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BY E-MAIL

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Dear Jon

Code Governance Review – Community Interest Companies

I am an independent researcher and consultant working in the energy, financial services and health sectors with a particular interest in the governance of companies. For the avoidance of doubt, this response sets out my own thoughts on issues in the review and is not representative of any of my clients.

As discussed earlier this week, I appreciate that you are not proposing to require the introduction of company and board structures as part of this review. However, as the advocate of the Community Interest Company (CIC) approach, I am writing to clarify that the benefit of adopting such a structure, so that you have this on record should the industry favour adopting company and board structures in the future.

Paragraph 2.29 of the initial proposals document sets out that CICs can introduce a corporate social responsibility approach to governance. This can be the case and it is common for CICs to be set up and run by social enterprises. However, this is not the primary reason I am advocating this approach. The primary benefit is to avoid or at least mitigate significantly the conflict of interest that would exist if code governance was to be through a company and board approach.

Under a standard company / board approach the duty of the directors of the company is to act in the interests of the company. There may be occasions when these interests are not directly aligned with the objectives of the industry code.

The benefit of the CIC approach is that the company can be a for-profit entity, but the assets are locked in, so that they are permanently available for the delivery of the CIC's purposes, rather than being available for distribution to shareholders. Setting the CIC's purposes as the effective delivery of a code's objectives creates a strong alignment between the code and the organisation set up to deliver the code and addresses the potential conflict of interest.

When appropriate I would be happy to discuss these comments further with you and your colleagues. If you have any questions, please contact me on 07814 009762.

Yours sincerely

Arthur Probert