Consultation

Financial Reporting Council

June 2018

The Wates Corporate Governance Principles for Large Private Companies

The FRC's mission is to promote transparency and integrity in business. The FRC sets the UK Corporate Governance and Stewardship Codes and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.

FOREWORD

I was pleased to have been asked by the Government to chair the Coalition Group developing corporate governance principles for large private companies. This paper represents five months of concerted effort by the Coalition Group, with guidance from the Financial Reporting Council as secretariat. These draft Principles and guidance represent diverse perspectives, and are the product of significant debate and exploration, including the review of similar codes in other countries, and consultation with experts and representative bodies. We offer this draft now for broader consultation.

The environment for business in the UK is world class, and we take corporate governance seriously. To date, however, with a few notable exceptions, corporate governance efforts in the UK have focused on publicly listed companies. The UK Corporate Governance Code, with which premium-listed companies must comply, contains elements that are not appropriate for private companies, which – while representing a diverse set of ownership structures – often experience a different set of governance challenges.

But private companies constitute a vast portion of the UK economy, and they must recognise that their actions can have a significant impact on their stakeholders. This potential impact, and the responsibilities it implies, led the Government to table legislation before Parliament that would require private companies of a significant size to state in their directors' reports whether and how they follow a code of corporate governance. The Principles and guidance in this document are intended to help such large private companies comply with that legislation.

I am under no illusion that these Principles will cure all the ills in the business world. I nonetheless hope that they will provide a useful tool to help companies of all sizes – not just those who are caught by the legislative requirement – understand good practice in corporate governance and, crucially, *adopt* that good practice widely. I hope that companies look at these Principles and see their compelling logic. Companies will not find in them a prescriptive list of actions they must take or boxes they must tick. These Principles are about fundamental aspects of business leadership and performance, which every company must interpret and apply for itself.

The word 'governance' comes from the Greek word 'kubernetes', which was the steersman of a ship. Every ship, whatever its size, needs to be directed. The steersman must know where the ship needs to go and have the means to adjust the course according to shifting winds and currents. So it is with companies.

I believe that good business, well done, is a force for good in society. But that doesn't come automatically. Companies need clarity of purpose, grounded in social value, and a good steersman to help them deliver that value.

I hope that the Principles and guidance in this paper, when finalised towards the end of 2018, prove useful to boards of directors who need to steer their companies, and I look forward to hearing whether readers of this consultation paper agree that the Principles achieve their desired aims.

Thank you to all the members of the Coalition Group and the Financial Reporting Council for their hard work, insight and wisdom in developing this paper.

James Wates CBE
Chairman

INTRODUCTION

The case for corporate governance for large private companies

1. Strong, successful business generates value for wider society. Throughout the UK, large private companies contribute to productivity, generate employment, and provide vital goods and services. Many large private companies are established and run in accordance with a clear purpose and strategy that enables them to generate ongoing social value for the communities in which they operate.

2. However, in recent years there has been a notable decline in public trust in how big business operates. Several large-scale corporate failures have not only drawn public attention to the lack of transparency and accountability in many companies, but also highlighted the severe risks to wider stakeholders, including the workforce, suppliers and customers, when big business fails. This has prompted questions as to how large private companies can be encouraged to operate responsibly and preserve their value, as well as protect the valuable stakeholder relationships that are integral to their long-term success. The UK's corporate governance framework provides a system by which companies can be effectively directed and controlled, with the strongest corporate governance and reporting standards applied to publicly listed companies. Traditionally, this has been done to alleviate the risks of agency that are caused by the separation of shareholders from the decision-making undertaken by company executives. In large private companies the relationships between shareholders, directors and senior management can vary dramatically. They are not a homogenous group and are established under a variety of differing ownership and legal structures, including family businesses, private equity-owned businesses, sole-owners and subsidiaries. Since 2007, private limited companies have consistently accounted for over 96 per cent of all corporate body types, with public limited companies amounting to just 0.2 per cent of all corporate body types in the UK (Companies House 2017).

3. Private companies enjoy the privileges of limited liability status, but are not subject to the same level of reporting and accountability requirements as publicly listed companies. The traditional rationale for this is that private companies stem from private ownership and have no reliance on public equity markets to raise capital. However, many respondents to the Government's Green Paper, *Corporate Governance Reform* (2016), noted the economic and social significance of large private companies can be as great as publicly listed companies and, when problems occur, there are comparable risks for a wider range of stakeholders, such as customers, pensioners, the workforce, supply chains and the community. Given the potential significant impact of large private companies on wider society, there is keen public interest in whether they operate in a sustainable and responsible manner.

