

Consultation Agenda

Synopsis of the areas for consideration during the second phase of the Financial Reporting Council's review into the Combined Code of Corporate Governance

SECTION I

Topics relating to the content of the Combined Code

1.1 The responsibilities of the Chairman and the Non-executive Directors

Although the Combined Code identifies some responsibilities for the roles of Chair and Non-executive Directors in the supporting principles to Sections A1, A2 and A4, it does not explicitly define the role and responsibilities in full, as Directors' statutory duties are detailed in the Companies Act 2006. The FRC is therefore considering

- Whether it may be beneficial to clarify the role, responsibilities, and expected behaviours required of the Chair and Non-executives, either in the Code or in non-binding guidance.
- Whether it would be helpful to provide further guidance on the time commitment expected of the Chair, Senior Independent Director and/or Non-executive Directors.

1.2 Board balance and composition

Commentators during the first phase of consultation have expressed concern regarding the Code's recommendations around the balance of representation of Executive and Non-executive Directors, as well as criteria against which the independence of Non-executives should be assessed. The FRC is therefore considering:

- Whether the Code gives sufficient emphasis to the need for relevant experience among the Non-executive Directors collectively
- Whether the independence criteria have unnecessarily restricted the pool of potential Non-executive Directors and, in particular, whether the 'nine year rule' has resulted in the loss of continuity and valuable experience.
- Whether the recommendation that the Boards of FTSE 350 companies should comprise at least 50% independent Non-executives has resulted in fewer directors sitting on Boards
- Whether more guidance is required on succession planning and the need to ensure Board composition is aligned with present and future needs of the business



1.3 Frequency of director re-election

Concerns have been expressed about the frequency of Director re-election and the need to increase accountability to shareholders. The FRC therefore invites views on which of the following recommendations commentators would support for inclusion in the Code:

- Annual re-election of the Chair
- Annual re-election of the Chairs of the main board committees
- Annual re-election of all directors
- Binding or Advisory votes on specific issues, or on the corporate governance statement as a whole.

1.4 Board information, development and support

Views are invited by the FRC on whether it would be helpful to provide more guidance on the following issues:

- The need for Non-executive Directors, individually and collectively, to have sufficient knowledge of, and information about, the business to be able to effectively challenge the executive through a number of possible options which are highlighted in the FRC report.
- The need to increase the effectiveness of the role of Company Secretary in terms of more clearly defined responsibilities

1.5 Board evaluation

Although the Code states that ‘the Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees’, it does not specify how the evaluation should be carried out. The FRC is therefore considering:

- Whether the Code should be amended to recommend that Board evaluations should be externally facilitated at least every two or three years, for some or all companies
- Whether the recommendation that the effectiveness of all main Board committees would be evaluated every year should be relaxed in some way
- How disclosures of evaluation in the annual report might be more informative, either in relation to the process that was followed or the outcomes of the effectiveness review.

1.6 Risk Management and Internal Control

The Combined Code states that companies should maintain a sound system of internal control and further guidance on this subject is set out in the Turnbull Guidance which was last revised in 2005. Following the first consultation phase, the FRC is considering:



- Whether the Board's responsibility for strategic risks and setting risk appetite should be made more explicit in the Code
- Whether there is a need for all or parts of the Turnbull Guidance to be reviewed
- How reporting on risk might be improved
- To what extent the mechanisms recommended for banks and financial institutions would also be appropriate for other listed companies.

1.7 Remuneration

The Combined Code contains recommendations on the level and make-up of remuneration, as well as outlining the procedures to be followed when setting remuneration for Executive Directors. Areas highlighted for consideration as a result of views expressed on this topic include:

- The link between risk and remuneration
- The need to ensure remuneration policies promote the long-term interests of the company
- The design of remuneration packages
- The remit, composition and effectiveness of the remuneration committee
- The role of shareholders in setting remuneration of directors
- The remuneration of employees below Board level
- The use of remuneration consultants
- The need for further guidance on different aspects of remuneration

SECTION 2

Topics relating to the implementation of the Code

2.1 'Comply or Explain'

The implementation of the Code is currently based upon a 'comply or explain' mechanism. During the Review process, there has been a suggestion that the term should be replaced by 'apply or explain' as this may better allow companies the opportunity to explain non-compliance with certain recommendations that may not be relevant to their organisation. The FRC is therefore giving further consideration to this proposal. In addition they are seeking views regarding:

- Whether it would be appropriate for the FRC or FSA to undertake greater monitoring and enforcement of 'comply or explain' statements, and if so, what form this might take.
- The extent to which it would be desirable to rationalise the disclosure requirements set out in the Code.
- Whether there are any other actions the FRC should take to encourage more informative disclosure
- What steps can be taken by the FRC or others to encourage companies to be more proactive about regular engagement with shareholders