WHAT IS "GOOD" CORPORATE GOVERNANCE? THE NEW CODE ON CORPORATE GOVERNANCE

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ABSTRACT

The new 2003 Combined Code on Corporate Governance was published in July 2003 and will apply, broadly, to listed companies for reporting years beginning on or after 1st November 2003. It replaced the version which resulted from the Hampel Committee Report and which had been effective in respect of financial years ending on or after 31st December 1998. It incorporated the recommendations of two major committees, the Higgs Committee and the Smith Committee. The impetus for the Higgs and Smith Committees was the Enron scandal, following the pattern established by its predecessor, the Cadbury Committee which had been established in the aftermath of the Maxwell scandal. Subsequently, the Tyson Task Force has reported but its recommendations are fairly minor in nature. The introduction of the 2003 Combined Code appears to have attracted surprisingly little attention in legal circles. There is little purpose in seeking to speculate upon this. Perhaps it is because it appears superficially to resemble its predecessors and the changes relatively minor; or perhaps it has been lost amongst the flood of significant recent developments including the prospective introduction of a new Companies (Audit, Investigations and Community Enterprise) Bill and the Societas Europaea, to name just two. This is nonetheless regrettable because the changes are far from minor, are in places highly controversial, and when taken together represent a very radical reconceptualising of the listed company. The overall objective of this paper is to test whether and, if so, how the Combined Code represents "good" corporate governance. It will:

- *Discuss the criteria by which corporate governance might be considered to be "good";*
- *Identify how "good" corporate governance is conceptualised in the 2003 Combined Code;*
- *Evaluate whether the 2003 Combined Code is consistent with "good" corporate governance.*