

UK Corporate Governance Code Consultation

A public consultation issued by The Financial Reporting Council

Comments from ACCA to The Financial Reporting Council
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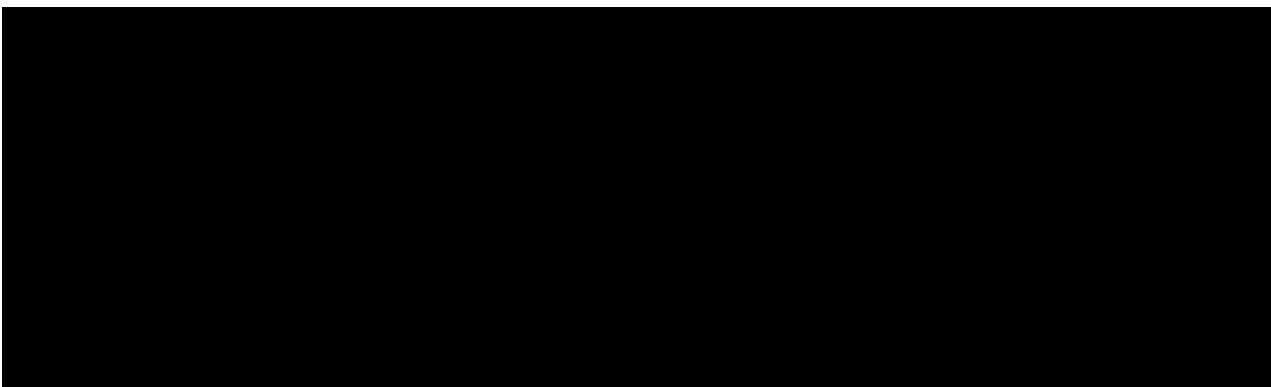
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ACCA supports proposed changes to the Corporate Governance Code

We commend the FRC for making the changes set out in the draft revised Corporate Governance Code.

We believe that the key proposed revisions should deliver more outcomes-based reporting but also consider that culture needs more emphasis if the proposed revisions are to drive change and add any value. The roles, skills and composition of the board are crucial factors in influencing the behaviours and mindsets needed to meet the organisation's objectives.

We welcome the key changes proposed in this consultation that aim to get boards more active in building resilience and reporting on how they do this. We also agree with the overarching purpose of these changes to encourage companies to provide more transparency about whether they can conclude that risk management and internal controls are effective over the 12-month reporting period. In the context of increasing importance of non-financial reporting, it is essential that boards are tasked with ensuring the continuous monitoring of the organisation's governance framework, and that the process for doing so is clearly defined and communicated across all operations.

ACCA, therefore, supports the UK Government in their objectives to enhance the Code's effectiveness in promoting good corporate governance through:

- Setting out a revised framework of prudent and effective controls to provide a stronger basis for reporting on and evidencing their effectiveness.
- Improving the functioning of comply-or-explain, taking account of recently published FRC research and reports.
- Making necessary revisions to reflect the responsibilities of the board and audit committee for sustainability and ESG reporting, and associated assurance in accordance with a company's audit and assurance policy.
- Updating the Code to ensure that it aligns with changes to legal and regulatory requirements as set out in the Government's response to the White Paper, including strengthening reporting on malus and clawback arrangements.

Board leadership and company purpose

Boards are ultimately responsible for ensuring that the organisation's governance keeps pace with the rapid change and rising expectations of not only shareholders but also regulators, employees, customers, and other key stakeholders.

Given the exponential disruption all organisations are facing today, boards need to be more forward-looking in understanding how future risks and opportunities will affect their ability to fulfil purpose and adapt to the rapid change.

We believe companies should disclose material policies and performance metrics related to environmental and social matters, just as they do regarding their commercial objectives. We would also like to see greater emphasis on organisational ethics and how boards define, frame and communicate their moral compass.

Division of responsibilities

We welcome proposed changes which make the issue of significant external commitments an explicit part of board performance reviews. Service on too many boards can affect the time board members have to effectively fulfil their responsibilities.

We also support the proposed change designed to encourage greater transparency on directors' commitments to other organisations and believe that this can also lead to improved nominations. This assessment should be undertaken at least annually, for all directors, as changes to a director's appointment may adversely affect their capacity to act responsibly'.

Composition, succession and evaluation

We welcome the inclusion of standardised numerical disclosures on the ethnic background and gender identity of the board, key board positions and executive management team in the Annual Report, and believe that such metrics can give a better sign of actual progress (or lack of) in the company. However, on the 'equal weight to all protected and non-protected characteristics', we feel there needs to be some consideration of how this might be open to manipulation, given that some diversity characteristics are subjective and open to interpretation.

Audit, risk and internal control

We agree that all Code companies should consider preparing an Audit and Assurance Policy on a 'comply or explain' basis to ensure consistency in the matters that audit committees consider as part of their AAP, including consistency and comparability. Although the APP is primarily aimed at PIEs, we believe that it should also apply to non-PIE entities in the light of the current global challenges.

We agree that the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics. The roles and responsibilities of the audit committee in relation to narrative reporting should mirror their roles and responsibilities in relation to financial reporting.

