Regulatory Responsibilities of Executive and Nonexecutive Directors: An International Overview

Checklist Description

This checklist provides an overview of the regulatory responsibilities of executive and nonexecutive directors.

Definition

From a legal point of view, there is no difference between the executive and nonexecutive directors in terms of their responsibilities towards the company and its stockholders. It is recognized, however, that executive directors have an active role in directing the company's affairs for the benefit of, and in the best interests of, the stockholders. The executive directors—and especially the managing director—have overall responsibility for the performance of the company's business. The nonexecutive directors have a supervisory and balancing role, controlling the activities of the executive directors and the board in general.

The directors are responsible for the company's books and accounts and are responsible to stockholders and investors for the company's activities and results. They must act in good faith, in the best interests of the company's business and stockholders. Any conflict of interest with the company's business must be declared and approved by the board and, in certain circumstances, by the stockholders at a general meeting.

Directors must always act with due skill and care and must keep up to date with the needs of the company and its business. They must also consider the needs of the company's employees.

Directors have a responsibility to establish the company's objectives and policies and, once these have been established, to monitor their development and progress. They also appoint the company's senior management.

Directors have an active duty to comply with money-laundering regulations, which are now established internationally. In certain circumstances (when, for example, nonexecutive directors supply their services to the company via another business), they will have to register with certain government departments for the purposes of the money-laundering regulations.

Advantages

• Regulatory responsibilities enhance the role of a company's directors and guide their direction of the company's business.
• These responsibilities also reduce the risk of fraud and nonperformance, in the interest of the stockholders.
• The regulations give stockholders and investors the confidence to invest in companies and enable them to follow the directors in the performance of their responsibilities.

Disadvantages

• Compliance with the regulatory responsibilities can be expensive in terms of both time and money. It requires an active training program and professional advice.

Action Checklist

• Make sure that you appoint the right individuals as executive and nonexecutive directors. Executive directors will have an active role in the day-to-day running of the company while the nonexecutive will play more of a guiding role.
• Stress to your chosen appointees that all directors, executive and nonexecutive, have, in view of the law, equal duties and responsibilities.
• Establish training programmes that will allow the directors to keep up to date with any changes in the law in respect of the running of the company, their duties and responsibilities.

Dos and Don’ts

Do
• Put in place a good training program that will keep the directors’ skills up to date with their regulatory responsibilities.
• Obtain legal and professional advice regarding any changes in the legislation governing directors’ responsibilities.

Don’t
• Don’t ignore the importance of complying with the regulations governing directors’ duties and responsibilities.
• Don’t underestimate the need for proper training of directors and professional advice to help them fulfill their responsibilities.

More Info

Books:

Article:

Websites:
• Institute of Directors (IoD; UK): www.iod.com
• National Association of Corporate Directors (NACD; US): www.nacdonline.org

See Also

Best Practice
• Boardroom Roles
• Corporate Board Structures

Checklists
• Directors’ Duties: A Primer

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