

Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
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5 March 2010

Dear Chris,

### **Final Report on the Effectiveness of the Combined Code**

I write as Acting Chair of the Corporate Governance committee of the Commerce & Industry Group, which is recognised by the Law Society. The Commerce & Industry Group represents over 4,500 lawyers working in commerce and industry in all sectors and all sizes of business. The Corporate Governance Committee submitted a response to the FRC in July and has considered the Final Report. I set out below our observations.

#### **Responsibilities of the chairman and directors**

We understand the rationale behind not introducing minimum time commitments for senior office holders in the Code, but wondered whether it might be effective to apply some form of restriction on the number of other office bearing roles in listed companies that might be held by a chairman. There is a strong risk that the ability of a chairman of a FTSE company to hold another similar position would be significantly impaired if he sought to effectively fulfil his obligations as an existing company chairman. This does not mean that a chairman should be prohibited from being a Senior Independent Director of another listed company, but rather that a balance should be struck between performing duties and maintaining effectiveness of any contribution made.

#### **Board balance and composition**

Although this point is not covered in the commentary of the Final Report, it is important that there are sufficient executive directors on the board other than just the CEO and CFO. This will help to provide a better balance to the organisation and bring wider representation and experience to the day to day operations. In smaller companies, it might be more helpful if there were another executive on the board to provide balance and encourage the views of other executives to be heard besides the CEO at board meetings. We appreciate that this might lead to additional non- executive directors being appointed given the 50% rule in Provision A.3.2

#### **Frequency of director re-election**

We agree that annual election of the board could lead to "short termism" although at present, the code does not prevent annual re-election.. It would be useful to consider whether the appropriate sanction for, say, dissatisfaction with a chairman of the Remuneration Committee could be via the board chairman having to face the shareholders on an annual election basis.

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### Board information, development and support

The Committee is generally supportive of the aim that all directors should have access to the business operations and staff of the company. This would help remove the impression of office holders being "remote". It would give non-executive directors an opportunity to hear firsthand about how the business is running and what concerns the managers and staff below board/management executive level might have.

### Board Evaluation

We welcome the proposals for an external evaluation to be conducted every 3 years and would support the publication of results of the internal and external evaluation being published in the Corporate governance statement of the Annual Report. The Committee believes this would give investors a better understanding of how the board is operating.

### Risk Management and internal control.

The Committee is of the view that board risk committees would not be an effective use of resources in non-financial companies and may duplicate the roles and responsibilities of the General Counsel and CFO. A more effective way of addressing risks might be to have higher level board risks spelt out more fully in the OFR of the Annual Report. This would contrast with presentation of the day to day operational risks which are addressed via the Turnbull procedures. In this way, Boards would be required to consider the key risks on a regular basis and to keep investors formally appraised.

### Remuneration

The Committee is generally supportive of the European recommendation that there be more in house expertise on remuneration issues on the Remuneration committee. Practical implementation of this could be to ensure the Remuneration Committee can call on the head of HR or the CFO to attend the Committee when invited, or by selecting non executive directors who have such expertise to serve on the Remuneration Committee. The handling of employee benefits, pensions and long term incentive plans is becoming more and more complex and any board will wish to assure itself that it has established policies and procedures to support employee behaviours that are in the organisation's best interests.

### The quality of disclosure by companies

Disclosure of information is vital to promote a better understanding of the company's activities, but care must be taken to avoid disenfranchising those who do not routinely access information from websites. In our view, the corporate governance statement could move from the Annual Report to the website, on the basis that any request for information to be provided by means other than a website should be treated sympathetically.

### Engagement

The committee is encouraged by the approach taken by the FRC to promote an increase in trust between boards and shareholders, but would suggest that engagement by shareholders has to be far wider than just before the AGM. The focus should be for the company to engage in real, ongoing dialogue with its material investors, whilst recognising that there are a number

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of key stakeholders that take an interest in a company's performance. It may sometimes be the case that research entities will respond on behalf of their clients with voting preferences and then review results after the results presentations. In other situations, shareholder voting service providers may review an organisation's activities a few weeks before the AGM and reach conclusions on the organisation which may influence their advice on voting preferences. At such a late stage, it may be challenging to actively engage in dialogue on compliance or explain the background behind why certain key voting options have been presented. In this context, the committee is supportive of the initiative to develop a Stewardship Code for institutional shareholders.

Should you wish to discuss any of these comments in more detail, please do not hesitate to contact me.

Yours faithfully,

A handwritten signature in cursive script that reads 'Nina Barakzai'.

Nina Barakzai  
Acting Chair,  
Corporate Governance Committee  
Commerce & Industry Group  
(recognised by the Law Society)