

Non-executive directors review

Response of Richard Sykes QC

In general, I do not feel competent to offer comments as I am not very au fait with the process of appointing non-executives nor the particular role they perform in practice.

I will make three particular comments.

- A8. I am strongly opposed to the notion that the law should clothe executive and non-executive directors with different duties. The duties of directors are applicable to all directors whilst they are acting as such and not to executives acting in their executive capacity.
- B. I am somewhat disappointed by the narrow field from which most listed companies pick their directors – broadly directors or senior executives of other listed companies. My own view is that in order to be a non-executive director it is not necessary to have been an executive or director of another company or companies. For example, there are many solicitors who retire relatively early and have an adequate experience of being involved in the management of businesses. Their enquiring minds make them, I consider, ideal candidates but they are not greatly used. The same is true of chartered accountants although generally they do not retire quite so young. This comment is not applicable to barristers, in my view, but may be applicable to other professions.
- C22. There is authority to support the view that a director who is satisfied that the course being advocated to shareholders by the other members of the Board is against the interests of the company will be entitled to his costs of sending shareholders a circular to explain his view. There was an attempt (perhaps via PRONED) to publicise this case but it is not widely known.

Richard Sykes QC. 12 August 2002.

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