Bar Council response to the Department for Business, Energy & Industrial Strategy consultation on Restoring Trust in Audit and Corporate Governance

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Department for Business, Energy & Industrial Strategy consultation paper on Restoring Trust in Audit and Corporate Governance.[1]

2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

Consultation Questions

Our responses are set out below. We have not responded to every question – where a question raises matters of policy, or covers areas which are outside the knowledge of those responding, we have indicated that we have no comment.

[1] Consultation

1 The Government's approach to reform

1. Should large private companies be included within the definition of a Public Interest Entity (PIE)? Please give your reasons.

Response

1. This is a matter of policy. However, it is noted that a number of substantial business collapses in recent years, such as BHS (a private company) and Patisserie Valerie (an AIM listed company), have involved companies that would not be captured by the existing definition of a PIE.

2. What large private companies would you include in the PIE definition: Option 1, Option 2 or another? Please give your reasons.

Response

2. Again, this is a matter of policy. However, there is a practical utility in avoiding companies becoming subject to too many different size-based accounting requirements derived from different sources. The selection of Option 1 would align with the definition used in The Companies (Miscellaneous Reporting) Regulations 2018 No.860.

3. Should AIM companies with market capitalisation exceeding €200m be included in the definition of a PIE? Please give your reasons.

Response

3. No comment.

4. Should Government give newly listed companies a temporary exemption from some of the new reporting and attestation requirements being considered for Public Interest Entities?

Response

4. No comment.

5. Should the Government seek to include Lloyd's Syndicates in the definition of a PIE? Please give your reasons.

Response

5. No comment.

6. Should the Government seek to include large third sector entities as PIEs beyond those that would already be included in the definitions proposed for large

companies? If so, what types of third sector entities do you believe should be included and why?

Response

6. *No comment.*

7. What threshold for 'incoming resources' would you propose for the definition of 'large' for third sector entities? Is exceeding £100m too high, too low or just right?

Response

7. *We repeat our response to Question 2 above and the practical consequences of introducing too complicated a system of size-based accounting requirements. Subject to this, no comment.*

8. Should any other types of entity be classed as PIEs? Why should those entities be included?

Response

8. *No comment.*

9. How would an increase in the number of PIEs impact on the number of auditors operating in the PIE audit market?

Response

9. *No comment.*

10. Do you agree that the Government should provide time for companies to prepare for the introduction of a new definition of PIE?

Response

10. *Yes. We agree that there should be sufficient time afforded to PIEs to prepare for the changes that affect them.*

11. Do you agree that the Government should seek to offer a phased introduction for a new definition of PIE?

Response

11. *We regard this as primarily a matter for other consultees. However, a phased introduction would likely assist PIEs to prepare for the changes that will affect them.*

2 Directors' accountability for internal controls, dividends and capital maintenance

12. Is there a case for strengthening the internal control framework for UK companies? What would you see as the principal benefits and disbenefits of stronger regulation of internal controls?

Response

12. Yes. There are potential benefits in reinforcing to all board members (ie going beyond any CFO and CEO), their responsibility for ensuring that proper financial and non-financial systems are put in place and maintained.

13. If the control framework were to be strengthened, would you support the Government's initial preferred option (Table 2)? Are there other options that you think Government should consider? Should external audit and assurance of the internal controls be mandatory?

Response

13. On the basis of our response to Question 12, we would support the Government's initial preferred option. However, we consider that it would be sensible to consider extending the control framework to non-financial controls, since these matters (eg corporate culture, data protection and cybersecurity) can be highly important to investors and users of accounts.

14. If the framework were to be strengthened, which types of company should be within scope of the new requirements?

Response

14. *No comment.*

15. Should the regulator have stronger responsibilities for defining what should be treated as realised profits and losses for the purposes of section 853 of the Companies Act 2006? Would you support either of the two options identified? Are there other options which should be considered? What should ARGA consider when determining what should be treated as realised profits and losses?

Response

15. Yes. We express no preference for either alternative option, provided that the guidance or rules are clear and the product of appropriate consultation.

16. Would the proposed new distributable profit reporting requirements provide useful information for investors and other users of accounts? Would the cost of preparing these disclosures be proportionate to the benefits? Should these requirements be limited to listed and AIM companies or extended to all PIEs?

