



FINANCIAL REPORTING COUNCIL

**CONSULTATION ON THE REVISED UK CORPORATE
GOVERNANCE CODE**

DECEMBER 2009

INTRODUCTION

During the course of 2009 the Financial Reporting Council (FRC) has carried out a review of the impact and implementation of the Combined Code, the results of which were published in December. The main findings of the review are set out in “2009 Review of the Combined Code: Final Report”, which is available at:

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

As a result of the review the FRC is consulting on a number of changes to the Code. These are summarised in Section A of this document. The draft revised Code is in Section B. The Appendix contains a table showing what has happened to the current principles and provisions in the draft revised Code. As well as changes to the content of the Code, the FRC will change its name from “The Combined Code on Corporate Governance” to “The UK Corporate Governance Code”.

Views are invited from all interested parties on the proposed revisions to the Code. If changes are made to the Code following this consultation, the FRC will publish a regulatory impact assessment when issuing the revised Code. It would welcome information on the likely costs and benefits arising from the proposed changes.

Subject to the outcome of this consultation, the intention is to publish the revised Code in April or May 2010. The Listing Rules will need to be amended before the revised Code can take effect, and consequential amendments may also be needed to the Disclosure and Transparency Rules. Subject to that, it is intended that the revised Code should apply to accounting periods beginning on or after 29 June 2010.

The FRC is proposing other follow-up actions as a result of this review. These are summarised in the report on the review and briefly at the end of Section A of this document. Some of these actions will be subject to separate consultation.

How to comment

Comments on the proposed changes to the Code set out in this consultation document are requested by 5 March 2010. Responses should be sent by e-mail to codereview@frc.org.uk

or in writing to:

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Corporate Governance Unit
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Fifth Floor
Aldwych House
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London WC2B 4HN

It is the FRC's policy to publish on its website all responses to formal consultations issued by the FRC and/or any of its Operating Bodies unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. We do not edit personal information (such as telephone numbers or email addresses) from submissions; therefore only information that you wish to be published should be submitted.

SECTION A: PROPOSED CHANGES TO THE CODE

1. This section summarises the proposed changes to the structure and content of the Code. It also identifies those proposals that the FRC believes may lead to changes in the costs and benefits for companies and investors, and briefly summarises the other actions that the FRC intends to take as a result of the review in order to provide a complete picture.

Proposed changes to the structure of the Code

2. The FRC intends to change the name of the Code to “The UK Corporate Governance Code”. The FRC believes that the new title would make the Code’s status as the UK’s recognised corporate governance standard for companies clearer to foreign investors, and to foreign companies listed in the UK which, as a result of changes to the FSA’s Listing Regime, will henceforth need to report against the Code if they have a Premium Listing.
3. The FRC proposes significant structural changes to Section A of the Code with the intention of giving more prominence to some of the factors that underpin an effective board, and to reflect some of the recommendations made by Sir David Walker which the FRC considers apply to all listed companies. These changes consist of dividing the existing principles and provisions into two new sections called “Leadership” (Section A) and “Effectiveness” (Section B), and creating a number of new main principles (see paragraph 7 below). Some provisions have been moved between principles as a consequence. Subsequent sections of the Code have been renumbered as a consequence of the former Section A now forming two sections.
4. Other proposed structural changes include updating the structure and content of the Preamble to the Code to form a new introductory section, adding a list of all the Code principles after that section, and reversing the order of the sections dealing with remuneration and accountability. The changes to the introductory section are intended to reinforce important messages about the way the Code should be viewed and applied. Views are invited on whether it succeeds in this intention.
5. The FRC proposes to remove the former Section E, which was addressed to institutional shareholders, subject to sufficient progress being made by the time the revised Code is issued on implementation of a Stewardship Code for institutional investors as proposed by Sir David Walker, on which the FRC will be consulting separately. If that is not the case, Section E will be reinstated.

6. The FRC also proposes to delete the previous Schedule B on the liability of non-executive directors. Other, more comprehensive, guidance is available from other sources and, if needed at all, the material in the Schedule might more appropriately form part of updated guidance that ICSA have been commissioned to develop on the FRC's behalf (see paragraph 19 below).

Proposed changes to the content of the Code

Changes to the Main Principles

7. As part of the proposed changes to Section A of the Code three supporting principles have been upgraded to main principle, with the consequence that companies with the Premium Listing will now be expected under the Listing Rules to report on how they have been applied. These principles relate to the roles of the chairman and the non-executive directors (which use wording in the former Supporting Principles A.2 and A.1 respectively) and on the time commitment expected of all directors (the wording is new but reflects the sentiment in former Supporting Principle A.4).
8. In addition former Main Principle A.5 on information and development has been divided into two separate principles. A new supporting principle has been added to the latter concerning the need for directors to have appropriate knowledge of the company and access to its operations and staff.
9. Two proposed new main principles have been added in response to issues raised during the review. The first is new Principle B.1 which states that the board should have the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively; this replaces the former Main Principle A.3 (on the balance of executive and non-executive directors), which now forms part of the supporting principles. The second proposed new principle makes explicit the board's responsibility for overseeing risk management and setting the company's risk appetite and tolerance.
10. In addition, drafting changes have been proposed to the main principle on the role of the board to clarify that the board is responsible for the long-term success of the company (Principle A.1). The supporting principles on the level and composition of remuneration have also been amended to make explicit reference to the long-term success of the company (new Principle D.1). Finally, the supporting principles on appointments to the board (new Principle B.2) have been amended to encourage boards to consider candidates from a broad talent pool and to incorporate the existing principle that there should be progressive refreshing of the board.

