

# Corporate Governance Developments From Around The World

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## United Kingdom

Financial Reporting Council publishes UK Stewardship Code

On 2 July 2010, the UK Financial Reporting Council (“FRC”) published the first Stewardship Code for institutional investors following the publication in May of the updated UK Corporate Governance Code for

listed companies. The Code includes principles on:

- The monitoring of investee companies;
- The escalation of activities taken to protect or enhance shareholder value;
- Collective engagement;
- Voting policy;

- Managing conflicts of interest; and
- Public reporting and reporting to clients.

The purpose of the Code is to improve the quality of corporate governance through promoting better dialogue between shareholders and company boards, and more transparency about the way in which investors oversee the companies they own.

The Stewardship Code is available from the FRC site here:

<http://www.frc.org.uk/press/pub2306.html>

### **Provision of Non-Audit Services by Auditors and Guidance for Audit Committees**

On 23 July 2010, the FRC published an updated guidance to audit committees on determining whether a company’s auditor should be allowed to provide

particular non-audit services. Among other things, the guidance sets out how to distinguish between those non-audit services which are closely related to an audit and which give rise to a very low threat to auditor objectivity and those where the threats need more careful consideration. The guidance was published for the purposes of consultation and is still in draft form.

The consultation document, 'Revisions to FRC Guidance on Audit Committees: Non-Audit Services' is available from the FRC site here:

<http://www.frc.org.uk/apb/press/pub2326.html>

### **Guidance on Effective Board Performance**

On 29 July 2010, the UK Institute of Chartered Secretaries and Administrators ("ICSA") published a draft guidance, "Improving board effectiveness", for public consultation. The ICSA was asked by the Financial Reporting Council to develop the guidance, and it is intended to complement the new UK Corporate Governance Code which was issued in May. The recommendations set out in the draft include the following:

- The importance of the board's role in creating a high-performance culture which maximises the opportunities for value creation and minimises risk;
- The need to create an environment of challenge in the boardroom;
- The value of well-informed and high-quality board decision making;
- Diversity of psychological types and of personal attributes in board composition;
- The advantages of a good training and development program designed to improve directors' skills experience and knowledge; and
- The benefits of regular and bespoke

board evaluation to explore how well the board is functioning.

The guidance is available from the ICSA site here:

<http://www.icsa.org.uk/assets/files/pdfs/consultations/2010/Higgs%20Responses/ICSA%20Review%20of%20the%20Higgs%20Guidance%20on%20behalf%20of%20the%20FRC.pdf>

### **New Zealand**

New Zealand Securities Commission Issues Report on Corporate Governance Reporting

On 28 July 2010, the New Zealand Securities Commission ("Commission") published its latest review of corporate governance reporting. The Commission's review found that many companies disclosed relevant information on:

- board members' independence, expertise and experience;
- the use of board committees, such as remuneration and audit committees;
- remuneration policies for directors and executives;
- risk management policies and processes; and
- processes for ensuring external auditors' quality and independence.

However, many issuers did not disclose matters relating to the following Corporate Governance Principles:

- Observing and fostering high ethical standards, such as compliance with a code of ethics;
- Building constructive relationships with shareholders, e.g. establishing market disclosure, communications and continuous disclosure policies; and
- Considering and respecting stakeholders' interests, including stakeholder relations policies and other social and environmental disclosures.

Further information is available from the Commission's site here:

<http://www.sec-com.govt.nz/new/releases/2010/2807101.shtml>

### **Australia**

ASIC Releases Guidance on a Director's Duty to Prevent Insolvent Trading

On 29 July 2010, the Australian Securities and Investments Commission ("ASIC") released regulatory guidance to assist directors to understand and comply with their duty under the Corporations Act 2001 to prevent insolvent trading. The guide, Regulatory Guide 217 'Duty to prevent insolvent



trading: Guide for directors', sets out the following four key principles for directors:

- keep themselves informed about the company's financial position and affairs;
- regularly assess the company's solvency and investigate financial difficulties immediately;
- obtain appropriate professional advice to help address the company's financial difficulties where necessary; and
- consider and act in a timely manner on the advice.

The regulatory guide is available from the ASIC site here:

<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-164AD+ASIC+releases+guidance+on+a+director's+duty+to+prevent+insolvent+trading?openDocument>

### Listing Rule Amendments

The ASX recently amended its Listing Rules as follows:

- On 4 August 2010, the ASX announced that S&P / ASX 300 Index entities must have a remuneration committee comprised solely of non executive directors. This requirement will come into effect on 1 July 2011.
- On 19 July 2010, the ASX announced that listed entities will be required to adopt and disclose a company trading policy on when directors and other key management personnel can trade in the entity's securities. It also issued a Guidance Note to assist listed entities comply with their obligations under this new requirement.

The amendments to the Listing Rules are available on the ASX website here:

[http://www.asx.com.au/resources/newsletters/companies\\_update/archive/CompaniesUpdate\\_20100813\\_0710\\_HTML.htm](http://www.asx.com.au/resources/newsletters/companies_update/archive/CompaniesUpdate_20100813_0710_HTML.htm)



### Changes to Corporate Governance Principles and Recommendations

On 30 June 2010, the ASX Corporate Governance Council issued an amended Principles of Good Corporate Governance and Best Practice Recommendations. The changes include a requirement that companies develop and disclose a board diversity policy which should include diversity as to age, gender, ethnicity and cultural background. It also encourages companies to provide greater transparency of the processes which the board adopts in searching for and selecting new directors to the board.

Further information is available on the ASX site here:

[http://www.asx.com.au/about/pdf/cg\\_marked\\_up\\_amendments\\_30\\_june\\_10.pdf](http://www.asx.com.au/about/pdf/cg_marked_up_amendments_30_june_10.pdf)

### United States

#### SEC seeks Comment on US proxy system

On 14 July 2010, the US Securities and Exchange Commission ("SEC") voted unanimously to issue a concept release seeking public comment on the US proxy system and asking whether rule revisions should be considered to promote greater efficiency and transparency. The SEC's concept release focuses on the accuracy and transparency of the voting process, the manner in which shareholders and corporations communicate, and the relationship between voting power and economic interest.

The concept release is available on the SEC site here:

<http://www.sec.gov/news/press/2010/2010-122.htm>