

c/o Rothschild GmbH | Börsenstraße 2-4 | 60313 Frankfurt/Main

Catherine Horton  
Financial Reporting Council  
8<sup>th</sup> Floor  
125 London Wall  
London  
EC2Y 5AS

**Via email:** [codereview@frc.org.uk](mailto:codereview@frc.org.uk)

28 February 2018

Dear Madam,

**Consultation on the Proposed Revisions to the UK Corporate Governance Code**

I am writing to you as the Chairman of the Supervisory Board of TUI AG.

We have set out our responses to the consultation questions on the proposed Revisions to the UK Corporate Governance Code in the Schedule to this letter. We have also set out some further general remarks in this letter below.

This response is a joint response made on behalf of both the Supervisory Board and the Executive Board of TUI AG.

TUI AG (“the **Company**”) is the ultimate parent company of the TUI Group, the world’s leading leisure tourism group. The Company is incorporated and domiciled in Germany, and so, in addition to other legislation, the German Stock Corporation Act (*Aktiengesetz*) and the German Co-Determination Act (*Mitbestimmungsgesetz*) mandatorily apply to the Company. The Company also adheres to the German Corporate Governance Code.

However, since the merger in 2014 of the Company with former TUI Travel PLC the Company has had its prime listing on the London Stock Exchange and is a member of the FTSE 100 (ISIN GB0001383545). In the merger announcements the Company stated publicly that it would adhere to the UK Corporate Governance Code (“the **Code**”) to the extent practicable. Accordingly, the Company has continually reported in the annual report and accounts, in the corporate governance section, on its compliance with the Code.

As you will appreciate, one of the fundamental differences under German law (in contrast to English law and other jurisdictions) is the mandatory two-tier board system, consisting of the Executive Board and the Supervisory Board. While the Executive Board is responsible for the management of the

business of the Company and the general representation of the Company, the Supervisory Board oversees the management of the Company by the Executive Board.

As such, the Supervisory Board is expressly not authorized to manage the Company. The Executive Board currently consists of six members, while the Supervisory Board consists of 20 members. One half of the Supervisory Board's members represent the shareholders, the other half represents the employees and consists of the Company's employees and representatives of the unions, in accordance with the German Co-Determination Act.

You will also, of course, appreciate that this fundamental difference and other legal or structural constraints mean, in some instances, that it is not possible for the Company to comply with the Code. German law, which is applicable to the Company does not, for example, foresee the function of a Senior Independent Director or a Company Secretary. Accordingly, while we strive to comply at least with the spirit of the Code, we feel it is important that the Code should make allowances for those companies where compliance with the letter is not possible.

With regard to the consultation we would also make the following general comments:

1. Provision No. 3: Director appointed from the workforce

We understand the general approach with regard to workforce participation and also the intended use of the term "workforce" with a broad definition that aims at capturing "the complexity and diversity of modern contractual relationships between companies and individuals undertaking work for them". However, a broad definition of workforce that could include agency workers and contractors is potentially including third party interests, depending on the contractual relationship of a company with the agency workers or the contractors. Depending on the size of the company and the area of its business, forming an overall "workforce voice" could present significant practical and procedural difficulties.

Therefore, the Company would prefer that the workforce for these purposes includes only direct employees of the Company.

On the other hand, the German Co-Determination Act actually requires for a company of our size a co-determined Supervisory Board (see above) and therefore ensures already a strong involvement of employees.

Seite 3

Datum 28 February 2018

2. Provision No. 24: Chair of the board not a member of the audit committee

Whilst we agree that the chair of the board should not be the chair of the audit committee, we do not agree that he should not be a member of this committee. The audit committee has a wide remit that refers in many cases directly to the tasks and duties of the entire Supervisory Board. Also in German companies the audit committee for instance is the meeting where detailed reviews of all financials are conducted, the in-depth exchange with the external auditors takes place and very comprehensive discussions with the internal compliance and audit functions are held. Thus, we therefore believe that it would be a significant loss of efficiency if the chair of the board is recommended not to be a member of the audit committee and therefore would not have direct access to discussions that are fundamental for the performance of effective control functions.

3. Principle J: "ethnic background"

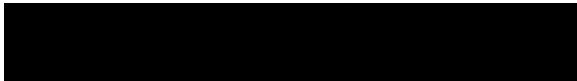
We do not believe that "ethnic" background is a suitable criteria for achieving diversity. It can promote discrimination as much as it promotes diversity. We believe a more suitable criteria would be international or cultural background.

