



“MY  
PRINCIPALS!  
DON'T LIKE  
'EM? I HAVE  
OTHERS...”\*

*When it comes to “what not to do” in corporate governance, we are somewhat spoilt for choice for cautionary tales and eye-popping case-studies: RBS, BP, Tesco, Enron, Northern Rock, News International, Cambridge Analytica and Facebook have, to varying degrees, been the subject of losses in shareholder value and public trust, not to mention major job losses and, in certain cases in the list above, taxpayers’ money rescues and pension funds for millions, diminished.*



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The roll-call of calamity caused by failings in corporate governance goes on and on across sectors, and it's worth just reminding ourselves of what we have learned about leadership shortcomings in the past few years: Mis-selling of services by banks, which has cost them and taxpayers billions of pounds and further damaged trust in the financial sector in the process. Tax avoidance by international firms, who route income through low tax domiciles, in order to avoid paying tax. Anti-competitive behaviour, such as the persistent rumours of collusion between energy firms. Unethical behaviour and serial privacy invasion such as the phone hacking scandal or social media being weaponised for political ends. Corruption and the payment of bribes in countries where the rule of law is weak, in order to secure contracts. Massive fines against energy and water companies for the environmental damage and, worse of all, patients hurt and fines levied by regulators against pharmaceutical companies for their frequent failure to disclose the side-effects of drugs discovered in clinical trials. I feel like I need to take a shower after writing this, but you have the general idea, things haven't been great.

No matter how many codes are developed or laws passed, it is the corporate governance of executive boards and the behaviour of the leaders of companies that counts. Despite many deleterious and sometimes dramatic consequences, public understanding and perception of the role and importance of independent directors, as a driver of change towards best governance practice, remains woefully inadequate. So why do I claim that independent directors - non-executive directors in old money - are the real custodians of our companies? First and foremost, increasingly, they have the majority of seats on the boards of public companies. Plus, in the final analysis, it is the boards that have the responsibility for the strategy and performance of businesses. Secondly, they represent all interested parties not just the executive team and shareholders interest. This is particularly important since, increasingly, via their executive representatives, shareholders have become focused - almost fixated - upon short-term results, and it falls to independent directors to have concern about the longer term health, ethical and strategic direction of the business.

Another significant factor is that the increasing mobility of executive directors requires independent directors to retain focus upon high calibre management recruitment and/or the associated management succession.

Given all these factors, the role and function of the independent director crucially both safeguards and helps responsible management. Interestingly, this isn't just the case in the corporate sector, but increasingly also on the; Councils of Universities, NHS Trusts, Charities & NGO boards, along with numerous other public bodies. Responsibility for company strategy is foremost for most non-executive directors since this, together with ensuring the strength of the senior team, are the key factors that impact the health of companies. There are also critical roles to play in helping companies deal with issues of globalisation and risk management, as well as overseeing merger and acquisition due diligence (along with hostile approaches from predators). Obviously, corporate social responsibility is another key area, along with recognising and implementing the many benefits of better diversity and inclusion policies and practices. Finally, independent directors are the eyes and ears of companies, in addition to bringing best practice, experience and contacts from other sectors and geographies.

company take with regard to protecting the information about and privacy of its users and/or customers? Will it engage in price fixing, price exploitation or dumping in order to grab market share, regardless of the long-term impact on customers? How safe are the company's products? Is data shared with inappropriate or unethical actors? Is the company behaving in an environmentally friendly manner? Plus, there are the impacts of different types of ownership and globalisation that necessitate the need to cultivate legal, political economic, social and cross cultural understandings of the countries with whom their companies do businesses. Emerging countries bring with them their own special challenges. Gone are the days when it was enough to attend board meetings, nowadays most directors are members of the main committees such as; Audit, Remuneration, Quality, Health & Safety, and Nomination. So, it is essential that knowledge is founded upon legislative vigilance, while also being contemporary and fully up-to-date with all that is happening in those specialist areas. Finally, it is of course necessary to visit the coalface of the business and meet the employees, as often as is possible.

A particular aspect of the challenge of the job is to be truly independent in thought, action and spirit. The independent director is not

in the future too - all collateral damage or losers. It is time for UK companies to properly embrace the business case for inclusion and diversity policies, in order to deliver; competitive advantage through increased productivity; better decision making from inviting and harnessing staff engagement; better staff retention from inviting and harnessing staff engagement; widening the talent pool and better risk mitigation.

While we wait for legislation or organisational step change to actually happen and notwithstanding diversity and inclusion is often an easy mantra to virtue signal with, or solution propose, beefing up our D&I practice enjoys the advantage of being immediately actionable, low cost and with increasing out year impacts. Obviously, before even this, a first positive step by government would be to address by closing the gender pay gap for current existing employees. More widely, to both replace these missing-in-action workers and further expand the UK talent pool, the government urgently needs to actively pursue better more robust diversity and inclusion employment strategies. Big shifts in working practices and patterns across all sectors in the UK means that there is increasing recognition that best employment practice means truly engaging with the widest range of employees, skills, attributes, cultures, outlooks and perspectives. Actively seeking out new talent from currently untapped pools of talent doesn't make pay differentials and low pay go away overnight, nor does it instantly improve staff motivation or ensure risk management has greater integrity. But a Government and UK-wide pro-active diversity and inclusion agenda would - from a business case point of view - help mitigate risk, improve ethical decision-making while also simultaneously expanding the talent pool available, as we wait for actions to catch up with the fine words of business leaders, executive boards and governments.

\*Groucho Marx

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## IT IS ESSENTIAL THAT KNOWLEDGE IS FOUNDED UPON LEGISLATIVE VIGILANCE, WHILE ALSO BEING CONTEMPORARY AND FULLY UP-TO-DATE WITH ALL THAT IS HAPPENING IN THOSE SPECIALIST AREAS

It's obviously the case that the job of corporate governance has become much more challenging and difficult, which reflects the growing complexity of the decisions which the boards of companies routinely face: Should the company do business in, or with countries that have oppressive regimes, the policies of which may be anathema to employees, shareholders and the general public? How should the company make sure that local subsidiaries, suppliers and so on are not behaving in unethical ways such as; exploiting child labour or failing to provide a safe working environment? What stance should the

there to do the jobs of the executive directors but to challenge them and open minds to alternative practices and solutions to business problems. This is particularly necessary in times of adversity and ethical compromise. Finally, and of great importance, is spending enough time to really understand the business and the sector and to know and understand board colleagues and the executive team, especially the CEO. Responsible media also have a crucial part to play on shining a light on those companies and institutions who do not take corporate governance seriously for the consequence is that we are then - now and

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