

How important is having an
independent our outside **director** in
your board



Introduction:

Since 1998, I have been supporting CEO's, Presidents and business owners in the leadership of their business. As sparring partner, director, interim manager.

There are hundreds of definitions and answers on leadership. Certainly from much more intelligent and wise people as me. So I will avoid to copy and text the usual referrals.

There are also many debates on the opinion and question of: **are we born as leader or do we become leaders?** To be frank with you, I'm balancing between both. However based on an accumulation of experiences, starting in sports, then in military, family, studies and finally in business, I tend to say the following:

I think, a leader opens his eyes as a baby with the essential elements of a leader. Sometimes only a situation or a constellation of different occurrences brings this essence to its shine and at that moment, eventually the acting and behavior of the leader is visible. Probably the leader will do the right thing right. Just by instinct. I have observed that these people they even do not know why. I think that this essence is given by, Good, Mother Nature and our genes. A leader will later learn in his education, training, drill, or through his mentors and examples, the necessary tactics, strategies, methodologies. These influences will be modelling the essence given to a leader.

I have been leading people and organizations in a formal and relevant way since my early twenties. One of the best lessons is that a leader without a team with at least a second person, will be very limited, from resources, intellectual and emotional point of view. A lonely leader cannot lead. Except himself. It is rather auto reflexing. Or if you cannot lead yourself, how you can lead others. But this is another story.

If we bring this to the next level of corporate governance and management of a company, things are getting rather serious and complex.

In all jurisdictions known to me, depending on the legal structure of a company, particularly for public companies and incorporations, there is a board which has some duties and responsibilities. The board is the highest operative and strategic leadership of the company. Some of the board members are executive directors, others are not. Others are independent.

I have seen boards which are functioning like a football team, (everybody is at this position for once scope), others are like a family (for sure in 90% of the cases in family business), in certain structure the board has nothing to say, for different reasons. In certain cases you even do not see a board, because the boss and owner, is like an umbrella. He opens and closes the dialogue as he likes. Other directors are just sitting and getting the fees. Like monkeys bananas.

Personally I see more and more a trend to bring aboard independent directors. There are pros- and cons, against non- or executive ones.

In this article, I will put my focus on the “independency” of the director. And Why it is important that these directors have their opinion and are able to express it to the CEO and President, or even the business owner. Finally also to challenge the given structure.

What is an Independent or Outside Director?

Usually it is a member of a company's board of directors who was brought in from outside the company. The independent outside director has not worked with the company for a period of time , he or she is not an existing manager and is generally not tied to the company's existing way of doing business.

Outside directors are advantageous and beneficent to the company because they have very little conflict of interest. They may see the big picture differently than insiders. Finally, they are not affected by career issues and internal political affairs. The downside is that since they are less involved with the companies they represent, they may have less information upon which to base their decisions and reduced incentives to perform. Also, outside directors can face out-of-pocket liability if a judgment or settlement occurs that is not completely covered by the company or its insurance. This occurred in class-action suits against Enron and WorldCom.

Board members with direct ties to the company are called "inside directors."

The general consensus and understanding among stockholders is that independent directors improve the performance of a company through their objective view of the company's health and operations. They do not have to pander to other management personnel in order to retain their jobs. Stockholders and politicians pushed for more independent outside directors in the wake of the Enron collapse in the early part of the 2000s

According to Wikipedia the independent director is characterized as following:

An Independent director (also sometimes known as an outside director) is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees. Independent Directors do not own shares in the company. (Some sources state non-executive directors are different from independent ones in that non-executive director are allowed to hold shares in the firm while independent directors are not.) In the US, independent outsiders make up 66% of all boards and 72% of S&P 500 company boards, according to The Wall Street Journal.

The Value of an Independent Director for a Board

There has recently been, in my personal opinion, a healthy trend to include more “independent” directors on company boards. Reforms after the financial crisis in Wall Street and other stock exchanges worldwide, kicked off an awareness of the need for improved corporate governance. The subsequent trend and has led to boards looking for, and recruiting more “independent” directors – directors who are not affiliated with any particular shareholder group, and who bring significant board, industry and management experience. But also a critic spirit and fresh air.

This trend has resulted in boards having considerably improved quality and effectiveness, as measured by various industry reports. Another point, is that that business has become more and more global. It is not enough to have a good board member rooted in the block around the HQ’s, but it more and more requested having aboard international directors, who can anticipate and explain the causes and effects of the board decisions from a global perspective. Particularly for companies with branches, international partners and clients.

It requests truly leadership to a family business or a business owner, or to a President. Why? In certain cases, they must confess a weakness or admit, not knowing everything they should. In certain cases they must admit that something is going wrong and that they need help.

