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Sir Adrian Cadbury  
Rising Sun House  
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Dear Sir Adrian,

**RE: Non-Executive Directors Insurance - Independence - Insurance**

I was fortunate enough to be present at the dinner hosted by Pannell Kerr Forster on 5th November when you gave us a masterly, brief insight into the remit of your committee concerned with non-executive directors and Corporate Governance.

It is just possible that you may recollect that I brought up the question of independent insurance, coupled with legal advice for non-executive directors and the need for that almost to be an essential element of the contract of appointment.

A Syndicate at Lloyds, together with a very well-known broker are prepared in principle to make available the following to non-executive directors:-

1. Cover for all claims (save where the non-executive directors are a party to fraud or dishonesty) brought against the non-executive director by anybody, including the company on whose board he serves. This is very exceptional.
2. Cover for the legal costs and expenses the director may incur in bringing a claim for damages against the company should he feel that he has been wrongfully or improperly dismissed or removed from the board.
3. A special provision whereby the company will pay for legal advice at the request of the non-executive director from the lawyers appointed or approved by Underwriters at a rate per hour, to be agreed in

Contd.../...

D DAVID A. McINTOSH JOHN PARKER VINCENT O'CALLAGHAN DAVID ROGERS MICHAEL DOBIAS SIMON PEARL JOHN COATON JOHN SMITH NICHOLAS ROCHEZ  
A MARK BEATTIE KENNETH MCKENZIE ALAN FISHER ANNE WARE DANIEL GOWAN ANDREW HIGGS GERALD O'MAHONEY MICHAEL FLETCHER DAVID McL. ROBERTS  
C DAVID HERTZELL ROBERT LEE MICHAEL COVER NICHOLAS SINFIELD LAURENCE MESSER NIGEL MONTGOMERY JOHN JACKSON MICHAEL RHATIGAN BETH WILKINS  
GARY MARSHALL MARJORIE HOLMES CHARLES WANDER JOHN BOLTON MARTIN HARRISON NICHOLAS RUDGARD ROGER DUNCAN SIMON PINE HILARY NICHOLLS  
ROBERT VINEY ASHRAF MOHAMMED THOMAS SHAWDON NICHOLAS BRADLEY ADRIAN HARRIS CHRISTOPHER REES CONSULTANTS: ANTHONY HARRIS CLIVE BOXER  
BRUSSELS HONG KONG LONDON LLOYD'S MADRID MANCHESTER

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25th November 1992

advance annually (special concessionary rates will be available), and to be paid by the company. In turn this will be treated as notification to and with the support of the Underwriters so that the non-executive director, when requesting the advice, is effectively placing the Underwriters on notice which they will accept if there should follow a claim. The claim will attach to the policy when the notice, or request for advice is made.

These proposals stand little chance of getting off the ground unless the support of your committee is given to them by way of a recommendation that they ought to be part of any appointment of a non-executive director to the board of any company. An active sponsor in the shape of ProNed or some similar organisation willing to insist upon the purchase of such insurance as a term of the provision of their services would also be required.

For the insurance to be available at reasonable rates it has to be taken up on a large scale by non-executive directors and on an individual basis (although the premiums would be paid by the company and the legal fees also by the company at the concessionary rate).

The intention is to give the non-executive directors a feeling of independence so that they can, at no expense to themselves, call upon legal advice and have the full support of their insurers should they want to take an independent and determined position against a strong executive board.

This is one way of ensuring that close associates of executive directors, who are appointed to the board of the company as non-executive directors, can achieve a certain degree of independence and authority. It will make all the difference to whether a non-executive director is an effective force on a board or is merely an isolated cypher, worried about a consequence of a step being taken by the board, and able to obtain advice and assistance from, or with the knowledge and approval of those whose support he would want if anything went seriously wrong.

I was encouraged by our brief discussion to think that this proposal would be of interest to you. I believe it is in keeping with the objectives of your committee's report. I would be very happy to discuss its ramifications with you further if that would help.

