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13 September 2023

Dear David,

***Financial Reporting Council's UK Corporate Governance Code: Consultation Document***

Thank you for the opportunity to respond to the Financial Reporting Council's ('FRC's') Consultation on the UK Corporate Governance Code ('the Code') which I am pleased to do on behalf of KPMG LLP ('KPMG').

We welcome the intention to enhance the Code's effectiveness in promoting good corporate governance. We support many of the specific proposals and underlying principles in the consultation.

In particular, we believe that board accountability for the effectiveness of risk management and internal control systems should be strengthened. We see this as one of the cornerstones of the overall reform proposals, and are supportive of the proposed changes within the Code for boards to make a statement of effectiveness in this regard.

However, as currently drafted, we believe there is a difference between how the FRC envisages companies will implement the proposals for an effectiveness declaration, and how many boards and advisors are interpreting them.

We have therefore highlighted below, and within our detailed response, a number of considerations and amendments which we believe are essential to ensure that the proposals achieve their intended outcome in a proportionate manner, and to help build a common understanding across key stakeholders.

■ ***The statement of effectiveness should focus on internal controls and risk management systems related to the principal risks the entity faces***

Rather than asking boards to report on the effectiveness of risk management and internal control systems in their entirety, we recommend that the accompanying guidance clarifies that the statement of effectiveness should focus on the material internal control and risk management systems, relating to the management of, and reporting over the principal risks identified by the company.

Principal risks, by their very definition, are those risks which could seriously affect the performance, future prospects or reputation of the entity. While there is a clear reference to "material" controls within the current draft of the proposals, we believe that identifying that boards should focus on risk management and internal control systems which manage these

risks, will help to ensure that proposals are implemented in a more proportionate way. This will be practically achievable for companies while still leading to more transparent reporting.

■ *A point in time assessment will lead to the desired proportionate and pragmatic outcome*

In our view the board's statement of effectiveness of internal controls and risk management systems should be at a point in time, at the balance sheet date. We anticipate that many companies will continuously monitor the operation of material controls throughout the year, however the point in time effectiveness statement allows companies time to remediate control weaknesses identified during the year. This will also align to other international regimes and reduce the impact on dual listed entities.


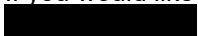
■ *Detailed guidance is essential to achieve consistent, comparable reporting*

Detailed guidance with a clear framework is critically important. Without it there is a significant risk that companies will inconsistently apply the new requirements, and therefore reporting will lack comparability. Given its importance, we believe the guidance should be subject to consultation. The guidance should set out minimum standards for directors, as well as for those with executive responsibility for designing and operating a company's risk management and internal control system, and for audit/assurance providers. In our view it should:

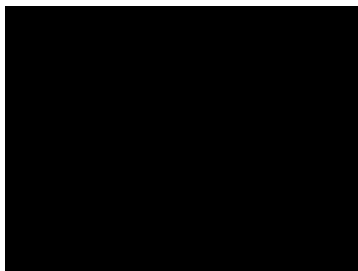
- clarify the precise scope of statement of effectiveness (over material internal control and risk management systems, relating to the management of, and reporting over the principal risks identified by the company)
- state the types and nature of controls expected
- clarify the level of precision the controls should be operated at, and the evidence required to be maintained
- include references to relevant frameworks which would help to support dual-listed entities
- provide examples of how requirements apply to non-financial risk management systems and internal controls, including materiality assessment.

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The appendix to this letter contains our detailed response where we sought to provide constructive solutions and suggestions as to how to mitigate unintended consequences arising from the proposals, together with our responses to individual questions.

If you would like to discuss any of the issues we raise, please do not hesitate to contact   
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Yours sincerely,



## Appendix

We have set out further detailed views on the proposed Standard – including our thoughts on the specific questions raised – below.

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

We are supportive of the introduction of a Code Principle emphasising the need to focus governance reporting on outcomes and to provide clear explanations for departures from the Code. This, along with the FRC's Annual Review of Corporate Governance Reporting (and best practice recommendations contained within), are a positive step towards more outcomes-based reporting.

### **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 are supportive of the proposed change to Provision 1 to bring more focus to environmental and social matters – notwithstanding that Environmental, Social and Governance (ESG) should be embedded within a company's strategy rather than being something separate. We are also supportive of boards reporting how environmental and social matters are considered in the delivery of its strategy, including their climate ambitions and transition planning.