I suggest all family business, business owners, Presidents and CEO’s, just to see such an assignment as a huge and priceless opportunity and why not, strategy. The right independent director will not be a threat for you, nor for your family business. Contrary is the case.

You can and will reduce risk of failure and increase the chances for growing your business. As initially said. It is about to decide what kind of leader you are and why kind of leadership you want to have in your company. If you wish to have monkeys, go for it and offer bananas. If you wish to have professionals and challenges, question you. And be a true leader.

What are the real benefits of having a professional, independent director on a board?

There are some key aspects in my opinion. Also depending on the legal structure and the size of your business, but also the life-cycle where it stands today and your personal overall strategy.

1. Corporate Governance

Independent directors with extensive board experience and ongoing board education, are able to catch up quickly the hot and key legal and governance issues early. They can provide the stimulus to call the child by name and initiate any debate and constructive due diligence necessary which is part of the board. In certain cases and unfortunately too often, particularly in “family type” of boards, issues are “presumed” to be good for the company, there is no real intention to questioning the situation and members tend to pass issues by a quick show of hands. A meaningful debate, even when there is a strong and unanimous desire to approve the issue, can protect against board liability.

2. Industrial Knowledge

Independent board members can bring an external point of view in. In most cases I have seen, board members with a very strong experience in the industrial sector of the company. Maybe they went through similar life-cycle situations of the firm, or are aware of external trends. They are not blind, for what “we have never done it”, or “we have already tried”.

3. Management, cultural and leadership experience

I also have observed that many boards are not updated with today’s management tools, in financials or marketing subjects. Or a company which is rather local or regional, wishing to expand their business to another country or zone, is lacking of linguistic or international working experience. Or in certain cases, the owner or the President is strong in certain subjects, but lacks of skills and competencies in others which are vital for the development of the company. This can be particularly important when discussions with management require a second opinion on key operational or strategic points.

4. Unfiltered and unpolitical opinion

Independent board members can and should present opinions that are not tied to the interests of management or any shareholder group. They should have a free spirit. They can also bring views that may be politically difficult for other directors to discuss, given ties to shareholder groups or management.

5. Mediation, neutrality and business coach

Too often, there are different and conflicting interests around the boardroom table. A good independent director can and should be a powerful force for mediation, brokering compromises between shareholder groups, and resolving the different views between management and the board that inevitably occur.

Some years ago, I was appointed by a large group, who has taken over niche leader in their respective area. During the first and second board meeting (The CEO of the large group was the president of the board, while the previous owner of the SME was the E-VP.) I’ve felt tensions, which did obstruct my work as Interim CEO. After the second meeting, I’ve asked them to have a face-to-face discussion and told them, if they would not be able to discuss and work together in a professional way, I would leave my mandate. I’ve offered them an outside workshop session. The result was very positive and we were able to focus on what brought both together and the elements, which were key to succeed the merger. I think, I was able to do this due to my neutrality. My drive was given by the belief that what is the best interests of the company. They confirmed me afterwards, that I had brought a new way and a fresh air into the discussion, also by making them focus on common objectives, at business challenges and opportunities,

6. Negotiating compensation, incentives and other executive agreements.

Determining appropriate executive compensation, benefits and other perquisites is always a challenge. This is especially true when family members hold leadership positions in a business. Experienced independent directors can help directly. Or under a given mission, with outside consultants to create a suitable compensation package and otherwise address the concerns of relatives who do not participate directly in day-to-day operations but may own an equity interest in the company.

As an objective third party, an independent director can also help identify potential candidates to fill positions open to non-family members and help ensure that these individuals receive a fair compensation package.

7. Credibility and Reputation

Since the collapse of Enron and other accounting scandals, corporate accountability and transparency have taken on increased importance in the eyes of investors. Private and Institutional ones. While Sarbanes-Oxley applies to public companies only, many institutional and private-equity investors, as well as lenders, are seeking similar assurances that non-public companies are also meeting proper accounting and fiduciary standards. If, for example, a privately held business is seeking outside investment, a board of directors with an independent member can help demonstrate the commitment of leadership to operate the company with the highest levels of integrity and objectivity. Personally I have seen many times, that either the lender / investor look to have somebody externally aboard, giving a “kind” of guarantee or assurance. On the other side, while it comes to investment or project financing, also linked to restructuring and expansion projects, to strengthening the board with external forces, from a marketing or operational point of view, is in my eye a must.

8. Resolving competing interests.

An independent director can also help negotiate solutions to the competing interests of family members or minority and majority shareholders. This can be especially helpful when it comes to succession planning or management.

