

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London WC2 4HN

05 March 2010

Dear Mr Hodge,

Thank you for the opportunity to comment on the proposed UK Governance Code.

Since the start of the review process, Odgers Berndtson has regularly discussed both the content and application of the Code with a broad audience of Chairmen, company secretaries, executive and non-executive directors and investors. These conversations, which have included a mix of formal events and informal discussions, have informed the views set out below.

Summary Views

We welcome the name change to the UK Governance Code, an altogether clearer title.

We strongly support the emphasis on improving board behaviours. Good governance cannot be commanded simply by the application of rules; it requires competent, committed directors who take their role seriously and who can provide the appropriate mix of challenge and support to the executive team. The revised phrasing of the Main Principles emphasises this point.

Appointments to the Board

It is not unusual for boards of large public companies to consider only non-executive director candidates drawn from the boards of other large public companies. While understandable, such an approach unnecessarily restricts the talent pool from which board candidates can be selected.

As search consultants, we are in constant contact with highly capable, professional and experienced individuals from diverse backgrounds who could add significant value to a plc board; such people frequently struggle to win appointments, however. We welcome the revised Supporting Principles at B.2 that emphasise the need to look widely for candidates.

For example, the current sensitivities around remuneration suggest that individuals with an HR background would make excellent non-executive director candidates. Widening the pool to include the HR community would also help increase the number of women on boards.

We support the principle in favour of “progressive refreshing of the board,” which can bring new ideas and experience into the boardroom and help prevent groupthink. For the same reason, we support the provision (B.4.2) that calls for a personalised approach to training and development for each director.

Board Evaluation

The Higgs Review of the Role and Effectiveness of Non-Executive Directors, published in 2003, recommended that companies conduct an annual review of the board's performance. Higgs said: "Conduct of the evaluation by an external third party can bring objectivity to the process and its value should be recognised by chairmen."

He added that companies should disclose in the annual report whether such a review has taken place and how it has been conducted.

Higgs, however, offered little guidance on what constituted a thorough, value-adding effectiveness review, and best practice has evolved only slowly. There is little consensus around how an evaluation should be carried out, or whether and how often external facilitators should be used. There are also no common standards about how the output of any review should be disclosed to shareholders.

It is right that this status quo is challenged in the wake of the financial crisis and recession. The Walker Review, which assessed the governance of banks and other financial institutions, suggested that companies use external facilitators every second or third year. Walker reported: "Not all boards have given the process the attention and seriousness it deserves," and he pressed for "enhanced rigour and disclosure in this respect." We support his conclusion.

Occasional but regular support from an external party offers such rigour, and we agree that at least every third year is an appropriate cycle. Companies undergoing substantial change programmes or post-M&A integration may wish to use external facilitation more frequently.

It is right that the names of external evaluation facilitators are disclosed to put them on a par with remuneration consultants.

Re-election

In our discussions with Chairmen and board directors, the question of annual re-election proved the most controversial issue. Strong views were expressed on both sides. Some argued that annual re-election would exacerbate short-termism and would create conditions for activist investors and short sellers to destabilise the company for immediate gain. Others, including directors with experience of overseas boards where annual re-election is the norm, suggested that the change would, in reality, have little impact in all but exceptional cases.

We incline to the latter view. It is possible to imagine circumstances where minority investors create unrest by stirring up a campaign to oust the Chairman but we doubt this will be a widespread problem. Elsewhere, the Code takes steps to enhance the quality of shareholder dialogue and make investors' engagement activities more transparent. These steps should allow the market to determine whether concerns over a particular Chairman or board are the product of unscrupulous chatter or the genuinely held view of a broad range of long-term investors.

We also believe it is highly unlikely that the proposed annual re-election of the Chairman will lead to tense standoffs between boards and investors or knife-edge votes at the AGM. Any self-respecting Chairman will resign the moment they feel they have lost the trust of even a significant minority of shareholders, let alone the majority. The issue will rarely be settled by a vote.

On balance, we believe it is preferable for the Chairman to face annual re-election rather than the full board. The Chairman is the captain of the ship, and should be prepared to stand for the board as a whole. The Chairman also tends to be closer to the company's investors, and in regular dialogue with them, making him or her better attuned to any potential City concerns and able to effect changes before those concerns become significant disagreements.

Restricting annual re-election to the Chairman also guards against the Remuneration Committee Chairman being singled out. As one Senior Independent Director said to us about this role – "you should not have to face being lynched for an extra £15,000 a year." Of course, decisions made by this committee should be subject to challenge but the annual vote on the Remuneration Report provides such an opportunity.

Conclusion

We believe the Code review offers a sensible and proportionate response to the recent financial crisis. The UK governance regime remains practical and robust. There are no compelling arguments that suggest that more prescriptive governance rules would have prevented the crisis. A strengthened, principles-based regime, with 'comply or explain' at its heart, remains the best guarantor of good governance in the UK.

Yours Sincerely,



Baroness Virginia Bottomley
Chair, Board Practice

ODGERS BERNDTSON
Tel: +44 20 7529 1066
Assistant: Jo Henderson
www.odgersberndtson.com



Kit Bingham
Principal, Board Practice

ODGERS BERNDTSON
Tel: +44 (0)20 7529 3925
Assistant: Laura Macaulay
www.odgersberndtson.co.uk