ip group
visionary ventures

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13 September 2023

UK Corporate Governance Code consultation
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

By email: codereview@frc.org.uk

Re: UK Corporate Governance Code consultation

Dear Sir/Madam,

We welcome the opportunity to respond to the UK Corporate Governance Code consultation.

IP Group plc ("IPG", or the "Group") is a FTSE250-listed venture capital investor with deep sector expertise in Deep Tech, Life Sciences and Cleantech employing c.100 people in the UK, Australia and Hong Kong. Our business model enables us to systematically build businesses to maximise long-term financial and societal return from our capital and expertise.

We take a consistent and deliberate approach to making investments, aligned to our purpose and ethical investment framework. We focus capital, resources and expertise on investments that can make a positive difference and where we can optimise returns through leveraging our existing strengths and adding value to the growth journey.

IP Group's role as a venture capital investor and corporate director of a number of its UK public and private portfolio companies, as well as being a premium listed entity, means we are well positioned to provide feedback on the benefits and challenges of the proposed changes to the UK Corporate Governance Code (the "**Code**"). We are supportive of these changes being applied via the Code which preserves an adaptable framework for the governance of UK Public Interest Entities.

We believe that the need for reform must be appropriately balanced with supporting high-potential UK companies through the growth and development phase of their corporate maturity journeys and to ensure the UK remains an attractive destination for doing business and as a listing venue. In doing so, we are largely supportive of the changes proposed via the Code but ask the FRC to be mindful of the cost to businesses of implementing such changes on limited time scales and therefore urge you to provide at least a 24-month lead time post the publication of detailed guidance before the changes apply. We also believe that the Code revisions should follow finalisation of the reforms which progress following the consultation on 'restoring trust in audit and corporate governance' and should not anticipate what these might be.

The Group does not currently meet the 750+ employees and £750m+ turnover test and are therefore not mandated to meet the new corporate reporting requirements outlined by BEIS that are expected to be implemented by secondary legislation but note that we will, following the publication by the FRC of its associated guidance, give due consideration to voluntarily complying with the Code proposal to publish an Audit and Assurance Policy given our position as a premium listed public company.

Summary of responses to the consultation document

Detailed responses to the specific consultation questions that we consider to be most relevant to the Group and its experiences are shown at Appendix A within this letter.

A summary of our position on the issues that we consider to be most material is as follows:

1. We consider that aspects of the proposed amendments insofar as they relate to the strengthening of risk management and internal controls are disproportionate without clarifying guidance as to how they should be applied. We note that many government, listing authority and regulatory reforms in consultation seek to simplify the governance framework in the UK while the proposed Code revisions are prescriptive and extend current obligations without any cost/benefit analysis.

   Of particular significance is the proposal to include the monitoring of all narrative reporting within the remit of audit committees and the change of the reference from ‘financial’ to ‘reporting’ controls, both of which are potentially hugely expansive. Therefore, should this change proceed, clarification in associated guidance to the Code as to how information is scoped in or out of the Annual Report and Accounts and how the materiality threshold should be applied is essential.

2. We request that at least a 24-month minimum lead time post publication of detailed guidance be provided to allow companies to implement the required changes to their business. As a Group we have taken a keen interest in the expected new regime, responding to the initial ‘restoring trust in audit and corporate governance’ consultation in July 2021 and while we awaited the exact requirements of the new framework, we have been proactive and undertaken a programme of activities that will enable a smooth transition to the expected new regime.

   However, the exact requirements of the expected regime will take time to implement and to do so in a way that does not incur too great a cost, unnecessary business disruption and allows for a sufficient testing and remediation phase. Therefore, this additional implementation time will be essential and should follow publication of the final reforms.

