

Revised UK Corporate Governance Code Consultation

Q2) Do you have any (general) comments on the revised guidance?

- We strongly support the principles of good governance, including transparency, and broader stakeholder engagement, to ensure that companies are run effectively to deliver lasting economic and stakeholder benefits.
- It is important that any regulation or governance framework maintains a level playing field so large listed PLCs (which are global businesses) are not unduly disadvantaged in commercial operations for competing for employees in that market.
- A level playing field also makes sense from a competitiveness perspective – regulation should not make it comparatively more burdensome to run a business as a PLC than e.g. a foreign- or indeed privately-owned business of comparable scale competing in the same market.
- It is increasingly important to ensure that Britain can demonstrate it is both ‘open to’ and ‘pro’ global business to attract investment, create jobs and economic growth.
- To address the issues that have a broader social impact (working conditions / pension funding gaps), the appropriate frameworks should be proportionate, targeted, and apply equally to all business entities that can have a similar scale impact on stakeholders (including e.g. employees / customers, supply chain and pension fund beneficiaries) regardless of their legal form, e.g.: pension funding issues are not unique to PLCs; and more generally, addressing many of the social / equality issues originally raised in the Government’s Green Paper would require the majority of business entities to be covered.
- The unitary Board, and the separation of responsibilities between Executive and Non-Executive Directors are key to the UK Governance model, and these principles should be preserved.
- There is an administrative burden and significant costs associated with all regulatory, compliance and disclosure obligations, and the FRC should not adopt measures unless they are proven necessary or deliver a meaningful improvement in governance outcomes, especially for smaller companies.

Q3) Do you agree that the proposed methods in Provision 3 (for employee engagement) are sufficient to achieve meaningful engagement?

- While three methods have been proposed, it is important that Boards retain flexibility to adopt a different approach if that is more suitable. We are concerned that the flexibility currently envisaged by the use of the word ‘normally’ in the provision will in short time come to be lost as shareholders and/or proxy agents interpret one of the three example approaches as being mandatory.
- Large global businesses (with significant headcount outside the UK) will face different challenges in seeking “meaningful, regular, two-way dialogue and a means of listening to the workforce”, and what is appropriate for one company will not be appropriate for another.
- The unitary Board, and the separation of responsibilities between Executive and Non-Executive Directors are key to the UK Governance model, and these principles should be preserved. Proposals for non-executive director engagement with the

workforce need to be proportionate to ensure these principles are maintained. We question how the appointment of a director from the workforce, where such a director has a mandate to represent one class of stakeholder (employees) only is consistent with the concept of a unitary Board and with the primacy of shareholders under s172 Companies Act (unlike the situation applicable to supervisory board directors in continental two-tier boards).

- In a large-employer or global context, it would be instructive for the FRC to consider guidance on the scale of activity that would be required to constitute “meaningful, regular, two-way dialogue” between non-executive director(s) and the workforce, particularly if the implication is that this should be independent of executive management.
- The costs associated with these provisions may be significant, depending on the scale of implementation.
- The time burden for non-executive directors, particularly for those in global organisations with disparate geographies to cover, could also be significant.

Q5) Do you agree that 20% is ‘significant’ and that an update should be published no later than six months after the vote?

- Context is very important in understanding the real level of shareholder dissent in any particular situation. Certain factors can have a marked influence on shareholder voting in different ways: large individual shareholders; the influence of proxy advisor bodies; and the increasing fragmentation of investor ‘house’ views which limits a company’s ability to achieve consensus support. Collectively, this suggests that a ‘20%’ figure is an arbitrary distinction.
- It is appropriate that companies seek to engage to understand the reasons for these views, but the Code should recognise that it may not be possible to reconcile opposed shareholder views, or connect directly with shareholders who follow a proxy advisor. Proxy advisors often operate remotely and discourage engagement with companies. It might be instructive for the FRC to consider these issues, as well as the level of resource institutional investors/proxy advisors commit to engagement with companies, as part of the review of the stewardship code.
- We believe that publishing an update within six months of the vote might be impracticable. We support publishing an update in the next annual report.

Q7) Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

- We agree with the Principle set out in Section 3 of the Revised Code that Board membership should be regularly refreshed and we believe that non-executive directors should be independent. We believe that six years (and beyond) is an appropriate point in time at which to rigorously test a director’s independence but we do not agree with the drafting of Provision 15 of the Revised Code which automatically deems a director not to be independent at nine years.
- A nine year time limit on independence will make it more difficult for there to be internal chair appointments and will discourage this type of succession planning.
- We prefer the drafting of the existing Code which leaves the question of independence at nine years a matter for the judgement of the Board.

