

**MAIN ISSUES RAISED IN CONSULTATION RESPONSE**

- 1 Tone of report: criticised by companies as too negative - concentrates too much on need for control, not enough on need for positive leadership, and implies executive management cannot be trusted.
- 2 The unitary board: by far the major criticism is that the report, by reserving certain functions for NEDs and casting them in a monitoring role, will divide the board and/or dilute its collective responsibility. Committee to consider:
  - i) detailed amendments to meet this criticism;
  - ii) whether to include clear statement of where it stands in relation to the unitary/two-tier board debate.
- 3 The Code: general agreement that needs to be free-standing. (Separate paper circulated.)
- 4 Statements of compliance: CBI and many companies oppose the proposed Stock Exchange listing requirement as unnecessary. Others argue that it will not be a powerful enough enforcement mechanism.
- 5 Start date: year-ends on or after 31 December 1992 generally felt to be too soon.
- 6 Endorsement by the auditors: widely regarded as inappropriate by companies. APB say auditors should endorse only those elements of the Code where compliance can be objectively evaluated, and suggest that statement of compliance should be considered and endorsed by the audit committee.
- 7 Review of Code: wide agreement on need for on-going review. Committee to consider administrative arrangements and ensure Code has an 'owner'.
- 8 Small companies: suggestions that should be greater stress on the need for flexible application of the Code in the case of small companies and clarification of the number of NEDs they are expected to have.
- 9 Combined roles of chairman and chief executive: variety of views expressed. Committee to reflect on existing wording.

10 Role of executive directors in corporate governance: not adequately covered at present.

11 . Minimum number of NEDs: not much comment, but a few respondents question whether Committee supports PRO NED line that at least three, or approximately one third of directors on every board should be independent.

12 Independence of NEDs: need to clarify definition of independence.

13 An agreed procedure for NEDs to take independent advice: wide support in principle, provided procedure is extended to all directors. Committee to consider whether to offer steer on how should be implemented in companies.

14 Supply of NEDs: widespread scepticism about whether there are enough potential NEDs of the right quality available.

15 Selection and nomination of directors: various comments. Committee to reflect on existing wording.

16 NEDs to be appointed for specific terms: various comments. Committee to reflect on existing wording.

17 Directors' training - some respondents would like to see the need for training given greater emphasis.

18 Formal schedule of matters reserved to the board for decision - CBI and some companies would turn round so as to recommend that boards should define what they expressly delegate, rather than what they retain. Other respondents would like more extensive guidance on what the schedule should contain, and make various suggestions.

19 Internal control: Comments on balance support the recommendations, but stress need to define internal (financial) control. Some concern about increasing audit costs.

20 Audit committees: should membership be restricted to the NEDs? *Finance director in practice has to attend.*

21 Audit committee chairmen to answer questions at the AGM: wide consensus that this should only be at the invitation of the board chairman.

22 Internal audit - some respondents would like to see the report go further in recommending a strong internal audit function. (Separate paper to be prepared for the Committee.)

23 Directors' remuneration: criticism (that report is too weak) has come mainly from the press. Need for clarification on disclosure of stock options and pension contributions. Committee to consider whether to discuss more fully the difficulties of shareholder voting on pay issues. (Separate paper circulated.)

24 Directors' service contracts: some support for tightening legislation still further than recommended by the Committee.

25 Interim reports:

26 Communications with shareholders:

27 Pensions governance: better to omit? *In Good hands.*

28 Quarantining of audit services: muted comment. Committee to consider whether existing wording needs clarifying.

29 Rotation of auditors: support from big accountancy firms but reservations from some smaller ones.

30 Extension of auditors' role: Committee urged to recognise need to balance costs and benefits.

31 Going concern: on balance recommendations are supported in principle but many reservations are expressed and two respondents suggest that a way forward will depend on negotiations with the banks.

32 Fraud:

33 Auditors' liability: some grumbling that Committee has backed the Caparo judgment but it is limited. More serious is comment from big accountancy firms that (notwithstanding Caparo) they are excessively exposed to negligence claims and that the position will be aggravated by Committee's recommendations for extending the audit.

34 Shareholder resolutions: a few calls from shareholder bodies that it should be made easier to table resolutions at AGMs.

35 . AGMs: little support for Committee's suggestion on written questions.

NDP

8.9.92