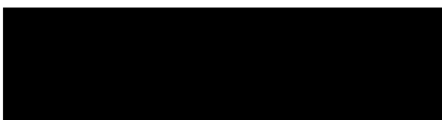
3. We question the value of prioritising direct engagement with shareholders on matters such as the scope of work performed by the external auditor. We consider that the members of audit committees (who are, after all, representatives of shareholders and other stakeholders) possess the relevant skills and experience to take the appropriate actions. While shareholder feedback can often be helpful and welcome, it is not the case that all feedback from individual shareholders is made in the best interest of all shareholders, whereas that consideration is properly a judgement to be made by the Board on which sit a majority of non-executive directors. We consider it unnecessary and potentially also unhelpful to include this mandate within audit committees' responsibilities. As an alternative we suggest including in the Code that audit committees should give proper consideration to any shareholder or wider stakeholder feedback received.

4. We stress the importance of the FRC’s role in communicating to all stakeholders, including proxy advisory groups, the operation of the ‘comply or explain’ framework for the provisions of the Code, under which providing a sufficiently detailed explanation does not indicate non-compliance with the Code. We have seen proxy advisory groups in the past create their own limits which are more stringent than the provisions contained in the Code, or completely disregard a properly justified explanation of non-compliance, which makes it difficult to satisfy the requirements of all interested stakeholders and/or is in conflict with what we believe the FRC intend by having such provisions on a ‘comply or explain’ basis. We wonder therefore if the FRC might consider changing its wording to ‘apply or explain’ to make it clearer that explanation can be consistent with compliance with the Code.

   A consistent standard across the industry and full regard being given to properly justified explanations would be beneficial to all and we see the FRC’s outreach to these groups is essential in this regard.

We hope that these responses are useful as you consider the appropriate outcomes and conclusions from the consultation and would be willing to provide further thoughts or inputs if that would be helpful.

Yours faithfully,



APPENDIX A:

Section 1 – Board leadership and company purpose

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

We are generally supportive of improving and giving prominence to outcomes that illustrate the impact of governance activities.

Question 2: 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?

IP Group already reports on climate in relation to the Group's strategy both in mandatory TCFD and SECR reporting as well as describing 'Impact' as one of the Group's key strategic pillars.

It is unclear from the proposed amendments to the Code whether compliance with similar reporting obligations will be sufficient to meet this requirement. There are a number of overlapping reporting obligations across the Companies Act, non-financial narrative reporting requirements, Listing Rules and Code, and the FRC should ensure that any changes to the Code in this regard are proportionate, avoid duplication and strike an appropriate balance with respect to the burden placed on companies by the Code. We think it would be better if the Code incorporated by reference the evolving regulatory and legal requirements rather than adding a level of duplication.

Section 2 – Division of responsibilities

Question 4: Do you agree with the proposed change to Code Principal K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?

The Group benefits from the expertise of its Board members, especially the non-executive directors who provide a breadth of experience and external viewpoints. We are supportive of there being no arbitrary maximum number of board appointments put forward for non-executive directors. Assessing the external commitments of the Group's executive and non-executive directors and their ability to discharge their responsibilities effectively is a matter for the Group's Chair and the Nomination Committee to consider as part of overall Board effectiveness and they already do this effectively utilising the annual Board performance reviews and annual individual director assessments. Given the Group does this already, it is comfortable with the Code making this explicit. We also have no objection to full-time executive directors being limited to one non-executive position in a FTSE100 company or other significant appointment.

We have seen proxy advisory groups and some investors in the past create their own limits which are more stringent than that contained in the Code which makes it difficult to satisfy the requirements of all interested stakeholders. We request that the FRC is mindful of proxy advisory groups and certain investors implementing their own fixed number approach and impress on them that each directorship should be considered on its own merits. Consistent guidance across the industry would be beneficial to all and we see the FRC's outreach to these groups, including, in the case of investors, through updates to the stewardship code, is essential in this regard.

Question 5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?

