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For the attention of: The Financial Reporting Council

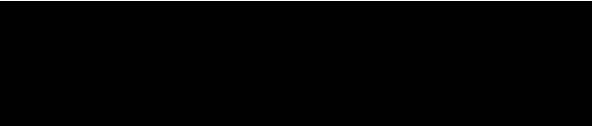
Re: Public consultation on the UK Corporate Governance Code

Thank you for providing us with the opportunity to comment on your consultation document, dated May 2023. Having reviewed the matters raised in your document I write to provide you with our comments, which have been reviewed and approved by our Audit Committee Chair and Group Finance Director.

We have included our responses to the 26 consultation questions in the Appendix.

Please do not hesitate to contact me if you have any questions or would like to discuss further.

Yours sincerely,



Appendix: Response to the consultation questions

| Section 1: Board Leadership and Purpose | |
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| Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting? | We concur that the revision makes it clear that outcomes-based reporting is expected on a 'comply or explain' nature. |
| Q2: Do you think the board should report on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance? | We believe that boards should be responsible for determining the matters that are most material to their strategy. While the challenges posed by climate change and transition planning are significant issues, and we agree that boards should report on their climate ambitions in the context of its strategy, we do not consider it helpful to specify these in the Code as it may lead to companies taking a checklist approach to strategic issues. |
| Q3: Do you have any comments on the other changes proposed to Section 1? | <p>We are supportive of the greater focus on culture, and support aims to ensure the clarity of outcomes in governance reporting to demonstrate how the Code has been applied but would welcome further high-level guidance on what is expected in practice.</p> <p>We note that Provision 3 proposes amending the recommendation that Committee chairs should "seek engagement with shareholders" and "should engage with" shareholders on significant matters, which appears to be setting a higher bar than the recommendation that the chair should "seek" regular engagement with shareholders.</p> |
| Section 2: Division of Responsibilities | |
| 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? | <p>We do not believe a specific provision on significant external commitments is a necessary change to the Code. The annual performance reviews would be expected to consider director capacity anyway and director capacity and capability is not impacted solely by their other appointments.</p> <p>The proposed change requiring an explanation of how each director has sufficient time to undertake their role is unnecessary and is unlikely to provide meaningful information to the user of our Integrated Annual Report.</p> |

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 welcome the non-prescriptive approach in the proposals that do not specify a maximum number of board appointments which can be held by a director (beyond the existing requirement for full-time executive directors which we continue to support). In describing how board members' skills and experience contribute to the long-term success of an organisation, annual reports already set out directors' significant external appointments and we do not believe it is necessary to mandate a list which is likely to lead to an increased use of boilerplate language.

The annual effectiveness review of the Board considers the performance of the Board as a whole, and the performance of its individual directors, and considers whether Directors have sufficient capacity to fulfil their duties. If a recommendation is felt necessary on this point it may be more appropriate to incorporate into Provision 22 which addresses disclosure of the annual effectiveness review of boards.

Provision 15 already requires that the reasons for permitting significant appointments be explained in the Annual Report.

Section 3: Composition, succession and evaluation

Q6. Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?

We agree and support the measures taken to avoid duplication and welcome the focus that has been taken to align requirements across existing regulations.

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 are supportive of the move away from a list of specified diversity characteristics and that requirements around diversity and inclusion be kept high-level and directional.

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

We welcome the changes to raise the profile of succession planning and senior appointments as we recognise that these are important matters for our stakeholders. However, we note that reporting on these matters will likely remain at a broad, framework level given the potential sensitivity and confidentiality of the matters disclosed. We would welcome further guidance

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| | on what the FRC would anticipate as a good quality level of transparent reporting in this area. |
| Q9: Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI? | We support the proposed adoption of the CGI recommendations on board performance reviews and reporting on the related provisions of the Code. |
| Section 4: Audit, risk and internal control | |
| Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis? | <p>We agree that a 'comply or explain basis' would be commensurate with the basis of reporting for other aspects of the Code, and that specific guidance should be provided on disclosures. We also agree that a 'comply or explain' basis would be appropriate for non-PIE entities as well.</p> <p>The implementation report will help clarify which aspects of the Annual Report have been subject to assurance, however, we are sceptical as to what extent these disclosures will lead to meaningful engagement with investors and would welcome proposals from the FRC to help inform stakeholders of the purpose of the disclosure and the expectations on them to engage in this topic.</p> |
| 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? | Agree. |
| 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? | <p>We believe that it is for the Board to determine the remit of these matters and it should have the discretion to determine how it delegates responsibilities to its Committees.</p> <p>The Anglo American plc Board has a Sustainability Committee which provides oversight and assurance to the Board of the Group's most material sustainability matters and in relation to sustainability and ESG reporting and metrics. While the Audit Committee may be an option, we would want to retain the flexibility to delegate these matters to an alternative governance body, such as our Sustainability Committee, which is</p> |

