British Land
York House,
45 Seymour St,
London, W1H 7LX
+44 020 7486 4466
info@britishland.com
britishland.com

Financial Reporting Council
125 London Wall
Barbican
London
EC2Y 5AS
codereview@frc.org.uk

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British Land response to May 2023 UK Corporate Governance Code Consultation

On behalf of The British Land Company plc (British Land), please find below a response to the May 2023 UK Corporate Governance Code Consultation document. We are supportive of many of the changes being proposed and welcome the continued focus on flexibility and proportionality inherent within the Code. We have also had the benefit of being privy to the GC100 response to the consultation, many aspects of which we support.

In the appendix to this letter we have provided more detail on specific proposals that we disagree with, or where we think additional clarity within the Code would be useful. The following are the areas where we have the strongest views:

1. **Shareholder engagement & audit diversity** – The enhanced obligations on Audit Committees to engage with shareholders and drive competition in the external audit market are unachievable. Our experience, supported by FRC research, shows that the investment community engages on issues that it chooses, regardless of company efforts to engage. Similarly with external audit tenders, only a small number of audit firms are willing to submit tenders in respect of large organisations. In our view, a requirement to 'seek' engagement, as per the language in the previous Code would be more appropriate.
2. **Risk management & internal control effectiveness** – The requirement for the Board to confirm that it can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period is in danger of muddling management responsibility to do (e.g. day to day risk management and internal control), with the accountability of the Board, which we regard as inappropriate. While the majority of the Board, and all Board Committees, comprise Independent Non-Executive Directors, their primary role must remain one of oversight, rather than day to day management responsibility. It is difficult to see how a Board comprised mostly of Non-Executive Directors would be able to provide such a confirmation without in effect performing an Executive function of continuous monitoring or relying heavily on costly third-party assurance.
3. **Directors' commitments & succession planning** – A number of proposed changes regarding Directors' time allocation and other commitments are welcome but, in our view, miss the underlying issue. Greater clarity is required as to what 'overboarding' is, so that the issue is no longer left to be determined by proxy agents with the strictest interpretation. The revised reporting obligations in respect of succession planning will, in our view, lead to 'boilerplate' disclosure rather than anything of value to shareholders. Anything meaningful involving individuals will, by definition, be too sensitive to disclose. Further clarity on what the FRC is expecting companies to report on must be provided within the Code.

We would be very happy to discuss any points within this letter in further detail.

Kind regards

[redacted]

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Appendix 1 – Consultation questions response

(NB – where we do not have especially strong views, we have not responded)

Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?

- The introduction of outcomes-based reporting within the Code is a welcome addition and sensible given the FRC's commentary on this area of disclosure in recent reporting reviews. In our view, it is important for the Code to recognise that it will not be possible for all companies to provide meaningful examples of compliance in respect of every aspect of the Code in every reporting period.

Q3: Do you have any comments on the other changes proposed to Section 1?

- The amendment in Provision 3 which replaces '*seek engagement*' with '*engage*' should not be included given shareholders generally do not engage with companies on many issues. Indeed, the FRC's own recent research paper into proxy advisors stated '*Investor interviewees said that their decision on which companies to engage with were primarily driven by their own priorities rather than in response to requests from companies*.'
- In our view seeking engagement is as much as can be expected from companies. This would also be consistent with the obligation on the Chair of the Board, in the earlier section of Provision 3.

Q4: Do you agree with the proposed change to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?

Q5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?

- We support further clarity on this area of governance, but in our view the revisions as currently drafted do not provide the clarity that is required.
- The term '*significant appointments*' is very subjective and will be left open for proxy agents and auditors to define. The FRC must provide guidance as to what constitutes a significant appointment, which in our view is one that requires more than 20 days commitment from the Director.
- The amendments to Principle K provide further uncertainty by introducing '*commitments to other organisations*'. In our view this requirement should be based on '*significant appointments*' to be defined as per our comment above.

Q7: Do you support the changes to Principle I moving away from a list of diversity characteristics to the proposed approach which aims to capture wider characteristics of diversity?

- We support an approach that promotes diversity beyond gender, social and ethnic backgrounds – particularly as Boards need to reflect the wider organisation and the communities they serve.
- However, we do not support the changes. The reference to '*protected characteristics and non-protected characteristics*' is so wide as to be unclear (and in the typical Non-Executive Director recruitment processes, the kind of cognitive assessments and personality profiles performed on Executives are very far from the norm). Singling out '*cognitive and personal strengths*' places a peculiar significance on them relative to other diversity characteristics.
- We agree with the GC100 that an alternative formulation would be preferable, for example:

  '*They should promote equal opportunity and contribute to a diverse and inclusive Board and senior management team*.'

Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?

- Given the confidential and sensitive nature of management succession plans, the proposed changes to Provision 24 will not produce anything more than 'boilerplate' disclosures. We do not regard this change as productive of insight that shareholders will value and think it is unnecessary. If the FRC would like to see

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better disclosure in this area, further guidance within the Code is required to specify what companies are required to report, noting the obvious limitations as described above.

Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?