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

#### *Principle B*

As boards are responsible for establishing a company's purpose, values, strategy, and culture, we suggest amending Principle B from:

*"The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are all aligned", to*

*"The board should establish the company's purpose, values, strategy and culture, and satisfy itself that these are all aligned."*

#### *Provision 3*

We are supportive of increased engagement between investors and committee chairs, however this is challenging in practice.

We therefore believe that there needs to be a more fundamental re-evaluation of how companies and investors engage, and the FRC (and ARGA in the future) will be crucial in driving that change. We also note that the upcoming review of the Stewardship Code should mirror any expectations placed on corporates.

**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?**

Whilst we agree that consideration of each director's commitments to other organisations should form part of the annual performance review, we question whether it should be singled out for inclusion within the Code over and above the many other important matters which should be considered as part of the annual performance review. We therefore recommend addressing 'over-boarding' within the FRC's Guidance on Board Effectiveness rather than the Code itself.

**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 recognise the importance of ensuring that directors have sufficient time to undertake their role effectively and that consideration of each director's commitments should be regularly assessed. However, we do not believe that the amendment to Provision 15 (requiring a description of how each director has sufficient time to undertake their role) will allay investor concerns. The appropriate time directors devote to their role is a complicated and nuanced issue; and influenced by the director's knowledge and experience, the complexity of the organisations and the issues it faces or times of exceptional activity, as well as the level of support the director receives from the company secretarial team or governance office.

In our view, this will be difficult to disclose in a succinct and effective way. We believe that this Provision will result in boilerplate disclosures that increase the length of the governance reports, adding little value to the shareholders.

As an alternative, we suggest that a Provision to explicitly set out that the board has considered each directors' commitments and found them to be appropriate would be sufficient. This could be supported by guidance, which sets out the expected level of assessment to be performed.

**Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area [Composition, succession, and evaluation], without introducing duplication?**

See response to Question 7 and 8 below.

**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 understand that the proposed changes to Principle I are designed to support the FCA's 2022 Policy Statement on diversity and inclusion without introducing additional duplicative targets or regulations; and we are supportive of the amended provision giving equal weight to all protected and non-protected characteristics.

However, we believe that references in the Code to gender and ethnic diversity have contributed to both consideration in the boardroom and enhanced disclosure, and therefore

we question whether the amendments will encourage companies to consider diversity beyond gender and ethnicity without specificity. We would therefore be supportive of the Guidance being used to encourage board consideration of specific characteristics; for example, social economic backgrounds, which is currently given very little attention during succession planning and the appointment of board members<sup>1</sup>.

**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 are supportive of the amendments to Provision 24. While the changes are small, we believe they better articulate good practice (and the FRC's expectations) in relation to nomination committee reporting.

To reduce duplication with other requirements, we consider that the provision no longer needs to ask for disclosure of the 'gender balance of those in the senior management and their direct reports' as this information is now required by the Listing Rules (LR 9.8.6 R (9)).

**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 amendments to Provisions 21 and 23 of the current Code to both replace "board evaluation" with "board performance review" and to clarify that the chair "should commission" instead of "consider having" a board performance review.

We are supportive of the CGI recommendations contained within their publication 'Review of the effectiveness of independent board evaluation in the UK listed sector' and their incorporation into the FRC's 'Guidance on Board Effectiveness'.

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

We recognise that the legislation on the Audit and Assurance Policy (AAP) will apply only to companies with a high-level of turnover and employees, and that this will create inconsistencies among those companies adopting the Code. Consequently, we agree that all companies reporting against the Code should produce an AAP on a 'comply or explain' basis, using the legislation as a guide for what should be included.

We note that the *Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023* (now laid before parliament) require that the AAP include:

*"an explanation of whether, and if so how, the company intends to seek external assurance over—....(ii)the effectiveness of the company's internal controls over financial reporting".*

We suggest that the Guidance to the Code addresses the difference in scope between this requirement and the proposed statement of effectiveness of the company's risk management and internal control systems – which is much wider in scope. It is important that users of the

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<sup>1</sup> [Uncovering social mobility in the boardroom](#)

accounts have a clear understanding of what internal controls have (and have not) been externally assured.

In our view, it will be challenging for the AAP to achieve its full potential with the current fee caps which are placed on public interest entity audits. This could potentially leave boards unable to identify an independent assurance provider if the external auditor is not an option.

