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IN IRELAND

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Financial Reporting Council
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Re: Financial Reporting Council's Consultation on the UK Corporate Governance Code, May 2023

To whom it may concern,

Thank you for the opportunity to respond to the consultation on the UK Corporate Governance Code ("**the Code**"). The Institute of Directors (IoD) in Ireland notes that this consultation is focused on the legislative and governance reforms that the UK Government proposes, which support the FRC's transition into the Audit, Reporting and Governance Authority (ARGA) and includes proposed changes related to other UK legislation that will not apply in Ireland.

IoD Ireland is a not-for-profit organisation, and is independent of, but works collaboratively with the Institute of Directors in the UK. IoD Ireland is the leading membership body for directors and business leaders in Ireland, with membership across all sectors and industries. Our Vision is for Ireland to be an exemplar of corporate governance. Our Purpose is to instil stakeholder trust and confidence in organisations by educating, informing, and supporting directors and business leaders to lead successfully. Being the voice of directors and an advocate for the highest standards of corporate governance in Ireland is a core strategic pillar for IoD Ireland. IoD Ireland has detailed knowledge of best practice standards, codes of practice and the techniques and processes associated with high performing boards.

Why is IoD Ireland Responding to this Consultation?

We are responding to this consultation as the representative body for directors in Ireland. Many of our members sit on boards of listed companies in Ireland and the UK. In Ireland, Euronext Dublin (formerly the Irish Stock Exchange) recognises that the Code has set the standard for corporate governance internationally. It is regarded as being the pre-eminent corporate governance code and is widely emulated. Since the 1995 Irish Stock Exchange Act, the Listing Rules of Euronext Dublin have required every company Listed on Euronext Dublin to state in its annual report how the principles of the Code have been applied and whether the company has complied with all relevant Code provisions. Where a company has not complied with all relevant provisions of the Code it is required to set out the nature, extent, and reasons for deviation. Many of our members sit on boards of unlisted companies which look to the Code to emulate best practice corporate governance within their context. As such, the evolution of the Code is significant for our members and their companies, and we are pleased to make a submission on the FRC's consultation through this lens. Our responses to the specific questions raised within the consultation are included in the Appendix below.

We support the continued approach to having principles, which companies must apply, supported by provisions to which a 'comply or explain' approach is taken. In our view, this approach is what makes the Code so relevant and useable in other corporate contexts. We also welcome that the FRC is taking this opportunity to improve the functioning of 'comply or explain' through a new Principle in section 1. Boards should embrace confident and persuasive communications with shareholders and seek to avoid boilerplate/uninformative descriptions and explanations. We agree that the bespoke nature of the Code, reflected in the Code's 'comply or explain' approach, demands disclosures that are also bespoke.

A substantial volume of ESG reporting and disclosures are now required of listed companies which has the potential to make annual financial statements unwieldy and thus less valuable to stakeholders. We consider that the Board should be encouraged to cross-reference to disclosures versus relevant standards/frameworks voluntarily adopted by their companies and/or any legislative requirements on climate disclosures so that the Code is not imposing additional climate disclosure on Boards and/or duplicating information within the annual report.

Given our Purpose to instil stakeholder trust and confidence in organisations by educating, informing, and supporting directors and business leaders to lead successfully, we would welcome increased emphasis within the Code on the continuing professional development of directors to maintain their professional knowledge.

We note that this consultation on the UK Corporate Governance Code focuses largely on internal control, assurance, and resilience. We welcome your approach which makes clear the board's accountability for this issue, yet reflects the need for flexibility, proportionality, and consideration of the particular circumstances of individual companies in a way that will enhance transparency and investor confidence. We look forward to the publication of the revised Guidance on Audit Committees and Board Effectiveness as well as the Guidance on Risk Management, Internal Control and Related Financial and Business Reporting, which will take account of changes to principles and provisions on risk management and internal control.

Thank you again for the opportunity to present our observations. We would be delighted to discuss our submission with you.

Yours sincerely

[redacted]

Consultation Questions	Response of Institute of Directors in Ireland
Section 1: Board Leadership and Company Purpose	
Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?	**Principle D:** "*When reporting on its governance activity the board should focus on outcomes in order to demonstrate the impact of governance practices and how the Code has been applied. Where the Board reports on departures from the Code's provisions, it should provide a clear explanation*". We note that the objective of the new Principle is to emphasise that reporting should demonstrate the outcomes of governance activities where possible as your Review of Corporate Governance Reporting has indicated that it is an area where improvement is needed. We fully support this approach. We consider that the wording in Principle D should reflect relevant wording in the current Introduction Section of the Code to be more impactful. We understand that the FRC may plan to amend the Introduction Section but suspect that the key messages will be retained. It is important that the Corporate Governance Statement effectively leverages off and cross-references to other sections of the annual report. **We recommend the following:** **Principle D:** "*Boards should demonstrate throughout their corporate governance reporting how the application of Principles, following the more detailed Provisions, and using the associated guidance in the governance architecture of the company, contributes to its long-term sustainable success and achieves wider objectives. High-quality reporting should include signposting and cross-referencing to those parts of the annual report that describe how the Principles have been applied. Where the board reports on departures from the Code's Provisions, it should provide a clear explanation for this departure*".

