



Governance in brief

Your summary of the latest corporate governance developments

Headlines

- FRC publishes *Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009*
- FSA restructures and re-labels the listing regime into two segments – “premium” and “standard”
- The ICAEW Foundation publishes the results of its review of the practice of risk governance by the boards of non-financial companies

FRC publishes *Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009*

In Brief: The FRC has published Guidance for directors of all UK companies covering going concern and liquidity risk. The Guidance brings together the requirements of company law, accounting standards and the Listing Rules on going concern and liquidity risk for small, medium and large UK companies and provides assistance on their application. It supersedes the 1994 “Going Concern and Financial Reporting: Guidance for Directors of Listed Companies Registered in the UK”, the update to that guidance published in November 2008 and the March 2009 guidance for directors of FRSSE companies.

The Guidance does not make any major changes to the requirements on directors. However, the content of the previous FRC material has been redrafted to focus on three key principles.

1. **Assessing going concern:** Directors should make and document a rigorous assessment of whether the company is a going concern when preparing annual and half-yearly financial statements. The process carried out by the directors should be proportionate in nature and depth depending upon the size, level of financial risk and complexity of the company and its operations.
2. **The review period:** Directors should consider all available information about the future when concluding whether the company is a going concern at the date they approve the financial statements. Their review should usually cover a period of at least twelve months from the date of approval of annual and half-yearly financial statements.
3. **Disclosures:** Directors should make balanced, proportionate and clear disclosures about going concern for the financial statements to give a true and fair view. Directors should disclose if the period that they have reviewed is less than twelve months from the date of approval of annual and half-yearly financial statements and explain their justification for limiting their review period.

The FRC has responded to the experience of companies, auditors and users in applying the previous guidance. It has confirmed that the guidance applies to *all* companies as an assessment of going concern is required by IFRS, UK GAAP and the FRSSE.

The FRC has, however, acknowledged that the way in which directors apply the principles may differ.

- The Guidance adopts a “think small first” approach, providing assistance to directors of all companies first, and then additional points for directors of large and medium-sized companies and then listed companies to consider.
- The guidance discusses the situation of subsidiary companies. Directors of subsidiaries are still required to apply accounting standards and the law, and therefore must still perform an assessment of going concern and make suitable disclosures. However, the situation for subsidiaries will involve consideration of the interaction between the company and other members of the group, including any support needed from, or pledged to, the rest of the group. Example 1(b) in Appendix II of the Guidance is a new example for a subsidiary where the directors have identified no material uncertainties that cast significant doubt about the ability of the company to continue as a going concern.

The other significant change in the Guidance is to make explicit in principle 1 that the directors should document their assessment of going concern. This was implicit in the previous FRC material and many directors already did document their assessment. It should not be an overly burdensome requirement, if applied in a proportionate manner, and will help directors to demonstrate, should the worst happen, that they performed an assessment and that their conclusion was supported by the evidence available to them.

Finally, following requests for clarification, the FRC has indicated that it expects the disclosure to be made in the financial statements. If the disclosures are made elsewhere, there should be a cross-reference from the notes to the financial statements to that disclosure.

The new Guidance is applicable to directors of all companies for periods ending on or after 31 December 2009. This deadline should be achievable given the lack of major differences from the previous FRC updates. The FSA has indicated that it will make the necessary change to the Listing Rules to refer to the 2009 Guidance instead of the 1994 Guidance and an update to APB Bulletin 2006/5 is expected in December 2009.

Date: 15 October 2009

Source: Financial Reporting Council

Further info: <http://www.frc.org.uk/press/pub2141.html>

FSA restructures and re-labels the listing regime into two segments – “premium” and “standard”

In Brief: Following a two year consultation the FSA has announced changes to the Listing Rules to re-label the listing regime into two segments with effect from 6 April 2010:

- “Primary” listings will be relabelled as “Premium” listings to reflect the fact that the requirements for companies with a primary listing are more stringent than the minimum required by EU law.
- “Secondary” listings will be relabelled as “standard” listings, reflecting the fact that they meet the EU minimum standards.

The changes also strengthen the rules for certain non-UK companies with a London listing. Overseas companies with a premium listing will be required to ‘comply or explain’ against the full Combined Code and offer pre-emption rights to shareholders. The requirement on all EEA companies listed in London to produce a corporate governance statement in accordance with DTR 7.2 is being extended to non-EEA companies and GDR issuers.

The FSA is consulting further on technical aspects of the final rule changes, including a simplified process for moving between segments. From 6 April 2010 a company will no longer need to de-list and re-list in order to move segments, but prior shareholder approval will be needed.

One change takes effect from 6 October 2009: UK companies will be able to have a secondary listing of equity shares, a choice previously restricted to overseas companies. In practice few companies will want to pursue this option, given that shares with a standard listing are excluded from the various FTSE indices. It is expected that those UK companies not wanting to comply with the continuing obligations for a primary listing will continue to choose AIM as a way of raising funds.

Date: 2 October 2009

Source: Financial Services Authority

Further info: http://www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_24.shtml

The ICAEW Foundation publishes the results of its review of the practice of risk governance by the boards of non-financial companies

In Brief: A new study on how boards of non-financial services companies go about making sure risk is well-managed has shown there is no case for significant change in the UK's governance rules in the wake of the financial markets crisis. Instead, the research, undertaken on behalf of the ICAEW Foundation and supported by the large accounting firms, suggests that the focus of any changes to the Combined Code in the area of risk management should be on encouraging company boards to concentrate on securing the right behaviour and attitudes to risk-taking and management.

The research report suggests that changes that may be needed for banks should not be applied more widely, with company boards satisfied that their risk management is working well with no need for new governance structures and processes. It highlights opportunities to improve the Code to emphasise or clarify how its principles should be put into practice.

The study provides an extensive picture of how boards and senior management make sure that risk management is working well and that boards are doing what they need to do. It complements the review that Sir David Walker has undertaken into risk governance within financial services companies and will be used to inform the Financial Reporting Council's current consultation on the Combined Code.

Eric Anstee, Deputy Chair of the ICAEW Foundation, said: "Government and regulators have been looking at the Combined Code and whether or not it has stood up to the unique environment of the economic crisis. Whilst it's important to consider specific issues related to the financial services sector, we cannot assume that non-financial services companies have behaved in the same way. This report will inform that debate and I hope ensure that any changes to the Combined Code address the practicalities of its use across the whole of the corporate landscape."

One clear message from the report is that what is needed is not more rules but for companies to make a good job of putting into practice those that already exist. In this regard there is strong evidence that the FRC should consider a review of the Turnbull guidance. The report found evidence that non-executive directors need to spend more time with the business outside the boardroom. There should be a greater emphasis on ensuring they understand the business in all its aspects without straying into executive territory.

Date: 12 October 2009

Source: The ICAEW Foundation

Further info: http://www.icaew.com/index.cfm/route/168247/icaew_ga/Home/About_us/Latest_news/Getting_it_right__Latest_news__ICAEW/pdf

Time to take action

- Discuss the going concern assessment and draft disclosures with auditors sooner rather than later.

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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Designed and produced by The Creative Studio at Deloitte, London. 434A

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