Changes to the provisions

11. The FRC proposes a small number of new provisions, which will be subject to the “comply or explain” requirement in the Listing Rules. These are:

- The chairman should agree and regularly review a personalised approach to training and development with each director (new Provision B.4.2).
- Evaluation of the board should be externally facilitated at least every three years, and any other connections between external consultants and the company disclosed (new Provision B.6.2).
- The board should satisfy itself that appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company (new Provision C.2.1).
- The annual report should include an explanation of the company’s business model and overall financial strategy (new Provision C.1.2).

The first three of these proposed provisions reflect recommendations of Sir David Walker which the FRC consider have broader applicability, while the fourth reflects a recommendation of the House of Commons Treasury Select Committee.

12. Some changes to the wording of other provisions are also proposed:

- Additional wording is proposed in the provision on the role of the senior independent director to reflect Sir David Walker’s recommendation on this subject (new Provision A.4.1).
- The FRC also proposes to amend the provisions relating to the re-election of directors (new Provisions B.7.1 and B.7.2). Views are invited on two options: the annual re-election of the chairman or the annual re-election of all directors. If the latter option were chosen, the provision that non-executive directors should be re-elected annually when they had served more than nine years would no longer be relevant and would be deleted.

- The FRC proposes some changes to the provisions relating to remuneration in the new Section D and Schedule A to reflect developments in good practice and the recommendations made by the European Commission and Sir David Walker. These are set out in the draft revised Code but the most significant relate to the link between remuneration and risk policies and systems; the use of non-financial metrics when measuring performance; and considering arrangements for reclaiming variable components in certain circumstances. An additional change clarifies that all forms of performance-related remuneration are discouraged for non-executive directors, not just share options.
- A number of changes have also been proposed to the new Section E on relations with shareholders (now titled “Communication”). These include: amending the heading of the new Section E.1 to clarify that engagement with private shareholders, who might also form a major part of the share register in some companies, is encouraged; amending the new Provision E.1.1 to clarify that compliance can be achieved without needing to set up separate meetings for non-executive directors; and clarifying the new Provision E.2.2 on votes taken on a show of hands.
- Finally, there are a small number of other minor drafting amendments that the FRC considers do not change the meaning of the Code. These have been indicated in the text.

Disclosure requirements

13. As well as the requirements in the Listing Rules for companies to report on how they have applied the principles in the Code, and to explain where they have not complied with its provision, the Code itself contains a number of provisions which require companies to disclose specific information in order to comply with them. The Code specifies where this information is to be made available; in most cases this is in the annual report.
14. In the progress report issued in July the FRC invited respondents to identify any such requirements that could be removed on the grounds that the information was of little value. None were identified; all the information provided in accordance with the Code was considered useful by at least some respondents. The scope for removing requirements is also constrained by the fact that some of them are required under European legislation. The FRC does not therefore propose to remove any of the current disclosure requirements in the Code.

15. However the FRC invites views on whether the requirements in the Code that certain information must be disclosed in the annual report should be amended to enable companies to take advantage of the flexibility allowed under Section 7.2 of the FSA's Disclosure and Transparency Rules, which allow companies a choice of whether to put the corporate governance statement on the website or in the annual report. This might provide an opportunity for companies to make the annual report more focused by placing the full corporate governance statement on the website and an edited version containing the most important information in the annual report. If this proposition was supported, consequential amendments would need to be made to a number of provisions of the Code and further discussions would be needed with the FSA in case changes to the Listing Rules or Disclosure and Transparency Rules were required.
16. The FRC intends to retain the existing Schedule C to the Code (as new Schedule B) which summarises the relevant disclosure requirements in the Disclosure and Transparency Rules, the Listing Rules and the Code itself. This will need to be updated to reflect the proposed revisions to the Code and the changes in the Listing Regime that will take effect in April 2010, and has therefore not been included in the draft revised Code in the next section.

Costs and benefits

17. If changes to the Code are implemented following this consultation, the FRC will publish a regulatory impact assessment when issuing the revised Code. It would welcome information on the likely costs and benefits arising from the proposed changes. If it is possible to quantify the costs or benefits that might arise from specific proposals that would be particularly helpful; if not it would still be helpful if respondents could indicate what form these costs and benefits might take (for example, administrative costs or savings for companies, investors or advisers or changes to the overall level of remuneration as a result of changes to the board).
18. The FRC considers that the following proposed changes might have an impact on the costs and benefits to companies or investors (bearing in mind that under the "comply or explain" mechanism companies can choose not to comply with specific provisions if they believe that the benefits envisaged by applying the related principles can be achieved in another way):
- The principle that the board should have the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively.

- The provision stating that the chairman should agree and regularly review a personalised approach to training and development with each director.
- External facilitation of the board evaluation process at least every three years.
- Changes to the frequency of election for the chairman or all members of the board.
- The changes to the principles, provisions and Schedule on performance-related remuneration.
- The provision stating that the board should satisfy itself that appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company.
- The proposed disclosure of the company's business model and overall financial strategy.
- The clarification that new Provision E.1.1 can be complied with by non-executive directors attending existing meetings, rather than by setting up additional meetings.
- Changes to allow companies the option of disclosing information either in the annual report or on the company's website.

