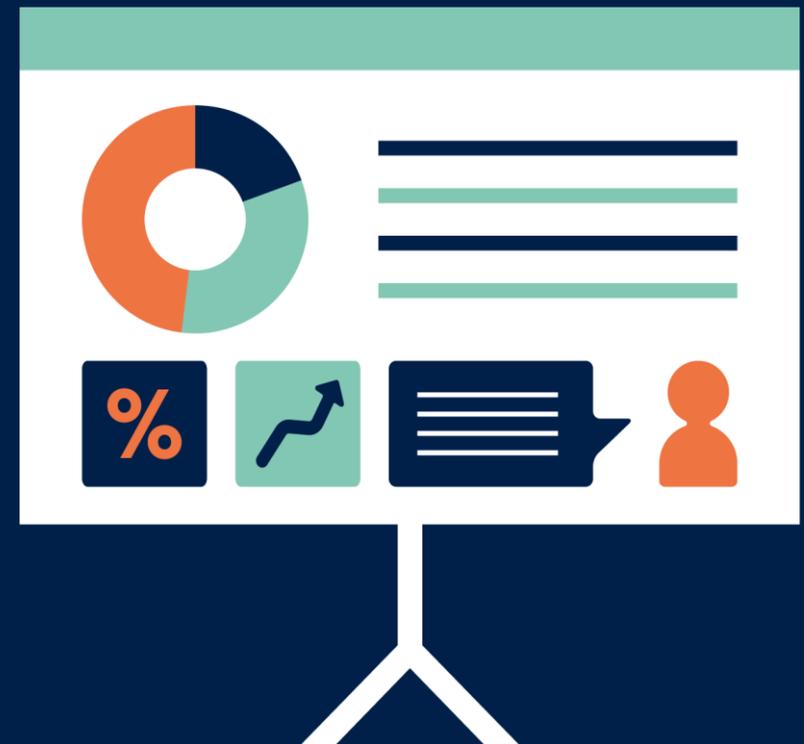


Whitepaper Conference Share Plans and Employee Incentives

*How do you effectively incentivise
non-employees?*

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Session Overview

○ Why extend share plan participation beyond employees?

○ Which service providers are we discussing?

○ Non- Executive Directors (NEDs)