Response

16. We consider that the proposed reporting requirements would provide useful information for investors and other users of accounts. We consider that such information is likely to be of interest to all users of accounts (creditors included) and therefore the requirement should not be limited to only listed and AIM companies but should extend to all PIEs.

17. Would an explicit directors' statement about the legality of dividends and their effect on the future solvency of a company be effective in both ensuring that directors comply with their duties and in building external confidence in compliance with the dividend rules? Should these requirements be limited to listed and AIM companies or extended to all PIEs?

<u>Response</u>

17. We consider that such an explicit statement would be effective in achieving both ends. Consistent with the response to Question 16, we consider that this requirement should extend to all PIEs.

18. Do you agree that the combination of recently introduced Companies Act section 172(1) reporting requirements along with encouragement from the investment community and ARGA will be enough to ensure that companies are sufficiently transparent about their distribution and capital allocation policies? Should a new reporting requirement be considered?

<u>Response</u>

18. We agree that the proposed reforms will tend to improve transparency in corporate accounting. We agree that a formal reporting requirement is not necessary to reinforce this objective.

<u>3 New corporate reporting</u>

19. Do you agree that the above matters should be included by all companies in the Resilience Statement? If so, should they be addressed in the short or medium term sections of the Statement, or both? Should any other matters be addressed by all companies in the short and medium term sections of the Resilience Statement?

<u>Response</u>

19. We agree that all companies should address such matters in their Resilience Statement. We consider that such matters should be addressed in respect of both the short and medium term sections of the Statement.

20. Should the Resilience Statement be a vehicle for TCFD reporting in whole or part?

Response

20. No comment.

21. Do you agree with the proposed company coverage for the Resilience Statement, and the proposal to delay the introduction of the Statement in respect of non-premium listed PIEs for two years? Should recently-listed companies be out of scope?

Response

21. No comment.

3.1 Audit and Assurance Policy

22. Do you agree with the proposed minimum content for the Audit and Assurance Policy? Should any other matters be addressed in the Policy by all companies in scope?

Response

22. We agree that an Audit and Assurance Policy with the proposed minimum content is likely to be of significant benefit in enhancing company reporting. We consider that it would be likely to improve reporting on payment practices (Section 3.2 of the Consultation) if assurances over payment reporting were to form part of the Audit and Assurance Policy, rather than left to shareholders (para 3.3.6 of the Consultation). Subject to above, no comment.

23. Should the Audit and Assurance Policy be published annually and subject to an annual advisory shareholder vote, or should it be published and voted on at least once every three years?

Response

23. Yes. We consider that such requirements would be reasonable and would not be unduly burdensome on subject companies.

24. Do you agree with the proposed scope of coverage and method for implementing the Audit and Assurance Policy?

Response

24. Yes.

3.2 Reporting on Payment Practices

25. In order to improve reporting on supplier payments, should larger companies be required to summarise their record on supplier payments over the previous 12 months as part of their annual Strategic Report (applying at a group level in the case

of parent companies)? If so, what should the reporting summary include at a minimum? Do you have alternative suggestions on how to improve supplier payments reporting?

Response

25. *We consider that such information could be usefully included as non-financial information in the Strategic Report. We agree that the minimum content identified at para 3.3.5 of the Consultation would be likely to make supplier payment information readily accessible to investors and other users of accounts.*

26. To which companies should improvements in supplier payments reporting apply: companies which are PIEs and already report under the Payment Practices Reporting Duty, or PIEs with more than 500 employees?

Response

26. *We consider that it would be simplest to extend the requirement to companies which are PIEs and already report under the PPRD.*

3.3 Public Interest Statement

27. Do you agree with the Government's proposal not to introduce a new statutory requirement at this time for directors to publish an annual public interest statement?

Response

27. *Yes.*

4 Supervision of corporate reporting

28. Do you have any comments on the Government's proposals for strengthening the regulator's corporate reporting review function set out in this chapter?

Response

28. *We consider that some form of appeal or reconsideration process should be incorporated into the proposals.*

We agree that the outcome of reviews should be published so that the wider market might understand the approach that has been taken. This is likely to allow lower-cost compliance by companies facing the same issue and a more general ability to assess the regulator's likely stance on similar issues. In principle, we accept that this could be achieved by a "summary findings" document.