Yours sincerely,

CLIVE BOXER



D  
A  
C

Laurence Cockcroft

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Nov 20th

Sir Adrian Cadbury,  
Rising Sun House,  
Baker's Lane,  
Knowle,  
Solihull,  
W Midlands B9J8PT

Dear Sir Adrian,

I am writing to you following your report on corporate governance since I am one of several people involved in launching an initiative focussed on corruption in international business. This will specifically relate to international transactions which are partly financed from public sources, notably development assistance and export credits.

A good deal of international support has been secured and we are now working towards launching 'Transparency International' as an international NGO to pursue this objective. Current support for the principle comes from some development finance agencies (tentatively World Bank and European Bank), some companies (especially in the US), some governments (notably Germany, Namibia) and individuals. The very small amount of funding which has been necessary to date has been provided by GTZ of Germany and the Global Coalition for Africa.

One of the key objectives of 'TI' will be to promote Standards of Conduct which can become a part of contracts financed by donor agencies ; another will be to assist governments to introduce more effective procedures for letting contracts under international competitive bidding ; a third will be, at the request of relevant parties, to investigate particular cases ; and a fourth will be to issue reports on the problem at a global or country level. We also hope to promote the idea of Company Chairmen personally confirming, as part of the an annual audit, that no corrupt payments (as defined in the Standards of Conduct) have been made. This obviously overlaps, in the UK context, with your own proposals.

As an approach to beginning this task, we currently foresee TI working to persuade say half a dozen governments (from different parts of the world but ranging from Africa to eastern Europe) to become active supporters of TI's goals and so to make the Standards obligatory in all externally financed contracts ; OECD based development finance agencies would insist on the same requirement for contracts in the country in question.

Since this concern does seem to be genuinely widespread we are confident of attracting a Council of Advisers capable of giving TI some weight. Robert McNamara and Andrew Young have to date agreed to serve and we believe that, of the others who have

been or are being approached (ex Presidents Nyerere and Haval)  
we shall have a balanced group.

We would much appreciate it if you felt able to lend support to the initiative in the UK, and perhaps to consider joining the Advisory Council. To give you a further flavour of the current progress of TI, I enclose a recent newsletter to the international network which already exists. This includes a current draft of the proposed Standards of Conduct.

If you feel the initiative is of interest, perhaps I could talk to you about it personally before too long ?

Yours sincerely,

*L. Cockcroft*

x10

**TRANSPARENCY INTERNATIONAL**

**TI NEWSLETTER --ISSUE 1**

**OCTOBER 1992**

We welcome all of you to the first issue of a Monthly Newsletter for Transparency International. As we are still in the formative stages for TI, we welcome your comments on the information contained herein and on the format and function of the Newsletter itself. Our goal in issuing it is to inform those of you who have expressed an interest in TI about recent developments, discuss upcoming decisions and ask for your guidance and comment, and advise you of expected developments over the next several months. In that all public announcements regarding TI will be carefully planned for the time of launching, we would ask that you keep the information contained herein in confidence, and not quote or publicize it outside the circle of supporters. That is not to suggest that we do not whole-heartedly encourage you to discuss and promote TI as widely as you see fit--indeed, that is what we hope you and all interested supporters will do over the next several months.

The format of this Newsletter is, as you can see, relatively simple. We will have a status report, a report from the various National Chapters which are developing around the world, a schedule of past and anticipated developments, and other attachments as appropriate. In future issues we hope to annex clippings of articles of interest to supporters of TI. Finally, we will on occasion ask for your comments and ideas, and will report on suggestions in future newsletters.

In this issue we ask for your comments for a Media Programme proposed by Frank Vogl, annexed hereto as Attachment 1. Please review the questions and respond. We hope that you find the information contained in this Newsletter informative, and appreciate your continued interest and support.

