

 expert views

THE INSIDE TRACK

 Expert view: *The lawyer*

Climate Change For Corporate Governance

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With the near-calamitous collapse of the global financial sector and the malaise that followed, it was only a matter of time before the corporate governance practices of public companies would be scrutinised.

Policy makers are asking why some publicly quoted companies failed to foresee, or at least mitigate, the events which have engulfed them. Attention has focused particularly on boards of directors, and apparent corporate governance failures, which has led to a series of reviews covering financial regulation, banking governance and the operation of the Combined Code on Corporate Governance ("the Code").

Earlier this month, the Institute of Chartered Secretaries and Administrators ("ICSA") published its report on "Boardroom Behaviours" – which is designed to assess the varying board performance of companies during the financial crisis. This report contributes to a larger assessment being undertaken by the Financial Reporting Council ("FRC"), which is charged with analysing the impact of the Code on companies. Although AIM companies are not generally expected to adopt the Code, since it is more applicable to larger sophisticated companies, the practices they typically adopt tend to be loosely based on the Code,

through guidance provided by the Quoted Companies Alliance and the National Association of Pension Funds.

The argument that AIM's previous successes and significant popularity stems in large part from its lighter regulatory touch is well rehearsed. Nevertheless, it is fair to say that the level of corporate governance varies hugely across the AIM market, with some companies adopting governance regimes firmly based on the Code.

However, ICSA's findings have shown there to be very little guidance within the Code on the factors that drive boardroom behaviour and believes it to be both possible and recommendable to formulate expectations as to suggested boardroom behaviour within the Code.

Clearly, the Code (with or without any future set of boardroom behaviour guidelines) is not designed to be followed by AIM companies in its entirety. However, the flexibility offered to companies with an AIM quotation is that they are able to implement the parts of the Code, and any applicable boardroom behaviour guidelines, which suit their specific circumstances.

ICSA believes that despite the best intentions of many boards to improve on existing standards of behaviour in the boardroom, "directors need to develop a greater awareness of, and commitment to, 'fit for purpose' governance as the means by which the board can collectively agree the business objectives of the Company."

Over the past year, many directors' reputations have been irreparably damaged, having been judged to be the architects of the decline of their respective companies. Others have been criticised for awarding discretionary bonuses despite failing to meet performance targets. This has led to questions being raised as to the way boards behave and ICSA is of the view that "strong standards of performance in terms of boardroom behaviour should bolster directors' reputations."

Whereas increased regulation appears to be inevitable, many believe that the corporate governance regime is not inherently broken, but rather its effectiveness has been undermined by a failure to observe appropriate boardroom behaviours. Some argue that it merely represents a structural weakness, which can be addressed by a deeper understanding of a greater commitment to the inter-relationship between transparency, accountability, disclosure, trust and confidence. Furthermore, any future guidance on boardroom behaviour could go some way to safeguarding against the dramatic corporate failures which have occurred.



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