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Corporate Governance inquiry - written submission form

The deadline for written submissions is Wednesday 26 October 2016.

Dear David Offenbach

Thank you for submitting your evidence to the above committee inquiry.

You will receive an email to david.offenbach@smab.co.uk in the next 24 hours.

The email will contain information about next steps.

For more information and the latest news visit the [Committee's website](#)

Written Evidence submitted by David Offenbach
Vice-Chair, Labour Business (formerly Labour Finance and Industry Group)
(Chair 2011 to 2015) in a personal capacity
25th October 2016

I write from my experience as a Solicitor acting for public, private and not for profit companies and as a former non-executive Director of a Stock Exchange quoted company for 15 years which has led me to conclude that substantial reforms are necessary to company law in the United Kingdom.

Executive Summary

1. **Director's Duties**

A director's duties under Section 172 of the Companies Act 2006 need to be widened so that the statutory duty of a director must not only be to promote the success of the company for the benefit of its members as a whole, but should also be expressed to be for the benefit of the community at large.

2. **Breaches of Duty**

The Companies Act 2006 does not have a satisfactory enforcement mechanism for breach of duty by a director and therefore new statutory criminal offences should be created in order to properly police breaches of duty. Civil remedy is inadequate.

3. **A Public Benefit Corporation Rule Book**

A new form of public benefit limited company, perhaps on the Delaware USA model, should be introduced in order to encourage the establishment of companies set up for a wider social purpose with either statutory force or voluntary rules enabling the company from the outset to have a wider public interest.

1. **Director's Duties**

So far as I am concerned the duty of a director whether executive or non-executive should be the same. Having been a non-executive director (both of public and private companies) there should be no distinction drawn because if a director does not feel that he/she cannot fully manage a company whether he is executive or otherwise or not then he/she should not continue to be a director. Section 172(1) of the Companies Act 2006 has a rather limited view point. For example, should the maximisation of profit by the company for its members be at the expense of all other considerations e.g. should a company employ child labour or engage in illegal practices in order to maximise profit? Much informed opinion, particularly in relation to companies of a certain size or publicly quoted companies, should have regard to additional interests of perhaps the community, the region etc.. I have written previously about questions of public interest in business (Takeovers and the Public Interest, Policy Network/Labour Finance and Industry Group 2013), (Beyond Shareholder Value, TUC/New Policy/Institute/SO

AS University of London 2014). Recent much publicised cases of poor board room practice underline the problem.

2. **Breaches of Duty**

Under the Companies Act 2006 there are very limited rights of redress for breach of director duty. Either a shareholder may try and mount a hard-to-bring shareholder action, or the company board itself may decide whether it wishes to seek any civil remedy against a director (or more probably a former director) which is always difficult about a former or current colleague. This is manifestly inadequate and an independent prosecuting authority, probably the Crown Prosecuting Authority could be invested with the responsibility of instituted criminal proceedings for breach of duty. This is not only necessary for the policing of individual failings but also to give overall confidence to investors in the United Kingdom and internationally that a proper regulatory regime is in force in order to protect their investment. It is better that an authority independent of any industry Regulator is invested with this prosecuting task.

3. **A Public Benefit Corporation Modern Rule Book**

There has developed in the USA in recent times the concept of the public benefit corporation. Having been introduced in Delaware there are now 33 states in the USA who have legislation assisting the establishment of public benefit corporations ("B Corporations"). Consideration should be given to the kinds of statutory and voluntary regimes described in "The Public Corporation Guide Book" (Frederick H Alexander published by Morris Nicholls Arsht and Tunnell in 2016). Such B Corporations build on the concept of community asset companies within United Kingdom company law.

Oral Evidence

I would like to have the opportunity of giving oral evidence and providing more detail than this short note.