We agree that extending the regulator's powers over the entire annual report is appropriate and, even if it remains a matter for the regulator to consider in due course, that the ability to obtain pre-clearance would be a helpful addition to the proposed scheme.

5 Company directors

5.1 Enforcement against company directors

29. Are there any other arrangements the Government should consider to ensure that overlapping powers are managed effectively?

Response

29. No. In particular, we agree that responsibility for bringing directors' disqualification proceedings should remain with the Insolvency Service.

30. Are there any additional duties that you think should be in scope of the regulator's enforcement powers?

Response

30. No.

31. Are there any existing or proposed directors' duties relating to corporate reporting and audit that you think should be specifically included or excluded from further elaboration for the purposes of the directors' enforcement regime?

Response

31. No.

32. Should directors of public interest entities be required to meet certain behavioural standards when carrying out their statutory duties relating to corporate reporting and audits? Should those standards be set by the regulator? What standards should directors have to meet in this context?

Response

32. As noted in the Consultation, directors are already subject to significant civil duties to exercise their powers for a proper purpose and, further, to do so honestly to promote the success of the company as a whole (see sections 171 and 172 of the CA 2006, which are not amongst the duties noted in Footnote 127 of the Consultation). Such duties are ordinarily only enforceable by the company (or its liquidator(s) or administrator(s)), but require positive action as much as they operate to restrain untoward conduct.

The general statutory duties of directors in the Companies Act 2006, which codified the former common law and equitable duties, have deliberately been expressed in general terms in order to allow the courts to apply the duties flexibly according to the circumstances of the case and to allow the law to develop as appropriate. We consider that it would be appropriate to retain that flexibility in the general statutory duties rather than making them prescriptive. However,

the courts can be expected to take into account more specific statutory duties relating to corporate reporting and audit in determining whether directors have complied with their general statutory duties.

Thus the extension of duties in relation to corporate reporting and audits should aim to buttress these duties and should avoid unconscious departure from the statutory formulation of the existing statutory civil duties. For example, section 172 is framed in terms of "honesty" (and other requirements). A director observing their section 172 duty in relation to their company would therefore be required to act honestly with any auditor in deciding what information they revealed to the auditor (and, indeed, might breach their section 171 duty if they did not). We are unsure what the suggested duty (para 5.1.24 of the Consultation) to act with "honesty <u>and integrity</u>" (emphasis added) would actually add to the formulation of the existing civil duty to act "honestly".

33. Should the Government's proposed enforcement powers be made available to the regulator in respect of breaches of directors' duties?

<u>Response</u>

33. Enforcement powers by regulators risks conflict with claims that might be brought by both the company (in a going concern scenario) and office-holders (in an insolvency scenario), or exceptionally shareholders (through a derivative action or other minority shareholder action). In addition, there is the prospect of disqualification in the event of serious breaches of duty by a director meeting the statutory threshold. It is possible, if not likely, that the facts that give rise to concerns on the part of a regulator will also give rise to claims by the company/liquidator(s) (if not also disqualification proceedings).

In a solvent scenario, the matter may be of obvious direct concern between the regulator and the director involved (with an indirect interest for the company itself). Here, the events that might lead to enforcement proceedings against the director may give rise to claims against the director by the company (eg for its costs involved in having to deal with the regulator's concerns and/or preparing corrective accounts or statements) but these claims are likely, in practice, to follow on from a regulator's determination in the course of enforcement against the director involved.

In an insolvency scenario, there is necessarily a competition for the available but inadequate assets. The levying of any financial sanction by a regulator upon a director will only serve to deplete the director's resources and, hence, their personal assets against which any civil claim might, ultimately, be enforced - effectively, damaging creditors' interests yet further. That

would not, of course, preclude any wrongdoing by a director being redressed in civil proceedings (eg by the company or its liquidator) or in disqualification proceedings.

Generally, and from the director's perspective, there is a concern if findings might be made by a regulator based upon evidence that might not be admissible in more general civil proceedings. It is not presently clear what process would be expected of the regulator and on what basis it might act, eg would it be able to compel the provision of information from the director? We also note that the proposed sanctions would likely impact significantly on the reputation of a director, beyond the bare financial consequences involved.

