When I Question Director Independence

Daniel's Perspectives: October 29th, 2019

In the recently published FY2019 annual report and financials of a JSE listed company, one of their non-executive directors is classified as ***independent***. It also clearly states this person's independence was formally re-assessed by the Remuneration & Nomination Committee during the past year.

Independent means "*free from outside control; not subject to another's authority*" and "*not depending on another for livelihood or subsistence*"

A bit of sleuthing led to the following information for the 2019 financial year;

1. Board & committee fees paid to this director of R1,638,000.
2. Cumulative rent of R14,479,000 paid to 3 private unlisted companies of which, upon further investigation, this person is 1 of just 2 directors. In the financials these payments are only disclosed as 'related party transactions'. The names of the 3 private companies provide no obvious links to this director.

A figure of R136,500 *per month* for board and committee meetings intuitively feels on the high side. However, when the rental payments are considered and assuming this director is a shareholder of one or more of those private companies, which seems a reasonable assumption, this director and their close business associates could be receiving between a minimum of R136,500 and a potential maximum of R1,343,083, *per month*.

In addition, this director also just so happens to be the serving Chair of the Remuneration & Nomination Committee of this company.

To be clear; I have zero evidence to conclude that anything illegal is going on here. It just doesn't look or feel right to me. Why did this company choose not to disclose nor attempt to clarify a clear conflict of interest that could serve to compromise this person's independence? If the rules allow this director to be classified as independent then my logical conclusion is that the rules are dumb. Regardless of what the rules allow, I believe a prudent business would not attempt to mislead its stakeholders in this way.

Our work continues...

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