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**Subject:**

UK Corporate Governance Code consultation document

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Dear sir or madam

Below is our response to the consultation. Kindly acknowledge timely receipt.

Yours faithfully

## Response Consultation questions

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

The directive within Principle D remains the same.

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 imperative that companies begin to incorporate sustainability into the framework of sustainability governance. The inclusion of transition planning within a business's corporate strategy has become increasingly crucial. Companies must carefully evaluate the risks associated with transitioning their products, services, and workforce toward sustainability. This assessment extends to identifying certain services, goods, or workforce segments that may no longer align with a sustainable future and need to be phased out.

Transition planning encompasses not just overseeing the transition itself but also proactively strategizing how companies can create sustainable goods, services, and job opportunities for their existing workforce. While some industries, like fossil fuels, have already recognised this necessity, others may have hidden transition risks that are of significant concern.

In this context, transition planning takes precedence over climate ambitions. It is grounded in evidence-based qualitative and quantitative internal data, allowing companies to chart a practical course forward. While lofty climate ambitions are admirable, they may prove overly ambitious once a company has made its best efforts to approach net-zero emissions. Additionally, it is essential to consider the broader impact of transition plans on the wider community, especially on the economic front. There are always two sides to every coin.

Regarding governance, it is vital for the board to report on the company's climate ambitions and transition planning within the broader context of its overall strategy and governance. This reporting not only underscores the company's dedication to sustainability but also offers stakeholders valuable insights into how the company is

addressing both environmental and social challenges. It demonstrates a commitment to aligning long-term objectives with a sustainable future and promotes transparency, accountability, and well-informed decision-making. In today's business landscape, where societal sustainability is increasingly crucial, such reporting is indispensable.

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

Where has the whistleblowing principle and investment in workforce provision gone?

### 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?

Reviewing the issue of significant external commitments is a long-overdue step. Presently, it's not uncommon to find non-executive directors (NEDs) holding five or more appointments. While this is acceptable for professional non-executives, the real challenge arises when senior executives, already burdened with demanding full-time roles, take on multiple NED positions. The question naturally arises: how do they manage the time for these additional roles?

The issue of significant external commitments is not exclusive to large FTSE-listed companies. It should encompass any organisation where executives and non-executives find themselves dedicating substantial time due to structural or strategic complexities. However, the problem lies in identifying these commitments. Board performance reviews often tend to focus excessively on the non-executive portion, even though in the UK system, CEOs and CFOs are typically board members as well.

Determining the extent of significant external commitments requires thorough assessment. This, however, poses a challenge, especially if the organisation is not publicly listed, as asking intrusive questions may not align with the customary questionnaire-based assessments. The solution may lie in conducting one-on-one evaluations and interviews with each board member, but enforcement remains a concern. Would a company act against an overstretched board member, given the challenges of finding the right NED in the first place? The board might be more inclined to act if it's an executive by simply asking them to resign the significant external commitment.

In summary, while addressing significant external commitments is essential, it raises issues both in terms of assessment and enforcement, particularly when it comes to balancing the board's need for expertise with the practicality of managing external commitments.

### 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?

While the proposed change to encourage greater transparency on directors' commitments to other organisations is a commendable move, there are practical considerations to keep in mind. Annual reports are already substantial documents, and the overarching goal, often overseen by Company Secretaries, has been to ensure their content remains concise and relevant.

A more efficient approach could be to list these commitments within the directors' biographies on the company's website. This not only streamlines the annual report but also allows for more dynamic updates. Companies can conduct ad hoc reviews and report them promptly on their websites, showcasing ongoing transparency, review, and evaluation.

Moreover, it's important to define what constitutes a "significant appointment," especially since the impact of such commitments can vary widely. For instance, FTSE100 companies may have different dynamics compared to others that might have experienced profit warnings or other challenges.

Consider the example of Manganese Bronze Holdings Plc, the maker of the London Taxi, which eventually went private and delisted. In the years leading up to that, the company faced numerous profit warnings, necessitating frequent board meetings. The non-executive directors (NEDs) involved were fortunately professional NEDs without executive roles.

In summary, while transparency on directors' commitments is important, striking a balance between disclosure and practicality is essential, and defining "significant appointments" can help provide clarity in this regard.

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

Which proposals?

What existing regulation is there regarding appointments? Check appendix C

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?

Reverting to the classic UK principle-based approach takes the issue of diversity beyond a simple exhaustive checklist. It recognises the need for a more comprehensive understanding of diversity within organisations, moving beyond the confines of an exhaustive checklist.

However, it's crucial that the new principle is clear in its intended outcomes. A note of caution is warranted, especially for companies in sectors like Fintech, which the London Stock Exchange aims to attract to the UK market rather than the USA. While broadening the definition of diversity is beneficial, it must strike a balance to remain effective in achieving meaningful diversity outcomes. Overly broad definitions could potentially allow some companies to circumvent diversity requirements, which could be counterproductive to the goal of fostering diversity and inclusion.

