



13 September 2023

Financial Reporting Council

Consultation on the UK Corporate Governance Code

Dear Sir/Madam

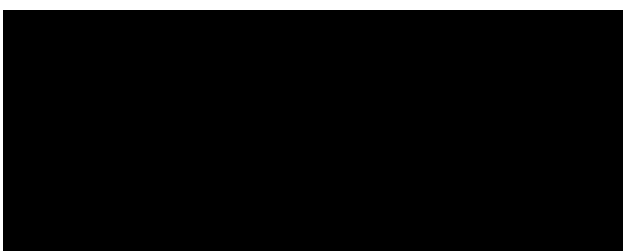
We welcome the opportunity to comment on the proposed amendments to the UK Corporate Governance Code. The Corporate Governance Code is essential in ensuring the on-going attractiveness of the UK marketplace and whilst our response broadly supports the proposed changes, we would ask the FRC to consider more generally their overall impact on the competitiveness of the jurisdiction. Our response provides further detail in relation to the specific questions asked where we think more guidance or clarification is required to ensure consistency in application and the reporting of decision-useful information to investors and other stakeholders.

Whilst we are broadly supportive of increased disclosures around the areas set out in the Code, we ask the FRC to be mindful of the increasing reporting requirements which UK entities will need to adopt in future reporting periods, particularly in relation to sustainability disclosures. The FRC should ensure (within its remit) and/or influence a coordinated approach across all of these requirements to remove any duplication or unnecessary burden on reporting entities. For example, proposed reporting on climate ambitions and transition planning are similar to those already required under TCFD reporting and the widely expected requirement to report under ISSB standards in the near-term. This creates complexity in the overall framework for UK entities and impacts on the attractiveness of the jurisdiction.

Further, there are areas of the proposed amendments where we believe that the scope could be open to interpretation and therefore further guidance or clarification is needed. In particular, the scope of narrative reporting to be overseen by the audit committee and the scope of 'reporting' controls needs further defining. The FRC could consider defining this in relation to certain documents or the frameworks which UK entities are required to report under.

We have welcomed opportunities to engage directly with the FRC through relevant industry bodies of which we are members (e.g. the ABI) in question and answer type sessions which have provided further insight on the desired outcomes of proposed Code amendments. Through these discussions the FRC have indicated that a number of entities are already applying governance which would largely satisfy the amendments and providing good disclosures in this respect. We would ask the FRC as a matter of urgency to publish the examples of good practice they have identified as guidance to aid consistency in interpretation of the proposed amendments and clarity over what the FRC expects to see.

Our response sets out a number of areas where additional guidance and/or clarification is necessary to ensure consistency of application and we understand that the FRC have committed to provide some further guidance in relation to the proposed amendments. Given the timing of when this guidance may be published and potential need for further engagement, the implementation timeline for these areas is short, particularly around risk and assurance. Companies such as ours, operating across jurisdictions, are also juggling a number of different new reporting requirements at this time, particularly in relation to narrative and sustainability-related disclosures. We suggest a phasing-in of proposed changes to ensure that companies are continuing to make progress to improve their governance whilst also taking the time to properly and most efficiently set themselves up for success, providing more meaningful change and insight to stakeholders.



Appendix – M&G Responses to Consultation questions

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

We support the FRC's move towards more outcomes-based reporting and believe the changes to Principle D clarify the intention in this regard. Some guidance on best practice in this area would be useful to help companies understand better what is meant by 'outcomes-based' reporting and help avoid boilerplate disclosures.

Question 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?

We support the FRC's intent to ensure that climate ambitions are embedded in strategy.

The reporting obligations around climate ambitions, transition plans and wider sustainability are evolving rapidly and we request that there is a coordinated approach with other sustainability-related reporting requirements being considered for UK entities. UK companies such as ours are already required to report under TCFD on a comply or explain basis which includes reporting around strategy, governance and risk management and there is a widely developed expectation that the ISSB standards will be mandated in the UK in the near-term. We understand the Transition Plan Taskforce (TPT) is working with the ISSB on how to incorporate its transition plan framework into IFRS S2 Climate. Given this we would question the need to include these additional disclosure requirements in the Code which will add complexity and duplication to the overall UK reporting framework.

Question 3: Do you have any comments on the other changes proposed to Section 1?

No significant comments. Chairs are already engaging with shareholders as required by the code (and good practice). However we would question the need to report on this engagement in the annual report beyond what is already required.

Question 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?

We support this amendment to provide better insight into the commitments of directors and the impact, both positive and negative that it may have on board performance. As an investor we are aware that for certain companies there may be a limited pool of qualified NEDs and therefore it is important that the reporting of this information does not hinder the willingness of directors to take up multiple positions in their areas of expertise.

Question 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 support this amendment, but with a strong caveat that proxy advisors (such as ISS / Glass Lewis) take a numerical approach to directors' other commitments.

Given the influence proxy advisors have on a Company's annual votes, it would be helpful to understand if the FRC has engaged with any proxy advisors to find out if they will, e.g. accept a greater number of positions if explanation and transparency around them evidences that a director has sufficient time.

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

We do believe that the proposals strengthen the existing regulation but would suggest that the time lag from consultation to implementation is not necessarily being considered in keeping pace with additional market expectations related to ethnic diversity at the board of directors and senior management levels.

Recently the Parker review has announced expectations that each FTSE 350 company will set a percentage target for senior management positions that will be occupied by ethnic minority executives in December 2027. It is an excellent time to align provision 24 to include gender balance and ethnic minority representation in senior management and their direct reports to ensure greater alignment and progress in broader representation as is intended with the proposed changes to Principle I.

Question 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?

