

RESPONSE TO DEREK HIGGS' CONSULTATION PAPER

From Peter Coppard, Net Resource Services Ltd

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A. ROLE

A1.

Listed companies and SMEs

Role of directors is to run the Business to maximise profitability and enhance long term prospects.

The Chairman needs to be nonexec for listed companies – not so necessary for SMEs. He should ensure that his nonexec directors are given adequate information to enable them to fulfil their duties effectively. He should also ensure that they are capable of using this information in order to draw appropriate conclusions.

A2.

Listed companies

The key role is to protect the best interests of the shareholders and stakeholders. The particular background and experiences of each nonexec will naturally focus their thinking along these lines and how they will affect the organisation's prospects. Independent thinking is crucial.

SMEs

Same key role, but the nonexec's skills and expertise would be expected to enable a greater involvement in the company's activities. Again, however, the need for independent thinking is paramount.

A3.

Listed companies

I suspect that all too often the nonexecs are not in possession of all relevant information, nor are prepared to act independently to the point of 'walking away'.

SMEs

Not enough SMEs have nonexecs. Not enough have sufficient nonexecs. There is still a general lack of awareness of the benefits that good well-chosen nonexecs can bring to a company.

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A4.

The more the better. The board, properly chaired, will derive strength from the independent contributions.

A5.

Obviously the main potential conflicts are

- a) when the nonexec cannot agree with the board's decisions and has to resign and thus lose out financially.
- b) When the nonexec feels that he/she has much to contribute but cannot persuade the board to agree on a particular course of events.

In both cases the nonexec should have a practicable means of ensuring that the shareholders, investors and stakeholders are acquainted with the facts. This can be achieved by using the Internet via the '[Nonexec reporter](http://www.nonexecdirector.co.uk)' we are developing within www.nonexecdirector.co.uk .

An underlying feature concerning the roles and abilities of nonexecs is the need for adequate specialised training.

A6.

Listed companies

The chairman's role is very significant and extensive. He/she should be prepared for 100+ days/annum committed to the company. The chairman should never be the CEO.

SMEs

The CEO and Chairman can be one person's job. If not, the nonexec chairman may be required to commit to 30 – 40 days/annum. The Nonexec's commitment varies greatly, depending on the role(s) being undertaken. It can be as few as 6 days/annum to, say, 36.

Listed companies and SMEs

If we are to enhance the effectiveness of nonexecs there clearly has to be an upward limit to the number of posts held at one time by an individual. Commonsense suggests that, to do the jobs properly, this should be no more than 3 or, perhaps, 5 if the duties and required involvements in each are low.

A.7

Listed companies

There should be a role for a senior independent nonexec. The role should be to coordinate any specific issues that the nonexecs have concerns about, e.g. if they feel that they are not

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getting the information they need. It may also be relevant if they wish to make a statement to the shareholders and stakeholders via a reporting mechanism.

SMEs

It is unlikely that an SME board would require a senior nonexec.

A.8

In an ideal scenario, where nonexecs are provided with adequate information and have a swift and effective reporting mechanism (such as the proposed [Nonexec Reporter](#)) to their shareholders, there should be no reason to depart from them holding the same legal responsibilities as held by executive directors.

If they are not trained adequately, however, and not given all relevant information, it is easy to see how, in such an undesirable situation, they could be at substantial risk when the company runs into trouble. Clearly therefore the government should be pressing the point that nonexecs should be properly prepared before taking on a directorship, not changing the law. If trained, the nonexec would be more likely to know when he/she has not been given the requisite information needed for their board duties.

B. ATTRACTING AND APPOINTING NON-EXECUTIVES

B.9/10

The key skills needed by nonexecs include

- The ability to think independently
- The ability to understand balance sheets and profit and loss accounts
- The appreciation of the techniques of risk assessment
- A good understanding of the principles of corporate governance
- An appreciation of the requirements of the Companies Act
- An understanding of the stock market and share valuation
- Good interpersonal skills
- A good understanding of the company's business
- A good understanding of the company's culture
- An awareness of directors' remuneration levels
- Understanding of the uses of the Internet

All these skills are essential to the nonexec. The last mentioned will grow more in importance over the next 10 years.

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B.11

There is no substitute for experience. Skills are very necessary to be able to contribute to boardroom activity but to have seen and learnt from situations elsewhere that have a bearing upon current challenges facing a company is invaluable.