Finally, if enforcement action were to be pursued by a regulator, this should not be at the expense of, nor should it delay other proceedings that might be brought against an errant director by a company or its liquidator, whether by way of a civil claim or disqualification proceedings etc. Errant directors are likely to look to rely on the existence of competing pressures in order to hold-up (or defer responding to) the multiple challenges that they might face.

5.2 Strengthening clawback and malus provisions in directors' remuneration arrangements

34. Are there other conditions that should be considered for the proposed minimum list of malus and clawback conditions? What legal and other considerations need to be taken into account to ensure that these conditions can be enforced in practice?

Response

34. We agree that there are often contractual obstacles to withholding or recovering remuneration and that, in any event, they may not properly compensate the company for the damage it has suffered. In principle, we consider that such matters are best addressed by requiring Remuneration Committees to consider adding the proposed minimum conditions. Save as aforesaid no comment.

6 Audit purpose and scope

6.1 The purpose of audit

35. Do you agree that a new statutory requirement on auditors to consider wider information, amplified by detailed standards set out and enforced by the regulator, would help deliver the Government's aims to see audit become more trusted, more informative and hence more valuable to the UK?

Response

35. Yes.

36. In addition to any new statutory requirement on auditors to consider wider information, should a new purpose of audit be adopted by the regulator, or otherwise? How would you expect this to work?

Response

36. No comment.

6.2 Scope of audit

37. Do you agree with the Government's approach of defining the wider auditing services which are subject to some oversight by the regulator via the Audit and Assurance Policy?

Response

37. Yes.

38. Should the regulator's quality inspection regime for PIE audits be extended to corporate auditing? If not, how else should compliance with rules for wider audit services be assessed?

Response

38. No comment.

39. What role should ARGA have in regulating these wider auditing services? Should its role extend beyond setting, supervising and enforcing standards?

Response

39. No comment.

6.3 Principles of corporate auditing

40. Would establishing new, enforceable principles of corporate auditing help to improve audit quality and achieve the Government's aims for audit? Do you agree that the principles suggested by the Brydon Review would be a good basis for the regulator to start from?

Response

40. Yes.

41. Do you agree that new principles for all corporate auditors should be set by the regulator and that other applicable standards or requirements should be subject to

those principles? What alternatives, mitigations or downsides should the Government consider?

Response

41. We consider that situations in which compliance with the principles would require an auditor to depart from the standards are not likely to arise commonly in practice. We suggest that, where they do arise, auditors should be required to explain any divergence between the principles and the standards in their report. We do not express any view as to whether auditors should be required to obtain prior clearance from the regulator in cases where they propose to divert from standards to meet the principles.

6.4 Tackling fraud

42. Do you agree with the Government's proposed response to the package of reforms relating to fraud recommended by the Brydon Review? Please explain why.

Response

42. Yes. Shareholders and other stakeholders typically place significant emphasis on a company's financial statements and the fact that financial statements have been audited. The detection of fraud should be an important part of an audit and auditors should be expected to take reasonable steps to test for and detect fraud. We are not persuaded by the argument that auditors may face liability for failing to detect fraud. Auditors can already be liable in certain circumstances for failing to detect and identify fraud, which the courts and tribunals are able to determine the question of culpability by reference to how a reasonable auditor would have acted in the circumstances. We see no reason why the proposed reforms would affect that position.

6.5 Auditor reporting

43. Will the proposed duty to consider wider information be sufficient to encourage the more detailed consideration of i) risks and ii) director conduct, as set out in the section 172 statement? Please explain your answer.

Response

43. No comment.

6.6 True and fair view requirement

44. Do you agree that auditors' judgements regarding the appropriateness of any departure from the financial reporting framework proposed by the directors should be informed by the proposed Principles of Corporate Auditing? What impact might

this have on how both directors and auditors assess whether financial statements give a true and fair view?

Response

44. Yes. However, we anticipate that the circumstances in which any departure from a requirement of the framework would be limited and in the large majority of cases compliance with the requirements of the framework would continue to be consistent with giving a true and fair view and the Principles of Corporate Auditing. In circumstances where giving a true and fair view requires a departure from the framework, we consider it is appropriate for the appropriateness of such departure to be informed by the Principles of Corporate Auditing.

