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Financial Reporting Council

By email: codereview@frc.org.uk

13 September 2023

Dear Sir/Madam

UK Corporate Governance Code – Consultation

We welcome the opportunity to contribute to the FRC's consultation on proposed changes to the UK Corporate Governance Code ('the Code'). As a company listed in both London and New York, InterContinental Hotels Group PLC (IHG) has a strong interest in contributing to the effective operation of a high-quality and proportionate corporate governance regime.

We are supportive of the role the revised Code can play to improve accountability, build trust and support investment and stewardship decisions in the UK, and that it is positive to review the Code to reflect the best available practice across the market since the last review.

We have set out below, in more detail, some areas where we would like to add particular emphasis and provided more detailed responses to a number of the individual consultation questions where we have a stronger view. We note that additional guidance will be forthcoming on internal control, assurance and resilience later in the year and therefore our current comments are based on reasonable assumptions we can make on the potential impact these changes may have on IHG.

We have been involved in the General Counsel 100 discussion on this consultation and confirm our support for the views expressed in their response.

As we stated in our response to the Government's White Paper in 2021, we believe a strengthening of the existing internal control framework for UK companies could drive greater consistency between companies and other jurisdictions, but that this should be proportionate and balanced with due consideration to the additional cost burden. As a US listed entity, we already invest significant resources each year to document, test and obtain assurance on our financial reporting controls under section 404 of the Sarbanes Oxley Act. We are also already monitoring the potential for additional assurance and divergent reporting being required by the SEC and other reporting standards in relation to disclosures on carbon data.

With regard to our UK listing we also note that the 'comply or explain' nature of the Code has, in our experience, already led to robust consideration by our directors and management of our internal control, assurance and resilience arrangements over the past 25 years, and has received constructive challenge throughout this period from our external auditors. We believe we already disclose significant information on our governance arrangements throughout our annual report and accounts, including the crucial role played by our Audit Committee in overseeing internal control and risk management.

We believe that achieving proportionality should be a central consideration when considering the Code's objectives in relation to accountability, trust and investment and stewardship decisions. We are concerned that the probable incremental time required for management and directors to engage effectively across the proposed revisions, and the wider Statutory Instruments, may be underestimated. We believe that the time and cost of incremental management and external assurance support required to enable Boards to "reasonably conclude" on risk management and internal control effectiveness is under estimated and may therefore be disproportionate. From our current interpretation, we believe this will require significant and incremental upfront, ongoing and year-end board discussion on what is considered material (especially for compliance and operational matters) and what would be required to enable this conclusion to be satisfactorily reached by board directors.

We also see important considerations for the needs of dual listed Board directors and achieving simplicity between reporting regimes. In our case, we make a combined Annual Report and Accounts and 20-F filing so alignment of terminology (for example, "material weakness") wherever possible would be extremely helpful to keep discussions as efficient and understandable as possible.

In relation to the draft, we see many of the elements within the consultation paper as sensible evolutions to the Code, with limited practical impact on IHG, in particular, the focus on outcomes-based reporting which will enable us and others to continue to explain the activities and value of existing governance structures and processes to how we make and oversee decisions. The proposals for Audit, Risk and Internal Control led to the greatest discussion across our teams and we have provided detailed thoughts on this in the appendix. On this topic, we urge the FRC to maintain an appropriate balance between elements of threat and opportunity and allowing companies to proportionately respond to risk management in the context of the strategic objectives and the pace of the external environment. We noted, and support, the removal of the explicit reference to a 'prudent' framework of internal control as we also viewed this as pre-determining risk appetite / tolerance, rather than allowing for an open discussion of what could be considered appropriate for an organisation in pursuit of its strategic ambitions.

We agree with the consideration of environmental and social matters and climate and transition planning as an integral part of the delivery of strategy, meaning that internal control, assurance and resilience arrangements need to adapt and accommodate evolving threats and opportunities (as they have always had to). We believe this should also be the case for emerging risk areas such as the potential impact of artificial intelligence, rather than requiring any amendment or additional guidance in support of the Government's White Paper on this topic. We welcome additional clarity in the areas of climate and sustainability in particular but are very mindful that this remains an evolving regulatory topic.

In summary, and again repeating our comments to the Government, it is vital that any new requirements retain the attractiveness of UK markets to investors. The overall scope of changes being proposed in this consultation, the wider legislation and other national and international disclosure requirements is wide-ranging and raises concerns as to the aggregate burden on companies, audit firms and the regulator, as well as potentially increasing the complexity and volume of information disclosed in Annual Reports (which is already at an all-time high). We believe that adding further requirements without rationalising in other areas is unlikely to add incremental insight to the average reader and that a phased approach may be necessary.

