Financial Reporting Council

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13 September 2023

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Dear Sir/Madam

Consultation on the Corporate Governance Code 2023

Beazley is a specialist global general insurer based in London, with a large presence in the Lloyd's insurance market and global operations in the US, Europe, Canada, Asia Pacific, and Latin America. Beazley was established in 1986 and in 2022 gross written premium exceeded $5.2bn. Beazley listed on the London Stock Exchange in 2002, and in 2022 announced that it would be entering the FTSE100. In the UK, Beazley is regulated by the Prudential Regulation Authority and the Financial Conduct Authority and as a Lloyd's managing agent, is subject to the bye-laws and oversight principles set by the Corporation of Lloyd's. Beazley is also regulated in Ireland by the Central Bank of Ireland and in the US by the Connecticut Insurance Department and other US state regulators. In 2022, Beazley contributed c.£124m revenues to the UK Exchequer and employed 993 people across the UK at 31 December 2022.

We welcome the opportunity to respond to the Financial Reporting Council's (FRC) proposals on strengthening the UK Corporate Governance Code (Code), and to address the policy issues asked of the FRC by the Government in its response to the consultation: Restoring Trust in Audit and Corporate Governance.

Beazley believes the governance framework should be fit for purpose, internationally competitive and enhance the competitive advantage of 'UK PLC'. We are supportive of the Code and the 'comply or explain' approach, which has been adopted by the FRC, and consider it is already fit for purpose because it encourages best practice corporate governance amongst companies listed on the London Stock Exchange, while allowing flexibility for an individual company approach.

We fear that some of the proposed changes run contrary to the Government's wider objectives on economic growth and global competitiveness. We also have some very deep and specific concerns, particularly with the proposed amendments to section 4 of the Code regarding audit, risk and internal controls. We regard these additional reporting requirements as adding unacceptable additional obligations on our board and directors, additional costs on our business, and believe that their aggregated impact would make

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the UK's operating environment more onerous than that of the US. Should the changes to the Code be made as proposed, we believe many UK listed companies will re-consider their commitment to the London market and weigh up the potential advantage of moving their listings to more welcoming financial centres.

We have not set out to provide an answer to every question in the Code consultation but have responded only to those most relevant to Beazley where we have concerns. Our responses are included in the appendix to this letter. We have also contributed to the wider consultation response collated by the Lloyd's Market Association (LMA), which will be submitted to you separately.

The key points from our response are as follows:

- **UK competitiveness**: We share the Government's desire to create a more effective and streamlined reporting regime, and to ensure that what companies report on is useful and helps to support investment and growth. However, we fear that the proposals in their current form run contrary to the Government's over-arching competitiveness objectives and could have unintended consequences for the UK's financial services sector and the wider economy.

- **A balanced approach**: In our Restoring Trust in Audit and Corporate Governance consultation response, dated 8 July 2021, we confirmed that we supported the option set out in Table 2 for strengthening internal company controls. However, we noted that it was important that the UK remained attractive for business and capital. When considering any additional requirements, we urged the Government to balance safety and soundness with the risk of creating competitive disadvantage for UK based firms.

- **Cost of compliance**: We believe that the costs to listed companies of complying with the new provisions in Section 4 of the Code will outweigh the benefits to investors and other stakeholders of improved accountability and transparency. We are also concerned about the impact on smaller listed companies, who may have fewer resources to undertake the necessary level of assurance to comply with the new provisions. We ask whether a comprehensive cost benefit analysis has been carried out by the FRC in relation to the proposed changes to section 4 of the Code?

- **Proposals for reporting over controls are too onerous:** We have set out our deep concerns about the extent of the changes proposed to Section 4 of the Code in our responses to consultation questions 13 to 17. Significantly, we do not support expanding the scope of controls to include non-financial controls; the declaration on control effectiveness and reporting of material weaknesses being over the reporting period; or the requirement for 'continuous monitoring' of the effectiveness of controls. We would also urge the FRC to consider moving away from a 'declaration' being required. This approach does not fit well with a principle based 'comply or explain' framework. We also set out concerns and suggestions around the reporting timeframe, the guidance to be provided by the FRC, and potential for ambiguity to result in a more onerous regime than intended, which will in our view make the UK less attractive for capital and bring a risk of competitive disadvantage.

