? And even, where are the loos, how are allowable expenses approved and paid, and is a list of key contact details available? All perfectly obvious, if often forgotten!

Nevertheless, a proper induction process is important. If you have ever been a 'newbie' in an organisation, you will know yourself that how you are treated and informed in your first few days and weeks will probably influence all your future views and sense of shared commitment. I don't think NEDs are really very different from employees here, even if they may be a little more patient and understanding!

8. Appraisal

Once you have appointed your NED, it is no more than good practice for Board members to appraise each other, typically annually, and that should include the Non-Execs as well as the Executive Directors.

This should be a very constructive event for all and an experienced NED may well offer you several alternative approaches to make sure that it is! My own experience suggests that the secret to success is to make board appraisals as positive as possible, strictly confidential amongst those involved and with minimum bureaucracy.

9. Goodbye?

Eventually, the time should come for all NEDs, however successful, to move on. It would usually be considered very wasteful to appoint a NED for just a year or so, just as s/he was be starting to really understand how the business truly works. But it might be equally wasteful to keep the same NED for too long, Whether that is after 3, 5 or even 7 years, for example, any NED-relationship can become too cosy and unchallenging after a while, and can even produce a sense of dependency that may not be best for the personal development of the incumbent Executives.

My suggestion would be to agree an initial period of appointment at the very start, with an extension for a further period if mutually agreeable, but with a clear understanding that this will not be a formal appointment for life!

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10. And what did you *'really, really want'*?

Finally, do be clear why you are appointing a NED. It could be that you want an impressive 'name' on your company letter-head, but there will usually be far better reasons!

As with any senior appointment, NEDs are most often chosen for their business knowledge, skills and experience. However, do remember that you are also going to be building an important working relationship for quite a while, with someone whom you will seek to trust implicitly with no hidden agendas.

So it is important that you both feel you can work together productively. While you don't want someone who is possibly going to tell you how to run your business, you don't want someone who isn't prepared to stand up to you on occasion and even disagree with you. Equally, while you don't want someone who always seems to want to give their point of view without listening to yours, you don't want someone who seems to have no views at all!

And most of all? Do note that good NEDs can often be at their most valuable, not when everything is running smoothly, but when things are *not* going so well. So don't just choose a 'fair-weather friend', but someone with cool judgement, broad experience and wise counsel who can support you in both hard times as well as the good ones.

With all best wishes,

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Jeremy Thorn is a past or present Non-Executive Director of well over 15 different organisations over the last 20 years.

He is a frequent speaker and writer internationally on a wide variety of business topics and the author of several prize-winning business books. He is also a formally-trained Executive Coach and business mentor. His special passion is for helping businesses to reach their full potential, and the people who work within them.