We understand that in a principles-based Code, flexibility should be provided to comply with the principles and that the guidance cannot, therefore, be overly prescriptive. In order to remain within the principles-based spirit of the Code, the guidance should explicitly state that it is providing examples and not an exhaustive list of plug-in or tick-the-box methodologies and frameworks which can be used. Such non-prescriptive guidance on assessing RM and IC systems should have an emphasis on:

- Roles and responsibilities of the board, relevant committees, management, internal audit and process owners.
- Importance of continuous monitoring of the systems and adaptation to the changing environments through risk assessment, key trends control reviews, significant operational events, and regulatory change.
- Importance of competence of those involved in the review from financial, business, compliance, and sustainability perspectives. This should also include a focus on continuous development of skills and cross-training between different teams within the company to effectively gain a full view for the assessment of the RM and IC systems.

Remuneration

We believe the proposed revisions strengthen the links between remuneration policy and how it supports sustainable corporate performance. The use of sustainability indicators in compensation may demand disclosures that allow investors to judge whether the indicators

are linked to material sustainability-related risks and opportunities and how they incentivise a long-term perspective.

We support measures to increase the transparency of remuneration policies and a commitment to clear and consistent communication. The proposed reporting changes will provide more transparency and the additional information should enable users to assess whether remuneration outcomes are truly aligned with the company's performance and the successful delivery of the company's long-term strategy including ESG objectives.

Board leadership and company purpose

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 to Principle D in Section 1 of the Code will deliver more outcomes-based reporting but feel that culture needs more emphasis if the revisions are to add real value. Through our engagement with ACCA members since the onset of the COVID-19 pandemic, we have witnessed governance gaps and culture contradictions even at organisations with more mature frameworks. The lack of resources and underinvestment in governance has been exacerbated by the rapid change and interconnectedness of risk. Given the exponential disruption all organisations are facing today, there needs to be more energy put into the organisation's 'plumbing'. We have also found that governance failures are often masked by the lack of transparency, so more disclosures of the 'assessments' of organisations' governance frameworks is very much welcomed. Such proposals should be designed to give stakeholders and shareholders more insight into whether what the companies say in their statements and annual reports is, in fact, what is happening in practice.

Companies should also disclose the methodology and results of the assessments if the stakeholders and shareholders are to understand how or whether the board is acting on them, particularly in ensuring that purpose, values, strategy and risk appetite are aligned. The debilitating misalignment we found across all industries and regions in our recent [risk culture study](#) was due to an overwhelming lack of awareness in risk and governance. Furthermore, the disclosures from such governance assessment requirements could allow companies to benchmark their progress (or lack thereof) compared with their peers.

The board should be tasked with ensuring the continuous monitoring of the organisation's governance framework, and that ensure the process for doing so is clearly defined and communicated across all operations. Best practice would include disclosing the progress of this monitoring and how the culture that the governance promotes is in line with inevitable changes to its purpose, risk appetite, size, strategy, legal jurisdictions and regulatory requirements.

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?

In line with the OECD's revised G20 Principles of Corporate Governance revisions, we agree that the Board should be transparent about an organisation's climate goals and transition planning, and that crucially includes how its governance helps foster a culture needed to meet these objectives.

Companies should disclose material policies and performance metrics related to environmental and social matters, just as they do regarding their commercial objectives.

If the UK adopts the ISSB Standards, IFRS S2 Climate-related Disclosures would require companies to disclose these to enable stakeholders to understand a company's strategy for managing its climate-related risks and opportunities.

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

Provision 3 could benefit from additional clarity about the role of stewardship and the responsibilities for both the board and shareholders in their 'engagement' — and how in the governance monitoring is the board keeping these in line with strategy. We would like to see greater emphasis on organisational ethics and how boards define, frame and communicate their moral compass. Once clearly defined by the board, the other aspects, such as purpose, values, strategy and risk appetite, should come together more consistently.

Division of responsibilities

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?

We welcome Code Principle K (in section 3 of the Code), and feel it has become an issue discussed widely across the world. A significant [proportion of investors](#) have lost confidence in board members during times of crisis. Service on too many boards or board committees can affect the time board members have to effectively fulfil their responsibilities. We agree that it is most important to ensure that the members have the approval and legitimacy of the shareholders that there is no conflict of interest.

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?

We agree with the proposed change to Code Provision 15. Disclosure about other board and committee memberships and chair responsibilities is essential not only, as mentioned in response to question four, in revealing any potential conflict of interest but also in ensuring the member has sufficient time and experience. This can also lead to improved nominations. The assessment should be undertaken at least annually, for all directors, rather than one-off at appointment, which is aligned with the proposed amendment to Principle K, on annual performance review for directors. Changes to a director's appointment may affect their capacity to discharge responsibilities effectively. Keeping records for individual board members and any other work undertaken on behalf of the board and the related remuneration is also crucial.

Composition, succession and evaluation

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

The reporting landscape for diversity and inclusion is complex and fragmented, with a number of mandatory requirements and voluntary initiatives. However, we believe the proposed changes to the Code will strengthen and support existing regulations in this area, without introducing additional requirements or duplication.

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?

The changes to Principle I moving away from a list of diversity characteristics to the proposed approach is much more appropriate for the world we live in today. This may also encourage companies to look slightly further afield for non-executive directors, therefore, improving diversity and including different views, not just of race and gender, but also of expertise, age and experience. In fact, there could be even more specific attention to or guidance on how to assess what the board needs beyond ethnicity and gender in order to fulfil its above duties. For example, what expertise or perspective does it require that currently needs to be added to the board, and how or where does it get the desired composition necessary for steering the company in the right direction. Companies should also be encouraged to disclose these critical questions and how the board addresses them. The transformations we are talking about today require more critical thinking, so there needs to be a broader range of cognitive thought on boards to get their organisations where they want to be.

