

**The Wates Corporate Governance Principles for Large Private Companies (the “Code”)  
- Consultation Response**

**Q1. Do the Principles address the key issues of the corporate governance of large private companies? If not, what is missing?**

There is a clear emphasis on key shareholders throughout the Code which it is assumed is in recognition of the different role of shareholders in the management of a private company. However, the main aspects of the role of key shareholders are not defined in the Principles. While these aspects will vary from company to company, key shareholders who are also directors should recognise the different roles they play and the conflicts that may exist at any one time. Examples of the separation of roles should be included to assist directors in the discharge of their duties and shareholders in effectively managing potential conflicts.

**Q2. Are there any areas in which the Principles need to be more specific?**

Principle 1 – Paragraph two provides guidance on a company’s values and behaviours. The role of the board to set the tone from the top may be a useful addition here.

Principle 2 – The Principle hints at a performance evaluation but could go further. Recommending a board evaluation with a focus on individual performance would be beneficial, as boards of private companies would benefit from performance evaluations as much as public companies. It may also be helpful to include an example of how a nomination committee might assist the board with the matters highlighted in Principle 2.

Principle 3 – The Principle refers to independent challenge, but it does not describe the form this should take. Providing one example of independent challenge, such as the appointment of an independent director, would help clarify what is meant by ‘independent challenge’. It would also be advantageous to include a recommendation for boards to review the internal controls within the company on a regular basis to ensure they remain fit for purpose.

Principle 4 – The Principle hints at linking strategy to risk management, but it would be clearer if strategy and risk management were expressly linked. It may also be helpful to include an example of how an audit committee might assist the board with the matters highlighted in Principle 4.

Principle 5 – In line with best practice for listed companies, it would be good to see a recommendation that annual bonus and other incentive arrangements include stretching performance criteria to avoid rewarding failure.

**Q3. Do the Principles and guidance take sufficient account of the various ownership structures of private companies, and the role of the board, shareholders and senior management in these structures? If not, how would you revise them?**

Compared to governance codes for listed companies, the Principles and guidance acknowledge a difference in ownership structures. However, there is a clear emphasis on key shareholders (Principles 1 and 3) ahead of the board and senior management. While the nature of a private company is such that key shareholders may have a greater role to play in the operations of the business, company law still recognises that the directors are responsible for running the company

and therefore the emphasis should still be on the directors as collectively being responsible for discharging their duties under company law.

The extent to which a shareholder should have control over a business should be governed by the Articles of Association and any matters reserved for shareholder approval. It would be advisable that any further involvement in the management of the company should be as a director. Therefore, an appropriate corporate governance framework should be adopted to govern the relationship between shareholders and the Board.

**Q4. Do the Principles give key shareholders sufficient visibility of remuneration structures in order to assess how workforce pay and conditions have been taken account in setting directors' remuneration?**

Principle 5 could be enhanced to require large private companies to publish a remuneration policy in their Annual Reports (or on their websites). The purpose of doing so would be to provide visibility to shareholders vis-à-vis the remuneration structure of the company without needing to disclose remuneration outcomes themselves (beyond existing reporting requirements).

**Q5. Should the draft Principles be more explicit in asking companies to detail how their stakeholder engagement has influenced decision-making at board level?**

Yes, the guidance provided for Principle 6 is explicit about private companies developing the methods to engage with their workforces and how such engagement is utilised when taking decisions. However, additional wording could be added to Principle 6 itself to require disclosure of such methods to be made either in the Annual Report or on the corporate website.

**Q6. Do the Principles enable sufficient visibility of a board's approach to stakeholder engagement?**

See answer to Q5.

**Q7. Do you agree with an 'apply and explain' approach to reporting against the Principles? If not, what is a more suitable method of reporting?**

Yes. As the Principles are broad enough to be applied in different ways, it is appropriate to ask companies to disclose how they have applied the Principles in practice.

**Q8. The Principles and the guidance are designed to improve corporate governance practice in large private companies. What approach to the monitoring of the application of the Principles and guidance would encourage good practice?**

A database could be set up by, for example, the FRC, containing details of all companies that apply the Wates Code. Companies that are required to comply could be required to submit a copy of their corporate governance statements which could be available for free via the database. This would enable stakeholders to gain easy access to corporate governance statements. A list of companies that are required to comply but haven't yet provided a copy of their corporate governance statements could be added to the database to ensure that non-compliance is visible.

**Q9. Do you think that the correct balance has been struck by the Principles between reporting on corporate governance arrangements for unlisted versus publicly listed companies?**

Yes, the balance seems appropriate. A failure of an unlisted company as a result of poor governance is likely to have a large impact on key stakeholders. Boards of such companies should therefore be required to account for their corporate governance practices, even if to a lesser extent than publicly listed companies.

**Q10. We welcome any commentary on relevant issues not raised in the questions above.**

It would be helpful to number the paragraphs which make up the guidance for ease of reference.

**Jordans Corporate Law  
6 September 2018**