

To: codereview@frc.org.uk

Attention: David Styles

13 September 2023

Dear David,

UK Corporate Governance Code: consultation document

I write in response to certain aspects of this document on behalf of Secure Trust Bank PLC (STB).

STB is committed to high standards of corporate governance. The comments in this response relate to taking an approach which is proportionate to STB's circumstances as a small public interest entity.

When I refer below to a 'large' Public Interest Entity (PIE) I mean one which meets the thresholds decided on by the Government in its response to its consultation on the March 2021 White Paper on Restoring Trust in Audit and Corporate Governance. And, so by a 'small' PIE, I mean an entity which is a public interest entity but which does not meet these thresholds.

About STB

The ordinary shares in STB are listed on the premium segment of the Main Market, London Stock Exchange. STB is:

- not within the FTSE 350,
- not a large PIE as its annual turnover is less than £750m, but
- a small PIE (by virtue of being a bank (and which is dual regulated by the PRA/FCA)).

Accordingly under the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 (Regulations) STB will not, when those Regulations are finalised and start to apply, be legally required to disclose annually:

- a resilience statement,
- an audit and assurance policy,
- its distributable profits/profit distribution policy,
- its assessment of material fraud risks and related main prevention/detection measures.

As STB is not within the FTSE 350 it is not directly in the scope of the FRC's 'Audit Committee and the External Audit: Minimum Standard'. You will recall that the Standard was developed following a recommendation from the Competition & Markets Authority that the minimum standard should initially be applied to the Audit Committees of FTSE 350 companies.

Summary

The proposed form of Governance Code would have the result of putting STB (and other small PIEs or, as applicable, non-FTSE 350 companies) of non-compliance with provisions of the new Code in relation to the:

- Resilience statement,
- Audit and assurance policy, and
- Minimum Standard.

STB would, instead of voluntarily fully adopting them, have to provide a suitable explanation for its non-compliance with those provisions and could therefore be at a disadvantage to large PIEs/FTSE 350 companies and potentially be wrongly perceived as operating to lower standards of corporate governance.

Below we propose specific changes to the proposed Governance Code that would enable STB (and other small PIEs/non FTSE 350 companies) still to be able to comply proportionately with these Code provisions in relation to these disclosures and have the option voluntarily to disclose against some or all of them. As explained below, we think small PIEs should consider whether to make these disclosures and, if doing so, to be able to decide what is proportionate to their circumstances, making any such disclosures fair balanced and understandable and giving clear explanations. Our approach would apply to the four disclosures required for large PIEs under the Regulations and the Minimum Standard expected of FTSE 350 companies.

Our reasons

These are:

- The Government's response referenced above decided that the resilience statement and audit and assurance policy disclosures should legally only be obligations of large PIEs. There were over 600 responses to the consultation including 190 respondents to the consultation on the options for the PIE definition. The Government concluded that the majority of those respondents favoured an option-Option 2- (or a variant of that option) with a size threshold for large PIEs, saying: 'The Government has concluded that a variant of Option 2 – a size-based threshold based on turnover and employees – strikes the best balance for the widening of the PIE definition, being proportionate whilst ensuring those companies which are economically important and systemically important are within scope. Therefore, the Government intends to extend the PIE definition to large companies with both: • 750 or more employees, and • an annual turnover of £750 million or more.' The Government's impact assessment is based on adopting this variant.
- ARGAs (when empowered) faces a very difficult enforcement challenge to treat (i) companies legally required to make these disclosures and (ii) companies voluntarily choosing to make them similarly, fairly and rationally in the same circumstances. If the effect is that companies in the second category would have to be treated as if they had failed to comply with a legal obligation the effect would be that ARGAs would be 'law making'.
- In fact, the position is more complex. The timing of the legislation to give ARGAs enforcement powers and give guidance on these disclosures is uncertain. Could the Regulations, new Code and UK Sustainability Reporting Standards potentially come into effect while the FRC only has its existing powers (more limited than contemplated for ARGAs) with Government enforcing the Regulations and the FRC exercising such powers and influence and it has?