B.12/13

Using the old methods of recruiting nonexecs,

- a) your own contacts, bank manager / accountant / solicitor's recommendations, it was not easy to find nonexecs with the right skills and attributes or,
- b) employing recruitment agencies, it was very expensive and time-consuming.

Now this has changed with the advent of specialist web sites and on-line databases such as www.nonexecdirector.co.uk. We have approaching 900 skilled and experienced people offering their services to companies who have registered on-line. This enables them to search free of charge, and only when they have made their own short list from the candidates displayed do they have to pay any money. Even then, the fees are extremely low compared with those charged by the recruitment firms.

Having found the 'ideal' nonexecs from their short list it is then necessary for the companies to offer the individual(s) the position as a non-executive director. They can access a suitable contract format, fully referenced to the Companies Act 1985, again from the website.

The nomination committee should obviously contain the chairman and CEO, it should also include representation from the main shareholders (pension funds, banks, venture capitalists) since the nonexec's responsibilities are equally to them as to the board.

I am sure that too many nonexec positions on the larger listed company boards are occupied by too few individuals. As many of them also sit on each others' remuneration committees, it is perceived that the 'nonexec's club' is incestuous and self-perpetuating – not a good image - and when corporate crises occur, investors and stakeholders lose confidence in a system that should be there to protect their interests.

B.14

The rewards for non-executive directors have been appropriate for the services they have provided in the past. However, if we are going to upgrade their standing, levels of competence, restrictions in numbers of offices held and responsibilities, we should accept the fact that to get the right people offering their services the fee levels must be increased significantly.

The trend in the US is to pay less in fees and more in equity. I feel there is an inherent danger in this, as it will inevitably bring some pressure to bear on the nonexec who may wish to 'blow the whistle' when he feels that the board is following a flawed policy or strategy. This may appear to be at odds with his obligation to the shareholders but if he

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feels that the company will be damaged by the board continuing down a particular path, then he should consider his actions will be in the shareholders' best long term interests.

B.15

Yes. There should be absolutely no distinction between all directors regarding liability insurance provision.

STRUCTURES AND ACCOUNTABILITY

C.16/17/18/19

These questions are very much corporate governance issues as they relate to listed companies – particularly the larger organisations. As I am not a director of such an organisation I do not think I have the experience to comment on these matters.

C.20/21

I believe very strongly that the board and all its members should have key performance indicators set and agreed by the board. This technique is probably used throughout the company and there is no reason why the directors should not themselves be challenged in like manner. The results of their performance should be made available to shareholders and stakeholders.

C.22

I think that it has been too difficult for nonexecs to successfully challenge executive decisions or expose serious problems. The recent raft of corporate disasters bears witness to this. It must be made easier for the disaffected nonexec to make his views known to those to whom he has a responsibility. This is why we are establishing the opportunity for them to report via the Internet so that any interested party can gain free access to the text.¹

RELATIONSHIPS WITH SHAREHOLDERS AND OTHERS

D.23

I do not believe that there is enough communication between nonexecs and shareholder and stakeholders. They can easily be improved by the use of the nonexecs portal described in

¹ See [Appendix 1](#)

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Appendix 1. The institutional shareholders would be able to read the nonexecs report and, via his/her email address, make direct contact.

D.24

Chairmen have the unique opportunity to bring out the best in their directors – both executive and nonexec. In the latter case they must ensure that the nonexec has access to all the information he/she needs. They must also enable the nonexec to fulfil their duties as effectively as possible by making appropriate training available to them, if they agree that this would be beneficial.

Chairmen should also include corporate governance risk assessment as a key part of board meeting agenda. This is such a vital management tool and it is hard to see how the recent catastrophes could have occurred if proper risk assessment had been made.²

D.25

Good, professional relationships are absolutely necessary if a board is going to work to its full potential. If there is a conflict with the board involving personalities rather than issues, it must be identified and resolved. Organisational Development techniques can be very effective in dealing with such problems. The Chairman is responsible for dealing with matters affecting the performance of his board.

It is also important for the nonexecs to meet the company's senior management. All too often the nonexecs are only seen at board meetings and the AGM. This does not give other staff the opportunity to voice any concerns they may have over the way the company and its management and financial accounting are being run. Depending on the culture of the organisation, it can often be very difficult for nonexecs to 'have it from the horses mouth'.