#### Status Report

Annexed hereto as Attachment 2 for your general information is a General Background document from the Chairman of the Interim Board of Directors, Peter Eigen. Many developments have occurred in the progress of TI since the highly successful meetings at Coopers & Lybrand excellent facility in Latimer on July 24 and 25, 1992. As you probably know, as a result of decisions made at that meeting, Dr. Eigen was requested to assemble an Interim Board of Directors and act as its Chairman. It consists of the following individuals:

Brigadier G. Blakely  
Laurence Cockcroft  
Peter Eigen  
Judge Theo Frank  
Joseph Githongo  
Michael Hershman  
Dr. Kamal Hossain  
Gerry Parfitt  
Frank Vogl

In addition, several working groups have been established dealing with various subjects, such as the Attorneys Working Group, convened by Fritz Heimann and a Media Group, convened by Frank Vogl. We hope this kind of dedicated support will continue to grow and expand over the next several months. The following are a number of the significant events which have occurred in the last months:

1. A new version of the Standards of Conduct was finalized on October 23, 1992, which although still a draft, is nearly complete. A copy of this latest draft is annexed hereto as Attachment 3.
2. On September 1, 1992, a very fruitful meeting of the Washington Chapter was hosted by Frank Vogl. Peter Eigen chaired an October 20 meeting of this Chapter, and we refer you to the Report annexed as Attachment 4.
3. Based on a number of factors, the decision was made by the Interim Board of Directors to legally register TI in Germany. A small group has been working on the corporate documents with assistance from GTZ, Reinold E. Thiel and Suzanne Hawkins and with the support of the Attorneys Group, specifically Fritz Heimann and Dr. Hossain. The preliminary decision is that TI will be registered under German law as a Verein, or association, which will provide the flexibility which is desired for TI, and which can also be afforded tax exempt status. The corporate documents should be finalized and filed before the end of November 1992.
4. A number of outstanding individuals have been approached and are inclined to serve on the Advisory Council for TI, including: Robert McNamara, Andrew Young, Miklos Nemeth, former Prime Minister of Hungary, Hansjörg Elshorst, Managing Director of GTZ, Tim Lancaster, Permanent Secretary ODA, Tim Boatman, Gerhard Kienbaum, and others. Other distinguished candidates have been proposed, and follow-up is required to confirm their interest. Candidates are also being considered for the permanent position of Chief Executive Director as of approximately June 1993. We will be pleased to receive suggestions from all supporters of TI for these important positions.
5. Efforts are continuing to expand the network of contacts with persons who have an interest in TI, especially in areas such as the Far East, Scandinavia, the former Communist countries, and elsewhere.
6. We have been advised that the Berlin and Frankfurt Chapters of SID are placing TI on their agendas in the upcoming months in order to encourage interest and support for TI. We were informed that TI was unofficially on the agenda of the IMF World Bank annual meeting last month. Michael Hershman is speaking to a number of groups about TI, including the Public Sector Management Symposium at the World Bank on September 9, 1992, and he intends to refer to TI in a speech to be given at Columbia University School of Business Alumni on October 29, 1992 and on November 4, 1992 in a speech before the Washington International Financial Management Forum, at the invitation of a Senior Financial Management Adviser for USAID Bureau for Latin America and the Caribbean.

## TRANSPARENCY INTERNATIONAL (TI)

*...the coalition against corruption in  
international business transactions*

Dr. Peter Eigen  
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### General Background on Transparency International (TI)

From Peter Eigen  
Interim Board Chairman

October 6, 1992

1. In recent months a diverse group of individuals from governments, national and multinational aid agencies, private corporations, NGOs and academia, have met to plan an initiative to combat corruption in international business transactions. A major concern has been to strengthen processes of good governance and enhance the effectiveness of resource flows to developing countries and to former communist nations. These discussions have been positive and I want to inform you about them.
2. We concluded that effective action is only possible in a spirit of cooperation. We intend to create a coalition, casting our net widely to engage participants who together can take actions outside of the glare of sensational publicity. We seek to establish a pragmatic coalition called Transparency International (TI).
3. We believe the organization must be flexible and independent and have as its sole focus the elimination of serious corruption in international business. TI will have a small office and its Executive Director and the members of its governing Board of Directors will be individuals enjoying excellent reputations. We also decided to invite a number of outstanding personalities to lend their support and guidance as members of an Advisory Council. They will be people who can secure trust from those at the highest levels of business and government.
4. We envisage TI developing specific activities and offering a menu of services largely in line with the demands of its coalition partners. For example, one activity might see TI working with coalition members (governments, donor agencies, and businesses) to strengthen rules and systems for international procurement bidding to eradicate corruption. Another activity might involve assisting governments to establish anti-corruption investigative agencies.