- **Lack of detailed guidance/implementation timeframe***:* Furthermore, until more detailed guidance is provided, it is challenging to determine the impact, cost, and appropriate timescales to implement the changes effectively. The timeframe to comply with the proposed Code is short; particularly if the directors' declaration (provision 30) is retained as currently proposed. As identified in UK Finance's 2023 report[1], companies already experience difficulty in satisfying necessary due diligence requirements and regulatory complexities can hinder investment in the UK and its global competitiveness.

[1] UK Finance report: UK Capital Markets: Building on Strong foundations (May 2023)

- **Impact of suite of reforms proposed:** We would also like to put on record our concerns about the onerous and duplicative reporting requirements in the UK, which will be made more burdensome by the suite of proposed reforms including the proposed changes to the Code, the Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 (the SI), a Statutory Instrument laid in July 2023 and scheduled to be voted on in Parliament this autumn, and the future primary legislation anticipated. Combined these will add increasing burden to UK public interest entities and undermine the competitiveness of the UK.

- **Disproportionate impact on SMEs:** We are very concerned that these current proposals in the aggregate will have a disproportionate and adverse impact on small and medium sized companies (SME) across all sectors in the UK.

Our clear view is that the new requirements of the Code, combined with the SI and potential primary legislation, are unnecessarily onerous and would run contrary to the policies that the Chancellor brought about in The Edinburgh Reforms (December 2022), which are intended to drive growth and competitiveness in the financial services sector. The requirements of the Code and the SI also run contrary to the recommendations being put forward by the Capital Markets Industry Taskforce (CMIT) about what is needed to strengthen the UK's ecosystem to "ensure we are the place where great companies start, grow, scale, and stay." On these grounds we ask that the proposed revisions to the Code, as drafted, should be reconsidered.

We would recommend that the financial and non-financial reporting framework in the UK, including the Code and the Companies Act 2006 and other legislation are reviewed comprehensively and holistically following the Department for Business and Trades recent survey on non-financial reporting. We suggest that it would be wise to pause the suggested reforms to the Code and the vote on the SI until a comprehensive review can be undertaken to ensure a balance between the noble aims of improving accountability and transparency, building trust, and supporting investment with streamlining the reporting regime and easing the financial burden of reporting for UK businesses.

We would welcome the opportunity to work collaboratively with the Government and the FRC to develop a streamlined approach to reporting aligned with domestic goals and international standards and meeting the aims of the BEIS consultation.

Appendix

Responses to specific questions in the consultation paper

Question 3. Do you have any comments on the other changes proposed to section 1?
Provision 3, which requires committee chairs to engage with shareholders is positive but will need support from investors and the stewardship code to ensure that investors take up the opportunities provided to engage with companies and that they provide meaningful input. Any change proposed needs to be reciprocal and reflected in the Stewardship Code or this will become and additional drag and create more inefficiencies and bureaucracy. **Summary:** In principle support the proposals so long as they are reciprocated.

Question 7. 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?
In theory this sounds fine, and we would support a widening out of the guidance rather than introducing further diversity targets, but we would suggest that having some specific targets for companies is helpful because it enables them to focus as diversity and inclusion is such a vast topic. Widening out the focus could create inertia by having no real core element to measure success. It makes the statement increasingly vague which does not help with achieving progress. **Summary:** Support with reservations outlined above.

Question 10. Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a comply or explain basis?
We support adding the Audit and Assurance Policy (AAP) to the Code and agree it will provide greater transparency to shareholders on how the board is comfortable with a number of risk areas. Greater guidance would be helpful to ensure consistency in adoption across the market, in particular on the scope and materiality and the expectation of external assurance. We have concerns around the wider impact on SME companies who will need to comply with the AAP under the Statutory Instrument. **Summary:** Support, but due to widening scope of the code have concerns for the impact on SME companies.

