



ICGN

International Corporate Governance Network

Transparency and Trust
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Business Environment Directorate
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London
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Submitted by email to: transparencyandtrust@bis.gsi.gov.uk

24th September 2013

Dear Sir or Madam,

RE: BIS Transparency and Trust Discussion Paper

The International Corporate Governance Network (ICGN) welcomes the opportunity to comment on BIS's proposals to enhance the transparency of UK company ownership and increase trust in UK business but will confine its response to areas under the headings below which are of more direct concern to ICGN and its members. We recognise that the other topics have a broad public interest but others are better placed than we are to comment on the implications for private companies.

The ICGN is an investor-led organisation of governance professionals. Members are drawn from over 600 institutional and private investors, corporations and advisors from 50 countries. Our investor members are responsible for global assets of US\$18 trillion. Our mission is to inspire and promote effective standards of corporate governance to advance efficient markets and economies world-wide, and we do this through three core areas of activity:

- Influencing policy by providing a reliable source of practical knowledge and experiences on corporate governance issues, thereby contributing to a sound regulatory framework and a mutual understanding of interests between market participants;
- Connecting peers and facilitating cross-border communication among a broad constituency of market participants at international conferences and events, virtual networking and through other media; and
- Informing dialogue amongst corporate governance professionals through the publication of policies and principles, exchange of knowledge and advancement of education world-wide.

Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

Promoting better corporate reporting has been a long standing activity for ICGN with the establishment of our Non-Financial Business Reporting Committee in 2004 (renamed Integrated Business Reporting Committee in 2010) and the publication of our Statement and Guidance on Non-financial Business Reporting in 2008. We believe that taking into account broader non-financial issues will help investors to appreciate broader risks and to make better investment decisions. It follows that we support, in principle, sound measures to improve transparency and trust.

Part A Enhancing the transparency of UK Ownership

We note that this section represents a substantial part of the consultation document. However, as indicated above, ICGN is primarily concerned with public companies and others are better placed to comment on the implications for unlisted private companies although we acknowledge there is a broader public interest in greater transparency. We consider that, given the comprehensive disclosure requirements already in place for listed companies, there is no need to replicate this by including public companies in the proposed central registry. In particular, DTR 5.1 requires anyone who has an interest of 3% or more in the voting rights of a listed company to notify both the company and the Financial Conduct Authority; and Companies Act 2006, section 793, enables public companies to compel the disclosure of parties having an interest in their shares, no matter how small or large the interest.

Bearer Shares

We share the continuing concerns about the scope for misuse of bearer shares and agree that the proposed prohibition on future issues will increase transparency and other wider public benefits. Although there are legitimate uses for bearer shares, we believe that this is outweighed by the risks. As a global governance body we are aware of abuses in other markets and believe the UK can take an international leadership position by dealing with this.

Nominee and Corporate Directors

We agree in principle that the practice of appointing corporate directors to UK company boards is open to abuse in concealing beneficial owners and other undesirable practices. From our perspective we would expect all directors on the board of a listed company to be individuals.

However, we recognise that there are often legitimate business reasons for the use of nominee and corporate directors as with the boards of OEICs or group subsidiary entities with no active trading activities. It is important to consider the broader implications to avoid unintended and undesirable consequences that might result from a blanket prohibition.

We would observe in passing that some of our UK pension fund asset owner members are structured as a corporate trustee and it is not unusual for some of the directors to be a corporate director. There are some well known and highly reputable UK firms, such as Law Debenture, that act as independent trustees and have sometimes been appointed by The Pensions Regulator as a corporate director of troubled pension schemes that are themselves structured as a corporate trustee.

Part B Increasing Trust in UK Business

We consider that we are better placed to respond to questions in this section and have particular concerns about the proposals to extend the duties of bank directors.

Clarifying the responsibilities of directors in key sectors

We have major reservations about the proposal which originates from the Parliamentary Commission on Banking Standards (PCBS) report to amend directors' duties in the Companies Act for directors of banks.

Although we certainly wish to see sound banks, and acknowledge the concerns of the PCBS and the regulators on this fundamental issue, we question the assumption that financial safety and soundness on the one hand and shareholders' interests on the other hand are incompatible objectives.

The implication that they are somehow mutually exclusive is misleading. Ordinary equity shareholders rank below unsecured creditors in insolvency and have a strong interest in the continuing success of the banks in which they invest. The importance of prudential management of banks is a fundamental concern for shareholders as well as broader stakeholders and it is not helpful to weaken the primacy of shareholders.

We also consider that the existing duties of directors as set out in section 172 of the Companies Act 2006 to promote the success of the company for the benefit of members as a whole does impose a long term focus on boards.

The Companies Act 2006 is intentionally general in its application and does not distinguish between sectors. We feel that imposing specific requirements for directors of banks in the Companies Act would create a potentially undesirable precedent which if extended to other sectors could lead to complex, confusing and even contradictory company law. This would undermine the clearly stated intention of successive UK governments to reform and simplify company law.

We feel that sector specific issues are better dealt with by a sector specific regime that complements rather than displaces general company law. In the case of banking, the Prudential Regulation Authority would be the lead regulator and it is worth noting in passing its scope would also extend to banks that are not incorporated and not caught by the Companies Act. Bank regulation is highly complex and technical and, given other proposed changes in the banking industry, such as increased capital requirements and ring-fencing, both the need for this amendment and its intended and potential actual effects are not clear.

Sectoral Regulators Powers to disqualify directors and factors to be taken into account in disqualification proceedings

We have major reservations in giving Sectoral Regulators powers to disqualify directors beyond their sectors. In general, disqualification should be a matter for the courts under the Company Directors Disqualification Act 1986. However, we are supportive of the suggestion to amend the factors to be taken into account in the CDDA to include breaches of sectoral regulations. We have some concerns about the proposed extension to wider social impacts which will introduce an undesirable layer of subjectivity. As a global governance organisation, we agree that some weight should be given to foreign disqualifications by the UK regulatory authorities and

should be taken into account by the court in any application on unfitness to serve as a director but we do not support automatic disqualification.

However, we see no objection in empowering sectoral regulators to refer cases to the courts as suggested in the paper which refers to the FCA, the PRA and the Pensions Regulator in particular. We would also hope that in any event the relevant sectoral regulators, Companies House and BIS continue to work together in sharing information and ensuring effective enforcement.

Educating Directors

We strongly support the proposal to offer directors training and feel it would be helpful if more guidance was offered. Both BIS and Companies House have a valuable role to play in raising awareness of the need for training and professional advice on their websites. We also agree that such education could perhaps lead to a reduced disqualification period or a pre-condition for re-admission as a director. Although not a precise analogy, the courts routinely impose similar requirements on disqualified drivers and this is clearly in the wider public interest.

Other Matters

Board Evaluation

Although not specifically addressed in the consultation, we consider that that independent evaluation of boards using an outside consultant may be of particular importance for the prudent functioning of boards of listed companies and can help to (re)establish and maintain trust, accountability and proper transparency in the long term.

We hope that these comments are helpful and should you wish to discuss any of the above points in more detail, please do not hesitate in contacting Kerrie Waring, ICGN's Acting Head of Secretariat, by phone at 020 7612 7079 or by email at: kerrie.waring@icgn.org

Yours faithfully,



Michelle Edkins
Chairman of ICGN Board of Governors



Frank Curtiss
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