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To: FRC

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

13 September 2023

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Dear Sir / Madam,

**RE: HELIOS TOWERS' RESPONSE TO THE FRC'S CONSULTATION ON CHANGES TO THE UK CORPORATE GOVERNANCE CODE.**

**INTRODUCTION**

We write in response to the paper issued in May 2023 titled "*Draft revised UK Corporate Governance Code – Consultation Document*", in which responses to the questions in the document were requested.

Helios Towers ('HT') is a leading independent telecommunications infrastructure company, having established one of the most extensive tower portfolios across Africa. We own and operate over 13,800 telecommunication tower sites in nine countries across Africa and the Middle East. We are a constituent of the FTSE 250, having listed on the London Stock Exchange in October 2019.

We support the efforts to improve corporate reporting in the UK and think a number of the recommendations set out would be additive to the broader reporting framework. Our Audit Chair and I have attended a number of roundtable discussions on the draft Code hosted by Big 4 firms and the Audit Committee Chairs' Independent Forum ("ACCIF"). I set out below our collective views on some of the proposed changes.

We believe that the overarching approach needs to be one which balances the need for change with the original intended ambitions of these reforms, whilst taking into account the cost-benefit analysis of the changes to UK PIEs, the now condensed timeline for rollout, with final details still TBC, and finally how this sits alongside the other regulatory changes that are also coming in, e.g. TCFD regulations. Companies have faced many challenges over the last 3-4 years and we are keen to ensure that the regulations do not make it more difficult to operate under a UK regulatory framework otherwise there could be heightened risks of potential for downsides for both UK PIEs and the UK market more generally.

Our response consists of an executive summary with our key responses and then an appendix with answers to your specific questions.

## **EXECUTIVE SUMMARY**

### **1. Sufficient Time to Implement**

Given the importance of these reforms and the time taken to arrive at these Code changes, we would request that appropriate time be given to companies to implement these, whether all at once or on a phased basis. The resources and time required by companies to ensure compliance should not be underestimated. We recommend that the timeline for implementation should be extended and/or should be linked to when the final approach is enacted, for example, 18 months following finalisation of the reforms.

### **2. Alignment with Other Concurrent Corporate Initiatives**

We have a general concern that several reporting and corporate reforms are being introduced in addition to these Code changes (e.g. TCFD and ISSB reporting) which may result in additional reporting and compliance requirements, which whilst subtly different, address the same topic. This would add to the reporting burden and have a negative impact on the attractiveness of doing business in the UK. We would like assurance that there is a coordinated and cohesive approach to new reporting and reform changes.

### **3. Benefit vs. Cost of Implementation**

The implementation of the proposed changes will impose substantial additional time and financial burden on organisations, while the changes may not result in a proportional benefit to stakeholders. We feel there needs to be robust challenge as to the value the additional disclosure provides to users of the financial statements relative to the additional burden it places on organisations to provide it.

4. Additional Requirements Could Potentially Lead to Further Elongation of Annual Reports and Reduce User-Friendliness and Transparency.

While we are supportive of several of the proposals, we are concerned that the volume of additional disclosure will make the annual report less user-friendly by increasing the length and verbosity. The annual report should focus on the organisation's performance outcomes and we challenge whether some of the additional disclosures could be reported elsewhere (e.g. Company website).

5. Additional ESG/Narrative Reporting Responsibilities.

We support oversight over narrative reporting, however, the Board should determine the allocation of this responsibility in line with individual companies' governance frameworks. In addition, there needs to be a clear linkage to the Audit and Assurance policy such that there is not an expectations gap emerging on the veracity of work undertaken to assess the integrity of narrative reporting and this does not get perceived as a "verification" level undertaking.

6. Declaration Regarding the Effectiveness of Risk Management and Internal Control Systems Will Necessitate a Substantial Increase in Effort.

