David Styles
Financial Reporting Council
Code Review Team
By email: codereview@frc.org.uk

13 September 2023

Dear David Styles,

GC100 Response to FRC UK Corporate Governance Code Consultation

I am writing on behalf of GC100.

Introduction

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. There are currently over 130 general counsel and company secretary members of the group, including representatives from over 85 of the UK FTSE 100 companies. Please note that, as a matter of formality, the views expressed in this response do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

GC100 welcomes the opportunity to engage with the FRC regarding its proposals to revise the Code and would like to thank the FRC, and in particular Sir Jan du Plessis, for their attendance and engagement at the GC100 membership event to discuss the Consultation on 7 June 2023 and the additional engagement opportunities that have been offered as part of the consultation process.

While GC100 acknowledges the purpose and intention behind the proposals, GC100 has serious concerns that the Revised Code as currently drafted will have a significant negative effect on premium listed companies and their boards of directors and is inconsistent with the Government's stated objective to make the UK a more attractive place for companies to list and grow.

To address some of these concerns, GC100 has made a number of alternative suggestions in this response which we hope the FRC will find helpful in finalising the proposals. The Code, as a proponent of principle based and "comply-or-explain" corporate reporting, is internationally recognised and is a respected feature of the UK regulatory landscape. However, the Revised Code does little to address concerns of "comply-or-explain" becoming a misnomer, and we suggest that the changes to the existing Code will place further pressure on companies to comply (rather than explain) at the expense of good governance and investor relations.

We are also concerned that the Revised Code as currently drafted goes above and beyond the Government's plans as set out in the response to the 2021 consultation paper "*Restoring Trust in Audit and Corporate Governance"*, and in so doing fails to support one of the Government's key objectives which is to drive growth in the UK economy and see businesses thrive.

Part A sets out the key themes that GC100 would like to highlight as part of its response to the Consultation, in the broader context of the Government's objective of strengthening the UK's reputation as a choice investment destination. **Part B** addresses the specific questions posed in the Consultation.

Part A: Key Themes

As set out in GC100's response to Restoring Trust in Audit and Corporate Governance[1], GC100 wishes to be a partner to the Government and the FRC to ensure that any reforms benefit the UK as an investment destination while maintaining its international reputation for high standards of corporate law and governance. In this spirit, GC100 wishes to ensure that the FRC is aware of some of the significant key concerns in relation to the reforms which it raised in 2021, and which continue to be significant in the context of the Consultation.

Impact on the UK's ability to attract and retain capital

GC100 believes that the UK's strong reputation is crucial to its ability to continue to attract and retain capital. GC100 considers that the following principles should inform the FRC's work in ensuring that the UK has an effective, proportionate, and practical regulatory framework:

Proportionality: Proportionality is a key principle in the regulation of companies. As such, it is essential that the principle of proportionality is applied to all matters concerning company regulation. Many GC100 members have raised concerns about the proportionality of the proposed reforms to the Code, particularly in light of the expected significant increase in costs for their businesses. Many GC100 members have yet to do a full impact analysis on their businesses, but those who have carried out a costs analysis have suggested that there will be significant one-off and ongoing costs for their businesses.

Over-regulation: Imposing additional obligations over subject matter, which is already covered by other regulation, leads to over regulation and uncertainty/confusion among those companies and individual directors being regulated. Regulation must not be duplicative. The FRC has acknowledged this and have committed to avoiding duplication with other requirements. Despite this commitment, GC100 notes that there are several instances of duplication in the Revised Code, most notably duplication with the FCA's Listing Rules.

UK as an investment destination of choice: Increasing the compliance burden (and cost) for companies may affect the UK's competitiveness as a preferred destination for corporate and capital market activity. GC100 considers that imposing significant and disproportionate new rules on companies and directors through the Revised Code is at odds with the Government's ambition, and the work which the FCA is currently undertaking, to make London a more attractive listing venue. A number of high-profile companies are opting to list their shares in what are perceived to be more attractive capital markets, thereby questioning the UK's attractiveness as a listing destination, even before the proposed reforms are implemented.