D.26

The Company Secretary is there to support the board and advise on corporate regulations and legal requirements. If there are issues arising that pose a risk to the company he should ensure that the nonexecs are made fully aware of the relevant details.

SUPPORT

E.27

Nonexec directors are expected to make and support decisions, determine strategy and contribute to a vast range of issues at board level. They must therefore be provided with adequate information be able to perform these tasks effectively.

² See Appendix 2

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As they have a responsibility to the shareholders and stakeholders, as well as the board, there have undoubtedly been occasions when they have not been given all the information they could, and should, have had. When, subsequently, corporate disasters have occurred, the nonexecs have been found wanting – partly due to matters being concealed from them and partly due to them not asking the awkward questions that good training would have prompted.

E.28

Training courses for nonexecs do exist, provided by IoD and some management training establishments. I am cooperating with the BSI regarding their running a course for nonexecs that focuses particularly on the vital area of risk assessment for corporate governance. I have not seen this aspect treated with enough emphasis within other course curriculae.

The other important feature of training is to ensure that the nonexec has enough understanding of the company's financial affairs to know when all is not well.

E.29

Induction of nonexecs is absolutely necessary if he/she is to be able to understand the company and its culture. Meeting staff is an integral part of the process thereby enabling direct contact to be fostered at all levels.

E.30

The nonexec should ask for a statement from the chairman as to what is expected from him. The use of the KPI will further enable the nonexec to measure his/her performance against an agreed yardstick.

SMALLER LISTED COMPANIES

F.31

Where relevant, particularly in the earlier questions of the consultation document, I have detailed the differences in character between the duties and responsibilities of nonexecs in listed companies and what are generally referred to as SMEs.

The essential difference is that there will generally be a smaller number of shareholders to represent and the directors may well be significant equity holders themselves. The role of the nonexec director will probably contain an element of additional contribution in the way of his/her own particular expertise and experience. This aspect would be very much considered when choosing a candidate for the position.

There need not be any different provision within the law for such nonexecs.

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INTERNATIONAL CONTEXT

G.32/33/34

Generally the UK is thought of as a leader in matters of corporate governance. It would be greatly to our credit if the changes that come about following this investigation into the role of the non-executive director become adopted as best-practice by our international friends.

One thing I do believe is that countries such as Germany have an advantage over the UK because they are more inclined to take the long term view on a company's prospects and investment strategy and are less motivated by short term results so favoured by the City. This constant drive for immediate success can seriously weaken future growth and I have seen companies mortgage their next financial period just to massage the current results.

It would be distinctly advantageous if the partnership between nonexecs and the shareholders could steer the board in the direction of future prospects, and effective communication between them becomes vital.

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APPENDIX 1

The Nonexec Reporter

The website www.nonexecdirector.co.uk is to be enhanced to act as a portal site for any non-executive director to post a report. The purpose is, primarily, to enable them to communicate directly with the company's shareholders, institutional investors, bankers and stakeholders on matters of concern to them. As the reports will be in the public domain, other interested parties will also have similar free access.

The methodology of the portal will be based on certain principles:

- All non-executive directors wishing to post a report will have to register on-line, giving relevant personal and company details, email address and his/her secure password
- Our Admin will verify that the information is genuine and correct before acceptance
- After clearance of the registration, the nonexec will be advised by email then enabled by use of the password to upload his report, which must be dated and bear his name and/or email address
- Ideally the report should be in .pdf format. The website administration has no control whatever over the content of the report
- When a report is uploaded, Admin will advise the relevant company that one has been placed, by whom and that a fee is due to website administrator
- Admin will invoice the company for the verification and information services provided
- There will be no cost to the nonexec when posting a report
- If he/she wishes to amend the report, this can be done, and dated, but the original report will still be open to view with its original date
- Reports will be removed after a given time (yet to be decided)

There needs to be an agreement that the company will pay the invoice promptly, the amount of which has not yet been fixed, but will not be excessive. It should be borne in mind that the owners of the company are the shareholders and investors. It is they who will be the beneficiaries of this scheme so even if the directors are not happy that one of their nonexecs feels behoved to post a report, they must not be able to delay or prevent payment.

These aspects are provisional and may be amended after discussion with appropriate authorities.

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APPENDIX 2

The booklet Managing Risk for Corporate Governance is available via the website www.nonexecdirector.co.uk at a price of £30.

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