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Dear Catherine

Proposed revisions to the UK Corporate Governance Code

1 Introduction

Mazars, the international, integrated and independent organisation, specialising in audit, accountancy, advisory, tax and legal services, is pleased to offer its response to the above consultation. As of 1st January 2018, Mazars operates throughout the 86 countries and territories that make up its integrated partnership and draws upon the expertise of 20,000 women and men led by 980 partners working from 300 offices worldwide.

2 Our overall views

2.1 Support for the enhanced focus on sustainable success, purpose and culture

We strongly support the enhanced emphasis in the proposed new Code on promoting long-term sustainable success and linked to this the increased focus on the board's role in relation to the purpose, strategy and culture of the business and, in particular, on ensuring they are aligned.

2.2 Welcome broader role for Remuneration Committee

We also welcome the proposal that the Remuneration Committee should have a wider focus on ensuring the approach to remuneration across the business is linked to promoting sustainable success and aligned with its strategy and values.

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2.3 We would refer to the UN Sustainable Development Goals in the proposed new Code

We would support making more specific reference to the UN Sustainable Development Goals in the Code and Guidance as these have been endorsed by governments all over the world and so are a common point of reference for global businesses in the various jurisdictions in which they operate. That said, with 17 SDGs we consider further work is needed on developing fair and balanced ways in which companies can apply and report on them.

2.4 Support increased focus on diversity in proposed new Code

We strongly support the wording of Principle J calling for both appointments and succession plans to promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths. We believe it to be particularly important that if the business is to achieve sustainable success that appropriate attention be paid to all aspects of diversity in the talent coming through on the executive side of the business as well as in the appointment of non-executive directors.

2.5 Amount of work to implement the new code should not be underestimated

We believe boards will need to undertake significant work to implement the revised code in a manner aligned with the spirit of the key changes discussed above, eg with regards to the greater involvement of their workforce, reporting on how they have applied s172 of the Companies Act and the stronger focus on purpose, culture and diversity. We would encourage initiatives both to discuss the importance of focusing on implementation as a matter of priority and on providing practical guidance on ways in which boards might move forward on these issues, including by reference to practice in other countries.

2.6 A fundamental review of the Stewardship Code essential

If boards are to promote sustainable success in their businesses, it is essential that leading institutional shareholders are actively engaged and supportive of such an approach. To secure this, we believe a thorough review and strengthening of the Stewardship Code is needed. We discuss this more fully in our response to Q17 in the consultation. The FRC has taken a leadership role internationally in the development of the concept of a stewardship code and we welcome their continued focus in this area.

3 Avoiding additional burdens on smaller listed companies

We believe the proposed new Code should maintain the following derogations in the current Code in certain areas for smaller listed companies outside the FTSE 350 which have been removed in the proposed new Code:

- directors can be elected for a period not exceeding three years rather than on an annual basis
- only expected to have a minimum of two independent directors rather than at least half the board
- need to have an externally facilitated board evaluation at least every three years (though we support them being encouraged)

4 Retaining board's role to be able to declare directors independent in limited circumstances after 9 years

If a tightening up were to be introduced, as proposed, such that there was an absolute cap of nine years after which independence was deemed not to exist, we believe in the interests of not imposing too many expectations on smaller listed companies that it should only be applied to FTSE350 companies. An alternative approach would be to allow a transition period of two years beyond the 9 years within which the board could deem a director to be still independent so long as they indicated their reasons for doing so as at present.

5 Respective roles of board and CEO in setting strategy

The Code currently indicates that non-executive directors should 'constructively challenge and help develop proposals on strategy'. Provision 10 of the proposed new Code states 'The chief executive is responsible for proposing strategy'. Whilst the two versions can be reconciled the impression conveyed is rather different. We believe it should be clear that the chief executive is responsible for proposing the corporate strategy to the board where it should be subject to constructive challenge and, if appropriate, development. It is vital for the board to be actively involved in the setting of strategy it is to fulfil its responsibility to lead and direct the business effectively.

6 Whether the chair counts as an independent director

Under the present Code the chair should be independent on appointment but thereafter is treated as neither independent or not independent in the sense that they do not count in the determination of the proportion of the board that should be independent, it being 'Except for smaller companies, at least half the board, excluding the chairman should comprise non-executive directors determined by the board to be independent'. The proposed new Code says instead 'Independent non-executive directors, including the chair, should constitute the majority of the board'. We believe the current formulation is preferable in terms of their role leading the board which is made up of both independent and executive directors.

