

Richard Anderson & Associates Independent Governance Risk & Assurance

The Thatched House, Bisham Road, Marlow, Bucks, SL7 1RL
e-mail: rc.anderson@tiscali.co.uk
Telephone: 07703 503196

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

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Dear Chris

I am delighted to have the opportunity to comment on the proposed changes to the Code of Corporate Governance.

I support the broad thrust of the changes that you are proposing in your Consultation Paper. However, there are three major issues on which I wish to comment and one minor issue. These are set out below.

Major issues

1 Comply or explain

In the first instance, I would like to record once more, my view that the financial crisis has demonstrated that boards largely provide lip-service only to Corporate Governance. I am fully aware that your consultation with existing board members suggests that you have broadly “got it right” in terms of the structure and compliance regime for the Code. I doubt that would be the view of indirect stakeholders who have been badly let down by the boards of many major banks. This is true for the three countries that I have considered in my work for the OECD. I suspect that empirical research, were it to be conducted, would demonstrate that the absence of an enforceable duty for boards to discharge their corporate governance duties with due and diligent care means that board members know that there is little risk to them personally in allowing Corporate Governance to be discharged as a box-ticking exercise. We have now got to the stage where we have no option but to move beyond “comply or explain” as a compliance regime if we wish to see the Code taken seriously by boards of listed companies. As well illustrated by the financial sector, light touch regulation means that there is no imperative for anyone to comply. We require a more intrusive approach to compliance. Badges of compliance, which is how boards demonstrate compliance in annual reports, are no longer a substitute for real compliance with the substance of the requirements. Compliance is simply too important to our economy as a whole to be left as it stands.

2 Risk management and internal control

You suggest in the new C.2 that the board should be responsible for defining the company's risk appetite and tolerance. While in principle I do not disagree, I am concerned that these expressions ("risk appetite" and "risk tolerance") are poorly understood. I attach a copy of a paper that I have written on the subject. I recommend that in reviewing the "Turnbull" guidance, this matter should be further researched so that appropriate and meaningful guidance can be provided to boards.

3 Turnbull guidance

I note that it is your intention to review the Turnbull guidance. It is my view that this guidance is now out of date and in need of a substantial update. When it was written, risk management practice was in many instances embryonic and best practice was hard to identify. This is no longer the case and it is my view that boards require better guidance as to what is meant by risk management. I recommend that consideration should be given to encouraging boards to comply with the guidance offered in "BS31100 Risk Management Code of Practice", as amended for listed companies if need be. A statement of compliance with the British Standard would represent a considerable step forward in risk management in the listed corporate sector as a whole. I recommend that the British Standard be adopted as being a more meaningful and helpful document than the International Standard (ISO31000), which for example does not touch on the subject of risk appetite and includes some unnecessary recommendations which could lead to additional bureaucracy.

Minor issue

I note in paragraph 2 of your Consultation Paper that you refer to the new name of the Code as making clearer the Code's status as the UK's recognised corporate governance standard for companies. I assume that this still refers to listed companies only, rather than all companies. This is important in that there is no guidance for unlisted companies, and while there may be some interest in developing such guidance (for example from the BSi) scope creep for the Code would be inappropriate without explicit consultation.

I would be pleased to expand further on these comments if that would be helpful.

Yours sincerely



Richard Anderson
Principal, Richard Anderson & Associates