We have concerns regarding the practical implications of these proposals, specifically in terms of additional costs and resources. The absence of detailed guidance may result in interpretational disparities resulting in comparability issues among different entities. Judging from the feedback and roundtable discussions there have been a lot of concerns expressed over the requirement for an attestation statement over all material controls. This is based on the practical experience of many Audit Chairs and CFOs who have implemented and or audited SOX internal control processes previously. Systems and controls around non-financial reporting are continuing to evolve and are far less mature than those for financial reporting. The language in the draft code is similar to US SOX and as such it is likely to generate expectations that the board will have undertaken detailed reviews of both the design and operating effectiveness of a wide number of controls (operational, financial and non-financial).

7. Directors External Commitments as Part of Board Performance Reviews

We are concerned whether it's the Company's place to delineate directors' additional obligations. Instead, we propose that each organisation, in collaboration with each Director, continue to examine whether the directors have the bandwidth to discharge their responsibilities. A statement affirming the Board's consideration along with committee and board attendance records should suffice in this regard.

We would be happy to discuss our letter and the draft proposals with you. If you have any questions, please contact [REDACTED] and we can organise a call.

Yours faithfully,

[REDACTED]

## APPENDIX A – RESPONSES TO CONSULTATION QUESTIONS

1. Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?

We agree that the changes will deliver more outcomes-based reporting, however further guidance should be provided by the FRC on what it considers 'governance outcomes'. We feel there may be merit in disaggregating policy compliance and governance outcomes.

2. Q2: Do you think the board should report on the company's climate ambitions and transition planning, in the context of it's strategy as well as the surrounding governance?

It is an important issue; however, it is not clear how this interlinks and aligns with the required TCFD disclosures. Including such specific disclosures in a provision seems to run counter to a principals-based approach and an encouragement for Boards to provide transparent reporting on material matters. We would recommend that the focus should be on strategic challenges which are relevant to the specific company.

3. Q3: Do you have any comments on the other changes proposed in Section 1.

We do not support the amendment to Provision 3.

We do not find the change to the second sentence relating to engagement by committee chairs helpful and our view is that the existing wording works better as currently drafted and reflects the practical reality. Although committee chairs do make themselves available and seek to engage with shareholders, shareholders do not always have the time to engage with committee chairs and often prefer to communicate with the investor relations department or the chair of the company on a variety of issues, which can then be reported back to the appropriate committee chairs. The experience of our Audit Chair is mirrored by peers who responded to the ACCIF survey.

4. Q4: Do you agree with the proposed changes to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of the board performance reviews?

We do not believe it is the Board's responsibility to outline its directors' other commitments. We feel the Board should be comfortable that directors can allocate appropriate time to discharge their responsibilities effectively.

We would rather recommend a policy that explores, in consultation with the Directors, their current commitments when they are appointed, to ensure they have sufficient time to commit to the role they will have in the company (e.g. sitting on/chairing committees, being an advisor) and also an annual assessment if these changes (both their commitments and their role in the organisation). Each director is appointed based on the skillset they bring to the company - these come with different time commitments.

A statement to say the Board have an appropriate policy and has considered this should be sufficient.

5. Q5: Do you agree with the proposed change to Code Provision 5, which is designed to encourage greater transparency on directors' commitments to other organisations?

We don't believe it's for the company to outline these. It's for the Board of the Company to ensure its directors have sufficient time to fulfil the role they are being recruited to undertake. Non-executive Directors can often have very different roles, which come with different time commitments. In our view the disclosure does not add insightful value to investors, knowing the Board has considered whether Directors have the appropriate time to commit to the role they have in the company, should be sufficient, along with existing disclosure of Board and Committee attendance.

6. Q6: Do you consider that the proposal outlined effectively strengthens and supports existing regulations in this area, without introducing duplication?

No specific comment.

7. 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?

We support the approach to consider diversity in a broader sense, however, this should be kept at a high level and the reference to 'protected and non-protected characteristics' is unnecessary. We feel that first and foremost the priority should be to have individuals with the best skillsets.

8. Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?

We do support additional transparency on succession planning, however, we would suggest that this be limited to information on Board and Senior Management appointments. Extending this to direct reports of senior management may lead to lengthy generic disclosure.

