

**FRC Consultation – September 2023**  
**Law Debenture**

We welcome the opportunity to engage with FRC on the consultation. In producing our response below, we have considered not only the views of the Law Debenture Corporation Plc but also those of our clients.

The order in which we have responded is based upon the FRC’s questions and not weighted based on the importance we attach to the issues discussed.

We would welcome the opportunity to discuss this further with the FRC or provide clarity if any is required.

<b>Proposal</b>	<b>Supportive</b>	<b>Commentary</b>
<b>Section 1 - Board leadership and company purpose</b>	<b>Yes</b>	<p><b>Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?</b></p> <p>We support the proposed changes to the new Principle D (previously Principle E) it will encourage companies to explain their governance processes, outcomes and also enhance reporting. This also emphasises that, where departures are made, a clear explanation should be provided.</p> <p>It also provides companies with flexibility to tailor their governance arrangements to fit their individual circumstances whilst ensuring they explain any departures from the Code.</p>
	<b>Yes with Moderations</b>	<p><b>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?</b></p> <p>We support the proposal that ESG should have a Board level owner but believe that the actual owner will vary depending upon the size and type of company. What is appropriate for commercial trading companies who have physical operations, and material impact on climate change factors, is not necessarily true for all e.g., in Investment trusts where the majority of ESG work is carried out by the fund managers, it may be appropriate for ESG to be considered by the Board. Equally, if an Investment Trust’s proposition is specifically ESG then it may be appropriate for ESG to have its’ own committee or be part of the remit of the Investment Committee to ensure sufficient focus. In some instances, it may even be that the majority of ESG reporting does not apply to certain Trusts, and it may be more appropriate to have the option to explain why a reporting exemption should be applied.</p> <p><b>Q3: Do you have any comments on the other changes proposed to Section 1?</b></p>

		<p>Provision 5 which requires companies to report against S172 of the Companies Act 2006 is a requirement for UK incorporated companies. Making a specific reference to UK Company Law is not relevant for a non-UK Company with a UK listing. Therefore, if included we would recommend it is specific to UK companies.</p>
<p><b>Section 2 - Division of responsibilities</b></p>	<p><b>No</b></p>	<p><b>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?</b></p> <p>Principle H (new Principle G) requires NED to have sufficient time to meet their board responsibilities therefore NEDs are already required to assess their time commitments and the majority of companies have an appropriate process in place to manage overboarding.</p> <p>Whilst we believe there is opportunity to strengthen the review processes undertaken, e.g., to consider appointments to unlisted entities, we do not think a more detailed assessment or reporting of time commitments would be valuable.</p> <p>The challenge, as we see it, is that whilst a business can provide guidance on expected time commitments, this will vary year on year depending on what is happening within the business and the sector. Consideration should also be given to whether work undertaken with one Board is transferable to other appointments, such as training.</p>
	<p><b>Yes</b></p>	<p><b>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?</b></p> <p>We agree that all significant appointments should be listed in the annual report, and we also believe greater clarity in annual reports regarding whether the role is publicly quoted or non-publicly quoted or not for profit would also be beneficial.</p> <p>We support there not being a limit on the number of directorships and other positions held. As each role varies on the time commitment required. Where there are a significant number of appointments, it might be valuable to encourage more detailed disclosure on how the individual director will manage the time commitment to each and would value guidance in this area.</p>
<p><b>Section 3- Composition,</b></p>	<p><b>Further clarification requested</b></p>	<p><b>Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?</b></p>

<p><b>succession and evaluation</b></p>	<p><b>Yes with moderations</b></p>	<p>We note the FRC proposal that companies should commission externally facilitated board performance reviews, which we support for medium to large companies and the financial services industry.</p> <p>However, we would question the value of an external board evaluation for smaller companies on a regular basis, if that is defined as a three-year basis. Small boards do find value in these reviews but at specific points in the board’s succession, for example, a year after new directors have joined the board. Mandating a three-year review cycle for all companies runs the risk of external reviews being carried out as a tick box exercise rather than for a specific purpose.</p> <p>We also note the proposal to change the term from board evaluation to board performance review and have no strong opinions either way.</p>
	<p><b>Yes with moderations</b></p>	<p><b>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?</b></p> <p>We are very supportive of any recommendations to improve diversity and would welcome the proposed expansions to focus on all diversity categories rather than just gender and ethnicity.</p> <p>However, we would advise against mandating any more measures as these can be challenging to adhere to, particularly for investment trusts with smaller boards, and run the risk of boards appointing individuals to meet targets rather than appointing the best candidate for the job.</p> <p>We are also fully supportive of including diversity within the succession planning process. It should be noted that every board has a different timeline for succession and flexibility should be built in for those companies with a relatively new board and no imminent recruitment plans.</p> <p>In particular, we would encourage any guidance or recommendations to help encourage diversity in the talent pool. For example, we would support investment trusts helping encourage a diverse workforce within the investment management sector and any requirement to hold the fund managers accountable for implementing diversity policies/strategies which would benefit the sector as a whole and diversity at the Board level in the future.</p>