4. The 2016 Green Paper investigated the role of corporate governance in large private companies and asked whether such companies should meet minimum corporate governance reporting standards. It observed that the declining trend in the number of publicly listed companies coincided with an increase in the number of private companies, which were excluded from the levels of public scrutiny and corporate governance to which many public companies were subject. The Green Paper noted it was in the interests of businesses themselves to have strong corporate governance, stating: 'It provides confidence not just to shareholders, but to other key stakeholders, that a company is being well run.'[1]

[1] Department for Business, Energy and Industrial Strategy, *Corporate Governance Reform Green Paper* (2016), p.44.

5. The House of Commons' Business, Energy and Industrial Strategy Committee published its *Corporate governance* report in April 2017 and considered the need for improved transparency and accountability for large private companies. In its report, the Committee noted that 'arguments in favour of greater transparency and accountability for private companies are based on the premise that those with a significant presence in the community should be required to report on non-financial matters for the benefit of employees and other stakeholders'.[2] It noted that while no law or set of principles could remove the risk of serious corporate failings, a code of corporate governance for large private companies 'can serve to raise awareness of good practice and, over time, help to improve standards of corporate governance in private companies, large and small'.[3] The Committee recommended that the Financial Reporting Council (FRC) and others develop an appropriate corporate governance code with which the largest private companies would be expected to comply.

6. In its response to the Green Paper, the Government stated that it believed the case had been made for strengthening the corporate governance framework for the UK's largest private companies, noting 'the conduct and governance of large companies, whatever their legal status, has a sizeable impact on the interests of employees, suppliers, customers and others'.[4] It invited the FRC to work with a variety of partners to develop a voluntary set of corporate governance principles for large private companies under the chairmanship of a business figure with relevant experience.

Development of the Wates Corporate Governance Principles for Large Private Companies

7. In January 2018, the Secretary of State for Business, Energy and Industrial Strategy, the Rt Hon Greg Clark, appointed James Wates CBE as Chairman of the Coalition Group, with the FRC providing secretariat support. Membership of the Coalition includes representation from the FRC, British Private Equity and Venture Capital Association, the Climate Disclosure Standards Board, the Confederation of British Industry, ICSA: the Governance Institute, the Institute of Business Ethics, the Institute of Directors, the Institute for Family Business, the Investment Association, and the Trades Union Congress.

8. The Chairman and the Coalition Group have developed the Wates Corporate Governance Principles for Large Private Companies for public consultation. These draw on a detailed work programme, including analysis of existing national and international corporate governance codes, and the expertise of the members of the Coalition. In developing the draft Principles, input was sought from a number of different stakeholder groups, including a series of roundtable discussions, as well as input from senior business leaders of large private companies in the UK. The draft Principles will be subject to a 12-week consultation period with the aim to finalise them for publication in December 2018 to align with the introduction of the Government's new reporting requirement.

[2] House of Commons Business, Energy and Industrial Strategy Committee, *Corporate Governance*, *Third Report of Session 2016-17* (2017), p.30.

[3] Ibid, p.31.

[4] Department for Business, Energy and Industrial Strategy*, Corporate Governance Reform: the Government response to the green paper consultation* (2017), p.40.

New reporting requirement for large private companies

9. In its response to the Green Paper the Government announced its intention to introduce secondary legislation to require all companies of a significant size that are not currently required to provide a corporate governance statement to disclose their corporate governance arrangements in their directors' report and on their website, including whether they follow any formal corporate governance code.[5] On 11 June 2018, the Companies (Miscellaneous Reporting) Regulations 2018 were laid before Parliament. The new reporting obligations are set out in the table below:

Extract from The Companies (Miscellaneous Reporting) Regulations 2018
26.—(1) The directors' report must include a statement (a "statement of corporate governance arrangements") which states— (a) which corporate governance code, if any, the company applied in the financial year, (b) how the company applied any corporate governance code reported under sub-paragraph (a), and (c) if the company departed from any corporate governance code reported under sub-paragraph (a), the respects in which it did so, and its reasons for so departing. (2) If the company has not applied any corporate governance code for the financial year, the statement of corporate governance arrangements must explain the reasons for that decision, and explain what arrangements for corporate governance were applied for that year.

10. This new reporting requirement applies to all companies that satisfy either or both of the following conditions:
    - more than 2,000 employees;
    - a turnover of more than £200 million, and a balance sheet of more than £2 billion.

11. Subject to Parliamentary approval, this new reporting requirement will apply to company reporting for financial years starting on or after 1 January 2019.