Concerns about Electing an Independent Board Member

My intention is not to sell you hardcore the assignment of a new independent Director. Of course, it is important to raise a few questions about the value an independent board member offers, particularly to privately held and family-owned companies:

- 1. How "independent" is an independent board member?** An independent director doesn't just appear out of nothing. First it comes from a need or an insight that something must be done and that the board should assign a new director. At this point, the President or business owner, sometimes represented by a lawyer or trust/fiduciary, will establish a profile description. Then the person must be identified and approached. He or she must be selected by someone within the company. The nominating party—whether an owner, executive or both—is likely to choose the director whose point of view and background favor his or her own agenda and profile requested

What if majority shareholders don't want an independent director? If the majority shareholders do not agree to the election of an independent board member, the initiative could die before the discussion starts. Therefore, for those parties interested in electing an independent board member, their first step must be to achieve consensus on the issue among themselves and other owners. Then as previously mentioned, I strongly suggest having the profile elements written and agreed.

- 2. What are the costs for having an independent board member?** An independent director does not work for nothing and free of charge and must be compensated for his or her services. Likewise, the director may insist on directors and officers liability insurance in order to protect against any financial risks associated with board service. Depending on the size, the number of meetings (they must be prepared) or additional task, the board member will probably cost to an international scale between €10'000-40'000 per year. Start-ups will eventually pay with shares or options. Some directors will maybe go for a mix of compensation.
- 3. Does electing an independent director mean losing control?** Executives of privately held and family-owned companies are often concerned that an independent board member will block decisions or prevent owners from acting with the degree of independence to which they are accustomed. For many, the desire to being their own master and commander was one of the primary reasons they created their companies in the first place. However, in the case of limited liability companies and limited partnerships, these concerns can be softened if the operating/partnership agreement provides for a board of directors with advisory powers only.
- 4. Will the independent board member know the business well enough to perform adequately and how long it will take, until he or she will understand the culture, structure**

and the business? In most cases, board members may end up serving the equivalent of only a couple of weeks per year. Maybe 3-4 meetings.

Given this limited exposure to the workings of the company, there may be legitimate concerns about the ability of independent directors to provide truly useful guidance. And if their primary source of information is the executive leadership of the company, their opinions may be biased by the very individuals they are expected to advise.

Of course, these concerns are not unique to privately held and family-owned businesses—the same questions are often asked of the boards of publicly owned companies. In order to assuage these concerns, board nominations should be made with an eye toward the backgrounds and experience of potential members. The more familiar the individual is with the company, the industry and the marketplace, the more useful guidance he or she will be likely to provide. The trend goes also in the direction, to expect board member to take active external leadership roles, opening doors to potential clients, investors, suppliers or relevant opinion leaders and stakeholders.

Therefore, the selection of a board member and new director, has a lot to do with personal leadership of the President or Business Owner. The balance between success and failure is sharp and it makes sense that any business should weigh carefully the option to elect an independent director.

While you are looking for your perfect new Director, I suggest pointing your finger on the top 10 following criteria:

1. Independence
2. Impartiality
3. Wide experience
4. Special knowledge and skills in the areas which are necessary and requested
5. Personal qualities (do not underestimate this point) and Commitment
6. Team focus (being independent does not means, not being able to work in a team)
7. Perception and a broad perspective of the area or industry
8. Capability to contribute to the strategic direction of the company
9. Efficiently solving problems that arise
10. Good communicator (good listener and empathetic capabilities)

Conclusions:

A professional and experienced independent director will be a very efficient and productive asset to your leadership and the development of your company.

There are different ways to come to a conclusion if you wish or need to have one.

1. Do you need to give an “electro shock” to your board, fresh air or a new input?
2. Are you in serious stagnation, worst in a crisis?
3. Are you in need for growth capital, project financing or expansion?
4. Are you a family business and need outside “blood” in the system?
5. Are you looking to expand your business internationally and in need of an international experienced personality
6. Are you intended to run an M&A operation?
7. Do you need to restructure your business?
8. Do you lack of certain experience, capabilities or competencies?
9. Do you need an impartial person?
10. Do you need a strong independent sparring partner?

A precondition is to recognize you have one of these 10 needs and second that you do not have the competencies or resources necessary. This will lead to take the right decision and be an effective leader.

If you need help, support and an effective director, probably I can help you. Directly or with team of over 30 experienced directors.

Your advisor:

Nelson M Peña has being helping over 40 clients since 1998, as interim manager, director and business coach. In over 25 countries.