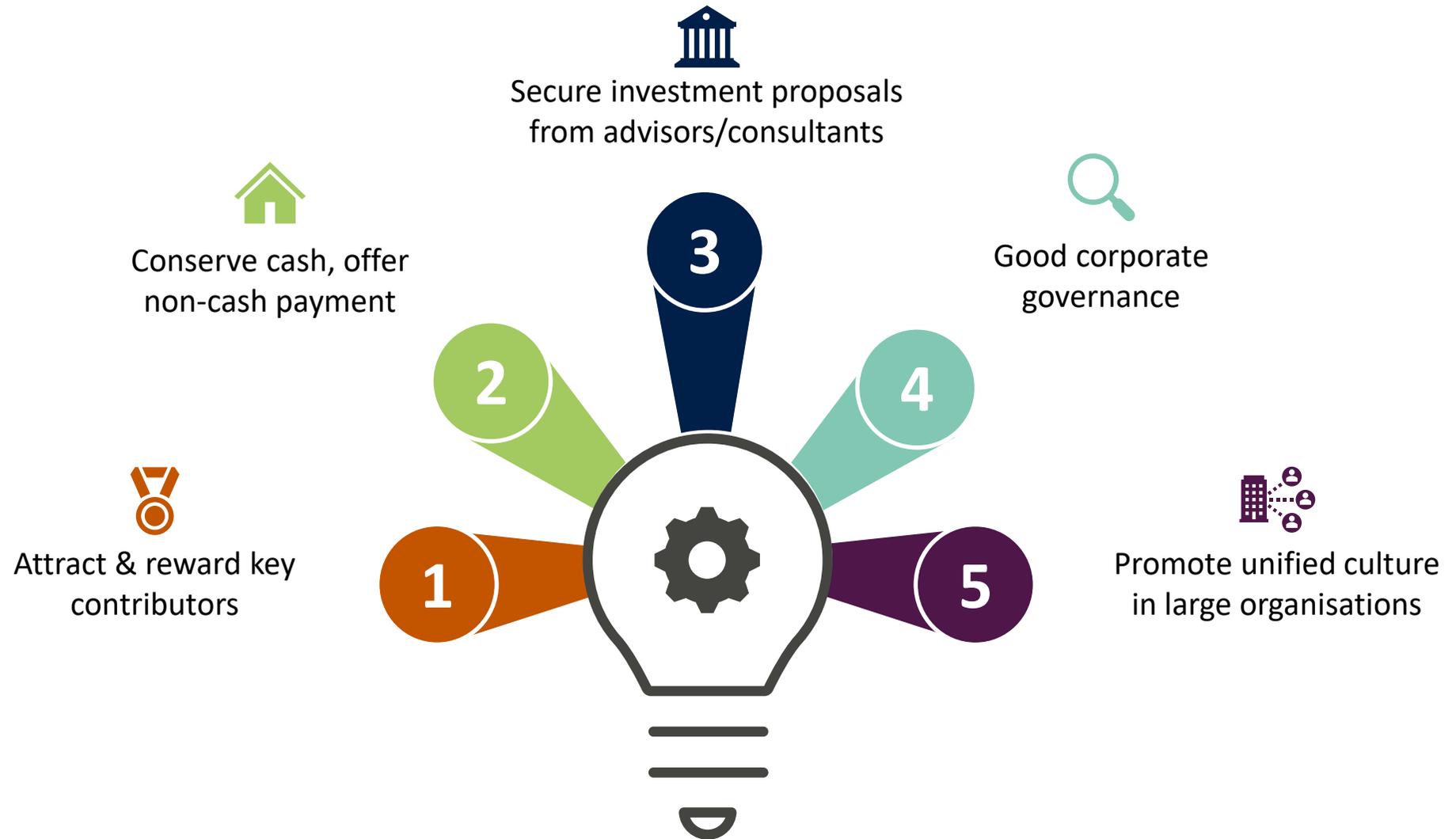
○ Consultants

○ Workers via Employer of Record (EOR)

○ Partners in LLPs

○ Key legal & practical considerations

Why Incentivise Non-Employees?



Non-Executive Directors (NEDs): Legal Framework



1

UK Companies Act 2006:

- NEDs not included in 'employee share scheme' definition
- Impacts on share allotment, pre-emption rights, financial assistance

2

Financial Services/Prospectus Regulations

3

Employee Benefit Trusts: S.86 Trusts

4

Articles of Association: check caps & restrictions

NEDs – Tax and other Plan considerations



Taxed as employees

Employment related securities regime will apply



Tax advantaged plans

NEDs seldom eligible (except possibly for CSOP and SAYE if “full-time director” condition is satisfied)



Employment law

NMW and other minimum worker rights will not apply to NEDs



Commercial

Leaver/vesting provisions, performance conditions

NEDs – Listed Companies

1 UK Corporate Governance Code and Investment Association

Endorse share-based NED pay at market price and with independence safeguards

2 Listing Rules

Shareholder approval for LTIPs is needed

3 Remuneration Policy

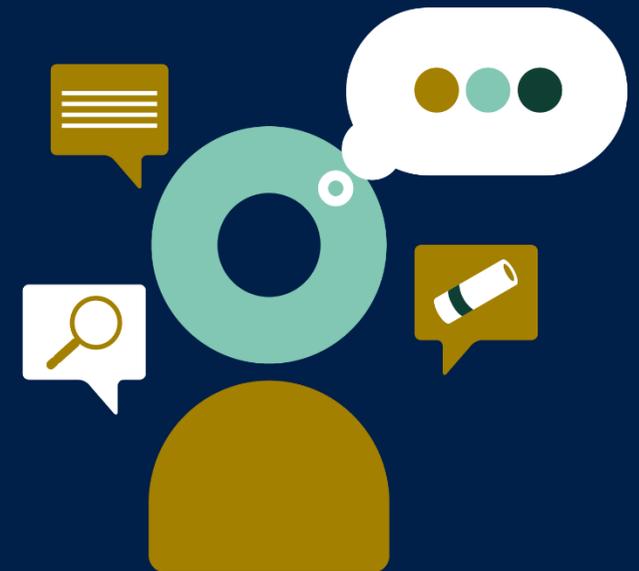
Must explicitly allow share/options payment of NED fees

