

Please find detailed below Asesoria Group's (www.asesoria-group.com) comments on the FRC's consultation on the proposed revisions to the "UK Corporate Governance Code" and the "Guidance on Board Effectiveness".

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

We understand the current code application date will apply to accounting periods beginning on or after 1 January 2019. Subject to planned revised code publication in early summer 2018, we do not have any specific concerns with the application date.

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

The Guidance on Board Effectiveness is considerably longer partly due to the focus to "shorten and sharpen" the Code, with some provisions moved to the Guidance. We have not responded to specific elements of the guidance but feel the increase of sections headed "Questions for Boards" and examples or areas for consideration, certainly adds more detail on elements where Boards should be challenging themselves. As with all Guidance if it is used to challenge their approach to governance and broader decision making it will be a success, but we hope the "questions for boards" do not become a tick-box exercise for boards who do not consider other relevant issues or use them to justify their approach to reach a poor decision. It is important that it is reiterated that this is guidance and not statutory and should be used as such.

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

We welcome the enhancement of Provision 3 to include the wording, **workforce** not just **employees**. The "Guidance on Board Effectiveness" emphasises that more than one approach or option should be considered to achieve engagement with the workforce. This might include one of the three options detailed in Provision 3 or a mixture of approaches. For us the specific method of engaging with the workforce is less important, than the effectiveness of the process chosen, actions taken as a consequence of that engagement and subsequent outcomes or impact on the workforce. The reporting and feeding back to the workforce, not only in the annual report, is of equal importance to build trust. We appreciate that extensive consultation has already taken place on this point and that the 3 options detailed need to be included, however we would therefore suggest a slight amendment to Provision 3:

"The board should establish a method (or a variety of methods) for gathering the views of the workforce. This could be ~~would normally be~~ a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. There should also be a means for the workforce to raise concerns in confidence and (if they wish) anonymously. The board should regularly review the effectiveness of these ~~is~~ and ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action. The board should report annually on the incident rate and any resolutions".

This is supported by our recent surveying of institutional investors who all indicated that organisations should be able to choose the option or use a mix of approaches to meet this Code requirement. Although most responded that they did have a preference for one of the specific options outlined by the government's approach.

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?

We do not feel that UN SDG's or other NGO principles should be explicitly referred to in the code. Many large companies do already report against UN SDG's, UN Global Compact, GRI, as well as against their own CSR frameworks and public commitments. We feel it is important that companies report against issues material to them rather than potentially "shoehorn" reporting into a framework and miss other opportunities of best practice. To encourage companies further down the listing to develop good reporting practices we feel it is better not to include specific examples, that may lead them down a specific avenue that is not the best fit for them. If it is felt more detail or specific examples of reporting practice is needed it should be included in the Guidance not the Code.

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?

The percentage of shares held by investors in UK listed companies does vary by company. In some cases a 20 per cent vote could indicate a number of investors with a smaller holding are unhappy with a resolution and for other companies it may attribute to just one or two investors with a larger holding being unhappy with a resolution. We suggest that 20 per cent can be significant and this percentage should be kept under review. Publication of an update no later than six months after the vote would seem a sensible time frame. The continued spotlight on remuneration and remuneration policies in companies, as well as the Investment Associations public register, will support the move to greater transparency in this area.

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. Best practice suggests that any board, committee or association where large funds or resources are managed should have some form of external evaluation as a way of "holding up a mirror" on their governance, effectiveness and areas for improvement. Large charities with a turnover over £1million, sports associations and government departments, to name but a few organisations, are now recommended to undertake a board effectiveness review, including external evaluation. It would seem sensible that those below FTSE 350, many of which have a substantial turnover and large numbers of employees should be required to undertake an independent board evaluation every three years. From experience we have heard practical opposition to this when companies have few employees (but this would be a small exception). A well facilitated external evaluation should provide challenge, recommendations and suggest a rolling plan of actions for future years. The costs incurred in commissioning a review should be offset by the recommendations designed to improve decision making and board effectiveness as a result of the evaluation.

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 this seems sensible from an independence consideration but it is also important to look at tenure from a wider lens to ensure that the board has the right skills, experience and diversity to respond to the changing environment companies operate in. A non-executive should not remain just because they can still be considered independent but a much broader set of issues need to be considered.

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

Although nine years criterion for independence is regularly used by companies and investors, this has happened without the need for a prescriptive maximum period of tenure to be detailed in the Code. We agree there should be no necessity for this to be explicit.

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?

Achieving real diversity in organisations will take time and it is a complex issue. Building diversity at board and senior level not only increases financial performance but delivers innovation and provides better risk management amongst other things. It also demonstrates to the rest of the workforce that the organisation supports diversity and inclusion. Many organisations achieve gender parity at graduate or intake level but fail to support individuals from diverse backgrounds as they continue their career. The changes in Section 3 will not address the problem but should support progress by continuing to focus on, and champion the requirement to improve the diversity of boards and senior management through robust succession planning. We would support any further disclosure that helps develop a diversity at all levels and believe the Code should encourage companies to report on the policies and programmes they have in place, as well as the impact these programmes have in promoting diversity across their senior management. The continued focus and pressure placed on company boards who have taken little action in this area and organisations championing these issues, will also ensure further progress is achieved on this issue.

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. We fully support extending the Hampton-Alexander recommendations beyond the FTSE 350. It should not be a burden on organisations as it makes good business sense and research indicates there are many business benefits, including financial performance.

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.

Reporting on levels of ethnicity at board level is straight forward and we believe boards should work to implement the recommendations outlined in the Parker report to achieve one director of colour on FTSE 100 boards by 2021 & FTSE 350 by 2024. However many UK listed companies are global organisations and have country executive teams with their line reports operating across a wide range of jurisdictions. From experience the ability to report on ethnicity does vary as legislation in countries may make it more difficult to capture this data and also due to cultural issues individuals may choose not to disclose their ethnicity. Therefore multi-national companies may find reporting on levels of ethnicity more complex. However we would support any further disclosure that helps develop a diverse workforce and believe the Code should encourage companies to report on the policies and programmes they have in place, as well as the impact these programmes have in promoting diversity (including ethnic diversity) across their senior management.

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. We believe retaining the requirements even if there is some duplication is a better course of action.

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. We support the removal of C.3.3 of the current code to the Guidance (paragraph 53)

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?

Yes. We support the wider remit of the remuneration committee and of taking responsibility for the oversight of company remuneration and workforce policies. However we do feel this will substantially expand the committee's role and workload, therefore there will be a need to delegate some policy issues to sub-committees. Along with the Chair's experience we feel other remuneration committee members should have some wider experience of remuneration, knowledge of a range of workforce issues and understanding of best practice in driving constructive and transparent practices in remuneration across the workforce.

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

Provision 36 states "Longer periods, including post-employment periods may be appropriate". To build public trust the perception that senior individuals can walk away from an under-performing or failing organisation with large pay-outs or shareholdings needs to be a greater focus. We would suggest a minimum two-year holding period post-employment with clawback provisions in the event of organisational failings due to decisions made during tenure or wrongdoing. Only in addressing the whole problem will public trust begin to be restored.

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

We feel it is a step in the right direction in addressing the issue but this alone will not be enough to give meaningful impetus. However the Code enhancements, in conjunction with the government's secondary legislation on pay ratios, the requirement to provide Gender pay gap data, as well as public and investor pressure will help lead to boards exercising more discretion.