ACCA welcomes the inclusion of a standardised numerical disclosure on the ethnic background and gender identity of their board, key board positions and executive management team in the Annual Report, as these are metrics that can give a better sign of actual progress (or lack of) in the company. There could also be beneficial reasons for including the layer below executive management in these numerical disclosures, so that investors and stakeholders can gain deeper insight into how (or how not) the company's culture is in line with its stated values and DE&I objectives

However, on the 'equal weight to all protected and non-protected characteristics', there needs to be some consideration of how this might be open to manipulation, given that some diversity characteristics are subjective and open to interpretation. This could lead to not achieving the outcomes intended if this potentially distracts from core DE&I objectives that support demonstrably under-represented groups.

Below is a quote from an ACCA member who works at an insurance company in the UK:

"I think that tracking other forms of diversity, where the distinction may be less clear (e.g. class / socio-economic background) could make tracking progress on protected characteristic diversity less clear. I believe a better way to do this would be to concentrate on existing D,E&I initiatives and diversity monitoring and when we can demonstrate that companies are achieving an appropriate balance (aligned to broader society) then other forms of diversity can

be assessed. It is important that legal protections were applied to these characteristics because these people had been under-represented in companies, particularly in leadership, and poorly treated in broader society. We should not stop focussing on these areas until these issues have been overcome.”

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 support the changes to Provision 24 and believe that this is best-practice governance. It is imperative for investors and stakeholders to see the approach, but also how and whether the governance monitoring ensures the approach they describe in their statements is actually what is being done in practice. Several jurisdictions worldwide are also stating that companies should disclose the selection processes and whether it was open to a broad field of candidates.

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?

We support the proposed adoption of the CGI recommendations as set out; overall, the monitoring of governance by the board must include a continuous review of the internal structure of the company, ensuring there are clear lines of accountability for managing the company – how it treats its stakeholders and how it makes its products and delivers its services. As discussed in our [Risk culture: Building resilience and seizing opportunities report](#), good governance starts with clarity of roles and responsibilities, and in today’s world, there also needs to be a clear distinction between responsibility and accountability.

Audit, risk and internal control

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

We agree that all Code companies should consider preparing an AAP on a ‘comply or explain’ basis to ensure consistency in the matters that audit committees consider as part of the AAP, including consistency and comparability. Although the AAP is primarily aimed at PIEs, it is nevertheless good practice for other companies implementing the UK Corporate Governance code to prepare an AAP, as this would promote transparency with regard to external assurance provider engagement and allow a sustainability perspective to be incorporated into the corporate governance through multi-stakeholder considerations, which we feel should apply to non-PIE entities as well in the light of the current global challenges.

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?

Given that the Code Provisions contain holistic guidelines on the roles and responsibilities of the audit committees, removing some aspects of the Provision and referring companies to the minimum standard for audit committees could fragment the guidelines and lead to potential inefficiencies by making companies refer to different documents relating to one topic. The aspects in question are not significant in leading to duplication or making the Code an unreasonable length.

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?

Overall, we agree. Provisions 26 and 27 should expand the responsibilities of the audit committees to sustainability matters. We believe that the roles and responsibilities of the audit committee in relation to narrative reporting should mirror their roles and responsibilities in relation to financial reporting. For example, rather than being involved in the selection of ESG metrics to be reported on, the audit committee's remit should focus on building stakeholders' trust and strengthening the credibility of the entity's sustainability-related information, such as through recommendations on the scope for assurance work, and the appropriate and commensurate level of assurance (limited vs reasonable assurance) on sustainability-related information. It would also include the selection of an external assurance provider, developing or strengthening the policy for the appointment of sustainability assurance providers, ensuring assurance providers have access to appropriate staff and supporting information, and overseeing the quality of the assurance work carried out.

The audit committee may also advise the board or another committee on the assurability of sustainability-related information that the entity plans to report on. This would also align with the audit committee's proposed responsibilities for developing the AAP. The board should ensure that the audit committee as a whole has the relevant competence to fulfil these expanded responsibilities.

As stated in our ACCA report on the [Tenets of good corporate reporting](#), we believe that corporate reporting needs to provide a more holistic picture of the performance of a business, beyond just showing investors its financial performance. A report should contain all relevant information allowing a user to understand the position, performance and, where appropriate, the prospects of the reporting entity.

Ultimately, the efficiency of capital markets is enhanced if investors and lenders can compare disclosures by companies, so we also advocate ensuring consistency and interoperability as much as possible while at the same time allowing for flexibility where it makes sense, for example, for small companies that might need time to develop appropriate processes. This may justify prioritising disclosure requirements of some of the most relevant sustainability matters and phasing in others on a 'comply or explain' basis.

We also wish to reiterate that the audit committee is an important part of effective corporate oversight and audit committees play a vital role in capital markets' investor protection. Narrative reporting, including sustainability reporting, is a subset of corporate reporting. Accordingly, we believe that the audit committee's responsibilities in relation to the oversight of audit of financial statements and the audit tender process should expand to encompass narrative reporting, unless another more suitable or relevant board committee has been expressly identified to fulfil this responsibility. Nonetheless, all directors of the board shall continue to have collective responsibility for decisions taken by the board (unitary board principle).

We further note that the *Audit Committees* and the *External Audit: Minimum Standard* does not currently address non-financial reporting. As such, in the event that the remit of audit committees is expanded, the *Audit Committees* and the *External Audit: Minimum Standard* should be reviewed, in addition to updating the regulations and the Guidance expected to be issued by the FRC, to ensure continued alignment with the latest requirements of the FRC UK Corporate Governance Code.

