Key Considerations When Preparing an Executive Service Agreement

Considering the practical and commercial expectations of the appointment at the outset can help ensure that the agreement provides clarity for both the executive and the business.

Role and Responsibilities
Clearly define the executive's duties, authority and reporting arrangements. Senior appointments should provide sufficient clarity while retaining appropriate flexibility as the business develops.

Board and Employment Roles
Establish whether the executive will also serve as a company director. A directorship is an office that can exist separately from an employment relationship, so the agreement should distinguish between the two roles where appropriate.

Remuneration and Benefits
Set out salary, pension, benefits and other contractual remuneration clearly. Senior packages may involve several different elements that need to operate together.

Bonuses and Incentives
Consider how discretionary and contractual bonuses, commission and long-term incentives will operate. The documents should also address what happens when the executive resigns, is dismissed or changes role.

Notice and Termination
Choose notice periods that reflect the seniority of the appointment and the time required to manage a leadership transition. The agreement should also establish the circumstances in which employment may be terminated without notice.

Garden Leave

Consider whether the business requires the ability to remove the executive from active duties during their notice period. Appropriate garden leave provisions can help protect confidential information and important commercial relationships.

Confidential Information

Identify the commercially sensitive information available to the executive and ensure that appropriate confidentiality obligations continue after employment ends.

Restrictive Covenants

Consider whether post-termination restrictions are needed to protect customer relationships, employees or other legitimate business interests. Restrictive covenants should be carefully tailored, clear and appropriately limited rather than unnecessarily broad.

Shareholder Arrangements

Identify whether the executive holds or will acquire shares in the business. Employment terms should be reviewed alongside any shareholders' agreement, articles of association and incentive documentation.

Future Changes

Consider how the role may develop as the organisation grows or restructures. The agreement should provide appropriate flexibility while clearly defining the executive's core position.

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