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Dear Claudia

ICSA response to The Wates Corporate Governance Principles for Large Private Companies

We welcome the opportunity to contribute to the consultation on The Wates Corporate Governance Principles for Large Private Companies.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. ICSA is the professional body that qualifies Chartered Secretaries, which includes company secretaries. Company secretaries have a key role in companies' governance arrangements, including the development of governance policies, the application of and compliance with the UK Corporate Governance Code for listed companies, supporting the board on all governance matters, and in companies' relationship with investors. Our members are therefore well placed to comment on The Wates Corporate Governance Principles for Large Private Companies

In preparing our response we have consulted, amongst others, with a number of groups of our members, including members who work for large private companies and the members of the ICSA Company Secretaries Forum, a group of company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. However, the views expressed in this response are not necessarily those of any individual members of any of these groups, nor of the companies they represent.

Q1: Do the Principles address the key issues of the corporate governance of large private companies? If not, what is missing?

Generally yes, although we do have three points of concern.

The first of these is around the relationship with shareholders. The principles acknowledge that private companies vary hugely but still seem to assume a fairly close connection between directors and



shareholders in all private companies. This is not always the case and there seem to be increasing opportunities for the public to invest in private companies. Shareholders – particularly where they are minority shareholders - of private companies can be taking more risk than those investing in listed companies because private companies are not subject to the same standards of governance as listed companies.

Secondly, we think there should be greater focus on conflicts of interest as they are an area of significant concern in a number of private companies. Conflicts are mentioned in the Guidance to Principles Three and Four but there is no mention in the Principles themselves.

Finally, although public companies must appoint a company secretary, the Companies Act does not require private companies to do so. We believe that private companies that are large enough to be obliged to report against these principles should also be required to have a company secretary to manage the reporting and governance process.

Q2: Are there any areas in which the Principles need to be more specific?

We believe that Principle Four needs to say more about opportunity. The Principle is about ‘opportunity and risk’ but all it says in the Principle about opportunities is ‘... by identifying opportunities to create ... value ...’ It also says nothing about opportunities in the supporting guidance; apart from another mention of ‘creating value’ and then ‘... as well as identifying opportunities for innovation and entrepreneurship’ which looks like an afterthought. Everything else is about risk.

This creates the wrong balance between the board’s responsibility for identifying opportunities to create value and their responsibility for preserving value by identifying and mitigating risks. Most people work in SMEs and they are what drive our economy. It does make the point in para 13, page 4 of the consultation document that ‘as the UK prepares to leave the EU we need to promote its reputation as a global leader in corporate governance’ and we think that we also need to be a bit more positive around value creation in private companies.

Q3: Do the Principles and guidance take sufficient account of the various ownership structures of private companies, and the role of the board, shareholders and senior management in these structures? If not, how would you revise them?

No – see our comments under Q1 about shareholders.

Q4: Do the Principles give key shareholders sufficient visibility of remuneration structures in order to assess how workforce pay and conditions have been taken account in setting directors’ remuneration?

Yes. We thought that Principle Five is well written, balanced and provides for sufficient transparency.

Q5: Should the draft Principles be more explicit in asking companies to detail how their stakeholder engagement has influenced decision-making at board level?

No. The new s172 reporting requirement covers this.

Q6: Do the Principles enable sufficient visibility of a board’s approach to stakeholder engagement?

Yes - more than enough. And the new reporting requirements address this issue.

Q7: Do you agree with an ‘apply and explain’ approach to reporting against the Principles? If not, what is a more suitable method of reporting?

Yes. It is appropriate that large private companies report on their application of the Corporate Governance Principles and explain the specific governance arrangements within their companies.

Q8: The Principles and the guidance are designed to improve corporate governance practice in large private companies. What approach to the monitoring of the application of the Principles and guidance would encourage good practice?

We believe that there should be a formal monitoring process. Subject to the outcome of the Kingman review, this may be a role for the reporting arm of the Financial Reporting Council.

Q9: Do you think that the correct balance has been struck by the Principles between reporting on corporate governance arrangements for unlisted versus publicly listed companies?

Probably yes, for now, but we suspect we will be revisiting this again very soon. The way in which people invest in companies is changing rapidly and people are more able to access investment in all sorts of private enterprises.

Q10: We welcome any commentary on relevant issues not raised in the questions above.

There is one additional issue that we believe we should raise. The principles have been widely described as the Wates Principles, but one of our members questioned whether it was prudent to link the principles to the name of a specific individual or company, in case of any issue in the future.

Finally, we noted some points of detail in the guidance:

- Guidance for **Principle Two**, 4th para, says ‘individual evaluation of directors should demonstrate whether each director continues to contribute effectively’ - but doesn’t say what they should do about it if the director doesn’t.
- **Principle Three** only mentions accountability but the Guidance talks about accountability and responsibility – are these the same?
- The third para of the Guidance for **Principle Three** talks a lot about independent challenge and seems to be encouraging the appointment of NEDs but doesn’t say so. Would it be better to be a little more direct?

We hope you find our comments helpful and would be happy to expand on any of these points should you wish to discuss them further.

Yours sincerely



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Policy & Research Director