Internal audit function

The failure to use the update to the Code to make an explicit requirement to have an internal audit function (either in house or outsourced) on publicly listed companies is a missed opportunity. Good examples exist either in Codes used in other jurisdictions or in PRA and FCA requirements for regulated financial services companies to set out explicit responsibilities. As a minimum, we would propose a requirement for a periodic review by the Board, advised by the Audit Committee, on whether there is a need for an internal audit function.

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?

It is important to ensure that the board takes responsibility for the oversight, assessment of effectiveness of risk management (RM) and internal control (IC) systems and explains how it does this by reporting on it annually. We agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems proportionately; however, the revised Guidance must include the necessary details to help companies fulfil their new proposed requirements.

The consultation paper notes that the revised Guidance 'may' set out circumstances in which external assurance might be considered appropriate to aid the development of that policy. We strongly support that boards seek to obtain external assurance over the effectiveness of the company's risk management and internal control framework hence we support that the FRC does refer to such circumstances in its Guidance.

Explicit statements should show how the board ensures that management executes all this, giving clear insights to stakeholders who want to know whether the company objectives and the business activities established to achieve them are supported by a strong foundation of

risk management and internal control systems. This includes their responsiveness to material sustainability challenges.

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?

Due to the nature of the RM and IC processes and their inherent characteristics, such as; responsiveness and adaptability to changes in the internal and external environment; continuous improvement; feedback loops; and the pace of changes in reporting and compliance environments, the declaration by the board should relate to the effective functioning of the RM and IC systems throughout the reporting period up to the date of the annual report.

This approach will also be responsive to the common approach and best practices of internal audit and external audit assessments of internal controls, to identify systemic deficiencies (in internal controls). This naturally means reviewing operations over the reporting period rather than at a point in time. This approach appropriately reinforces directors’ ongoing accountability rather than at a particular point in time.

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 agree with the proposal that “financial” should be changed to “reporting” to capture controls on narrative as well as financial reporting. As the importance of sustainability reporting is increasing, internal controls operating over sustainability-related information that informs narrative reporting are equally important to ensure the production of high-quality sustainability-related information for internal and external users.

The disclosure of sustainability matters, financial reporting, and other corporate information must be connected. The same level of rigour to the measurement and reporting of financial information should be applied to sustainability-related information, including the G in ESG. As detailed in our [Risk Culture Report](#).

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?

We understand that in a principles-based Code, flexibility should be provided to comply with the principles and that the guidance cannot, therefore, be overly prescriptive. However, this is a key change in the Code and guidance via examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems would be very helpful. In order to remain within the principles-based spirit of the Code, the guidance should explicitly state that these are only examples and not an exhaustive list of plug-in or

tick-the-box methodologies and frameworks which can be used. Such non-prescriptive guidance on assessing RM and IC systems should have an emphasis on:

- Roles and responsibilities of the board, relevant committees, management, internal audit and process owners.
- Importance of continuous monitoring of the systems and adaptation to the changing environments through risk assessment, key trends control reviews, significant operational changes, and regulatory change.
- Importance of competence of those involved in the review from financial, business, compliance, and sustainability perspectives. Continuous development of skills and cross-training between different teams within the company to effectively gain a full view for the assessment of the RM and IC systems.

We have found that the misalignment of risk management frameworks can be debilitating for companies and believe it is crucial for boards, audit & risk committees in particular, to address these gaps given the disruption and uncertainty. Our recent risk culture study showed that most companies even with mature ERM frameworks are very disconnected. Our survey also explained how some functions are completely unaware of potential risks or the appetite for them, which is a real danger. It is ultimately the board's responsibility to drive the culture needed to achieve the organisation's objectives and that includes ensuring the oversight of threats that could prevent such success.

Additional detail relating to these areas is available in our [Risk culture report](#). One of our calls to action in this report is that boards and other major decision makers need to understand the behaviours that produce risks. Other relevant calls to action include:

- Call to action 4: A 'tick the box' compliance approach cannot be a substitute for risk management.
- Call to action 8: Measure and incentivise the risk culture you want by making sure 'everyone owns it'.

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?

We believe that the definition used for material weakness should be consistent with the definitions found in ISA (UK) 265, *Communicating Deficiencies in Internal Control to Those Charged With Governance and Management and the equivalent PCAOB standards*, as well as being in line with definitions used in frameworks that are commonly used for the establishment of an effective risk management and internal controls systems such as for example, the COSO framework.

The definition of a material weakness could be amended as follows:

*A fault, deficiency or failure, **or a number of such**, 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 **in a timely manner** is adversely affected*

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

The importance of technology-based controls must not be lost. Any internal control framework increasingly relies upon the skillsets of the individuals who deliver it. Having an assessment of how those charged with governance have assessed the appropriateness of those skills (in the second and third lines) may well be appropriate.

On the basis for declaration, we would like to see the following covered in guidance:

- Disclosing the approach to determining materiality, particularly in the context of assessing internal controls over sustainability reporting;
- The inclusion of a narrative on the changing risk landscape and how this has impacted the maintenance of the effectiveness of the RM system. For example, a high-level approach to risk identification, assessment, and internal reporting to ensure that the dynamic environment is factored into the RM system and to show whether it is a continuous process.

