These Guidance Notes offer an outline of the relevant legal provisions, but they are not comprehensive and should not be relied on as authoritative. Specific advice should be obtained on any particular issues.

Introduction

In the twenty first century working patterns have changed. With the quest for a better work life balance, forced redundancy and lesser job security, economic factors, and changing trends in early and ordinary retirement, an increasing number of executives and business people are now forced or chose to engage in a more flexible way of working. In doing so, they seek to exploit their experience, skills, contacts and client lists.

There are a number of ways that this can be achieved, as a full time option or as part of a “portfolio” career offering the executive flexibility, potentially significant rewards and challenge. Businesses can also benefit from obtaining expertise, contacts and sales without incurring a major upfront liability, either economically or as an employer, rewarding only the successful.

The first questions often asked by the client business and by the consultant or introducer are “What is a consultant worth?” and “What type of arrangement will be best?”

What is a consultant worth?

The answer to this question is not always an easy one to answer but in reality a consultant is probably only worth what a client will pay for the consultant’s time and services, or a proportion of the value that is achieved! If the consultant is directly selling his time – whether on an occasional basis, a one off project, or an ongoing or recurring basis - a good starting point may be to take the average salary for a similar employed position in that industry, add on the “hidden” value of elements that an employee will get but are not available to a self-employed consultant (such as other benefits, sick pay, pension, statutory employment rights and holiday entitlement) and calculate an appropriate hourly rate. The consultant may also need to take into account other expenses particularly those which consultancy status will require, for example, professional fees, the cost of running an office – even if from home – and professional indemnity and other insurances. The consultant will then need to assess whether this hourly rate is profitable and a realistic and competitive rate in the market. Some thought is also needed on whether to offer a reduced daily rate or a retainer rate, reflecting a volume or guaranteed commitment of work. Then it’s over to the consultant to sell his or her services and negotiate with the client!
If considering a Board or Non-Executive Director role the level of remuneration will probably be based on a daily or annual rate based on an agreed level of commitment – perhaps two or three days a month - and may range from nothing except expenses in voluntary positions (especially in the public and charitable sectors) to a daily rate. NED roles may pay more and will be based on more commercial rates reflecting the director’s skills and experience, the role and responsibilities, the time commitment and the size of organisation. Rates for Chairs may also be higher and in some organisations are the only paid roles on the Board. Again a good starting point may be to calculate a director’s worth as if a consultant and negotiate from there, particularly for NED positions in commercial businesses.

The IoD’s Business Information Service (businessinfo@iod.com, 020 7451 3100) can provide information on remuneration levels particularly at Board and senior executive levels in various sectors, locations, industries and for senior employees. Information on remuneration levels can also be obtained by reading job supplements and in advertisements in national newspapers and industry publications.

Other types of more entrepreneurial arrangements including those outlined below – Commission, Introducer and Referral arrangements – will normally be based on a “no win, no fee” success arrangement, in which the consultant or introducer will be paid a fee or commission – sometimes called a “finder’s fee” - based only on what is brought into the arrangement, the value of the deal or specific targets reached. In some cases a basic retainer payment may also be paid plus a – potentially lower - success fee or bonus for business introduced or targets met.

In all cases consider whether or not rates are inclusive or exclusive of the consultant’s expenses (such as mileage, other travel, hotel accommodation, telephone and office costs) and whether these will be reimbursed over and above the agreed remuneration rate. In some cases the consultant may absorb some or all of these in his or her rates. You may also need to consider the need for the consultant to register for VAT and make it clear whether that is to be added on.

**What type of arrangement will be best?**

When seeking to enter into a flexible role – as either a client or consultant / introducer - there are a number of options available (excluding full or part time employment) including:

- NED and board roles;
- a consultancy arrangement based solely on remunerating the consultant’s time;
- a commission / introducer / referral arrangement with remuneration based upon the introducer’s success (“CIR arrangement”).

It is worth noting that the consultant / NED / introducer will have to give some consideration at the outset of the best way to conduct his or her business – whether to be self employed or operate through an incorporated limited company or even a limited liability partnership. The question of whether to incorporate or not is dealt with in greater detail in the IoD factsheet “Should I incorporate or not?” If considering an NED role you should also consult the IoD factsheet “Terms of appointment for an NED”. Both are available from the IoD’s Business Information Service.

