

31 July 1991

Anthony Tennant Esq
Chairman
Guinness plc
39 Portman Square
London W1H 9HB

Thank you very much for your letter of the 23rd and for enclosing the extract from your Articles of Association. All of this is most helpful as is your description of the way in which the Audit Committee works.

One of the difficulties which I suspect we will face is the wish to load special responsibilities on to non-executive directors. At the same time, there is great concern at the CBI that any move to differentiate between executive and non-executive directors is a step on the way to a two-tier board. I think there are ways of meeting the CBI's fears and the more we can draw on the practical experience of boards such as yours, the better.

I am impressed by your Board line-up and it is good to know that it may be even further strengthened in future.

I am very grateful for your help.



GUINNESS PLC

39 PORTMAN SQUARE • LONDON W1H 9HB • TELEPHONE 071 486 0288
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Sir Adrian Cadbury,
Chairman,
Committee on The Financial Aspects
of Corporate Governance,
PO Box 433,
Moorgate Place,
LONDON EC2P 2BJ

23rd July, 1991.

John Adams

Thank you for your letter of 16th July.

Our Articles of Association certainly reserve specific powers to the Company's non-executive directors.

Articles 88 and 89 refer, and I attach an extract which also includes Article 87 dealing with Board Committees - one of which is the Audit Committee. Non-executive directors provide all four members of the Audit Committee although the Company's Chairman and Managing Director, Finance and Administration normally attend both meetings by invitation. There is always time at the conclusion of each meeting for the Committee to have a private session (i.e. without the Chairman and Managing Director, Finance and Administration) with the auditors.

Accordingly, Guinness has recognised the need for an active participation by non-executive directors in these key areas as part of their overall contribution to the continuing progress of the Company.

I have no objection to anyone seeing this information. It is a good system and works well.

-1- Contd/.....

We have 5 executive directors and 6 non-executive directors, who are as follows:

EXECUTIVE DIRECTORS

A.J. Tennant
I.M. Duncan
B.F. Baldock
A.A. Greener
S.C. Dowling - *To retire shortly*

NON-EXECUTIVE DIRECTORS

The Earl of Iveagh
Sir Norman Macfarlane
Sir David Plastow
Sir Ian MacLaurin
M.F. Julien
B. Arnault

The non-executives are, as you know, to be joined by another!

Let me know if I can be of any further help

Yours Anthony

A.J. Tennant

5 February 1992

Anthony Tennant Esq
Chairman
Guinness plc
39 Portman Square
London W1H 9HB

I felt I should let you know privately that I have now been approached by the other side to the discussion about which you wrote to me. I have not told them that we have been in touch and I see no reason to do so. My advice will be as before that it is for the board to make these decisions, although always open to discussion with the shareholders before or after the event. Nevertheless, I think the subject is sufficiently important to be worth airing further, not in relation to any specific case but to attempt to clarify the respective roles of boards and shareholders.

What I think our Committee is likely to do is to endorse the ISC approach to communications and, in my view, you have met all the relevant ISC proposals. We may go further and suggest that where companies do not have nominating committees they should seek to ensure that there is a certain minimum degree of shareholder support for new appointments to the board. As we discussed over the phone, there are considerable practical problems over this suggestion, but it is relevant to your discussion because it implies a certain degree of co-determination between boards and major shareholders.

What I appreciate, of course, is the practical concern which you have shown at Guinness to build in the necessary checks and balances at the top. In what I have written on the subject, I have always made it clear that each situation has to be looked at on its own. I enclose a photocopy of a page from my book which deals with this point. I will do my best to ensure that my Committee is not prescriptive on this matter.

You might be amused by the enclosed cutting.



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PRIVATE & CONFIDENTIAL

Sir Adrian Cadbury,
Rising Sun House,
Baker's Lane,
Knowle,
Solihull,
West Midlands,
B93 8PT

6th February, 1992.

Dear Adrian

Thank you for your letter. It didn't seem appropriate when we talked to tell you who it was who raised this matter with me - although it might not have been difficult for you to guess. At any rate, I am glad that you feel we have met all the relevant ISC proposals.

I am interested in your view that it might be appropriate, in some circumstances, for companies to seek to ensure that there is "a certain minimum degree of shareholder support for new appointments to the board". Don't you think the re-election procedure at the AGM is sufficient?

