

## **Email**

2nd January 2018

Dear Sirs,

### **Consultation on revised Corporate Governance Code**

I am responding to your consultation on the proposed revisions to the Corporate Governance Code.

I set out in the appendix to this letter my experiences to support this submission.

The proposed revisions to the Code are generally welcomed. In particular the shortening and the tightening of the Code is to be applauded. I believe there is further scope to consolidate Principles and avoid repetition and unnecessary detail. For example Principle B and Principle H could easily be combined as could Principle F and I. The ICAEW delivered a Thought Leadership paper some years ago consolidating the fundamental principles down to five. (Leadership, Capability, Accountability, Sustainability and Integrity). I am sure further consolidation of the Principles but with support from provisions would be a sound move. It would also help companies which are 'explaining' why they have not complied with a specific Provision address the Principle and why that has been properly applied.

The reputation of business is not far from an all-time low. Sadly the present Government and PM have exacerbated the problem rather than help to resolve it. It would be good to see the FRC take leadership and responsibility for improving the reputation of business which, as your consultation so well describes, complies very highly with the CGC. Making it clear by deed that the FRC is not a mere lapdog for Government would be a very good thing.

I appreciate the need for excessive care in political correctness but I would prefer to see a chair as an inanimate object.

In response to your specific questions.

**Q1.** The proposed application date is fine.

**Q2.** See above and detailed answers to questions.

**Q3.** I agree that it is important that Companies gather views of all stakeholders. Provision 3 sets out methods for attaining views of the workforce alone. These smells of May-ism, lack credibility and risks a box ticking compliance. Sadly meaningful engagement will happen only when the Board see the need for it and when those engaged with are adult and responsible. In my experience good companies are keen to get the views of all stakeholders and in turn this leads to a more sensible dialogue. The workforce may be of critical importance in some companies but the customer or the public at large may be more critical for others. The Code should avoid pandering to Mrs May but do a proper job for UK business.

**Q4.** No.

**Q5.** I agree that 20% is 'significant' but so is the 80% in favour. I respectfully suggest that if democracy is to mean anything the wishes of the 80% should carry more weight than those of the 20%. Originally this threshold was to apply to remuneration issues, where I have some sympathy. However it has now been extended to any resolution and this brings with it a real danger. Some institutions (or voting agencies) have arbitrarily decided their own rules for certain votes (e.g. Buy back of shares threshold to be 9.9% rather 14.9% or re-election of directors to be subject to arbitrary and ill informed 'overboarding' criteria). Sadly the Institutions that have these arbitrary rules are also, in my experience, the

ones most reluctant to engage in any sort of dialogue or conversation. The Box Ticking mentality of the corporate governance departments of institutions is a major issue and one which the FRC should acknowledge.

A six month update on many issues would be wholly inappropriate particularly where those institutions who voted against did not engage. I have more sympathy on Remco issues.

**Q6.** I believe companies smaller than the FTSE 350 should continue to have exemption from the need to have an independent board evaluation. The cost of an evaluation is £20-30,000 and sadly is often overly influenced by the company Chairman. To burden big companies with this is all part of the cost of being listed but smaller companies carry enough cost as it is.

I think that the removal of the other exemptions is OK but it will mean that a number of smaller companies will need to employ an 'extra' NED to comply with the AC and Remco quorums. At least they can explain!

A further refinement re Board Evaluations for larger companies would be to make the SID responsible for selecting the external agency. This would prevent the 'cosy chairman' mandate but would get the FRC a lot of flack!

**Q7 & Q8.** The FRC's attempt to set a de facto maximum term of 9 years by arbitrarily defining 'independence' as less than 9 years is a clever one but one which will open the Code to accusations that it has confused independence with tenure. I would certainly support a maximum term for NED's of 9 years. I also support a maximum term for Chairman of 9 years (including any previous years as an NED) but think this will get a lot of resistance.

Independence is really a matter of mental approach. I have had the privilege of sitting on three boards with NED's deemed non independent by reference to shareholdings who in practice have been pillars of independence. Nevertheless the rule is not unreasonable and would be perfect if institutions had wisdom in judging the 'explanation'.

**Q9, Q10 and Q11.** Diversity and gender diversity in particular is here to stay and needs to be addressed. The issue I have faced in recruitment is that the executive pipeline has historically been biased toward white Anglo Saxon men and therefore the pool from which to recruit persons of the right caliber and experience is also biased away from the population at large. Anything that helps address the bias in executive pipeline is a good thing as long as quality is maintained. As regards ethnicity I would want some comfort that those of an ethnic background would want their difference as opposed to their commonality emphasised. What would happen if one were to suggest that Premier League Football sides should more closely resemble the population mix as a whole? Perhaps meritocracy has its place in business as well?

**Q12.** Yes. Having a single document is a help.

**Q13.** Yes to retain the guidance as a provision would belittle the Code.

**Q14, Q15 & Q16.** Many Remco's already have as part of their remit the oversight of the pay structure for the organisation as a whole. Indeed I think it would be difficult to set, properly, the pay for the top of the pyramid if it was outwith the context of the pay for Company as a whole. However it seems to me that giving the Remco the responsibility to engage with the workforce crosses over the line between Executive and Non-executive responsibility and I think this could be very dangerous.

Much is written about 'excessive' executive pay but the context is entirely missing. There are I understand some 650,000 people in the UK who pay additional rate tax. No more than 1200 or 1400 of these are FTSE 350 executives. Who are the others and what do they earn? Without this information the accusation of excessive pay is baseless and driven by jealousy. The FRC should not pander to

the Media (whose disclosure of their own pay is abysmal) on this. Again I see the FRC unreasonably reacting to a Government initiative here.

The average tenure of a FTSE CEO or CFO is quite short (c. 5 years last time I saw that data). If the movement to deny access to awards for a period of 8 years (3 years of earning and 5 of holding) continues the relevance of this method of reward will diminish. I am uncertain whether this will be a good thing but I do know that executives will not take a perceived pay cut easily.

Remco's need more backbone is exercising discretion but the simplistic approach of the mass media is not the answer either.

### **Stewardship Code**

Engagement between the companies on whose Boards I have sat and the equity analysts and fund managers has been overwhelmingly good. Sadly the engagement with the Corporate Governance departments of the same Institutions has been the opposite. The more complex and detailed the Governance Code becomes the more voting at AGM's and other matters become a backroom task devoid of any intelligence about the company's performance and people. A major advance in the Stewardship Code would be made if it could start to address this very serious issue.

Thank you for the opportunity to input to the consultation.

Yours faithfully,

David H Richardson

## **Appendix**

### **Credentials**

1. Executive director of Whitbread PLC 1996 -2005 as, successively, Strategy Director and Finance Director
2. Went 'plural' from 2005 to date for various companies including Serco PLC, Dairy Crest Group PLC, Forth Ports PLC, Tomkins PLC, De Vere Group PLC, Sports Direct PLC, The Restaurant Group PLC, Assura PLC, BBGI sicav SA, World Hotels AG, IHG GmbH, Four Pillars Hotels Ltd, The Edrington Group Ltd. Covering over 50 'company years' NED work in both UK Unitary and the continental Supervisory/Management Board structures
3. Plural activities have included Chairmanships of Listed (FTSE 350) companies, Private Equity backed companies and a bank owned company. Chairmanship and membership of numerous Audit Committees and Remco's. Senior Independent Directorships and NED activities
4. Experience as an NED of three Takeover Code Transactions
5. Experience as an NED of two IPO's and numerous capital raises
6. Chairmanship of the London Stock Exchange Primary Markets Group
7. Chairmanship of the ICAEW Corporate Governance Committee