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| | <p>chaired by an independent non-executive director with membership comprising a majority of independent non-executive directors on the Board with relevant expertise of sustainability in its broadest sense, and with the appropriate membership crossover between the Company's Audit and Sustainability Committees.</p> <p>However, there is merit in ensuring consistent oversight of significant and material reporting, considering the requirement for a Director's statement on the effectiveness of risk management and internal controls.</p> |
| <p>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?</p> | <p>It is difficult to conclude at this point as to whether the right balance has been achieved, as guidance for the new reporting has yet to be developed and there is no track record of reporting to evaluate.</p> <p>A single declaration covering the entirety of risk management and internal control systems, explicitly extended to non-financial reporting, is a significant undertaking. The maturity of controls varies across our organisation, and it may prove difficult to determine the appropriate declaration to cover the full landscape. We would therefore welcome proposals that allow for differentiation across each component of the risk management and control system, and we would be supportive of the proposals we see from other stakeholders for a phased implementation across the non-ICFR elements.</p> |
| <p>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 B/Sheet</p> | <p>We note that continuous monitoring of controls is not yet defined, and it is unclear what extent of monitoring would be necessary and sufficient to give the directors confidence to make such a declaration.</p> <p>We question what disclosures would be required in the first year of implementation, i.e., to what extent would the FRC expect detailed disclosures of material weaknesses or other deficiencies discovered, to be fully rectified during the implementation, should that be after 1 Jan 2025 but before 31 Dec 2025?</p> <p>We consider it would be more straightforward for the declaration to be based on the date of the balance sheet as there is greater understanding of what this means in practice given this is consistent with the other internal</p> |

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| | <p>control regimes. Practically this means a date should be defined i.e., balance sheet date similar to US SOx, which also ensures consistency to US SOx requirements, should a company wish to dual list.</p> <p>Our reporting controls need to be sufficient to prevent material misstatement of the data presented within the annual report. Therefore, it is not critical that the controls operate throughout the year effectively but if they do not, the effective operation of the controls at the end of the period needs to be sufficient to mitigate the risk of the potential failings observed earlier in the year.</p> <p>Without clear guidance or date this could become a significant assurance burden at a significant cost to companies to monitor and report operating effectiveness throughout the year.</p> <p>We therefore agree and believe the objective set out by the changes in the Code and the principle behind it, but the effectiveness of changes to strengthen corporate governance will depend on how the Code is enforced. There should be clarity on required disclosures to avoid non-meaningful statements.</p> <p>We also believe that providing details on external assurance involvement should not be a focus; the focus should be around how material risks are assured by any arrangement as per the IIA standards.</p> |
| <p>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?</p> | <p>We agree that extending the scope to non-financial reporting is a proportionate step given the significance of non-financial reporting to the prospects and performance of a Company.</p> <p>We would suggest that the scope of these controls be defined by the narrative information within the Annual Report and not extended to other reporting as that will reduce the cost and accelerate the timeline for compliance.</p> <p>Extending the Code's scope to non-financial data presents some challenges as often for this data there is not an externally recognised framework to assess the composition of the data against. This data is likely to have been collected in a less developed and formalised</p> |

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| | <p>way than financial transactions, which are typically in an ERP environment. While we support the sentiment, the timeline for compliance over this type of data would benefit from a phased approach. Forward-looking statements are also notably higher risk and therefore more difficult to 'quantify and control'.</p> <p>Guidance should be presented regarding the consideration of how the concept of materiality should be applied to non-financial data which is much more subjective than for financial data. The scope of operational controls is also broad, and we suggest that the FRC provide further guidance and definition of materiality.</p> |
| <p>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?</p> | <p>The guidance should extend to examples of methodologies and frameworks for the review as this will aid the consistency of approach across all companies and provide better clarity as to the expectations of directors, so they are able to make the declaration on effectiveness.</p> <p>Furthermore, providing guidance and a framework will also provide clarity to stakeholders. Some of our stakeholders will come with an expectation that the framework is commensurate to US Sox definitions and requirements. Guidance that outlines the expected framework would therefore reduce potential misinterpretation and misalignment of expectations.</p> |
| <p>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?</p> | <p>We consider the terms 'effective' and 'materiality' are widely used, particularly with respect to financial reporting and we would propose that rather than new definitions be created for risk management, that instead language is used that is consistent with other reporting regimes and international standards, and that additional guidance is provided in terms of how these definitions should be applied to non-financial data and narrative reporting, including forward-looking statements.</p> <p>Guidance for non-financial areas would promote consistency of interpretation and will need to consider broader factors than just a quantitative benchmark.</p> |