5. The discussions so far have prompted an array of detailed conclusions. Some of the most important include:

- TI will seek to secure support from among all participants in international business transactions for **Standards of Conduct** designed to promote transparency and accountability in such transactions. The Standards will aim to maintain the highest levels of integrity amongst all parties in international business. (TI's Standards will largely reflect generally recognized standards of fairness and good commercial practice.)
- TI will see as one of its missions that of **educating** the public on issues of corruption in international business, through convening meetings of experts, publishing studies and specific reports, issuing an Annual Report, and serving as a clearing house for information on these issues.
- TI will aim to provide **assistance** and expertise to parties to international trade, investment, and economic and social development, to assist them in implementing the provisions of the Standards and ensuring compliance.
- And TI will from time to time undertake **research** of compliance with the Standards and in appropriate cases examine serious contraventions.

6. TI's success will depend on its ability to achieve real results. As a stimulator of coalition building it will need to enjoy respect from all sides and so it must be, and appear to be, independent. Accordingly, we have decided that no single contributor should provide more than 5% of this not-for-profit organization's annual budget.

7. We want many contributors -- government agencies, international organizations, businesses, foundations and other non-governmental groups, who share the goal of eradicating serious corruption. National Chapters in the UK, the US and Germany, have arranged informal meetings to develop further the mission on TI; supporters in other countries are in the process of organizing themselves in Chapters. A number of bilateral donors (in France, Germany, UK and US), multilateral organizations (UNCTC, OECD/DAC, EBRD) and private enterprises are considering to support this effort. In coming months a variety of individuals will be devoting time to put in place the legal and administrative basic actions necessary to launch TI.

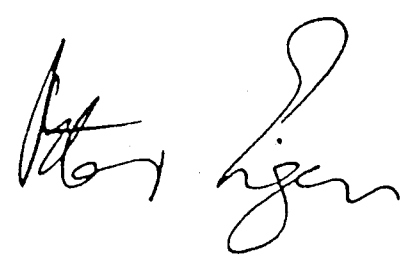
8. The immediate action program for the next four months includes:

- Completion of the draft Standards of Conduct (draft of 8/27/92 enclosed);

- preparation of corporate documents (probably incorporation in Europe);
- search for Executive Director;
- assembly of Board of Directors and Advisory Council (members of the Interim Board of Directors are listed in the attachment);
- development of work program and budget for the first year or two;
- exploration with governments, donor agencies, foundations, corporations for pledges of participation and funds; and
- preparation of publicity for an effective global launch.

9. In addition to the documents mentioned above, I enclose the Chairman's Summary of our last major meeting in July and the Statement of Decisions at that meeting. Also enclosed is a list of the participants at the various planning meetings. We are aiming at launching TI in January-February of 1993.

10. The effort to expand and diversify the support for TI is crucial at this formative stage of preparation; in particular the early participation of key members of the Advisory Council would provide important guidance at this stage, based on their experience and judgement, to find a practical approach to the problems of corruption. They would also lend credibility to our effort, which may be seen by some to be biased or quixotic. We do not expect this support to be very time consuming; the board members and the Executive Director would be in charge of the day to day running of TI. But it will be vital to guarantee the usefulness, the balance, the objectivity, the professionalism of the operation.



Enclosures

draft - 10/23/92  
Dr. Kamal Hossain  
Fritz F. Heimann

## *Transparency International*

### *Standards of Conduct*

These Standards of Conduct ("Standards") are set forth as a declaration of generally recognized principles applicable to international business transactions:

RECOGNIZING that corruption subverts economic and social development by driving up costs, distorting priorities and misallocating resources, undermines respect for public institutions and damages the fabric of society;

FURTHER RECOGNIZING that there is mounting concern about the consequences of corruption, shared globally by developed and developing countries, their governments and their citizens, by lending and aid-granting agencies, and by the international business community;

BELIEVING that effective international cooperation to combat corruption calls for a concerted effort to promote transparency and accountability in international business transactions and that this objective would be furthered by securing adherence with standards of conduct to be observed by all parties to international business transactions.

