

The Wates Corporate Governance Principles for Large Private Companies: Short but Blunt

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This blog is looking at a new corporate governance code which has recently been issued in the UK, specifically for large private companies. This new code grew out of the *Corporate Governance Reform* project which the UK Government launched in 2016. The Government noted that the UK already had a long-standing code of practice addressing corporate governance reform - the *UK Corporate Governance Code* – and that that did do much to make companies adopt higher standards of corporate governance. But then existing UK Governance Code, applies only to large public companies with a premium stock exchange listing. And so the Government recommended that another code of practice should be developed but would be specifically for large private companies. Responsibility for writing that new code was given to a coalition of experts appointed by the Government, but chaired by an industrialist. And finally, in December 2018, that group published *The Wates Corporate Governance Principles for Large Private Companies*.

In some ways, these new *Wates Principles* look very similar to the existing *UK Corporate Governance Code*. And so it might be hoped that *Wates* will have the same positive impact on large private companies that the *UK Code* has already had on listed ones. But I think this is probably quite unlikely, for there are significant interesting differences between them.

Now, it is true that each code does address the same *subject matter*. So, each code focuses on the board of directors, and the contribution which *it* (the board) can make in delivering better corporate governance. Each code also tends to address the same board features. They are the board's role within the company, its membership, its ability to control risks, executive remuneration, and engagement with stakeholders.

However, the really striking difference between the two codes is the level of the detail in their content. Starting first with the *UK Corporate Governance Code*, the existing code for listed companies, that is made up of 18 – admittedly quite general, high level - Principles, which address the board features just mentioned – things like board role, board composition, remuneration, etc. Importantly, these 18 Principles are then supplemented by a further 41 so-called 'Provisions', and they are much more detailed and much more prescriptive than are the Principles. These 41 Provisions which really ratchet-up the demands on the board, imposing even more precise expectations which the board can easily be judged to have either satisfied or to have breached.

These very specific expectations in these 41 provisions are then reinforced by the way in which the *UK Corporate Governance Code* is then enforced. In theory, the UK Code is not legally enforceable. However, the *Code* is designed to generate strong compliance pressure on the listed companies to which it applies. So, premium listed companies have to describe *how* they apply those 18 Principles. But second, and more importantly, they have to confirm that they do comply with those 41 detailed Provisions, or else they must explain why they fail to do so. In practice, it seems, that listed companies are fairly reluctant to risk alienating the capital markets by having to admit and explain instances of non-compliance.

If we turn now to look at the *Wates*, by contrast, it's built around just 6 general principles. Again, these address those main board features we've noted already – composition, role, remuneration,

etc. And again, as with the long standing listed company code, these 6 principles are fairly short, general statements about what good boards should do. It would be difficult to object to any of these 6 principles. Few would deny that they represent good qualities for a board to possess, and good things for boards to spend their time doing. But, they are unobjectionable largely because they are such bland statements of the very obvious.

But the big difference between the two codes is that Wates does not then have the more detailed 'Provisions' which supplement those vague Principles, in the way that the *UK Code* does. All that Wates has to add to those 6 general principles is what it calls 'Guidance'. But that Guidance lacks the precision of the *UK Code's* hard-edged 41 Provisions. The language of Guidance in *Wates* is much vaguer, it's much more aspirational. It is intended to be there to help large private companies understand and reflect on the Principles. It is not intended to form a set of rules for companies to follow, or 'boxes' to be ticked.

And that is also reflected in the way in which *Wates* will, or will not, be enforced. Large private companies, they do now have to say whether they've chosen to follow any corporate governance code at all. Where a company says that it has chosen to follow the *Wates'* code, then it must say how it applies that code and must also explain any so-called 'departures' from the code. But it's not clear what counts as a 'departure', and in any case since *Wates* is drafted in such a less prescriptive way, there will simply likely be fewer departures that private companies have to try and explain away.

So, to summarise. Both codes are trying to make boards more effective. Both want boards to do roughly the same sorts of things to achieve that. But the *UK Corporate Governance Code* is more like a shepherd, it's firmly steering boards along a fairly narrow path that it wants them to take. The *Wates Principles*, on the other hand, there are rather more like a tour guide, they are recommending a journey to those companies that wish to take it, but they are trying to avoid any sense of compulsion.