**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?**

We agree that amending paragraph 26 to refer to the '*Audit Committees and the External Audit: Minimum Standard*' (the Minimum Standard) is an effective way of reducing duplication of what should be included in the annual report about the role of the audit committee and how it discharged its duties. We are also supportive of the Minimum Standard extending beyond the FTSE 350 given the 'comply or explain' framework within which the Code operates.

However, we suggest that the bullet "*following the Audit Committees and the External Audit: Minimum Standard*" could be replaced by:

*"providing oversight over the appointment of the external auditor and the effectiveness of the audit in accordance with the Audit Committees and the External Audit: Minimum Standard".*

This provides a more rounded explanation of the role audit committees are performing when following the Minimum Standard.

To avoid duplication, the additional bullet "*promoting effective competition during the tendering for an external auditor, to support audit market diversity*" could be removed, as this requirement is included within the Minimum Standard.

**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?**

We agree that, within the 'comply or explain' framework, the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting and ESG metrics where appropriate, unless such matters are reserved for the board or other board committee. In our experience, this is already standard practice for many audit committees.

The 'comply or explain' framework provides sufficient flexibility for those companies that choose to provide oversight through a different committee. However, to provide greater clarity (and to avoid unnecessary "non-compliance" disclosures) we suggest amending the proposed wording in line with existing Code Provision 25, bullet 3:

*"The main roles and responsibilities of the audit committee should include: ... monitoring the integrity of narrative reporting, including sustainability matters, and reviewing any significant reporting judgements, unless expressly addressed by a separate board committee composed of independent non-executive directors, or by the board itself."*

**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?**

While we support the intent of the proposals, in our view they do not, as currently drafted, strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way. We believe there are a number of amendments and clarifications which could be made to achieve this aim.

The new provision requires that boards should provide a declaration on whether they can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period and up to the date of the annual report. This, combined with a broader scope, pushes the practical requirements to comply with the Code significantly beyond other international regimes, which potentially challenges one of the wider aims of the Audit and Corporate Governance reforms; to ensure the UK remains an attractive place to do business and to invest. As currently drafted, there is a significant gap between how the FRC envisage companies will implement the proposals for a declaration on the effectiveness of risk management and internal control systems compared to how many boards and advisors have interpreted them.

We consider the following to be the essential elements to ensuring the proposals achieve their intended outcome:

- Boards should have explicit accountability for internal controls, which support high quality reporting and risk management systems. This will be demonstrated by the proposed statement on the effectiveness of the internal controls and risk management systems (the statement of effectiveness).
- The statement of effectiveness should focus on the material internal control and risk management systems, relating to the management of, and reporting over the principal risks identified by the company. This should be made clear within the accompanying guidance.
- The statement of effectiveness should be made at a point in time, at the end of the financial reporting period. While regular monitoring will be performed throughout the year in order to make the statement of effectiveness, a point in time assessment motivates companies to remediate controls by this date, as well as practically allowing time for appropriate assurance and oversight before disclosing such a statement within the Annual Report and Accounts.
- Critically, there needs to be detailed guidance with a clear framework which sets out minimum standards for directors, for those with executive responsibility for designing and operating a company's risk management and internal control system, and for audit/assurance providers. Without this, there is a risk that the requirements will be inconsistently applied by companies and the reporting provided will lack comparability.



We therefore believe that the provision should be amended as follows:

*The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover material financial, operational, compliance and reporting controls. The board should provide in the annual report:*

- A ~~declaration~~ statement of whether the board can reasonably conclude that the company's risk management and internal control systems, relating to the management of, and reporting over the principal risks, were effective ~~throughout the reporting period and up to the date of the annual report~~ at the end of the reporting period;*
- An explanation of the basis for its ~~declaration~~ statement, including how it has monitored and reviewed the effectiveness of these systems; and*
- A description of any material weaknesses or failures identified and the remedial action being taken, and over what timeframe.*

We have set out below our detailed views on each of the proposed changes to Provision 29 throughout our responses to Questions 13 – 18, particularly where we believe the current proposals will lead to unintended consequences, how these could be amended to support the intended outcome, and crucially where detailed guidance will be beneficial.

#### *Scope and applicable date*

We are supportive of the statement of effectiveness extending to the broader risk management and internal control system rather than being limited to internal controls over financial reporting. In our view, it is important that all material risks in a company are identified, understood, controlled, and managed. Therefore, we believe it should be explicit within the Guidance that the statement of effectiveness should focus on the material internal control and risk management systems, relating to the management of, and reporting over, the principal risks identified by the company. For the avoidance of doubt, we believe that the effectiveness statement should capture material internal controls over financial reporting.