We fully support the changes to Principle I in the proposed capture of wider diversity characteristics.

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

We fully support the proposed changes to provision 24 as it relates to greater transparency in succession planning.

We would also suggest and fully support, as outlined in item 6, that provision 24 include an expectation to describe the work of the nominations committee including the ethnic minority representation in senior management along with gender balance.

Expanding the definition of diversity in Principle I and expanding the expectations on reporting past gender balance in senior management does not seem to align with the overall intent of the broader changes being proposed.

Question 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 support the proposed changes on Board Performance Reviews and the CGI recommendations.

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

We agree with the proposal that all Code companies should prepare an Audit and Assurance Policy on a 'comply or explain' basis. An Audit and Assurance Policy will provide shareholders and other users of financial and non-financial reporting with greater clarity and understanding of a company's approach to assurance which may not be visible at the moment. Further guidance on the scope of the policy would ensure greater consistency in application. This should take into account the specifics of what stakeholders are lacking in this area without being overburdensome.

We welcome the clarity provided in the recent Statutory Instrument that subsidiary companies do not need to report separately if they are included within a consolidated group director's report.

Question 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 agree that removing Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication. The Minimum Standard was based on the existing Provisions, so it makes sense to streamline the Code using this approach.

Question 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 agree that the remit of audit committees should be expanded to include oversight of narrative reporting, including sustainability reporting, although further guidance should be provided as to the scope of this requirement.

'Sustainability' and 'narrative reporting' are broad terms and we currently prepare numerous types of reporting which may be considered to fall under this banner, some regulatory and some voluntary.

Data availability continues to be a key challenge and therefore much reporting in this area remains on a best endeavours basis with increased risk of restatement. We would ask that the differences between developed financial reporting and early stage sustainability reporting are considered further in setting out what is required of audit committees and the guidance in this area. This will lead to more fulsome, decision useful reporting, rather than less risky, minimum compliance, boilerplate type disclosures in this area.

Further, ESG and sustainability is a new area, with developing levels of expertise and businesses are still organising themselves internally to deliver on various requirements. More implementation time should be considered for this requirement to allow for this internal reorganisation and also for audit committees to upskill as necessary.

Question 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?

We believe the proposals to be proportionate and strike the right balance, other than as noted below. Recent clarifications from the FRC that this is not intended to be US SOX or US SOX plus, or similar, are appreciated.

Additional detail on practical steps needed to comply with the requirements, e.g. guidance and examples of good practice indicators, would be helpful.

Question 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?

While we believe there should be continuous monitoring throughout the reporting period, it would be more practical for the declaration to be based on the date of the balance sheet (and not throughout the reporting period up to the date of the annual report). This would enable remediation activities to be performed and completed in the reporting period, but making clear that continuous monitoring (with additional guidance to be provided from the FRC as to what this means) is in place.

Question 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?

We agree that controls on narrative as well as financial reporting should be captured however as worded the code revision could have a wider scope than intended – leading to inconsistencies in reporting. Alternatives could be:

- (i) to define the scope of controls by reference to the annual report and accounts (or similar), or
- (ii) provide more detail/guidance as to what 'material controls' are/includes.

Question 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?

The guidance should provide sufficient clarity around the meaning of effective design and operation of the risk management and internal controls systems.

Question 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?

The current definition considers the effectiveness of the framework itself, but it is unclear if that is also meant to cover the definition of material weakness in the context of individual/aggregate control failures identified.

We propose that the working definition provided in the consultation document be expanded to:

- a) consider the fault, deficiency or failure in the design or operation in isolation as well as in aggregate; and
- b) consider the impact on the end user of the report.

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

The guidance should also include to what extent the declaration and underlying information be subjected to external review and assurance as part of the financial statements audit. For example, should it be reviewed for consistency with the findings arising from the external audit?

Question 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)?

Yes - we are supportive of this requirement as it results in consistent reporting across entities.

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

We agree that reporting on future prospects is useful for all stakeholders to assess the resilience of the entity to various scenarios based on future outlook beyond the going concern period and therefore support the proposal from the FRC to retain it.

We also agree with the additional guidance given to improve the quality of the disclosure.

Question 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?

This requirement does not apply to us as the Group does not have any non-PIE code companies.

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

Yes, the wording is clear on expectations for designing policies and determining/disclosing remuneration outcomes. We would not expect the updates to lead to materially different or more onerous disclosures for the majority of companies.

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

The change to 39 to refer to “other agreements or documents” is helpful.

As noted, the requirements of 40 should already be met (or substantially met) by many companies. The new reporting requirements should promote more consistency in disclosures.

We would note that the disclosure of the use of malus or clawback in respect of a current or former director is already a requirement. The rolling 5-year look-back would be new but would contain information disclosed in previous reports and we can see the benefit for shareholders.

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

Yes - the simplification and consolidation of the factors is very helpful.

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

Whilst it is important in our view that Remuneration Committees set out the factors taken into account in determining appropriate remuneration outcomes, including workforce pay and conditions, the specific requirement to reference pay ratios and the gender pay gap (which are disclosed and available elsewhere) is potentially duplicative and can risk leading to ‘boiler plate’ disclosures that detract from the key relevant circumstances, factors and context specific to each company.

Question 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?

We expect there will be areas of the Code which may require amendment or additional guidance in relation to this emerging topic although much of the themes are already included in the Code particularly around appropriate oversight of risks. We expect investors to be interested in the extent to which AI is used in the business, the processes and controls around its use and the extent to which assurance (internal and external) is provided and therefore would expect guidance to clarify disclosure requirements in this area. This should be proportionate and not overburdensome recognising that AI is just another resource available to companies to carry out their business.