AberdeenStandard
Investments

Regierungskommission Deutscher Corporate Governance Kodex
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To the members of the Regierungskommission,

Aberdeen Standard Investments is a global asset manager dedicated to creating long-term value for our clients, and is a brand of the investment businesses of Aberdeen Asset Management and Standard Life Investments. We manage £557.1bn of assets worldwide (as at 30 June 2018). We have been long term investors in German corporations for many years and have responded to previous consultations undertaken by the Commission. We recognise the many benefits which the Code has brought since it was first introduced and welcome the opportunity to comment on the changes proposed for 2019.

General comments

We are pleased to note that this current consultation proposes a number of further improvements to governance arrangements at German companies. In particular, we would highlight the suggestions regarding the composition and independence of the Supervisory Board and the reduction in the maximum term of director election from five to three years.

However, in the section on Shareholders and the General Meeting, we note the removal of the wording that 'In principle, each share carries one vote. There are no shares with multiple voting rights, preferential voting rights ("golden" shares) or maximum voting rights.' Also we note the removal of the statement that 'Shareholders generally have pre-emptive rights corresponding to their interest in the share capital when new shares are issued'. We are disappointed and concerned by these deletions. Unfortunately, there is no explanation of the Commission's rationale for these changes in the consultation document. From our perspective, the principles of one share, one vote and of the pre-emption rights of existing shareholders, are fundamental to good governance and we would strongly prefer that these provisions be reinstated. Accountability to shareholders is undermined by unequal voting structures and weakening pre-emption rights, thus hampering attempts by shareholders to be responsible owners for the benefit of both themselves and wider stakeholders.

Specific comments

Principle 9: The Principle that board committees be established for larger enterprises is welcome but we would prefer that this Principle be applied more widely. Board committees are important for supporting the work of the Supervisory Board, ensuring that sufficient time is available for debate of important topics and providing the resource to conduct more in depth analysis or review than may be possible at the full board. We accept there may be reluctance to apply this Principle to all companies but there is scope to encourage its application more broadly e.g. by more complex companies, defined in terms of both broad geographic spread and operations.

Recommendation A.6: We welcome the requirement that the Audit Committee Chair has specific financial knowledge and experience and is required to be independent. However, given the critical importance of the work of this committee, we believe that the Audit Committee should comprise a majority of independent members.

Principle 14: The requirement for Supervisory Board members to undertake training or professional development would be enhanced by expanding the Principle to recommend that this training is discussed as part of the board evaluation. This would allow the Chair to understand how individual board members were keeping up to date, allow the Chair to make relevant suggestions as to potential development needs, and help spread best practice.

Principle 20: As we stated earlier, the proposed reduction in the maximum term of director election from five to three years is a positive development. We would see this as a further step towards annual director election, something which we regard as best practice internationally, and would prefer that the wording be amended from 'shall be appointed for a period of not more than three years' to 'shall be appointed for a period of up to three years'. Although only a small change, we hope this will encourage companies to consider periods of less than three years.

Remuneration of Management Board and Supervisory Board members: whilst we appreciate the attempt to put a more structured framework around remuneration arrangements, we are concerned that the proposals may prove too prescriptive and limit the flexibility which companies often require, particularly in difficult or unusual circumstances. We are also concerned at the recommendations that all short term variable remuneration be paid in cash and that a peer group is used for benchmarking purposes. Unfortunately, in our long experience, benchmarking is much more of an art than a science and often leads to an upward ratcheting in remuneration levels. We would prefer that both these recommendations are removed.

We also note that there is a maximum severance cap of twice annual total compensation. This seems high when considered from an international perspective and we would welcome a reconsideration of whether it is appropriate. Twice fixed pay, or one times total compensation, are more usual levels in other markets and seem better suited to avoiding the possibility of rewards for failure.

We also strongly oppose the granting of performance-related remuneration to Supervisory Board members and would prefer that this possibility be expressly prohibited.

In conclusion, we hope our views will be helpful to the Commission in its deliberations and would be happy to expand on any of the above points if that would be useful.

Yours faithfully,

Alison Kennedy
ESG Investment Director
Aberdeen Standard Investments