

STRATEGICALLY SELECTING A BOARD THAT WORK IN THE BEST INTEREST OF YOUR COMPANY- Mojolaoluwa Olaifa #BoardroomswithMojola

A. Background

It is understood that a duly incorporated company possesses a legal personality i.e. is seen as a person distinct from its founders. It has the rights of a physical person and can buy, sell, sue or be sued. It then becomes a valid question, how does a company which is an abstraction perform all of these functions? Through its officers e.g. Board of Directors, Employees, Contractors etc.

Try to visualize this



Here's your company

He thinks, strategizes and plans with his brain (Directors) and then carries out the instructions with his hands, mouth, legs etc. (employees that carry out the day to day functions).

It would seem that since the other parts of the body only carry out instructions from the brain, it is therefore very important that the brain functions optimally. That the brain can properly assess situations, has the ability to reasonably anticipate risks and can position itself efficiently to handle such risks, can deliberate on matters and come up with solutions, basically trusting the brain to keep the body alive and well. This is the job description of any board of directors in the simplest of terms, therefore selecting your board has to be done without bias, sentiment and logically.

B. Factors For Consideration

Various factors influence the appointment of directors to the board, some of which include but are not limited to:

- a. The desire to keep ownership/leadership of the company within a closed group
- b. Leveraging on the technical expertise of certain individuals

- c. Bartering a piece of ownership for financial investment in the company
- d. Capitalizing on the goodwill and social capital of prospectives
- e. Aligning with global ESG standards i.e. board diversity in age, gender, stakeholder experience, tenure, ethnicity etc.
- f. The loyalty of a person to the existing leadership

Many founders/CEOs have been known to include members of their immediate families and friends on their boards however this is common with private companies only. Companies that are publicly owned and companies that have received funding from external parties have stricter rules guiding the appointment of leaders and the reasons are clear. People need to know that their financial commitments and investments in your company are secure.

It is also possible to assemble a board of directors where each member serves a different purpose from the others i.e. a board constituted by a cocktail of considerations. It is important however to understand the various classifications and types of directors in order to make an informed decision on whose strengths fit into what position.

C. Who Exactly is a Director?

A Director is the alter ego of a company. Directors of a company are people duly appointed by the company to direct and manage the business of the company. A company acts either through its members in general meeting (shareholders), its board of directors, or through officers or agents appointed by or under authority derived from, the members in general meeting or the board of directors. A **director** includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

The most serious duties of theirs is to carry out the obligations and instructions of its company. The duties of a director means that he has to be reasonable, open and honest with his company. In order to be a director in good faith, one has to make a diligent inquiry into the affairs of the company and make decisions using his best judgement.

D. EXECUTIVE DIRECTORS v. NON-EXECUTIVE DIRECTORS

Directors can be classified into two broad categories. Every director falls into one of these two categories which are Executive and Non-Executive Directors.

1. Executive Directors

They are full timed or salaried Directors who are appointed to take charge of day-to-day running of company affairs. They occupy dual status as alter ego as well as an employee of the company and have a contract of service. This means that as an alter ego, he sits at Board meetings formulating policy directions for the company, and as an employee, he is in charge of implementation of the policies of the company.

They are responsible for the day-to-day running of a company and oversee all operational activities, they also assist Board of Directors in formulating strategy. They are basically responsible for managing the affairs of a company on a day to day basis. They are responsible for efficient running of the enterprise and hence, are accountable for all its duties as well as decisions. To be able to properly monitor progress and to accordingly take steps in case of deviation from plan or target, they review operations regularly and have the authority to issue directives.

2. Non-Executive Directors

As the management of a company is responsible for carrying out the core functions of the business, it is essential that part-time directors do not participate in any manner in the management . To ensure this, they have to be explicitly

excluded from executive duties and have their role restricted entirely to sit at Board meetings to organize and direct the affairs of the company. They are not involved in the day-to-day management and they are employees. These are part-time directors who are not entitled to remuneration but only reimbursement for their out of pocket expenses in carrying out the company affairs . It is important to point out that the same standard of care in relation to the director's duties to the company shall be required for both executive and non-executive directors.

