



Institute of Directors

2007 REVIEW OF THE COMBINED CODE: CONSULTATION ON PROPOSED CHANGES TO THE CODE

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This paper gives the Institute of Directors' comments on the Financial Reporting Council's *Review of the Combined Code: Consultation on proposed changes to the Code* issued in December 2007.

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Review of the Impact of the Combined Code

The Institute of Directors welcomes the opportunity to comment on the 2007 Review of the Combined Code

The Institute of Directors

Founded in 1903, the Institute of Directors (IoD) is an independent non-party political organisation of individual members and now has some 52,000 individual members. The membership is drawn from across all sectors. 86% of FTSE 100 companies and 70% of FTSE 350 companies have IoD members on their boards, but the majority of members (about 70%) are directors of small and medium-sized enterprises, ranging from long-established businesses to start-up companies. The organisations from which our members are drawn employ over 10 million people in the UK, i.e. over 40% of the workforce.

The IoD's aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole.

Introductory Comments

- The IoD participated in the Review of the Impact of the Combined Code that was undertaken in 2007. In summary our view at that time was that:
 - The Code should be kept under regular review, but should be amended only where there is a clear justification to do so.
 - It needs to be relevant to the needs of both companies and investors and provide a clear demonstration of what is regarded as good practice from time to time.
 - The Code should reflect good practice, not be an aspirational document, or a home for experimental governance practices.
 - The success of the Code, particularly for smaller companies, depends on investor attitude to comply or explain, including being open about the resource they devote to governance.¹
- The IoD supports the proposed change to the Code to remove the restriction on an individual chairing more than one FTSE 100 company.
- With regard to allowing the chairman of a company outside the FTSE 350 to be a member of the audit committee, providing he or she was considered independent on appointment the IoD considers this a move in the right direction.

¹ Institute of Directors "*Review of the Impact of the Combined Code*" Response to the Review, July 2007

Proposed amendments to the Combined Code

1. Chairing more than one FTSE 100 company

The IoD fully supports this proposed amendment, and the thinking behind it. The overall levels of commitment of the chairman (or indeed any other director) are what are relevant, not just chairing a FTSE 100 company. Companies should be encouraged to be particularly informative in the information they provide about commitments outside the realm of listed companies, since investors are less likely to have a clear perception of what such roles entail, but this should be achieved by development of practice rather than by the introduction of any specific provision.

2. Company chairman sitting on an audit committee for smaller companies

The IoD appreciates the move proposed to assist smaller companies address difficulties they can face in coping with the Code provisions on committee membership. However, given the need for the audit committee to have appropriate levels of expertise, we would recommend that the revised wording of Code provision C.3.1 go further than proposed. We would not go so far as to allow the chairman to be deemed to be independent for all purposes, but we would propose that the proviso regarding serving on the audit committee only if deemed independent on appointment should be deleted. This is for three reasons:

- a) The justification for the change is to assist smaller companies in achieving good quality committees. By restricting the amendment to chairmen deemed independent on appointment a lot of good quality committee members could be either precluded from serving or the subject of explanations, with all the issues about how effectively these are considered in relation to smaller companies.
- b) Companies may simply seek to 'deem' their chairman to be independent on appointment thereby attempting to bypass the provision.

3. Other revisions to the Combined Code

a) Revised Preamble

The IoD believes that anything that helps reinforce the message that good governance should be as much a factor in supporting wealth creation and entrepreneurship as in protecting shareholder value, and that it is certainly not an end in itself, is to be welcomed.

b) Overlap with the FSA Corporate Governance Rules

The IoD has reviewed and is commenting on the new FSA Rules to implement the corporate governance requirements in the 4th and 8th Company Law Directives. These comments will be available on the IoD's website www.iod.com

It is appropriate that it is the Code provisions that provide the more detailed, since they are based on the 'comply or explain' principle.

The IoD welcomes the intention to reference the relevant FSA Rules in footnotes to the Code. This will assist companies, particularly smaller companies with fewer resources, in distinguishing between their obligations under the FSA Rules and their approach to the Code.

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