Draft Covering Letter to support JD's response to comment on the FRC's consultation on the UK Corporate Governance Code.

To be sent via email to codereview@frc.org.uk by Wednesday 13 September 2023.

JD plc welcomes the opportunity to comment on the FRC's consultation on the UK Corporate Governance Code, issued in May 2023.

As a Board, we are committed to the highest standards of governance and control and are supportive of any reform which aims to enhance transparency and stakeholder confidence, particularly in uncertain times.

We believe that reliable and proportionate corporate reporting safeguards stakeholders and whilst risk is an inherent component of any capital market, the changes to the corporate governance code should enhance the transparency of how companies approach risk and their appetite towards it.

If we get this right, businesses will welcome clearer rules with greater focus on the information that matters, in turn bolstering confidence in UK business, attracting global capital and growing our economy. It will also enable the UK to continue to be a leader in responsible business.

If we get this wrong, we will add further burden to the already existing onerous reporting and disclosure requirements which will prove challenging for listed businesses to both effectively deliver but also afford, creating a tick box, boilerplate environment where it is difficult for users to really understand the material issues in front of them.

So, whilst we are broadly supportive of the direction of the recommended reforms, we would like to offer the following considerations.

General

In updating the corporate governance code, it is important to ensure that reporting meets not only the needs of financial experts but also those of a much wider range of stakeholders. Corporate reporting needs to be accessible to all rather than just those with deep financial expertise.

Being overly prescriptive will create significant bureaucracy onto an already heavy reporting burden on companies, and therefore is unlikely to enhance transparency and risks ultimately reducing it through the necessity for boilerplate responses which are not in the spirit of the code.

Board Leadership and Company Purpose

We believe that company purpose, social value and strategy should be linked with the relationship between them clearly visible. Greater transparency on climate ambitions and sustainability, along with company values should be visible and form a base for suitable governance.

This should extend to assurance and remuneration and the linkage between these components, alongside purpose, value and strategy should also be made clear. Additional guidance on the importance of considering these factors holistically will enable Boards to direct assurance efforts to risk areas that not only threaten the delivery of strategy but also the core foundations of purpose and values on which the company is built. Without further guidance, there is a risk that assurance efforts address areas of compliance only and fail to drive real value.

Division of responsibilities

As skill sets become more specialist, it is understandable that more time will be needed from specific Board members to adequately oversee and govern appropriately. As Board members, we are fully committed to ensuring that we all have the necessary time to dedicate to our Board responsibilities and therefore we agree with an approach which is not prescriptive. We would also welcome additional focus on ensuring that the relevant skill sets around the Board table are linked to strategy, purpose and values which are of fundamental importance to creating long term value.

Audit, risk, and internal control

Internal audit, risk management and assurance play a vital role in the effective running of companies but should not be limited to compliance efforts or financial metrics. There is a real opportunity for effective assurance models to support the delivery of company strategy, values and purpose if executed in an appropriate way for each individual organisation. Again, by being too prescriptive, there is a risk of these important areas being approached through tick-box exercises rather than becoming effectively embedded within business culture.

Increasingly we expect stakeholders to focus on non-financial measures, so we are supportive of a broad focus across the areas set out. We are also supportive of a controls statement that covers the full period as we believe this best ensures behaviours and controls are embedded, rather than only being present at a point in time.

Further guidance on how best to achieve assurance is welcome but ultimately, we believe that a Board must use its own discretion to ensure that the depth and focus of assurance is appropriate for each individual business, although we are supportive that this should be straightforward and transparent to distinguish between companies with differing risk appetites.

Sent on behalf of the JD plc Group Board

<u>JD plc Consultation responses</u>

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

Yes - we agree that it is important to demonstrate the impact of governance practices and to go beyond a simple description of governance activities and procedures.

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?

Yes – it is important to link climate and change to strategy and governance and we welcome the additional focus on environmental and social matters. It is however important to avoid overlapping requirements through the adoption of TCFD recommendations and the adoption of the ISSB sustainability reporting standards.

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

An increasingly prescriptive approach adopted by the FRC, if not balanced, may create significant bureaucracy and boilerplate responses. We caution against being over prescriptive and heavy handed in favour of an approach that facilitates transparency in Board decisions and assurance.

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?

Yes – the increased focus on governance, as well the increase in the number of specialist skills needed by non-executives, will require increased effort to achieve good governance at certain times. This will be diluted if significant external commitments are not considered as part of Board performance reviews.

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?

Yes

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

Yes – although will not have a significant impact. If the Code covers a matter that is included in other regulation, then we agree they should be aligned, and we believe the proposed changes achieve this.

However, as a rule duplication should be minimised and avoided where possible.

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?

Yes - although this is increasingly challenging to measure.

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

Yes, although disclosures in this area could be boilerplate and, in many cases, the quality of reporting will only be increased through regulatory oversight against an established reporting framework.

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?

Yes, we support the adoption of the CGI recommendations.

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

Yes – this will provide investors and other stakeholders with transparency for all Code companies. Risk appetite and assurance are vital for sound investment decision making and should not be limited to the largest companies. Further, an Audit and Assurance Policy can be tailored to a company's size and shape and does not dictate how much assurance is required, enabling rightsizing across Code companies.

Q11: Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?

Yes. Avoids duplication and provides clarity.

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?

Yes, regarding assurance of metrics included in external reporting however the remit of Audit Committees is already wide ranging. It is important therefore to ensure that key topics like sustainability are given the attention they deserve and hence we are supportive of dedicated committees to focus on these vital topics from a strategic and operational perspective.

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?

Yes - although this will lead to a large range of approaches being adopted which could be misleading. To be effective, reporting will need to set out the approach adopted and how improvements will continue to be made across all lines of defence, not just Internal Audit. The Audit and Assurance policy will also need to be straightforward and clear in explaining the assurance obtained.

More prescriptive guidance in this area will be beneficial and help enhance governance for Code companies.

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?

The declaration should be based on review throughout the year. Reporting at the balance sheet date can be misleading and cover over gaps in governance throughout the year as well as creating a box ticking approach.

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?

Yes.

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?

The guidance should set out clear examples and methodologies whilst recognising differences between code companies and acknowledging that some companies. Differing maturities of company infrastructure will require flexibility in approach.

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?

Definitions should be consistent with those used in other capital markets. Separate definitions and approaches in the UK will create confusion when evaluating issues.

We recognise that materiality for non-financial material weaknesses lacks a clear definition and examples and methodologies for evaluating these are welcome.

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

Yes. There is a risk that we create a dual lens to controls, one driven by the code for companies and one for external auditors who already have defined standards for controls. We risk creating a situation in which management conclude they have effective controls but the external auditor considered them ineffective. This could create to confusion with investors and will be challenging for Audit Committees without guidance.

Q19: Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?

Yes – legal requirements should be consistent with financial reporting standards.

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

Yes.

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?

No comment.

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

Yes, as long as performance is measured against all elements of company strategy.

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

Yes.

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

We agree with the proposed changes to Provisions 40 and 41. We believe they will improve the clarity and usefulness of the required disclosures.

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

Strengthened – removing it reduces transparency and it is an important disclosure that should be covered through reporting controls.

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?

No comment.