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Dear Mr Hodge

REVIEW OF THE EFFECTIVENESS OF THE COMBINED CODE

Thank you for the opportunity to contribute to the FRC's review of the Combined Code. The board of Lonmin notes that the Code has now been in existence for over a decade without substantive change having been required. We believe this is testament to the quality of the thought and drafting at both its genesis and during the subsequent reviews that have taken place. We do not believe that substantive changes are warranted at this time although, as we note below, we believe that there are a few areas in which the Code could helpfully be clarified or adapted.

Addressing each of the items in paragraphs 11 and 12 of your consultation paper:

Which parts of the Code have worked well? Do any of them need further reinforcement?

We believe that the Code, implemented on the basis of 'comply or explain', generally works well. We do however feel that section A.3.1 relating to the independence of non-executive directors requires review, as noted below.

Have any parts of the Code inadvertently reduced the effectiveness of the board?

We have not found this to be the case.

Are there any aspects of good governance practice not currently addressed by the Code?

We believe that there should be an increased emphasis on the need for boards to review the key strategic risks facing the company, a requirement that mitigating actions should be explicitly reflected in business plans and, potentially, be one of the drivers of executive compensation. However, our board does not believe that it is practicable for all operational risks to be subject to the same level of scrutiny.

Is the 'comply or explain' mechanism operating effectively?

In general terms we find that this operates satisfactorily. In our experience there is a wide variance in the quality and quantity of resource devoted to this area by institutional shareholders and while some still operate on a 'box ticking' basis, others are prepared to engage openly and constructively with the company. We therefore believe that there needs to be a stronger focus on Section 2 of the Code.

So far as the content of the Code is concerned, our views are as follows:

The composition and effectiveness of the board as a whole

We find that the provisions relating to independence in A.3.1 are often construed narrowly by certain institutional investors and governance commentators and in the most extreme cases we have heard references to 'the nine year rule'.

The Code properly stresses the importance of independence as an essential quality required by NEDs. Independence is often interpreted as shortness of service, rather than ability to challenge management or take unpopular but constructive positions. Length of service often provides insights that are not available for newer directors and more than compensates for the potential disadvantage of lack of fresh thinking. In general, we find that NEDs are at their most valuable between 4 and 8 years of service, by when they have developed good insights into the operations and workings of their companies. While independence will not necessarily erode after eight years, both NEDs and the companies may find that the relationship begins to lose vitality. A simple and beneficial amendment that could be made to the Code would be for service periods of four years rather than three years as at present. There would be a presumption that NEDs would be elected for two terms, each of four years, subject to performance. Should tenure continue after year eight, NEDs would be required to submit themselves for election at each AGM.

To be effective, a board needs *inter alia* an appropriate combination of industry experience, financial experience and company experience. The latter is an important factor, as lack of deep knowledge of the company and its business can place the NEDs at a disadvantage in deliberating operational and strategic matters. The current debate on board effectiveness has tended to focus on the mechanism of assessment rather than looking at the important, although subjective, question of balance in the board composition.

The respective roles of the chairman, the executive leadership of the company and the non-executive directors

In our experience, the division of duties at the head of a company are best allocated as follows:

- **Chairman** – is responsible for the performance of the board as a whole, and should be the primary interface between the executive and non-executive, particularly regarding strategic guidance and the monitoring of performance
- **Executives** – are responsible for developing strategy for consideration by the board, the implementation of that strategy once approved and furnishing the board with all information reasonably required to monitor the efficient and effective conduct of the business
- **Non-executives** – should contribute individually and collectively to:
 - The selection, appointment, pay and, where appropriate, removal of the executives leading the business and the succession planning necessary to support this
 - The development and approval of strategy
 - The setting of targets and the subsequent monitoring of performance
 - Assessment of the management of risk and the strength of the internal control environment
 - Effective governance (in the senses of (1) compliance with applicable Codes, (2) ensuring stakeholders' needs are adequately considered and addressed and (3) in the internal management arrangements of the company) to ensure shareholders' interests are protected

The burden on the non-executive directors, including the chairman, is real. In this context, we note that a non-executive director will typically spend something of the order of 20 to 25 days per year on each of his or her companies. Most FTSE100 Chief Executives, spending all of their working lives in a company, must rely on delegation to the company's broader management team to manage both the business and the risks to which that business is exposed. It seems to us that there is a potentially unbridgeable gap between the expectations of NEDs and what they can, in practice, deliver even with all the effective questioning made. We would therefore welcome greater clarity on the role of the NED within the wording of the Code.

We suspect that, to be discharged properly, the role of the NED requires a greater investment of time than normally appears to be the case. Another helpful step would be for the NEDs to be provided with greater resources to support them in the discharge of their duties and the focus of the role of the company secretary could be re-considered in that light.

The board's role in relation to risk management

The current financial crisis has highlighted above all else the failure of many companies' risk identification and assessment systems, particularly in the financial services sector. We believe that this topic has generally received insufficient board attention and note that it is often delegated to audit committees. However, we would make the distinction between strategic risks (which we believe are properly the responsibility of the board) and operational risks where, for the reasons outlined in the preceding paragraph, we believe that a board predominantly composed of NEDs should set 'tone at the top' and be responsible solely for (1) defining the company's "risk appetite" (2) ensuring appropriate focus by management on the assessment and monitoring of operational risks and (3) assessing the adequacy and effectiveness of the internal control environment. A Code requirement to explain how risk appetite was set and strategic risks are addressed by the board, and how operational risks are managed, would be a material step forward.

The role of the remuneration committee

Despite extensive prescription and a great degree of shareholder, media and public scrutiny in this area, executive compensation systems have been highlighted as one of the key causes of, or contributory factors to, the current financial crisis.

Since the implementation of detailed reporting of executive compensation following the Greenbury Report, there has been very significant growth in management reward. We do not believe that this is co-incidental and while the disclosure is highly commendable from the standpoint of transparency, it does not serve as a method of restraining pay. An entire industry has sprung up analysing executive pay and inevitably leads to upward pressure on pay, both in terms of quantum and the complexity of the mechanisms used to deliver reward. While we hesitate to suggest that reduced disclosure would form part of the answer and cannot offer any other easy solution to this issue, with the economy in recession we would urge the FRC to reflect on this important matter.

The quality of support and information available to the board and its committees

We believe that the non-executive component of the board should be provided with access to greater resource, as noted above.

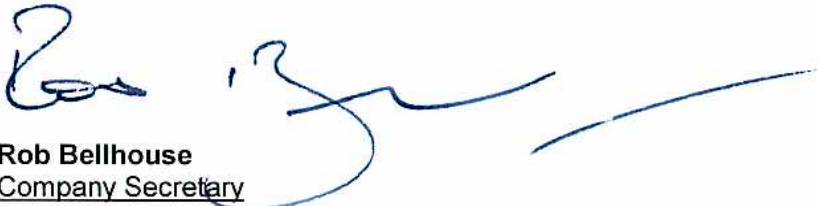
The content and effectiveness of Section 2 of the Code

We believe that this remains a key challenge, with some institutional investors failing to discharge fully the responsibilities of ownership. The focus of the governance debate has, for many years, been on the role of listed companies. We believe that there should be an equivalent debate on the role that should properly be played by the owners of those companies, and the resources and approach that would be needed to give effect to this.

I hope that these comments will assist the FRC in their deliberations. Please feel free to contact me should you wish to discuss any of these points further.

Yours sincerely

For and on behalf of Lonmin Plc



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