

ZPG Plc suggestions for FRC consultation

The Board of ZPG Plc (**ZPG**) has considered the proposals of the Financial Reporting Council (**FRC**) to update the UK Corporate Governance Code (the **Code**) and is grateful for the opportunity to contribute to the consultation process. ZPG has considered all the areas covered by the Code. We have limited this submission to the four points that we feel are most worthy of further consideration.

1. Chairman independence and the nine-year “rule”

- The Chairman’s role – engaging with shareholders, senior management, executive directors and the Board – makes it difficult to see how he or she could remain fully independent over a prolonged period. For many years the Governance Code has recognised this exact point and has therefore only required a Chairman’s independence to be tested on his/her appointment. In our view there is no logic for now requiring that the Chairman be independent on an ongoing basis; we cannot see what has changed. And in the event a company did manage to put in place provisions to ensure independence, why that should it automatically be the case that independence ceases after nine years?
- In addition, INEDs sitting on the Board are likely to make good Chairman succession candidates. Including the time an INED has spent on a board as part of the nine year “rule” may dissuade companies from promoting from within.

ZPG Proposal: keep the Code as currently drafted, which better reflects the nature of the Chairman’s role, but place more emphasis on achieving independence through at least half of the Board being INEDs. A time limit could be included for the Chairman, but that timing should start from the date of the Chairman’s appointment, not when the person originally joined the board.

2. Independence criteria

- As there will no longer be a reference to board discretion for determining whether a non-executive director is independent notwithstanding the existence of one of the criteria listed in the Code, boards may be prevented from implementing the most effective board structure to satisfy the independence criteria. We are not sure why this change is necessary given the existing protection around this. For example, the ultimate right of a shareholder to vote against the re-election of a director on an annual basis if he or she objects to that candidate.
- ZPG has a c. 30% shareholder that has the right to appoint two non-executive directors to the board. It is challenging to achieve a majority of independent directors on our board (even more so if the Chairman was included in the non-independent group). Strict application of the independence criteria would limit our board’s ability to appoint directors who are independent of mind and judgement but also have significant sector expertise in favour of directors who meet the criteria but do not have sector expertise, thereby leading to a worse outcome for shareholders from a governance perspective.

ZPG Proposal: following the new Code on this point will not always be in the interests of either shareholders or wider stakeholders. The FRC should reinstate the existing discretion as the board is best placed to assess all factors relevant to a director and to make an overall assessment of independence. If the FRC does decide to proceed with this proposal, it should clarify how companies should treat the different factors. For example, what is meant by 'material business relationship', 'significant links' and 'close family ties' in Provision 15?

3. Wider role for Remuneration Committee

- Our understanding is that the FRC's intention with the proposed change was to emphasise the need for the remuneration committee to have a full understanding of relevant workforce policies and practices when proposing remuneration policy. The proposed expanded role for the remuneration committee seems, however, to suggest greater operational involvement and a general HR supervisory role. As currently drafted the Code risks blurring the distinction between executive and non-executive responsibilities, creating uncertainty over how a remuneration committee should be resourced, and how their relationship with the HR team and senior management should develop.

ZPG Proposal: the FRC should clarify, with relevant wording in the Code, that oversight means understanding and that on remuneration issues such as consistency, fairness, pay philosophy and how to align this with a company's strategy, senior management should be responsible.

4. Stakeholder engagement

- The Government has said that it will publish secondary legislation requiring companies to disclose more around how boards have engaged with stakeholders and how their interests are taken into account by boards.
- There is a risk of creating two competing and slightly different disclosure requirements even though the policy aims behind them are the same.

ZPG Proposal: the FRC should ensure that any relevant wording in the Code precisely mirrors that in the secondary legislation.

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