Impact on boards of directors

GC100 members are concerned about the cumulative impact of new obligations on directors of the boards of UK listed companies. These boards are finding it increasingly challenging to attract the talent, quality and diversity of background and experience desired to enable effective decision-making. This is contrary to what the Government and the FRC wish to see. There are many practical instances of quality candidates deciding against joining a listed company board, particularly where they are being recruited to join the audit and risk committees, over concerns of over-regulation and incurring potentially unlimited personal liability.

The cumulative impact of new obligations on companies and their directors in turn will create additional costs as companies will need to provide more internal support (and external assurance) to allow directors to meet those obligations. As a general comment, and with the

[1] *GC100 response to BEIS 'Restoring trust in audit and corporate governance' (8 July 2021)*

exception of some of the changes regarding remuneration reporting, the Revised Code changes are additive in nature. The updates to the Code which GC100 expected to see as a result of the Government's response to Restoring Trust in Audit and Corporate Governance appear to be more onerous than the Government intended, and GC100 notes that there are many changes which are not connected to the Government's reforms.

The impact on board committees is also significant. With the increasing responsibilities placed on them, as set out in the Revised Code, non-executive directors will be required to do even more and to commit more time than their traditional supervisory role suggests. We believe that they will also be more exposed to the risk of regulatory sanctions. This could have an adverse impact on the effectiveness of boards and the companies they serve. For example: (i) non-executive directors may be forced to reduce the number of directorships (and other appointments) they hold, thus depriving companies (and other bodies) of crucial cross fertilisation of skills and experience; and (ii) the increased exposure could have a negative effect on high quality/experienced candidates for non-executive positions thereby reducing an already small pool of talent and making it more likely that companies would be forced to engage less experienced candidates.

General comments on the Revised Code

GC100 notes that the Revised Code includes changes which are outside of the scope of the Government's reform agenda (the "**Non-Reform Changes**"), with the FRC noting that it is "*taking this opportunity to improve the functioning of comply-or-explain through a new Principle in Section 1, and to improve reporting on diversity (particularly in relation to the success of diversity policy initiatives) in Section 3*GC100 is supportive in principle of changes which are likely to lead to an improvement in the quality of reporting, provided that those changes are proportionate and do not create excessive additional reporting obligations for companies. However, the changes are overall additive in nature, and GC100 questions how those changes will in practical terms achieve an improvement in reporting. GC100 is concerned that the drafting of the Code has become more complicated than it should be, taking into account that it was intended to be a code of practice which was easy for companies to interpret and follow.

GC100 notes in the Foreword to the Consultation that: "*The Code's success relies on companies, investors and a wide range of stakeholders engaging to improve the quality of governance and stewardship, and to embrace the comply-or-explain nature of the Code*". Investors 'embracing the comply-or-explain nature of the Code' does **not** accord with the practical experience of GC100 members, nor does it appear to be in line with feedback received from companies who contributed to the FRC's research paper[2] in relation to proxy advisers. GC100 notes in particular the following:

- "*All proxy advisor interviewees stated that the UK Corporate Governance Code is one of the main sources for their UK benchmark policy*" (page 15).
- "*Most company interviewees believed that proxy advisors applied their voting policy rigidly and would always recommend against any proposals which deviated from it without considering the reasons given by the company or explaining the company's position in the research report*" (page 42).

There is clearly a disconnect between the significant weight which the FRC places on the operation of the "comply-or-explain" principle and the ramifications for companies in failing

[2] *FRC paper: The influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE 350 companies and investor voting*

to 'comply' with the provisions of the Code, in the form of votes against the company or individual directors.

GC100 further notes that an impact assessment has not been completed to assess the costs (both internal and external) for companies in complying with the Revised Code. While GC100 understands that there is no statutory requirement for the FRC to complete such an assessment, the overwhelming feedback received from GC100 members it that they expect their businesses to encounter significant additional costs in complying with the Revised Code, particularly new Provision 30.

GC100 suggests that many of the changes could be better dealt with through updated guidance referred to in paragraph 10 of the Consultation. The FRC has acknowledged that improvements have been achieved over the last few years of reporting[3], and as such GC100 suggests that the current approach of the FRC producing guidance is working. GC100 notes however that while the guidance produced to date has been largely helpful to companies, the sheer volume of guidance risks making it more of a hindrance than a help. As such, GC100 is very supportive of the FRC reviewing the existing guidance and hopes that it can be made more concise and accessible/user-friendly for companies (for example, by ensuring that the guidance is hyper-linked to the relevant provisions of the Code). GC100 reiterates its offer to work with the FRC to update existing guidance.