I believe a board of directors is appointed by shareholders to exercise the responsibility of deciding on management and management succession, taking account of all matters that are relevant. Boards are in a position to make such judgements. Indeed, that is one of their primary responsibilities.

Given the sensitivity involved and the level of information available to the board, which cannot be widely disseminated for obvious reasons, it could be inappropriate to take soundings of some shareholders' views. Clearly not all shareholders can be consulted and the board must beware of favouring some over others. While shareholders are, and should rightly be, interested in corporate governance they cannot be in a position to judge the appropriate management structure of a company in the same way as directors.

Best wishes.

*Yours
Anthony*

Anthony Tennant

COMMITTEE
ON
THE FINANCIAL ASPECTS
OF CORPORATE GOVERNANCE

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5 February 1992

Anthony Tennant Esq
Chairman
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Thank you very much for your letter of the 23rd and for enclosing the extract from your Articles of Association. All of this is most helpful as is your description of the way in which the Audit Committee works.

One of the difficulties which I suspect we will face is the wish to load special responsibilities on to non-executive directors. At the same time, there is great concern at the CBI that any move to differentiate between executive and non-executive directors is a step on the way to a two-tier board. I think there are ways of meeting the CBI's fears and the more we can draw on the practical experience of boards such as yours, the better.

I am impressed by your Board line-up and it is good to know that it may be even further strengthened in future.

I am very grateful for your help.



27 JAN 1992

GUINNESS PLC

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E.M.Sandland, Esq
Chief Investment Manager
Norwich Union Fund Managers Ltd,
PO Box 150,
Sentinel House
37, Surrey Street,
NORWICH NR1 3UZ

27th January 1992

Jan Mike

As I suggested in my brief reply, your letter of 9th January raises important issues, both directly on the subject of the management structure at Guinness, and indirectly on the way in which the management succession was handled. Let me deal with each in turn.

1. Management Structure.

In effect, Tony Greener will succeed me as Executive Chairman in 1993, filling exactly the same position as I hold now. We do not, in practice, use the term Chief Executive, merely that of Chairman. Under the Chairman, there are the two managing directors who manage our two core operating businesses, spirits and beer, reporting to the Chairman and through him to the Board. We also have an executive Finance Director. All our executive directors are closely involved in executive management of the whole business, through our executive committee. The nature of the business, with only two operating divisions each with its own managing director, does not call for both a Chief Executive and a Chairman at the top.

The key point is that our Articles of Association, I believe uniquely, provide for a Non-Executive Committee, consisting of all the non-executive directors of the company and chaired by one of them, which has the following powers:-

- ◆ To elect or remove the Chairman and any Vice or Deputy Chairman.
- ◆ To determine the remuneration of the Chairman and all Executive Directors.

This power to appoint or remove the Chairman, and to determine the remuneration of all executive directors gives the committee the powers sometimes in the remit of a non-executive chairman, but in a stronger form, and one which is embedded in our Articles. Comparing our structure with that set out in the ISC's "Role and Duties of Directors - A Statement of Best Practice", I would draw your attention to the fact that Guinness closely follows the ISC's recommendations on appointment and removal of directors in all respects. The powers of the non-executive committee to appoint the chairman meet the requirement set out in paragraph (b), page 2 of the ISC booklet. Furthermore our non-executives have powers and

responsibilities which exceed those set out in the same document (pages 2 & 3).

The creation of the non executive committee followed consultation with, among others, the D.T.I., the Scottish Office, the Bank of England and the Stock Exchange, with a view to putting together an enduring and publicly understood mechanism to protect shareholders interests.

This arrangement provides a strong counterbalance to any concern about concentration of power into the hands of an Executive Chairman. You will know too, I am sure, that we have a clearly defined retirement policy and adhere to it. Furthermore, as I am sure you would agree, Guinness continues to provide a model in its strong cadre of non-executive directors, one which outnumbers executives on the Company's Board.

Indeed I understand that the ISC is proposing to circulate our articles of association to its Council members as a potential model for others in respect of the powers of the non-executive directors.

It is the responsibility of the Board to appoint a management structure appropriate to the business of the Group. The appointment of an executive Chairman, provided that suitable checks and balances exist within the structure, means that he will be, in effect, the most senior director within the group. The simple structure we have adopted, given that we have only two operating companies, obviates the need for a separate chief executive.