Other actions resulting from the review

19. The FRC proposes a number of other actions in response to its review of the Combined Code and Sir David Walker's report on the corporate governance of banks and financial institutions. These are set out in more detail in "2009 Review of the Combined Code: Final Report" but, briefly, they are:

- The FRC to take responsibility for a Stewardship Code for institutional investors as recommended by Sir David Walker, subject to consultation designed to ensure it can be operated effectively.
- The FRC is considering options for producing practical guidance on good practice engagement between companies and investors.
- The FRC to carry out during 2010 a limited review of the Turnbull Guidance on internal control, on which there will be separate consultation.

- The FRC has commissioned ICASA (the Institute of Chartered Secretaries and Administrators) to work with others on its behalf to update the good practice guidance from the 2003 Higgs Report which addresses, for example, the roles of the chairman and non-executive directors.

20. In addition it is possible that the FRC may wish to propose limited changes to its existing guidance to audit committees depending on the outcome of work being undertaken by the FRC's Auditing Practices Board on the provision of non-audit services and audit partner rotation.

SECTION B: THE DRAFT REVISED CODE

Explanatory note

The text of the draft revised Code is on the pages with the blue background.

Because of the proposed changes to the structure of the Code it would be too confusing to attempt to show all of the changes in a marked-up version of the existing Code. Instead, in the draft revised Code:

- Where existing principles or provisions have been moved, the current reference is shown at the end of each paragraph.
- Where new wording has been added, this has been underlined.
- Where existing wording has been amended or removed, this has been indicated at the end of the paragraph.

In addition, the table in the Appendix shows where the existing principles and provisions appear in the new structure.

As well as the draft text contained in this consultation document the FRC intends to retain the existing Schedule C to the Code (as new Schedule B) which summarises the relevant disclosure requirements in the Disclosure and Transparency Rules, the Listing Rules and the Code itself. This will need to be updated to reflect the proposed revisions to the Code and the changes in the Listing Regime that will take effect in April 2010.

A contents page will also be added to the published version of the Code.

GOVERNANCE AND THE CODE

The purpose of corporate governance, supported by the Code, is to facilitate efficient, effective and entrepreneurial management that can deliver growth in shareholder value over the longer term.

The first version of the UK Code on Corporate Governance (the Code) was produced in 1992 by the Cadbury Committee. Its paragraph 2.5 is still the classic definition of the context of the Code:

Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.

Corporate governance is therefore about what the board of a company does and is to be distinguished from the day to day operational management of the company by full-time executives.

The Code is a guide to a number of key components of effective board practice. It is based on the underlying principles of all good governance: accountability, transparency, objectivity and focus on the sustainable success of an entity over the longer term.

The Code has been enduring, but it is not immutable. Its fitness for purpose in a permanently changing economic and social business environment requires its evaluation at appropriate intervals. The reviews preceding this one were in 2005 and 2007. The Preface opposite, which should be regarded as an integral part of the Code, introduces the changes made in the current review.

The new Code applies to accounting periods beginning on or after 29 June 2010 and, as a result of the new Listing Regime introduced in April 2010, applies to all companies with a Premium Listing regardless of whether they are incorporated in the UK or elsewhere. In the normal course of events the next review will be in 2012.

CHAIRMAN'S PREFACE

1. The financial crisis which came to a head in 2008-09 triggered widespread reappraisal, locally and internationally, of the governance systems which might have alleviated it. In the UK, Sir David Walker was asked to review the governance of banks and other financial institutions; and the FRC decided to bring forward the Code review scheduled for 2010 so that corporate governance in other listed companies could be assessed at the same time.
2. Two principal conclusions were drawn by the FRC from its review. First, that much more attention needed to be paid to following the spirit of the Code as well as its letter. Secondly, that the impact of shareholders in monitoring the Code could and should be enhanced by better interaction between the boards of listed companies and their shareholders.
3. Nearly two decades of constructive usage have enhanced the prestige of the Code. Indeed, it seems that there is almost a belief that complying with the Code in itself constitutes good governance. The Code, however, is of necessity limited to being a guide only in general terms to principles, structure and processes. It cannot guarantee effective board behaviour because the range of situations in which it is applicable is much too great for it to attempt to mandate behaviour more specifically than it does. Boards therefore have a lot of room within the framework of the Code to decide for themselves how they should act.
4. To follow the spirit of the Code to good effect, boards must think deeply, thoroughly and on a continuing basis, about their overall tasks and the implications of these for the roles of their individual members. Absolutely key in this endeavour are the leadership of the chairman of a board, the support given to and by the CEO, and the frankness and openness of mind with which issues are discussed and tackled by all directors.
5. The challenge should not be underrated. To run a corporate board successfully is extremely demanding – far more so than is generally realised by those who have never participated in one. There is a constant shortage of time and knowledge combined with the need to maintain mutual respect and openness between a cast of strong, able and busy directors dealing with each other across the different demands of executive and non-executive roles. To achieve good governance requires continuing and high quality effort.

6. The Code's function should be to help boards discharge their duties in the best interests of their companies. The FRC in this review has focussed on changing the "tone" of the Code by making limited but significant changes to signal the importance of the general principles which should guide board behaviours. It is to be hoped that these changes will promote greater clarity and understanding with regard to the tasks of a board and that communication with shareholders will be more effective as a result.
7. It is hoped that chairmen will choose to report personally in their annual statements how the principles (in Sections A and B of the new Code) relating to the role and effectiveness of the board have been applied. Not only will this give investors a clearer picture of the steps taken by boards to operate effectively but also, by providing fuller context, it may make investors more willing to accept explanations when a company chooses to explain rather than to comply with one or more provisions. Above all, the personal reporting on governance by chairmen as the leaders of boards might be a turning point in attacking the fungus of "boiler-plate" which is so often the preferred and easy option in sensitive areas but which is dead communication.