9. 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 the CGI?

No specific comment.

10. Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain basis'?

We support this.

11. 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 agree.

12. 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?

We support oversight over narrative reporting, however, the board should determine the allocation and extent of this responsibility in line with the company's governance framework. In addition, "Narrative reporting" is a very wide term and encompasses among other areas, corporate governance, strategy, environmental and social matters as well as principal risks. Monitoring the integrity of all these areas would add considerably to the workload of the audit committee and expose non-executive directors to increased liability. The work involved in doing this is not proportionate and could amount to a "verification" exercise. There is also a risk that there is an expectation gap arises on the level of assurance being provided on non-financial and narrative information. The scope of such assurance is still evolving and there are many external providers who are not subject to the same level of regulation and guidance as both internal and external audit. The AAP and reporting on outcomes against the policy will be an essential tool in managing this expectation.

13. Q13: Do you agree the proposed amendments to the Code strike the right balance in terms of strengthening the risk management and internal controls system in a proportionate way?

We support the concept, however, the implementation of this will depend on the supporting guidance to be provided. A robust evaluation needs to be undertaken to ensure the additional costs and resources that will be incurred in compliance are proportionate to the intended benefit from the amendments.

Subject to this evaluation we support the options put forward by the ACCIF in their response which are repeated below:

- Call for specific narrative on the steps taken by the board to assess the effectiveness of the risk management and internal control systems.
- Focus the declaration just on the effectiveness of internal controls over financial reporting in the first instance (see Q15 below).
- Make the declaration on the effectiveness of internal controls over financial reporting as at the balance sheet date (see Q14 below).
- Stagger the implementation of these proposed changes, so that well-resourced organisations, perhaps with experience of SOX reporting, are required to adopt the changes first with a phased implementation thereafter.

14. 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 feel the Board's declaration should be at the balance sheet date. This would provide consistency with the US requirements, which are well understood. It would also provide alignment for dual-listed entities.

15. 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 feel there may be merit in expanding the scope, however, this should be done on a targeted basis, rather than capturing controls over narrative reporting more generally. Unless thoroughly explained, this could lead to an investor expectation gap. More targeted assurance, which is relevant to a specific entity, may provide more meaningful assurance.

16. Q16: To what extent should guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?

Guidance to set out methodologies or frameworks would be helpful to promote consistency among companies.

17. Q17: Do you have any proposals regarding the definition issues e.g. what constitutes an effective risk management and internal controls systems or a material weakness?

Terms such as 'effective' and 'material' should be defined to ensure consistency and comparability between reporting entities.

18. Q18: Are there any other areas in relation to risk management and internal controls that you would like to see covered in guidance?

Guidance on the nature and extent of evidence to support declarations would be helpful.

19. Q19: Do you agree that the 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 achieve consistency across the Code for all companies (not just PIE's)?

We are supportive.

20. Q20: Do you agree that all Code companies should continue to report their future prospects.

We are supportive; however, this should not be covered by the declaration by the directors. Appropriate safe harbour provisions need to be included when companies are reporting future prospects.

21. Q21: Do you agree that the proposed revisions to the Code to provide sufficient flexibility for non-PIE Code companies to report on their future aspects?

No specific comment.

22. Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?

Yes, it should.



23. Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?

Additional reporting does improve transparency, however, it may set expectations around recoverability/enforceability of malus and clawback provisions. The individual facts and circumstances of each case are often complex and may result in companies taking an economic or commercial view as to whether to enforce certain contractual provisions.

24. Q24: Do you agree with the proposed changes to Provisions 40 and 41?

Changes to Provision 41 will enhance disclosure, however, we do not believe this would be the case for Provision 40.

25. Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?

We feel it should be reported by companies, however, this doesn't have to be in the Annual Report.

26. Q26: Are there any areas of the Code which consider requiring amendment or additional guidance, in support of the Government's White Paper on artificial intelligence?

Artificial Intelligence is a complex area and additional guidance and consultation are suggested.