

## MONITORING GROUP CONSULTATION

### STRENGTHENING THE GOVERNANCE AND OVERSIGHT OF THE INTERNATIONAL AUDIT-RELATED STANDARD-SETTING BOARDS

#### RESPONSE FROM MIRA MAKAR MA FCA, MEMBER SME ALLIANCE LTD

1. Do you agree with the key areas of concern identified with the current standard setting model? Are there additional concerns that the Monitoring Group ("MG") should consider?

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1.1. No. Standard setting ought not to be separated from the underlying laws which MG seeks to enforce. For example in the UK, there is no register of auditors as required by the 1984 EU directive, which is maintained by **the state**, which verifies independence, integrity, experience, honesty, track-record before registering the individual/partnership/incorporated entity. This is to be contrasted with the position for example of an electrician who must have an up to date accreditation/license in order to trade. The prosecutor in the UK is Trading Standards and was the Office of Fair Trading (Enterprise Act 2002) until it was closed in 2012, without replacement. It should include the department formerly known as the Department of Trade and Industry (DTI), which operated DTI Inspectors for this very work, as well as monitoring the operations of the department itself. However from 2006, this has been weakened to be "replaced" by "regulation", whilst maintaining prosecution obligations and victims code obligations, neither of which are enforced. The small team of ninety criminal prosecutors were moved to an agency in 2016 and are not visible.

1.2. MG should consider:

1.2.1. **directors**, who are personally liable under civil and criminal law for the maintenance of proper books and records, and who depend on the auditor to discharge their own duties. These are the true "customers" of a statutory auditor;

1.2.2. **implicit as well as explicit law**. For example in the UK an auditor must make an adverse report if the books and records are not sufficient to ascertain the trading position of an enterprise at all times. However an auditor does not have to certify that they have looked.

1.2.3. **enforcement of omissions** being placed on a par with false or misleading statements. In particular in the UK, "*letters to management*" are the key part of the statutory obligation of the auditor to report ("*an auditor shall report*", implicitly to those charged with the governance of an enterprise with duty to safeguard the assets of the enterprise and act in the interests of the employees). These are protected by statutory confidentiality, as are letters of engagement. It is a statutory offence not to report.

Code setters must consider how they enforce omissions and deal with confidentiality. They cannot do this unless amongst their number are those executive directors who will suffer personally exposure they did not know about when there is such an omission. These would be focused members of a code setting forum.

1.2.4. The prevalence of **assertion based assurance reporting** as evidence relied upon for direct access (audit reporting). It has become common in the UK over the last twenty years for an assertion based report to be relied upon as persuasive audit evidence. For example person A reports on loan valuations and person B reports on accounts which allow these to be repaid on listing shares. A bubble builds on a bubble, with no-one going back to the original leveraged acquisition and linking it to the final “dumping” on the market. The person taking the upfront profit will typically have the same auditor as the leveraged buy out. This is referred to as “horizontally integrated”. There is no true independence.

1.2.5. The role of **“policy”**, that co-exists with the law but allows operations, the effects of which are, that the law is circumvented. In the UK “complaints” have replaced line management escalation, so there is no issues resolution.

The impact of random **boundaries**. For example in the UK companies below a certain size do not have to have a statutory audit. The threshold has increased over the years. These very same enterprises however form the bulk of the customer base of those entities which are audited. If the smaller ones are pulled down, the bigger ones fail and if the bigger ones are financially unstable, they bring down the smaller ones.

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2. *Do you agree with the overarching and supporting principles as articulated? Are there additional principles which the Monitoring Group should consider and why?*

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2.1. Independence is the key: the other principles are components of independence (credibility; cost effectiveness; relevance; transparency; accountability).

2.2. “Public duty” should replace “in the public interest” so there is no confusion. Auditor and duty go together.