Sir Christopher Hogg
Chairman, Financial Reporting Council
[date]

COMPLY OR EXPLAIN

1. The “comply or explain” approach is the trademark of corporate governance in the UK. It has been in operation since the Code’s beginnings and is the foundation of the Code’s flexibility. It is strongly supported by both companies and shareholders and has been widely admired and imitated internationally.
2. The Code is not a rigid set of rules. It consists of principles (main and supporting) and provisions. It is expected that companies will apply the principles and report to shareholders¹ on how they have done so. The principles are the core of the Code and the way in which they are applied should be the central question for a board as it determines how it is to operate according to the Code.
3. It is recognised that non-compliance with a provision may be justified in particular circumstances if good governance can be achieved by other means. A condition of non-compliance is that the reasons for it should be explained clearly and carefully to shareholders, who may wish to discuss the position with the company and whose voting intentions may be influenced as a result. In providing an explanation, the company should aim to illustrate how its actual practices are consistent with the principle to which the particular provision relates and contribute to good governance.
4. In their responses to explanations, shareholders should pay due regard to companies’ individual circumstances and bear in mind in particular the size and complexity of the company and the nature of the risks and challenges it faces. Whilst shareholders have every right to challenge companies’ explanations if they are unconvincing, they should not be evaluated in a mechanistic way and departures from the Code should not be automatically treated as breaches. Institutional shareholders should be careful to respond to the statements from companies in a manner that supports the “comply or explain” process and bearing in mind the purpose of good corporate governance. They should put their views to the company and both parties should be prepared to discuss the position.

¹ References to shareholders also apply to intermediaries and agents employed to assist shareholders in scrutinising governance arrangements

5. Smaller listed companies, in particular those new to listing, may judge that some of the provisions are disproportionate or less relevant in their case. Some of the provisions do not apply to companies below the FTSE 350. Such companies may nonetheless consider that it would be appropriate to adopt the approach in the Code and they are encouraged to do so. Externally managed investment companies typically have a different board structure which may affect the relevance of particular provisions; the Association of Investment Companies' Corporate Governance Code and Guide can assist them in meeting their obligations under the Code.
6. Satisfactory engagement between company boards and investors is crucial to the health of the UK's corporate governance regime. Companies and shareholders both have responsibility for ensuring that "comply or explain" remains an effective alternative to a rules-based system. There are practical and administrative obstacles to improved interaction between boards and shareholders. But certainly there is also scope for an increase in trust which could generate a virtuous upward spiral in attitudes to the Code and in its constructive use.

MAIN PRINCIPLES

SECTION A: LEADERSHIP

Every company should be headed by an effective board which is collectively responsible for the long-term success of the company.

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.

The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role.

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

SECTION B: EFFECTIVENESS

The board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively.

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.

All directors must be able to allocate sufficient time to the company to perform their responsibilities effectively.

All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.

SECTION C: ACCOUNTABILITY

The board should present a balanced and understandable assessment of the company's position and prospects.

The board is responsible for defining the company's risk appetite and tolerance. The board should maintain a sound system of risk management and internal control to safeguard shareholders' investment and the company's assets.

The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting, risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors.

SECTION D: REMUNERATION

Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

SECTION E: COMMUNICATION

There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.

The board should use the AGM to communicate with investors and to encourage their participation.

SECTION A: LEADERSHIP [*New Section*]

A.1: The role of the board [*formerly “The Board”*]

Main Principle

Every company should be headed by an effective board which is collectively responsible for the long-term success of the company. [A.1]

Supporting Principles

The board’s role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The board should set the company’s strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company’s values and standards and ensure that its obligations to its shareholders and others are understood and met. [A.1]

All directors are fiduciaries who must act objectively in the best interests of the company and in accordance with their statutory duties². [A.1] [*This is a revised version of the existing Supporting Principle which takes account of the duties in the Companies Act 2006*]

Code Provisions

A.1.1. The board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management. [A.1.1]

A.1.2. The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the board committees³. It should also set out the number of meetings of the board and those committees and individual attendance by directors. [A.1.2] [*Replaces “nomination, audit and remuneration committees”*]

A.1.3. The company should arrange appropriate insurance cover in respect of legal action against its directors. [A.1.5]

² For directors of UK incorporated companies, these duties are set out in the Sections 170 to 179 of the Companies Act 2006.

³ Provisions A.1.1 and A.1.2 overlap with FSA Rule DTR 7.2.7 R; Provision A.1.2 also overlaps with DTR7.1.5 R (see Schedule B).

A.2: Division of responsibilities [*was "Chairman and Chief Executive"*]

Main Principle

There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision. [A.2]

Code Provision

A.2.1 The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board. [A.2.1]

A.3: The Chairman [*New principle*]

Main Principle

The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role. [A.2] [*New Main Principle - this was part of the first sentence of Supporting Principle A.2*]

Supporting Principle

The chairman is responsible for setting the board's agenda and ensuring that adequate time is available for discussion on strategic issues. The chairman should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors. [A.2]

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders. [A.2]

Code Provisions

A.3.1. The chairman should on appointment meet the independence criteria set out in B.1.1 below. A chief executive should not go on to be chairman of the same company. If exceptionally a board decides that a chief executive should become chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the next annual report⁴. [A.2.2]

⁴ Compliance or otherwise with this provision need only be reported for the year in which the appointment is made.