TRANSPARENCY INTERNATIONAL will dedicate its efforts to promoting adherence to these Standards in international business transactions by governments, international lending and aid-granting agencies, and business enterprises.

### Article I: Respect for Law and Standards

1. All parties to international business transactions shall respect and conform to all relevant laws and regulations applicable to the business transaction involved and shall observe the letter and the spirit of these Standards.

### Article II: Bribery

1. No one shall, directly or indirectly, offer or give a bribe to any public official in connection with an international business transaction, and any demand for such a bribe must be rejected.
2. No one shall demand or accept a bribe.

### Article III: Kickbacks and Subcontracts

1. All parties shall take measures reasonably within their power to ensure that no part of any payment made by a governmental entity in connection with an international business transaction is paid to government officials with decision-making responsibility regarding such transaction, their relatives, or business associates.
2. All parties shall take measures reasonably within their power to ensure that subcontracts and purchase orders relating to an international business transaction are not used as a device to channel payments or other benefits to government officials with decision-making responsibility regarding such transaction, their relatives, or business associates.

#### Article IV: Agents and Consultants

1. All parties shall take measures reasonably within their power to ensure the following:
  - a) that any remuneration paid to any agent or consultant represents no more than what is appropriate compensation for legitimate services; and
  - b) that no part of any such payment is passed on as a bribe or otherwise in contravention of these Standards.
2. All parties shall take measures to ensure that agents, consultants, or other intermediaries are not employed to gain any improper influence in connection with obtaining or retaining any business.

#### Article V: Financial Disclosure

1. All parties shall maintain accounting systems under which all financial transactions are properly and fairly recorded in appropriate books of account available for inspection by boards of directors, auditors, or other authorized persons.
2. There must be no "off-the-books" or secret accounts, nor may any documents be issued which do not properly and fairly record the transactions to which they relate.

#### Article VI: Political Contributions

1. Contributions to political parties or committees or to individual politicians shall only be made or solicited in accordance with the applicable local law, and all requirements for public disclosure of such contributions shall be complied with fully and promptly.

2. No political contribution shall be made or solicited, even if permitted by the applicable local law, in circumstances where such contribution, given its magnitude or timing, could reasonably be construed as exercising undue influence aimed at securing a special benefit or advantage in connection with an international business transaction.
3. All governments which do not have such laws are urged to enact laws and regulations requiring full and prompt public disclosure of all political contributions.

Article VII: Measures to Be Adopted by All Parties

1. All parties shall:
  - a) Take reasonable steps, including the establishment and maintenance of proper systems of monitoring and control, to prevent any contravention of these Standards; and
  - b) Periodically review compliance with these Standards and establish procedures for obtaining appropriate reports for the purposes of such review.

Article VIII: Measure to Be Taken by Governments

1. Governments shall take appropriate legislative, administrative, and enforcement measures to combat corrupt practices and to promote transparency and accountability in international business transactions.
2. Governments shall, through bilateral and multilateral agreements and institutional arrangements, develop cooperation in combating corrupt practices and promoting transparency and accountability in international business transactions.

Article IX: Measures to Be Taken by International Lending and Aid-Granting Agencies

1. International lending and aid-granting agencies shall adopt appropriate measures to promote compliance with these Standards.
2. Failure to comply with these Standards shall be taken into account in making lending and aid-granting decisions.

Article X: Measures to Be Taken by Transparency International

1. Transparency International will promote adherence to these Standards by all parties to international business transactions.
2. Transparency International will promote public awareness with respect to corruption in international business transactions and will serve as a clearing house for information on compliance procedures and other relevant issues.
3. Transparency International will provide consultation and other assistance to governments, international lending and aid-granting agencies, and business enterprises to assist them in implementing these Standards and assuring compliance.
4. Transparency International will research compliance with these Standards and, in appropriate cases, investigate serious contraventions.