A single solution cannot be imposed on all companies irrespective of their particular needs. It may interest you to know that 18 of the top 20 companies in the UK have an executive Chairman, and that approximately half of these have no separate chief executive. However the main point is that they should adopt an appropriate arrangement for the structure of their businesses. The Board of Guinness has taken a similar decision in the context of the structure of Guinness and its businesses.

2. Handling of Management Succession.

The implication of your letter is that Boards should take soundings from shareholders before deciding on management succession, or that explanations of their decisions should be given. I, and my colleagues, disagree for the following reasons:-

- i. A Board of Directors is appointed by shareholders to do the job of appointing management and deciding on management succession, taking account of all matters, such as their assessment of the requirements of the business and of the qualities of the potential candidates, and of the expressed views of bodies such as the ISC. This was the case on my appointment as Chief Executive in 1987, and on my election a Chairman in 1989. Boards are in a position to make such judgements, indeed that is one of their primary functions and responsibilities.
- ii. Given the sensitivity of such matters, and the level of information available to the Board which cannot be widely disseminated for obvious reasons, it would be whol

inappropriate to "take soundings" of shareholders's views before arriving at such a decision. Furthermore, the Board must beware of favouring some shareholders over others and clearly not all shareholders can be consulted. However much shareholders are interested, and rightly, in such issues of Corporate Governance, they cannot be in a position to judge on the appropriate management structure for a particular company in the same way as Directors.

- iii Similarly, once a Board has taken its decision on management structure or succession, it is not appropriate for it to issue what would be taken as an apology for its action. It is implicit in the announcement of change, that the Board has taken the best decision in the light of the company itself, and the management talent available to it.

Clearly it is appropriate for shareholders to raise their concerns with Board decisions once they are public, which is why I have set out the reasons for the management succession and structure at Guinness in such detail for you. However I firmly believe that it is the duty and responsibility of the Board to decide on these matters, and that it is inappropriate for the Board, in normal circumstances, either to consult on, or issue an explanation of its decisions at the time they are made.

Yours Sincerely,



A.J.Tennant



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13 JAN 1992

E.M. Sandland, Esq.,
Chief Investment Manager,
Norwich Union Fund Managers Ltd.,
PO Box 150,
Sentinel House,
37, Surrey Street,
NORWICH NR1 3UZ

10th January, 1992.

Jean Mike

Thank you for your letter of 9th January.

The point you make is an important one - and the way in which you make it raises related issues of considerable significance. I shall, therefore, take a few days to consider it and discuss it with my colleagues before responding. I will come back to you by the end of the month.

Yours sincerely,

A.J. Tennant

A.J. Tennant

NORWICH UNION FUND MANAGERS
LIMITED

From Mike Sandland,
Chief Investment Manager

Mr A J Tennant
Guinness plc
39 Portman Square
London
W1H 9HB

*cc Cragg
(for info)*

9 January 1992

Dear Anthony


My attention has been drawn to the announcement in early December 1991 that, when you retire at the end of 1992, your successor will be Tony Greener who will become both Chairman and Chief Executive.

I know that you are aware that there is a strong body of opinion that these two roles should not normally be held by one person, a principle which I and the Norwich Union fully support. Our point of view is set out in a booklet issued by the Institutional Shareholders' Committee (The Role and Duties of Directors - A Statement of Best Practice), an organisation of which I have the honour to be Chairman; a copy of this document was sent to you shortly after it was published in April 1991.

Whilst supporters of the combination of both roles can point to many companies which operate successfully under such a regime (notably your own), equally there are a number whose fortunes have been severely hampered by such a combination. I acknowledge that in the case of Guinness a system of checks and balances exists through the presence of a strong body of independent non-Executive Directors who are specifically empowered to monitor the Chairman and Chief Executive, and this has been the reason why I have not pressed you unduly on this matter in the past. However, given the opportunity provided by your imminent retirement to effect a separation of the two roles, I feel I must express my concern that your Board has elected to continue with existing practice without either taking soundings from your shareholders or offering them an explanation of what special circumstances led them to conclude that the continued combination of these roles was both necessary and desirable.

I would be grateful for your observations on this matter and look forward to receiving your comments in due course.

Yours sincerely



E M Sandland

