



Governance in brief

Your summary of the latest corporate governance developments

Headlines

- Sir David Walker publishes 39 recommendations seeking to change behaviours in bank corporate governance.
- FRC publishes progress report and second consultation on its review of the Combined Code.
- New responsibilities for senior accounting officers come into force.
- The Conservatives set out their blueprint for sound banking and financial regulation.
- Draft audit firm governance code issued.

Sir David Walker publishes 39 recommendations seeking to change behaviours in bank corporate governance

In Brief: The debate on the governance arrangements of UK banks and certain other financial industry entities (BOFIs) has commenced with the publication of Sir David Walker's recommendations for change. Sir David hopes that his recommendations will result in a behavioural shift to achieve more effective governance in BOFIs. It is hoped that they will benefit BOFIs, their shareholders and the wider public interest.

The recommendations seek to address weaknesses in risk management, board quality and practice, control of remuneration, and in the exercise of ownership rights.

There are five key themes of the Review:

- The Combined Code remains fit for purpose.
- The principal deficiencies in BOFI boards related much more to patterns of behaviour than to organisation.
- Board-level engagement in the high-level risk process should be materially increased with particular attention to the monitoring of risk and discussion leading to decisions on the entity's risk appetite and tolerance.
- Fund managers and other major shareholders need to engage more productively with their investee companies with the aim of supporting long-term improvement in performance.
- Substantial enhancement is needed in board level oversight of remuneration policies in particular in respect of variable pay, and in associated disclosures.

Sir David's intention is to issue a final version of the report and its recommendations in November in light of responses and further discussions between now and the end of the consultation period on 1 October.

Deloitte has issued a paper on the challenges firms now face to be ready in time and setting out key questions firms should be addressing, and/or considering as they plan for implementation.

Date: 16 July 2009

Source: HM Treasury

Deadline for comment: 1 October 2009

Further info: http://www.hm-treasury.gov.uk/d/walker_review_consultation_160709.pdf and Deloitte Walker Review Client Briefing Note available from your local Deloitte partner.

FRC publishes progress report and second consultation on its review of the Combined Code

In Brief: Ensuring the board has the right people providing effective contribution and challenge and improving the level of engagement between companies and investors are the emerging themes from the FRC's review of the effectiveness of the Combined Code.

In the progress report the FRC summarises the responses to the initial consultation paper, of which there were over 100, identifies the areas of the Code the FRC may consider updating and cross-refers these areas to the relevant recommendations contained in the Walker Review consultation document. In particular the FRC is seeking views as to whether the Walker Review recommendations should extend to all non-financial listed companies or some sub-set of those.

It is noted that market participants expressed a strong preference for retaining the current approach of 'soft law' underpinned by some regulation rather than moving to an approach more reliant on legislation and regulation.

Views are invited on the following aspects of the Combined Code and its application.

- The responsibilities of the Chairman and non-executive directors and whether guidance is needed on their responsibilities, expected behaviours and time commitments.
- The composition of the Board including finding the right balance of independence and expertise, the current 'nine year' and '50% independent non-executive director' rules and the alignment with present and future needs of the business.
- The frequency of directors' re-election, the need for more guidance on succession planning and increased accountability through an advisory vote on the risk report or the corporate governance statement.
- Board information, development and support including greater contact between NEDs and the operational activities of the company.
- Evaluation of the board's effectiveness, including that evaluations should be externally facilitated at least every two or three years and the possibility of an assurance statement on the board evaluation.
- The effectiveness of existing risk management systems, whether the Turnbull guidance should be reviewed and whether the board's responsibility for strategic risks and setting risk appetite should be made more explicit.

- Remuneration policy and process including the possibility of votes on individual remuneration.
- The usefulness of companies' reporting on corporate governance, the possibility and desirability of rationalising disclosure requirements and whether it would be appropriate for the FRC or FSA to undertake greater monitoring and enforcement of 'comply or explain' statements.
- Engagement between boards and shareholders.
The FRC believes that it is of critical importance that there are sufficient institutional investors willing and able to engage actively with the companies in which they invest.

The FRC aims to publish its final report, and begin consultation on whatever changes may be proposed to the Combined Code, before the end of the year. Subject to the outcome of that consultation, a revised Code would take effect in mid-2010.

Date: 28 July 2009

Source: Financial Reporting Council

Deadline for comment: 9 October 2009

Further info: <http://www.frc.org.uk/press/pub2037.html>

New responsibilities for senior accounting officers come into force

In Brief: The controversial rules imposing a personal liability on senior accounting officers for, amongst other things, failure to properly establish and maintain appropriate tax accounting arrangements came into force on 21 July 2009 when Royal Assent was given to the Finance Act. The measures are effective for financial years starting on or after 21 July 2009.

A senior accounting officer is defined in the Act as being the 'director or officer of the company who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements'. In practice, it is expected that this will be the finance director.

A company is caught by these requirements if it has a turnover of more than £200 million and/or balance sheet assets of more than £2 billion.

Each qualifying company is required to inform HM Revenue & Customs of the identity of the company's senior accounting officer each financial year. The senior accounting officer must provide a certificate for each financial year of the company confirming whether the company had appropriate tax accounting arrangements throughout the financial year.