We also recognise the increased focus of investors and other stakeholders on non-financial reporting and therefore the importance of any material controls that support such reporting. As stated in our response to Question 16 below, we suggest that 'reporting' is added to the list of examples, rather than replace 'financial'.

In order for companies to consistently apply the reporting requirements, detailed guidance will be needed. We believe that this guidance should be consulted on and provided to companies in its final form with sufficient time for them to implement it. We believe that companies and stakeholders will actively engage in any consultation associated with the finalisation of the guidance. Finalisation of this process is crucial and may lead to the implementation timetable / date needing to be reconsidered.



### *Board responsibility for risk management and internal control*

As the board has responsibility for monitoring an organisation's overall approach to risk management and internal control, we agree that it is the board that should make the statement of effectiveness.

Boards will rightly look to their senior executive team, first-line controls teams, second-line reviewers and internal audit to provide them with the internal assurance required to make this statement of effectiveness. It is therefore critical that there is detailed guidance for those with responsibility for designing and operating a company's risk management and internal control system as well as the board.

### *An explanation for the basis for the board's statement of effectiveness*

We agree that the board should explain the basis for its statement of effectiveness including the process undertaken to obtain the assurance required to make the statement of effectiveness, the reliance on first-line controls teams, second-line reviewers, and internal audit. We would welcome in the guidance some examples, including where a company has "explained" aspects of its approach.

### *A description of material weaknesses identified and any remedial actions*

We agree that material weaknesses identified, and any remedial actions taken should be disclosed. However, as stated in our response to Question 14, we believe that the statement of effectiveness should be at a point in time and not throughout the reporting period. Material weaknesses identified during the year should still be disclosed, however the point in time assessment allows companies time to remediate any control weakness before reporting publicly. We believe that this supports the aim for transparent disclosure to the markets.

For example, we expect many Code adopters will have a Principal risk in relation to cyber. Cyber-attacks are occurring on a more frequent basis, and could have a significant impact on a company's operations if they are successful. A point in time effectiveness assessment would enable a company that had suffered a cyber-attack during the year, but had subsequently remediated the weakness in its risk management and internal control systems, to state that their risk management systems and internal controls are effective at the year end, but also disclose the specific material weaknesses which have been remediated in relation to their cyber environment during the year.

### **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?**

While controls reporting under the Code has historically been based on continuous monitoring, we strongly believe that the board's statement of effectiveness should be at a point in time - and specifically at the balance sheet date. We anticipate that many companies will continuously monitor the operation of material controls throughout the year.

If proposals are not amended and the statement of effectiveness is based on continuous monitoring, we believe that the statement of effectiveness should be restricted to the

reporting period only. We do not consider it practical for boards to make a statement in respect of the period up to the date of approving the annual report and accounts as the board, executives and assurance functions will need to perform work up to that date to support the necessary disclosures – and there would be no time to remediate any adverse findings. This problem will be exacerbated if the audit committee has chosen to obtain external assurance over the statement of effectiveness.

**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?**

We suggest that ‘reporting’ is added to the list of examples, rather than replace ‘financial’ as financial controls and financial reporting controls are not the same. We suggest amending this part of paragraph 29 to read:

*“The monitoring and review should cover all material controls, including financial, operational, compliance and reporting controls, associated with the company’s principal risks.”*

**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?**

The FRC Guidance for directors – as with previous iterations – should be both concise and highly-principled. This should set out the need for companies to adopt/devise a framework as a standard against which to assess the effectiveness of its material internal control and risk management systems, relating to the management of, and reporting over the principal risks identified by the company and for that framework to be identified within the annual report.

As stated above, we believe there is also a role for more detailed guidance for executive management and those responsible for implementing and operating the processes and controls, underpinning attestations and disclosures. This will be a change from previous practice, however we envisage that this will be something the FRC wishes to take forward as it transitions to ARGA and takes on more of an “improvement regulator” role. Such detailed guidance will:

- support companies comply with Code as the regulator intends, in a proportionate and pragmatic manner;
- help to drive consistency of the standard applied so that large and small Code adopters improve their corporate governance, including their risk management and internal control systems; and
- avoid unnecessary cost burdens for companies.

