



## Governance *in brief*

Standards proposed for listed company board effectiveness reviews

### Headlines

The consultation document issued by the ICSA seeks views on whether there is a need for:

- A code of practice for the providers of board evaluation services, and formal arrangements for implementing and monitoring such a code.
- Voluntary principles to be applied by listed companies when engaging external reviewers to undertake board evaluations.
- Guidance for listed companies on disclosure of the conduct and outcomes of their board evaluation, in accordance with the 2018 UK Corporate Governance Code.

The document includes draft versions of a code of practice for independent reviewers and voluntary principles and guidance on disclosure for listed companies.

### Background to the ICSA consultation paper

In a feedback statement on its 'Insolvency and Corporate Governance' consultation paper, the Department for Business, Energy and Industrial Strategy noted that some respondents had identified that the standards or thoroughness of board evaluations can vary significantly.

The Government therefore invited ICSA: The Governance Institute to convene a group, including representatives from the investment community and companies, to identify ways of improving the quality and effectiveness of board evaluations including the development of a code of practice for external board evaluations.

### A reminder of the relevant provisions of the 2018 UK Corporate Governance Code

21. There should be a formal and rigorous annual evaluation of the performance of the board, its committees, the chair and individual directors. The chair should consider having a regular externally facilitated board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement made about any other connection it has with the company or individual directors.

23. The annual report should describe the work of the nomination committee, including... how the board evaluation has been conducted, the nature and extent of an external evaluator’s contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition.

### Suggested actions for listed companies

In order to encourage companies to adopt good practices in the way that they engage with an external reviewer, ICSA is suggesting that companies are invited to commit to a set of voluntary principles.

<b>Selection</b>	<ul style="list-style-type: none"> <li>• The company will not delegate the decision on the appointment of an external reviewer to a single board member or employee. It will ensure that the decision is ratified by either the full board or the nomination committee.</li> <li>• The company will not appoint external reviewers with which it has other current commercial relationships, or that have carried out more than two previous consecutive full board evaluations for the company.</li> </ul>
<b>Scope and process</b>	<ul style="list-style-type: none"> <li>• The company and reviewer will agree terms of engagement before the review commences. These must specify the objectives and scope of the evaluation, and the process to be followed. The company will not subsequently seek to amend the terms of engagement without the agreement of the reviewer.</li> <li>• The company will provide the reviewer with direct access to the board collectively and directors individually as part of the evaluation process. It will also provide access to board and committee papers, board committees, management and other internal and external stakeholders where necessary to meet the agreed objectives of the evaluation.</li> <li>• The company will provide the reviewer with an opportunity to present their findings directly to the full board.</li> <li>• The company will identify a contact with whom the reviewer can discuss in confidence any concerns they have about the way the process is being managed. This would normally be one of the independent board members.</li> </ul>
<b>Confirmation</b>	<ul style="list-style-type: none"> <li>• In the annual report, the company will state whether it has followed these principles, and whether the board reviewer is a signatory to the code of practice for reviewers.</li> <li>• The company will obtain the reviewer’s formal agreement that the description of the process followed and the findings of the evaluation to be included in the annual report is accurate.</li> </ul>

## Suggested code of practice for service providers

The draft code provided in the consultation paper identifies the commitments that service providers would need to take on if they wished to become signatories. Part of being a signatory to the code of practice would involve participation in any oversight arrangements which are established.

<b>Competence and capacity</b>	<ul style="list-style-type: none"> <li>• Signatories should have – and be able to demonstrate to potential clients – the expertise, experience and capacity necessary for each engagement they undertake. They should only accept work that they are qualified to perform and in which the client can be served effectively.</li> <li>• Signatories should publish on their website sufficient information about their experience, expertise and resources and how they would typically undertake an evaluation to enable potential clients and their shareholders to assess how well suited they are for a specific engagement.</li> </ul>
<b>Independence and integrity</b>	<ul style="list-style-type: none"> <li>• Signatories should have and publicly disclose procedures for addressing potential or actual conflicts of interest that may arise in connection with the provision of services.</li> <li>• Signatories should not provide any other services to a client during the course of an engagement, or subsequently accept any work from them which might create a perception of a conflict of interest.</li> </ul>
<b>Engaging with the client</b>	<ul style="list-style-type: none"> <li>• Signatories should ensure that the terms of engagement for each board evaluation have been clearly and unequivocally agreed in writing with the company before the evaluation commences.</li> <li>• There should be a formal confidentiality agreement. Signatories should commit to keeping all information received during the engagement confidential, with the exceptions of the discovery of unlawful practices or where information is demanded by regulators.</li> <li>• Where a signatory is not able to agree with a potential client a scope for the evaluation that it believes will provide a true, fair and balanced assessment of the board's performance, it should decline the appointment.</li> <li>• If a signatory feels it has been put under inappropriate pressure by a client during an engagement, it should withdraw from that engagement.</li> <li>• When a client discloses details of the process or outcomes of the board evaluation either publicly or to a regulator, signatories shall ensure they are given the opportunity to check the accuracy of the client's statement before it is published.</li> </ul>

## Draft annual report disclosure guidance for listed companies

Guidance has been provided to assist listed companies to provide their shareholders with information that they would find useful in assessing how diligently the board is seeking to improve its effectiveness. This part of the ICSA's proposals cover both internal and external board evaluations with some additional disclosures recommended for externally facilitated reviews.

