



SABMiller plc

**Financial Reporting Council's Review of the Effectiveness of the Combined Code:
Second Consultation**

SABMiller plc Response

9 October 2009

SABMiller plc submitted a response to the Financial Reporting Council's Review of the Effectiveness of the Combined Code. A copy is attached for ease of reference.

We welcome the opportunity to respond to the FRC's Second Consultation. The purpose of this response is to express our views on the supplementary questions posed in the Second Consultation. We ask that this response be viewed as supplementary to our initial response, which we do not repeat here, except to highlight that:

- we believe that the Code generally reflects good and responsible governance. We think it works well and fully support its principles-based approach;
- we do not agree that the Code should be tailored to deal with corporate governance issues which may be associated with particular industries, such as the banking sector, and
- the only changes we would like to see to the Code are changing the emphasis from "comply or explain" to "apply or explain", and the removal of the nine-year rule.

We strongly caution against a knee-jerk reaction to the change in economic circumstances under which companies are operating. If significant changes are to be made to address issues which arose in the banking sector, those changes should be confined to that sector and could be captured in a specific schedule or annexes to the Code. We are not aware of any factual evidence which would justify allowing such changes to "spill over" into the wider corporate world.

Regarding the recommendations of the Walker Review, it follows therefore that we do not believe that it would be appropriate for these recommendations to be extended to all non-financial listed companies. We agree with the GC100's suggestion (in their comments on the Walker Review and its recommendations) that the Code should remain generally applicable to all listed companies.

Our responses to the specific issues which the FRC raises for further consideration are as set out below:

1. The content of the Code

We welcome the guiding principles which the FRC is planning to adopt in considering lessons from the financial crisis and the case for changes to the Code. We recommend the consideration of a further principle, along the following lines:

- *"Changes to the Code which are considered necessary to address concerns arising in a particular sector will be confined in their application to that sector, unless there is clear justification for their wider application."*

We support the introduction of a preamble, as suggested by the GC100 in their response to the Second Consultation. In particular, we strongly support the explicit recognition of the overarching principle that the role of the board is to govern and not to manage.

2. The responsibilities of the chairman and non-executive directors (NEDs)

We reiterate our view that the key to effective corporate governance is the calibre of the individuals involved, and that they should have a clear understanding of their role and responsibilities. Between the Companies Act 2006 and the Code as it stands there is perfectly adequate and clear prescription as to the duties and responsibilities of directors, as well as on induction and training requirements. We do not think introducing further clarification, guidance, specificity or prescription in this regard would be helpful or appropriate.

We do not support prescription as to the expected time commitment of NEDs. Companies differ enormously in complexity and size, and the judgement as to what constitutes adequate time is best left to individual boards and NEDs. As noted, they have serious duties and responsibilities to the company, and maintaining or developing a healthy pool of senior, experienced, high-calibre NEDs whose judgement is critical could be undermined by introducing time-keeping requirements in place of their judgement as to what constitutes adequate time spent on the company's affairs.

3. Board balance and composition

We believe that boards should comprise NEDs with a broad range of skills and experience. We are not opposed to added emphasis being given to the need for relevant experience among NEDs collectively, provided that the emphasis is indeed on the collective experience of the board, rather than the "relevant experience" of each member, such that each director was required to have particular relevant experience.

We reiterate our opposition to the nine-year rule, which we believe is an artificial and arbitrary rule which does not place sufficient weight on experience gained by a director while on the board. In our view, this rule reduces the effectiveness of boards, especially as a number of the proxy voting services appear to pay absolutely no attention to companies' explanations as to the determination of independence of directors who have more than nine years service, and automatically recommend a vote against the re-election of all NEDs who have served for more than nine years.

We have no comment on the composition of FTSE 350 boards.

We do not believe that any further guidance is required on succession planning or board composition: these matters are already adequately covered in the Code.

4. Board information, development and support

We believe that the Code deals well with these matters; further prescription or guidance is unnecessary.

5. Board evaluation

We support rigorous board, committee and individual director evaluation. It does not however follow that external evaluation is necessary or desirable. Internal assessment, led by the chairman (who understands the business, its strategy and principal risks, and the actors around the board table) can be rigorous, incisive and very valuable. While external assessment could be of value in certain circumstances, there is the risk of it being costly, disruptive and a "blunt instrument". In short, this is not an area in which prescription is warranted: it is appropriate for boards to determine for themselves the most effective assessment methodology, and to make that determination based on their own circumstances. We are content with annual committee effectiveness reviews, though suggest that they might be more effective and impactful if conducted every two years.

Enhanced disclosure of a company's evaluation process, as suggested by the GC100 in their submission, may well be a step in the right direction.

6. Risk management and internal control

We believe that the Turnbull Guidance is adequate and that the balance between that Guidance and the Code is satisfactory - there is no compelling reason to change either. Specifically, we do not believe that the Walker Review mechanisms recommended for banks and other financial institutions would be appropriate for other listed companies. We are

perhaps in the minority of respondents that believe that there are serious potential dangers in creating a separate risk organisation within a (non-financial institution) company, with bespoke board committee structures and senior management positions. We believe that while companies must have robust processes for identifying and evaluating risk and determining their risk appetite and profile, oversight over risk is the responsibility of the board itself, and the management of risk is integral to the role of each manager.

7. **Recommendation**

We are in agreement with the GC100's submissions in relation to remuneration and have nothing further to add.

8. **Quality of disclosure by companies**

We would welcome efforts to streamline, and make more useful to investors, disclosure and reporting requirements.

The monitoring of "comply or explain" statements seems to us to be fraught with difficulty. It is difficult to see how this would be done in practice and would run counter to the principle of "comply or explain", which is intended to recognise that companies will usually have perfectly good explanations and to encourage shareholders to engage with the company directly about their explanations.

The monitoring and enforcement of "comply or explain" statements by an outside agency would introduce a real risk of frustrating direct and constructive engagement between a company and its shareholders, and would, we believe, be a retrograde step.

We reiterate our view that "**apply** or explain" is a far preferable approach.

9. **Engagement between boards and shareholders**

We support and are fully aligned with the submissions of the GC100 on this issue.