On guidance on RM, IC and Related Financial and Business Reporting, we would like to see the following covered in guidance:

- Emphasis on the reliability of data and information used in reporting, both generated internally and collected from third parties, which is most relevant for sustainability reporting due to numerous data sources, limited IT solutions for non-financial data and the need to collect information from third parties (e.g. Scope 3 greenhouse gas emissions, sustainable supply-chain);
- Emphasis on building competence and cross-functional knowledge sharing should be made as an integral element of an effective RM and IC system and a primary principle of good governance applicable to the board, committee members, RM, IC, and IA teams;
- It could also be advised that companies may need to look for skills outside those typically represented in such teams, including sustainability experts and non-finance/non-accounting experts (depending on the industry) to effectively assess effectiveness of ESG and operational controls.

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)?

Yes, we agree that current Provision 30 should be retained.

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

We agree that all Code companies should continue to report on their future prospects. As the consultation paper notes, we find that this is an area of great interest for investors which plays an important role in ongoing engagement and future investment.

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?

We agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects.

Remuneration

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

We agree that the proposed revisions strengthen the links between remuneration policy and how it supports sustainable corporate performance. Companies are and should be expected to disclose timely information, including material changes in the remuneration policies applied to board members and key executives, as well as remuneration levels or amounts on a standardised or comparable basis, so that investors can assess the costs and benefits of remuneration plans and the contribution of schemes, such as stock option schemes, to company performance. Individual disclosure (including termination policies and retirement clauses) is also becoming regarded as best practice and is now required or recommended in many G20 jurisdictions. Some regimes concentrate on specific positions, while others require the compensation of the highest-paid executives to be disclosed. . The use of sustainability indicators in compensation may demand disclosures that allow investors to judge whether the indicators are linked to material sustainability-related risks and opportunities and how they incentivise a long-term perspective.

Below is a quote from an ACCA member who is a NED in the UK:

“I think there could be stronger alignment with the Senior Managers Regime that is applied to UK-based financial services businesses.”

This member also welcomed the provisions because directors are generally judged and rewarded on recent statutory accounts or short term projections:

“Quantified future risk has been generally ignored. This can be counterproductive to the long-term existence or value of the organisation, so the remuneration committee should be required to address these issues and be open with their consideration and how they intend to address them.”

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

We support measures to increase the transparency of remuneration policies and a commitment to clear and consistent communication. We believe the proposed reporting changes will provide more transparency to enable users to understand what malus and clawback provisions the company have in place, how they can be used and for how long. The additional information should enable users to assess whether remuneration outcomes are truly

aligned with the company's performance and the successful delivery of the company's long-term strategy including environmental, social and governance objectives.

More generally clawbacks should allow for issues arising from poor culture, or from decisions out of alignment with ESG aspirations, to have consequences. This alignment with longer term remuneration should reinforce the importance of culture and ESG and avoid the misconception that they can be ignored when sales are the priority. This should help prevent some of the type of governance failures we have seen in the [banking community](#) in recent years.

If certain malus and clawback provisions are triggered by different circumstances, we suggest categorising them accordingly and disclosing them separately for more transparency. Disclosing the use of malus and clawback provisions over the preceding last five years provides useful trend information and potentially highlights more severe underlying problems in the company's governance.

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

We agree with the proposed changes to Provisions 40 and 41. Clear and consistent reporting should provide greater transparency for investors without placing unnecessary constraints on remuneration committees in determining the arrangements most suited to their company's circumstances, and it is good to eliminate duplication. One concern with this change is that companies may think it has been removed entirely. So, this change needs to be explained clearly to ensure it is understood.

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

We agree it is important that improvements continue to be made in this area and think asking companies to report on measures that have been implemented to reduce and eliminate pay gaps within their organisation is a must.

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?

There are a number of areas of the Code which we believe require amendment or additional guidance, in support of the Government's White Paper on Artificial Intelligence.

US listed companies are required to have proven IT experience on the board. While this must be an ever-growing requirement with the evolution of AI, Chatbots and data analytics, this however appears to be omitted from the Code.

Boards are expected to govern an organisation's adoption or rejection of AI. In order to meet those expectations, boards must learn how their organizations can and should use AI, what vulnerabilities it brings, how it can massively scale the organisation's upside potential, where the opportunity to innovate lies, and what level of unexpected outcomes they are willing, or unwilling, to accept. Boards must also press their executive teams to deeply understand the

board's expectations regarding management, compliance, ethics, and more. Education is crucial here, and companies should explain how they are upskilling across specific roles, in addition to the rationale for prioritising those roles.

While there are always likely to be loopholes in regulation, the concern will be where AI gets in the hands of bad actors. Cooperation globally will be the best way to address such concerns. However, we already see the challenges of global fragmentation from intensifying competition between the United States and China in technology supply chains and AI adoption, to the European Union's pursuit of open strategic autonomy and the failure of the G7 countries to agree on binding mechanisms for global digital governance, most notably on international data transfers. The challenging implication for organisations is how to navigate the vast range of compliance obligations, regulatory guidance, and new legislation. We believe the FRC has a crucial role to lead in harmonising this space by leveraging existing frameworks, such as the World Ethical Data Foundation, which recently released a new voluntary framework for developing artificial intelligence products safely. Many of the world's top AI experts have already backed this framework.

Through our engagement with members around the world we are seeing how AI can look at unstructured data and find trends (and patterns) from past events that can be used to make risk predictors. Using these patterns, it is possible to build realistic scenarios for the future to predict what will happen and estimate the risk. AI also makes the link between business processes and risk easier to see. By making data more open, risk controls and their usefulness can be evaluated to make sure that the right steps are taken to reduce risk. Auditors can use AI to look at whole groups of data and activities instead of just a few, making the audit more thorough and helping them find strange things that can be flagged for closer inspection. It also makes sure that smaller transactions get the same level of attention they didn't get before because of materiality limitations.