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| | <p>In addition, we would welcome a clear definition of 'significant deficiencies' identifying those deficiencies that do not meet the definition of material but warrant specific consideration by those charged with governance.</p> <p>We would also welcome a clear definition of 'material weakness', as well as expectations around disclosures of those material weaknesses, and 'Operational' and 'Compliance' controls. Whilst these are not new concepts in the Code, the requirement elevates the importance of these controls such that clarity on scope and expectations would be welcomed.</p> <p>Lastly, we question whether this should sit in the Code at all, and if it does, would it not be better to set clear minimum requirements on what ought to be reported.</p> |
| <p>Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?</p> | <p>We would welcome the guidance being broadened to recognise that there are a range of internal assurance options across the three lines of defence and that the work of these teams could support the declarations made by the Company.</p> <p>We recognise that there is an opportunity to be more prescriptive in guidance for Provision 29 with frameworks or other to better articulate how one might explain the basis for ARA declaration (process undertaken, description of board committees involved, etc.).</p> |
| <p>Q19: Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?</p> | <p>Agree but we would encourage a streamlining of disclosures on this and suggest that forward looking risk management is also considered.</p> <p>The going concern concept is already covered by accounting standards and company law and so would encourage the Code to explicitly reference the incremental requirements and encourage only disclosing in one place (i.e., basis of preparation) rather than multiple duplicative disclosures.</p> |
| <p>Q20: Do you agree that all Code companies should continue to report on their future prospects?</p> | <p>We agree that companies should continue to report on their future prospects, and that we would expect it to be the responsibility of the Directors to define the medium-term period.</p> |

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| <p>Q21: Do you agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects?</p> | <p>No comment.</p> |
| <p>Section 5: Remuneration</p> | |
| <p>Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?</p> | <p>We agree. Our Remuneration Committee considers the outcome of performance metrics alongside underlying financial performance and the experience of stakeholders (including shareholders and employees) when determining remuneration outcomes. A meaningful proportion of executive incentives is based on ESG performance, and a Fairness Section is included in the Directors' Remuneration Report.</p> <p>The determination of executive remuneration outcomes is therefore already strongly linked with company performance, purpose and values, and long-term strategy and we have been acknowledged to lead in this area amongst our peers.</p> |
| <p>Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?</p> | <p>Malus and clawback provisions are disclosed in the Directors' Remuneration Policy, including the minimum applicable circumstances and minimum clawback periods. Under the proposed revised Code, we will also be required to disclose (in the ARR): an explanation as to why the selected minimum clawback periods are appropriate; confirmation of whether the provisions have been used in the last reporting period and why; if applicable, disclosure of the use of malus and clawback provisions in the last 5 years.</p> <p>The format and level of detail to be provided on the use of malus and clawback provisions is still to be confirmed by the FRC. Whilst being supportive of the additional disclosures in terms of promoting reporting consistency across companies and noting that in principle the additional disclosures are not onerous, we do need to be mindful of any potential disclosure sensitivities (i.e., why malus and clawback was operated) resulting from the new requirements.</p> |
| <p>Q24: Do you agree with the proposed changes to Provisions 40 and 41?</p> | <p>We agree to the proposed changes as these disclosures have felt 'cookie cutter' and not particularly value-add for participants. The changes to Provision 40 and 41 promote a more tailored and meaningful approach to</p> |

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| | disclosing how the Remuneration Policy and incentive framework supports strategy and ESG objectives. |
| <p>Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?</p> | <p>We support the removal of these references as we do not believe that they offer much to the reader in terms of additional context. There are many factors in any given year that can influence these figures, however we note that gender pay-gap information is useful and can demonstrate tangible improvements under a Company's D&I strategy.</p> <p>In our view, it is more meaningful to consider executive remuneration outcomes in the context of the experience of the wider workforce, which incorporates workforce pay arrangements, health & safety and D&I, which is factored into the Code in Principles P and Q.</p> |
| Other matters | |
| <p>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?</p> | <p>We do not require amendment or additional guidance in support of the Government's White Paper on artificial intelligence, however, illustrative disclosure guidance to support first time adoption would be beneficial.</p> <p>Principle J in Section 3 relates to an appropriate balance of skills, experience, and knowledge. If AI and other technical domains materially affect the business, we believe that there should be a statement on relevant technical expertise required.</p> |