6.7 Audit of Alternative Performance Measures and Key Performance Indicators linked to executive remuneration

45. Do you agree that the need for specific assurance on APMs or KPIs, beyond the scope of the statutory audit, should be decided by companies and shareholders through the Audit and Assurance Policy process?

Response

45. Yes.

6.8 Auditor liability

46. Why have companies generally not agreed LLAs with their statutory auditor? Have directors been concerned about being judged to be in breach of their duties by recommending an LLA? Or have other factors been more significant considerations for directors?

Response

46. No comment.

47. Are auditors' concerns about their exposure to litigation likely to constrain audit innovation, such as more informative auditor reporting, the level of competition in the audit market (including new entrants) or auditors' willingness to embrace other proposals discussed in this consultation? If so, in what way and how might such obstacles be overcome?

Response

47. No comment.

6.9 A new professional body for corporate auditors

48. Do you agree that a new, distinct professional body for corporate auditors would help drive better audit? Please explain the reasons for your view.

Response

48. No comment.

49. What would be the best way of establishing a new professional body for corporate auditors that helps deliver the Government's objectives for audit? What transitional arrangements would be needed for the new professional body to be successful?

Response

49. No comment.

50. Should corporate auditors be required to be members of, and to obtain qualifications from, professional bodies that are focused only on auditing?

Response

50. No comment.

51. Do you agree that a new audit professional body should cover all corporate auditors, not just PIE auditors?

Response

51. No comment.

7 Audit Committee Oversight and Engagement with Shareholders

7.1 Audit Committees – role and oversight

52. Do you agree that ARGA should be given the power to set additional requirements which will apply in relation to FTSE 350 audit committees?

Response

52. No comment.

53. Would the proposed powers for ARGA go far enough to ensure effective compliance with these requirements? Is there anything further the Government would need to consider in taking forward this proposal?

Response

53. No comment.

7.2 Independent auditor appointment

54. Do you agree with Sir John Kingman's proposal to give the regulator the power to appoint auditors in specific, limited circumstances (i.e. when quality issues have been identified around the company's audit; when a company has parted with its

auditor outside the normal rotation cycle; and when there has been a meaningful shareholder vote against an auditor appointment)?

Response

54. No comment.

55. To work in practice, ARGA's power to appoint an auditor may need to be accompanied by a further power to require an auditor to take on an audit. What do you think the impact of this would be?

Response

55. No comment.

56. What processes should be put in place to ensure that ARGA can continue to undertake its normal regulatory oversight of an audit firm, when ARGA has appointed the auditor?

Response

56. No comment.

57. What other regulatory tools might be useful when a company has failed to find an auditor or in the circumstances described by Sir John Kingman (i.e. when quality issues have been identified around the company's audit; when a company has parted with its auditor outside the normal rotation cycle; and when there has been a meaningful shareholder vote against an auditor appointment)?

Response

57. No comment.

7.3 Shareholder engagement with audit

58. Do you agree with the proposals and implementation method for giving shareholders a formal opportunity to engage with risk and audit planning? Are there further practical issues connected with the implementation of these proposals which should be considered?

Response

58. We agree with the proposals for giving shareholders a formal opportunity to engage with risk and audit planning.

59. Do you agree with the proposed approach for ensuring greater audit committee chair and auditor participation at the AGM? How could this be improved?

Response

59. We agree with the view that it is not proportionate to require the senior company auditor to attend all AGMs. However, we consider that there may be benefit in an approach which requires the senior company auditor to attend an AGM for the purpose of allowing questions to be put to him or her if requests to do so were to be made by a threshold proportion of the company's shareholders. We understand the concern around implications for auditor and audit firm liability, but this would in our view be substantially mitigated if auditors were not expected or required to answer questions going beyond the conduct of the audit and content of the audit report and the chairperson of the AGM has power to control the number and scope of the questions put.

60. Do you believe that the existing Companies Act provisions covering the departure of an auditor from a PIE ensure adequate information is provided to shareholders about an auditor's departure? If you believe those provisions are inadequate, do you think that the Brydon Review recommendations will address concerns in this area? What else could be done to keep shareholders informed?

