

# The EMI Group

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2 September, 2002

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*Dear Derek,*

Consultation Paper : Review of the role and effectiveness of  
non-executive directors

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In this letter I will provide EMI's comments on certain of the questions raised in your Consultation Paper.

Generally, we greatly value the important role played by our non-executive directors and the challenge and support they provide to the executive management team. For a good many years it has been EMI's policy that a majority of its board should comprise independent non-executive directors.

## Independence of non-executive directors (Questions 4 and 16)

Given the relatively small size of our Board and the central roles played by the Remuneration and Audit Committees in the Company's governance, we think it is important that all non-executives participate in the different non-executive roles. This approach helps ensure that all non-executives have access to a wide range of information about the Group's business and, we believe, encourages the open culture between the executive team and the non-executives which is central to an effective governance structure.

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It is, therefore, our view that all non-executives should be independent, in the sense adopted by the Combined Code. We do not think it is either necessary or appropriate for other additional hard and fast rules on independence to be adopted, for example that non-executives cease to be regarded as “independent” after a defined period of service. Independence is best judged by the Board in each individual case, within the context of the Combined Code’s guidance.

### Senior independent non-executive director (Question 7)

In general we support the concept of a senior independent non-executive director, as a focal point for both the other non-executives and, in appropriate circumstances, the shareholders. The precise extent of the role of a senior independent non-executive director very much depends upon other aspects of the structure of a particular Board – for example, whether all non-executives are “independent”; whether the Chairman is executive or non-executive; the role of any Deputy Chairman; and whether the role of Chairman and senior executive officer are separated or combined.

We consider, therefore, that one of the non-executives should be designated as the “senior independent”, but that the extent of the role should be determined by the Board in the light of the particular circumstances.

### Recruitment of non-executives (Questions 6, 12, 13 and 14)

In practice we have to date been encouraged by our ability to attract high quality non-executives with a range of skills, experience and nationality. Our Board currently consists of 3 British, 3 Americans, 1 French and 1 German! The continued availability of such a pool of non-executive talent to UK corporates should, we believe, be a central concern of both your review and corporate governance generally. To put the point bluntly, there is little utility in proposals which, however theoretically or politically “correct”, will diminish the willingness or ability of appropriately qualified individuals to serve on UK boards.

We believe that current UK norms for fees for non-executives undervalue the role. There is, of course, a link between fee levels, the time commitment required of non-executives, the particular structure of a board, the number of other posts held by non-executives, and the quality of an individual’s input.

Recognising the constraints these interdependencies place upon generalisations, we offer the following thoughts:

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- the number of posts held by non-executives should be limited – but the limit should be set by each Board in the light of the particular circumstances (though it is unlikely that a portfolio in excess of 3 or 4 non-executives posts would allow an individual to provide an appropriate level and quality of contribution).
- to reflect appropriately the governance requirements increasingly being placed on non-executives, fee “norms” (currently c.£35,000 p.a.) should be not less than £50,000.
- there should be flexibility as to the means of payment, including share based remuneration: non-executives should be encouraged to build up and retain shareholdings in the companies they serve.

### Are non-executives able to successfully challenge executive decisions or expose serious problems? (Question 22)

Both the performance of non-executive directors, and their ability to challenge decisions or expose serious problems, are fundamentally dependent upon an open culture and the quality of information provided to them. Access to the external auditors and to key members of the internal management team (for example the Company Secretary and internal audit), as well as defined Board reporting procedures, all help. But, it is not possible to prescribe the precise information to which non-executives should have access, nor specific guidelines for achieving the necessary open culture. It is an essential part of the role of the non-executive Chairman and/or senior independent non-executive director, and indeed of the non-executive directors as a group, to ensure that they are satisfied, in the particular circumstances of a given Board and the nature of the underlying business, that the necessary culture and flow of information exists.

### Relationship with Shareholders

We consider that shareholders should have access to the non-executive directors, but in a way and in areas which appropriately reflect the nature of the non-executive role. It is essential that the relationship between the executive team and shareholders is not undermined, and we offer the thought that contact between shareholders would most naturally fall in the fields of remuneration matters, governance and management issues.

We also believe that it is important that contact should be at the behest and initiation of shareholders as they see the need, rather than on a prescribed “one size fits all” approach. The manner and extent of contact should be determined between Boards and shareholders in the light of the particular circumstances and requirements.

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### What can be learnt from international experience?

As I have mentioned above, our Board is already very international. We are in no doubt that a global business such as our own benefits greatly from contributions from a wide range of experience and nationalities, which reflects the make-up of the management team below the Board.

We believe that the unitary board system adopted in the UK, with a balance of executive management and non-executives actively involved in all aspects of the Board's activities, is a key contributor to the strength and well being of UK corporates. Corporate governance should not have either the aim or the effect of reducing executive representation on boards.

In short, we believe that the UK model, whilst no doubt susceptible to improvement, has significant advantages over either a two-tier board system or models where executive representation is very limited. We suggest that your review should seek to build on the strengths of the existing UK system, and avoid wholesale change.