

## **FRC Combined Code (the Code) Review – the GC100 Perspective**

### **Summary of Discussion**

- The requirements of the Code are proportionate to benefits they bring
- The Code supports the effective working of the board
- We support the principles-based approach
- Responsibilities of governance voting agencies
- 'Apply or explain' vs. 'comply or explain'
- The same principles-based approach should apply to smaller companies

### **Summary of Recommendations**

- No changes should be made to the Code at this point in time
- Adoption of apply or explain rather than comply or explain
- Governance voting agencies to disclose likely implications of their voting recommendations

### **Discussion**

GC100 welcomes the evolution of the Combined Code (the Code) and has found its implementation to be manageable and its requirements proportionate to the results; there are no major concerns with the Code in its current form. We agree with the Code's main and supporting principles as laid out in A.1. The Code provides the right framework for a balanced and constantly refreshed board. It sets out requirements for timely flows of information, training and evaluation, which should support the effectiveness and performance of the board over time. The removal of the restriction on the Chairman sitting on the remuneration committee was welcomed as a commonsense revision.

We fully support the principles-based approach as being preferable to a rules based approach. However, it is apparent that practice has emerged which does not regard the 'explain option' as being in compliance. This box ticking undermines the principles-based approach.

Governance voting agencies should be encouraged to consider explanations given by companies more fully. They should also be required to consider and state the likely implications of their voting recommendation. This would support a move away from 'box ticking' and the voting agencies would have to take real responsibility for their recommendations. We support a change in emphasis from 'comply or explain' to 'apply or explain'.

We are not in favour of a dilution of the sound principles of the Code for smaller companies. Smaller companies should aspire to adhere to the Code but governance voting agencies and shareholders should adopt a more flexible approach in dealing with smaller companies when presented by clear and justifiable reasons for departures from the letter of the Code. We believe governance is important for all companies, regardless of size, as shareholders are delegating responsibility to the board to manage their investment.

Maintaining a level of governance which is appropriate to risk is perhaps more relevant now than when the Code was first introduced taking into consideration

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the competition (for executive level talent) that UK plc faces from private equity houses.

Current levels of disclosure give shareholders an appropriate amount of information without placing an unnecessary burden on the company. The annual report/corporate website is the most appropriate channel for communicating the company's governance arrangements. It would be cheaper to move to website only reporting, but perhaps it may be more appropriate to leave such a change for a couple of years to allow the move towards ecomms to gather pace.

In respect of the responsibilities of the Chairman, the Code may be viewed as somewhat over prescriptive; specifically, the restriction on the appointment of one person as Chairman of two FTSE100 companies (A.4.3.) is probably unnecessary. Prospective Chairmen and appointing Boards may be better placed to judge whether time commitments would be prohibitive. Consideration should also be given to matters such as whether there is a deputy chairman and the calibre and availability of the SID.

Board evaluation has proved to be beneficial to many companies, identifying where training needs arise and supporting board succession. It is considered that the current levels of disclosure in respect of board evaluation are appropriate as greater disclosure may serve to limit the effectiveness of this process as a forum for discussion into how the board can be further improved.

**Recommendation** - The Code should be allowed to settle in its current form; no changes are recommended. There should however be a shift in emphasis from 'comply or explain' to 'apply or explain' to avoid the initial judgement that non-application of a code provision is non-compliance or breach. Explanations given by companies for departures from the Code should be open and transparent giving a clear business justification. Governance voting agencies should be encouraged to consider explanations given by companies more fully and they should also be required to consider and state the likely implications of their voting recommendation.