GC100 notes the FRC is working with the Department for Business and Trade on a non-financial review initiative intended to 'improve regulation across the board', 'reduce burdens' and 'drive economic growth'[4]. GC100 encourages the FRC as part of the Code Consultation to consider opportunities to introduce greater flexibility to publish information electronically or on a website and in so doing enable the annual report to focus on material issues for a company's stakeholders.[5]

In addition, GC100 is concerned that there is a relatively compressed timeline to prepare for what are significant changes to the Code and, in particular, a limited timeframe between guidance being published and the effective date of the Revised Code of 1 January 2025.

Finally, GC100 notes the recent press speculation regarding the lack of Parliamentary time to implement the wider audit reforms, including the establishment of the Audit, Reporting and Governance Authority[6]. GC100 considers that it is important that there is a clear roadmap for

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[3] *"We continue to see improvements in the quality of reporting – risk management procedures and ESG disclosures and more generally, where there are departures from the Code." – Foreword, FRC Review of Corporate Governance Reporting (November 2022), p.2.*

*"Since we began assessing reporting, we have seen year-on-year improvements in reporting" [**N.B**. however, the sentence goes on to states that "there are few companies whose disclosures meet the highest standards throughout their report"] – Executive Summary, FRC Review of Corporate Governance Reporting (November 2022), p.4.*

"We are pleased to see that more companies are now offering greater transparency when reporting departures from the Code, including those instances where the chair's tenure is extended beyond nine years" - Executive Summary, FRC Review of Corporate Governance Reporting (November 2022), p.4.

[4] *Smarter regulation non-financial reporting review: call for evidence*

[5] *GC100 response to Department for Business and Trade 'Smarter regulation non-financial reporting review: call for evidence' (August 2023)*

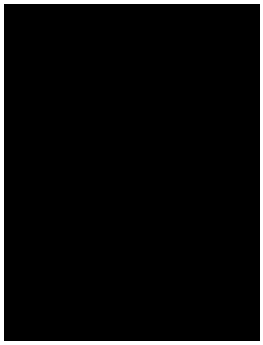
[6] *FT article: UK government set to omit audit reform from legislative plans (31 August 2023)*

companies on the detail of all of the reforms, as well as the implementation programme. The Code is an important part of the overall governance framework, and so it should not be considered in a vacuum. GC100 considers that Code reforms which are in any way dependent on the broader legislative framework should not be adopted until the relevant legislation has been finalised and adopted by Parliament.

Conclusion

GC100 is grateful to the FRC for providing a further opportunity to contribute to the ongoing review of the UK corporate regulatory framework. GC100 is happy to discuss its concerns and proposed solutions with you in more depth to ensure that the UK's competitiveness is not harmed by unnecessary and counterproductive changes to the regulatory framework.

Yours sincerely,



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CC

- Richard Moriarty, Chief Executive Officer, Financial Reporting Council
- Sir Jan du Plessis, Chair, Financial Reporting Council
- Kevin Hollinrake MP, Minister, Department for Business and Trade
- Andrew Griffiths MP, Economic Secretary, HM Treasury

Part B: Response to the Consultation

SECTION 1

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

No. GC100 members have commented that they do not think it is clear what "governance activities" and "governance outcomes" are and consider that the revisions to Principle D would inevitably lead to more boilerplate reporting.

GC100 considers that new Principle D could be amended to read simply as follows: "*Where the Board reports on departures from the Code's provisions, it should provide a clear explanation*". GC100 considers that this would address the FRC's concerns around the quality of explanations given, with the new Code Guidance providing examples as to what a clear explanation looks like. GC100 notes that listed companies are already required to comply with Listing Rule 9.8.6(6) and that this listing rule adequately addresses the comply-or-explain requirements in relation to the provisions of the Code.

If the FRC decides to retain the current drafting, GC100 considers that Principle D should be made consistent with LR 9.8.6(5), and it should say "how the *principles of* the Code ~~has~~ *have* been applied".

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?