	Yes	<p><b>Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?</b></p> <p>We are supportive of the transparent approach to reporting on succession planning and senior appointments.</p>
Board performance reviews	No	<p><b>Q9: Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?</b></p> <p>We support the current approach launched in 2018, however we believe the new guidance of introducing principles and disclosure guidance for listed companies is quite prescriptive and might have significant cost implications without necessarily providing concomitant benefits to shareholders.</p>
Section 4- Audit, risk and internal control	Yes with Moderations	<p><b>Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?</b></p> <p>We note the FRC proposals for companies to consider producing an Audit &amp; Assurance Policy on a 'comply or explain' basis. We believe both these requirements are more relevant for larger companies and those in the financial services industry and would not necessarily add value for shareholders in all cases.</p>
Audit Committees and the External Audit: Minimum Standard	No	<p><b>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?</b></p> <p>We would support the UK Code referencing that the minimum standard in the UK Code will only apply to FTSE 350 companies. The requirements are set out in the FRC guidance (audit quality practice aid for audit committees and guidance on audit committees) regarding the minimum standard. If 25 and 26 are amended this would then require companies outside of the FTSE 350 to report on a 'comply and explain' basis which would not always be beneficial or add significant value for shareholders.</p>
Sustainability reporting	Yes with Moderations	<p><b>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, where such matters are not reserved for the board?</b></p> <p>We support the proposal that ESG should have a Board level owner but believe that the owner will vary depending on the size and type of company.</p> <p>For example, where the majority of ESG work is carried out by the fund managers, it may be appropriate for ESG to be considered by the Board. Equally, if a firm's proposition and/pr products are specifically ESG related then it may be more appropriate for ESG to</p>



	<p>No</p> <p>Yes</p>	<p>We believe the controls should be limited to controls over financial reporting rather than the financial reporting itself. This aligns with the statutory audit and DTR 7.</p> <p><b>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?</b></p> <p>We believe it would be helpful to have some examples of methodologies.</p> <p><b>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?</b></p> <p>The proposal for annual reports to include a description of any material weaknesses or failures identified and the remedial action being taken, and over what timeframe, could be misinterpreted by shareholders who may not fully understand the potential implications. Forcing such a definition, which in any event would be somewhat subjective, could also serve to undermine the quality of debate and challenge at Board level.</p> <p><b>Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?</b></p> <p>It is difficult to determine at this stage what other areas in relation to risk management and internal controls should be covered in guidance. It would, however, be useful to ensure that any guidance is capable of being used by all companies, and that it can be adapted for their size and type of company.</p>
<p>Going concern</p>	<p>Yes</p>	<p><b>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 Provision, and to achieve consistency across the Code for all companies (not just PIEs)?</b></p> <p>We support the current Provision 30 (new Provision 31) should remain unchanged.</p>
<p>Resilience Statement</p>	<p>Yes with Moderations</p>	<p><b>Q20: Do you agree that all Code companies should continue to report on their future prospects?</b></p> <p>We agree with the recommendation for larger companies to report upon future prospects in line with the government's response to the consultation that this would apply to Public Interest Entities.</p>

		<p><b>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?</b></p> <p>We would recommend that Provision 31 (new provision 32) is deleted as this would provide flexibility for companies under the threshold.</p>
<b>Section 5 – Remuneration</b>	<b>Yes with Moderations</b>	<p><b>Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?</b></p> <p>We are supportive of the proposed revisions for commercially listed and financial services companies including a link to wider performance including objectives such as ESG due to their physical operations and material impact on climate change factors.</p>
<b>Malus and clawback</b>	<b>Yes with Moderations</b>	<p><b>Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?</b></p> <p>We support for medium to large companies to improve transparency.</p>
<b>Changes to improve the quality of reporting</b>	<b>Yes</b>	<p><b>Q24: Do you agree with the proposed changes to Provisions 40 and 41?</b></p> <p>We support the changes being proposed.</p> <p><b>Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?</b></p> <p>We support the reference to pay gaps and pay ratios being removed.</p>
<b>Artificial intelligence</b>	<b>No</b>	<p><b>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?</b></p> <p>We do not recommend any changes at this stage.</p>