Since the launch of ChatGPT in November 2022, many ACCA stakeholders have raised questions about AI governance. The OECD states: "accountability" refers to the expectation that organisations or individuals will ensure the proper functioning, throughout their lifecycle, of the AI systems that they design, develop, operate or deploy, in accordance with their roles and applicable regulatory frameworks, and for demonstrating this through their actions and decision-making process (for example, by providing documentation on key decisions throughout the AI system lifecycle or conducting or allowing auditing where justified).

Risk culture: Calls to action

While we see risk and financial leaders taking greater interest in their organisation's risk culture, this is often prompted by something that has already happened. Our aim is to help them better understand how risk culture can be a competitive advantage, as famously phrased, 'Culture eats strategy for breakfast'.¹

1. The authority of the chief risk officer (CRO) or people in charge of risk is key to improving risk culture

Empower risk leaders to drive risk culture. Risk leaders should share their knowledge across functions and do so by speaking in a clear and concise language others can relate to, allowing them to gain more trust and mutuality in influencing behaviours and making the mindset shifts needed to manage risks and seize opportunities successfully (Primeau 2021). When bosses engage and talk about mutual interests that are critical to the organisation, such as the key performance indicators (KPIs), people feel safe and more involved in matters that ultimately affect them. A risk culture without such mutuality is a recipe for mediocrity at best.

THOSE ONLINE SURVEY RESPONDENTS THAT SAID THEIR ORGANISATION HAD ALREADY CONDUCTED A RISK MATURITY ASSESSMENT WERE GENERALLY MUCH MORE CONFIDENT IN THEIR ORGANISATION'S RISK CULTURE AND ABILITY TO DETECT, REPORT AND MANAGE RISK.

'Leadership is not about job titles; it is how you influence relationships. For example, if a medical doctor advises a patient about a health condition, and the patient believes in what the doctor advises, there is a mutual agreement. The doctor isn't forcing the patient to act on the advice, the patient does it because of trust in the doctor's judgement. When people know you are competent in your role and can bring a solution that is acceptable to them, they naturally give you power.'

Joachim Adenusi, (Oga risk) enterprise risk leadership and sustainability consultant

'If risk leaders can't influence major decision makers, then everything they do in risk assessment and reporting just becomes an academic exercise.'

James Lam, founder of the ERM Institute, and author of Enterprise Risk Management: From Incentives to Controls (Lam 2003/2014; James Lam & Associates 2023)



¹ 'Culture eats strategy for breakfast'. The phrase was attributed to the management guru Peter Drucker in 2006, and made famous by Mark Fields, who later became chief executive of Ford Motor Company. It implies that any company that disconnects the two puts its success at risk.

2. Resist the danger of tunnel vision when faced with a multitude of risks. Develop more structure for conversing and convening instead

Today there is an understandable tendency for people to focus on the immediate issues in their roles, even if conflicting actions within an organisation can mean that some risks are ignored. It is also during times like these that diversity of thought is most urgently needed, so that the organisation is not blinkered and stymied in its solutions when it can least afford to be. Instead, the organisation must promote a culture of roundtable engagement, where people from different roles and levels convene, exchange ideas and insights, and know they are free to speak up. Getting risk conversations elevated up and cascaded down the organisation is the secret sauce of a successful risk culture. Through our research, we found shadow boards and mid-level risk committees to make profound differences (Conmy 2023).

40% OF OUR SURVEY RESPONDENTS DID NOT BELIEVE THAT RISK IS SUFFICIENTLY DISCUSSED ACROSS ALL LEVELS OF THE ORGANISATION, AND OUR ONLINE-COMMUNITY PLATFORM REVEALED SEVERAL REASONS WHY DIFFERENT FUNCTIONS IN AN ORGANISATION MAY OR MAY NOT BE ALIGNED: FROM 'TICKING BOXES' TO THE BOARD AND SENIOR MANAGEMENT TALKING IN A VACUUM.

'I have worked a lot more with our chief HR [human resources] officer, given the uncertainty and workplaces changes, and the benefits are mutual. Siloed functions just breed risk, and you see how sharing knowledge allows you to connect the dots and work things out more quickly.'

CRO at chemicals company based in Europe

'Our chief risk officer function covers code of ethics, risk and compliance and all of our committees across the company cover these three disciplines. We work closely with HR on these, but we are the one responsible for issuing and developing the training and learning around the code of ethics. We have recently bolstered our business conduct team with a centralised investigations team so that we can improve our psychological safety and make sure that any business conduct-related matters are investigated in a centralised function that is independent of the first line of defence. So, it really is a partnership with HR.'

Head of risk and compliance at a power company

3. Behavioural analysis can be a highly effective tool in detecting emerging risks, but it is imperative to have buy-in and engagement from the top

Behavioural analysis provides rich insights about stakeholders' behaviours and attitudes that do not make it into risk registers or quarterly reports. However, risk and financial professionals must ensure that senior management are optimising that knowledge by linking it to strategy and policy. Leaders may turn to behavioural analysis after something goes wrong but are they using it to improve corporate governance, due diligence, and decision making? Our research shows that even those firms that do take this seriously have a way to go before behavioural risk analysis teams and the indicators that they develop are properly entrenched into risk strategy.

'In credit risk modelling you can look at the top five metrics and say that they capture 80% or so of the risk. We currently don't have that in the culture and conduct space, but the benchmarking exercises happening in some jurisdictions are getting the banking world more focused on data sources, and many are using AI [artificial intelligence] and big data to monitor trends and detect those unusual or "off" behaviours that may indicate a risk.'

