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Dear Ms Horton

**Consultation on a revised UK Corporate Governance Code – February 2018**

Link Market Services are part of the Link Group and provide share registration and value-added services to over 5 million shareholders on behalf of more than 1,100 companies in the UK and Ireland. We are responsible for share registers and share registration, corporate actions, share plans, share dealing and company secretarial support (via our Company Matters business) across a base of clients that range from small or recently floated to large multinationals.

We also provide custody and settlement operation supporting overseas companies listing on the UK market and a share dealing service primarily aimed at shareholders in its client companies. Some of these client companies are based in other EU countries. Jai Baker, our Head of Industry, chairs the ICSA Registrars Group and Link sit on the ICSA Company Secretaries Forum. We are also a member of the Quoted Companies Alliance.

Thank you for the opportunity to respond to your proposals in the consultation. We are supportive of the majority of the proposed revisions to the Code and welcome the wide ranging review to refresh what is already a mature and strong corporate governance code. We also support the continuing use of the ‘comply or explain’ model. This allows companies the flexibility to make the arrangements that suit their particular circumstances best. Please see our responses below to the questions we feel are relevant to our operations and clients.

| Q1. Do you have any concerns in relation to the proposed Code application date? |
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| The revised Code will require all companies subject to the Code to work carefully to implement the changes. This may be more challenging for some companies, especially those premium listed companies not currently in the FTSE 350 who benefit from a number of exemptions. Perhaps consideration should be given to allowing smaller companies additional time to complete such changes |

during 2020 rather than 2019?

The changes may be particularly difficult for AIM companies who seek to comply with the Code. These companies are sometimes more prepared to make finer judgements about directors' independence and under the new proposals may have to refresh a large part of their board or replace key directors in order to meet the more prescriptive independence criteria. They face a difficult choice between the risk created by losing a swathe of corporate memory or delaying compliance. There should be an acknowledgement that it may take time for companies to meet the new requirements and they should be able to 'explain' their timeline for implementation.

Q2. Do you have any comments on the revised Guidance?

There are areas within the Guidance that provide more flexibility than the Code. However, external commentators are less likely to take account of the Guidance and/or give it sufficient weight. It is therefore important that the increased flexibility is reflected in the wording of the Code and we make some specific points about this in answers to the questions below.

There are some deletions from the Code that we feel may benefit from being maintained at least within the Guidance. The separate section E of the current Code on "Relations with shareholders" has been removed. This includes both "Dialogue with shareholders" and "Constructive use of the AGM". The dialogue aspects of the original Code are maintained in Principles and Provisions or Guidance and the requirements around board responses where there is a significant vote of more than 20% against a resolution have been strengthened. However in the "Constructive use of the AGM" E.2.1, 2.2 and 2.4 have been deleted. These sections contain valuable advice and protections around the separation of resolutions, how votes are recorded and publicised and enhance notice provisions to 20 working days for premium listed entities. Shareholders may continue to value these protections and facilities that allow more time for the consideration of the business being proposed in notices by companies at their AGMs and other general meetings. Is there an argument for these aspects to be maintained in the revised Guidance document?

Q3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?

Provision 3 as drafted is not sufficiently helpful for boards trying to tackle this issue. Companies will probably want to use a combination of some, all or none of these methods. Companies should choose whichever approach is most likely to provide effective engagement in their organisation.

Provision 3 should make it clear that the three methods described are not the only options and there are many other suitable methods of engaging with a workforce. The Code could make clear that using one or a combination of the suggested means of gathering the views of the workforce or the alternative methods suggested in the Guidance would be acceptable as well as any other method the board deemed to be acceptable.

Q4. Do you consider that we should include more specific reference to the UN SDGs or other NGO principles, either in the Code or in the Guidance?

No comment.

Q5. Do you agree that 20 per cent is 'significant' and that an update should be published no later than six months after the vote?