12. Companies will be able to voluntarily adopt the Wates Corporate Governance Principles for Large Private Companies as an appropriate framework when making a disclosure about their corporate governance arrangements under the Government's new reporting requirement. It is hoped that the Principles will provide a useful tool for a wide range of companies (not just those covered by the new reporting requirement) to understand and adopt good practice in corporate governance.

13. In releasing this document for consultation, the FRC seeks submissions from business and the wider community, with the view that the Principles should be examined in light of the unique requirements of private company ownership. As the UK prepares to leave the European Union, it is hoped the Principles will further promote its reputation as a global leader in corporate governance, by enhancing transparency and accountability within its largest private companies and, ultimately, helping to improve public trust in business.

[5] See section 472A of the Companies Act 2006 for the meaning of 'corporate governance statement'.

APPLICATION OF THE PRINCIPLES – 'APPLY AND EXPLAIN'

14. The Wates Corporate Governance Principles for Large Private Companies recognise the variety of large private companies incorporated within the UK. Differing management and ownership structures means that a one-size-fits-all approach to corporate governance in large private companies is not appropriate. The draft Principles seek to accommodate this by introducing a high-level approach to good corporate governance. This can be applied by any large private company, while allowing sufficient flexibility for companies to explain the application and relevance of their corporate governance arrangements.

15. Government regulations require companies to include a statement within their directors' report that details which, if any, corporate governance code the company adopts, and how that code is applied. Nothing in these principles overrides or is intended as an interpretation of directors' duties as set out in the Companies Act 2006. The duties of directors are set out in sections 170-177. These include, in section 172, the duty of a director to promote the success of the company for the benefit of its members as a whole. Section 172 also sets out the matters to which directors should have regard in doing so.

16. A company that adopts the Principles is expected to apply them fully. Using an apply and explain approach, large private companies are expected to provide a supporting statement for each principle that gives an understanding of how their corporate governance processes operate and achieve the desired outcomes. The principles are supported by non-exhaustive guidance that helps companies apply the principles in practice.

17. The guidance is not intended to be a check-list. Rather than requiring a compliance and 'tick-box' approach to reporting, adopters of the Principles will be encouraged to demonstrate, through a written explanation in their directors' report and on their company's website, how the application of the Principles has resulted in improved corporate governance outcomes.

18. For example, draft Principle three states that a board should have 'a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge'.

19. Companies could apply and explain this Principle in different ways:

    - A large family owned company might seek to appoint an independent director to its board to introduce independent challenge. It could explain how the appointment of this director has delivered improved outcomes to its board's decision-making processes by identifying an example where the provision of independent challenge from the independent director has improved board decision-making.

    - A private equity-owned company with a small shareholder board might appoint an external consultant to provide independent advice on its corporate strategy. It could describe the value that independent insight has had on refining the company's purpose.

    - A large subsidiary of a UK-listed company may establish an advisory committee to seek independent, objective advice as to the effectiveness of the board's decision-making. It could explain how this appointment demonstrates the directors' commitment to accountability and acknowledgement of their duties under the Companies Act 2006.

20. Among other things, this consultation is seeking feedback on whether the Principles are set at the right level to ensure they are meaningful and robust, while at the same time enabling widespread adoption by large private companies. It also aims to identify areas where this could be improved.

THE CONSULTATION AND HOW TO RESPOND

On behalf of the Chairman and the Coalition Group, the FRC welcomes comments on the proposed draft Principles and guidance.

A full list of consultation questions can be found at the end of this paper. If you wish to make general comments not relating to a specific question, please state clearly the draft Principle the comment relates to, so that these can be more effectively captured as part of the post-consultation review.

Comments on the questions set out in this consultation document are requested by Friday 7 September 2018. Responses should be sent by email to corporategovernanceprinciples@frc.org.uk or in writing to:

Kristy Merrick
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

Please note it is advisable to send your response electronically. All responses will be acknowledged.

It is the FRC's policy to publish on its website all responses to formal consultations unless the respondent explicitly requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure. The FRC does 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.

PRINCIPLE ONE – PURPOSE

An effective board promotes the purpose of a company, and ensures that its values, strategy and culture align with that purpose.

Guidance for consideration:

A well-defined purpose will help companies of all sizes and structures to articulate their business model, and develop their strategy, their operating practices and their approach to risk. In large private companies, key shareholders and the board should work in partnership to ensure the company operates with a clear sense of purpose. By effectively promoting a company's purpose, a board establishes a rationale for existence. Companies with a clear purpose often find it easier to engage with their customers, workforce and the wider public. An effective board promotes and develops its collective vision of the company's purpose, and can identify and explain how events or developments affecting the company's long-term success have been addressed.