- The Code does not have to be ‘one size fits all’. The current and proposed Code differentiate between FTSE 350 companies (or not), and frequency of board evaluation/reviews.
- Where a larger company can be fully compliant with the Code (because it has to comply with legally required disclosures) but a smaller company is not fully compliant with the Code (because it voluntarily chooses not to make the same disclosures) it could suggest to a retail investor that the standard of corporate governance is higher/more effective in the larger company. In fact, a smaller company like STB can operate to the same or higher standards of governance than a larger unregulated one by virtue of, in STB’s case as a bank:
 - the dual regulation of its activities, its systems and controls, its governance, its consumer outcomes under the Consumer Duty and its culture by the PRA and FCA,
 - the responsibilities of its senior managers and certified persons under the Senior Managers and Certification Rules (including their financial and non-financial conduct),
 - the regulatory requirements for a risk committee, whistleblowers’ champion and independent internal audit, and
 - the alignment of its remuneration with risk considerations, and regulatory controls on amounts, timing and vesting periods of remuneration affecting material risk takers (a potentially broader population than the Code concept of senior management).

The Resilience Statement

We acknowledge that the proposed Code as drafted does not appear intended to seek to require small PIEs to disclose a mandatory (once in force) Resilience Statement. New footnote 14 (when referring to footnotes I am referring to the numbering in the tracked change version in Appendix A to the consultation) appears intended to give an option to disclose or explain, with either being compliant with the proposed Code.

But, we think this intent would be clearer/better if:

- Footnote 14 was drafted as expressly including the word ‘either’ so that it reads as an ‘either/ or’ Provision.
- Footnote 14 as drafted refers to a ‘similar and proportionate way’. We think this should just refer to ‘a proportionate way’.
- There is no need to add ‘future’ to ‘future prospects’ as prospects inherently relate to the future.

Audit and assurance policy (AAP)

The consultation document expresses the FRC view that all companies reporting against the Code should ‘consider’ producing an AAP on a ‘comply or explain’ basis, using the legislation as a guide. New footnote 11 goes further, saying ‘companies not subject to this regulation should determine the content of their policy taking this regulation into account. Similarly new Provision 26 (in the fourth and fifth points) mandates (in order to comply with the Code) the existence of ‘the audit and assurance policy’. The effect is to mandate having an AAP whether or not ‘required’.

We think it would be better if:

- New Provision 26 referenced 'any required' AAP.
- New footnote 11 said: 'Companies not subject to this regulation should consider whether to have an audit and assurance policy and, if so, decide the extent to which such a policy is proportionate to their circumstances taking this regulation into account and should develop, implement and maintain that policy to that extent. These companies should explain their approach.'
- The final point of New Provision 27 should reference 'any required' triennial audit and annual implementation report' (so removing both references to 'the' in that point) and cross refer to new footnote 11 (as above).

Minimum Standard

We agree that the Code should be revised to prevent duplication between existing Provisions 25 and 26 for FTSE 350 companies. But, for non FTSE 350 companies we think the approach should follow the one we outline above for resilience statements, that is, non-FTSE 350 companies should consider whether to apply the Minimum Standard, decide what is proportionate to their circumstances taking into account the Minimum Standard, and explain their approach.

Distributable profits/profit distribution policy, and material fraud risks and related main prevention/detection measures

We note that:

- the proposed Code does not expressly require their disclosure, but
- such disclosures may be advantageous, necessary, complement or be referenced in the FRC/ARGA guidance about other disclosures about financial position, prospects and risk management and internal controls, and
- footnote 9's reference to 'information required to be presented by statutory instruments' extends the 'fair, balanced and understandable' responsibility (where such disclosure is so required).

We comment that:

- We think it is better expressly to address disclosure of this policy and these measures in the revised Code.
- But, their disclosure should be on a proportionate basis (as we advocate above).
- Footnote 9 should be flexed (in any event) to include such disclosures as are chosen to be made.
- Our reasons are clarity of governance standards for premium segment, Main Market listed companies, the importance of these disclosures and the prospective offence for (shorthand) failure to prevent fraud.

We note that new Principle D needs some flex to require clear explanations not just where the board departs from the Code's provisions but where it explains an approach which is proportionate to the company's circumstances.

Going concern

We support the retention of current Provision 30 (new 31) for all companies to state whether they are adopting a going concern basis of accounting so as to achieve consistency across the Code for all companies (not just PIEs).