Behavioural risk management consultant in London

RESPONDENTS WHO WERE VERY CONFIDENT THAT THEIR ORGANISATION WILL DETECT UNEXPECTED BEHAVIOURAL OR MISCONDUCT ISSUES WERE ALSO MORE LIKELY TO HAVE SAID THAT THEIR ORGANISATION HAD CONDUCTED A RISK MATURITY ASSESSMENT OR AUDIT OF ITS RISK CULTURE. THEY ALSO WERE MORE LIKELY TO BELIEVE THAT ACCOUNTANCY PROFESSIONALS HELP IN ASSESSING RISK CULTURE AND ITS IMPACT ON THEIR BALANCE SHEET AND BETTER UNDERSTANDING AND MANAGING NON-FINANCIAL RISKS.

4. A 'tick the box' compliance approach cannot be a substitute for risk management

Organisations should focus on the outcomes that rules and regulations seek to engender. In highly regulated industries, such as in financial services, compliance is a complex affair and, as our research reveals, regulatory change is the top risk priority for organisations today. One respondent, for example, referred to risk reporting as a 'regulatory tsunami'. In many ways, however, a compliance culture is the antithesis of a good risk culture. A fixation on 'box-ticking' exercises can render the organisation blind to the real risks it faces in its specific environment. Whereas an effective risk culture enables the organisation's people to understand and take on the right risks in an informed manner, and rewards them for this, a preoccupation with compliance can leave an organisation without the proper bearings to judge the risk landscape in which it finds itself. Organisations today also tend to fall into the trap of treating ESG issues as a compliance exercise rather than focusing on the outcomes that such principles are meant to deliver. We found that most companies still fail to link risk or ESG with value creation.

'There's a compliance tendency at the front line – a kind of parent-child dynamic. What's missing is an adult-to-adult dynamic where we can acknowledge that our own staff are intelligent people and have their own ethical views, and they're looking for ethical engagement.'

Dr Roger Miles, a specialist in behavioural science who is also member of ACCA's risk culture special interest group

'The rising cost of compliance could force industry consolidation. If we're not prepared, we could go out of business.'

GRO survey respondent

RESPONDENTS IN OUR SURVEY OVERWHELMINGLY CONCLUDED THAT THE G IN ESG NEEDED UPGRADING IF THEIR ORGANISATIONS' OBJECTIVES FOR THE E AND THE S ARE TO BE ACHIEVED. THE POWER OF GOOD GOVERNANCE LIES IN ITS ABILITY TO INFLUENCE BEHAVIOURS BOTH AT A FIRM LEVEL AND A TEAM LEVEL. THIS INVOLVES SPELLING OUT SUBTLE DIFFERENCES BETWEEN RESPONSIBILITIES, ALIGNING WHAT ONE PERSON OR FUNCTION MIGHT BE DOING WITH ANOTHER, OR DECIDING WHAT MIGHT BE MOST APPROPRIATE FOR EACH AREA TO OWN AND ENSURING THAT THOSE RESPONSIBILITIES ARE FULFILLED.

5. Consider how you define the role of accountants in risk culture, given rapid transformations

How accountants are explicitly tasked with reconciling ethics with profits alongside other responsibilities needs more clarification during volatile times. As organisations attempt to embed risk into strategic decision making across all activities, they should ask themselves what makes sense and what adds value. For example, where can we free up or find the energy and resources we need to improve our risk governance and meet changing and rising stakeholder expectations? If we need to cut costs, can risks be sufficiently managed so that business objectives can still be met? The complexities of today's evolving business models mean accountancy professionals should be reviewing any conflicts with stated values and deciding whether opportunities are in line with desired ethics.

'Accountancy is already under so much pressure to put numbers on intangibles, and the fundamental point about the financial accounting way of looking at the world is that it is simply nowhere near sophisticated enough to capture the true complexity of what organisations are trying to deal with. Using numbers to describe the world provides a sense of order and shared understanding but that comes at the price of simplification. In modern organisations you need a way of representing culture and leadership that enables a richer and more accurate view of what is happening, and it cannot be only the accountants' job to do that. To paraphrase Michael Schumacher, "the hardest thing to see is the eye you're looking through".'

Dr David Cooper, leadership specialist at Cooper Limon, and member of special interest group

THOSE SURVEY RESPONDENTS MOST CONFIDENT ABOUT THE BENEFITS OF ACCOUNTANCY PROFESSIONALS FOR ASSESSING RISK AND NON-FINANCIAL RISK-RELATED ISSUES WERE ALSO MORE LIKELY TO EXPRESS CONFIDENCE IN THEIR ORGANISATION'S RISK CULTURE.

6. Risk appetite is difficult to implement given the speed with which risks arise today, so better communication is paramount

In the absence of a clearly defined risk appetite, decision-making will ultimately be reduced to personal judgement, which can depend dangerously on inference and is subject to bias. This leads to a culture of inconsistent behaviours within the organisation, which in turn leads to mistakes and fragility. Risk and accountancy professionals must involve mid-level management in both defining risk appetite and monitoring how it is employed. Since the articulation of risk appetite helps guide and inform behaviour, and therefore culture, communicating its purpose well and defining which risks are and are not acceptable are vital to building a robust risk culture.

'Risk appetite helps navigate business activity in the organisation, but it is the risk culture that determines how [staff] act, and how they approach different issues. So, risk appetite should be aligned to strategy and business capabilities, because all of us need to move in the same direction.'