No. GC100 notes that these are Non-Reform Changes. GC100 does not consider that the changes to Provision 1 should be included in the Revised Code. GC100 considers that there are two parts to the amendments to Provision 1 and comments on them in turn:

(i) '*Environmental and social matters are taken into account in the delivery of its strategy*'

GC100 notes that section 172(1) of the Companies Act 2006 requires directors to have regard to the impact of the company's operations on the community and the environment (as well as various other factors) as part of their decision making. Company strategy is generally set by the board and therefore section 172(1) reporting is the correct vehicle for reporting in this area. By including this amendment in Provision 1, the practical effect is to duplicate the requirements of the section 172 statement, albeit that the suggested disclosure is at the level of company strategy, rather than at the level of individual decisions the directors have made in promoting the success of the company in a given year. GC100 suggests that, given the acknowledged improvement in reporting on section 172 requirements[7], section 172 reporting guidance could include suggestions on how the statement could be drafted to address the FRC's proposals for reporting in this area.

[7] See for example pages 12, 20 and 53 of *FRC Review of Corporate Reporting* (November 2021)

GC100 notes there are currently numerous sustainability reporting requirements, so it would be desirable to unify these requirements without creating additional reporting obligations.

In addition, in relation to the new diversity-related LR 9.8.6(9) and (10) reporting requirements, we note that the FRC says: '*Our revisions are intended to strengthen the Code in this area and support the FCA's policy without introducing additional, duplicative targets or regulations*'[8]. We therefore consider that these changes to Provision 1 contradict this statement by introducing extra reporting elements for all social and environmental matters. They should be removed.

(ii) '*Including its climate ambitions and transition planning*'

GC100 notes that the proposed additional wording at the end of Provision 1 requires a new disclosure in relation to climate ambitions and transition planning as part of the wider 'taking into account' of environmental and social matters. GC100 notes that much of the disclosure that would be required by the amended Provision 1 is already required under LR 9.8.6(8) and (in due course) will be required by the mandatory transition plan regime, and as such considers that these amendments will be duplicative and should be removed.

In addition, GC100 makes the following comments on these amendments:

- The revised drafting of Provision 1 retains the reference to the delivery (and not "*formation*") of strategy, following the wording which currently relates to governance. It is not clear if this is deliberate to place emphasis on the impacts of environmental and social matters on a company's strategy which – it could be inferred - might otherwise be formed without regard for these matters. However, in the spirit of avoiding duplicative content, it would be clearer and simpler if this new wording were to be removed entirely.

- The existing Taskforce on Climate-related Financial Disclosure-based regimes do not relate to the company's forward-looking strategy positions covering the company's own impact on the climate. They only relate to the impacts of climate change on the company, and the company's response to that impact. As such, it appears that the FRC is introducing a new requirement, similar to the EU's double materiality concept. It is not clear exactly whether this is the intention of the amendment, as the phrase 'climate ambitions' is ambiguous – as it is not clear if this 'ambition' is intended to relate to improving the impacts of the company on the climate or on improving the response of the company to climate change risks. If the FRC decides to retain the current drafting, the FRC should clarify what is meant by climate ambitions.

- The revised drafting would also increase the scope of the climate-related assessment, as the proposal for Provision 1 is agnostic as to jurisdiction. By contrast, the net zero requirements of the UK Climate Change Act (which require UK companies to decarbonize and therefore makes them subject to an unavoidable transition risk, and which listed companies therefore need to take into account for the purposes of climate risk planning in current disclosures) only relates to UK emissions. More broadly, GC100 is concerned about the increased risk of green-washing litigation exposure as a result of these changes. Requiring companies to disclose their forward-looking sustainability strategies needs to be reviewed in this context, as companies will be at various stages

[8] *Paragraph 28 of Consultation*

in development of their internal strategies and will be subject to different pressures regarding the need to preserve their credentials for the sustainability and green linked claims that they make. Companies' ability to disclose forward looking sustainability strategies will therefore depend on their level of confidence in their climate-related strategy, and the particular circumstances of each company and its stakeholders. Whether to disclose details of forward looking sustainability strategies should therefore primarily remain a matter for the company directors.

Q3: Do you have any comments on the other changes proposed to Section 1?