The Group is generally supportive of transparency in its reporting but, in this case, it strongly believes that it should always remain the primary responsibility of the Chair and the Nomination Committee to (i) review the external commitments of each of the Group's directors, as these can vary considerably in terms of time required and individual directors vary considerably in their ability to take on a number of additional roles; and (ii) assess whether and how each director has sufficient time to undertake their role effectively as part of its annual board evaluation cycle and individual one-to-one director assessments and report on the outcome of this assessment, which the Group already does. The non-executive members of the nomination committee (who are, after all, representatives of shareholders and other stakeholders) possess the relevant skills and experience to undertake this review and assessment and to take appropriate actions as a result. Therefore, whilst the Group is supportive of the addition to Code Principal K (as per its response to question 4 above), it does not agree with the proposed addition to Code Provision 15 and believes this should be deleted in its entirety.

Section 3 – Composition, succession and evaluation

The Group is generally supportive of the proposed changes and has no material feedback to provide in this section.

Section 4 – Audit, risk and internal control

Question 10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?

IP Group's Audit and Risk Committee reviewed an initial draft Audit and Assurance Policy ("AAP") in December 2022 prepared by management in response to the Government's Response Statement in May 2022 and the Group is giving due consideration to voluntarily preparing and reporting on this policy in the future, notwithstanding the fact that the Group may not meet the statutory 750+ employees and £750m+ turnover test which would make this a mandatory requirement. We consider the AAP to be a sensible foundation for risk management of listed companies and consider consistency across the peer group would be welcome.

The development of the Group's AAP is stalled while we await the necessary detailed requirements. We consider that it would be sensible to delay first reporting of the AAP under the Code until at least the secondary legislation is passed which mandates it for companies meeting the 750+/£750m+ criteria and ideally not for at least 24 months after the detailed guidance is provided to companies to allow for a thorough implementation plan which is not unnecessarily disruptive.

Question 11: 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 consider that Audit Committees are best placed to (i) monitor the integrity of narrative reporting, including sustainability matters, (ii) review any significant reporting judgements, (iii) develop, implement and maintain an AAP, (iv) promote effective competition during an audit tender process and (v) develop and implement a suitable non-audit services policy.

Importantly, and further discussed at Question 12 below, Audit Committees should not be mandated to set ESG strategies, perform ongoing monitoring of agreed metrics or indeed set the appropriate metrics and instead their focus, unless otherwise agreed by a company that so wishes, should be on monitoring the integrity of narrative reporting and the reporting of key metrics in this area.

We note the reference to the Minimum Standard for Audit Committees regarding the external auditor and consider this a sensible reference and effective way to avoid duplication.

With respect to the proposal to supplement audit committees responsibilities to include directly engaging with shareholders and other stakeholders on the role of the audit committee, scope of work of the external auditor and the approach to the audit and assurance policy we are of the view that the non-executive members of audit committees (who are, after all, representatives of shareholders and other stakeholders) possess the relevant skills and experience to take the appropriate actions. While shareholder feedback can often be helpful and welcome, it is not the case that all feedback from individual shareholders is made in the best interest of all shareholders, whereas that consideration is properly a judgement to be made by the Board on which sit a majority of non-executive directors. We consider it unnecessary and potentially also unhelpful to include this mandate within audit committees' responsibilities. Companies will continue to retain the discretion to seek ad-hoc feedback from shareholders and other stakeholders as it considers appropriate and to also take into account and respond as appropriate to any feedback received. As an alternative we suggest including in the Code that audit committees should give proper consideration to any shareholder or wider stakeholder feedback received but note they will have limited control over the quality of feedback provided, or if any feedback at all is provided.

We note that we have observed limited engagement from shareholders to date on such matters and consider that, investors could apply a house policy approach instead of making an informed evaluation on the circumstances of individual companies and stress the point that non-executive directors and committees are best placed to consider these matters on their behalf.

Question 12: 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 Group is generally supportive of the proposed changes to the remit of the audit committee to explicitly include monitoring the integrity of narrative reporting including sustainability reporting. However, the term 'narrative reporting' is potentially hugely expansive in terms of obligations so clarification of what is or is not to be covered within the Annual Report and Accounts is required and should be limited to what is considered key or material information to readers in the context of the relevant company.

