

Response to the FRC Consultation on the UK Corporate Governance Code

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UK Corporate Governance Code and Guidance on Board Effectiveness

General Comments

The proposals overall make eminent sense, particularly the focus on culture management and the importance of independent Board effectiveness reviews (evaluations).

Condie believes however that the benefits to the organisation in terms of improved risk awareness, and the consequent development of risk appetite and controls is understated. Whilst there are relatively few changes proposed in the actual wording of Section 4 – Audit, Risk and Internal Control, better governance will make very positive impact on risk management. It is recommended that the Code makes these connections clear.

Questions

Q1. Do you have any concerns in relation to the proposed Code application date?

No

Q2. Do you have any comments on the revised Guidance?

No

Q3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?

Of the three options proposed the least practical is the appointment of a director from the workforce. This throws up numerous problems, including;

- Recognising the full directorial responsibilities of the nominee

- Defining the extent of representation within the nominee's area of interest

- Accepting that the Board may not follow the views or interests of the nominee or the workforce

It would also create problems for an NED to be designated as the workforce “contact” – mainly because this will be yet another area of work for a non-executive. The same problems as noted above prevail – placing the NED in the invidious position of having (on occasion) to deal with potentially conflicting duties to the Board and the company, and those perceived duties to the workforce.

Meaningful engagement would best be achieved through a regular structure of management and workforce communications, largely the responsibility of the CEO. We do not believe the expression “advisory council” is helpful – some other title, perhaps “workforce liaison” would be more correct. It would be the CEO who brings workforce issues and representations to the Board.

Q4. Do you consider that we should include more specific reference to the UN SDGs or other NGO principles, either in the Code or in the Guidance?

No, there is a danger of becoming prescriptive if you do.

Q5. Do you agree that 20 per cent is ‘significant’ and that an update should be published no later than six months after the vote?

Yes to both of these questions.

Q6. Do you agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years? If not, please provide information relating to the potential costs and other burdens involved.

Yes, strongly agree with the removal of the exemption of an independent board evaluation for companies below FTSE 350. The costs need not be prejudicial to the firm and the benefits are likely to be significant. Costs should be adjusted accordingly – a small and straightforward firm may budget £5,000 - £15,000 for an evaluation, with more complex firms budgeting £10,000 - £30,000. There is no material burden and the advantages outweigh the time diversion.

It is accepted that a “comply or explain” option should be allowed.

Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

Yes

Q8. Do you agree that it is not necessary to provide for a maximum period of tenure?

No, why not state 9 years if this is widely regarded as the de facto boundary for independence?

Q9. Do you agree that the overall changes proposed in Section 3 of revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole?

Yes

Q10. Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350? If not, please provide information relating to the potential costs and other burdens involved.

Yes

Q11. What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply.

We do not agree that the "levels" of ethnic groups should be required to be reported. Firms should be asked to state the actions and processes they employ in regard to diversity that they believe makes them compliant with all relevant laws and serves the firm to best advantage. These actions and processes should be audited periodically (internally). This concept applies to firms of all sizes and types.

Q12. Do you agree with retaining the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or Companies Act?

Yes, this would be help and aid clarity.

Q13. Do you support the removal to the Guidance of the requirement currently retained in C.3.3 of the current Code? If not, please give reasons.

Yes

Q14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?

Whilst agreeing that the expanded role would be beneficial to the firm and enhance the Board's remuneration risk management, it does represent a totally new concept of the role of the RemCo. It will also ask questions of the NEDs who serve on the committee in terms of their knowledge of remuneration and incentives within the firm's sector. And increase significantly the time requirement of these NEDs. Firms may therefore wish to structure a two-tier RemCo, with executives serving on a "remuneration management tier" and NEDs on a "remuneration governance tier" above this.

Q15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?

Again, the Board should be required to describe their systems and practices that they believe result in sustained positive performance for the firm and all its stakeholders. External scrutiny and judgement against recognised best practice will result in greater attention to reasonable and effective remuneration practices.

Q16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?

No. Exercising any "discretion" in either changing or not honouring contracted remuneration should be an extremely rare event and should remain so. No additional impetus is implied by the draft Code above that which exists currently.

Stewardship Code

No comments are submitted in regard to the Stewardship Code.