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# Introduction

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Non-executive directors (NEDs) play a fundamental and increasingly important role in the governance of a company. Independence of thought and action is a duty expected from all directors, but the non-executive director should be able to bring an additional and challenging objectivity and independence through their lack of involvement in the day-to-day, habitual operational activities of an organisation. They need to have the ability to be able to 'see the wood through the trees'.

These checklists for non-executive directors are designed to deliver a number of differing stimuli.

- ▶ Clarity of understanding.
- ▶ Reminder of key requirements.
- ▶ Questions to challenge self and others.

These checklists are neither prescriptive nor exclusive. They will not all be relevant to every non-executive director and they do not cover everything that a non-executive director needs to know. However, I am confident that there will be something challenging contained herein for every non-executive director. The book should be used to sense-check specific aspects or to dip in and challenge oneself.

Every organisation is different, and every director is different.

There is very rarely, if ever, only one right answer in the world of corporate governance. Likewise, there is never only one right answer in the interpretation of the finances of an organisation.

Non-executive directors, in particular, need to take the time to understand and consider the breadth of possible answers before decisions are taken around the board table.

My experience of working with many boards and many directors suggests two gaps that are often evidenced in the boardroom.

- ▶ Lack of financial literacy – the ability to look at, read, consider and challenge a set of figures. After all, they underpin the liquidity and viability of the company.

- ▶ Lack of professional scepticism – the ability to step back and challenge what is being presented from a perspective which eliminates bias.

It is important to enjoy the role of non-executive director, but it is not for the faint-hearted.

Mark Wearden MSc FCCA FCIS

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# Annual general meeting

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## Introduction

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A private company does not need to hold an annual general meeting (AGM) unless the constitution requires this to happen. All procedural matters for general meetings (notice period, voting etc) will usually form part of the articles of association of the company.

A public company must hold an AGM within six months of its accounting reference date. Where a company's accounting reference period is shortened, the AGM must be held within three months of the giving of the notice to shorten the accounting period. A public company may not need to hold an AGM in any particular calendar year if it has a financial year in excess of 12 months.

The 'ordinary' business of the AGM is to:

- ▶ receive the most recent accounts;
- ▶ consider the remuneration report (quoted companies only);
- ▶ confirm the declaration of a final dividend (where appropriate);
- ▶ approve the remuneration of the auditors; and
- ▶ re-elect the auditors and retiring directors, if necessary.

Any other business is deemed to be 'special' business. The majority of the following points are therefore applicable directly to public companies with their AGM requirement but may also be of use as reference points to companies who choose to have an AGM.

## NED checklist

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- ▶ Is the AGM being held within the required time (i.e. six months of the financial year end for plcs)?
- ▶ Is there a final proposed dividend payment which needs AGM approval?
- ▶ Does the directors' remuneration report need to be approved at an AGM (this is obligatory for a listed company)?

- ▶ Is the appointment and reappointment of directors clear and does it require approval at an AGM? Will the board balance continue to remain appropriate and in line with any code, shareholder or stakeholder expectations?

## Procedure

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- ▶ The company secretary will normally handle all matters pertaining to an AGM but a NED, as a director, needs to be satisfied that:
  - ▷ the correct notice has been given to members of the company;
  - ▷ that the notice of AGM, any proposed resolutions, and any required voting (including the use of a proxy) have been prepared and circulated within the required timescales;
  - ▷ the timing and venue for the AGM is appropriate for the expected attendance to ensure an appropriate opportunity for challenge and debate if required; and
  - ▷ all communications are clear and appropriate for maintaining the reputation of the company.

## Notes

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- ▶ Remember that an AGM is an annual meeting for the owners to maintain their oversight of the control of their investment.
- ▶ The procedural requirements for any additional 'general' meetings of shareholders, historically referred to as extraordinary general meetings (EGM), will be covered in the Companies Act 2006 (CA2006) and/or the constitution of the company – as with the AGM.

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# Annual report and accounts

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## Introduction

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All UK limited companies (ltd and plc) are required to submit a report to Companies House and to their shareholders at least annually, underpinned by the financial statements dated at the end of each financial year of the company.

The contents and format of the financial, non-financial and narrative aspects of the report are determined by the size and nature of the company concerned.

The report is signed by a named director of the company on behalf of each director of the company.

Traditionally, such reports have been viewed as an historic report of the directors to the shareholders as at the year-end date. Driven, at least partly, by the strategic report expectations within CA2006, reports for all companies except small companies now contain a greater level of strategic projection and commentary from the directors. Combined with enhanced stakeholder awareness and the speed of media and social media communication, this has led to year-end reports being viewed by many as a future-looking as well as a historic report. This perspective, and such a reliance, has not yet been tested in law.

## NED checklist

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- ▶ Understand the reporting requirements for the size of company of which you are a NED, remembering that the report is issued in your name.
- ▶ Enquire and have confidence in the process that leads to the production of the final annual report and accounts – where there is extensive narrative, who is the compiler and author? The call from shareholders is for a more focused and combined approach to reporting, not just a series of separate reports.
- ▶ As a director, do you have the opportunity to review financial, non-financial and narrative aspects of the report in sufficient time to enable constructive challenge and input, if required?

- ▶ Ensure that the final version is debated by all directors during a formal minuted board meeting, and the appropriate resolution is approved to put the report and accounts to the members for approval in the AGM.

## Requirements

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- ▶ Small and micro companies under CA2006:
  - ▷ minimum financial information of balance sheet at year-end date, with any appropriate notes; and
  - ▷ a short and formulaic directors' report.
- ▶ Medium-sized companies under CA2006:
  - ▷ more detailed financial information including an income statement and cashflow statement to supplement the balance sheet;
  - ▷ a directors' report;
  - ▷ a limited strategic report; and
  - ▷ an auditor's report.
- ▶ Large private companies under CA2006:
  - ▷ detailed financial information;
  - ▷ a directors' report;
  - ▷ a detailed strategic report, including an increasing range of wider stakeholder and corporate social responsibility (CSR) information; and
  - ▷ an auditor's report.
- ▶ Larger private companies under CA2006 as enhanced by the Companies (Miscellaneous Reporting) Regulations 2018:
  - ▷ all the requirements for 'large' companies; and
  - ▷ governance reporting using either the Wates Principles or an acceptable alternative on an 'apply or explain' basis.
- ▶ Public listed companies:
  - ▷ all the requirements for 'large' companies; and
  - ▷ governance and other reporting in accordance with the requirements of the Listing Rules: currently, the application of the UK Corporate Governance Code 2018 on a 'comply or explain' basis.

## Notes

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- ▶ Always remember that the Companies Act requires the annual report and accounts to be 'consistent with the size and complexity of the business'.

## Further information

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- ▶ The Chartered Governance Institute: guidance note: 'Contents list for the annual report of a UK company'.