We consider that it is important that the amendments should not limit the ability of the board to reserve responsibility for ESG matters, nor for setting ESG and sustainability metrics. Nor should the amendments limit the ability of the board to delegate such responsibility to other board committees, such as an ESG committee, should it see fit and therefore should not be automatically assigned to audit committees within the guidance.

Question 13: 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?

We think aspects of the amendments are disproportionate without clarifying guidance as to how they should be applied. We observe that many government, listing authority and regulatory reforms in consultation seek to simplify the governance framework in the UK while the proposed Code revisions are prescriptive and extend current obligations without any cost/benefit analysis.

Question 14: 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?

The Group does not consider that continuous monitoring up to the date of the annual report release is practical or feasible and instead we view it as unduly onerous and in excess of even the US SOx regime. Instead, we feel a point in time approach, such as quarterly, would achieve the required outcomes sought from the proposed change. Additionally, we feel that the reporting period should be up to the balance sheet date rather than the date of the annual report, again for practical and feasibility reasons. To supplement this Boards could be required to report on any material deficiencies identified up to the date of reporting, a less onerous requirement than providing confirmations.

Question 15: 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?

The Group acknowledges that the expansion of "financial" controls to "reporting" controls is sensible due to the high profile of "front-end" disclosures including ESG reporting, however 'reporting' is potentially hugely expansive in terms of obligations so some clarification of what is or is not to be covered within the Annual Report and Accounts is required.

Question 16: To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal control systems?

The Group will welcome updated detailed guidance setting out possible structures, responsibilities, actions and recommendations for the review of the effectiveness of risk management and internal control systems while allowing companies to maintain flexibility and therefore allowing adaption to each company's particular circumstances. Guidance in relation to possible structures will provide helpful context while organisations implement the required changes to meet the new internal control regime's requirements with confidence.

Question 17: 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?

The Group will welcome practical examples and guidance regarding the meaning of key items including 'effective risk management and internal control' and 'material weakness'. If no clear expectation is set there is a risk that more risk averse companies would disclose more deficiencies than those with a different interpretation of what constitutes being 'effective' or what a 'material' weakness is. Clearly such discrepancies would not be helpful for investors or analysts.

Question 19: 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)

Yes.

Question 20: Do you agree that all Code companies should continue to report on their future prospects?

Yes.

Section 5 – Remuneration

Question 22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?

Overall, we considered the proposed changes to be balanced and will simplify our current Directors Remuneration reporting requirements without major change required to our current policies. However, one point to note on including alignment to company values with remuneration outcomes is detailed as follows:

Company values are usually less tangible than the purpose, and of less direct relevance in setting annual performance targets. As such, adherence with this part of the proposed Code could potentially lead to some companies engaging in a "window dressing" exercise (for example, bonus is not impacted and the Directors Remuneration Report or Remuneration Committee minutes simply includes a sentence which confirms executive directors operated in line with the stated values), or it could introduce a requirement to set stretching, measurable targets around values/behaviours, which, being necessarily subjective in nature, could potentially be both onerous on the corporate and counter-intuitive from a shareholder perspective, who generally prefer objectively measurable metrics to underpin bonus.

Question 23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?

With respect to the proposed malus and clawback reporting within the annual report at Provision 40 we would suggest, that given the rarity of exercising the malus and clawback provisions and to avoid the inclusion of boilerplate negative confirmation language, reporting on the use of these provisions should only be made if the provisions have actually been used in the last reporting period, together with a clear explanation of the circumstances surrounding their use.

Additionally, we consider that the proposal for companies to set out the use of their malus and clawback provisions in the last five years was too long to provide on a lookback basis given much could have changed over the previous 5 year period and indeed may not be relevant to the company’s current management team. We suggest that this period be shorted to 2 years.