He is an experienced Sr. Manager and Leader, supported by his organization in over 60 countries and all five continents and a selection of top professionals.

If you are interested in talking to him, he is more than happy to support you and to be at your side. He speaks fluently English, Spanish, French, Italian, German and Swiss German. With knowledge of Portuguese.

Nelson M Peña, August 2017

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- + 2009-2012 DVNLP NLP Practitioner / Master / Coach, Switzerland
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Academic Expertise:

- + Lecturer at the Business School Berne in Marketing, Leadership, Strategy
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Fluently in English, German, French, Italian and Spanish. Mother tongue is Swiss German-Spanish.

General Experience:

Since 1998 Executive interim Manager in 16 executive mandates, mostly as CEO. Further led or co-signed projects for over 50 companies. Worked in all five continents and over 25 countries. Experience in supporting as advisor, coach and sparring partner to CEO's, business owner, multinationals as well as SME's.

Specialties are interim management, post-integration assignments of M&A operations, project financing, commercial and business development, strategy, leadership, restructuring, change management.

IMC International as a company

IMCI Group International Ltd. is a London based advisory group, with Swiss roots going back to 1998 and as the funder and global CEO, Mr. Nelson M Peña, started his career as interim manager and strategic advisor. In 2004 he founded the company in Switzerland as **IMC** as a single proprietorship firm and in 2010 he launch the group as **IMC Intl.**, initially as a network organization of high level professionals, with 16 associates in 10 countries and five business lines.

Over the time **IMCI Group International** has become a fast growing and a truly international business advisory group in **M&A/Corporate Finance**. Further we do support clients and investors in **restructuring and expansion** activities.

IMCI Group has kept its consulting soul in aspects of restructuring and expansion support. Additionally through **IMCI Coaching & Advisory**, we deliver a 360 degree solution in HRM, Interim Management, Succession Management, Business Coaching and Trainings.

Through our company **IMCI Investment Services Ltd.**, the group is offering Bank Guarantees, Project Funding, Trade/leverage Trade and Bond Programs, as other side capital services. This combination of investment banking and corporate consulting state of art has made of **IMCI Group** a very successful firm and unique in its market positioning.

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IMC has signed over two dozen strategic JV Cooperations and is operating through own organization of companies and representatives, supported by a network of business associates in over 50 countries and all five continents. With an Investor Panel present worldwide (family offices, investment and merchant banks, funds), with access to a total of over 40'000 investors, top 20 banks, insurances and stock exchanges. IMC can cover a broad variety of investment sources and 360 degree financial solutions.

In **2016 IMCI GROUP** was short listed for nomination as **“Best International M&A Advisory Partner – Global 2016”** by Capital Finance International www.cfi.com. We hold since 2013 two TV shows at the **Swiss Financial TV – Dukascopy TV** in Geneva.

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	Change / Transformation	CIT	Objectives setting	Portfolio	Controlling	Negotiation
	Motivation / Development	Information	Motivation	Development	Tools	Key Accounts
	Recruitment	Communication	Controlling	Innovation	Investment	New Markets
	Retention	Quality Management	Leadership	Product Communication	Disinvestment	New Segments
	Right Profiles	Production	Management Techniques	Brand Communication	M&A activities	Expansion
	Technical HRM issues	Operations	Efficiency	Sales Force	Reporting	M&A
	Culture	Planning	Improvement	Pricing	Pricing	Company Settings
	Management Capabilities	Business Intelligence	KPI's	Promtion	Cost-Management	Optimizing
	Team Building	CRM	Balance Score Card	Distribution	Taxes	Restructuring
	Client	Organization	Strategies	Offline Communication	Legal	Reengineering
	Stakeholders	Outsourcing		Online Communication	Balance Score Card	Alliances
	Reputation	Insourcing		Internet	KPI's	Cooperations
	Recruitment / Search	Strategies		Research / Surveys	Strategies	Legal
	Training	Optimization		Legal		Strategies
	Legal	Fixing		Strategies		
	Strategies			Brand Reputation		

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- Project Financing
- Private Equity Funds
- Provide Passive & Active Equity From US \$ 10 Million to US \$ > Billion +
- Debt & Working Capital Instruments for expanding business
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- M&A operations

Our Financial Services

- Projects and deal assessments, Company valuation and Market study
- Strategic analysis and proposals
- Business plan elaboration according to the highest standards required by the most rigorous investors.
- Teaser or executive summary of the business to be presented to investors
- Risk assessment using the most modern tools like Montecarlo Simulation.
- Start up advisors and management, Turnaround advisors and management
- Due diligente
- Board / Management Sparring and Coaching
- MBO's and LBO's advisors

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