A company's values should inform the expected behaviours of all company employees and the wider workforce. These values should be integrated into the different functions and operations of the business, including the organisation's internal audit, ethics, compliance and risk management functions.

A successful company should be directed by an effective board that develops a strategy and business model to generate sustainable value. A board is responsible for ensuring that its strategy is clearly articulated and implemented throughout the organisation, and that it, with the company's values, supports appropriate behaviours and practices within the organisation. This includes discouraging misconduct and unethical practices, and promoting behaviour that balances short-term needs with long-term aspirations.

A healthy company culture is critical to the company's competitive advantage, and vital to the creation and protection of long-term value. A board is responsible for fostering and maintaining the company culture. Culture in a corporate context can be defined as a combination of the values, attitudes and behaviours manifested by a company in its operations and relationships with its stakeholders. Key shareholders, the board and management must own and maintain a commitment to embedding the company's desired culture throughout the organisation.

PRINCIPLE TWO – COMPOSITION

Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.

Guidance for consideration:
The chair leads the board and is responsible for its overall effectiveness.

The establishment of a balanced board promotes strategic decision-making and ensures the delivery of a company's strategy. An effective board embraces diversity, promotes accountability and incorporates objective thought that promotes appropriate constructive challenge and effective decision-making. The closely held nature of ownership within large private companies means directors are often required to have resilience and resolve to maintain objectivity in complex situations.

All directors should collectively demonstrate a high level of competence relevant to the company's business needs and stakeholders. Companies should demonstrate a commitment to the ongoing professional development of their board, and directors should engage with such opportunities.

Individual evaluation of directors should demonstrate whether each director continues to contribute effectively.

A board should give careful consideration to its size and structure so that it is sufficient to meet the strategic needs and challenges of the organisation. Board membership must be broad enough to provide for an appropriate degree of challenge and analysis, but agile enough to enable efficient and effective decision-making. An effective board should be able to demonstrate that there has been a considered effort to establish an appropriate balance of expertise, diversity and objectivity within its membership. Diverse characteristics a board may consider include, but are not limited to, gender, social and ethnic backgrounds, and cognitive and personal strengths.

PRINCIPLE THREE – RESPONSIBILITIES

A board should have a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge.

Guidance for consideration:

An effective board should establish and maintain corporate governance practices that provide clear lines of accountability and responsibility to support effective decision-making. A company's constitutional documents should set out policies and procedures that govern the internal affairs of the company. These include matters relating to the authority, role and conduct of directors, and in some companies may extend to shareholder agreements that set out the rights and responsibilities of shareholders and provide minority shareholder protection.

Strong, accountable systems for decision-making and the delineation of responsibilities ensure the company's key shareholders, board and senior management have clearly defined roles and decision-making powers, with conflicts of interest appropriately managed. Such clear corporate governance practices give insight into the stewardship of the company, and how the company's leadership works together to deliver long-term value. Corporate governance can guide decision-making powers, detail succession planning, and give clarity on the engagement between the company and its owners, including engagement with a parent company where the company is a subsidiary. Such processes could provide for the establishment of advisory or board committees (including audit, risk, nomination, remuneration and/or sustainability committees) with clear terms of reference, as necessary.

Effective corporate governance practices, such as the provision of independent challenge in board decision-making, should mitigate the risk of unfettered powers vested in individuals. Independent challenge can allow for industry experience and objective decision-making, encouraging constructive problem-solving that benefits companies in the long term. Companies should consider the value that independent representation can deliver in the context of overall board composition and company structure, and seek opportunities to promote independent thought in the decision-making process. This should include identifying and managing any potential conflicts of interest that could compromise objective decision-making. The provision for independent challenge should reflect the unique needs of a company.

A board should have confidence in the integrity of the information used for decision-making and reported by a company. A company should establish formal and robust internal processes to ensure systems and controls are operating effectively, and that the quality and integrity of information provided to the board is reliable, enabling directors to monitor and challenge the performance of the company. Boards rely on a broad range of information sources, including but not limited to:

- financial reporting;
- key performance indicators;
- workforce data;
- environmental data;
- stakeholder engagement feedback; and
- consumer data.

In some cases, this will require the design and implementation of appropriate internal control systems (such as an internal audit function). Regardless of the mechanisms put in place, a board must be satisfied there are sufficient checks and balances to ensure the integrity of the information used when taking decisions.