If we can assist further, please do not hesitate to contact me.

Yours faithfully

[redacted]

Board Leadership and Company Purpose

1	**Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?**
2	**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?**
3	**Do you have any comments on the other changes proposed to Section 1?**

We already focus our reporting on outcomes and will look for opportunities to tie practical examples back to the Code principles. While we believe that the changes will deliver more outcomes-based reporting, we also request examples as there is scope for wide interpretation of “governance outcomes” and the risk of increased boilerplate reporting. We are currently presuming this will mean reporting on decisions/conclusions reached by the Board with a focus on the governance aspect rather than the eventual impact of those decisions.

We agree that environmental and social matters / climate and transition planning should be reported on as an integral part of the delivery of overall strategy, as we aim to do with the People, Communities and Planet pillar within our strategy, but note that these reporting requirements are already captured across the Companies Act, Listing Rules and TCFD framework.

As a comment which also applies to other sections, we highlight for consideration that increased disclosures in the Annual Report relating to the greater focus on shareholder engagement, board activity outcomes, climate ambitions and transition planning etc will impact flow and layout of our already - by necessity - very large report. In practice this will mean that concise and streamlined reporting will require some difficult / unwelcome trade-offs across the report to avoid a spiralling page count and unnecessary repetition.

As a minor comment, we noted the introduction of wording that the board should "report on how effectively the desired culture has been embedded" and would appreciate guidance if there is any specific intent behind this change.

Division of responsibilities

4 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?

5 Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?

We have no significant comments on these proposals. Any external appointments already require our Board approval and we disclose external appointments in the Governance Report, however, would need to consider how we would report against the proposed revisions to the Code. Existing governance provisions already provide adequate scope for assessing Director's time and other commitments and the proposed changes to the Code are therefore unlikely to introduce meaningful governance changes but will introduce complexity of reporting.

Composition, succession and evaluation

Diversity and inclusion

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

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?

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

Board performance reviews

9 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?

We have no significant comments but note that the sensitivity around succession plans is likely to lead to boilerplate reporting and there is inevitable fluctuation in succession plans as people and organisations continue to move. We would also welcome consistency in language across the Code and Listing Rules.

We would also recommend for clarity that Provision 24 stipulates as a separate bullet point if annual reports should include a standardised numerical disclosure on the ethnic background of the board, key board positions and executive management team. This is a recommendation on the FCA's policy statement on DE&I and for consistency think those recommendations should also be covered in Provision 24. Provision 24 current stipulates this on gender but not ethnicity.

Audit, Risk and Internal Control

Audit and Assurance Policy

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

Audit Committees and the External Audit: Minimum Standard

11 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 have no strong view on these questions as IHG will be required to comply through the draft legislation.

Sustainability Reporting

12 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 see this as a sensible clarification of the Audit Committee's existing responsibilities, which, for IHG, is already somewhat considered through the Committee's oversight of disclosure controls across our external reporting. We note however that there is continued scope for confusion when considering the terms of reference of various board committees given the role of our dedicated Responsible Business Committee on sustainability strategy, ambitions, reporting and metrics and would therefore need to keep this under review.

Risk Management and Internal Controls

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?

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?

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?

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?

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?

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

As noted in our cover letter, we believe that the time and cost of incremental management and external assurance support required to enable Boards to “reasonably conclude” on risk management and internal control effectiveness is under-estimated and may therefore be disproportionate. From our current interpretation, we believe this will require significant and incremental upfront, ongoing and year-end board discussion on what is considered material (especially for compliance and operational matters) and what would be required to enable this conclusion to be satisfactorily reached by board directors.

On the substance of the proposed changes, whilst we are pleased to note that the proposals are not attempting to replicate the full requirements of SOX, such as mandated external assurance, we also have concerns as to their ability to achieve meaningful change and consistency. The documentation of controls and detailed testing, as currently required to comply with SOX, are vital in supporting a declaration on effectiveness. Whilst we do support greater flexibility in the hands of the board to design and monitor internal controls that mitigate the key risks specific to the company, we believe that more explicit guidance and/or requirements would be necessary in this area in order for the revised directors' statement to deliver a consistent step forward in governance.

