

---

# Editorial

---

## Non-Executive Directors

Readers could be excused for finding the topic of non-executive directors ("NEDs") somewhat tedious. Company law practitioners will be only too aware of the now annual campaign by Sir Brandon Rhys Williams to introduce legislation requiring substantial companies to have at least a prescribed minimum of NEDs on the board. The NED concept has also, to its disadvantage, become entangled in such transatlantic notions as audit committees.

This is unfortunate since most advisors and secretaries of companies which have NEDs would readily testify to the valuable contribution which NEDs can make. They can introduce objectivity to board deliberations and possibly bring valuable external skills to bear on the company's affairs; their contribution can be greatest at times of crisis such as internal board disputes or takeovers. NEDs are also said to be a bulwark against oppression by an overweening chief executive (though one can think of instances where NEDs did not adequately fulfill this role). The appointment of NEDs is now in practice widespread and certainly where a substantial company relies on institutional support, the presence of NEDs on the board is indispensable.

The question of practical relevance is thus no longer whether to appoint NEDs but rather who to appoint and how best to identify suitable appointees. Companies will be helped in this endeavour by the establishment of a new organisation, "Promotion of Non-Executive Directors" (PRO NED), sponsored by the CBI, the Bank of England, The Stock Exchange and other financial institutions. PRO NED's first initiative has been to publish a helpful guide, "Role of the Non-Executive Director". PRO NED will also maintain contact with chairmen and chief executives who would be prepared to make themselves or their directors or senior personnel available for appointment as NEDs of non-competing companies and will be able to effect suitable introductions for companies seeking NEDs.

In the view of PRO NED, NEDs should devote about 10 per cent of their time to the company's affairs. Companies may well be reluctant to permit serving directors and executives to take on NED appointments since they are usually already heavily committed. This is, however, a short-sighted view since it is in the interests of companies generally for there to be an adequate supply of suitable qualified candidates for appointment. The lending company's own management could also be strengthened by the resultant widening of experience of its executives. Possibly companies would need to have slightly larger management teams to make the necessary capacity available — the costs could be recouped or mitigated from the directors' fees receivable. Recently retired executives will also continue to be a useful source of supply (particularly as retirements become progressively earlier as seems likely).

## Role of the Board

The recent endorsement by the European Parliament of the "Guertsen Report" on the draft 5th EEC Company Law Directive (discussed in our Editorial of October 1980) makes this an opportune moment to reflect on the role of the board of directors. That role is unquestionably to manage the affairs of the company "in its best interests". Ultimately the board's duty may be said to be to ensure the survival of the company; unless the company maintains reasonable profitability and productivity and remains able to remunerate its staff competitively, its survival or at least its continued independence will be under threat. The board must be single-minded in managing the company's affairs and each member of the board needs to be prepared to contribute to the attainment of the company's overall objectives. Accordingly, the wider choice of options set out in "Guertsen" is to be welcomed as it will permit companies to adopt or continue board and management structures which maintain the necessary separation between board direction of the company's overall affairs and negotiations between claims of differing interests within the company.