The guidance for those with executive responsibility for designing and operating a company’s risk management and internal control system should set a minimum standard covering:

- *The type and nature of controls expected* – setting this out within guidance will help companies identify what the key controls are.

- *The level of precision directors should be using and documenting for their internal controls* – without this level of detail within the guidance, effectiveness statements will not be comparable between companies.
- *The documentation/evidence companies should be required to maintain in order to demonstrate the effectiveness of their internal controls* – this will be important to support any audit / assurance obtained over the effectiveness statement. Without this detail, it will be left to internal auditors or external auditors/assurers to determine what is deemed to be sufficient and appropriate evidence.
- *References to relevant frameworks* – providing examples of relevant frameworks will help to ensure that companies apply the intended level of rigour, making the effectiveness statements more comparable. This would also support dual-listed entities who already comply with another international standard.
- *How the requirements apply to non-financial risk management systems and internal controls, including materiality* - Materiality for financial statements is generally understood – auditors include detailed disclosures within the Auditors Report on the level on materiality they have applied when assessing financial statement disclosures. In contrast, materiality applied by companies to all disclosures within the annual report and accounts is less well understood; the FRC Lab states as part of their call for evidence for “Materiality in practice”, “*determining what is or is not material is highly subjective and involves considering not only quantitative aspects but qualitative ones as well. This can present challenges for companies, especially in light of a growing focus on non-financial information.*” In our view, without a clear consistent understanding of how materiality should be applied, companies will not consistently identify the material controls or consistently assess material weaknesses over their non-financial risk management and internal controls, leading to challenges for users of the accounts on how to interpret the results.

We are also supportive of guidance for auditors on how they should address the board’s statement of effectiveness of risk management and internal control systems, the responsibility of the auditor with respect to identifying control failures, and how such statements interact with any control deficiencies reported as part of the audit. We comment on this further in our response to Question 18.

**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?**

*Effectiveness*

Clearly articulating what constitutes an effective risk management and internal control system will be crucial to achieving the desired outcome of greater trust in corporate governance and

reporting. Consequently, we believe that the FRC should issue clear guidance on what might constitute an effective risk management and internal control system, the role of each company's risk appetite in reaching such a conclusion, and what the scope of any audit/assurance activity over any aspect of the statement may entail. Without this guidance there will inevitably be a high degree of variability across companies in the rigour of the exercise underpinning the statement of effectiveness; one company with a higher risk appetite than another company may take a different view on "operated effectively".

We understand that the planned guidance will be written with boards in mind, however without detailed guidance for the operators of the internal controls and risk management systems and independent assurers, there will inevitably be a high degree of variability across companies in the rigour of the exercise underpinning attestations.

#### *Material Weaknesses*

The existing [Guidance on Risk Management, Internal Control and Related Financial and Business Reporting](#) "requires" boards to explain what actions have been or are being taken to remedy any significant failings or weaknesses, yet we rarely see deficiencies over internal controls reported in the UK (for those companies which only comply with the UK Corporate Governance Code). We believe a significant contributing factor to this is the lack of a standard benchmark against which to assess and report deficiencies against.

We note that the new guidance issued with the revised Code will discuss what may constitute a material (and therefore reportable) weakness and concur that it will ultimately be for the board to use their professional judgement to determine which weaknesses are material to their specific circumstances. Nevertheless, any definition needs to be sufficiently robust to prevent abuse of the flexibility inherent in the UK corporate governance framework.

#### **Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?**

##### *Audit and assurance*

As we set out in our response to BEIS's consultation on Restoring Trust in Audit and Corporate Governance, we do not believe the UK capital markets will benefit from a strengthened internal control reporting regime as fully as the US capital markets have done without mandated external auditor assurance along with continued regulation of the external audit firms and individual audits to drive consistency across audit firms and companies. Without annual external assurance on the directors' attestation there would be:

- less incentive for a company to embed a sustainable strengthening of the internal control framework
- less incentive for a company to report deficiencies externally
- a risk that the level of severity of deficiencies identified will be downgraded

However, we understand that the question of mandatory external audit / assurance is beyond the scope of the UK Corporate Governance Code and recognise that the AAP provides boards with the opportunity to explain whether, and if so how, they intend to seek external assurance

in relation to the effectiveness of internal controls over financial reporting. There are currently no auditing standards that would facilitate the execution of such assurance, nor over the resilience statement, and we would welcome guidance setting out how this assurance would be envisioned to be executed.