Sustainability

We note that in existing Provision 1 no change is proposed to the reference to 'the sustainability of the company's business model'. We do not object to this wording but invite you to consider:

- whether it is overtaken by disclosures in the strategic report, the new form of resilience statement or later references to 'narrative reporting', and
- how these words be read once the UK adopts the IFRS Sustainability Standards.

Basis of this response

This response is not confidential.

Your sincerely,



Appendix A:

Draft revised UK Corporate Governance Code (with tracked changes)

Moved new position - Blue underlined
Moved old position - ~~Blue strike through~~
Deleted - ~~red strike through~~
New – Green
STB Legal – changes

Section 1 – Board leadership and company purpose

Principles

- A. A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society. The board should ensure that the necessary resources, policies and practices are in place for the company to meet its objectives and measure performance against them.
- B. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are all aligned. All directors must act with integrity, lead by example and promote the desired culture. The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success.
- ~~C. The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.~~
- D.C. In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.
- E.D. ~~The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.~~ When reporting on its governance activity the board should focus on outcomes in order to demonstrate the impact of governance practices and how the Code has been applied. Where the **board** reports on departures from the Code's provisions, it should provide a clear explanation.

Provisions

1. The board should assess the basis on which the company generates and preserves value over the long-term. It should describe in the annual report how opportunities and risks to the future success of the business have been considered and addressed, the sustainability of the company's business model and how **environmental, social and governance** matters are taken into account in ~~its governance contributes to~~ the delivery of its strategy, including its climate ambitions and transition planning.
2. The board should assess and monitor culture and report **in the annual report on how effectively the desired culture has been embedded**. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board's activities and any action taken. ~~In addition, it should include an explanation of the company's approach to investing in and rewarding its workforce.~~

-
3. In addition to formal general meetings, the chair should seek regular engagement with major shareholders in order to understand their views on governance and performance against the strategy. Committee chairs should ~~seek engagement~~ **engage** with shareholders on significant matters related to their areas of responsibility. The chair should ensure that the board ~~as a whole~~ **understands** the views of shareholders, **and report in the annual report on the outcomes of the engagement with them during the reporting period.**
 4. When 20 per cent or more of votes have been cast against the board recommendation for a resolution, the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result. An update on the views received from shareholders and actions taken should be published no later than six months after the shareholder meeting¹. The board should then provide a final summary in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting, on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed.²
 5. The board should understand the views of the company's other key stakeholders and describe in the annual report how these ~~ir~~ **interests** and the matters set out in section 172 **(1) (a) – (f)** of the Companies Act 2006 have been considered in board discussions and decision-making.³ The board should keep engagement mechanisms under review so that they remain effective.

For engagement with the workforce,⁴ one or a combination of the following methods should be used:

- a director appointed from the workforce;
- a formal workforce advisory panel; **or**
- or a designated non-executive director.

If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective.

6. There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review **the effectiveness of these arrangements** ~~this~~ and the reports arising from ~~their~~ **its** operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.

1 The update should be published on the company's website, the Regulatory Information Service used by the company, or both.

2 Details of significant votes against and related company updates are available on the Public Register maintained by The Investment Association – www.theinvestmentassociation.org/publicregister.html

3 This supports the reporting requirements set out in "The Companies (Miscellaneous Reporting) Regulations 2018. These were introduced to enhance reporting of section 172 of the Companies Act 2006 (Directors' Duties).

4 See the Guidance on Board Effectiveness Section [XXX] for a description of 'workforce' in this context.

-
7. The board should take action to identify and manage conflicts of interest, including those resulting from significant shareholdings, and ensure that the influence of third parties does not compromise or override independent judgement.
 8. Where directors have concerns about the board or the company that cannot be resolved, their concerns should be recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chair, for circulation to the board, if they have any such concerns.

Section 2 – Division of responsibilities

Principles

- F.E. The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.
- G.F. The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company's business.
- H.G. Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.
- H.H. The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.

Provisions

9. The chair should be independent on appointment when assessed against the circumstances set out in Provision 10. The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the board, major shareholders should be consulted ahead of appointment. The board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website.
10. The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director:
- is or has been an employee of the company or group within the last five years;
 - has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
 - has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;

-
- has close family ties with any of the company's advisers, directors or senior employees;
 - holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
 - represents a significant shareholder; or
 - has served on the board for more than nine years from the date of their first appointment.

