

Mr Derek Higgs
Non-Executive Directors Review
Room 2142
1 Victoria Street
London
SW1H 0ET

4 September 2002

Dear Mr Higgs,

I refer to your Consultation Paper issued on 7th June 2002 regarding your proposed Review of the role and effectiveness of non-executive directors.

We would particularly like to draw your attention to the one issue on which we have recently encountered the greatest practical problems in our dealings with organisations involved in corporate governance issues. We have in recent years had extensive correspondence and discussions on the subject particularly with institutional investors under the ABI umbrella, the NAPF and Pensions & Investment Research Consultants Limited ("PIRC"). The issue concerns the question of "independence" of non-executive directors and how it should be determined whether a director is "independent" or not. Accordingly our comments below relate to your consultation question A.4 – "How independent do non-executive directors need to be for the different roles?".

By way of background, Liberty International is a major listed property group currently ranking around 100 in the FTSE listings. Liberty International owns 100 per cent of Capital Shopping Centres PLC ("CSC"), the leading UK regional shopping centre business, and Capital & Counties plc, a commercial and retail property investment and development company. The Board consists of the Chairman, Mr Donald Gordon, six executive directors and seven non-executive directors.

We strongly believe that the definition of "independence" should be modified within the Combined Code and bodies such as ABI, NAPF and PIRC persuaded to utilise the same definition as that provided by the Code. We would therefore urge you to place a high priority in your review on attempting to bring greater clarity and conformity into determining what constitutes "independent" for a non-executive director.

The Combined Code dictates that an "independent" non-executive director should have no former or current tie with the management of the company nor any former or current business relationship with the company. PIRC (and other bodies) have however extended this definition to stipulate that non-executive directors who serve for more than 3 terms (each term of 3 years) are not "independent". We understand from information published by PIRC that an overwhelming majority of non-executive directors on boards of UK quoted companies do not meet PIRC's own definition of "independent", and therefore our concerns must be shared equally by numerous other UK quoted companies.

Indeed, it must be a matter of grave concern to boards of all quoted companies when their institutional shareholders do not support certain resolutions to be moved at annual general meetings, simply because such shareholders are acting on the arbitrary advice of bodies such as PIRC.

In our view, whether a director is "independent" or not depends very much on the individual concerned, and includes such matters as his self-confidence, stature, business judgement, intellectual capability and industry knowledge. It cannot be a formulaic concept and certainly the responsibilities of a director are in no circumstances diminished because the individual is regarded as "non-independent" by the current corporate governance rules.

Non-executive directors who have served for several years are, certainly in our experience, of great value to boards. Such directors are able to build up a tremendous knowledge of the companies on whose boards they serve and their respective industries and are therefore in a position to present a more balanced and, when required, a more critical point of view than those with less experience.

Non-executive directors who have a professional link with the company on whose board they serve are, again based on our experience, often able to make a particularly valuable contribution to their board both because they are usually eminent in their profession and because of their understanding and knowledge of the company on whose board they serve as well as of the relevant industry. Often these non-executive directors have detailed technical knowledge and advice to offer the board, for example, in relation to complex transactions.

Suggestions by some that length of service or business connection somehow impairs independence of thinking is, in our view, mistaken. Quite often, the individuals concerned are highly regarded professionals in their fields and major contributors at board level. There is no serious reason to believe that their objectivity, fostered by years of professional experience, is in any way adversely impaired when these individuals make their fiduciary judgements as non-executive directors.

Concerns that links and connections somehow disqualify a director from being regarded as independent could rapidly reach the self-defeating conclusion that no director would be regarded as truly "independent" if he received any form of payment from the company on whose board he served. In our view, a

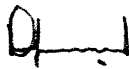
director who did not merit payment should not be considered as suitable by any UK quoted company for appointment.

We suggest that the question of "independence" should be judged irrespective of length of service. If an objective test is still felt to be desirable in respect of non-executive directors with business connections, we would argue that this should be judged on materiality to the group's turnover or scale of operations and only if significant should it be a matter of possible concern to third parties. In respect of directors who have a connection or past connection with the management, again this should be a matter for the Board to determine whether this has a bearing on the performance of the individual.

We strongly believe that the ultimate responsibility for the structure and composition of the Board rests with the Chairman of the company, the Nomination Committee and the Board itself. It is the Chairman's responsibility to ensure that the group of non-executive directors on the Board represents a proper balance of skills, experience and integrity.

Your review would in our opinion make a major contribution to improved corporate governance if it clarified thinking on this important issue and addressed some of the ill-informed and often prejudiced opinion, often from those organisations with little practical experience of the internal workings of Boardrooms. A worthwhile objective would be that, ultimately, a more broadly based and balanced definition of "independent" should be included in the Combined Code and accepted by the many interested parties in this area.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Gordon', with a stylized flourish at the end.

Donald Gordon
Chairman