Question 12. Do you agree that the remit of the audit committee should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics, where such matters are not reserved for the board?
This is the approach we and many companies already take. Guidance would be welcome on the meaning/scope of narrative reporting.

Summary: Support with the need for guidance.

Question 13. 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?

No, we do not agree. We appreciate the emphasis on risk management and control systems and strengthening transparency and accountability. However, the lack of detailed guidance and implied level of subjectivity including around scope/materiality and level of rigor required to underpin the effectiveness declaration makes it challenging to determine the impact, cost, and appropriate timescales to implement effectively. Once the detailed guidance is available, the effectiveness in striking the right balance depends on how we implement and adhere to the Code, as well as feedback and revision based on industry experience.

We would strongly urge the FRC to consider the following to ensure that the strengthening of risk management and internal controls is carried out in a proportionate way:

- Moving away from a 'declaration' being required to a 'statement' approach. We do not agree that a declaration approach fits well within a principles and provisions based comply or explain framework. We do not see how reasonably a company would be able to not comply with the requirements of the provision as drafted. This may also have a disproportionate impact on smaller listed companies, who may not have the resources to provide sufficient assurance over their controls in order for their directors to make the declaration and may be unfairly penalised if they choose to explain why they have not complied with the requirements.
- Changing the declaration/statement to the **balance sheet date** instead of 'throughout the reporting period.' Reporting on effectiveness of controls and material weaknesses throughout the period has not been implemented by other regimes (such as Sarbanes-Oxley in the US (SOx)) and therefore will significantly increase costs to businesses due to additional complexity around testing and remediation.
- Removing the reference to continuous monitoring of controls. The cost implications of enabling the Directors to make a declaration based on continuous monitoring would be excessive for companies and especially for SME companies. It is hard to understand what 'continuous monitoring' would involve, in terms of giving directors the confidence to sign their declaration/statement.
- To limit the scope of the declaration/statement to **financial reporting controls only**. Having regard to the effectiveness of controls over non-financial reporting is covered sufficiently by the existing requirement to ensure the annual report and accounts are fair, balanced, and understandable and the existing principle in the Code to ensure the integrity of financial and narrative reporting. Extending to non-financial controls will make the UK reporting regime more onerous than US SOx.

We would also urge the FRC to consider whether, as drafted, there is a danger that some of the requirements become **more onerous than intended**. We believe there is a risk of the changes being anti-competitive and making the UK less attractive for business and capital. Some areas could become more onerous than US SOx (particularly, inclusion of non-financial controls reporting and over the period reporting of material weaknesses). The role of professional advisers and proxy agencies in this must not be under-estimated. As identified in UK Finance's 2023 report, companies already experience difficulty in satisfying necessary due diligence requirements. And additional regulatory complexities and hurdles may stifle international investment in the UK – hindering our global competitiveness.

While we understand the FRC's view that the Code is 'comply or explain', and therefore offers flexibility in approach, in many areas proxy agencies recommend voting against companies for non-compliance (even where reasonable explanations have been provided). Professional advisers and auditors may also have a view, which could lead to further 'gold plating' of what is considered compliance with the Code.

More prescriptive guidance would help with mitigating these risks; we note that the FRC is rarely prescriptive in the guidance it provides due to the principle-based approach taken to the Code. However, we would strongly recommend more prescriptive and concise guidance on these provisions, if retained as proposed. We would also urge the FRC to spend considerable time engaging with wider stakeholders such as proxy agencies and other advisers to ensure that the approach to strengthening risk management and internal controls remains proportionate and the objectives are achieved. This will also ensure that any impact to the UK's financial sector, economy and global competitiveness is minimised.

Summary: Do not agree or support.

Question 14. 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?

No, as noted above in response to question 13, a balance sheet date approach would be more practical and efficient whilst providing meaningful information to stakeholders. The FRC states in its consultation document that this was chosen to ensure that reviewing effectiveness is not seen as an annual exercise.