7. 'Whistleblowing' arrangements should remain with the Audit Committee

The current Code in Provision c.3.1 indicates that the Audit Committee should review the arrangements for 'whistleblowing. The new Code in Provision 3 sets this out as a board responsibility. We believe this responsibility is best left with the Audit Committee as its membership is made up of independent non-executive directors.

8 References to relevant audit issues in the section on Audit, risk and internal control

As previously expressed, we consider that appropriate references to the Audit Committee's role in ensuring all eligible firms are able to participate to audit tenders led by it should be included in the revised code.

9 Support more concise Code but some additional issues should have transferred into the proposed new Code

We generally welcome the move to having principles and provisions, without a third category of applied principles, and the more concise way in which the Code is now expressed. In a few areas we consider, however, that important points have been taken out of the Code:

- the challenges of running a successful corporate board (from the Preface)
- the chairman's role in the boardroom (A3 Supporting Principles)

- access to independent professional advice and to the company secretary and Committee resources (Code Provision B.5.1)
 - the board's role with respect to AGMs (E2 Main Principle)
 - the extent of the responsibility to present a fair, balanced and understandable assessment of the company's position and prospects (Supporting Principle C.1)
- We discuss these matters more fully in Appendix 1.

10 Detailed response to consultation questions

Our response to the consultation questions is attached at Appendix 2

11 Mazars and ecoDa to publish report shortly on European corporate governance

Mazars and ecoDa, the European Confederation of Directors' Associations, will shortly publish a report on the results of a survey of directors which looks into the practices of the European listed companies in designing their corporate governance structures and disclosing their corporate governance practices. The report covers 11 EU countries including the United Kingdom. We will send the report to you as soon as it is released.

12 Further discussion

If further discussion of the points raised by us would be helpful, please do not hesitate to contact Anthony Carey, Head of UK Board Practice, or David Herbinet, Global Head of Audit

Yours sincerely



Mazars

Appendix 1 Wording that should be transferred from the current Code to the proposed new Code

1 The challenges of running a successful corporate board

We believe the following paragraph in the Preface of the Code set out a number of the inherent challenges in running an successful corporate board in a concise way and should be retained in the new Code:

‘To run a corporate board successfully should not be underrated. Constraints on time and knowledge combine with the need to maintain mutual respect and openness between a cast of strong, able and busy directors dealing with each other across the different demands of executive and non-executive roles. To achieve good governance requires continuing and high quality effort’.

2 The chairman’s role in the boardroom

The current Code states that ‘The chairman is responsible for setting the board’s agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The chairman should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors’. We believe these ideas should be carried over to the proposed new Code, which is currently not the case, as they are crucial to the effective running of the board.

3 The board’s role with respect to AGMs

The current version of the Code says ‘The board should use general meetings to communicate with investors and to encourage their participation’. Provision 5 of the proposed new version no longer includes such an encouragement. We believe it is very important for the board to encourage active participation by shareholders, as owners, in the governance of the company including through participation in the AGM.

4 Access to independent professional advice and to the company secretary and Committee resources

The current Code states that ‘The board should ensure all directors, especially independent non-executive directors have access to independent professional advice at the company’s expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties’. The proposed new version of the Code is silent on this issue. Making clear directors’ rights in this area is very important in those circumstances where there may be conflict on the board and where, in particular, the non-executive directors may have concerns on decisions being taken.

5 Nature of responsibilities to present a fair, balanced and understandable assessment of the company’s position and prospects

The current Code indicates that ‘the board’s responsibility to present a fair balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements. The proposed new Code only refers to fair, balanced and understandable in the context of the annual report. We believe it should make clear the wider scope of this principle.

Appendix 2 Response to detailed consultation questions

UK Corporate Governance Code and Guidance on Board Effectiveness Questions

Q1. Do you have any concerns in relation to the proposed Code application date?

We consider asking companies to apply the code in respect of accounting periods beginning on or after 1 January 2019 strikes an appropriate balance between enabling companies to prepare properly for the changes in the new code and not having too long an implementation period. It will be important, however, for boards to be aware that they will need to invest the necessary time to prepare to implement the new Code.