Yes, GC100 makes the following additional comments:

Regarding Provision 2, whilst GC100 has no concerns about reporting on the embedding of culture, GC100 wishes to note that this is likely to lead to further boilerplate and not meaningful disclosure.

Regarding Provision 3, GC100 notes that these are Non-Reform Changes. GC100 considers that the amendment in Provision 3 which replaces "*seek engagement*" with "*engage*" should not be included in the Revised Code. GC100 noted in its response to Restoring Trust in Audit and Corporate Governance that shareholders generally do not engage with companies on many issues. Indeed, GC100 notes the conclusions of the FRC's recent research paper into proxy advisors and in particular, the conclusion that "*the ability of companies to engage with their major shareholders may be related to the size of the company and the composition of its share register. Investor interviewees said that their decision on which companies to engage with were primarily driven by their own priorities rather than in response to requests from companies*."

Further, from a technical perspective, the Code can only ask a chair to seek such engagement. It cannot demand that an actual dialogue takes place, as this is beyond the control of the committee chair, a practical challenge faced by companies reflected by the FRC in its report.[9]

SECTION 2

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?

No. GC100 notes that these are Non-Reform Changes. GC100 does not agree with the proposed change to Principle K.

GC100 agrees that assessing the ability of a director to commit sufficient time to the role should form part of the annual board review and GC100 notes that this assessment in practice occurs throughout the year - not just at the time of the annual board review but in advance of the appointment of a director, and when an existing director requests approval from the company to take on an additional appointment. However, GC100 considers that the requirement to consider external appointments is already adequately covered by the

[9] *The influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE 350 companies and investor voting*

requirement in Principle K to evaluate whether each director continues to contribute effectively, and GC100 welcomes the flexibility in approach that Principle K currently provides.

The existing Principle K is also consistent with CGI guidance to its Code of Practice for board reviewers[10] that it would not be appropriate to be overly prescriptive in how board evaluations are undertaken.

GC100 notes that Principle K requires a consideration of all commitments to other organisations, and not just significant external commitments (as set out in question 4) or significant director appointments (as set out in Provision 15). GC100 considers that there should be consistency of which commitments/appointments are covered by Principle K and Provision 15, making clear in particular whether the scope is: (a) only significant roles; (b) directorships only; and/or (c) other public roles. GC100 further considers that it is important that companies have discretion to determine what is in fact "significant", as this is very much dependent on the company and the individual circumstances of the relevant director.

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?

No. GC100 notes that these are Non-Reform Changes. GC100 supports transparency which achieves a purpose. GC100 is concerned that there may be unintended consequences of requiring these disclosures. In particular, GC100 is concerned that the disclosure required by Provision 15 will discourage talent from wanting to act as a non-executive director on the board of a UK listed company if it requires public disclosure of other enterprises in which they are involved. Such disclosures will encourage proxy agents to recommend votes against more non-executive directors, because in practice the proxy agents will do a simple sum of the number of mandates without taking account of any explanation provided.

It is also not clear how a company fulfils the requirement to explain how a director has time to undertake the role (and whether that assessment is based on a snapshot in time, for example, when drafting the annual report). GC100 does not think it is realistic for companies to provide detailed reporting on each director's ability to manage their time and that instead this is likely to lead to boilerplate reporting. In addition, GC100 considers that this requirement is intrusive for individual directors without having any clear benefit for shareholders.

GC100 considers that an unintended consequence of these changes may be that non-executive directors will be more reluctant to take on additional appointments outside of commercial company boards – for example, to act as trustees of charities or other not-for-profit organisations.

Should the FRC decide to adopt the proposed changes, GC100 notes that the new wording includes the following sentence: "This should describe any actions taken as a result of this assessment". It is not clear to which "assessment" the FRC is referring. Is this a reference to the assessment required in Principle K?

[10] *The Chartered Governance Institute's Code of Practice for board reviewers (January 2021), p2.*

SECTION 3

Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?

No. GC100 notes that these are Non-Reform Changes.

GC100 considers that a number of these proposals are duplicative of the FCA Listing Rules and requests the FRC to consider closer alignment to the Listing Rules (or removal, to avoid unnecessary duplication). For example, the penultimate bullet of new Provision 24 requires disclosure of "*the gender balance of those in the senior management and their direct reports.*" The FCA Listing Rules by contrast only requires disclosure of the "*gender identity or sex of the individuals on the listed company's board and in its executive management*", and not also the "*direct reports*" of senior management[11].