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 consider that the Board should be encouraged to cross-reference to disclosures versus relevant standards / frameworks voluntarily adopted by their companies and/or any legislative requirements on climate disclosures so that the Code is not imposing additional climate disclosure on Boards and/or duplicating information within the annual report. Reporting should be integrated and not siloed.
Q3: Do you have any comments on the other changes proposed to Section 1?	We suggest that the existing Provision C – *"The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed*" – be retained. In any organisation, there should be an alignment between purpose, strategy, culture, and risk appetite. Notwithstanding the changes made to Principle N, we consider that risk and internal control should be referenced from Section 1.
Section 3: Composition, Succession and Evaluation	
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 with the proposed change to Code Principle K, we consider that prior to appointment and annually thereafter, directors should reflect on their director portfolio/time commitments and confirm that they can/continue to devote the time required to discharge their obligations. At every Board meeting, the Chair should invite directors to disclose any significant changes to their time commitments. We suggest that Principle K be augmented to include that an assessment should be undertaken by the Nomination Committee with regard to a prospective board member's time commitments as part of a pre-appointment due diligence process. We note that the FRC is giving the issue more prominence in a board's annual performance review, which is welcome. We consider, however, that this is an on-going matter and that the Code should reflect the importance of the Chair's observation of whether each director's contribution, in terms of attendance, preparation, input and availability is in line with expectations.

	We note the proposed wording that*: "The annual performance review should consider each director's commitments to other organisations, and their ability to discharge their responsibilities effectively."* We request that it be clear that the Code is not advocating consideration of individual director commitments by externally facilitated board performance reviews. This should be a matter for the board.
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? (Relates to Section 2: Division of Responsibilities)	We do not consider that this change is necessary as the issue is addressed in the proposed revision to Principle K.
Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?	No comment.
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?	IoD Ireland promotes the importance of diversity and inclusion (D&I) in the composition of the board, executive management and in succession planning. We support the FRC's objective of encouraging companies to think about specific approaches that suit their individual circumstances, instead of using 'boilerplate' statements in their reporting. We support the changes to Principle I which aims to capture wider characteristics of diversity.
Q8: Do you support the changes to Provision 24, and do they offer a transparent approach to	We support the objective of the change to Provision 24. The Provision refers to "*including the search and nomination procedures and promotion of diversity*" in the description of the work of the Nomination Committee.

reporting on succession planning and senior appointments?	In references to the work of the Board or Board Committees we suggest avoiding the term "*procedures*" in favour of terms such as "*approach*", "*process*" or "*policy*". From our work conducting board evaluations, we note that succession, particularly for senior management and executive directors can be a commercially and a professionally sensitive matter. We suggest that the wording be amended to reflect this sensitivity. Nomination Committees might confirm compliance with relevant Board policies related to succession including equal opportunities and diversity and inclusion policies.
Q9: Do you support the proposed adoption of the CGI recommendations and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?	We support the use of the term "*board performance review'*" instead of "*board evaluation"* in the updated Code and concur with the view that the value of such reviews is in informing a continual process of self-improvement for boards. We support amending Provision 21 (22 in the new Code) to clarify that the Chair should commission, rather than consider having, a board performance review. We note the draft guidance produced by the CGI (Reporting on board performance reviews: Guidance for listed companies) and the intention of the FRC to incorporate many aspects of the CGI's guidance in its revised guidance. We consider that the FRC's Guidance on Board Effectiveness (2018) adequately deals with the issue of board performance reviews.
Section 4: Audit, Risk, and Internal Control	
Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?	Whilst we have no objection in principle that all companies should prepare an Audit and Assurance Policy (AAP) on a comply or explain basis, we request that the updated Guidance on Audit Committees provides good guidance on the format of the AAP taking a proportionate approach related to company context.