Where any of these or other relevant circumstances apply, and the board nonetheless considers that the non-executive director is independent, a clear explanation should be provided.

11. At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent.
12. The board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chair and serve as an intermediary for the other directors and shareholders. Led by the senior independent director, the non-executive directors should meet without the chair present at least annually to appraise the chair's performance, and on other occasions as necessary.
13. Non-executive directors have a prime role in appointing and removing executive directors. Non-executive directors should scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives. The chair should hold meetings with the non-executive directors without the executive directors present.
14. The responsibilities of the chair, chief executive, senior independent director, board and committees should be clear, set out in writing, agreed by the board and made publicly available. The annual report should set out the number of meetings of the board and its committees, and the individual attendance by directors.
15. All significant director appointments should be listed in the annual report, describing how each director has sufficient time to undertake their role effectively in light of commitments to other organisations. This should describe any actions taken as a result of this assessment. When making new appointments, the board should take into account other demands on directors' time. Prior to appointment, significant commitments should be disclosed with an indication of the time involved. Additional external appointments should not be undertaken without prior approval of the board, with the reasons for permitting significant appointments explained in the annual report. Full-time executive directors should not take on more than one non-executive directorship in a FTSE 100 company or other significant appointment.

-
16. All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board.

Section 3 – Composition, succession and evaluation

Principles

- ~~J.~~ I. Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan ~~should be maintained~~ for the board and senior management ~~should be maintained~~⁵. Both appointments and succession plans should be based on merit and objective criteria⁶. ~~They should promote equal opportunity, and diversity and inclusion of protected characteristics and non-protected characteristics including cognitive and personal strengths.~~ ~~and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.~~
- ~~K.~~ J. The board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the board as a whole and membership regularly refreshed.
- ~~L.~~ K. Annual evaluation of the board should consider its performance, composition, diversity and how effectively members work together ~~to achieve objectives~~. Individual evaluation should demonstrate whether each director continues to contribute effectively. ~~The annual performance review should consider each director's commitments to other organisations, and~~ whether they have sufficient time to discharge their role effectively.

Provisions

- 17. The board should establish a nomination committee ~~to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession.~~ A, a majority of members of ~~the committee~~ which should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor.
- ~~17.~~ 18. ~~The Committee should~~ ~~to lead the process for appointments, ensure p~~Plans should be in place for orderly succession to both the board and senior management positions, and ~~oversee the development of a diverse pipelines~~ should be developed for succession. Diversity and inclusion initiatives, along with any targets set, should contribute to the succession plan.
- ~~18.~~ 19. All directors should be subject to annual re-election. The board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the company's long-term sustainable success.

⁵ The definition of 'senior management' for this purpose should be the executive committee or the first layer of management below board level, including the company secretary.

⁶ Which protect against discrimination for those with protected characteristics within the meaning of the Equalities Act 2010.

-
- 19.20. The chair should not remain in post beyond nine years from the date of their first appointment to the board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the chair was an existing non-executive director on appointment. A clear explanation should be provided.
- 20.21. Open advertising and/or an external search consultancy should generally be used for the appointment of the chair and non-executive directors. If an external search consultancy is engaged it should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors.
- 21.22. There should be a formal and rigorous annual **review** of the performance of the board, its committees, the chair and individual directors. The chair should ~~commission~~~~consider having~~ a regular externally facilitated board **performance review**~~evaluation~~. In FTSE 350 companies this should happen at least every three years. The external ~~reviewer~~~~evaluator~~ should be identified in the annual report and a statement made about any other connection it has with the company or individual directors.
- 22.23. The chair should act on the results of the **board performance review**~~evaluation~~ by recognising the strengths and addressing any weaknesses of the board. Each director should engage with the process and take appropriate action when development needs have been identified.
- 23.24. The annual report should describe the work of the nomination committee, including:
- **succession planning for both board and senior management positions, in order to deliver the company's strategy, including an explanation of how the committee has overseen the development of a diverse pipeline for succession;**
 - **the appointments for the board and senior management, including the search and nomination procedures and promotion of diversity;**
 - **the effectiveness of the diversity and inclusion policy, including progress towards company objectives and adherence to established initiatives;**
 - **the gender balance of those in the **senior management**⁷ and their direct reports;**
and:
 - ~~the process used in relation to appointments, its approach to succession planning and how both support developing a diverse pipeline;~~