Article XI: Definitions

1. All parties shall include national governments; national and international agencies involved in international lending and aid-granting activities; corporations and other enterprises engaged in international business transactions; agents, marketing consultants, and

other consultants, individuals or firms providing services or goods in connection with international business transactions.

2. Bribery includes

- a) offering or giving any payment, gift, or other advantage to or for the benefit of a public official as consideration for action or inaction by such person in an official capacity.
- b) soliciting or receiving, directly or indirectly, by a public official of any payment, gift, or other advantage as consideration for action or inaction by such person in an official capacity.
- c) TI shall focus its efforts on bribery which significantly affects international business transactions and not on facilitating or expediting payments the purpose of which is to expedite or secure the performance of routine governmental actions.



Frog's Leap,  
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Tel: 0792 391356

Sir Adrian Cadbury,  
The Chairman,  
PRO NED,  
1, Kingsway,  
London.  
WC2B 6XF

19th November 1992.

Dear Sir Adrian,

As the debate on corporate governance continues I hope there will be greater attention given to the rôle of the institutional shareholder in this matter.

Many of us are aware that there are structural deficiencies within the institutions themselves which cause them to take a passive role on most issues other than perhaps dividends, directors remuneration and pre-emption rights. The sad fact is that they do not possess the industry specific expertise to become more interventionist on the broader issues such as product development and corporate strategy. Accordingly their only effective answer to perceived underperformance is to vote with their feet either by selling shares or supporting a takeover.

The lack of any real commitment to the responsibilities which come with ownership is particularly worrying at the moment. Pension funds have greatly increased their exposure to equities over the past two decades but as a recent article by Barry Riley in the Financial Times points out, this has been perpetuated more by the desire to conform to industry weighting averages than by recent performance which over the last 5 years has been poor. Any repositioning of pension funds in response to this underperformance would not be encouraging for equities in general.

Quite clearly greater shareholder commitment and involvement will only come with better understanding of the underlying business and inevitably this means greater specialisation. Institutions are quite prepared to acknowledge the need for specialist support in certain aspects of managing their funds such as overseas investments. They should be encouraged to do likewise with domestic holdings where they clearly do not have the industry expertise and perhaps swap their direct holding in say G.E.C. for an interest in an appropriately managed UK Electronic Holdings Investment Trust. While this raises all sorts of questions as to how that expertise can be put together certainly it would be more feasible than for institutions to respond individually.

In sounding out institutions on this particular idea the knee jerk response has been predictably negative such as- "Yes, and who would want to hold UK Engineering PLC if we were heading for a cyclical down turn?" Of course this does not stand up to any real analysis since providing the marketability was no problem the trust shares could be bought or sold in the same way as you would buy or sell any other engineering share.

My feeling is that unless the shortcomings of institutional shareholders are addressed more forcefully there will be little change and I would not expect the present government to show much inclination to intervene. However looking further ahead there are no grounds for complacency.

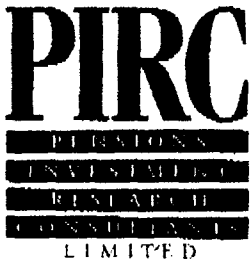
I am keenly aware of both sides of the debate having been in industry (at board level) and more latterly in investment management. I would like to feel that I could contribute on this particular issue and very much look forward to the response to your own draft report in the period ahead.

Should there be any matters either you or members of your committee would like to raise with me I should be most pleased to respond although I am aware that 31st July was your own deadline for comments on your report.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Ken Wilton".

K.G. Wilton FCA.



*nu CAD-02499*

Embargoed until 11 am, 1 December 1992

## PRESS RELEASE

### Statement in Response to the Cadbury Committee Report

PIRC<sup>1</sup> welcomes the final report of the Cadbury Committee, published today, and, in spite of some reservations, believes it will significantly strengthen the trend towards openness, higher standards of corporate governance, and company accountability to shareholders.

