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Boardroom Review Limited (BRL) welcomes the opportunity to respond to ICSA's Consultation on the review of the effectiveness of independent Board evaluation in the UK listed sector.

1 THE PURPOSE OF BOARD EVALUATION

Do you agree that the purpose of independent board evaluation is to help boards continue to improve their performance and to demonstrate to shareholders and others that they are committed to doing so? If not, what do you consider the purpose should be?

Yes. The purpose of Board evaluation is to inform and encourage a continual, incremental process of self-awareness, improvement and transparency, assist the Board in its preparation for future challenges, and demonstrate standards of excellence and leadership to shareholders and other stakeholders.

There are a range of benefits associated with a well-conducted review which are beyond pure compliance, including leadership, role clarity, accountability, decision-making, communication and board operations. Evaluation gives new directors an opportunity to improve their understanding of processes, cultures and dynamics.

Furthermore the process provides board members with a rare but legitimised opportunity to question board approach and expectation relating to issues such as the quality of meetings, the composition of the board, the role of the directors and the relationships between members, management and shareholders, creating a catalyst for discussion and change.

However, there are limitations. Board evaluation is not, and cannot be, an audit or an absolute assurance. Boards have unique competencies and requirements, responding to diverse demands of stakeholders, economic cycles, maturity levels, operational issues and locations in different ways. The need for a bespoke and voluntary approach to evaluation is recognised and emphasised throughout existing guidance.

Furthermore, governance codes and principles in themselves cannot guarantee good conduct, and it is difficult to correlate improvements in corporate governance with corporate performance, given the number of variants.

2 OVERVIEW OF SUGGESTED ACTIONS

Will the changes made to the UK Corporate Governance Code in 2018 be sufficient on their own to improve the standard of board evaluation and reporting by listed companies, or would additional actions be helpful?

The changes to the 2018 UK Corporate Governance Code with regard to evaluation (main, supporting principles and provisions) are sufficient in developing and improving the quality of the field. Although the Guidance with the Code is relatively limited, covering the subjects (Board, Committees, individuals), frequency of external reviews, the need to act on results, and disclosure in the Annual Report, its companion, Guidance on Board Effectiveness, is extensive and in many ways prescriptive.

Inter alia, the Guidance covers individual Board member responsibilities, papers to review, topics and areas to cover, benchmarking, and stakeholder inclusion. Recommendations within the Guidance include relevant circumstances which promote early review, methods for selecting a reviewer, terms and conditions, and ways to develop any outcomes. Importantly, the Guidance already emphasises the need for flexibility in formulation and delivery, rigour, and full client engagement.

In 2016 a consortium of reviewers and shareholders developed the following principles, many of which address the concerns outlined within this consultation (see table, below). These principles are already posted on the websites of the reviewers and shareholders, and embedded within letters of engagement.

BOARD EVALUATION PRINCIPLES

Introduction These guiding principles are intended to set professional standards for evaluators, regardless of methodology, and align expectations between clients, shareholders and regulators with regard to quality and integrity of process.

Summary There are four guiding principles for evaluators, and three for clients, that will standardise the quality, credibility and legitimacy of the field, and have relevance across a number of different methodologies.

Evaluators Independence Confidentiality Competency Follow-up

Clients Cooperation Transparency Approval

Four Guiding Principles for Evaluators

Independence - the evaluator must be able to exercise independent and objective judgement. Existing commercial relationships, and other conflicts of interest, should be avoided, and/or disclosed and managed.

Confidentiality - the evaluator must keep all information confidential. The only exception to this is the discovery of unlawful practices or regulatory demands.

Competency - the evaluator will disclose the skills and competences of each individual involved in the evaluation, and provide appropriate references. There must be alignment of expectation between the client and the evaluator with regard to quality, value and longevity of service.

Follow-up – the evaluator will discuss progress on agreed outcomes with clients (to include the Chairman, SID and/or Board) within 6-12 months of the evaluation.

Three Guiding Principles for Clients

Cooperation - there must be full cooperation between the client and the evaluator in order to ensure integrity of process. This will include transparency of, and appropriate access to, Board and Committee information, participants, and meetings.

Transparency – all disclosures, including the Annual Report, must identify the evaluator (and any conflicts), the methodology (including the use of interviews and observation), final outcomes (with reference to accepted recommendations), and the approval process.

Approval - the evaluator should agree and approve any formal disclosures, including the Annual Report, which describe the evaluation.

If further action is desirable, do you support the proposed package of a code for board reviewers and principles and disclosure guidance for listed companies? If so, should they be mandatory or voluntary? Are there any parts of the package you consider to be unnecessary or inappropriate?