Within the context of the statutory audit of financial statements, there are existing requirements for auditors to report whether there is a material inconsistency between the section of the annual report that describes the review of the effectiveness of the risk management and internal control systems (Provision 29 of the existing Code) and their audit knowledge. FRC Bulletin 2006/5 *The Combined Code on Corporate Governance: Requirements of auditors under the listing rules of the Financial Services Authority and the Irish Stock Exchange*, which provides guidance for auditors in this area, was written at a time when companies didn't make explicit statements on the effectiveness of their internal controls. If proposals go ahead as written (and a statement of effectiveness of risk management and internal control systems is required), we recommend that the FRC revisit and revise the Bulletin.

#### *Implementation costs and challenges*

The most significant impediment to a strengthened internal controls framework for companies, is the transitional cost of implementing the required changes to systems, processes and controls before these costs then reduce to a maintenance or "business-as-usual" level.

For each Code adopter, the transitional costs of implementation will depend on the desired outcome and the level of effort required to achieve and maintain it. However, based on the Provision as currently drafted, we believe that transition costs for most Code adopters will be significant. These costs will be significantly reduced if the guidance is clear, and the statement of effectiveness is a point in time assessment, focused on material internal controls and risk management systems, relating to the management of, and reporting over the principal risks identified by the company.

**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)?**

We are supportive of retaining the current Provision 30 without change. To remove any potential uncertainty, we recommend that it is clarified within a footnote to the Code that companies complying with the going concern element of the statutory Resilience Statement requirements will be compliant with this provision.

**Q20: Do you agree that all Code companies should continue to report on their future prospects?**

We agree that all Code companies should continue to report on their future prospects. Removing Provision 31 altogether would leave a gap in reporting on future prospects for those companies that are not required to comply with the statutory Resilience Statement

requirements or choose to do so voluntarily, therefore we are supportive of it staying within the Code.

**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?**

We agree that the proposed Code as drafted is sufficiently flexible for non-PIE Code companies to report on their future prospects in ways other than the Resilience Statement.

**Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?**

We are supportive of the amendments to current Principles P, Q and R that stress the importance of ESG objectives when seeking to align executive remuneration to company performance.

We are also supportive of the new reference to 'workforce conditions and pay' within the list of factors that remuneration committees should consider when authorising remuneration outcomes.

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

We have doubts over the effectiveness and practical application of malus and clawback arrangements *per se* and note that in practice, boards and remuneration committees usually favour using their powers of discretion to amend remuneration downwards rather than evoking any malus provisions.

To improve transparency in this area, we suggest the final paragraph of Provision 40 be amended from:

*"Companies should set out the use of their malus and clawback provisions in the last five years"*

to read:

*"Companies should set out the use of their malus and clawback provisions, and any use of discretion to override formulaic outcomes, in the last five years."*

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

We believe the proposed changes to current Provisions 40 and 41 – particularly the reference to ESG factors and clarifying the expectations around engagement with shareholders and the workforce – will improve the quality of remuneration reporting.

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

Given the increased access to gender pay gap reports and disclosures on company websites, we are supportive of removing the reference to pay gaps and pay ratios from current Provision 41 to prevent duplicate disclosures within annual reports.

**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?**

*Artificial Intelligence*

As discussed in our KPMG Board Leadership Centre paper '[Acceleration of AI ups the ante on governance](#)', rapid advancements in artificial intelligence (AI) and the implications for governance and board oversight are front and centre for many boards.

Given the legal and reputational risks posed by AI, many companies may need to take a more rigorous approach to AI governance, including (i) monitoring and complying with the patchwork of rapidly evolving AI legislation, (ii) implementing emerging AI risk management frameworks, (iii) securing AI pipelines against adversarial threats; and (iv) assessing their AI governance structure and practices to embed the guardrails, culture, and compliance practices that will help drive trust and transparency in tandem with the transformational benefits of AI.

However, as important as AI risks and opportunities are, they are just one of many potentially existential risks facing companies today. Climate change, geopolitics and other risks also present many governance challenges. For this reason, we do not propose any amendments to the Code in respect of AI at this stage.

*Legal and Compliance*

The Code refers to the roles of company secretary, compliance, and internal audit. We believe general counsel also play an important role within a company's corporate governance and therefore should also be referred to within the Code where relevant. More specifically, guidance should be included in relation to the access that the board should have to the general counsel, as well as the arrangements to support the independence of the general counsel.