Whilst 20 per cent was previously adopted as the relevant measure for boards to consider that a

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| significant vote had been lodged against a resolution this is something of an arbitrary figure and may not be an appropriate measure of significant opposition for the vote on a particular resolution. Boards did have some discretion around what was considered to be significant for their company in the circumstances of the business under consideration by shareholders. Perhaps this should remain in the Code with the 20 per cent retained as Guidance only. Additionally, if it is proposed to define significant within the Code or Guidance, perhaps the opportunity should be taken to review what percentage should be used and whether different percentages should apply to different types of resolutions?<br><br>If 20 per cent is the appropriate level of dissent to trigger the Code requirements where a resolution requiring an over 50 per cent majority is being considered, what would be an appropriate dissent level for a resolution requiring an over 75 per cent majority? Should this be 20 per cent as well or a smaller percentage in proportion to the majority hurdle in question? There are suggestions that 25 per cent may be a more practical significant dissenting proportion to be considered for the Guidance. |
| Q6. Do you agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years? If not, please provide information relating to the potential costs and other burdens involved. |
| In principal, yes. Most companies would wish to strive for the highest standards of corporate governance and therefore the proposed removal of the current exemptions for those Premium listed companies outside of the FTSE 350 does reflect an aspirational approach for all. However, the original argument for using FTSE 350 as a benchmark was presumably because higher market values and inclusion in the FTSE 350 suggested more likely exposure for more investors if these companies were not behaving in accordance with the best standards of corporate governance. This argument still exists but, as standards have risen over the years, the expectation is that, as the corporate governance bar has been raised, standards should be high and equivalent for all Premium listed entities.<br><br>The "exemption removals", as well as the stakeholder engagement enhancements will, as a whole, hit smaller companies harder as they seek to spread their independent director and governance resources across more compliance activities. Independent board evaluation every three years will increase costs for some companies and the interaction with the evaluation and the responses to it will put further pressure on some boards.<br><br>Some guidance on what an external board evaluation should involve and how to report on it might be helpful in maintaining the quality of external evaluations and the board performance/quality. Lower cost external evaluations are sometimes lower quality and it would be unwise to force smaller organisations into exercises that become box-ticking exercises to satisfy the governance requirements but have limited governance value.<br><br>Clearly having a single Code to apply to all companies may simplify the approach to governance but having different benchmarks for different sized organisations is not uncommon. Relatively new legislation, for example on gender pay gap reporting, differentiates between companies with differing levels of staffing. |
| Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent? |
| With regard to Provision 15, we do not believe that removing the judgement of the board re the independence of NEDs is the right approach. Boards need to be refreshed and increasing and diversifying the pipeline of board-ready candidates is essential. However, the board is best placed to assess the independence of individual NEDs and the circumstances of their re-appointment.<br><br>Recent work and initiatives have looked at ways of improving gender and ethnic diversity on boards and on improving the executive pipeline to board appointments. Benefits are and will accrue to companies and influence performance outcomes for the future. It is also possible that these efforts will have an |

