



SABMiller plc

Financial Reporting Council's Review of the Impact of the Combined Code

SABMiller plc Response

In summary, we are comfortable with the Code and think that it works well. In particular, we fully support its principles-based approach. Except for the removal of the nine-year rule, and a clear change in emphasis from “*comply or explain*” to “*apply or explain*”, we would not want to see the Code changed. We think that it should be allowed to settle in its current form.

Q1. Does the Code support better board performance over time?

It is our view that the Code generally reflects good and responsible governance practice. Its drafters intended that it should do just that and were successful. We suspect therefore that most responsible UK companies would choose to govern themselves in accordance with the key principles in the Code, even if it did not exist. It is therefore difficult to determine whether among soundly governed companies the Code actually plays a positive role in supporting better Board performance, or simply reinforces best practice.

In two respects the Code does not seem to us to support better Board performance. First, as explained further below, we do not believe that the “comply or explain” approach is working as it should do. This can impact negatively on Board performance as instances of non-compliance, even where adequately explained, could bring unwelcome pressure to bear on companies to make changes that are not necessarily in the interests of the company or its shareholders; and secondly, we do not support the nine-year rule.

Regarding the nine-year rule: we believe that this is an artificial and arbitrary rule that does not place sufficient value on experience gained by a director while on the Board. When the effect of the rule is considered in the context of the way in which the “comply or explain” regime currently works, the rule can lead to a negative view being taken by the governance industry of a director and/or the company, effectively forcing action to be taken for the director to vacate his/her seat on the Board at the time when, precisely because of the length of his/her tenure, the director in question is at his/her most valuable to the company.

Q2. Is the “comply or explain” approach working effectively?

If it is intended that non-compliance accompanied by an adequate explanation should be viewed neutrally, or not negatively, then we do not believe that the comply or explain regime is working adequately.

The issue is that an instance of non-compliance, even where accompanied by an adequate explanation, seems to be characterised by the governance industry as a bad thing, and a cross against the company's governance

scorecard. It is our experience that inadequate weight is attached to the company's explanation and to the judgement of the board in exercising its fiduciary duties in a responsible and considered manner.

It does however seem to us to be inappropriate to lay all the blame for this problem at the door of the governance industry. If complying or explaining are presented as alternatives, as they are, then taking the option that is not the "comply" option will always be viewed as non-compliance. Referring to the regime as "comply or explain" therefore invites the governance industry and observers to view even the best and most compelling explanation as something that is less than compliance and to treat it as an instance of non-compliance.

This can lead a company to conclude that it is not worth its while to "explain", as the explanation will make no difference, and, more importantly, could force a company to take action to become "compliant" that could very well be contrary to the interests of the company and its shareholders.

We should add that in our case this problem has led to a degree of frustration but has had no material effect, possibly in part because our UK shareholder base is relatively small and the influence of the governance industry over voting on our resolutions at our annual general meetings has been limited.

We fully support the recommendations of the GC100 group to change the emphasis to "apply or explain".

Q3. *What impact has the Code had on smaller companies?*

We do not think that the sound principles of the Code should be diluted for smaller companies. Our comments above, to the effect that generally the Code reflects sound governance practice, apply equally in respect of smaller companies.

Q4. *Do disclosures on the Combined Code in annual reports provide useful information to shareholders at proportionate cost to companies?*

Yes – we believe that the disclosures do provide useful information to shareholders. The burden to the company of providing these disclosures is not substantial.

SABMiller plc
20 July 2007