A.4: Non-executive directors [*New Principle*]

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

[*New Main Principle - this was the first sentence of the final Supporting Principle in A.1*]

Supporting principles

Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning. [A.1]

Code provisions

A.4.1. The board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate. [A.3.3] [*“Other executive directors” replaces “finance director”*]

A.4.2. The chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman present at least annually to appraise the chairman’s performance and on such other occasions as are deemed appropriate. [A.1.3]

A.4.3. Where directors have concerns which cannot be resolved about the running of the company or a proposed action, they should ensure that their concerns are recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chairman, for circulation to the board, if they have any such concerns. [A.1.4]

SECTION B: EFFECTIVENESS [*New Section*]

B.1: The composition of the board

[Was “Board balance and Independence”]

Main principle

The board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively. [*New Principle*]

Supporting principles

The board should be of sufficient size that the requirements of the business can be met and that changes to the board’s composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy. [A.3] [*Reference to skills and experience now incorporated in new Main Principle*]

The board should include a strong presence of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking. [*Was Main Principle A.3, incorporating “strong presence” from Supporting Principle A.3, the remainder of which has been deleted*]

The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairmanship and membership of committees. [A.3]

No one other than the committee chairman and members is entitled to be present at a meeting of the nomination, audit or remuneration committee, but others may attend at the invitation of the committee. [A.3]

Code provisions

B.1.1. The board should identify in the annual report each non-executive director it considers to be independent⁵. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director [A.3.1]:

⁵ A.3.1 states that the chairman should, on appointment, meet the independence criteria set out in this provision, but thereafter the test of independence is not appropriate in relation to the chairman.

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.

B.1.2. Except for smaller companies⁶, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors. [A.3.2]

⁶ A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

B.2: Appointments to the Board

Main Principles

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. [A.4]

Supporting Principles

Appointments to the board should be made on merit and against objective criteria that do not inappropriately restrict the talent pool from which candidates will be identified. [A.4. - *the rest of this paragraph has been replaced by new B.3*]

The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board. [A.4, *last clause added from former Main Principle A.7*]

Code Provisions

B.2.1. There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board⁷. [A.4.1]

B.2.2. The nomination committee should evaluate the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment. [A.4.2; *wording changed to be consistent with new principle B.1*]

B.2.3. Non-executive directors should be appointed for specified terms subject to re-election and to statutory provisions relating to the removal of a director. Any term beyond six years for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. [A.7.2] [*Was "Companies Act"*]

⁷ The requirement to make the information available would be met by including the information on a website that is maintained by or on behalf of the company.

B.2.4. A separate section of the annual report should describe the work of the nomination committee⁸, including the process it has used in relation to board appointments. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director. [A.4.6]

⁸ This provision overlaps with FSA Rule DTR 7.2.7 R (see Schedule B).

B.3: Commitment *[New Principle]*

Main Principle

All directors must be able to allocate sufficient time to the company to perform their responsibilities effectively. *[New Principle, but the wording reflects former Supporting Principle A.4]*

Code Provisions

B.3.1. For the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected, recognising the need for availability in the event of crises. A chairman's other significant commitments should be disclosed to the board before appointment and included in the annual report. Changes to such commitments should be reported to the board as they arise, and their impact explained in the next annual report. [A.4.3]

B.3.2. The terms and conditions of appointment of non-executive directors should be made available for inspection⁹. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes. [A.4.4]

B.3.3. The board should not agree to a full time executive director taking on more than one non-executive directorship in a FTSE 100 company nor the chairmanship of such a company. [A.4.5]

⁹ The terms and conditions of appointment of non-executive directors should be made available for inspection by any person at the company's registered office during normal business hours and at the AGM (for 15 minutes prior to the meeting and during the meeting).

B.4: Development

[Was part of "Information and Professional Development"]

Main Principle

All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge. [A.5]

Supporting Principles

The chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities. [A.5]

To function effectively all directors need appropriate knowledge of the company and access to its operations and staff. [New Principle]

Code Provisions

B.4.1. The chairman should ensure that new directors receive a full, formal and tailored induction on joining the board. As part of this, directors should be offered the opportunity to meet major shareholders. [A.5.1; *was "the company should offer to major shareholders the opportunity to meet a new non-executive director" - wording amended to be consistent with E.1.1]*

B.4.2. The chairman should agree and regularly review a personalised approach to training and development with each director. [New Provision]

B.5: Information and support

[Was part of "Information and Professional Development"]

Main Principle

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. [A.5]

Supporting Principles

The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary. [A.5]

Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required. [A.5]

The company secretary should be responsible for advising the board through the chairman on all governance matters. [A.5]

Code Provisions

B.5.1. The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties. [A.5.2]

B.5.2. All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole. [A.5.3]

B.6: Evaluation [Was "Performance Evaluation"]

Main Principle

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. [A.6]

Supporting Principles

The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors. [A.6]

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). [A.6]

Code Provisions

B.6.1. The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. [A.6.1]

B.6.2. Evaluation of the board should be externally facilitated at least every three years. Where consultants are used a statement should be made available of whether they have any other connection with the company¹⁰. [New Provision; the second sentence uses the same wording as for remuneration consultants in D.2.1]

