



## Governance in brief

### Your summary of the latest corporate governance developments

#### Headlines

- The FRC publishes 103 responses to its call for evidence on the effectiveness of the Combined Code.
- OECD concludes there is no immediate need to revise its Principles of Corporate Governance.
- IASB proposes guidance for the preparation and presentation of management commentary.
- The Ministry of Justice issues draft Bribery Bill for pre-legislative scrutiny.
- Government publishes the Shareholder Rights regulations.

#### The FRC publishes 103 responses to its call for evidence on the effectiveness of the Combined Code

**In Brief:** In general, the majority of respondents are supportive of the Code in its current form, including the 'comply or explain' regime, and do not wish to see more prescription. Examples of some of the comments made include the following:

- **Non-executive directors** – the independence criteria in the Code may need reviewing with more focus on the role, time, skills and contribution of non-executive directors.
- **Risk management** – various suggestions aimed at improving the risk management function but no consensus on the need for a separate risk committee. Some believe that this should be decided on a company by company basis.
- **Remuneration** – there is a need to ensure that there is a proper link between risk and remuneration and that remuneration properly supports the business strategy and objectives.
- **Shareholder engagement** – there is a continued call for better and active shareholder engagement on corporate governance matters and this is vital if 'comply or explain' is to be effective.

The FRC expects to publish a progress report on the review in July, with a final report later in the year. If the review results in any proposals to amend the Combined Code or related guidance, or to improve the effectiveness of the 'comply or explain' monitoring mechanism, there will be a separate consultation supported by a Regulatory Impact Assessment.

**Date:** 25 June 2009

**Source:** Financial Reporting Council

**Further info:** <http://www.frc.org.uk/corporate/reviewCombined.cfm>

### **OECD concludes there is no immediate need to revise its Principles of Corporate Governance**

**In Brief:** The Organisation for Economic Co-operation and Development (OECD) has published a paper entitled "Corporate Governance and the Financial Crisis: Key Findings and Main Messages". The paper concludes that at this stage there is no immediate need to revise the OECD Principles of Corporate Governance, since these adequately address the main concerns that have been raised. However, the Steering Group on Corporate Governance has the challenge of encouraging and supporting the effective implementation of already agreed standards. Some of the main findings and messages include:

**Governance of the remuneration process** – oversight of this area has often failed due to negotiations and decisions not being carried out at arm's length. Managers and others have had too much influence over the level and conditions for performance-based remuneration with boards unable or incapable of exercising objective, independent judgement.

**Effective implementation of risk management** – regulators and other standard setters should understand that their aim is to ensure that risks are understood, managed and, when appropriate, communicated.

**Board practices** – the aim should be to facilitate the creation of competent boards which are capable of objective and independent judgement. A board evaluation process, conducted with the assistance of independent experts on a regular basis, should be used as a structural tool for monitoring board effectiveness and efficiency.

**Exercise of shareholder rights** – shareholders in general have been reactive instead of proactive and seldom challenge boards in sufficient number to make a difference.

**Date:** 18 June 2009

**Source:** Organisation for Economic Co-operation and Development

**Further info:** <http://www.oecd.org/dataoecd/3/10/43056196.pdf>

### **IASB proposes guidance for the preparation and presentation of management commentary**

**In Brief:** For many entities, management commentary is already an important element of their communication with the capital markets, supplementing as well as complementing the financial statements.

This exposure draft presents the International Accounting Standards Board's proposals for a broad framework for the preparation and presentation of management commentary to accompany financial statements in accordance with International Financial Reporting Standards (IFRSs). The IASB makes it clear that it is for the management of an entity to decide how best to apply this framework in the particular circumstances of its business.

The Board's proposals are intended to provide a basis for the development of good management commentary. It offers a non-binding framework which could be adapted to the legal and economic circumstances of individual jurisdictions. The guidance has been developed to apply to publicly traded entities.

It is hoped that a management commentary prepared in accordance with the IASB's proposed framework will help users of the financial reports to assess the performance of the entity and the actions of its management relative to stated strategies and plans for development.