**Commission / introducer / referral arrangements (CIR arrangement)**

A **CIR arrangement** is in effect a distinctive style of consultancy arrangement, used where the client (a provider of goods or services, or a business wishing to achieve an agreed purpose or target) wishes to engage the introducer (the consultant), to introduce suppliers or customers in order to generate more sales and increase the client’s...
customer base or to facilitate a purpose – such as the purchase of an asset or takeover of another business. The introducer will earn a **commission from the client** in return for his or her successful efforts.

An introducer differs from an agent as he does not do any selling of his client's products or services themselves, but rather will refer a potential customer on, either by simply informing the customer of the goods or services provided by the client, or by actively passing potential customer’s contact details on to the client. Once the **introduction** is made, the introducer steps back and will have no further role in the relationship between the client and the customer. The negotiation, selling and supply remains the sole remit of the client.

The exact workings of the CIR arrangement may vary in a number of ways depending on what the introducer can offer – for example the extent of his contact list, his expertise and business skills – and what the client wants, for example:

- The client may wish to secure a contract with only one customer, perhaps in a new market or geographical region, who may be specifically identified or not. Where the target customer is not named, the client may define criteria establishing the type of customer sought.

- The client may wish to establish and reward the creation of an ongoing business relationship (OBR) with the new customer which will lead to a consistent future income. An OBR will be deemed established after a certain number or value of transactions as defined by the client.

- The client may not have in mind any one particular customer to target, but rather is simply seeking to obtain new customers and widen its client base, or sell into a new market. If so the introducer will receive a **fee or commission** for all transactions that occur between any customers introduced in a set period.

- The fee or commission may be earned only in respect of the first transaction between the client and the customer or may be calculated over a longer period, even extending into a “trailing” commission allowing for payments after the end of the actual agreement, provided the customer remains loyal.

- A finder’s fee – based on a percentage of the value of a deal - may be agreed if the introduction is for a specific contract, project, or sale of an asset or business.

- Arrangements can be set up to operate on a fixed fee or percentage basis, with payment upon the introduction itself, upon the first transaction, or both or at other specified points. The inclusion of a detailed fee structure also permits more detailed or complex fee arrangements to be incorporated.

- The obligations of both parties including, for example, whether the client will be responsible for providing marketing materials to pass onto potential customers.

- Non-competition and confidentiality arrangements may be imposed on the introducer both during and after the end of the agreement – in return it may be agreed that some customers remain the property of the introducer and are excluded from such restrictions. The arrangement may be exclusive in terms of customers, territory or products.

- When, how and in what circumstances the agreement may be terminated; perhaps after a fixed time, for poor performance, breach of contract or late payment?
In most arrangements if the introducer is unsuccessful and fails to introduce new customers or business he will earn no commission or fee. In this respect CIRs are often a “no win – no fee” type of agreement.

Please note that some industries may necessitate special agreements - such as those created in accordance with FCA rules or the Financial Services and Markets Act 2000 covering the introduction of clients for financial services, such as insurance products or Investment advice.

Furthermore, an arrangement which creates a principal – agent relationship, for example where the agent directly sells goods to customers will be governed by specific agency provisions where the agent may have enhanced statutory rights and greater protection.

The CIR agreement

As with all arrangements between two parties it is best to establish clearly the terms of the contract by having an agreed written document. Due to the many variations possible in CIR agreements it is impractical to provide one standard agreement that suits all arrangements but a simple agreement may contain clauses covering the following:

- Definitions and Interpretations
- Appointment of Introducer and (non) exclusivity
- Method of Introduction
- Obligations of the Client
- Obligations of the Introducer
- Fees and Payment
- Relationship of the Parties
- Anti-bribery provisions
- Non-competition
- Confidentiality
- Dispute resolution
- Termination
- Notices & Service
- Jurisdiction
- Schedules like: Product and Fee Schedules, and Prospective Client Criteria

Obtaining legal advice is recommended when entering into a CIR arrangement.

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This Factsheet is one of a series produced by the IoD Directors’ Advisory Service. It is intended as a general introduction to The subject, and is not a definitive guide.

If you would like specific advice, please contact the Directors’ Advisory Service on 020 7451 3188, businessinfo@iod.com. The service is free and is exclusive to members of the IoD.

116 Pall Mall, London SW1Y 5ED
April 2015

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