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

We regard the Guidance as helpful and support its being structured under the same headings as the revised UK Corporate Governance Code

We believe it would be helpful, however, to review the criteria for determining what goes in the Code and Guidance respectively. In 'Proposed revisions to the UK Corporate Governance Code' it is indicated that 'Some elements of the current Code have been moved to the Guidance. This does not mean that they are no longer important but that the practices are well embedded in company behaviour'. We are not persuaded this provides an appropriate means for determining whether particular issues are dealt with in the Code or Guidance. Even if particular practices are embedded in the behaviour of most boards this does not mean this is true for all boards applying the Code or that it will continue to be the case in the future. Where an issue is important for achieving effective governance we consider it should be covered by the UK Code.

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

In headline terms, we consider the three proposed methods for normally gathering workforce views, namely

- Director appointed from the workforce
- Establishing a formal workforce advisory panel
- Appointing a designated non-executive director

are reasonable.

Whilst recognising that accepted practice will emerge over time in this area and will vary according to circumstances, we consider it would be helpful to provide further guidance on how and also when it would be appropriate to consult with the workforce, e.g. when major decisions are being taken that will affect all members of the workforce or particular groupings as well as on a routine basis. Also, how the workforce is segmented for consultation purposes will be important as especially in the case of a global group operating in many countries and with many business lines this could have a crucial bearing on the dialogue and results that emerge, There is also the question of how this development links up with engagement with recognised trade unions. The amount of time and resource that will be needed to implement this provision in global groups should not be underestimated.

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?

We would support making more specific reference to the UN Sustainable Development Goals in the Code and Guidance as these have been endorsed by governments all over the world and so are a common point of reference for global businesses in the various jurisdictions in which they operate. That said, with 17 SDGs we consider further work is needed on developing fair and balanced ways in which companies can apply them without inappropriate ‘cherry picking’ of selected SDGs that will show the business to be performing well even though there are a number of important alternative areas in which it is having a negative impact on society.

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?

As a practical matter, we think it is reasonable to have a 20% threshold for votes by shareholders against a resolution for the purposes of determining whether there is ‘significant’ concern amongst shareholders as a whole. Any threshold will be arbitrary as it will not take account of the proportion of shares held by the leading shareholders or the extent of their concern but this figure appears broadly reasonable. Our view has regard to the declining level of shares in major listed companies owned by UK institutional investors which is the grouping that is most able to express views on a collective basis when it chooses to do so and thus we would suggest the threshold should not be set at too high a level.

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.

We consider all companies applying the code should be encouraged to have a triennial independent evaluation as we feel they can add significant value if properly undertaken by an experienced facilitator. We also consider the focus should be on the potential value they can create and not only the cost of having them. The cost will vary according to a number of factors including the size of the board and the complexity of board deliberations which will in turn be linked to the scale and complexity of the business.

Even though we undertake board evaluations and so might be thought to favour an extension of the formal expectation through a provision that all listed companies should have them, we believe on balance the provision should continue to only apply to FTSE350 companies recognising that smaller listed companies vary significantly in size and some are relatively small and so there should be a degree of caution before increasing the formal expectations of them.

Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

We agree that, in most cases, nine years is an appropriate period for a director to be considered independent. That said, we are not persuaded there is a problem with the current arrangement whereby there is a presumption of a loss of independence after nine years unless the board explicitly deems otherwise and explains its reasoning. This seems a reasonable safeguard against boards keep board members in place for an unduly long period.

If a tightening up were to be introduced such that there was an absolute cap of nine years after which independence was deemed not to exist, we believe in the interests of not imposing too many expectations on smaller listed companies that it should only be applied to FTSE350 companies. An alternative approach would be to allow a transition period of two years beyond the 9 years within which

the board could deem a director to be still independent so long as they indicated their reasons for doing so as at present.

One of the implications for FTSE 350 companies of a board member not being considered independent is that it can require two additional appointments if the (new) expectation of a majority of board members, including the chair, being independent are to be met, eg where there is a board has nine board members of whom five including the chair are independent. If, say, one is now deemed not independent by virtue of there being an absolute cap of nine years on independence, five would not now be independent and so there would be a need for six independent directors, including the chair, increasing the board size by two. Incidentally, only one new director would be required if the existing formulation that at least half of the board, excluding the chair, should be independent were retained.

Q8. Do you agree that it is not necessary to provide for a maximum period of tenure?

We do not consider this is a major issue in practice and so would not add a new expectation on maximum tenure.

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?