Anne Simpson, PIRC Director said: "The Cadbury Committee has placed a great responsibility on shareholders to police corporate governance and improve standards. They can only do this if they act together and assume the responsibilities of long-term ownership. If shareholders do not rise to meet this challenge, a great opportunity will have been lost to establish a positive new relationship between owners and managers which could contribute to re-establishing Britain's corporate success. But if shareholders are to be empowered to play a full role in the corporate governance process, there is an urgent need for legal reform to remove the inconsistencies and red tape in the present system. We hope the Committee's future work will focus on this area".

#### The role of shareholders

A great strength of the Report is its support for the role of shareholders. In particular, PIRC welcomes the Committee's clear endorsement of the view that the directors are directly accountable to the shareholders as owners (s6.1). We further welcome the Committee's recognition that a shareholder's voting rights are an asset (s51) and that, as owners of companies, shareholders have a the positive role to play in monitoring and ensuring compliance with the Code of Best Practice (s6.16). We look forward to the

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Committee's successor body considering legal changes which should be made to improve shareholders' access to the AGM agendas, by tabling resolutions for example (s6.4)<sup>2</sup>.

### **Independent directors**

PIRC endorses the Committee's views on the importance of non-executive directors and independent directors, and notes that the Committee now recommends that there should be at least three non-executives on the Board (s4.11). We believe that the definition of an independent director (s4.12) could be strengthened to explicitly exclude blood relations, and directors who represent a major shareholder. We do not agree with the Committee that "it is for the Board to decide in particular cases whether this definition [of independence] is met". Since shareholders must vote on these directors and ensure that there are sufficient numbers, they have a legitimate interest in determining whether directors are truly independent.

### **Nomination Committees**

We hope that companies will take up the Committee's suggestion that Nomination Committee's should be formed. The method and basis on which directors are selected is one of the most important factors which will determine future corporate performance, and should not be left to ad hoc procedures. On this issue, we are disappointed that the Committee has not pursued the issue of exclusion of executive directors from shareholder vote. PIRC research has shown that in many companies some or all executives do not need to seek regular re-election by shareholders. We believe that insulation of directors impinges on shareholder rights, and undermines the concept of the unitary board.

### **Separation of powers**

We are disappointed that the Committee has not recommended that the functions of Chairman and Chief Executive should be split in all cases, as we believe that these are separate functions which should be fulfilled by two people.

### **Directors' Remuneration**

While welcoming the Committee's recommendations on establishing Remuneration Committees and its backing for the principle of openness with regard to directors'

remuneration (s4.40), we think the Report would have been strengthened by inclusion of a schedule which set out precisely the figures for elements of emolument packages which should be disclosed. We also think that disclosure should apply to all directors not just the Chairman and highest paid. If shareholders are to assess remuneration packages fairly, they need clear and comparable data. We hope that the Committee's successor body will come back to this issue, and will consider recommending a regime based on the new SEC proposals in the USA.

### **Auditors**

An area where PIRC disagrees with the Committee, is over "quarantining" the audit from other services (s5.10). We are firmly of the view that, in the interests of ensuring the absolute independence of the audit, auditors should have no commercial relationship with a company other than performing the audit. This would avoid the possibility of any conflicts of interest arising, and would go a long way to reassuring shareholders of the independence of the audit process. Equally, we remain of the view that audit firms, and not just audit partners (s5.12), should be rotated periodically.

### **Legal changes**

We welcome the Committee's acknowledgment that in some areas (e.g. length of Directors' contracts [s4.41]) there is a need for the law to be changed. We think that any reform of the Companies Act must have a wide brief and consider fundamental changes to the relationship between shareholders and companies, in relation to the timetables for setting AGMs and receiving resolutions and methods of voting at AGMs, as set out in PIRC's submission.

**More information from: Stuart Bell / Anne Simpson 071 972 9060**

### **Notes**

1. PIRC Ltd advises UK pension funds with over £14 billion in combined assets, and has been running a Corporate Governance Service giving voting advice on AGM issues for the past two years. PIRC also provide this service to US pension funds with £35 billion in UK assets.
2. PIRC's submission to the Committee included extensive proposals for reform in this area. Copies are available from us.