GC100 suggests that it would be beneficial for the FRC to thoroughly review the definitions used in the Companies Act 2006 and the Listing Rules to ensure that the Revised Code definitions are consistent (for example the definitions of "senior manager" in section 414C(9) of the Companies Act 2006, "senior management" under the Code and "executive management team" under the Listing Rules do not directly align).

See further comments on this Provision in response to Question 8 below.

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?

GC100 notes that these are Non-Reform Changes.

GC100 supports an approach that promotes diversity beyond gender, social and ethnic backgrounds – particularly as boards need to reflect the wider organisation and the communities they serve.

However, GC100 is concerned that the reference to "protected characteristics and non-protected characteristics" is so broad as to be almost meaningless in this context. And that the retention of the specific references to "cognitive and personal strengths" places an undue significance on them relative to other diversity characteristics.

GC100 considers that an alternative formulation would be preferable, for example:

"*They should promote equal opportunity and contribute to a diverse and inclusive board and senior management team*."

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

No. GC100 notes that these are Non-Reform Changes. GC100 does not support the proposed changes to Provision 24. Succession plans, particularly for senior management, are

[11] *LR 9.8.6R (10) and LR 14.3.33R (2).*

confidential and often commercially sensitive – reflecting the fact they relate to individuals and their potential career progression. Accordingly, any disclosure around succession planning must be high level, talking about the process rather than the outcomes or named individuals. This will inevitably result in boilerplate reporting that does not provide any value to shareholders (similar in fashion to the current requirement to report against Provision 40). GC100 notes that the feedback received from investors is that they want to understand that there is a process in place but are not interested in the level of detail which new Provision 40 includes.

GC100 also has concerns about the references to pipelines in succession planning which does not acknowledge, for non-executive roles in particular, that any slate of candidates may only be available for a limited period and so cannot properly be considered a pipeline.

GC100 also notes, as a further reason for not amending existing Provision 24, that there is duplication between the amended Provision 24 and the Listing Rule requirements.

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?

GC100 notes that these are Non-Reform Changes.

GC100 is supportive of the CGI recommendations, but as a general matter GC100 is concerned that the guidance which is intended to support companies instead becomes unhelpful due to the sheer volume of guidance being produced and the fact that it is often difficult to find. As part of this Consultation, GC100 would welcome the guidance becoming more accessible, more concise and linked to the Code (for example, by way of hyper-links/footnotes to the Principles and Provisions, while making clear that it is guidance and does not form part of the Code itself).

SECTION 4

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

GC100 offers no comment on this question as all GC100 members will be subject to the new reporting regulations and so will be legally required to prepare an Audit and Assurance Policy ("**AAP**").

However, GC100 notes that there is an overlap between the AAP, which will require companies to state specifically whether they have any plans for external assurance over some or all of the company's Resilience Statement, or of the effectiveness of the company's internal controls over financial reporting, and the declaration required to be given by Provision 30. It is unclear whether the scope is intended to be the same for both the AAP and the declaration, and so GC100 suggests that the guidance prepared to support the Code should address this point.

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?

Yes, GC100 agrees that duplication should be reduced as far as possible. However, GC100 notes that the feedback provided by GC100 on the Minimum Standard for Audit Committees was not taken on board by the FRC, with the result that the responsibility of audit committees has been expanded significantly.

GC100's response on the Minimum Standard for Audit Committees also included observations and suggestions around some of the language in the draft, particularly around wording suggesting audit committees should be responsible for ensuring adequate competition and choice among audit firms, and that audit market diversity is a matter of public interest. GC100's response also highlighted the practical differences encountered in trying to get "challenger firms" to participate in an audit tender process. Unfortunately, the Minimum Standard, renamed to make clear it is in relation to external audit only, does not reflect any of GC100's concerns or suggested amendments.

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?

No. The FRC acknowledges that companies are building experience in different ways and the issues related to sustainability and ESG might be dealt with by risk committees, people committees, management teams or external experts. This is indeed GC100's experience. Many larger FTSE 100 companies have established board sustainability committees, and those which have not done so, manage their sustainability reporting at board level in different ways. GC100 considers that companies should continue to be afforded maximum flexibility to manage narrative (including sustainability) reporting and so do not consider it necessary for the Code to include this change.