We strongly support the wording of Principle J calling for both appointments and succession plans to promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.

We believe it to be particularly important that if the business is to achieve sustainable success that appropriate attention be paid to all aspects of diversity in the talent coming through on the executive side of the business as well as in the appointment of non-executive directors.

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.

In view of the importance of securing diversity in leadership roles across the economy and the potential business benefits it brings, we would support applying the Hampton-Alexander recommendations to all listed companies

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.

Far less improvement has generally been made on diversity with regards to ethnicity, as compared to gender, both in the case of board membership and the development of the executive pipeline. Whilst much remains to be achieved on gender diversity, shining the spotlight on this area and introducing targets for FTSE350 companies does seem to have helped. We therefore believe that enhanced reporting on levels of ethnicity both as regards executive pipelines and in board membership, is likely to lead to welcome additional action to move forward in this important area.

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, we believe it is helpful to have related requirements/expectations in a single place but where there are mandatory requirements, rather than ones where boards may 'explain' rather than 'comply', this should be made clear along with their origin.

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.

It seems appropriate, as proposed, to deal with the terms of reference of all committees in a similar way but we would support there being a code expectation that they all be available on the corporate website. We believe this is preferable to their just being a code expectation, as proposed, for the main roles and responsibilities of the audit committee to be disclosed. Where issues arise, having access to the detailed terms of reference rather than a precis of them can be helpful.

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?

We fully support a wider remit for the remuneration committee such that it satisfies itself that remuneration and *related (proposed additional word)* workforce policies and practices promote its long term success and are aligned with its strategy and values. The additional word 'related' is proposed to avoid the remuneration committee ending up with responsibilities related to all aspects of HR.

Q15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?

Please see our response to Q16 below.

Q16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?

In this as in other areas covered by the Code, the Code sets the framework, how well particular provisions and principles are implemented in practice by boards will depend on the skills, experience and determination of the board members involved, in this case members of the Remuneration Committee, and the effectiveness of the challenge and support they provide in given areas. It will also be significantly influenced by the degree of investor interest in ensuring remuneration is closely aligned with long-term sustainable success.

UK Stewardship Code Questions

Q17. Should the Stewardship Code be more explicit about the expectations of those investing directly or indirectly and those advising them? Would separate codes or enhanced separate guidance for different categories of the investment chain help drive best practice?

We believe a thorough review, development and strengthening of the Stewardship Code is needed as a matter of priority. We recognise it was introduced a number of years after the UK Code on Corporate Governance, or its predecessors, but it is still in a relatively embryonic state.

Thought is needed on the appropriate composition of the group to undertake such a review: in our view it should include significant representation from investors but also those representing the ultimate beneficiaries (e.g. employee pension fund trustees), representatives of civil society, independent experts on corporate governance and board members.

Given the international reach of major investors an effective code needs to be supported by leading international investors and so whether any revised code is continues to be applicable only in the UK or is more international in nature needs consideration as does how one secures implementation of a much more effective code. In view of the impact of major investors on the global economic system, this would seem to be an important issue for major governments, perhaps involving the G20.

In making the above comments, we would recognise the path-breaking role of the FRC in developing the first Stewardship Code and believe it should continue to play a major role in taking the code to the next stage of its development.

An effective Stewardship Code would be more explicit about the respective roles of different players in the investment chain with the share owners retaining responsibility for the way in which those to whom they sub-contact responsibilities act.

In the above context, there should, for example, be clarity on the expectations of proxy advisors as this is an area that causes significant concern to boards with regard to whether the advisers are willing to consider explanations properly or rather expect automatic compliance with provisions in national corporate governance codes.

We are open on whether there should be separate codes for the different participants in the investment chain or separate parts of the same code, applicable as relevant, but there should be clear principles to be applied, if applicable to a particular group, and expectations set out in provisions to be implemented on a 'comply or explain' basis. This would be a strengthening on the position with regards to the current Stewardship Code.

Q18. Should the Stewardship Code focus on best practice expectations using a more traditional 'comply or explain' format? If so, are there any areas in which this would not be appropriate? How might we go about determining what best practice is?

As discussed above, we consider a 'comply or explain' approach should be adopted.

The group we propose above to review the code would be responsible for identifying best practice and it would naturally have regard to that currently being applied by leading investors as well as taking account of relevant papers and reports in the area.

Q19. Are there alternative ways in which the FRC could highlight best practice reporting other than the tiering exercise as it was undertaken in 2016?

