

SINGAPORE INSTITUTE OF DIRECTORS

STATEMENT OF GOOD PRACTICE

EXECUTIVE DIRECTORS HOLDING NON-EXECUTIVE POSITIONS ELSEWHERE

Introduction

Is it advisable for an executive director, whether the CEO, CFO or COO or any other director holding at the same time an executive position, of one company to be appointed to the office of non-executive director of another company outside the group in which he is employed as executive director? Such appointments can be said, under the right circumstances, to be in the interests of the parties concerned:

- **From the employing company's perspective:** it will gain from the executive director's own individual development, which has been accelerated. The executive director will have the experience and knowledge to be able to contribute in more ways to the employing company's board. He can incorporate and adopt best practices and characteristics from other industries, and will have the increased opportunity of creating new business relationships in the future;
- **From the other company's perspective:** it will acquire a director who, because of his or her executive position with the employing company, will be cognisant with general management issues and a fresh and independent perspective will be brought to the board.
- **From the market's perspective:** in Singapore, in particular, where there is a lack of competent persons suitable to be appointed as non-executive directors, such "cross-pollination" of appointments between companies should be viewed as a good way of increasing the pool of competent directors available for board positions. In addition, having an interlocking network of directors has on the whole been proven to be effective in helping boards to mature and in the sharing and the promotion of good governance practices amongst companies.

General principle

The underlying principle is that the paramount duty of an executive director, particularly if he or she is also the CEO of the employing company, is to that company. As an executive director, he/she would owe fiduciary and statutory duties as an employee to the employing company. Therefore, with any external appointment, attention must be focused on avoiding:

- any conflict of interest arising as a result of the executive director serving on the board of both the employing company and the other company; but if it does exist or potential conflict is foreseeable, full and complete disclosure should be made to the board of the employing company and consent must be obtained before taking up the appointment with the other company. In the event that the conflict cannot properly be resolved, he/she should be prepared to resign from the board of the other company;
- any conflict of interest existing between the employing company and the executive director as a result of him/her taking up the position with the other company. In particular, the executive director's appointment to another company or organization should not materially interfere with the proper and effective discharge by the director of his or her duties and responsibilities with the employing company and should there be any conflict of interest arising at any time between his or her commitments to either company, then the interests of the employing company should take priority; and
- any misuse of confidential information. Although directors should be discerning enough not to leak any confidential information belonging to either company, they should be reminded that there can be potential legal issues if they are not careful with the handling of such information.

Some other considerations

There are various considerations to be borne in mind when deciding how many external appointments an executive director should accept or if he should hold any such external appointments at all. The director's time commitments, his/her executive position in the employing company, the growth status of that company, whether the companies are for-profit or not-for-profit organizations, and the stage of the director's career with that company (including whether the director is approaching retirement) should all be taken into account in the appointment or re-appointment process. Ultimately, it should be a decision for the respective boards and nominating committees to take, together with the CEO or executive director concerned, on a case by case basis. There is no optimum number or limit of appointments for any specific director should hold that can be prescribed across the board to all companies and individuals, as the multitude of factors and differing circumstances render each decision necessarily subjective. The relevant boards and nominating committees should nevertheless assess or evaluate the performance of its executive directors in the light of his/her competing commitments arising from other appointments elsewhere.

Conclusion

As we have seen from the above discussions, there can be advantages from the corporate perspective in allowing executive directors to hold non-executive positions in other corporations or organisations if the circumstances are appropriate. At the end of the day, the boards and nominating committees of both companies and organizations will have to carefully consider whether the director concerned has the resources, knowledge, ability and experience to successfully balance the commitments to both companies and organizations such that there is mutual benefit to all parties. The process of examining and weighing these issues should be undertaken in an honest and open appraisal, and the director concerned should be frank in giving his or her feedback, so that difficulties in the relationship and in his or her performance can be pre-empted from arising in the future.

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