

## Response from John Wallinger

I have had great difficulty in coming to any firm conclusions in answer, as the roles vary to such an extraordinary extent.

To emphasise, from my own standpoint, I am non-exec chairman of a tiny software head-hunter, where my role is a combination of father, encourager, early identifier of holes into which it would be preferable not to fall, and injector of some discipline into the management processes without strangling the entrepreneurial flair that exists in the company.

As a complete contrast I am a non-exec director of a listed UK Investment Trust, where the role is utterly different. There one is required to try to ensure that adequate systems are in place to ensure the authenticity of the figures we see, and also that such systems are being properly implemented. Thereafter it is a question of keeping the manager on his toes by questioning his thought processes and the implementation thereof without again strangling the flair aspect.

In between these two, I have a variety of roles but they all fall somewhere between those two extremes. As a result of this, I am uncertain that any attempt to create or write a statutory definition of a non-exec would ever be able to achieve any objective other than red tape. With regard to your questions on page 5, I've already commented on A above.

B The usual M&A problem. Out there is the best qualified person but how on earth do you find him? One could try a sort of Exchange for people looking to find roles and people looking to fill roles, but that is probably already covered in some measure by the I.O.D, and even the interim management companies.

C I think they do, Yes.

D Again, I think the status quo is adequate. The problem, if there is one, is exacerbated by the fact that very few shareholders bother to attend AGMs etc where they can ask whatever they like of the non-execs, until the problems have surfaced. I suppose one could argue that an 'early' AGM with only the non-execs present could offer shareholders the chance to ask questions without the risk/fear of being bullied by the execs, but again we'd run in to red tape and cost.

E Again, given the huge variety of roles, I don't think there is any easy way. Much more paper wouldn't be read, and the law enshrines an adequate level of compliance from the exec side.

F Not just Listed but unlisted also. I do chair four small listed companies, and the only real difference is that I find that the ratio of time and work to return is higher in direct inverse proportion to the size of the company!

G Here I do think we can learn. I have always been an advocate of the Continental concept of an Advisory Board. Theirs used to tend to be dominated by large (often family) shareholders, but they do represent a true shareholder control over the executive and I have never understood why it hasn't been adopted more in this country for the larger companies. The ability of the Supervisory Board to fire the executive management is a very strong control factor.

With regard to your questions posed on page 6 et seq, may I cherry pick some questions to comment upon?

2. It has been my experience that the Audit and Remuneration Committee have been (and should be) staffed entirely by non-execs, who, in the case of the Audit Committee, should have full access to the auditors, without the execs being present, at each accounting period end.

6. See my comments above - the smaller the company, the more the time required.

7. Non-exec chairman?

8. I don't think this works. My reasons are that non-execs are there for good reason - principally to look after shareholders interests. However, with the best will in the world, if the CEO and FD are in collusion over something that shouldn't be happening, there isn't a single thing that the non-execs can realistically do. Sending them to gaol wouldn't solve anything, and indeed I know of many people who would make excellent non-execs but who will not take on any such roles these days because of the legal risks, and the fact that they know they

cannot ultimately control the company if there is wickedness about. They won't accept unrestricted legal responsibility where they can't control events - a great loss to this country's boardrooms.

9. Must depend on the type of company, but a healthy dose of common sense and good antennae for deteriorating situations would be at the top of my list.

12. Surely the system could be improved, but I couldn't begin to work out how, unless once again, it became a bureaucratic nightmare.

13. Reduce the legislative burdens. If a non-exec is there to help the company to grow and develop, he will find today that he spends much of his Board time discussing legal minutiae. The SFA application processes seem endless, must have been designed by a committee, and choke small companies for weeks at a time.

14. I don't think pay is the primary attraction for the bulk of non-execs. Certainly in a small company, the pay level is pitiful, but the non-exec is there because he is stimulated by trying to help to get the company to that stage in its life when it can grow and prosper on its own. In larger companies, it varies considerably, but the non-exec doesn't have to accept the job if he doesn't like the rate.

15. I believe it is vital, but small companies cannot afford it, so it's one rule for the big companies and another for the small ones.

18. The Audit Committee benefits considerably from having someone with accounting skills on it. Other than that very general comment, I think they generally work well.

20. There are very few measures in existence that I've seen. I also think it unlikely that an all-encompassing one could be drafted. Lack of time would also mitigate against any structured rules.

21. I think that whilst that would be a good idea in principle, the red tape involved would mean it would be utterly impractical.

22. Two 'Nos' to this one. The first might work if the audit committee met without the executive board. The second is trying to quantify situations which will never be the same twice.

26. Company Secretaries report to the executive directors who pay their salaries. I can't see them taking the necessary aggressive stances other than in very rare instances. In terms however of general work, they can be extremely useful.

27. In the real world, the non-execs will never know or find out - at least until it's too late - if the execs don't want them to.

28. Too diverse a field. Experience is probably the non-execs' most useful training.

30. Rarely!

31. See my comments above. Small companies don't have full time people to do a lot of the systemic work that you speak of. Therefore the non-execs need to be more on top of things themselves. Equally, communication lines are shorter so that is often somewhat easier to achieve.

32. See my comments above re Supervisory Boards.

I am unsure how helpful much of what I have written will be. This largely due to the fact the in trying to define a 'non-exec' we are in fact talking of so many different roles in so many different sizes and structures of companies, that it is highly unlikely that any one catch-all rule or structure would be appropriate to more than a small sub-section of the group.

However, if I were to try to identify just two things that I think would really help, they would be:

1. Remove much of the legal risk overhanging non-execs, thus bringing many talented people back into the market.

2. For any company of size, require a Supervisory Board which should consist solely of shareholder representatives and non-executive directors, with appropriate powers as in Continental Europe.

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