We suggest this issue should be considered as part of our proposed wide-ranging review of the Stewardship Code

Q20. Are there elements of the revised UK Corporate Governance Code that we should mirror in the Stewardship Code?

At present the principles in the Stewardship Code are expressed at a very high and generic level and this should be reviewed. In general terms, there should be far more information on the purpose, culture, strategy, leadership, people issues including remuneration, and risk management/audit arrangements of leading institutional investors commensurate, as mentioned, with their role as major players in the global economic system. In saying this, we recognise, for example, that listed businesses with major investments, such as insurance companies, make disclosures at the corporate level.

Q21. How could an investor's role in building a company's long-term success be further encouraged through the Stewardship Code?

The investor's role in building a company's long-term success could be fostered by a Stewardship Code that expected shareowners and their representatives to consider the key issues contributing to long-term success such as those mentioned in the response to the previous question.

Our proposed review would also explore both whether engagement was on a wide enough range of issues by investors with companies in which they owned shares- at present it tends to focus on remuneration and board composition- and also whether the time committed to engagement is satisfactory. Many companies outside the FTSE100 often express the view that it is difficult to get their institutional investors to engage with them and engagement is vital to promoting long-term sustainable success.

Q22. Would it be appropriate to incorporate 'wider stakeholders' into the areas of suggested focus for monitoring and engagement by investors? Should the Stewardship Code more explicitly refer to ESG factors and broader social impact? If so, how should these be integrated and are there any specific areas of focus that should be addressed?

It clearly is essential to incorporate 'wider stakeholders' into the areas for monitoring and engagement given the vital contribution they make to modern businesses and similarly there should be more reference to ESG factors because they are important to the stakeholders driving the success of the business and to wider society. They have a crucial bearing on a company's licence to operate and are vitally important to business if it is to make a proper contribution to the society of which it is an integral part. Substantial reputation risk, possibly threatening the business as a going concern, also often arises when problems occur in the ESG area.

Q23. How can the Stewardship Code encourage reporting on the way in which stewardship activities have been carried out? Are there ways in which the FRC or others could encourage this reporting, even if the encouragement falls outside of the Stewardship Code?

We believe these issues should be considered by the wide-ranging stewardship review which we propose but the obvious means is by including a relevant provision on reporting in the revised Stewardship Code.

Q24. How could the Stewardship Code take account of some investors' wider view of responsible investment?

We would again support this issue being considered as part of our proposed wide-ranging stewardship review.

Q25. Are there elements of international stewardship codes that should be included in the Stewardship Code?

As discussed above, this raises the fundamental issue of whether with major investors being international in nature a national Stewardship Code can be fully effective or whether the primary emphasis should be on developing an international code to which the world's major investors would sign up possibly with some variations/add ons to take account of national circumstances.

Q26. What role should independent assurance play in revisions to the Stewardship Code? Are there ways in which independent assurance could be made more useful and effective?

We believe there should be much stronger assurance requirements related to statements made by those adopting the Stewardship Code. This issue should be considered by our proposed stewardship review.

Q27: Would it be appropriate for the Stewardship Code to support disclosure of the approach to directed voting in pooled funds?

We suggest this issue be addressed as part of our proposed wide-ranging stewardship review.

Q28: Should board and executive pipeline diversity be included as an explicit expectation of investor engagement?

Yes most definitely and some investors deserve credit for taking a strong interest in this area.

Q29: Should the Stewardship Code explicitly request that investors give consideration to company performance and reporting on adapting to climate change?

Our previous answer in effect addresses this issue. Investors should consider climate change issues where these have an important impact on the sustainable success of the business and as importantly, the other way around, where its performance has a significant impact on climate change, i.e. how it is managing salient externalities.

Q30: Should signatories to the Stewardship Code define the purpose of stewardship with respect to the role of their organisation and specific investment or other activities?

In the context of our views on the need for a thorough review of the Stewardship Code, our tentative view would be that the Stewardship Code should define the purpose of stewardship with respect to the role and activities of the organisation applying it

Q31: Should the Stewardship Code require asset managers to disclose a fund's purpose and its specific approach to stewardship, and report against these approaches at a fund level? How might this best be achieved?

In the context of our views on the need for a thorough review of the Stewardship Code, our tentative view would be that asset managers should disclose a fund's purpose and its approach to stewardship and report against these at a fund level.