

**CORPORATE GOVERNANCE
NON-EXECUTIVE DIRECTORS**

Corporate Governance has become an industry. Rather like motherhood and apple pie, no-one can argue that it is not a good thing although how much corporate performance has improved in the last ten years is more difficult to judge. However, at the very least many of the recommendations which have become established practice are plain common sense, a quality still rare in some areas.

The drivers of the furore surrounding Corporate Governance in general, and non-executive directors in particular, seem to be the media, good old British envy, Government suspicion of profit and institutional shareholders who do not do their job properly. And it is shareholders who should pursue them and not Government through more regulation. Generally speaking, the more regulated an industry is the worse it performs. We should also be careful of knee-jerk reaction to high profile events or ill-thought through measures on the basis of shareholder democracy -- giving shareholders the vote on remuneration packages being one example.

Here are some of my thoughts:

Non-Executive Directors

1. Quality is the key -- not quantity. Boards should rarely have to vote and three or four highly engaged non-executives carry an awful lot of clout. Formal performance appraisal of all directors, including the non-executives, should be encouraged.
2. Non-executives provide an external and independent view backed by experience, either in business or in a particular discipline. A key part of their job, arguably the main part, is to monitor the performance of the management which of course includes the executive directors.
3. Considerable time commitment is required, much more than the time taken by the monthly board meetings. The most valuable non-executive director, but often in short supply, are those who have retired or stood down from an executive role. They generally have more time and more interest to be involved.
4. However, non-executives should never see themselves fulfilling the role of the executive director or second guessing the management. Some of the present pressure may drive them that way. The role of executive and non-executive has to be clearly separated.
5. The question of senior executives taking a non-executive job in another company is an interesting one. The upside is that a) they do bring their experience to that company and b) it helps their personal development. The downside is one of time. Far too many executives, and it surely cannot be right that they hold more than one non-executive post, arrive at board meetings having read the papers on the way. Too often they have to leave

early and arranging ad hoc committees or non-executive get-togethers is a nightmare. These people are often just too busy.

6. Companies who allow their executives to take non-executive posts often do not realise they are making a big time commitment and when there is a clash of responsibility it is not difficult to imagine who wins. Companies are rather cavalier in allowing their executives to undertake this additional work. Perhaps they should insist that in return for the time which they agree to allocate, the fee should come to the company?
7. The role of the senior non-executive director, acting as some sort of whistle blower, is a bad idea. This undermines the role of the chairman with whom the major shareholders should have regular contact. They are, of course, entitled to talk to other directors at any time they like.

The Role of the Board

1. The role of the board very simply, is to ensure that the investors get an appropriate level of return taking into account the various confines within which companies must operate.
2. The most important job any board has to do is to make sure they appoint the right chairman and the right chief executive. Shareholders should take greater interest in this. A good chairman will make sure the board operates effectively in the shareholders' interests. A good chief executive, given appropriate direction, will run the business well.
3. Unitary boards are fine. There is no evidence to suggest that other types of board which operate in the US or Europe, e.g. a supervisory board, is more effective. In fact a lot of evidence is to the contrary. While executive directors and non-executive directors are one and the same in law, they do, in practice, pursue different roles but the combination, when working well, can be powerful. Non-executives have to be interested enough to get to know the senior executives well and it is much better for the non-executive than merely being exposed to the chief executive and the finance director. For the senior executives it gives them exposure and experience of the board environment and can be helpful in terms of succession etc.

Shareholders

1. Too many large shareholders, e.g. institutions, have neither the time nor, it seems, the inclination to take more than a superficial interest in their investments or, indeed, the people who are supposed to represent them, e.g. the non-executive directors. When things go wrong they then thrash around looking for someone to blame and suggest introducing more rules.
2. There often seems to be a disconnect between the fund managers and the corporate governance people within the institution. It is not unusual for a company to be given a "strong buy" recommendation while receiving a tongue-lashing for not conforming in some shape or form.

3. Directors have to be either trusted or not. The idea that shareholders can be involved in approving senior managers' pay is patently ludicrous.
4. Transparency is, of course, critical and major shareholders should be much more demanding and rigorous in this area. Arguably some of the recent scandals might have been spotted much earlier if analysts from the major institutions had been paying more attention or choosing not to ignore what was in front of them.

Remuneration

1. The role of the non-executive director is becoming both more onerous and more high profile. Therefore, despite the siren calls of headhunters, it is going to be increasingly difficult to attract the best. Key directors, i.e. chairmen of committees, will almost certainly have to receive greater reward and the roles are now much more time consuming and more responsible.
2. Remuneration in general is very high profile and membership of the Remuneration Committee has become one of the most arduous. Transparency again is the key in executive packages but more importantly getting away from the "reward for failure" accusation. The answer perhaps is that executives should be greeted, as a "golden hello", with a year's salary-worth of the company's shares. When they leave they should take them with them but nothing else. There may be a case for non-executives having a similar sort of arrangement.