ACCA CROs Forum

'We need to think about the language if we are all agreeing we need to get risk better integrated into the first line [of defence], and we cannot do that by dragging [other people] to our sandbox, we need to go to their sandbox and say "let us understand how you make decisions in your jobs and how you consider risk".'

James Lam, founder of the ERM Institute, and the world's first 'chief risk officer'

WHILE ALMOST 80% OF RESPONDENTS SAID THEY HAD A GOOD UNDERSTANDING OF RISK APPETITE IN THEIR ORGANISATION, THIS CONTRADICTED OTHER RESPONSES WITH OVER ONE-THIRD SAYING THEY DO NOT HAVE CONFIDENCE THAT INTERNAL AUDIT COULD VERIFY WHETHER PROPER INTERNAL CONTROLS AND PROCESSES FOR DEALING WITH RISKY BEHAVIOURS WERE IN PLACE AND BEING ADHERED TO.

7. Whistleblowing – eliminate the fear factor and focus on treating people fairly

Human beings' behaviour is a response to their environment. Therefore, risk and financial professionals should ask what the organisation is doing to contribute towards the manifestation of human risk. What part does it play in a misconduct incident and how does it influence good conduct?

Risk and accountancy professionals, in their various roles in setting up the appropriate risk governance processes, need to think more about the human beings they are trying to influence. It is easy to blame people for how they behave but speaking up is a behaviour that organisations can encourage.

Patrick Butler, a member of our special interest group, has talked about how to create a 'hands up' culture through visibility and leading by example. As a guide, he recommends *The Power of Followership: How to Create Leaders People Want to Follow and Followers Who Lead Themselves*, a concept developed by scholar Robert Kelley, who postulated that followers are more important than leaders for not only getting the job done but also supporting innovative thinking and job satisfaction (Kelley 1992).

'A few years ago, I was in a roundtable with CEOs and asked them what is feared most in their organisations and how that impacts their work. They replied, "fear of not hitting targets". This is one of the biggest problems within organisations, and why people will not speak or stand up and say I'm going to try something new. They do not want to put themselves at risk because they don't trust the organisation to treat them fairly if something doesn't work and impacts "clear but frequently short-sighted targets", even if it's intended for the good of the business and its clients.'

Patrick Butler, board chair, Net Zero Labs and adviser on culture and conduct Management, and member of the special interest group

8. Measure and incentivise the risk culture you want by making sure 'everyone owns it'

Everyone should be responsible for risk and understand their risk footprint, because a better understanding of risk ownership – 'you are what you risk' (Wucker 2021) – enhances working relationships and job satisfaction. A 'four-point plan' to do this could be to:

1. state your desired behaviours and define the outcomes you want to achieve with them in a document that everyone reads, a 'Behavioural Framework'
2. ensure that the CEO and senior managers at all levels role-model the desired behaviours
3. write down and discuss behaviours, not just core business individual performance metrics, in one-on-one objective conversations, and then choose a shortlist of behaviours that are most relevant to the particular situation and individual
4. reward desired behaviour in the same way you reward any other type of performance, ie, financially, for example '25% of managers' bonuses are based on how they went about their work, not on what the outcome was'.

You need to build a risk nervous system, a risk ecosystem that makes every employee a risk manager, making every employee responsible for their respective risks and processes.'

'Risk management needs to be embedded in the organisation's DNA and be much more dynamic.'

'Active participation is the only way to ensure a culture reflective of our goals.'

'Risk is a mindset not just a process. Mindsets are important.'

Comments from on-line community pop-up

9. Governance starts with role clarity and hence knowing who is responsible for what

Make sure you know what you're individually liable for – don't wait for someone to tell you or train you. Saying 'I didn't know' is not going to get you off the hook. Individual liability means just that. It is up to you to know how you need to act at a given time.

Additionally, leaders must ensure there is a clear distinction between responsibility and accountability. For every role it should be written where responsibility and ownership lies but also crucially where accountability lies. This is particularly important for managerial roles because accountability means that someone must be held accountable when even the responsible employee lower down the ranks fails or contributes to a failure.

'An effective risk culture is not a matter of risk assessment or level of compliance; it is a matter of individual ownership of risk and personal "conviction" – a state of mind where human beings own the risks and the process of managing those risks through making well-informed risk decisions because they want to, not because they have to: driving value through optimising risk management rather than [creating] a culture of compliance where they will do only what is required.'

Horst Simon, risk culture builder and member of the special interest group

10. Further cooperation between our professions and regulators will be beneficial for all

With a tidal wave of corporate compliance rules coming into force across all industries, it is clear that the regulators will be driving culture, conduct and other non-financial risks further up the agenda over the coming years. ACCA, Airmic and PRMIA, along with other industry bodies, intend to expand and coordinate our consultations with regulators to ensure that risk and financial professionals are well-informed and that communications between practitioners and the regulators are more meaningful. We need to have a multi-stakeholder approach if we are to develop regulations that lead to "outcomes" rather than a "being compliant" style of management.

'It's fashionable to say "yes" to the regulators "we're very concerned about risk culture and culture and conduct risks", but there's also the element of "it's kind of hard to measure and if you can't measure it, you can't manage it". Training on this is what the industry needs because in the banking world a lot of people are still playing lip service. It's hard to do something about it. It's nice to talk about it, but taking that next step is difficult.'

Non-executive director at a global bank

Keep it simple: culture conversation-starters

Figure 1 gives some ideas for initiating discussions on risk culture.

FIGURE 1: Discussing risk culture



Source: adapted from Dr Roger Miles