7 See footnote 5.

-
- how the board performance review~~evaluation~~ has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence future board composition.;
 - ~~the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and~~
 - ~~the gender balance of those in the senior management⁸ and their direct reports.~~

8 —See footnote 4

Section 4 – Audit, risk and internal control

Principles

- ~~M.L.~~ The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.⁹
- ~~N.M.~~ The board should present a fair, balanced and understandable assessment of the company's position and prospects.
- ~~O.N.~~ ~~The board should also establish and maintain an effective risk management and internal control framework of prudent and effective controls, which enable risk to be assessed and managed. The board should establish procedures to manage risk, oversee the internal control framework,~~ and **decide** the nature and extent of the principal risks the company is willing to take in order to achieve its long-term strategic objectives.

Provisions

- ~~24.~~25. The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two.¹⁰ The chair of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates.
- ~~25.~~26. The main roles and responsibilities of the audit committee should include:
- monitoring the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, and reviewing significant financial reporting judgements contained in them;
 - **monitoring the integrity of narrative reporting, including sustainability matters, and reviewing any significant reporting judgements, where not reserved for the board;**
 - providing advice (where requested by the board) on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for shareholders to assess the company's position and performance, business model and strategy;
 - **developing, implementing, and maintaining any audit and assurance policy¹¹;**

⁹ The board's responsibility to present a fair, balanced and understandable assessment extends to interim and other price-sensitive public records and reports to regulators, as well as to information required to be presented by statutory instruments.

¹⁰ A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

¹¹ As discussed above, this requirement is currently set out in a draft statutory instrument which is yet to be introduced. Under the provisions of that draft legislation, companies that meet the definition set out in the new proposed section [xxx] of the Companies Act 2006 should follow the approach set out in [xxx]. [See STB comment letter for alternative approach: **decide** ???]

-
- engaging with shareholders and other stakeholders on the role of the audit committee, the scope of work of the external auditor, and the approach to **any** audit and assurance policy;
 - **where required**, following the Audit Committees and the External Audit: Minimum Standard;
 - promoting effective competition during the tendering for an external auditor, to support audit market diversity;
 - developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, taking into account the relevant regulations and ethical guidance in this regard, and reporting to the board on any improvement or action required;
 - reviewing the company's ~~internal financial controls and~~ risk management and internal control ~~and risk management~~ systems, unless expressly addressed by a separate board risk committee composed of independent non-executive directors, or by the board itself;
 - monitoring and reviewing the effectiveness of the company's internal audit function, or where there is not one, considering annually whether there is a need for one and making a recommendation to the board;
 - ~~conducting the tender process and making recommendations to the board, about the appointment, reappointment and removal of the external auditor, and approving the remuneration and terms of engagement of the external auditor;~~
 - ~~reviewing and monitoring the external auditor's independence and objectivity;~~
 - ~~reviewing the effectiveness of the external audit process, taking into consideration relevant UK professional and regulatory requirements;~~
 - ~~developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, taking into account the relevant regulations and ethical guidance in this regard, and reporting to the board on any improvement or action required;~~ and
 - reporting to the board on how it has discharged its responsibilities.

26.27. The annual report should describe the work of the audit committee, including:

- ~~the significant issues that the audit committee considered relating to the financial statements, and how these issues were addressed;~~

- ~~an explanation of how it has assessed the independence and effectiveness of the external audit process and the approach taken to the appointment or reappointment of the external auditor, information on the length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans;~~
- ~~in the case of a board not accepting the audit committee's recommendation on the external auditor appointment, reappointment or removal, a statement from the audit committee explaining its recommendation and the reasons why the board has taken a different position (this should also be supplied in any papers recommending appointment or reappointment);~~
- **where required**, the matters set out in the Audit Committees and the External Audit: Minimum Standard;
- the significant issues that the audit committee considered relating to narrative reporting, including sustainability matters, and how these issues were addressed;
- where commissioned by the board, the assurance of environmental, social and governance metrics and other sustainability matters;
- where there is no internal audit function, an explanation for the absence, how internal assurance is achieved, and how this affects the work of external audit; and
- its approach to developing **any required** triennial audit and assurance policy and annual implementation report ~~an explanation of how auditor independence and objectivity are safeguarded, if the external auditor provides non-audit services.~~

~~27.~~28. The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for shareholders to assess the company's position, performance, business model and strategy.