Response

60. We do not consider that the existing Companies Act provisions ensure adequate information is provided to shareholders. We consider that further provisions are required to ensure shareholders are better informed about the reasons for an auditor's early departure and agree with the Brydon Review recommendation that the departing auditor be required to provide a minimum statement as to the reasons for his or her departure. We are less persuaded of the practicability of the recommendation that the departing auditor should be required to attend a general meeting and answer questions from shareholders, as this could place departing auditors in difficult circumstances and give rise to a legitimate concern on their part about exposure to liability (either to the company or, potentially, to shareholder directly) in respect of statements made in such circumstances.

8 Competition, choice and resilience in the audit market

8.1 Market opening measures

61. Should the 'meaningful proportion' envisaged to be carried out by a Challenger be based on legal subsidiaries? How should the proportion be measured and what minimum percentage should be chosen under managed shared audit to encourage the most effective participation of Challenger firms and best increase choice?

Response

61. No comment.

62. How could managed shared audit be designed to incentivise Challenger firms to invest in building their capability and capacity? What, if any, other measures, would be needed?

Response

62. No comment.

63. Do you have comments on the possible introduction in future of a managed market share cap, including on the outlined approach and principles? Are there other mechanisms that you think should be considered for introduction at a future date?

Response

63. No comment.

8.2 Operational separation between audit and non-audit practices

64. Do you have any further comments on how the operational separation proposals should be designed, codified (in legislation and regulatory rules), and enforced in order to achieve the intended outcome of incentivising higher audit quality?

Response

64. No comment.

65. The Government proposes to require that all audit firms provide annual reports on their partner remuneration to the regulator. This will include pay, split of profits, and which audited entities they worked on. Do you have any comments on this approach?

Response

65. No comment.

66. In the event that the Government wishes to go further than the existing operational split proposals in future and implement split profit pools in line with the CMA recommendation, do you have any comments on how these can be made to work effectively?

Response

66. No comment.

67. The Government believes these proposals will meet its objectives. In the event that they prove insufficient to improve audit quality, and full separation of

professional services firms is required, do you have any comments on how to make this work most effectively?

Response

67. No comment.

8.3 Resilience of audit firms and the audit market

68. Do you have comments on the proposed measures? Are there any other measures the Government should consider taking forward to address the lack of resilience in the audit market?

Response

68. No comment.

8.4 Additional competition proposals from the CMA

9 Supervision of audit quality

9.1 Approval and registration of statutory auditors of PIEs

69. Do you agree with the Government's approach of allowing the FRC to reclaim the function of determining whether individuals and firms are eligible for appointment as statutory auditors of PIEs?

Response

69. No comment.

9.2 Monitoring of audit quality

70. What types of sensitive information within AQR reports on individual audits should be exempt from disclosure?

Response

70. No comment.

71. In addition to redacting sensitive information within AQR reports on individual audits, what other safeguards would be required to offer adequate protection to the entity being audited whilst maintaining co-operation with their auditors?

Response

71. No comment.

9.3 Regulating component audit work done outside the UK

72. Do you agree with the Government's approach to component audit work done outside the UK? How could it be improved?

Response

72. *No comment.*

9.4 The application of legal professional privilege in the regulation of statutory audit

73. Do you agree that it is problematic if documents that the auditor reviewed as part of the audit are unavailable to the regulator because of the audited entity's legal professional privilege? If so, what could be done to solve or mitigate this issue while respecting the overall principle of legal professional privilege?

Response

73. We are cautious in responding to an undefined suggestion that might intrude upon legal professional privilege. However, as a matter of principle, we see no reason why an audited entity should be required, in the face of enforcement by a regulator, to forego generally its legal professional privilege in advice that it has previously obtained. As we understand it, the particular concern is where auditors effectively rely upon legal advice given to the company but the company later resists disclosure of that legal advice to a regulator when the auditors' treatment of it is challenged.

We consider the appropriate solution to this issue is that, where the regulator needs to review documents that are subject to the audited entity's legal professional privilege, the regulator should be required to treat any reliance on privileged material as a limited waiver which cannot be communicated to any third party.

10 A strengthened regulator

10.1 Establishing the regulator

74. Do you agree with the proposed general objective for ARGA?

Response

74. No comment.

75. Do you agree that ARGA should have regard to these regulatory principles when carrying out its policy-making functions? Are there any other regulatory principles which should be included?