4. Provision No. 36: LTIP Vesting Period as well as promotion of long-term shareholding

We believe that a vesting period of at least three, better four years for long-term incentive schemes is adequate for the alignment of management and shareholder interests in order to ensure that also long-term strategic decisions (e.g. investments which deliver profits only in a few years' time) are taken. Moreover, the time between the decision and the vesting (and therefore the performance reward) should not be too long in order to maintain a proper relationship between them.

We are happy for this response to be published on the FRC's website.

Yours sincerely,

A solid black rectangular box used to redact the signature of Prof Dr Klaus Mangold.

Prof Dr Klaus Mangold



Seite 4  
Datum 28 February 2018

**Schedule  
Response to Consultation Questions**

## 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?

No.

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

We generally support the use of Guidance to substantiate the Provisions and Principles of the Code. However, the Guidance could provide a more specific definition of the Code Provision or Principle or at least provide some examples.

For example, it would be helpful if greater detail was provided in the Guidance on the Code's interpretation of "culture" (Provision 2).

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

We consider the methods proposed in Provision 3 meaningful and appreciate the flexibility provided to companies on how to achieve workforce participation.

With regards to the term "workforce" please see our general remark in the cover letter.

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?

In our view Principles A and C as well as Provision 3 are sufficient to stress the importance of sustainability and stakeholder participation. In particular, taking into account that the Code applies to companies with a premium listing, whether they are incorporated in the UK or elsewhere, various standards apply and local reporting requirements in mature markets are also reflected in the public reporting requirement. E.g. the European rules on non-financial reporting (EU Directive 2014/95/EU) require large listed companies to publish reports on the policies they implement in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, diversity on company boards (in terms of age, gender, educational and professional background).

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?

In our view an opposing vote of 25% or even more (rather than 20% or more) should be deemed "significant". As TUI AG is a German corporation, this higher threshold would be more appropriate; the applicable German Stock Corporation Law stipulates a qualified majority of 75% for certain resolutions of high impact (e.g. changes in the articles of association, conclusion of a domination or profit transfer agreement, removal of a Supervisory Board member).

We would, therefore, appreciate a revision of Provision 6 which provides more flexibility to companies and allows them to determine what they consider a "significant" vote

against a proposed resolution. Such an approach would provide companies with the opportunity to consider the legal framework applicable and their individual shareholders' structure when determining what is "significant".

- 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 do not have a comment on this question.

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

In our view this period of time should be increased given that the revised Code does not allow companies to deviate from the independence criteria of Provision 15, what we also see critical. In our opinion, a period of at least 10 years would be more appropriate. For a German company this would mean two full office terms of five years each what today does not cause bigger concerns. Also a third office term of further five years must not necessarily mean a loss of independency. Moreover, it should remain in the judgement of companies whether they deem a long serving non-executive director as being still independent or not. In this regards it could be reflected whether a unanimous resolution of the non-executive directors declaring that they consider a long serving individual as being still independent is a more favorable approach. Shareholders were not limited to demonstrate a different assessment concerning long serving non-executive directors through an opposing vote during the AGM in the context of their reelections or the discharge of duties.

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

We agree that a maximum period of tenure is not necessary.

- 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 agree.

- 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.

We do not have any concerns regarding the scope of the Hampton-Alexander recommendation.

- 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.

Please note our general concern regarding the "ethnics" criteria in our cover letter.

- 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?

We would appreciate if the Code would not replicate provisions from other rules or acts. Having regulation only in a single place could be another contribution to shorten the text. However, please note that the Companies Act does not apply to TUI AG as a German incorporated company.

- 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.

We support the removal of C.3.3 of the 2016 Code to provide the companies with more flexibility and to limit the number of disclosure requirements under the Code.

- 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 do not support a wider remit of the remuneration committee's responsibilities.

We would prefer that the companies are allowed to develop a corporate governance structure that helps to achieve the targets of the Code regarding remuneration.

Please also note that TUI AG is legally prohibited from following this requirement as it cannot be implemented under the German two tier board system where the Executive Board alone is responsible for the management of the company and therefore also for the compensation of the senior management below the Executive Board level.

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

We are of the opinion that the measures already set out in the Code suffice to achieve this target.

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

We are of the opinion that discretion is an important element of remuneration and that the reform proposals will help to underline its importance. Unforeseen challenges and problems often occur during a financial year and therefore require certain flexibility when measuring the individual performance of the executive board members.