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Review of the role and effectiveness of non-executive directors

Introduction

The BBA welcomes the opportunity to provide comments on the questions raised in the consultation paper on the review of the role and effectiveness of non-executive directors.

What role should non-executive directors perform, and how does this compare to the present position?

The banking industry remains supportive of the concept of the Unitary Board. It therefore believes that any proposals aimed at giving better definition to the contribution that non-executive directors have to make and the role of the Board sub-committees on which they sit should be devised with the aim of strengthening the Board's overall ability to fulfil its responsibilities.

In broad terms, the role of non-executive directors is to bring an independent challenge to executive directors on the strategy and direction of the business, including the ethics that should apply to the way in which business is done. To be able to achieve this, a wide range of skills and depth of experience is needed, but the most important perhaps is a willingness to challenge strategic and other decisions and to be persistent in that challenge until they are satisfied with the explanation obtained. Independence from the executive is clearly important and the identification of a "senior independent" non-executive director may serve to give greater focus and objectivity to this role.

As explained above, however, we believe that the unitary board has served the UK well and for this reason believe that there should not be any distinction between the legal duties of executive and non-executive directors.

What knowledge, skills and attributes are needed, and what can be done to attract, recruit and appoint the best people to non-executive roles?

We believe that companies benefit from the appointment of non-executive directors with diverse knowledge, skills and attributes. There is, as ever, a need to widen the pool of potential non-executive directors and to provide assurance that recruitment and appointment is on the basis of objective and independent criteria.

While responsibility comes with a willingness to serve in a non-executive role, we are concerned that recent events and the prospect of litigation and criminal prosecution may act as a significant disincentive. We would also be concerned if the expectation of what non-executive directors can achieve became detached from reality.

Do existing structures and procedures facilitate effective performance by non-executive directors?

We believe that the existing structure under which non-executive directors operate to be well devised and that the Combined Code has given clarity to the expectations placed on non-executive directors and the Board committees on which they sit. Boards gain a great deal of comfort from the existence of effective and disciplined Audit Committees and wish to see them manned by capable and independent-minded individuals.

There may, however, be a case for giving greater definition to the role of the Audit Committee and other Board sub-committees. The Audit Committee should be charged specifically with making recommendations on the appointment of the auditors and clearly have a lead role in determining the scope of the audit, evaluating audit effectiveness and in setting remuneration. It also has a leading role to play in assessing auditor independence and in overseeing the provision of non-audit services.

When it comes to considering whether additional measures are needed in the UK to reinforce auditor independence, we believe that a lead should be taken from the European Commission recommendation 'Statutory Auditors' Independence in the EU: A Set of Fundamental Principles'. We found this balanced and principles-based, including on issues relating to auditor rotation and the provision of non-audit services, where the objective is to seek equilibrium between independence and the provision of services with efficiency and continuity.

Performance review is important and should take place on a pre-defined objective and transparent basis. We find it difficult, however, to conceptualise how one could measure specifically the performance of non-executive directors and are not convinced that it would be appropriate or practical to do so.

Do existing relationships with shareholders or others need to be strengthened?

While it may be reasonable for institutional shareholders and others to expect non-executive directors to be answerable for the operation of the Audit Committee, we would stress that it is the Board collectively that is responsible for the performance of a company.

Closing remarks

In its submission to the Treasury Committee earlier this year, the BBA observed that we should consider whether the obligations placed on non-executive directors are sufficiently clear and give further thought to the role and operation of the Audit Committee. We believe that the Higgs review should add clarity to the roles of non-executives and the Audit Committee and introduce certain new measures to strengthen auditor independence, but remain of the view that a radical overhaul of corporate governance and auditor arrangements is unnecessary at this stage.

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