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3. *Do you have other suggestions for inclusion in a framework for assessing whether a standard has been developed to represent the public interest? If so what are they?*

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3.1. The laws which the Code is intended to ensure are followed and knowledge of the prosecution path where it is not, as well as route to relief for those entitled and requiring compensation where there are contraventions. A draft Code should include the audit trail to enforcement and be published for consultation under the Equalities Act (in the UK).

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4. *Do you support establishing a single independent board, to develop and adopt auditing and assurance standards and ethical standards for auditors, or do you support the retention of separate boards for auditing and assurance and ethics? Please explain your reasoning.*

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4.1. Single in order to avoid arbitrage, which is prevalent.

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5. Do you agree that responsibility for the development and adoption of educational standards and the IFAC compliance program should remain a responsibility of IFAC? If not why not?

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5.1. Yes because (a) there must be continuity or effort will constantly be wasted; (b) IFAC can and must draw on the requisite experience/expertise and its power to do this is unfettered.

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6. Should IFAC retain responsibility for the development and adoption of ethical standards for professional accountants in business? Please explain your reasoning.

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6.1. Yes because the criteria are indistinguishable including directors and others.

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7. Do you believe the Monitoring Group should consider any further options for reform in relation to the organization of the standard setting boards? If so please set these out in your response along with your rationale.

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7.1. Yes. It should have direct relationships with prosecutors including tax prosecutors, so the path for the public is mapped out. There should be 24x7 technical and ethical help lines on a confidential basis, as well as whistleblowing arrangements. There should be witness and victim protection.

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8. Do you agree that the focus of the board should be more strategic in nature? And do you agree that the members of the board should be remunerated?

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8.1. No and no. "Strategy" is a euphemism for "airey-fairy" which has no place in the discharge of statutory duty. There should be no remuneration, save reimbursement of modest unavoidable out of pockets where member is impoverished and could not serve without such reimbursement.

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9. Do you agree that the board should adopt standards on the basis of a majority?

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9.1. Unequivocally no and indeed, this is not an option.

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10. Do you agree with changing the composition of the board to no fewer than twelve (or a larger number of) members; allowing both full time (one quarter?) and part-time (three quarters?) members? Or do you propose an alternative model? Are there other stakeholder groups that should also be included in the board membership, and are there any other factors that the Monitoring Group should take account of to ensure that the board has appropriate diversity and is representative of stakeholders?

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10.1. The smaller the better. All should be part-time, so their work has external stimulation/inspiration.

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11. *What skills or attributes should the Monitoring Group require of board members?*

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11.1. Current or previous executive director experience together with track-record in defining skill and experience of the resource actually inputting to the work in any area. Previous experience of drawing up case standards, auditing and enforcing the operations of the team.

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12. *Do you agree to retain the concept of a CAG with the current role and focus, or should its remit and membership be changed, and if so, how?*

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12.1. This should be a constantly changing group to ensure that specialist, experienced resource is available, and members are not given influence if they are not suitable.

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13. *Do you agree that task forces used to undertake detailed development work should adhere to the public interest framework?*

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13.1. No. Public duty and procuring resource with the requisite experience is required, as well as the self confidence to put the work out to consultation so the best experience is captured, with case studies to explain the points.

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14. *Do you agree with the changes proposed to the nomination process?*

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14.1. No. Teams should be selected on the basis of public calls for expertise (like any form of public procurement) not merely “having a job”, albeit with a sponsor.

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15. *Do you agree with the role and responsibilities of the PIOB as set out in this consultation? Should the PIOB be able to veto the adoption of a standard, or challenge the technical judgments made by the board in developing or revising standards? Are there further responsibilities that should be assigned to the PIOB to ensure that standards are set in the public interest?*

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15.1. “Judgment” is key in that it is the reader of the audited statements who is entitled to exercise judgment. Proper accounts, properly audited, should be neutral, so they come out the same, or more or less the same, irrespective of who the directors are who prepared them and who audited them.

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16. *Do you agree with the option to remove IFAC representation from the PIOB?*

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16.1. The organization will be simplified once “public duty” (law) replaces “in the public interest” (something other than law).

