

From: ralphbarber@hsbc.com [mailto:ralphbarber@hsbc.com]  
Sent: Friday, April 16, 2004 12:06 AM  
To: CVW  
Subject: Draft Code on Corporate Governance Practices and Corporate Governance Report

Dear Sir

Thank you for the opportunity to comment on the draft Code on Corporate Governance Practices and Corporate Governance Report dated January 2004. Our comments are attached.

I shall, of course, be pleased to discuss these comments or to provide any clarification you may request.

Yours faithfully

Ralph Barber  
Group Company Secretary

(See attached file: Code on Corporate Governance .doc)

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## **Comments on the draft Code on Corporate Governance Practices and Corporate Governance Report dated January 2004**

We are pleased to give our support to the introduction of the proposed Code on Corporate Governance Practices and the "comply or explain" approach advocated by the Exchange. Experience of this approach in the UK since the Cadbury Code was introduced 12 years ago has been generally very positive. The lessons learned from the Cadbury, Greenbury, Hampel and Higgs reviews over this period have shown that the objective of promoting good corporate governance is best achieved by articulating the principles of good governance and underpinning these with supporting code provisions, but avoiding over-prescription, which would promote a culture of "box-ticking". This can occur if the Code leads institutional investors to check for compliance rather than substance and if issuers strive to comply with overly prescriptive Code provisions to avoid the need for an explanation. This is of particular concern for companies with international shareholder bases as such explanations can be misinterpreted as corporate governance failures in countries unfamiliar with the "comply or explain" philosophy. We identify below several examples of provisions we recommend be considered very carefully to avoid the pitfall of over-prescription outlined above.

**Page 6. Report:** In view of the different, frequently conflicting, disclosure obligations to which international issuers are subject, it is important that the disclosures required for the Corporate Governance Report can be made in any appropriate section of the Annual Report, rather than in one discreet "Corporate Governance Report" section.

**Page 9. Minutes:** A.1.6 will require board minutes to be sent to directors within a reasonable time. There can be no disagreement that this is entirely appropriate but it should be for the Directors to determine what they consider to be a reasonable time. The inclusion of a specific time period in the Code is unnecessary; a fact which has been recognised by the inclusion of the phrase "..... generally within....."

**Page 12. INEDs:** A.3.1 would require the independent non-executive directors to be expressly identified "in all corporate communications that disclose the names of directors of the issuer". As Listing Rule 2.14 requires the name of each director to be included in any listing document, circular or announcement, this requirement will therefore be unnecessarily extended to regular shareholder communications such as scrip dividend letters.

**Page 14. Directors Independence:** While it is a Recommended Best Practice (rather than a Code Provision) A.4.5(c) provides that the Nomination Committee should be responsible for assessing the independence of non-executive directors. This contrasts with the UK and US practice where the determination of independence is a matter for the Board as a whole.

A.4.8 (a Recommended Best Practice) would require that, on the first election by shareholders of an independent non-executive director, the Board should set out in a circular to shareholders why they believe the individual can be considered to be independent. In reality, all that can reasonably be expected is for the Board to state that it considers that there are no relationships or circumstances which are likely to affect the director's judgement and any relationships or circumstances which could appear to do so are considered not to be material.

**Page 19. Remuneration Committee:** The proposed terms of reference in B.1.3. (as Code Provisions) are far more detailed than the terms of reference for the Nomination Committee (8.4.5.) which are a Recommended Best Practice. We would particularly advocate not disclosing details of remuneration payable to members of senior management (other than directors) on an individual named basis as this would facilitate poaching of high income generators by competitors and could have the unintended consequence of causing pay escalation.

**Page 24. Audit Committee:** C.3.2.(i) would require the Audit Committee to review the group's "operating policies and practices". This is outside the generally accepted remit of an Audit Committee and would impose a material additional obligation on the Committee and on non-executive directors. The reference probably should be to the group's "internal control and risk management systems".

**Page 31. Board Committees:** D.2.2 would require the terms of reference of each Board committee to include a provision "to report back to the board on their decisions or recommendations". As such committees are formed by and with only such authority as is delegated by the Board, they are answerable to the Board and the Board retains responsibility for matters so delegated, it should not be necessary to include this reporting requirement in the Code.

**Page 33. Poll:** E.2.3 (b) would require the Chairman, at the commencement of a shareholders meeting, to provide an explanation of the detailed procedures for conducting a poll. As the new Listing Rules require the procedures for demanding a poll to be included in the notice of the meeting this should not be necessary and may be regarded by shareholders to be an abuse of their time and patience if no-one wishes to demand a poll.