They are appointed along with the executive directors to provide a collaborative environment of diverse perspectives and experiences. They bring valuable insight and contribute to the company's growth strategy by serving on subcommittees and committees. They are not involved in the day-to-day management of the company; instead they are responsible for considering and recommending business strategies, evaluating management performance, and monitoring the financial performance .The board determines that it is required to contract one or more directors/executives.

Non-executive directors need to have a proper system of time management and scheduling so to avoid any direct or indirect conflict of interest.

E. OTHER TYPES OF DIRECTORS OF A COMPANY

1. Managing Directors

The Managing Director is the driving force of an organization. He must set up strategies and goals to ensure stability and growth. He is usually either appointed from among the Directors or from the employees of the company to oversee the management of the day-to-day business of the company. Once appointed, he is regarded as an employee of the company. He holds a dual position as an employee and alter ego. The Managing Director is the employer's representative with statutory powers. The managing director takes care of the overall management of the company. As an employee he can sign documents on behalf of the company. His decision is final for all administrative matters. It is common for the managing director to have a background in business, accounting and finance or entrepreneurship.

2. Alternate Directors

This is the Director who is appointed to take the position of another Director in the event of absence. The Alternate Director generally takes part in company's board meetings when the Director cannot attend. However he does not have any binding legal powers. Also the Alternate Director has no right of address without the permission of the Chairman unless it is a board meeting of his own appointment. It is the Director that **appoints** his alternate but is **approved by the resolution of the General Meeting i.e.** director appoints alternate to attend board meetings when he cannot attend

The Alternate Director ceases to hold office whenever the substantive Director ceases to hold office

3. Life Director

This is a person appointed a director for life as a director of the company, which means that he is not subject to the rotation of directors but he is removable where he is disqualified or vacates the office.The position of life director is a highly responsible position as the director can represent the board in all its decisions.

4. Nominee or Representative Director

Where a company is a Director in another company, the company is obliged to appoint a nominee to represent it in the Board for a fixed period. The Nominees are appointed by the Company to serve on the Board or Committees of the Company for a fixed period.Nominee or representative directors perform an important role within a company, by 'acting' on behalf of the company.

5. Shadow Director

This is a person who is not expressly made a director of a company but in accordance with whose directions the real directors of the company are accustomed to act. NOTE- nobody appoints him. Such professionals may be

engaged to advise or regularly apprise the directors on a particular matter and the directions given by them are expected to be complied with. They are known as "shadow directors". If a company is in the habit of regularly following directions given by such persons, they will be treated as shadow directors. Further if a person has such financial control over a company that its real directors take into account his wishes or views in taking major policy decisions affecting the company, he will be treated as a director. The shadow director is frequently in a position to gain favours from the company in return for the assistance he renders.

6. Chairman

The role of the Chairman is to preside over the Board and General meetings of the company and he/she is also a director. The directors may elect a chairman of their meetings and determine the period for which he/she is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within one hour after the time appointed for holding the same or he/she is unwilling to act, the directors present may choose one of their number to be chairman of the meeting.

The Chairman leads the Board and serves as the face of the company. He is accountable for making sure the company is on track and meeting business objectives. He holds the power to set the board's agenda, summarize and describe the actions and decisions of former boards and take responsibility for future activities.

7. Casual Director

Where there is a vacancy arising out of death, resignation, retirement, or removal of a Director, the Board of Directors shall appoint new persons to fill any such casual vacancy subject to approval by the members in general meeting and if not approved, he shall cease to be a director. Whenever there is a vacancy in the board, a new director will be appointed by the board and he will have the same power as the initial directors to act according to the articles. The appointee can be appointed as a director so long as it can be approved by the members in the general meeting. If not approved, he will have to go.

Crucial to state here that the new appointee steps into the shoes/tenure of the removed or dead or retired director. He merely enjoys the unexpired residue of the term of the initial director.