B.6.3. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors. [A.6.1]

¹⁰ See footnote 7

B.7: Re-election

Main Principle

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. [A.7]

Code Provisions

EITHER

B.7.1. All directors should be subject to annual election by shareholders. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election. [A.7.1] *[Under this version the sentence on annual re-election for long-serving NEDs is no longer needed.]*

B.7.2. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. [A.7.2] *[Part of former A.7.2 has been moved to new B.2.3]*

OR

B.7.1. The Chairman should be subject to annual election by shareholders. All other directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years. Non-executive directors who have served longer than nine years should be subject to annual re-election. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to take an informed decision on their election. [A.7.1] *[Incorporates the third sentence in former A.7.2. The sentence "Serving more than nine years could be relevant to the determination of a non-executive director's independence" in former A.7.2 has been dropped as that has already been made clear in new B.1.1].*

B.7.2. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The chairman should confirm to shareholders when proposing re-election that, following formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. [A.7.2]

SECTION C: ACCOUNTABILITY [*Was “Accountability and Audit”*]

C.1: Corporate Reporting [*Was “Financial Reporting”*]

Main Principle

The board should present a balanced and understandable assessment of the company’s position and prospects. [C.1]

Supporting Principle

The board’s responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements. [C.1]

Code Provisions

C.1.1. The directors should explain in the annual report their responsibility for preparing the annual report and accounts and there should be a statement by the auditors about their reporting responsibilities. [C.1.1]

C.1.2. The directors should include in the annual report an explanation of the basis on which the company generates revenues and makes a profit from its operations (the business model) and its overall financial strategy¹¹. [NEW]

C.1.3. The directors should report in annual and half-yearly financial statements that the business is a going concern, with supporting assumptions or qualifications as necessary¹². [C.1.2]

¹¹ [It would be desirable if the explanation were located in the same part of the annual report as the Business Review required by Section 417 of the Companies Act 2006.]

¹² ‘Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009’ suggests means of applying this part of the Code. Copies are available at: www.frc.org.uk/corporate/goingconcern.cfm

C.2: Risk Management and Internal Control¹³ [Was “Internal Control”]

Main Principles

The board is responsible for defining the company’s risk appetite and tolerance. The board should maintain a sound system of risk management and internal control to safeguard shareholders’ investment and the company’s assets. [C.2]

Code Provision

C.2.1. The board should satisfy itself that appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company. [New provision based on the wording used in paragraph 34 of the Turnbull Guidance]

C.2.2. The board should, at least annually, conduct a review of the effectiveness of the company’s system of internal controls and should report to shareholders that they have done so¹⁴. The review should cover all material controls, including financial, operational and compliance controls and risk management systems. [C.2.1]

¹³ The Turnbull guidance suggests means of applying this part of the Code. Copies are available at www.frc.org.uk/corporate/internalcontrol.cfm.

¹⁴ In addition FSA Rule DTR 7.2.5 R requires companies to describe the main features of the internal control and risk management systems in relation to the financial reporting process.

C.3: Audit Committee and Auditors¹⁵

Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an **appropriate relationship with the company's auditors**. [C.3] *[Wording changed to reflect new headings of earlier principles]*

Code Provisions

C.3.1. The board should establish an audit committee of at least three, or in the case of smaller companies¹⁶ two, independent non-executive directors. In smaller companies the company chairman may be a member of, but not chair, the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as chairman. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience¹⁷. [C.3.1]

C.3.2. The main role and responsibilities of the audit committee should be set out in written terms of reference¹⁸ and should include [C.3.2]:

- to monitor the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them;
- to review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;

¹⁵ The FRC Guidance on Audit Committees suggests means of applying this part of the Code. Copies are available at: <http://www.frc.org.uk/corporate/auditcommittees.cfm>.

¹⁶ See footnote 6.

¹⁷ This provision overlaps with FSA Rule DTR 7.1.1 R (see Schedule B).

¹⁸ This provision overlaps with FSA Rules DTR 7.1.3 R (see Schedule C).

- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

C.3.3. The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available¹⁹. A separate section of the annual report should describe the work of the committee in discharging those responsibilities²⁰. [C.3.3]

C.3.4. The audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action. [C.3.4]

C.3.5. The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report. [C.3.5]

C.3.6. The audit committee should have primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. If the board does not accept the audit committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the audit committee explaining the recommendation and should set out reasons why the board has taken a different position. [C.3.6]

C.3.7. The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded. [C.3.7]

¹⁹ See footnote 7.

²⁰ This provision overlaps with FSA Rules DTR 7.1.5 R and 7.2.7 R (see Schedule B).