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| impact on non-executive pipelines and the availability of diverse and talented candidates to be independent non-executive directors on boards in the future. Removing the possibility for companies to deem a long serving non-executive to be independent beyond nine years or classifying a NED as not independent because they meet the criteria listed in Provision 15 will probably lead to more demand for independent non-executive directors. The impact of the suggested change may be harder for smaller companies to manage.<br><br>Implementing this suggested change without some form of transitional arrangements may put significant pressure on the talent pool as the changeover occurs with a large number of appointments required to be made at the time the changes come into force. When the audit re-tendering arrangements were implemented in recent years, this aspect was factored into the changes to prevent the industry being overwhelmed by many changes being required to take place at one time.<br><br>If board judgement on this matter is to be remover, then in order to transition from the current arrangements to the suggested nine year limit, companies could be allowed to extend each individual director's period of independent office (if they are deemed still to be independent) for one year beyond nine to help smooth changes that are required to be made to the composition of the board.<br>There is also a strong argument that, for NEDs who become Chairs, the nine year independence limit should not be applied in the same way. A 're-start' on appointment as Chair would seem to be appropriate to protect the organisation from unnecessary change and upheaval.<br><br>Where takeovers occur there should be some guidance about tenure for NEDs who have stayed on with the company after a takeover. In a merger of equals or a reverse takeover, the "target" company will form a significant part of the ongoing business and key members of the target's management team may remain in position or be promoted to more influential positions. Is it right that, for a director of the target company who is appointed to the Board of the surviving entity, the clock starts ticking from the date of their original or new appointment?<br><br>With regard to the criteria for establishing independence in Provision 15 and AIM companies, it is worth noting that, for AIM companies (who seek to apply the Code), participation in share option schemes is often used as a way to attract higher calibre NEDs to their board. Under the new Code NEDs participating in these share plans will not be independent. Under the proposed changes in AIM Rule 26, AIM companies will be required to comply with a recognised industry corporate governance code and maintain a "comply or explain" statement on their website. Companies where the majority or all the board cease to be independent as a result of the share options they hold will face a difficult choice of failing to be fully compliant with the Code or relying on an alternative industry governance code. |
| Q8. Do you agree that it is not necessary to provide for a maximum period of tenure? |
| Given the recommendation that nine years is the limit on independence, it is unlikely that a maximum period of tenure need be specified. The nine year period was a useful tool in terms of encouraging the refreshment of the board, creating opportunities to increase diversity and reduce the possibility of long-standing directors becoming overly dominant on the board due to their experience and knowledge of the business. However, as is the case now, boards should retain the right to make judgements about independence and appointments continuing beyond nine years subject to special conditions in connection with re-appointment. |
| Q9. Do you agree that the overall changes proposed in Section 3 of revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole? |
| The revised Code provisions build on the recent FCA Disclosure and Transparency Rules requirements re reporting on diversity and may, by placing the responsibility with the Nomination Committee, ensure more focus on the actions to be undertaken to achieve change. |
| Q10. Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350? If not, please provide information relating to the potential costs and other burdens involved. |

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| Yes. However, it may be necessary to review timeframes for the achievement of the recommendations outside of the FTSE 350. It is also worth noting that smaller companies offer useful development opportunities for less experienced directors. |
| Q11. What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply. |
| Ultimately, it may be necessary for the Code to become specific about ethnicity reporting in executive pipelines if the current proposed actions, together with the changes to the DTRs and the Parker Review's recommendations do not produce change at board level. The annual assessments planned by the Parker Review Steering Committee, to track progress against its recommendations should be considered before any further reporting action is recommended. Furthermore, this needs to be considered against GDPR and an individual's right regarding publishing of personal data. |
| Q12. Do you agree with retaining the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or Companies Act? |
| Yes. But it would be helpful if the guidance could include clarification as to why the duplication is retained and any subtle differences e.g. para 69 on p 14. |
| Q13. Do you support the removal to the Guidance of the requirement currently retained in C.3.3 of the current Code? If not, please give reasons. |
| Yes. |
| Q14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice? |
| Expanding the remuneration committee's remit to "oversee remuneration and workforce policies and practices" and to take these into account when setting executive pay levels seems to be an extremely broad brush of extra responsibility that will require significant additional time and resources at the committee level. The revised Guidance explains that this work means overseeing not only pay, conditions and incentives but also other policies that impact on the workforce and drive behaviours, including policies around recruitment and retention, promotion and progression, performance management, training and development, reskilling and flexible working.<br><br>Paragraph 85 of the consultation paper says "Some companies may feel that it would be more appropriate to delegate some of the oversight for workforce policies to other committees where these exist as they might be better placed to deal with such matters. Examples include sustainability committees, corporate responsibility committees or people committees."<br>Perhaps the wording of Provision 33 could be amended to make it clear that there is flexibility for the oversight of 'workforce policies and practices' to be delegated to other committees, as explained in paragraph 85 of the consultation document.<br><br>Alternatively, the "advice" on delegation could be included in the Guidance to enable company remuneration committees to effectively spread the additional workload and still be responsible for compliance with the new requirements. |
| Q15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance? |

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| No comment. |
| Q16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion? |
| The proposals formalise into the Code an approach that many boards would already take should the need arise and prompt changes to schemes to enshrine such discretion should it be required. |

We would be happy to discuss our comments further if required.

Yours sincerely,

Phil Kershaw
Senior Manager, Industry & New Products