Response

75. No comment.

10.2 Governance

10.3 Funding: a statutory levy

11 Additional changes in the regulator's responsibilities

11.1 Supervision: Accountants and their professional bodies

76. Should the scope of the regulator's oversight arrangements be initially confined to the chartered bodies and should they be required to comply with the arrangements?

Response

76. No comment.

77. What safeguards, if any, might be needed to ensure the power to compel compliance is used appropriately by the regulator?

Response

77. No comment.

78. Should the regulator's enforcement powers initially be restricted to members of the professional accountancy bodies? Should the Government have the flexibility to extend the scope of these powers to other accountants, if evidence of an enforcement gap emerges in the future? What are your views on the suggested mechanisms for extending the scope of the enforcement powers to other accountants (if it is appropriate at a later stage?

Response

78. No comment.

79. Should the regulator be able to set and enforce a code of ethics which will apply to members of the chartered bodies in the course of professional activities? Should the regulator only be able to take action where a breach gives rise to issues affecting the public interest? What sanctions do you think should be available to the regulator?

Response

79. No comment.

11.2 Oversight and regulation of the actuarial profession

80. Is ARGA the most appropriate body to undertake oversight and regulation of the actuarial profession?

Response

80. No comment.

81. Should the regime for overseeing and regulating the actuarial profession be placed on a strengthened and statutory basis?

Response

81. No comment.

82. Do respondents support the proposed principles for the regulation of the actuarial profession? Respondents are invited to suggest additional principles.

Response

82. No comment.

83. Are the proposed statutory roles and responsibilities for the regulator appropriate? Are any additional roles or responsibilities appropriate for the regulator?

Response

83. No comment.

84. Should the regulator continue to be responsible for setting technical standards? Should these standards be legally binding? Should the regulator be responsible for setting technical standards only?

Response

84. No comment.

85. Should the regulator be responsible for monitoring compliance with technical standards? Should it also consider compliance with ethical standards if necessary?

Response

85. No comment.

86. Should the regulator have the power to request that individuals provide their work in response to a formal request - and to compel them to do so if necessary?

Response

86. No comment.

87. Should the regulator have the power to take appropriate action if work falls below the requirements of the technical standards? What powers should be available to the regulator in these instances?

Response

87. No comment.

88. Do respondents agree with the proposed scope for independent oversight of the IFoA? In which ways, if any, should the scope be amended?

Response

88. No comment.

89. Should the regulator's oversight of the IFoA be placed on a statutory basis? What, if any, powers does the regulator require to effectively fulfil this role?

Response

89. No comment.

90. Does the current investigation and discipline regime remain appropriate? Should it be placed on a statutory basis? What, if any, additional powers does the regulator require to fulfil this role?

Response

90. No comment.

91. Do respondents think that the regulator's remit should be extended to actuarial work undertaken by entities? What would be the appropriate features of such a regime, including the appropriate enforcement powers for the regulator?

Response

91. No comment.

92. Should the regulator's independent investigation and discipline regime for matters that affect the public interest also apply to entities that undertake actuarial work? Should the features of the regime differ for Public Interest Entities?

Response

92. No comment.

93. Does the regulator require any further powers in relation to its regulation and oversight of the actuarial profession?

Response

93. No comment.

11.3 Investor stewardship and relations

11.4 Powers of the regulator in cases of serious concern

94. Are there others matters which PIE auditors should have to report to the regulator? Could this duty otherwise be improved to ensure that viability and other serious concerns are disclosed to the regulator in a timely way?

Response

94. No comment.

95. Should auditors receive statutory protection from breach of duty claims in relation to relevant disclosures to the regulator? Would this encourage auditors to report viability and other concerns to the regulator?

Response

95. No comment.

96. How much time should be given to respond to a request for a rapid explanation?

Response

96. No comment.

97. Should the regulator be able to publish a summary of the expert reviewer's report where it considers it to be in the public interest?

Response

97. No comment.

98. Are there any additional powers that you think the regulator should have available where an expert review identifies significant non-compliance by a company in relation to its corporate reporting and audits?

Response

98. No comment.

Bar Council[2]
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