4 Minimum Shareholding Requirements

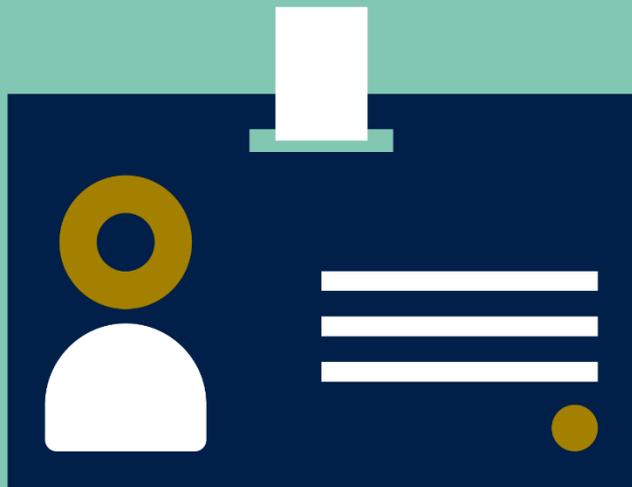
Encouraged to build meaningful shareholdings

Consultants

- Not employees or workers (usually)
- Legal considerations similar to NEDs, will not benefit from the 'employee share scheme' exemptions and (unlike NEDs) cannot be beneficiaries of a s.86 EBT
- Key difference between NEDs and Consultants is the tax treatment
- Limited tax guidance – but typically taxed as self-employed:
 - Tax at grant of a share option (trading income)
 - Capital gains on sale of underlying shares
- Areas of risk where tax treatment may be challenged: if not a genuine Consultant, if also a NED, if former, or prospective director or employee



Workers via Employer of Record (EOR)



1

Employees of EOR, not the Company operating the share plan

2

Legal considerations similar to Consultants, will not benefit from the 'employee share scheme' exemptions and cannot be beneficiaries of a s.86 EBT

3

Taxed as employees: with PAYE and NICs chargeable to the EOR

4

Risks around the Disguised Remuneration rules, as the Company is technically a third party looking to reward the employees of the EOR, so may need to rely on exemption

5

Requires robust contractual arrangements between the Company and the EOR to ensure leavers, vesting, and tax compliance are processed correctly and in a timely manner

Partners in LLP Structures

Typically, members of an LLP share in the profits of the LLP and sometimes the capital

If taxed as self-employed members, then taxed similar to Consultants

Their tax treatment depends on whether they fall within the 'salaried member' rules. If so, they are taxed as employees – and the employment related securities regime will apply to any share options granted to them



They will be remunerated by carry or phantom carry arrangements, which is subject to its own (favourable) tax regime

It is also common for members to participate in parent company share plans, especially if the parent company is preparing for an IPO or is listed already

Members' legal status is that they are also workers for NMW purposes, but they do not benefit from the 'employee share scheme' exemptions and cannot be beneficiaries of a s.86 EBT

Conclusion: Common Challenges, Practical Tips & Recommendations



Regulatory and structural gaps in legislation when it comes to incentivising non-employees



Plan design must not jeopardise the 'employee share scheme' exemptions available to any existing plans for employees, so bespoke arrangements or stand-alone schedules to existing plans are recommended



Think ahead, how will you manage leavers and vesting events (especially if you can't use an EBT)?



If there is complexity when dealing with hiring structures involving third parties, like EORs, consider phantom (wholly cash settled) arrangements instead



Balance your commercial aims with cost of more complex administration and tax risks for the business if they get it wrong



Questions

THANK YOU!

OPEN FOR DISCUSSION & QUESTIONS