~~28.~~29. The board should carry out a robust assessment of the company's emerging¹² and principal risks.¹³ The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, ~~what procedures are in place to identify emerging risks~~, and an explanation of how these are being managed or mitigated. **The board should explain in the annual report what procedures are in place to identify and manage or mitigate emerging risks and describe these risks.**

¹² Emerging risks should include those whose impact and probability are difficult to assess and quantify at present, but there is a reasonable probability of affecting the company over a longer time horizon.

¹³ Principal risks should include, but are not necessarily limited to, those that could result in events or circumstances that might threaten the company's business model, future performance, solvency or liquidity and reputation. In deciding which risks are principal risks companies should consider the potential impact and probability of the related events or circumstances, and

the timescale over which they may occur

29.30. The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including **financial**, operational, **reporting** and compliance controls. **The board should provide in the annual report:**

- A declaration of whether the board can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period and up to the date of the annual report;
- An explanation of the basis for its declaration, including how it has monitored and reviewed the effectiveness of these systems; and
- A description of any material weaknesses or failures identified and the remedial action being taken, and over what timeframe.

30.31. In annual and half-yearly financial statements, the board should state whether it considers it appropriate to adopt the going concern basis of accounting in preparing them, and identify any material uncertainties to the company's ability to continue to do so over a period of at least twelve months from the date of approval of the financial statements.

31.32. Taking account of the company's current position and principal risks, the board should explain in the annual report how it has assessed the prospects of the company¹⁴ **including its ability to** ~~, over what period it has done so and why it considers that period to be appropriate. The board should state whether it has a reasonable expectation that the company will be able to continue in operation~~ **and** meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

¹⁴ Companies that have complied with the requirements of section [xxx] of the Companies Act 2006 ("the Resilience Statement") will also be compliant with Provision 32. For companies not subject to section [xxx], [See STB comments for alternative version: the board should either report in a proportionate way to the requirements of this section or set out the basis for the assessment in the annual report.]

Section 5 – Remuneration

Principles

- ~~P.O.~~ A formal and transparent procedure for developing policy on executive remuneration and deciding director and senior management¹⁵ remuneration should be established. Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. ~~Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy.~~ No director should be involved in deciding their own remuneration outcome.
- ~~Q.P.~~ Remuneration outcomes should be clearly aligned to company performance, purpose and values, and the successful delivery of the company's long-term strategy including environmental, social and governance objectives. ~~A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management¹⁶ remuneration should be established. No director should be involved in deciding their own remuneration outcome.~~
- ~~R.Q.~~ The remuneration committee ~~Directors~~ should exercise independent judgement and discretion when authorising remuneration outcomes, taking into account ~~of~~ company and individual performance, workforce pay and conditions and wider circumstances.

Provisions

- ~~32.~~33. The board should establish a remuneration committee of independent non-executive directors with a minimum membership of three, or in the case of smaller companies, two¹⁷. In addition, the chair of the board can only be a member if they were independent on appointment and cannot chair the committee. Before appointment as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least 12 months.
34. The remuneration committee should have delegated responsibility for deciding the policy for executive director remuneration and setting remuneration for the chair, executive directors and senior management.¹⁸ The policy should be clear, identify and mitigate risks associated with remuneration, and ensure outcomes are proportionate and do not reward poor performance.
- ~~33.~~35. The remuneration committee ~~it~~ should review workforce¹⁹ remuneration and related policies and the alignment of incentives and rewards with culture, taking these into account when setting the policy for executive director remuneration. The committee in addition, it should include in the annual report an explanation of the company's approach to investing in and rewarding its workforce.

¹⁵ See footnote 5.

~~¹⁶ See footnote 4.~~

¹⁷ See footnote 10~~8~~.