Deloitte has a dedicated external website including guidance on good practice tax management in the light of the legislation, what senior accounting officers should be doing now, commentary on the draft guidance and a technical update summarising the requirements.

Date: 21 July 2009

Source: HM Revenue and Customs

Further info:

http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090010_en.pdf for the Finance Act 2009 (relevant parts are clause 93 and Schedule 46) and <http://www.deloitte.com/dtt/article/0,1002,cid%253D261977,00.html>

The Conservatives sets out their blueprint for sound banking and financial regulation

In Brief: The Conservatives have set out their White Paper for sound banking that they believe will lead the British economy from crisis to confidence. They believe that the financial crisis of the last two years represents a policy failure of historic proportions. They blame the failure of the tripartite system of regulation created by Gordon Brown, and a decade of fiscal imprudence, meaning that Britain was more exposed than most countries to the international banking shock.

A review has been conducted of the tripartite structure and the White Paper sets out the fundamental reforms a Conservative Government would undertake. This would include abolishing the tripartite system and giving the Bank of England responsibility for maintaining financial stability. In addition, the Financial Services Authority would be abolished and a new Consumer Protection Agency would be created.

A consultation on which regulatory authority should take on the FSA's various other responsibilities including markets and securities regulation, 'approved persons' licensing and listing authority responsibilities would be undertaken. For example, markets regulation could be combined with the Takeover Panel and Financial Reporting Council to streamline the number of regulators and create a powerful markets authority akin to that in France, Italy, Spain, Portugal and most of Eastern Europe.

On governance, the paper sets out the reforms the Conservatives would introduce in this area. Acknowledging the existence of the Walker Review, the Conservatives say that more transparency is needed on pay structures, and that regulators must also ensure capital requirements take into account the risks encouraged by bonus structures.

There is also a need to improve the internal risk management structures in banks – for example, it may be appropriate for the risk director to be appointed by the Board, not the CEO, to safeguard their independence.

A new shareholder activism would be encouraged. Investors would have the ability to hold management to account. This could mean greater financial disclosure, requirements that institutional shareholders vote, or annual re-election of directors. Under the plans, boards would be strengthened, with measures to safeguard against 'group think' and ensure proper NED engagement.

The Government also has a blueprint for reform of financial markets. The Chancellor of the Exchequer Alistair Darling has published 'Reforming Financial Markets', a document setting out the Government's proposals for the reform of the financial system.

The proposals focus on significant reform of the way banks are regulated, with more emphasis put on the risks financial firms can present to the economy and greater protections for consumers. They include:

- New plans for the FSA to place higher capital requirements on firms that present greater risks to the system and measures to deal with the potential failure of institutions that could have a significant impact on the economy.
- Steps to help consumers make better informed choices, including a national money guidance service funded by a levy on the financial sector and a new independent consumer education body.
- A strengthened framework for financial stability, to deal with system-wide risks in today's more complex and global markets. This will include legislating to set up a new Council for Financial Stability - which will bring together the Bank of England, the FSA and the Treasury to monitor system-wide financial stability and respond to long-term risks as they emerge.

Date: 20 July 2009

Source: The Conservative Party

Further info:

http://www.conservatives.com/News/News_stories/2009/07/~media/Files/Downloadable%20Files/PlanforSoundBanking.ashx and http://www.hm-treasury.gov.uk/press_65_09.htm

Draft audit firm governance code issued

In Brief: The Audit Firm Governance project is the result of a recommendation of the Market Participants Group's review of choice in the UK audit market. The recommendation suggested that 'every firm that audits public interest entities should comply with the provisions of a Combined Code-style best practice corporate governance guide or give a considered explanation'.

The working group tackling this recommendation, led by Norman Murray, has developed a draft Code that is "a cousin of the Combined Code, rather than its offspring". The draft code follows the structure of principles and provisions, the philosophy of 'comply or explain', and the wording of the Combined Code in a limited number of areas. However, it recognises that a Combined Code designed for listed companies is of limited applicability to owner-managed firms.

It is hoped that the draft code should be of direct interest to everyone who sees audit as playing a vital role in a market economy, including:

- shareholders in public interest entities;
- directors, employees and other stakeholders of those entities including regulators; and
- partners and staff of firms that carry out audits of such entities.

It is important that people with different perspectives look at the draft code, consider the effects it will have in practice, identify any ways it could be improved and share their insights with the Audit Firm Governance Working Group.

Date: 10 July 2009

Source: Institute of Chartered Accountants in England & Wales

Deadline for comment: 10 October 2009

Further info:

http://www.icaew.com/index.cfm/route/166504/icaew_ga/Technical_and_Business_Topics/Topics/ICAEW_consultations/Governance_of_firms_that_audit_listed_companies/Second_consultation/pdf

Time to take action

- Take steps to ensure that the senior accounting officer will be in a position to make the necessary confirmations at the required time.
- Provide further input to the Walker Review and FRC consultations on governance.

On the horizon

- Sir David Walker's final recommendations on bank governance.
- FRC consultation on proposed changes to the Combined Code.

For further information, visit the Corporate Governance section of our website at www.deloitte.co.uk (Services/Assurance & Advisory).

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