Independence of the Chair

- It is not clear why the revised Code proposes that the chair be independent after appointment, in contrast to the existing Code.

Q8) Do you agree that it is not necessary to provide for a maximum period of tenure?

- We believe that nine years will become the *de facto* maximum period of tenure should Provision 15 of the draft revised Code remain in the final draft of the revised Code. We believe that there may be circumstances where it would be appropriate for independently minded non-executive directors to remain on a Board for more than nine years and therefore we believe that Boards should have the flexibility to determine that a director meets the independence criteria at or beyond nine years.
- On the other hand, there are other reasons for Boards to encourage regular NED rotation/refreshment, without reference to tenure, for example, as the needs of the business and its strategy evolve. Such refreshment might take place within a nine year, or even shorter, period.

Q10) Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350?

- While we are not in the 'beyond the FTSE 350' category, we are supportive of diversity at all levels and in all companies as smaller companies also feed the pipeline for larger companies.

Q11) What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply.

- We are supportive of diversity at all levels, including executive succession. As a multinational business, recruiting and managing individuals globally to resource business needs, 'ethnicity' becomes difficult to define and measure. For example, would ethnicity be defined by reference to birth or race and how would second and third generations and mixed ethnicity be classified? Individual employee disclosures are typically voluntary, and data is therefore incomplete.
- In many jurisdictions, it is illegal for companies to ask for or to hold any data regarding ethnicity or indeed other diversity parameters apart from gender.
- There are significant costs associated with all regulatory, compliance and disclosure obligations, and the FRC should not adopt measures unless they are proven to deliver value for stakeholders.

Q14) Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?

- Oversight of 'workforce policies and practices' is a potentially very broad and ambiguous remit ranging on the one hand from the company's code of ethics to the executive arena of agreeing shift patterns. We agree that the Remuneration Committee should "understand and take into account the wider workforce and workforce policies and practices with regard to remuneration, when setting policy for director remuneration" but the current language of Provision 33 goes beyond this.
- The scope of the proposed remit should also be reviewed critically to ensure that the remit remains appropriate to the non-executive role. Clear guidance would then be

valuable to ensure these responsibilities can be met in an appropriate way without taking on an 'executive' function (e.g. 'awareness of policy' is different from a decision making mandate regarding day-to-day management of the business). In that regard, the proposal to 'set remuneration for senior management' arguably goes too far.

- Many people-related matters are already typically the subject of Board (or Committee) discussions, including but not limited to: broad people policies, safety, employee engagement, recruitment, training development and succession planning, and Boards typically receive briefings on important issues relating to people and engagement. The frequency of these discussions varies depending on relative importance and level of activity; the primary forum (Board or Committee) also varies depending on the topic.
- It would therefore be appropriate to ensure that the guidance is thoughtful in scope to encourage the desired outcomes without mandating a prescriptive approach that may not add value; and also permit flexibility to work with other Committees (nominations, safety, people) or the whole Board, if appropriate in the context.

Q15) Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?

- The guiding framework set out in Provision 40 is sufficient. There are disadvantages in trying to be too prescriptive or mandating a 'one size fits all' approach. Remuneration committees should be permitted to adopt remuneration principles that properly reflect the needs, culture and strategy of the company.

Q16) Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?

- We believe that shareholder sentiment and engagement is, and should remain, the principal driver here.

(continued overleaf)

Additional Comments:

Principle A and section 172 of the Companies Act:

Principle A of the revised Code states:

“A successful company is led by an effective and entrepreneurial board, whose function is to promote the long-term sustainable success of the company, generate value for shareholders and contribute to wider society.”

This is not consistent with a) the primacy of shareholders and b) the secondary consideration of the long term, as set out in s172 of the Companies Act which states:

Duty to promote the success of the company

1. A director of a company must act in the way he considers, in good faith, **would be most likely to promote the success of the company for the benefit of its members as a whole**, and in doing so have regard (amongst other matters) to:
 - (a) the likely consequences of any decision in the long term,
 - (b) the interests of the company's employees,
 - (c) the need to foster the company's business relationships with suppliers, customers and others,
 - (d) the impact of the company's operations on the community and the environment,
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - (f) the need to act fairly as between members of the company.

It is important that the Code is consistent with legislation.

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