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, I do. The Nominations Committee has historically been primarily focused on appointments. While there have been improvements over the years, especially with higher-profile appointments, expanding its role to include reporting on other areas can sharpen the board's focus.

Emphasising the scrutiny of senior management and their direct reports is crucial. Some of the fastest-growing companies, particularly those seeking listing, are still facing challenges in achieving gender balance. These changes in Provision 24 can hopefully lead to a more balanced approach and exert a positive influence on companies seeking IPOs in the future.

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, I do. I believe it's unnecessary to be overly prescriptive about how board performance reviews are conducted.

However, I would like to emphasise, or at least allude to, the importance of providing guidance on the methodology of the performance review when an external reviewer is engaged. This clarification not only ensures transparency

but also facilitates future comparisons of board performance review results conducted by different external reviewers. Such guidance can contribute to greater consistency and understanding of the review process.

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

I believe the concept of an Audit and Assurance Policy is a valuable one, and yes, it should be a requirement for Code companies, with the option for them to 'comply or explain' if they deviate from it. However, there are several important considerations to keep in mind.

Firstly, the focus should not solely be on the policy itself but also on the processes that underpin it. Implementation and execution are critical. Establishing a clear framework and well-defined processes are essential to make the policy effective.

Secondly, the Audit and Assurance Policy primarily deals with qualitative data and governance matters. Traditionally, in the United Kingdom, the finance director's role is heavily focused on financial reporting, leaving governance reporting under the purview of the company secretary. This dynamic may require organisations to seek external expertise to ensure the policy's effective implementation.

For instance, in many FTSE 50 companies, the annual report's fact verification process is overseen by the company secretary's office, not the chief financial officer or the finance director's office. This highlights the need for reorganisation and potentially bringing in governance experts to support the audit committee. While this may represent a shift in traditional practices, it is necessary to align with the evolving governance landscape.

In summary, while I support the adoption of an Audit and Assurance Policy, it is crucial to emphasise the importance of robust processes, potential reorganisation, and the need for governance expertise. I would also advocate for careful consideration of whether a 'comply or explain' approach is suitable, as the policy's effectiveness lies in its thorough implementation and execution rather than mere compliance.

## 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?

I agree that streamlining the Code to make it more comprehensible is a positive step. However, I would offer a word of caution regarding the potential for confusion. The proposed amendments suggest referring Code companies to the Minimum Standard for Audit Committees, which could result in a more complex landscape if multiple updates and changes are introduced.

Historically, we've seen instances where regulatory frameworks, such as the listing rules, became somewhat convoluted with various updates and revisions. To maintain clarity and coherence in the governance code, it's essential to find ways to keep it concise and internally consistent.

Ideally, the governance code should stand on its own without the need for extensive cross-referencing to other documents. While the intention is to simplify and reduce duplication, we must ensure that this streamlining process doesn't inadvertently lead to a fragmented and confusing regulatory framework.

In conclusion, while I support efforts to streamline the Code, it's crucial to carefully manage these changes to maintain clarity and prevent unintended complexity. If cross-referencing becomes necessary at this stage, we should

accept it as a temporary solution while aiming for a more integrated and self-contained governance framework in the long run.

## 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?

The idea of expanding the audit committee's remit to encompass narrative reporting, including sustainability and ESG metrics, is a commendable step towards comprehensive governance. However, it raises some important considerations.

One option to address this expanding remit is the establishment of a dedicated sustainability committee. This committee could focus exclusively on sustainability matters, given their distinct nature and importance in today's business landscape. The key rationale behind this proposal is that the audit committee, despite its importance in assessing risk, predominantly has a backward-looking perspective. In contrast, sustainability is a continuous journey that requires proactive monitoring and adaptation.

Alternatively, the responsibilities could be integrated into the governance committee's purview, as governance and sustainability often go hand in hand. It's crucial to acknowledge that the constituents and objectives of audit committees differ significantly from those of governance and sustainability committees. The latter predominantly focuses on non-financial and qualitative reporting, contrasting with the primarily financial orientation of audit committees.

Furthermore, the size of the audit committee must be considered. Expanding its remit without corresponding adjustments to its composition could lead to challenges. To effectively oversee sustainability reporting, the committee should include experts with governance and sustainability credentials, not solely financial expertise.

In conclusion, while expanding the audit committee's responsibilities is a positive move, it should be accompanied by structural changes and the inclusion of diverse expertise. Alternatively, establishing a separate sustainability committee could be a viable solution to ensure focused attention on sustainability and ESG matters, which demand continuous monitoring and expertise beyond traditional financial reporting.

## 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?

Firstly, I appreciate the emphasis on the board's accountability for monitoring and reviewing the effectiveness of the risk and internal controls framework. This is a commendable development, particularly from the perspective of sustainability governance and corporate governance.

