

London, 22nd August 2018

Response to the Consultation on the Wates Corporate Governance Principles for Large Private Companies submitted by Nestor Advisors Ltd.

About Nestor Advisors

Nestor Advisors is a London-based consultancy focusing exclusively on corporate governance. Our main clients are in the financial sector but we also have significant experience in other sectors such as power, oil and gas, mining and ITC. We have worked with the boards of several UK and European financial institutions and other companies on various aspects of governance, including research and data mining. We have also helped transform the governance of several large banks and other corporations in the Middle East, Africa, and Latin America. Nestor Advisors regularly publishes a widely-read comparative study on the governance of the largest 25 European banks. Additionally, we are often asked to contribute to policy initiatives on governance and have advised, among others, the EU Commission, the EBRD, the IFC/World Bank, and Sir David Walker in his review of UK bank governance. In 2012, our managing director gave evidence to the UK Parliamentary Commission on Banking Standards in the context of the preparation of new banking legislation.

Introduction

We welcome the attention that the Coalition Group is paying to the state of corporate governance of large private companies in the UK. Whilst the UK has been a long-standing leader in promoting high governance standards, we do feel that there are aspects of the Principles that can be improved. We are therefore grateful for the opportunity to contribute to the discussion, and remain at the disposal of the Coalition Group for clarifications or further discussions regarding these matters.

Response

In our view there are two tests against which the proposed Principles should be assessed: Do they provide a benchmark for good practice in private companies which will help to raise the general standards of governance? And do they provide a framework for meaningful but proportionate reporting by large private companies that have to comply with the Companies (Miscellaneous Reporting) Regulations 2018?

While we have no issue with the draft Principles as far as they go – they are clear, sensible and address the essential building blocks of good governance – we have doubts about whether, on their own, they pass either of those tests.

Ibex House, 42-47 Minories
London EC3N 1DY
United Kingdom

T: +44 (0)20 7628 3497
E: info@nestoradvisors.com

www.nestoradvisors.com

Raising the general standards of governance in large private companies requires a framework that enables and incentivizes boards to attain them.

For those companies that already take governance seriously, these Principles may be perfectly adequate. For other companies, though, we feel there may be a need for greater specificity. The guidance contained in the Principles sets out the rationale for each principle, but it does not provide any practical assistance on how to meet them (although paragraph 19 of the introductory section gives a useful illustrative example of how this might be done). (Question 2)

We agree with the statement in the Foreword that ultimately every company must interpret and apply the Principles for itself, but that does not mean they should not be given any advice on how to do so. The Principles themselves may not be the right place for that, but without more specific supporting guidance of some form to help companies identify the practices that will enable them to implement the principles, we are not sure they will succeed in raising standards.

As far as reporting against the new regulations is concerned, we see two possible dangers with the high-level approach taken in the Principles. Which is most likely will depend on how the regulations, and the Principles, are enforced. (Question 10)

If companies believe that the regulations will be rigorously monitored and enforced, then there is a danger that reporting on an “apply and explain” basis against high-level Principles could become more onerous than reporting on how a company has complied or explained with a more detailed code. Without some guidance as to the particular pieces of information that are to be disclosed, companies may be tempted to go into enormous detail rather than risk falling foul of the regulators.

On the other hand, if companies feel that nobody is monitoring what they report, there is no real incentive for them to disclose any meaningful information at all, and there is a high risk of boiler-plate disclosures that have little value. One should note that, unlike the UK Corporate Governance and Stewardship Codes, the Principles cannot rely on a “natural” enforcement monitor such as institutional investors or asset owners.

In order to guard against both these risks, we believe it might be helpful to develop a basic reporting framework that could be appended to the Principles. This could set out those essential pieces of information about the company’s governance arrangements that the Coalition Group considers would enable a company to demonstrate that it has applied the Principles. (Question 10)

As regards Question 4, we are of the opinion that the visibility of executive remuneration structures to the shareholder may be assumed. The relevant Principle should instead be referring to key stakeholders.

END