PRINCIPLE FOUR – OPPORTUNITY AND RISK

A board should promote the long-term success of the company by identifying opportunities to create and preserve value, and establishing oversight for the identification and mitigation of risks.

Guidance for consideration:
A board should consider and assess how the company creates and preserves value over the long term. This requires boards to consider both tangible and intangible sources of value, and the stakeholders that contribute to it. This should include an assessment of risk mitigation, as well as identifying opportunities for innovation and entrepreneurship.

A board has responsibility for an organisation's overall approach to strategic decision-making and risk management. This requires oversight of risk and how it is managed, and appropriate accountability to stakeholders, particularly with regards to conflicts of interest.

These responsibilities include:

- developing appropriate risk management systems that identify the risks facing the company and enable the board to make robust decisions concerning the principal risks;
- determining the nature and extent of the principal risks faced and those risks which the organisation is willing to take in achieving its strategic objectives (determining its 'risk appetite');
- agreeing on how the principal risks should be managed or mitigated to reduce the likelihood of their incidence or magnitude of their impact; and
- establishing clear internal and external communication channels on the identification of risk factors.

PRINCIPLE FIVE – REMUNERATION

A board should promote executive remuneration structures aligned to the sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.

Guidance for consideration:

Appropriate and fair levels of remuneration are imperative to enable companies to secure high-quality directors and senior management. Alignment between the remuneration of directors and senior management and company performance should demonstrate a shared purpose and common objectives.

Director and senior management remuneration should be developed around principles that align with the company's culture, values and long-term success. These include a considered assessment of the company's response to matters such as its gender pay gap reporting.

The board should establish a clear policy on the transparency of remuneration structures that enable effective accountability to key shareholders. Remuneration, including benefits, for directors and senior management should consider the broader operating context of the company, including the pay and conditions of the wider workforce.

PRINCIPLE SIX - STAKEHOLDERS

A board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce, and have regard to that discussion when taking decisions. The board has a responsibility to foster good stakeholder relationships based on the company's purpose.

Guidance for consideration:

Large private companies create their own social, economic and environmental impact, but are also affected by changes to their operating environment. Sustainable business benefits wider society, and large companies have a responsibility to create and sustain long-term value for a variety of stakeholders. This could include consideration of how a company's activities may impact future stakeholders.

The board should present a fair, balanced and understandable assessment of the company's position and prospects, and make this available to its material stakeholders on an annual basis.

A company should identify the stakeholder relationships that are integral to its ability to generate and preserve value. A board should demonstrate how the company has undertaken effective engagement with material stakeholders and how such relationships have been taken into account in its decision-making.

For many large private companies, their largest material stakeholder is their workforce. Companies should develop methods that enable them to engage meaningfully with their workforce and utilise such forms of engagement when taking decisions.

CONSULTATION QUESTIONS

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

2. Are there any areas in which the Principles need to be more specific?

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

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

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

6. Do the Principles enable sufficient visibility of a board's approach to stakeholder engagement?

7. Do you agree with an 'apply and explain' approach to reporting against the Principles? If not, what is a more suitable method of reporting?

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

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

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

THE WATES CORPORATE GOVERNANCE PRINCIPLES FOR LARGE PRIVATE COMPANIES

Principle One – Purpose

An effective board promotes the purpose of a company, and ensures that its values, strategy and culture align with that purpose.

Principle Two – Composition

Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.

Principle Three – Responsibilities

A board should have a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge.

Principle Four – Opportunity and risk

A board should promote the long-term success of the company by identifying opportunities to create and preserve value, and establishing oversight for the identification and mitigation of risks.

Principle Five – Remuneration

A board should promote executive remuneration structures aligned to the sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.

Principle Six – Stakeholders

A board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce, and have regard to that discussion when taking decisions. The board has a responsibility to foster good stakeholder relationships based on the company's purpose.

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- Philippa Foster Back CBE, Director, Institute of Business Ethics;
- Paul George, Executive Director Corporate Governance and Reporting, Financial Reporting Council;
- Mark Goyder;
- Gurpreet Manku, Deputy Director General and Director of Policy, British Private Equity & Venture Capital Association;
- Ilaria Lavalle Miller, Assistant Director Corporate Governance Reform, Department for Business, Energy and Industrial Strategy (observer);
- Andrew Ninian, Director Corporate Governance and Engagement, The Investment Association;
- Adam Peirce, Technical Director Climate Disclosure Standards Board;
- David Styles, Director Corporate Governance, Financial Reporting Council;
- Peter Swabey, Policy and Research Director, ICSA: the Governance Institute; and
- Janet Williamson, Senior Policy Officer, Trades Union Congress.

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