We support the intention behind changing references from ‘financial reporting’ to ‘reporting’ in recognition that there are important elements of company reporting beyond that of the core financial statements. We are mindful of the audit committee’s role in reviewing any significant reporting judgements and would value alignment of definitions so that this responsibility can be executed simply and effectively, including terminology such as “significant”, “material”, or “principal”, which can cause confusion without clear guidance. We would generally prefer specific reference in the Code where elements are deemed critical for all companies to disclose.

We believe that the board's declaration with regards to reporting controls and narrative, financial or otherwise, should be at the balance sheet date only. We understand that it does appear logical for controls monitoring and reporting to be over the entire period rather than at a point in time. However, the objective, in this case, is accuracy of reporting and effectively designed and operated controls at the balance sheet date should achieve that. We are concerned that the increased burden on management to review and potentially report on weaknesses that have been remediated and are of no material importance on reporting accuracy would provide no additional benefit to stakeholders. Our experience of SOX is that balance sheet date reporting works well and is well understood by stakeholders.

In our view a board declaration on their reasonable conclusion on operational and compliance risk management and internal control effectiveness should be across the whole period, reflecting the relevant control objectives' operation throughout the period. We believe that the overall declaration may need to distinguish between the operational, compliance and reporting elements.

We believe it would aid consistency between companies and provide minimum guidance to companies if the Code were to include recommendations on suitable or acceptable frameworks for management's review and how these can be applied in support of the Board's declaration. There are suitable frameworks already available in many areas, for example COSO Internal Control in relation to ICFR. Management would still have the flexibility to use other frameworks, and in line with the existing 'comply or explain' principle would explain the reasons for their choice.

We do not believe a single definition of materiality that encompasses all the elements of risk management including reporting, operational and compliance would be meaningful or appropriate. We believe that boards should determine what is material for each objective of their risk management and internal control framework. Each of these are separate objectives with different outcomes and cannot reasonably be assessed under the same definition of material. We would prefer that the Code's guidance be explicit and confirm that the materiality threshold applied in determining *how* a control is implemented and tested does not define *when* a material weakness is reported externally. We see the latter test, of 'what is relevant to stakeholders', as different from our internal 'at what degree of operational precision are we choosing to test' decision.

The FRC's consultation states the Code's definition of material weakness is 'in line with other existing definitions'[1]. We do not see an alignment between the Code's definitions and usage and that of the PCAOB[2]. We are concerned that introducing a different threshold but utilising the same definition will cause stakeholder confusion.

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[1] UK Corporate Governance Code Consultation document, paragraph 70 "A fault, deficiency or failure in the design or operation of the risk management and internal control framework, such that there is a reasonable possibility that the company's ability to identify, assess, respond to or monitor risks to its strategic, operational, reporting and compliance objectives is adversely affected" https://www.frc.org.uk/getattachment/a92c8f2d-d119-4c4b-b45f-660696af7a6c/Corporate-Governance-Code-consultation-document.pdf

[2] PCAOB AS 2201, appendix A.A7 A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis.

Going Concern

19 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)?

Resilience Statement

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

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

In the spirit of removing duplication we suggest the requirement within Provision 30 is not needed (and we feel never really has been). Our basis of preparation note (page 157 of our 2022 ARA) already says this in our audited accounts. Given the expansion of resilience and viability reporting, the 12 month "survival" accounting test is a very blunt instrument.

We will refer to the Resilience Statement to report on future prospects.

https://pcaobus.org/oversight/standards/auditing-standards/details/AS2201

Remuneration

Changes to strengthen links to overall corporate performance

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

Malus and Clawback

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

Changes to improve the quality of reporting

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

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

We believe most of the proposed changes are sensible and reflect best practice, however we disagree with the proposal to report on the five-year history of use of malus and clawback, simply as these are very rare and extreme measures for remuneration committees to take, so disclosures in the vast majority of cases would consist of a table showing nothing has happened in each of the preceding years. If malus and clawback was ever used, it would almost certainly be disclosed in detail in the relevant year's report.

We agree that Provision 40 in its current form is a 'tick box' for most companies and does not add value so should be removed.

We also reiterate our view that pay gap / ratio data does not add value and agree with the removal of reference to these in relation to explaining executive pay outcomes.

Other Matters for Consideration

Artificial Intelligence **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?**

As noted elsewhere, we are wary of drawing AI (or other specific risk topics) out for particular attention in the Code as we believe it presents an opportunity / threat like other factors and should therefore be considered as an integral part of the explanation of strategy, assessment of principal and emerging risks, risk management and internal control arrangements, and resilience etc. We would hope that the Code will remain flexible and adaptable to an ever-changing risk environment.