**Date:** 23 June 2009

**Source:** International Accounting Standards Board

**Deadline for comment:** 1 March 2010

**Further info:** <http://www.iasb.org/News/Press+Releases/IASB+proposes+guidance+for+the+preparation+and+presentation+of+management+commentary.htm>

### **The Ministry of Justice issues draft Bribery Bill for pre-legislative scrutiny**

**In Brief:** On 25 March 2009 the UK Ministry of Justice published the Bribery Bill designed to provide a new, modern and comprehensive scheme of bribery offences to enable courts and prosecutors to respond effectively to bribery in the UK and abroad. It builds upon the proposals of the Law Commission's Report, 'Reforming Bribery', of 20 November 2008, and seeks to:

- replace the fragmented offences under common law and the Prevention of Corruption Acts 1889-1916;
- simplify legislation by covering two general offences:
  1. offering, promising or giving of an advantage; and
  2. requesting, agreeing to receive or accepting an advantage;
- create an offence of bribery of a foreign public official;
- create an offence of negligent failure by commercial organisations to prevent bribery.

As under the current legislation, codified in The Anti-Terrorism, Crime and Security Act 2001 Act, this law will apply to the bribery of foreign officials, as well as commercial bribery i.e. non-governmental, whether by an individual or by a corporate body and provides jurisdiction to prosecute acts committed abroad by UK nationals or UK registered companies.

The bill has been published in draft and is undergoing pre-legislative scrutiny by a Joint Committee. The Committee is due to report by 21 July 2009. Jack Straw has indicated that the government's intention is to hear the bill in the next session of parliament.

The corporate offence clause, in particular, is likely to have major impact on the way UK corporations manage their international businesses and attendant risks. The corporate offence represents a new form of corporate liability arising from a negligent failure to prevent bribery committed on behalf of the company where, for example, bribery has occurred in order to secure a business advantage in foreign markets. The offence gives rise to a due diligence/adequate systems defence which would allow a company on behalf of which a bribe has been paid to avoid a conviction if it can show that it has adequate systems in place to prevent bribery despite this instance.

**Date:** July 2009

**Source:** UK Ministry of Justice

**Further info:** <http://www.justice.gov.uk/publications/draft-bribery-bill.htm>; [www.deloitte.co.uk/corruption](http://www.deloitte.co.uk/corruption) or contact Kirsty Searles on 020 7007 2823 or [kasearles@deloitte.co.uk](mailto:kasearles@deloitte.co.uk)

### **Government publishes the Shareholder Rights regulations**

**In Brief:** The Companies (Shareholders' Rights) Regulations came into force on 3 July 2009. These regulations implement the EU Shareholder Rights Directive in the UK.

The Regulations will amend the provisions on company meetings in the Companies Act 2006. Most of the changes will only affect listed companies but some will affect all companies. The new requirements will apply to meetings where notice is given on or after 3 August 2009.

The key provisions in the Regulations for listed companies include:

**Notice periods for EGMs** – the minimum notice period for listed company EGMs for both ordinary and special resolutions will be extended to 21 days instead of the 14 days currently permitted in the 2006 Act.

The period can be reduced to 14 days if two conditions are met. Firstly, the company must allow shareholders to vote "by electronic means accessible to all shareholders". This includes a facility available to all shareholders to appoint a proxy via a website. Secondly, shareholders must pass a special resolution every year approving the shortening of the notice period.

### **Circulation of members' resolutions and other matters**

– members will have a new requisition right (at 5% or 100 persons) to require the company to include "a matter" to be considered in the business of an AGM, as well as a resolution. The company only has to pay the costs of circulating a resolution or matter if the requisition is received before the company's financial year end.

**Asking questions at meetings** – there will be a new right for shareholders to ask questions at meetings which the company must answer unless one of the stated exceptions applies (which include that it would be undesirable in the interests of the company or good order of the meeting that the question be answered).

**New information requirements** – there will be new requirements for additional information to be included in notices of meeting (e.g. the notice of the new right to ask questions). Additional information will also need to be made available about the meeting on the company's website

**Return of proxies** – there is a new requirement for companies to give an electronic address for the return of proxies.

**Other changes** – there are a number of other detailed changes for listed companies including provisions on setting the record date for voting at meetings.

Changes applying to all companies include requisitioning general meetings, voting by electronic means and by post and voting by proxies on a show of hands.

**Date:** 3 July 2009

**Source:** Department for Business, Innovation and Skills

**Further info:** The Regulations – [http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091632\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091632_en.pdf)

FAQs – <http://www.berr.gov.uk/whatwedo/businesslaw/co-act-2006/faq%20Act%202006/page52173.html>

### Time to take action

- If not already done, consider the adequacy of your anti-bribery and corruption compliance programme.
- Ensure that steps are taken to be ready for the changes arising from the Shareholder Rights Directive.

### On the horizon

- Publication of Sir David Walker's review of bank governance.
- Follow-up to the FRC's call for evidence on the operation of the Combined Code.

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