GC100 notes further that there is no carve-out in the drafting of the Revised Code for the expanded remit not applying where narrative reporting is reserved for the board. If the FRC decides to proceed with this amendment, GC100 suggests that there should be an explicit carve-out where such matters are reserved for the board or another committee of the board.

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?

No. GC100, in its response to Restoring Trust is Audit and Corporate Governance, noted that the Government ought to prioritise (a) *proportionality*, that is (i) *considering how such regulation affects companies of varying sizes and capacities within its remit*; and (ii) *balancing the costs against the benefits of compliance on affected companies*; (b) *fostering/maintaining good quality and diverse boards*; and (c) *limiting any stronger regulation to internal controls of financial reporting only*.

GC100 considers that the revisions to Section 4 of the Code do not align with the priorities set out above, in particular proportionality and limiting any stronger regulation to internal controls over financial reporting only.

GC100 considers that the proposed amendments to Section 4 of the Code will have significant and disproportionate cost and resource implications for premium listed companies due to the level of internal and external assurance that many directors will require in order to give the declaration set out in new Provision 30.

GC100 members have commented that the costs involved in obtaining the internal and external assurance required will be significant, and are alarmed that neither the FRC nor the Government have undertaken a formal assessment of the impact of these Code changes on premium listed companies. A formal assessment of the impact of these Code changes should be undertaken on the assumption that many companies will require both internal and external assurance.

GC100 members have also raised concerns about the lack of capacity in the market to obtain external assurance for the areas which they consider their board will require it.

Several GC100 members comply with US Sarbanes Oxley (***SOX***) and other similar national reporting regimes. GC100 members who are already compliant with such frameworks are concerned about the practical ramifications and costs of managing multiple regimes for controls and reporting, with the regime set out in the Code being wider in scope than SOX or other national reporting regimes. Those members have suggested that there should be a regime in place which recognises the equivalence of other overseas frameworks with which some companies are already complying.

GC100 appreciates that the FRC has been mandated by the Government to strengthen reporting on internal controls. However, GC100 continues to consider that the current regime of internal controls as provided for in the Code is generally fit for purpose and that a few historic instances of corporate failure should not be taken as a proxy for the quality of the existing internal control frameworks at UK listed companies. As set out above, GC100 considers that the declaration required by Provision 30 should relate to financial controls only. Some GC100 members commented that if the FRC decides to proceed with Provision 30 as drafted, it would be helpful to have a transition period – for example, to require the declaration to be given in respect of financial controls only initially, and then after one to two financial reporting periods, to extend the declaration more widely.

Please also see the answer to question 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?

GC100's view continues to be that requiring directors to give a declaration of the nature set out in new Provision 30 will inevitably result in increased costs for companies. Many directors, particularly those who are accustomed to receiving a high level of comfort on the internal control environment through sitting on the boards of SOX-compliant companies, will be unwilling to give such a statement without having a high level of assurance from management, and also external assurance from advisors. Even if only one director requires an additional level of assurance, the practical impact of that is that additional assurance is required for the whole board.

GC100 makes the following comments on the drafting of Provision 30:

- The Government's response to Restoring Trust in Audit and Corporate Governance noted the following: "*The Government therefore intends to invite the FRC to consult on strengthening the internal control provisions in the UK Corporate Governance Code to provide for an explicit statement from the board about their view of the effectiveness of the internal control systems (financial, operational and compliance systems) and the basis for that assessment.*" GC100 considers that Provision 30 goes beyond what the Government intended the statement to cover.

- GC100 notes in particular that the removal of "financial" and replacement with "reporting" is intended to broaden the nature of the statement being given by the directors, which in turn expands the obligations of the directors as regards "monitoring and reviewing". GC100 considers that the existing wording of "financial, operational and compliance controls" should be retained.

- GC100 strongly believes that the declaration should be given as at the financial year end, and neither throughout the reporting period or up to the date of the annual report publication. GC100 considers that the current wording in Provision 30 would make the process of preparing the declaration and obtaining board confirmation unnecessarily onerous, with no clear benefit for stakeholders. GC100 members who are SOX-compliant also commented that the continuous nature of the declaration makes the company process that will underpin the declaration more onerous than SOX.