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17. *Do you have suggestions regarding the composition of the PIOB to ensure that it is representative of non-practitioner stakeholders, and what skills and attributes should members of the PIOB be required to have?*

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17.1. The term “stakeholder” should be abolished. It is meaningless and contrary to Human Rights and Equalities Act at least. In the UK, challenges to these activities are in the Administrative Court, where such vocabulary does not exist.

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18. *Do you believe that PIOB members should continue to be appointed through individual MG members or should PIOB members be identified through an open call for nominations from within MG member organizations, or do you have other suggestions regarding the nomination/appointment process?*

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18.1. This should be an open call with sufficient detail that the person replying can cover much groundwork ab initio. All posts should therefore be in the form of a reply to tender with an outline of what the considerations might be. For example INSS did a Call For Evidence (Insolvency Service, agency of Business Energy and Industrial Strategy) in September 2016, responses published 2017, where the questions were “open” allowing those contributing to evidence as deeply as they chose. This exercise reveals where the expertise lies. Such openness preserved freshness.

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19. *Should PIOB oversight focus only on the independent standard setting board for auditing and assurance standards and ethical standards for auditors, or should it continue to oversee the work of other standard-setting boards (eg issuing educational standards and ethical standards for professional accountants in business) where they set standards in the public interest?*

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19.1. These should all be done together, without classifying the people, as suggested.

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20. *Do you agree that the Monitoring Group should retain its current oversight role for the whole standard-setting and oversight process including monitoring the implementation and effectiveness of reforms, appointing PIOB members and monitoring its work, promoting high-quality standards and supporting public accountability?*

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20.1. Yes, subject to replacing “public interest” by “public duty” and law enforcement. There should be standards for projects and audit of compliance.

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21. *Do you agree with the option to support the work of the standard setting board with an expanded professional technical staff? Are there specific skills that a new standard setting board should look to acquire?*

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21.1. No. There is virtually no chance that permanent staff can be up to date on issues as those in live operations.

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22. *Do you agree that permanent staff should be directly employed by the board?*

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22.1. No. The UK experience of attempting to do this has been dire. Calls for Evidence are now dealt with by those employed to reply and with no real current experience or genuine research over time.

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23. *Are there other areas in which the board could make process improvements – if so what are they?*

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23.1. Planning enforcement at the same time as standard setting/updating.

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24. *Do you agree with the Monitoring Group that appropriate checks and balances can be put in place to mitigate any risk to the independence of the board as a result of it being funded in part by audit firms or the accountancy profession (eg independent approval of the budget by the PIOB, providing the funds to a separate foundation or the PIOB which would distribute the funds)?*

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24.1. This is wholly impossible. Financial independence is fundamental. It would be better to shut up shop than to touch money from any group.

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25. *Do you support the application of a "contractual" levy on the profession to fund the board and the PIOB? Over what period should that levy be set? Should the Monitoring Group consider any additional funding mechanisms, beyond those opt for in the paper, and if so what are they?*

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25.1. The concept of "profession" no longer applies. Participants should not be paid and should be free of political or financial influence. The bulk of work can be done by way of Calls For Evidence.

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26. *In your view, are there any matters that the Monitoring Group should consider in implementation of the reforms? Please describe.*

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26.1. Permanent collation of case studies of "what goes wrong"; diagnostics; and what would help prevent a repeat.

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27. Do you have any further comments or suggestions to make that the Monitoring Group should consider?

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27.1. Intellectual freshness and diligence is required. MG should draw on as wide a net of experience as it can and develop a reputation for “*having its finger on the pulse*” and being consistent and reliable, as well as apolitical.

The witness thanks the Monitoring Group for the opportunity to contribute to its thinking and planning.



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member SME Alliance Ltd

written evidence Parliamentary Commission on Banking Standards 2012  
and FRC (related) 2016

**<http://tinyurl.com/ParliamentaryCommissionBanking>**

**<http://tinyurl.com/FRC-Enforcement4May2016>**

**cc APPG Banking**