	We note that the detail of the requirements of the AAP will be set out in regulations, but that it is expected to require PIEs to set out the requirements listed on page 14 of the consultation including: ▪ What external assurance, if any, the company proposes to seek beyond the statutory auditor's duties. ▪ Whether any external assurance proposed will be 'limited' or 'reasonable' assurance. ▪ Whether any external assurance beyond the statutory audit will be carried out according to a professional standard. We note the level of emphasis being placed on external assurance and recommend that the requirements of the AAP as set out in the regulations and included in the Guidance for Audit Committees emphasises internal governance (three lines of defence model) and related assurance as much if not more than external assurance. Companies should be encouraged to enhance their systems of internal governance and we would be concerned where the board becomes overly dependent on external assurances rather than engendering a culture and competency of strong internal governance and assurance within their own organisation.
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 note that the Minium Standard was developed following a recommendation from the Competition & Markets Authority in the UK that the FRC "*should have the power and a requirement to mandate minimum standards for both the appointment and oversight of auditors*", initially applied to the audit committees of all FTSE 350 companies. We note that the UK Government incorporated this recommendation into **'Restoring Trust in Audit and Corporate Governance'**. We agree that the approach should remove duplication. We recommend that a footnote be inserted to explain the Minium Standard in Provision 25 with a link to the standards.
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,	The audit committee is a committee of the board and nothing about the work of the committee should negate the ultimate responsibility of the board. Approval of the annual report, including sustainability reporting within the annual report, is a matter reserved for the board supported by the work of the audit committee. The FRC's Guidance on

where such matters are not reserved for the board?	Audit Committees should continue to reflect that audit committee members are non-executive directors and ensure that the Guidance continues to reflect the practical reality of the role and the reliance on assurance provided from within and outside the system of internal governance.
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?	We consider that the proposed amendments to the Code strike a good balance in terms of strengthening risk management and internal controls systems in a proportionate way. We consider that the Board should be able to conclude that the risk management and internal controls systems are effective without having to provide too much operational-type information.
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?	We consider that the Board's declaration should be based on continuous monitoring.
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 references to controls includes both financial and reporting controls to ensure that oversight of the system of internal financial controls is not crowded out.
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?	We note that the Guidance on Risk Management, Internal Control and Related Financial and Business Reporting will be developed later in the year and finalised following this consultation. It will build on the current guidance and its predecessor, the Internal Control – Revised Guidance for Directors on the Combined Code (October 2005).

	The FRC might consider providing brief diagrammatic summaries of and links to internally recognized frameworks such as the widely adopted COSO Internal Control - Integrated Framework (ICIF) and the three lines of defence model within the guidance.
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?	We support the working definition of material weakness included in the consultation document.
Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?	We recommend that the updated guidance distinguishes between the respective roles and responsibilities of a risk committee versus audit committees and explores the circumstances where a risk committee or a joint audit and risk committee might be established. We recommend that the updated guidance distinguishes between the respective roles and responsibilities of the (board) risk / audit and risk committee versus management committees responsible for risk (e.g., the enterprise risk management committee). We refer to paragraph 71 of the consultation document which sets out how boards might report against the Code's amended requirements. We recommend that references to sub-committees of the board are not referred to as "*units*". The guidance must be very clear as to the demarcation between the system of internal governance (e.g., the three lines of defence model under ICIF) and oversight of this system by board committees and the board.
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	We agree with this approach.

Provision, and to achieve consistency across the Code for all companies (not just PIEs)?	
Q20: Do you agree that all Code companies should continue to report on their future prospects?	We have no objection to this provision.
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?	The fact that companies can approach the Code Provision on a 'comply or explain' basis should ensure proportionality.
Section 5: Remuneration	
Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?	We consider the remuneration terminology to be somewhat confusing in Principles O and P. It would be useful for Section 5 of the Code or the revised Guidance on Board Effectiveness to distinguish between remuneration policy, remuneration practices, remuneration design and remuneration outcomes. It is unclear what is meant by remuneration outcomes in Principal P. Principle O states that "*Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success*." We are disappointed to see references to purpose and values being deleted in Principle O. The remuneration policy of the board (which informs design) should ensure an alignment between company purpose, long-term strategy, and sustainability (including ESG), risk appetite and culture. Executive remuneration and incentives should be designed reflecting this policy. We recommend that Principle O be amended accordingly. Provision 34 states that the remuneration committee should have delegated responsibility for determining the policy for executive director remuneration and setting remuneration for the chair, executive directors, and senior management. We

	recommend that the Code clarify that the Board must approve the remuneration policy as recommended by the remuneration committee.
Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?	We consider the changes to be appropriate.
Q24: Do you agree with the proposed changes to Provisions 40 and 41?	While noting the research conducted for the FRC by the University of Portsmouth, we consider it is important to distinguish between remuneration design and board disclosure on remuneration. We consider that the former Provision 40 provides very useful guidance for companies in approaching remuneration design and recommended that the deletions be re-inserted.
Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?	We do not recommend the removal of references to pay ratios and support the strengthening of these references within the Code.
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?	We recommend that the FRC explore a separate paper on the governance of artificial intelligence.