- We agree with the principle of a triennial Audit Committee approved Audit and Assurance Policy.
- Key to ensuring the beneficial outcomes of the creation and application of this document, is suitable guidance on key elements which should form part of the policy, and therefore we would strongly encourage a guidance note to be produced accompanying the introduction of this requirement on a 'comply or explain' basis.
- If the direction of travel by the FRC is a shareholder advisory vote on the Audit and Assurance Policy, we would not be supportive of this. Shareholders generally do not engage with companies on many issues and even less on audit and assurance matters. As a result, mandated shareholder consultations often do not work. Shareholder engagement could be more efficiently strengthened through the Stewardship Code than by a new requirement to consult with shareholders on companies – i.e. compel it from the other end of the relationship. Besides, under the current framework, there are sufficient mechanisms for shareholders to engage with company Boards and Audit Committees on matters they care about, including the power to remove Directors where necessary.

Q11: Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?

- The Minimum Standard for Audit Committees is a welcome addition and allows for simplification and reduced duplication within the Code itself, albeit in turn by expanding the remit of the Audit Committee.
- However, references to engaging with shareholders and promoting effective competition during external audit tenders and non-audit services policies should be removed given they are outside Directors' control (at least as drafted). A more suitable obligation would be for the Committee to 'seek' engagement or effective competition.

Q12: Do you agree that the remit of Audit Committees should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics, where such matters are not reserved for the board?

- The expansion of the Audit Committee's role to cover narrative reporting is fine, and in many cases for example in sustainability reporting, is already common practice. However, we would request that the Code allow boards to organise themselves as they see fit – e.g. have sustainability reporting able to be dealt with by the Board Sustainability Committee if that is the set up in a particular public listed company.
- We would note however, that the scope of narrative reporting could be interpretated in many different ways. Further guidance therefore and clarification on examples of what does and does not constitute narrative reporting would be helpful to ensure consistency in the application of this provision.

Q13: Do you agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way?

- No. In our view the proposed amendments risk moving the role of the Board away from Non-Executive oversight, towards management responsibility. There is a subtle difference in confirming the effectiveness of risk management and internal control systems to confirming that they have been effective throughout the reporting period. It is difficult to see how a Board comprised mostly of Non-Executive Directors would be able to provide such a confirmation without in effect performing an Executive function of continuous monitoring or relying heavily on costly third-party assurance.

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Q14: Should the Board's declaration be based on continuous monitoring throughout the reporting period up to the date of the annual report, or should it be based on the date of the balance sheet?

- In order to ensure that the Board's responsibility does not stretch into Executive responsibility, our view is that the board's role should be '*oversight*' rather than '*continuous monitoring*' of risk management and internal control systems. This is crucial or risks muddling Executive responsibility with the oversight role of the Board.
- The declaration should be given in our view as at the financial year end. There are practical issues with carrying it on right up to the date of the annual report and if between year end and the date of the report, something sufficiently serious has arisen as to have a dramatic effect, listing rules would require disclosure on other grounds.
- There must also be further guidance as to what constitutes an effective control environment, which it might be argued is one where issues are identified and remediated. The drafting of Provision 30 currently implies that should material weaknesses be identified, risk management and internal control systems are not effective.

Q15: Where controls are referenced in the Code, should 'financial' be changed to 'reporting' to capture controls on narrative as well as financial reporting, or should reporting be limited to controls over financial reporting?

- In our view the Code should retain 'financial' within Provision 30 (given one of the key aims of the reforms is to prevent future corporate failures, which are usually driven by failures in 'financial' controls). The addition of 'reporting' however, is welcome.

Q16: To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?

- In our view, examples of methodologies and frameworks are always helpful to ensure consistency of application and ensures a minimum standard.
- Effective guidance is also important to ensure that effectiveness assessments are conducted in a proportionate and efficient manner. We note that many have commented on the application of Sarbanes Oxley within the US which led to many companies putting in place disproportionately onerous processes and procedures over and above what was originally envisaged as being necessary by the legislation.

Q17: Do you have any proposals regarding the definitional issues, e.g. what constitutes an effective risk management and internal controls system or a material weakness?

- In our view the key is that organisations should be able to follow the guidance in a way that is proportionate for their operations and related risks. Every organisation will have different levels of materiality and they should be able to make a judgement on what is important/significant for them. Our view is that '*material*' is a well understood term and should therefore be part of the definition – we would suggest '*materially*' is inserted ahead of '*adversely affected*'.
- On a related point, whilst reflecting previous UK Corporate Governance Code language, the use of '*systems*' in '*risk management and internal controls systems*' suggests that there is an expectation of the use of a technology platform or similar, whereas many companies will look to use a mixture of technologies as part of its overall risk management and internal control processes. Our suggestion would be that '*processes*' is more appropriate terminology than '*systems*'.

Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?

- We support the approach taken to malus and clawback which allows companies to tailor their malus and clawback policies to their particular needs. However there is an inconsistency in whether disclosure of the use of malus and clawback is required over a five year look back period or just over the last reporting period (as the last bullet and final sentence of Provision 40 conflict). This should be clarified and in any event, as remuneration reports will remain available on the company's website, a five year look back is unnecessary, and a one year look back would be appropriate.

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Q24: Do you agree with the proposed changes to Provisions 40 and 41?

- Deletion of the existing Provision 40 and the removal of the consequential reporting requirement in Provision 41 is helpful and will hopefully remove a lot of unnecessary 'boilerplate' reporting from remuneration reports.

Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?

- References to pay gaps and pay ratios are duplicative of existing statutory reporting requirements and should be removed.

Q26: Are there any areas of the Code which you consider require amendment or additional guidance, in support of the Government's White Paper on artificial intelligence?

- While some guidance on this may well be appropriate in due course, it is premature right now as things are evolving at pace.