



Financial Reporting Council
8th Floor 125 London Wall
London
EC2Y 5AS

By email: corporategovernanceprinciples@frc.org.uk

7 September 2018

Dear Maureen,

Re: BVCA response to FRC consultation on the Wates Corporate Governance Principles for Large Private Companies

The British Private Equity and Venture Capital Association (“BVCA”) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, the BVCA represents the vast majority of all UK-based firms, as well as their professional advisers and investors. Over the past five years (2013-2017), BVCA members have invested over £32bn into nearly 2,500 companies based in the UK. Our members currently back around 3,380 companies, employing close to 1.4 million people on a full-time equivalent basis (FTEs) across the world. Of these, around 692,000 FTEs are employed in the UK.

The BVCA was delighted to join the Corporate Governance Coalition and contribute to the development of the Wates Corporate Governance Principles for Large Private Companies (“the Wates Principles”). Private equity and venture capital firms are long-term investors, typically investing in unquoted companies for around three to seven years. This is a commitment to building lasting and sustainable value in business and the implementation of appropriate corporate governance frameworks is central to this objective.

As we have been actively involved in the FRC’s work, we are only responding to a limited number of questions.

Stakeholder engagement

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| <p>5. Should the draft Principles be more explicit in asking companies to detail how their stakeholder engagement has influenced decision-making at board level?</p> <p>6. Do the Principles enable sufficient visibility of a board’s approach to stakeholder engagement?</p> |
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The BVCA appreciates the need for a principle on stakeholder engagement as shown through our work on Sir David Walker’s guidelines for disclosure and transparency in private equity (“the Walker Guidelines”). Since 2008, the Walker Guidelines have provided a framework for the private equity industry to enhance stakeholders’ understanding of our activities and address concerns about a lack of transparency in the industry. These stakeholders include government, regulators, media, employees, customers and the public more widely.

The emphasis of principle six is to encourage stakeholder engagement and it is helpful that paragraph 15 of the consultation document clarifies that the principles do not extend, or alter the



current interpretation, of the law in respect of a directors' duties under the Companies Act 2006, notably the section 172 duty to promote the company's success for the benefit of its shareholders. This clarification will be beneficial for directors, as well for advisors to businesses, and should be included in the final publication of the principles, possibly in the underlying guidance itself.

'Apply and explain' approach

7. Do you agree with an 'apply and explain' approach to reporting against the Principles? If not, what is a more suitable method of reporting?

From the perspective of our members, it is very important that the requirements of the new Government regulations¹ on corporate governance reporting do not discourage innovation or existing practices. We think this might be the case if the directors need to provide a written explanation on how the adoption of the principles has resulted in improved corporate governance outcomes with the level of detail implied in the consultation document.

This is a concern because the benefits of a particular arrangement or policy may not be apparent at first, but that does not mean that the company has not applied the principles. It would become quite burdensome to document these examples and there will also be confidentiality factors to consider. The Government regulations require companies to state how they have adopted the principles without having to prove specific outcomes.

The proposed requirement to apply and explain is more onerous than what is required of listed companies under the UK Corporate Governance Code, although we note the UK Corporate Governance Code is in general much more prescriptive. In practice we think companies will find it difficult to provide the level of commentary suggested and the requirement for such may discourage companies from adopting the Wates principles and instead opt to simply explain what corporate governance arrangements they have in place.

Monitoring of the principles

8. The Principles and the guidance are designed to improve corporate governance practice in large private companies. What approach to the monitoring of the application of the Principles and guidance would encourage good practice?

Compliance with the Walker Guidelines is monitored by The Private Equity Reporting Group² ("PERG") and the BVCA provides the secretariat for this. In our experience of monitoring the implementation of the Walker Guidelines, we have found that having independent members on the PERG is particularly valuable as they provide the robust challenge needed to respond to scrutiny from media and other stakeholders. This is supported by the appointment of advisory firms to carry out a very detailed review of both compliance with the Walker Guidelines, and the quality of the disclosures produced when benchmarked with the FTSE 350. The companies covered by the Walker Guidelines also receive detailed feedback following this review. This process, however, requires a considerable amount of funding and resource, which our members provide and would be difficult to replicate across a much larger population of companies.

¹ The Companies (Miscellaneous Reporting) Regulations 2018

² Further information is available at www.privateequityreportinggroup.co.uk



An alternative to this would be for a report to be commissioned that looks in-depth at the disclosures published and contrasts this to those of listed companies. To help companies to improve, examples of good practice should be published and shared – this is an approach taken by the PERG and is valued by our members.

We would be happy to discuss the contents of this letter further with you.

Yours sincerely,

Amy Mahon
Chair, BVCA Legal & Accounting Committee