However, the Code already requires regular monitoring of risk management and internal controls, therefore we do not believe making the declaration throughout the year adds value in a proportionate way. This is an area where the requirements would be more onerous than US SOx and therefore anti-competitive. In addition, for insurance companies operating under the Solvency II regime there could be overlap and duplication.

This monitoring requirement could have a catastrophic impact on companies that are listed in the UK – it will harm the attractiveness of the UK to international investors, and ultimately contradicts the Government's ambition to make the UK a competitive global player. The requirements also fail to align with the arguments put forward by CMIT, specifically around the benefits of innovative regulation and unlocking capital. This risks the UK being left behind.

Summary: Support declaration based on the date of the balance sheet.

Question 15. 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?

It should be kept as financial reporting controls rather than extending to non-financial reporting controls.

The costs of monitoring and reporting on the effectiveness of non-financial controls would be excessive, potentially greater than US SOx requirements, and outweigh the benefits. This impact would be greater for SME listed companies. This could ultimately have a detrimental impact on

companies listed in the UK and impact the attractiveness of the UK market to prospective companies.

It is our view that monitoring of narrative reporting is already captured sufficiently by other principles and provisions of the Code (as well as other legislation for UK companies) and so this does not add value.

If non-financial controls were ultimately to be included, a longer implementation timeframe or a phased implementation would be required. It would also require guidance as to whether it was solely the annual report which was captured or other reporting. In addition, if a wider set of controls were captured, it would be useful for the directors' declaration to be split by component rather than have one overall effectiveness statement as processes to provide directors with assurance around financial controls are likely to be more mature than those for non-financial controls.

Summary: Support capturing financial reporting controls only.

Question 16. 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?

Yes. Detailed guidance would be welcomed given it is unclear how this is expected to compare with other established control frameworks (e.g. US SOX 404). It would also help companies to adopt a tailored approach that aligns with their unique circumstances as, we understand, is the FRC's intention.

It would be useful if the guidance set out whether companies which are meeting the requirements of other frameworks such as US SOx or Solvency II are considered to be complying with the Code.

Further stakeholder engagement by the FRC to develop appropriate guidance would be welcomed.

Summary: Support with the need to set out fully and have clear guidance.

Question 17. 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?

While the FRC does not typically provide prescriptive guidance, if no changes are made to the proposed drafting for provision 30, standard definitions and assessment tools should be included in the guidance or references made to other standard frameworks which would be acceptable to comply with the Code. This would avoid the market moving to a more onerous practice than was intended by the Government.

We would also ask that FRC looks at the definition of 'significant deficiency' so as not to create differences or inconsistencies with the other standard frameworks.

Summary: Support additional guidance or references made to other standard frameworks which would be acceptable to comply with the Code

Question 18. Are there any other areas in relation to risk management and internal controls which you would like to see covered in the guidance?
We do not support the general direction of the proposals discussed in questions 13 to 15. If our considerations are not taken forward it would be useful to clarify the scope in terms of operational and compliance as well as non-financial controls.

Question 23. Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?
While the proposed changes to Malus and Clawback may result in transparency for stakeholders, our concern is that Malus and Clawback information is sensitive, private, and confidential to an individual. It is usually shared with the board and regulators; however we are uncomfortable with sharing this information in the annual report and accounts and making it public. Therefore, the level of detail required to be disclosed in such cases would be of key importance and guidance should be provided. The level of detail where disclosure is required should be kept to a minimum. **Summary:** Do not support as proposed. We suggest that it is reconsidered with the need for clear guidance

Question 26. 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?
The White Paper on Artificial Intelligence (AI) encourages regulators to issue guidance on regulation of AI, while ensuring a 'pro innovation' regulatory framework. The approach of all the regulators in the UK needs to be understood before any changes should be considered or made to the Code in this respect. It is our current view that firstly, the Code in its current form is adequate and effective for managing emerging and principle risks and stewardship decisions by Boards and companies can and will be reporting on this within the existing reporting framework. **Summary:** Do not support any changes in the code due to AI, as the current provisions are adequate.