

UK Corporate Governance Code

A CONSULTATION RESPONSE FROM BOARD INTELLIGENCE, FEB 2018



BOARD
INTELLIGENCE

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PROPOSED REVISIONS TO THE UK CORPORATE GOVERNANCE CODE

I am writing on behalf of Board Intelligence to express our support for the approach the FRC has taken to revising the UK Corporate Governance Code.

The debate generated by the Government's Green paper on corporate governance reform shows that there is widespread concern that large companies have become disconnected from society. Whether perception or reality, this is a gap that needs to be bridged.

The Code can contribute by sending a signal to companies, investors and others about the issues that ought to be on every board's agenda and set the expectation that they will be addressed. We believe that the revised Code achieves that.

In particular, we welcome the emphasis the revised Code places on thinking more explicitly about the impact on stakeholders and engaging in constructive debate with them, as well as greater diversity on the board and in the pipeline.

Board Intelligence hosted two round tables for chairs and directors earlier this month, and we are grateful to the FRC for participating in both of them. While the majority of participants were broadly supportive of the overall objectives and draft Principles, reservations were raised about the detailed drafting of some Provisions and practical considerations for implementation were shared. These are summarised in the appendix to the letter.

We do not believe any of these points require a change of direction on the part of the FRC and that is not the reason for raising them. Rather, if it were possible to reduce the potential for unintended consequences or misinterpretation by addressing some of these points when the final drafting of the Provisions is prepared, this might hopefully improve the prospect of delivering on the ambitions set out in the Principles.

DINESHI RAMESH

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APPENDIX

Workforce and stakeholder voice

Some participants were concerned that the presumption that companies should have in place one of the three approaches in Provision 3 might result in some companies adopting sub-optimal arrangements for workforce and broader stakeholder engagement.

For example, several participants sat on the boards of large companies with international workforces. For these boards to engage effectively, a range of approaches was needed, taking account of local legal requirements, existing arrangements for employee representation and the nature of the relationship between the local and UK operation (e.g. subsidiaries that are in effect separate businesses). Having to set up arrangements that were designed for companies with only the UK workforce in mind could reduce the effectiveness of this overall engagement.

Some participants considered that by focusing purely on the workforce in Provision 3, there was a risk that the interests of other stakeholders might be overlooked.

The role of the remuneration committee

A similar concern was raised by some participants about the proposal in Provision 33 that the remuneration committee should oversee workforce policies and practices. It was argued that it should be for the board to determine where this responsibility should rest as part of a holistic approach. A few participants were also concerned that a significant increase in RemCo workload could make it more difficult to find suitable candidates willing to sit on the committee. On the other hand, it was also acknowledged that incentives drive behaviour and pay policy is one of the few levers at the board's disposal to help determine a healthy culture. Broadening the scope of their role in this regard has merit.

Chairman and director independence

The majority of participants either supported the proposed tightening of the 'nine year rule' in Provision 15 or considered that it would have no practical impact on the boards on which they sat. Some, however, were concerned that, if applied to the chairman from when they first joined the board (rather than when they became chairman), it would make succession planning for that role more difficult. It was argued that existing non-executive directors would not wish to become chairman if they knew they could only hold the position for a few years and would prefer to seek a similar position elsewhere.

Others drew out that an effective Chairman will often spend a lot of time on the matters of the business (in some cases extending to 4 days a week, if not more), calling into question whether they could ever be classified as truly independent, irrespective of tenure.