SECTION D: REMUNERATION

D.1: The Level and Components of Remuneration

[Was “The Level and Make-Up of Remuneration”]

Main Principles

Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors’ remuneration should be structured so as to link rewards to corporate and individual performance. [B.1]

Supporting Principle

The performance-related elements of executive directors’ remuneration should be stretching and designed to align their interests with those of shareholders and to promote the long-term success of the company. [New supporting principle - combination of former B.1.1 and Schedule A, paragraph 1 plus new wording on long-term success]

The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. [B.1]

They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases. [B.1]

Code Provisions

Remuneration policy

D.1.1. In designing schemes of performance-related remuneration for executive directors, the remuneration committee should follow the provisions in Schedule A to this Code. [B.1.1] [First sentence removed but intent reflected in new supporting principle]

[Previous B.1.2 moved to Schedule A]

D.1.2. Where a company releases an executive director to serve as a non-executive director elsewhere, the remuneration report²¹ should include a statement as to whether or not the director will retain such earnings and, if so, what the remuneration is. [B.1.4]

D.1.3. Levels of remuneration for non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for non-executive directors should not include share options or other performance-related elements. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the board. Holding of share options could be relevant to the determination of a non-executive director's independence (as set out in provision B.1.1). [B.1.3]

Service Contracts and Compensation

D.1.4. The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. [B.1.5]

D.1.5. Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should reduce to one year or less after the initial period. [B.1.6]

²¹ As required for UK incorporated companies under the Large and Medium-Sized Companies and Groups (Accounts and Reports) Regulations 2008.

D.2: Procedure

Main Principle

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration. [B.2]

Supporting Principles

The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest. [B.2]

The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration. [B.2] *[Deleted "in the same way as for other matters"]*

Code Provisions

D.2.1. The board should establish a remuneration committee of at least three, or in the case of smaller companies²² two, independent non-executive directors. In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board²³. Where remuneration consultants are appointed, a statement should be made available²⁴ of whether they have any other connection with the company. [B.2.1]

D.2.2. The remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level. [B.2.2]

²² See footnote 6.

²³ This provision overlaps with FSA Rule DTR 7.2.7 R (see Schedule B).

²⁴ See footnote 7.

D.2.3. The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors within the limits set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a committee, which might include the chief executive. [B.2.3]

D.2.4. Shareholders should be invited specifically to approve all new long-term incentive schemes (as defined in the Listing Rules²⁵) and significant changes to existing schemes, save in the circumstances permitted by the Listing Rules. [B.2.4]

²⁵ Listing Rules LR 9.4; available at <http://fsahandbook.info/FSA/html/handbook/LR/9/4>

SECTION E: COMMUNICATION [Was “Relations with Shareholders”]

E.1: Dialogue with Shareholders

Main Principle

There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place²⁶. [D.1]

Supporting Principles

Whilst recognising that most shareholder contact is with the chief executive and finance director, the chairman should ensure that all directors understand their major shareholders’ issues and concerns. [D.1] [*previously “the chairman (and the senior independent director and other directors as appropriate) should maintain sufficient contact with major shareholders to understand their issues and concerns”; amended for consistency with Supporting Principle A.2]*]

The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient. [D.1]

Code Provisions

E.1.1. The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend existing meetings with major shareholders and should expect to attend meetings if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders. [D.1.1]

E.1.2. The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about the company, for example through direct face-to-face contact, analysts’ or brokers’ briefings and surveys of shareholder opinion. [D.1.2]

²⁶ Nothing in these principles or provisions should be taken to override the general requirements of law to treat shareholders equally in access to information.

E.2: Constructive Use of the AGM

Main Principle

The board should use the AGM to communicate with investors and to encourage their participation. [D.2]

Code Provisions

E.2.1. At any general meeting, the company should propose a separate resolution on each substantially separate issue, and should in particular propose a resolution at the AGM relating to the report and accounts. For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution. [D.2.1]

E.2.2. The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, after a vote has been taken on a show of hands, the company should ensure that the following information is given at the meeting and made available as soon as reasonably practicable on a website which is maintained by or on behalf of the company [D.2.2]:

- the number of shares in respect of which proxy appointments have been validly made;
- the number of votes for the resolution;
- the number of votes against the resolution; and
- the number of shares in respect of which the vote was directed to be withheld.

E.2.3. The chairman should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM and for all directors to attend. [D.2.3]

E.2.4. The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting. [D.2.4]

SCHEDULE A

PROVISIONS ON THE DESIGN OF PERFORMANCE RELATED REMUNERATION FOR EXECUTIVE DIRECTORS

["For Executive Directors" added to clarify scope; see Provision D.1.1]

The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to enhance shareholder value and to promote the long-term success of the company. Upper limits should be set and disclosed. There may be a case for part payment in shares to be held for a significant period.

The remuneration committee should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. Executive share options should not be offered at a discount save as permitted by the relevant provisions of the Listing Rules. *[Last sentence was in Provision B.1.2]*

In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in less than three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liabilities.

Any new long-term incentive schemes which are proposed should be approved by shareholders and should preferably replace any existing schemes or, at least, form part of a well considered overall plan incorporating existing schemes. The total rewards potentially available should not be excessive.

Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives, including non-financial performance metrics. Remuneration incentives should be compatible with risk policies and systems, and criteria for paying bonuses should be risk adjusted.

[Deleted: "Consideration should be given to criteria which reflect the company's performance relative to a group of comparator companies in some key variables such as total shareholder return"]

Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block.

Consideration should be given to the use of provisions that permit the company to reclaim variable components in exceptional circumstances of misstatement and misconduct.

In general, only basic salary should be pensionable. The remuneration committee should consider the pension consequences and associated costs to the company of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.

APPENDIX

THE LOCATION OF THE CURRENT PRINCIPLES AND PROVISIONS IN THE DRAFT REVISED CODE

Note: the current principles and provisions are listed in the left hand column. The right hand column shows their location in the revised draft Code and indicates where the wording has been changed.