<p><b>How the board evaluation has been conducted</b></p>	<ul style="list-style-type: none"> <li>• The objective and scope of the evaluation.</li> <li>• The different processes that were used to carry out the evaluation.</li> <li>• Whose views were sought as part of the evaluation.</li> <li>• Who in the company oversaw the evaluation and was responsible for providing the external reviewer with the necessary access and support.</li> </ul>
<p><b>Externally facilitated evaluations</b></p>	<ul style="list-style-type: none"> <li>• The name of the individual or organisation that carried out the evaluation.</li> <li>• Whether they have any other connection with the company including whether they have previously facilitated board reviews for the company.</li> <li>• The nature and extent of their contact with the board and individual directors and details of other stakeholders contacted for views on the board's performance.</li> <li>• The process by which the reviewer was selected and who in the company was involved in taking the decision.</li> <li>• Whether the reviewer is a signatory to the code of practice for independent board reviewers, and whether the company itself has applied the principles for external board evaluations.</li> </ul>
<p><b>The outcomes and actions taken</b></p>	<ul style="list-style-type: none"> <li>• The annual report should at least identify, for each of the aspects of the board's performance that have been evaluated, where they have concluded there is a need for improvement. Wherever possible, the specific actions should be identified and a timetable for completing them given.</li> <li>• Where companies have identified in previous annual reports specific actions that they intend to take as a result of the evaluation carried out in that reporting year, they should report on whether those actions have been implemented, and if not explain why not.</li> </ul>
<p><b>Board composition</b></p>	<ul style="list-style-type: none"> <li>• Summarise the assessment of whether the board has the necessary mix of skills, knowledge and expertise, and of its diversity; this should be done whether or not the company has concluded that some refreshment of the board is required.</li> <li>• Where the company has concluded that changes to the board composition are needed it should indicate, as a minimum, what specific shortcomings those changes are intended to address, and the time frame over which the changes are intended be made.</li> </ul>

**Next steps**

Responses to the consultation are requested by Friday 5th July.

After analysing the responses to the consultation, ICSA will publish a report containing recommendations which be formally submitted to BEIS. It will be for the Department to consider whether, and how, to act on the recommendations.

**For further information:**

The full consultation paper is available at: [https://www.icsa.org.uk/assets/files/pdfs/guidance/consultations-2019/icsa\\_board\\_evaluation\\_consultation\\_document\\_may2019.pdf](https://www.icsa.org.uk/assets/files/pdfs/guidance/consultations-2019/icsa_board_evaluation_consultation_document_may2019.pdf)

## Deloitte view

- We agree that, done well, board reviews can act as a catalyst for board awareness and continuous improvement, but often they are treated as little more than a box-ticking exercise. We support the ICSA's efforts to improve standards.
- We hope that boards can use the recommended practices and disclosures in this consultation paper as an opportunity to shine a light on existing board evaluation arrangements, to ensure that they remain fit for purpose in the current environment.

## The Deloitte Academy

The Deloitte Academy provides support and guidance to boards, committees and individual directors, principally of the FTSE 350, through a series of briefings and bespoke training. Membership of the Deloitte Academy is available to board directors of listed companies, and includes access to the Deloitte Academy business centre between Covent Garden and the City.

Members receive copies of our regular publications on Corporate Governance and a newsletter. There is also a dedicated members' website [www.deloitteacademy.co.uk](http://www.deloitteacademy.co.uk) which members can use to register for briefings and access additional relevant resources.

For further details about the Deloitte Academy, including membership, please email [enquiries@deloitteacademy.co.uk](mailto:enquiries@deloitteacademy.co.uk)

### Contacts – Centre for Corporate Governance

Tracy Gordon	020 7007 3812 or <a href="mailto:trgordon@deloitte.co.uk">trgordon@deloitte.co.uk</a>
Corinne Sheriff	020 7007 8368 or <a href="mailto:csheff@deloitte.co.uk">csheff@deloitte.co.uk</a>
William Touche	020 7007 3352 or <a href="mailto:wtouche@deloitte.co.uk">wtouche@deloitte.co.uk</a>



This publication has been written in general terms and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. Deloitte LLP accepts no liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London EC4A 3HQ, United Kingdom.

Deloitte LLP is the United Kingdom affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms.

Designed by CoRe Creative Services. RITM0285399