

Combined Code needs revision

29 May 2009: The Institute of Chartered Secretaries (ICSA) has today published its submission to the Financial Reporting Council's Review of the Combined Code. As the professional body that qualifies company secretaries, the ICSA is well placed to provide authoritative comment on the effectiveness of the Code; many of its members work in public listed companies. The response has been informed by consultation with a specially constituted working group of company secretaries and the ICSA Company Secretaries Forum which has 30 members, with strong representation from the FTSE 100.

ICSA confirms its preference for the 'comply or explain' regime as opposed to regulation, stating that the flexible nature of the Code allows companies to tailor governance to their specific and changing needs and permits a greater speed of response to developing circumstances. By contrast the US system, enshrined in Sarbanes-Oxley, is far more prescriptive in nature than the Combined Code and did nothing to prevent the crisis in the banking system, either in the US or further afield. ICSA also confirms its support for the unitary board model over a two-tier structure believing that the latter would make non-executive directors less effective in their ability to challenge the executive directors.

Although recognising that recent significant failings in governance have related to sections of the banking sector, there are two areas of the Code which ICSA believes should be strengthened and made applicable to all sectors. These are that the board, with no delegation to committees, should be collectively responsible for establishing a policy confirming the company's risk profile and risk appetite, and that the board should be properly supported in its delivery of good decision-making by formalising the role of the secretariat:

'As recent events have shown, it is now essential that establishing the company's risk appetite should be considered a primary function of the whole board. The board should not only review risk on a regular basis, but should set out its policy clearly so that this can be implemented by management on a day-to-day basis...the board, as a whole, should categorise the types of risk which are acceptable for the company to bear in pursuit of its business objectives'

Rejecting the notion that a limit should be set on the number of directorships that a non-executive director should have, ICSA concludes that their time commitment should be evaluated as part of the board evaluation process and that non-executive director service contracts should no longer talk in

terms of a number of 'notional days'. ICSA states that all directors, whom they describe as 'stewards of the shareholder's assets' should be better informed:

'All directors, but most particularly the non-executives by virtue of their external position in relation to the company, need to be better briefed on company affairs.'

The company secretary, ICSA argues, should play a key role in assisting all directors to obtain the information they need to carry out their roles effectively:

'The Code should encourage the establishment in all listed companies of an adequately resourced company secretariat, headed by a company secretary appropriately experienced in matters of law, regulation, secretaryship, accounting, business finance, strategy, ethics and governance.'

'The Code should require the company secretary to report to the chairman. He (or she will) often have a second reporting line into the CEO, but his reporting line should not be solely to executive management.'

Finally, the response makes suggestions as to how the effectiveness of the Code can be improved in areas such as director induction and training, performance evaluation, remuneration and whistle-blowing.

David Wilson, ICSA's Director of Policy and Strategy comments:

'The status quo is not tenable. The Combined Code needs revision. Support for non-executive directors must be improved if they are now to discharge a more effective role in challenging management on their activities and performance. At the same time, the knowledge and access to information of all directors needs to be improved, and boards must ensure that risk evaluation is embedded in their strategic decision-making and business planning. To better demonstrate accountability for their stewardship of the company's assets and shareholders' investments, the processes by which boards evaluate their own performance need to be strengthened.'

To view the full response please [click here](#)

For further information please contact: Rosie Hamilton on 020 7612 7062 or pressoffice@icsa.co.uk or David Wilson on dwilson@icsa.co.uk or 020 7612 7014.

Editor's notes

The Institute of Chartered Secretaries and Administrators (ICSA) is the qualifying body for company secretaries and a leading authority on corporate governance. It publishes guidance notes and best practice guides and through its subsidiaries provides events, information and training, boardroom performance evaluation and dedicated software. The ICSA has 36,000 members worldwide and is represented in over 70 countries.

In March 2009 the FRC announced a review of the Combined Code. Further details can be found at: <http://www.frc.org.uk/corporate/reviewCombined.cfm>