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Financial Reporting Council
Code Review Team
Email to: codereview@frc.org.uk

13 September 2023

RE: Response to Consultation on UK Corporate Governance Code

Dear Code Review Team,

Thank you for the opportunity to provide input to the consultation on the proposed changes to the UK Corporate Governance Code ("Code"). As Company Secretary of Shell plc[1], I am responding to your consultation.

We welcome the efforts of the Financial Reporting Council ("FRC") to improve corporate governance and stewardship, as well as the wider efforts of the UK Government to restore trust in audit and corporate governance. Such efforts are in the interest of both our company and our shareholders. As always, measures taken in this regard should be proportionate, should not lead to duplication and should not be unduly burdensome or lead to excessive reporting obligations. We would also wish to see a coherent approach to the overall package of planned UK reforms and consideration for interoperability and equivalence with other non-UK regulations and standards impacting international companies such as ourselves and others active in the UK. We would also recommend a comprehensive impact assessment is undertaken by the FRC and/or UK Government, including on resources and the required capabilities for companies and assurance providers, as well as on the available pool of non-executive directors.

Whilst noting that we support the detailed and comprehensive submissions of the 100 Group and the GC100 to the consultation, we take the opportunity in this letter to emphasise or add comments on the consultation topics that are most important to us.

[1] The companies in which Shell plc directly and indirectly owns investments are separate legal entities. In this content "Shell", "Shell Group" and "Group" are sometimes used for convenience where references are made to Shell plc and its subsidiaries in general. Likewise, the words "we", "us" and "our" are also used to refer to Shell plc and its subsidiaries in general or to those who work for them.

1. Board leadership and company purpose

We consider that many of the changes proposed in this section are outside of the scope of the Government's reform agenda, lack clarity and introduce duplication with other existing requirements, for example, the Companies Act 2006 and the Listing Rules. In our view they will likely result in more 'boilerplate' reporting.

2. Division of responsibilities

We have no additional comments on the proposed changes to this Section beyond those already provided by the 100 Group and the GC100.

3. Composition, succession and evaluation

Diversity

We fully support efforts to promote diversity but believe that the proposed changes are not necessary and duplicative of other requirements, for example, those in the Listing Rules. As highlighted in our separate response to the "Smarter Regulation Non-Financial Reporting Review Call for Evidence", we would recommend reducing duplication and developing a single set of requirements. In addition, we would recommend aligning key definitions across the different regulatory regimes and widely accepted, and government-supported, benchmarks.

We believe it is important to focus on the sustainability of efforts on diversity and inclusion and that boards should be encouraged to ensure a wide and comprehensive approach beyond gender, social and ethnic backgrounds. Adding in specific references to "protected and non-protected characteristics" or "cognitive and personal strengths" may be counter-productive, however. We recommend a simpler and broader reference to "diverse and inclusive boards" which allows reflection of all characteristics.

Succession Planning

We do not support the proposed changes with regards to succession plans given that these are highly confidential and often commercially sensitive. We believe that the proposed changes would not provide any meaningful insights but could lead to unnecessary internal and external speculation.

4. Audit, risk and internal control

Audit and Assurance Policy (AAP)

We note that the secondary legislation introducing the requirements on the AAP has now been laid before the UK Parliament. Our views on this topic remain as expressed in our 2021 response to the UK Government consultation on "Restoring trust in audit and corporate governance",

including, for example, the potential duplication with the audit committee report and the value associated with shareholder engagement. On the latter, we would again highlight that there are already many existing mechanisms in place to allow shareholders to engage with boards and their committees should they wish to do so. This is set out, for example, in the Stewardship Code as well as already being adequately referenced in Section 1 of the Code itself. We do not believe that further mandating such engagement on the specific topic of the AAP is necessary, or will drive meaningful outcomes. We would have a similar view on mandating shareholder engagement in the Code on other specific topics, such as the role of the audit committee, or the scope of work of the external auditor.

Minimum Standard for Audit Committees

We support the removal of duplication but note that much of the feedback provided by stakeholders on this Standard has not been taken into account. Specifically in relation to proposed Code changes, we would suggest that companies are not best-placed individually to have significant influence on audit market diversity – this is rather the role of the market and the regulator.

Remit of Audit Committees to include narrative reporting, including sustainability reporting and ESG metrics

Shell currently maintains four Board Committees, including an Audit and Risk Committee and a Sustainability Committee. In our view, and given the continuously developing nature of narrative and sustainability reporting, companies should continue to have flexibility to decide where such topics are managed, rather than be obliged to have this within the remit of an audit committee.

Strengthening risk management and internal controls systems

Shell's internal control framework is designed to ensure compliance with the existing requirements set by multiple regulators, including, for example, those in the broader UK regime and under the US Sarbanes Oxley Act (US-SOx). In our view, the proposed changes to the Code are inconsistent with the principles of proportionality and balancing the costs of compliance for companies with the benefits for shareholders. We would, however, welcome efforts to improve consistency, both between companies and with other jurisdictions and in that regard would repeat our previous view (see our response to the 2021 UK Government consultation) that any changes should be limited to internal controls over financial reporting. Building on this, and to avoid unnecessary duplication, we further believe that any such changes should grant equivalence for companies that are subject to the US-SOx requirements.

Furthermore, we would strongly recommend that any declaration on internal controls should be

based on the date of the balance sheet, i.e., not throughout the reporting period, nor up to the date of the annual report. We consider this proposal not only unnecessarily onerous on companies and without clear benefit but would also compound the burden on US-SOx reporters, requiring multiple processes to satisfy the needs of the different regimes.

We would also recommend that any declaration be tailored to better reflect the monitoring and oversight role of (non-executive) Directors.

Finally, it is important that any changes to internal controls requirements do not lead to unintended consequences and implicitly drive a disproportionate and unnecessary increase in external assurance over non-financial reporting matters. It is important therefore that appropriate time and diligence is taken in developing associated guidance for any changes.

5. Remuneration

Whilst we agree with the principle of clear alignment between remuneration and company performance and long-term strategy, we do not consider that there should be an explicit reference to ESG objectives in Principle P. Whilst some ESG priorities will translate into obvious and meaningful metric(s) for some companies, it may do so less easily for others. ESG is also a broad concept covering diverse areas such as climate, safety, diversity and inclusion, and employee wellbeing, not all of which make appropriate metrics for variable remuneration. The explicit linking of remuneration outcomes to ESG performance could be interpreted as mandating the use of ESG performance conditions in remuneration no matter the circumstances, which could lead to unintended outcomes. Principle P could also encourage 'window dressing' whereby companies are compelled to include such conditions to 'check the box' regardless of the relevance for the business.

The proposed changes around malus and clawback will improve transparency for many companies, but the FRC may wish to consider whether the changes might inadvertently drive the wrong behaviours, e.g., discourage the application of malus or clawback in order to avoid public disclosure. With regards to the requirement to detail any use of malus and clawback provisions in the last five years, we would welcome clarity over whether this requirement relates to only Executive Directors or to all participants.

Other matters for consideration

Artificial Intelligence (AI)

Artificial intelligence is both a growing opportunity and threat for companies and indeed is already the subject of (proposed) regulation in many jurisdictions, including the UK. However, we consider it unnecessary to make changes in the Code to address AI given that this is just one

example of (emerging) risk areas already adequately covered by the principles-based Code. In addition, we consider any such changes would be premature given the evolving nature of legislation around this topic.

Yours sincerely,