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.1	Main Principle A.1 - wording changed as indicated
Supporting Principles A.1	Supporting Principles A.1 - first paragraph no change; second paragraph wording changed as indicated, third paragraph moved to Main and Supporting Principle A.4
Provision A.1.1	Provision A.1.1 - no change
Provision A.1.2	Provision A.1.2 - wording changes as indicated
Provision A.1.3	Provision A.4.2 - no change
Provision A.1.4	Provision A.4.3 - no change
Provision A.1.5	Provision A.1.3 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.2	Main Principle A.2 - no change to the wording but the title has changed to "Division of Responsibilities"
Supporting Principle A.2	Main and Supporting Principles A.3 - wording changed as indicated
Provision A.2.1	Provision A.2.1 - no change
Provision A.2.2	Provision A.3.1 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.3	Supporting Principle B.1 - wording changed as indicated. New Main Principle B.1 added and title changed to "The Composition of the Board"
Supporting Principles A.3	Supporting Principles B.1 - wording changed as indicated
Provision A.3.1	Provision B.1.1 - no change
Provision A.3.2	Provision B.1.2 - no change
Provision A.3.3	Provision A.4.1 - wording changed as indicated

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.4	Main Principle B.2 - no change
Supporting Principles A.4	Supporting Principles B.2 - part of first paragraph replaced by Main Principle B.3 and new wording added; wording of second paragraph changed as indicated
Provision A.4.1	Provision B.2.1 - no change
Provision A.4.2	Provision B.2.2 - wording changed as indicated
Provision A.4.3	Provision B.3.1 - no change
Provision A.4.4	Provision B.3.2 - no change
Provision A.4.5	Provision B.3.3 - no change
Provision A.4.6	Provision B.2.4 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.5	Divided into Main Principles B.4 (Development) and B.5 (Information and Support) - no change in wording
Supporting Principles A.5	Divided into Supporting Principles B.4 and B.5 - no change but additional wording added in B.4
Provision A.5.1	Provision B.4.1 - wording amended as indicated, and new provision B.4.2 added
Provision A.5.2	Provision B.5.1 - no change
Provision A.5.3	Provision B.5.2 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.6	Main Principle B.6 - no change
Supporting Principle A.6	Supporting Principle B.6 - sentences reversed but no change in wording
Provision A.6.1	Split into Provisions B.6.1 and B.6.3 - no change, but new Provision B.6.2 on external evaluation added

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle A.7	Main Principle B.7 - first sentence no change, second sentence moved to Supporting Principle B.2
Provision A.7.1	Provision B.7.1 - two redrafted versions in the consultation draft
Provision A.7.2	Provision B.7.2 - two redrafted versions in the consultation draft

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle B.1	Main Principle D.1 - no change to wording but heading changed
Supporting Principle B.1	Supporting Principles D.1 - no change but additional wording as indicated
Provision B.1.1	Provision D.1.1, but first sentence moved in amended form into Supporting Principles D.1
Provision B.1.2	Incorporated into Schedule A
Provision B.1.3	Provision D.1.3 - additional wording as indicated
Provision B.1.4	Provision D.1.2 - no change
Provision B.1.5	Provision D.1.4 - no change
Provision B.1.6	Provision D.1.5 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle B.2	Main Principle D.2 - no change
Supporting Principles B.2	Supporting Principles D.2 - wording deleted as indicated
Provision B.2.1	Provision D.2.1 - no change
Provision B.2.2	Provision D.2.2 - no change
Provision B.2.3	Provision D.2.3 - no change
Provision B.2.4	Provision D.2.4 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle C.1	Main Principle C.1 - no change to wording but heading changed
Supporting Principle C.1	Supporting Principle C.1 - no change
Provision C.1.1	Provision C.1.1 - wording changed as indicated
Provision C.1.2	Provision C.1.3 - wording changed as indicated (and new provision D.1.2 added)

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle C.2	Main Principle C.2 - amended as indicated and heading changed
Provision C.2.1	Provision C.2.2 - no change (but new provision C.2.1 added)

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle C.3	Main Principle C.3 - wording changed as indicated
Provision C.3.1	Provision C.3.1 - no change
Provision C.3.2	Provision C.3.2 - no change
Provision C.3.3	Provision C.3.3 - no change
Provision C.3.4	Provision C.3.4 - no change
Provision C.3.5	Provision C.3.5 - no change
Provision C.3.6	Provision C.3.6 - no change
Provision C.3.7	Provision C.3.7 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle D.1	Main Principle E.1 - no change
Supporting Principles D.1	Supporting Principles E.1 - wording changed as indicated
Provision D.1.1	Provision E.1.1 - wording changed as indicated
Provision D.1.2	Provision E.1.2 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Main Principle D.2	Main Principle E.2
Provision D.2.1	Provision E.2.1 - no change
Provision D.2.2	Provision E.2.2 - wording changed as indicated
Provision D.2.3	Provision E.2.3 - no change
Provision D.2.4	Provision E.2.4 - no change

2008 COMBINED CODE	REVISED DRAFT CODE
Section E: Institutional Shareholders	Removed subject to sufficient progress being made on the proposed Stewardship Code and monitoring arrangements

2008 COMBINED CODE	REVISED DRAFT CODE
Schedule A: Provisions on the design of performance related remuneration	Schedule A - some changes to the wording as indicated
Schedule B: Guidance on liability of non-executives	Removed
Schedule C: Disclosure of corporate governance arrangements	Schedule B - not included in the draft as will need revising to take account of the changes to the Listing Regime and the outcome of this consultation



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