

## Independence & Responsibility

Being an Independent Director of a PLC has its upside. There's the status, of course, and the director's fees. The work can be interesting as well, and there's the opportunity to mix with prominent people, and be involved in making important decisions.

However, the job also means contributing to the management of the PLC's affairs, not for personal benefit, but for the benefit of others. There's a duty to do your best to protect the interests of the PLC and its stakeholders.

Most of the time, everyone is clear about what is the right decision. The facts support the recommendation, the Executive and the primary advisers agree, and the major shareholders are aligned. The Board has a collegiate approach, like many Boards, and the Independent Directors "go with the flow".

It's all very comfortable, and that's what makes it so difficult when there's division.

If the ducks are not in a row, if the facts are in dispute, and there's confusion about the best course of action, the world looks to the Independent Directors. This is especially the case when voices become louder, and positions become more entrenched.

Too often, unfortunately, the Independent Directors seem to think the safest option is to keep their heads down and wait for it all to blow over. They could be digging themselves into a hole, especially if their silence is encouraged by any of the disputing parties, who have also taken control of the narrative.

By not being proactive, Independent Directors open themselves to being accused of giving of misleading information to the stock exchange, which is an offence under the Capital Markets and Services Act. Successful prosecutions have been brought against Independent Directors in just such circumstances.

As far as the stock exchange is concerned, any information is considered material if it is reasonably expected to have a material effect on:

- (a) the price, value or market activity of the PLC's securities; or
- (b) the decision of a holder of the PLC's securities to buy, sell or hold.

Financial reports, including unaudited quarterly reports are clearly material information, as are statements issued to the stock exchange by the PLC which contain financial information. The same applies to any dispute which could have a material impact on the PLC's financial status or results.

When a financial report or a statement is issued by the PLC, the whole Board is assumed to have approved the statement. Silence by the Independent Directors is taken as acquiescence.

If, for instance, the Executive releases a statement to the stock exchange announcing a dispute and stating its position, and the Independent Directors do not agree, the

responsible course for the Independent Directors is to raise their heads in the interests of the PLC as a whole. Silence is not a responsible option. The objective is to move on from public division and disputed data, to a position of openness and transparency for the benefit of all shareholders and stakeholders.

First, the Independent Directors need to get together, agree a spokesperson and inform the rest of the Board, the Company Secretary and the stock exchange. They need to take control of their own narrative.

Second, the Independent Directors should examine the willingness of the disputing parties to agree a resolution process. Waiting for the stock exchange or another regulator to weigh in is unlikely to ease tensions between the disputing parties. Every attempt should be made to avoid the disputing parties taking legal action against each other.

Third, the Independent Directors should appoint a qualified outside person to advise them on the legal and governance issues. The right to make such an appointment should be enshrined in the Board Charter. If any of the disputing parties seeks to block this, the stock exchange should be informed.

Fourth, the Independent Directors' should identify a timeline for successful resolution and the course of action they will take thereafter, depending on the outcome.

All this is much easier if the Board is led by an independent Chairman. If that is not possible, then the Senior Independent Director should take the lead and assume the spokesperson's role.

For those Independent Directors who still want to avoid being caught in the headlights of public opinion, there's always the option of resigning "for personal reasons". The problem with this is that without having taken a stand, there may be an assumption of acquiescence.

In a social context, when disputes arise, and people are forced to take sides, the interests of those in dispute are seen to be paramount. That's bad news for the bystanders, the community.

In a corporate context, the interests of the shareholders and stakeholders – all of them – are paramount. The role of the Independent Directors is to insert themselves into the fray for the greater good. It's the only responsible thing to do.

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