- GC100 also notes that the drafting of the bullets may in some circumstances make it impossible for a director to give the declaration. If, for example, a material weakness is identified and remediated without consequence for the business during the financial year, a director would likely be unable to conclude that the systems have been effective "throughout the reporting period". They would, however, be able to give a declaration as at the year end, and in this circumstance would still be able to explain the material weakness and how it was addressed.

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?

No. See above. GC100 considers that Provision 30 should continue to reference financial, operational and compliance controls. This is not mutually exclusive, as the obligation to monitor and review already covers "*all material controls…including…*". GC100 considers that retaining the existing wording is in line with the Government's objectives in this area.

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?

GC100 considers that guidance would be useful to provide a consistent baseline for companies, however, GC100 notes its general comments on page 4 of this response regarding 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?

GC100 offers no comment on this question save to note that any definitions introduced must be consistent with existing regulation and guidance.

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

GC100 reiterates its general comments on page 4 of this response regarding guidance.

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)?

GC100 offers no comment on this question.

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

GC100 offers no comment on this question.

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?

GC100 offers no comment on this question.

SECTION 5

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

GC100 notes that these are Non-Reform Changes.

In GC100's view, Principle P is largely duplicative of the language in Provision O that provides "*Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success*." It is unnecessary for Principle P to then state that they should also align to the long-term strategy, including ESG objectives.

GC100 is concerned that the reference to ESG objectives in Principle P (rather than in a Provision) could be interpreted as making ESG conditions a mandatory part of remuneration arrangements, thereby restricting a company's ability to properly align incentives and strategy. While some ESG objectives will translate into obvious and meaningful metrics for some companies, it may do so less easily for others. Companies should not be compelled to include ESG objectives in their remuneration policies where these are not appropriate to their business. Some GC100 members also raised concerns about the mandatory inclusion of ESG objectives given the rise in US shareholder claims against companies in respect of their diversity initiatives.

It is noted that there is a reference to ESG in new Provision 43 and GC100 considers it would afford a greater degree of flexibility to companies and allow them to compete more effectively in the global market if ESG is addressed there and not in Principle P (as the Principles are not 'comply or explain').

If the FRC decides to proceed with the changes to Principle P, GC100 notes that the word "outcomes" is inappropriate and should be replaced with "structure", as the outcomes for individuals are determined by the remuneration structure and company performance.

GC100 is also concerned around the specific requirement in Provision Q to take workforce pay and conditions into account when determining remuneration outcomes and considers this is already adequately dealt with through Provision 35.

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

GC100 welcomes the approach taken to malus and clawback which allows companies to tailor their malus and clawback policies to their particular needs and GC100 agrees that the proposed reporting changes will improve transparency. However, GC100 notes that there is an inconsistency in whether disclosure of the use of malus and clawback is required over a five year look back period or just over the last reporting period (as the last bullet and final sentence of Provision 40 conflict). GC100 requests that this is clarified.

GC100 considers that as remuneration reports will remain available on the company's website, a five year look back may be unnecessary, and instead suggests that a one year look back would be appropriate.

GC100 would also welcome clarity on whether the disclosure around use of the provisions is limited to directors (and so align with the existing disclosure required under the remuneration reporting regulations) or to all participants. If the latter, GC100 assumes the disclosure would only be of a generic nature and not require details that would allow individuals to be identified.

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

GC100 welcomes the deletion of the existing Provision 40 and the removal of the consequential reporting requirement in Provision 41. GC100 considers that this will remove a lot of unnecessary boilerplate reporting from remuneration reports.

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

GC100 considers that references to pay gaps and pay ratios are duplicative of existing statutory reporting requirements and should be removed.

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?

GC100 considers it premature and unnecessary to make any amendment to the Code or related guidance at a time when the legislative position on artificial intelligence in the UK (and more widely) is still evolving. Any such amendment or guidance could become outdated in the near-term. Also, artificial intelligence is just one of a number of areas of risk in relation to the use of technology (albeit one that is attracting a certain amount of attention at present given

recent technological developments). None of these other areas is specifically called out in the Code or related guidance, both of which are intentionally high-level.

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