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Derek Higgs  
Non-Executive Directors Review  
Department of Trade and Industry  
Room 2142  
1 Victoria Street  
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Date 6 September 2002

By email (non-exec.review@dti.gov.uk)

Dear Mr Higgs

**Non-Executive Directors Review**

I am writing to you on behalf of the City of London Law Society Company Law Sub-Committee. I am aware you have had comments and input from others from a legal perspective, including the Law Society's Company Law Committee. Accordingly we took the view we would not make a detailed response, however we did wish to draw your attention to one concern.

Given the importance of persuading high quality individuals to become non-executive directors, the legal risks and responsibilities of the office are important. It is clear that many people do not pursue non-executive positions, despite their high level of qualification and suitability, solely because of the risks (whether actual or perceived) of liability or even just of being tied up in litigation or regulatory investigations.

The direction of the DTT's Company Law Review and recent White Paper (a) is to toughen directors' duties still further (e.g. an objective standard of care rather than the current subjective standard judged by a directors' own ability), but (b) more importantly, may facilitate claims against directors by third parties. Whilst this is still under review and will be the subject of further consultation we suggest that you may wish to warn the DTI of the risks of further burdening directors with legal liabilities. It seems to us there is a proper balance between encouraging individuals to become directors and directors accepting proper accountability, but at the same time any further burdens may in practice drive away more good candidates for non-executive office.

Yours sincerely

  
**JAMES PALMER**

Bangkok Beijing Brussels Hong Kong London Moscow Paris Singapore Tokyo

A list of the names of the partners and their professional qualifications is open to inspection at the above office. The partners are either solicitors or registered foreign lawyers.

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