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Advisory Boards

13 January 2013 - In her excellent article, Ten Tips to Creating an Effective Advisory Board, Geri Stengel, writes as follows:

“You don’t need to navigate unfamiliar waters alone. Put together a good board of advisers, and you’ll create a powerful asset that can make a huge difference when you need to get objective advice, scout the marketplace, gauge future trends, seek new strategic positions, have introductions made or build repeat customers.

Unlike corporate boards, advisory boards have no fiduciary responsibility and their advice is non-binding. Some are hands-on, meeting monthly or more, even getting involved in the daily grind. Others meet quarterly, with an eye to the big picture. Many consist solely of interested outsiders, but a good number include investors as well. What all such boards share is this: They advise, evaluate and play devil’s advocate. Here are some guidelines to follow when building an effective advisory board.

1. **Determine the Objective of Your Advisory Board:** Advisory boards can be general in scope or targeted to specific markets, industries or issues such as adopting new technology or going global. They provide timely knowledge about trends and competitors, as well as identifying upcoming political, legislative and regulatory developments. They can help you enter new businesses and look at your own operations with an open mind. Advisory boards can also be made up of customers and prospects who provide insights into product development and marketing issues.
2. **Choose the Right People:** Of course, when forming a board you need to understand its purpose, but you also need to know what specific skills to seek. In general, look for diverse skills, expertise and experience. You want members to be problem solvers who are quick studies, have strong communications skills and are open minded.
3. **Big names can be a bonus ... but not always:** Getting a heavyweight on your board of advisers can give you credibility, but it’s also important to have members who are going to spend the time to give you thoughtful advice or are well connected and willing to make introductions.
4. **Set Expectations:** When inviting a prospective member to join your advisory board, you should lay down the ground rules about what is expected in terms of time, responsibilities and term of office. Specify the areas in which you’re seeking help. If the advisory board is going to discuss issues that include private information, members should be notified that they will be asked to sign a confidentiality agreement.
5. **Compensate Your Advisory Board:** Depending on whom you are asking and how involved you need them to be, compensation can vary from just providing food to covering expenses to stock options to cash payments to a combination of the four. Keep in mind that your

members will likely benefit themselves in a variety of ways. Being on your board will expose them to ideas and perspectives they may have otherwise missed. It will also expand their own networks and provide them with a way of giving back.

6. **Get the Most out of Advisory Board Meetings:** Prepare for meetings well in advance. Choose a site that is comfortable and free of distractions. Careful thought should be given to developing the agenda and managing the meeting. Solicit input for the agenda, and distribute important information ahead of time. Run the session as you would any professional meeting, and follow it with an action plan. The facilitator should know which experts to draw out and how to stimulate a dialogue. He or she should be result-oriented, as ideas without action aren't worth much. The minutes should be written up and circulated to top management. The notes should include recommendations on key issues.
7. **Ask for Honesty:** An advisory board must be open and frank, so don't be offended if you hear things you don't like. Your board will also suggest ways of correcting the problems they identify. If appropriate, encourage members to tell you about their mistakes so you can avoid making the same ones. You can learn a lot by finding out what other people did wrong.
8. **Consider Alternative Feedback Methods:** Getting the entire board together on a regular basis may not be possible. Instead, meet or have conference calls with specific members about topics relevant to their expertise as needed. E-mail is a great way to reach everyone and have them respond to you at their convenience.
9. **Respect your Board's Contributions:** Don't abuse or waste their time. Listen to what the board says. Sometimes, a business executive is so close to an issue, you can't see the forest for the trees. But remember: This isn't a corporate board, so you don't have to do everything they suggest. Ask yourself, "Does this work for my company? Am I comfortable with that?" Then make a decision.
10. **Keep Board Members Informed:** Once they're on the board, keep members excited about your business by giving them updates at times when you aren't soliciting their advice. The fact that they've agreed to be on your board means they care about your company, so keeping up-to-date will help them be of greater value to you. Remember that these people are evangelists for the company.
11. **Fire Bad Board Members:** If you realize you've made a bad choice, get rid of him or her. Unlike a board of directors, advisers can be replaced without a lot of legal headaches."

In South Africa, following the rest of the world, it often occurs that a new or small business decides to have an Advisory Board in order to benefit from the experience and knowledge of those persons who are not prepared to accept board appointments due to the liability attached thereto. However there has been increasing concern about the need for effective measures to hold those who exercise a significant degree of actual influence or control over the management of companies accountable for their conduct. The formulation of appropriate mechanisms for doing so is particularly problematic where the influence or control is often of an indirect nature.

The concept of a 'shadow director' was introduced into English law almost a century ago for regulating people who exercise indirect influence or control by giving instructions or directions to a company's board of directors which the directors are accustomed to obey. Since then several other Commonwealth jurisdictions have also enacted similar specific provisions on shadow directors. South Africa has not followed suit. The Companies Act 2008, as amended does, however, introduce the concept of a 'prescribed officer' and it appears from the definition of that term (still to be interpreted by the court) and the provisions applicable to it that it may have been intended, at least in part, to address those who act in ways analogous to shadow directors. Given the problematic issue as to whether shadow directors are subject to fiduciary duties and liabilities, whether a "prescribed officer" includes a shadow director or not and section 76 of the Act, parties asked to sit on an advisory board are well advised to take expert legal advice before doing so.

To quote South Africa's beloved Nelson Mandela, or Tata Madiba as South Africans will always fondly remember him, when he founded the Elders (Independent Global Leaders working together for peace and human rights):

"This group can speak freely and boldly, working both publically and behind the scenes. Together they will support courage where there is fear, foster agreement where there is conflict and inspire hope where there is despair".

It is my respectful suggestion that all entities, big or small, new or old, should give careful consideration, after taking expert legal advice, to the creation of an Advisory Board operating within a carefully and professionally prepared Terms of Reference.

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