The 2024 UK Corporate Governance Code

KPMG Board Leadership Centre

Following a 16-week consultation, the FRC have published their long-awaited 2024 UK Corporate Governance Code. The changes deliver on the FRC's intentions contained within its 7 November Policy Statement.

The FRC has made only a small number of changes to the Code - conscious that the expectations for effective governance must be targeted and proportionate.

The earlier proposals for revisions related to the role of audit committees on ESG issues; expanding diversity and inclusion expectations; over-boarding provisions, and expectations on Committee Chairs' engagement with shareholders, have been dropped.

A small number of minor changes have been made to the Code that aim to better streamline the expectations or clarify the language. Specifically, there are new Provisions relating to malus and clawback, and the audit committee minimum standards.

The main substantive change concerns internal controls.

Internal controls

Principle O has been amended to make the board responsible not only for establishing, but also for maintaining the effectiveness of, the risk management and internal control framework.

With respect to monitoring and reviewing the effectiveness of internal controls (Provision 29), the existing expectations in the Code will remain - namely that the Board should monitor the company's risk management and internal control framework and, at least annually, carry out a review of its effectiveness. However, the FRC is now asking Boards to explain through a declaration in their Annual Reports how they have done this and their conclusions.

Code Provision 29 now reads:

"The board should monitor the company's risk management and internal control ~~systems~~ framework and, at least annually, carry out a review of ~~their~~ its 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 description of how the board has monitored and reviewed the effectiveness of the framework;*
- *A declaration of effectiveness of the material controls as at the balance sheet date; and*
- *A description of any material controls which have not operated effectively as at the balance sheet date, the action taken, or proposed, to improve them and any action taken to address previously reported issues."*

As can be seen, the declaration and description of ineffective material controls pertain to the balance sheet date as opposed to "throughout the reporting period and up to the date of the annual report" as proposed in the consultation. It is also worth noting that "material controls" include financial, operating, reporting, and compliance controls – reporting controls capturing both controls over financial reporting and non-financial reporting.

The FRC set out in their press release that it will be for the board to determine what should comprise "material internal controls". The FRC is mindful that the needs for each business may vary and that the level of maturity of non-financial controls for some businesses may not be, or need to be, as mature as for their financial controls. It is for the Board to determine what level of maturity is right for its business and their own levels of required assurance in relation to the effectiveness of these controls.

Elsewhere in the UK Corporate Governance Code 2024 mythbuster, The FRC give a further indication of what they have in mind by stating that "*Provision 29 asks companies to "take a view on the effectiveness of the controls most material to the long-term sustainability of their company".*

Board leadership and company purpose

There is a new Code Principle creating an expectation that governance reporting should focus on board decisions and their outcomes in the context of the company's strategy and objectives.

Outcomes-based reporting means providing your stakeholders with information on how decisions taken by the board have, and will, impact the company's strategy, objectives and long-term viability. Outcomes may not always be observable in the short term and may change over time. The Code encourages the use of corporate governance reporting to demonstrate how governance decisions have delivered change.

Also, Provision 2 has been amended to include that boards should not only assess and monitor culture, but also how the desired culture has been embedded.

Composition, succession and evaluation

Principle J has been amended to promote diversity, inclusion and equal opportunity, without referencing specific groups. The list of diversity characteristics has been removed to indicate that diversity policies can be wide ranging.

Provision 23 has been amended to reflect the fact that companies may have additional initiatives in place alongside their diversity and inclusion policy. References to 'board evaluation' have been changed to 'board performance review'.

Audit, risk and internal control

In addition to the changes discussed above in relation to internal controls, Provision 25 and Provision 26 have been updated to reflect the Minimum Standard: Audit Committees and the External Audit, and duplicative language has been removed.

Provision 25 now reads:

"The main roles and responsibilities of the audit committee should include [inter alia]: …

- *following the Audit Committees and the External Audit: Minimum Standard …"*

Provision 26 now reads:

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

- *the matters set out in the Audit Committees and the External Audit: Minimum Standard; and …"*

Remuneration

Provision 37 has been amended to include that Directors' contracts and/or other agreements or documents which cover director remuneration should include malus and clawback.

Also, there is now an expectation (Provision 38) that companies include in the annual report a description of their malus and clawback provisions. Including:

- The circumstances in which malus and clawback provisions could be used:
- A description of the period for malus and clawback and why the selected period is best suits to the organisation; and
- Whether the provisions were used in the last reporting period. If so, a clear explanation of the reason should be provided in the annual report.

Comply or explain

Importantly, the well-established principle of Board's having the flexibility to "comply or explain" will remain. The FRC are encouraging boards, investors and their advisors to actively support the flexibility within the "comply or explain" approach to ensure governance expectations are better tailored to the specific circumstances of each company.

Guidance on the Code

The FRC will publish its guidance to the Code on 29 January. This guidance will not part of the Code and should not be seen as an instruction manual on the 'right way' to apply the Code. The intention is that it will stimulate thinking on how boards can carry out their role most effectively; there is no single way to apply the Code Principles nor comply with or explain against the Provisions.

Code companies differ in their size, sector and maturity, and this should be taken into account when using the guidance as a supportive tool.

Effective date

The 2024 Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere. It will apply to accounting periods beginning on or after 1 January 2025. However, in response to stakeholder feedback about the need for boards to have more time to develop their approaches to Internal Controls, the new Code expectation for the Board declaration will come into effect from 1 January 2026, one year after the rest of the updated Code comes into effect.

For parent companies with a premium listing, the board should ensure that there is adequate cooperation within the group to enable it to discharge its governance responsibilities under the Code effectively. This includes the communication of the parent company's purpose, values and strategy.

The KPMG Board Leadership Centre

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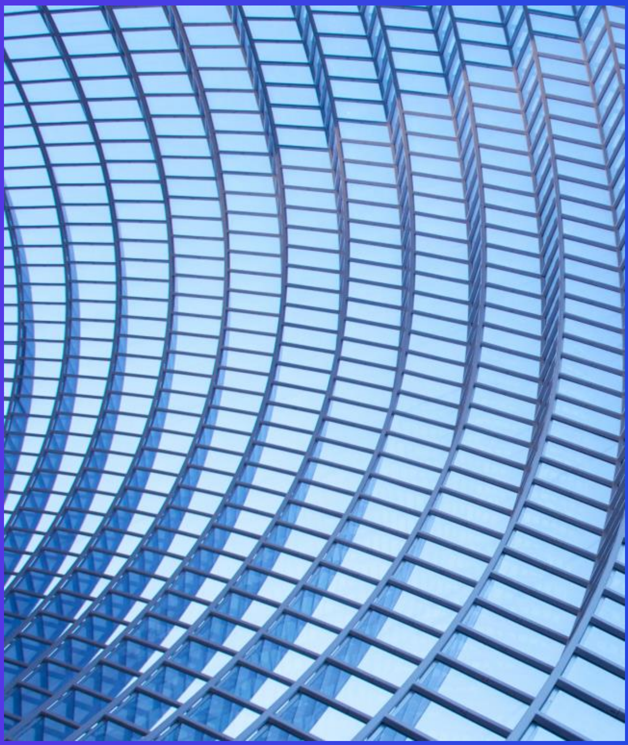

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