¹⁸ See footnote 5

¹⁹ See [Guidance on Board Effectiveness] Section XXX for a description of workforce in this context.

34.36. The remuneration of non-executive directors should be **decided** in accordance with the Articles of Association or, alternatively, by the board. Levels of remuneration for the chair and all non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for all non-executive directors should not include share options or other performance-related elements.

35.37. Where a remuneration consultant is appointed, this should be the responsibility of the remuneration committee. The consultant should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors. Independent judgement should be exercised when evaluating the advice of external third parties and when receiving views from executive and senior management²⁰.

36.38. Remuneration schemes should promote long-term shareholdings by executive directors that support alignment with long-term shareholder interests. In normal circumstances, share awards granted for this purpose should be released for sale on a phased basis and be subject to a total vesting and holding period of five years or more. The remuneration committee should develop a formal policy for post-employment shareholding requirements encompassing both unvested and vested shares.

37.39. Remuneration schemes and policies should enable the use of discretion to override formulaic outcomes. **Director contracts and/or other agreements or documents which cover director remuneration should include malus and clawback** ~~They should also include~~ provisions that would enable the company to recover and/or withhold sums or share awards, and specify the circumstances in which it would be appropriate to do so.

40. The annual report on remuneration should include a description of its malus and clawback provisions, including:

- the minimum circumstances in which malus and clawback provisions could be **used**;
- a description of the minimum period for malus and clawback and why the selected period is best suited to the organisation; and
- whether the provisions have been used in the last reporting period. If provisions have been used, a clear explanation of the reason should be provided in the annual report.

Companies should set out the use of their malus and clawback provisions in the last five years²¹.

²⁰ See footnote 3

²¹ See the [Guidance in Board Effectiveness] paragraph [XXX] for further guidance on the suggested format.

~~38.41.~~ Only basic salary should be pensionable. The pension contribution rates for executive directors, or payments in lieu, should be aligned with those available to the workforce. The pension consequences and associated costs of basic salary increases and any other changes in pensionable remuneration, or contribution rates, particularly for directors close to retirement, should be carefully considered when compared with workforce arrangements.

~~39.42.~~ Notice or contract periods should be one year or less. If it is necessary to offer longer periods to new directors recruited from outside the company, such periods should reduce to one year or less after the initial period. The remuneration committee should ensure compensation commitments in directors' terms of appointment do not reward poor performance. They should be robust in reducing compensation to reflect departing directors' obligations to mitigate loss.

~~40.—~~ When determining executive director remuneration policy and practices, the remuneration committee should address the following:

- ~~• clarity—remuneration arrangements should be transparent and promote effective engagement with shareholders and the workforce;~~
- ~~• simplicity—remuneration structures should avoid complexity and their rationale and operation should be easy to understand;~~
- ~~• risk—remuneration arrangements should ensure reputational and other risks from excessive rewards, and behavioural risks that can arise from target-based incentive plans, are identified and mitigated;~~
- ~~• predictability—the range of possible values of rewards to individual directors and any other limits or discretions should be identified and explained at the time of approving the policy;~~
- ~~• proportionality—the link between individual awards, the delivery of strategy and the long-term performance of the company should be clear. Outcomes should not reward poor performance; and~~
- ~~• alignment to culture—incentive schemes should drive behaviours consistent with company purpose, values and strategy.~~

~~41.43.~~ There should be a description of the work of the remuneration committee in the annual report, including:

- ~~• an explanation of how the strategic rationale for executive directors' remuneration policies, structures and any performance metrics supports company strategy and environmental, social and governance objectives;~~
- ~~• reasons why the remuneration is appropriate using internal and external measures, including pay ratios and pay gaps;~~

-
- ~~a description, with examples, of how the remuneration committee has addressed the factors in Provision 40;~~
 - whether the remuneration policy operated as intended in terms of company performance and quantum, and, if not, what changes are necessary;
 - what engagement ~~with shareholders and the workforce has occurred~~ ~~has taken place with shareholders~~ and ~~what~~the impact this has had on remuneration policy and outcomes, including the alignment with executive remuneration and the overall company pay policy;
 - ~~what engagement with the workforce has taken place to explain how executive remuneration aligns with wider company pay policy;~~ and
 - to what extent discretion has been applied to remuneration outcomes and the reasons