As someone with expertise in sustainability governance, I believe that this emphasis will greatly benefit chief sustainability officers and professionals working in sustainability areas, including ESG (Environmental, Social, and Governance). It will elevate their visibility and influence at the board level, facilitating more informed decision-making in these critical areas.

Moreover, it's essential to support these principles with practical examples or case studies that demonstrate how these controls are put into practice, monitored, and reviewed. Concrete illustrations can provide valuable guidance and help companies understand the real-world application of these principles.

Secondly, it's worth noting that historically, risk management has often been viewed as an operational matter, particularly within financial services. Given the inherent risks associated with financial products and services, it's understandable why risk management has been a core operational concern in these sectors.

However, when we contrast this with non-financial industries, risk management has often been on the periphery, limited to maintaining risk registers and disaster management plans. The proposed amendments to the Code seek to rectify this imbalance by emphasising the board's role in risk oversight and control.

In conclusion, the proposed amendments to the Code strike a positive balance by strengthening risk management and internal control systems in a proportionate manner. The increased focus on board accountability and practical case studies will enhance governance practices and empower professionals in sustainability and ESG areas to contribute meaningfully at the board level, a crucial step in today's evolving business landscape.

**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 board's declaration should be based on continuous monitoring throughout the reporting period, up to the date of the annual report, which includes the date when the front end is signed.

**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?**

Changing the term from 'financial' to 'reporting' to encompass narrative reporting represents a significant shift in the internal governance framework of companies. Considering that financial reporting and controls typically fall under the purview of the finance director, there might be an issue arising regarding narrative reporting, which traditionally falls within the remit of the company secretary. From my perspective, this could pose a challenge to the role of the company secretary.

Similarly, when we discuss the inclusion of sustainability reporting, particularly in contrast to ESG metrics and ratings, which often come under the oversight of the audit committee, it raises questions about the role of the company secretary or, more broadly, governance professionals in managing narrative reporting.

In my view, there is a strong case for establishing a dedicated sustainability committee where various functions can report their sustainability efforts. This committee's report can then be presented to the board of directors for consideration.

As we move forward and develop corporate governance frameworks, it becomes crucial to define the roles of the CFO or finance director and the company secretary. Historically, the company secretary has been associated with narrative reporting, while the CFO has focused on financial matters and internal financial reporting. However, these roles may evolve to accommodate the changing landscape of reporting and governance.

**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?**

Providing such examples in the guidance would be helpful. There are both advantages and disadvantages to consider with this approach. One advantage is that it can assist businesses in structuring their processes effectively. However, a potential drawback is the inclination for organisations to simply copy these examples without fully understanding or customising them to their unique needs. Another drawback could be a reduced demand for the

services of external firms, which may not be beneficial for the UK economy. While it might benefit the FRC, it could have implications for corporate governance advisors and the broader advisory sector.

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?

None.

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

It would be beneficial to have guidance that clarifies the distinction between sustainability and ESG. ESG is more focused on a risk-based approach for non-investment companies to assess various sustainability risks which is a subset of sustainability.

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 I do.

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

Yes I do.

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?

It appears so, but will have to wait and see.

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

Yes, I believe the proposed revisions indeed strengthen the links between remuneration policy and corporate performance. In my experience, even when the remuneration committee wanted to consider workforce salaries, they often couldn't do so effectively. Now that it's explicitly required within the code, I anticipate they will be more enthusiastic about it. After all, nobody wants to be part of a company where the chief executive's compensation is disproportionately high compared to the lowest-paid employee. While the skill sets may differ, there should be a sense of moral proportionality at the very least.

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

Regarding these types of regulations, it's essential to monitor their impact over the next 2-3 years to assess whether the provisions have indeed achieved the desired effect.

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

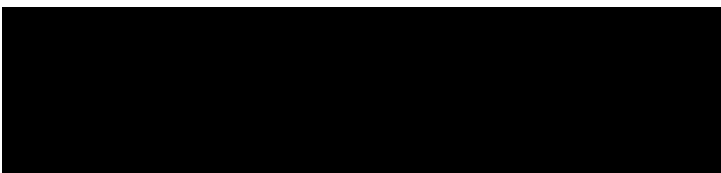
Yes, I believe that provisions 40 and 41 will significantly enhance the transparency of malus and clawback provisions.

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

I think references to pay gaps and pay ratios should be strengthened. It is because of this transparency that we're able to home in on the issues of malus and clawback.

### 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?

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## Cogent Analytics

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### Past Events:



**[Introduction to Sustainability and ESG - Thursday, 15 June 2023 at 10.30am, 80 Basinghall Street, London EC2V 5AG](#)** (Corporation of London Small Business and Research Enterprise Centre)

**[Unlock the Power of ESG: Practical Strategies for Small Businesses - Friday, 31 March 2023 at 12.30pm](#)** (ESG for SMEs Network)

**[Introduction to Sustainability and ESG - Thursday, 20 April 2023 at 10.30am](#)** (Corporation of London Small Business and Research Enterprise Centre)



