Email – Peter Smith

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I write to comment on three Provisions of the proposed revised UK Corporate Governance Code which, in my opinion, are too prescriptive or do not adequately reflect the complexity of some business structures.

Over the last 15 years I have been a chairman, non-executive director or audit committee chair of a number of FTSE 250 and FTSE 100 companies. My comments are made in a personal capacity.

Provision 3
I am supportive of the practice that a company and its board should be familiar with the views of its employees. Indeed, it is somewhat perverse that in previous iterations of the code this matter seemed subordinate to other areas of corporate social responsibility.

However, whilst I understand the wishes of the Government, all three options could be inappropriate responses for a company, particularly one with international operations where UK based employees may be in a minority. I recommend that in line 2 the words “would normally be” are changed to “could be” so as to be less prescriptive.

In detail, my concerns are:

- A "worker" director is unlikely to be considered independent so such an appointment must be accompanied by the appointment of an additional independent non-executive director, thereby increasing the size of the board at a time when experience is suggesting that smaller boards are more effective. Where the company has a global workforce, is run on a de-centralised basis or has multiple product types, the Provision provides no guidance as to how such an individual should be selected, and it is difficult to see how one individual could represent the workforce as a whole.
- Formal workforce advisory councils suffer similar problems in an international business and arguably might lead to a further level of unnecessary cost and bureaucracy. In some EU states, the involvement of statutory councils is an impediment to the agile companies that the UK Government wants to see developed in the UK.
- A designated non-executive director suffers the same problems as a worker director – they will not be independent, will require a “matching” independent NED to be appointed, and probably bring additional bureaucracy as advisory councils or other structures are put in place to provide support to such a director.

It would be far better to protect the unitary board and leave the three options as non–prescriptive examples, requiring companies to describe in more detail the arrangements that they have at both holding company and subsidiary level for assessing the opinion of the workforce, as proposed by paragraph 31 et seq of the Guidance on Board Effectiveness. In the era of nimble, virtual, tech-based global operations, the prescriptive language of Provision 3 seems very 20th century.

Provision 5
Over the last decade one of the challenges for a FTSE250 company has been getting active engagement with shareholders. Investors understandably want to put their time into difficult situations. Therefore, to recognise this, I suggest that the wording in respect of committee chairs in line 3 is modified to read “should be available to engage” since otherwise the provision “should engage” will for many result in an “explanation” why they have not. Such an amendment would then be consistent with the less prescriptive language of paragraph 22 of the Guidance on Board Effectiveness.

Provision 32

In my opinion it is excessively prescriptive for smaller companies to require that the chairman of the remuneration committee has previously served as a member of a remuneration committee for at least twelve months. Of course it is desirable, but people are fast learners and will be supported by other directors and advisors. The appointment details will be available to investors if they want to take up the issue. Reporting an "exception" may well lead to the presumption that the workings of the Remuneration Committee and its Reports are flawed, which could be inappropriate and make for lazy corporate governance.