There is no need for the proposed package of a separate code. Our jurisdiction and corporate governance system is based on principles, not rules, and there is already lengthy and detailed guidance on the principles of Board evaluation within the existing Code and its supplements. Furthermore, the UK was one of the first countries to introduce external Board evaluations, and continues to lead the world in theory and practice: see <https://www.oecd.org/daf/ca/Evaluating-Boards-of-Directors-2018.pdf>.

Perhaps most importantly, efforts should be made by shareholders and other stakeholder to encourage companies to examine their own performance and effectiveness in a meaningful way – longer codes and increasingly bureaucracy imposed by regulators and government departments will have the opposite effect.

On the proposed code:

The UK Corporate Governance Codes have always been described as a body of rules which can be over-ridden with explanation; they continue to be practiced in accord with Cadbury's observation that there is no single right way to govern all Companies, and that it is for individual Boards to implement those principles most appropriate for their particular circumstances.

The suggested code is disappointingly prescriptive and conformist, conflicting with the principle above. Given our governance system, it is not appropriate for a separate Code to prescribe, inter alia, the attributes of competence and capability, the terms of engagement between reviewer and client, the scope and conduct of the approach, and the client's recruitment and decision making process.

Furthermore, it is worth noting that the Steering Group for this consultation is chaired by a member of ICSA, an organisation which has an existing commercial revenue stream from Board effectiveness reviews, and is therefore conflicted in designing a Code to which it knows in advance it can conform and possibly benefit, whilst excluding others. Although there are a variety of diversified stakeholders on the Steering Group, there appears to have been little or no other input from the most experienced reviewers in the field.

Should shareholders have more direct influence on the appointment of the independent board evaluator? If so, what form should this take?

Shareholder views with regard to corporate performance, governance and Board effectiveness vary dramatically between fund managers and governance stewards, even within the same firm. In the UK, shareholders do not dictate or influence a Company's corporate advisors (such as auditors, strategy consultants and remuneration consultations), nor are they held responsible for the quality of the advice given, or the corporate actions taken. For this reason, and to avoid obvious potential conflicts, shareholders should not be involved in specific appointments.

Should the code and principles be applied to other sectors as well?

The remit of this consultation does not extend to best/good practice across other sectors.

3 ACTIONS FOR SERVICE PROVIDERS

Do you agree with the proposed definition of ‘independent board evaluation’?

Yes.

Do you agree that a disclosure approach to understanding a signatory’s competence and capacity is appropriate?

No. This Consultation Document assumes that the concept of a separate Code and conforming “signatories” is an acceptable and agreed concept. At this stage of the consultation, it is neither.

Competence and capacity is relative, not absolute, and should be matched to the unique circumstances and needs of the Company and the Board as the client. Directors are more than capable of assessing the quality, suitability and availability of individual reviewers and firms without an “approved list”, in the same way that they assess and recruit other Board advisors and consultants.

Furthermore, the reputation and quality of work in this field is well publicised and discussed between directors, company secretaries, shareholders and others, and disclosure with regard to methodology and outcomes is improving.

On the proposed Code:

- It is inappropriate to suggest that reviewers should publish information on their websites revealing their methodology, included participants, and resources; this information is commercially sensitive.
- The suggested range of topics and skills are already covered in existing guidance.

Should the code identify specific processes that must form part of evaluations carried out by signatories?

No. There is no need for a separate Code which identifies specific processes. There is comprehensive guidance on approach and methodology within existing Codes. Boards, and their reviewers, should agree the scope of the review, depending on the specific circumstances and needs of the Company and the Board.

Should the code should set out minimum standards in relation to the independence and integrity of the reviewer? If so, are the suggested standards the right ones?

The proposed standards are already emphasised in existing guidance.

Do the code of practice and the principles for listed companies deal adequately with potential conflicts of interest?

Existing guidance deals sufficiently with potential conflicts. However, conflicts are not the only priority. Confidentiality is a significant priority for both reviewers and clients (as noted within this consultation).

Is there a need for oversight and/or accreditation, or should service providers be able to self-certify that they are meeting the standards set out in the code of practice?

No. There is no need, within existing quality control mechanisms, to enforce additional oversight or accreditation. The quality, professionalism and development of this field depends and thrives on the diversity of methodology, the skills of execution, the integrity of clients, the transparency of disclosure, and the scrutiny of stakeholders.

Indeed, accreditation could serve as An anti-competitive barrier to entry, working against those who can add real value to clients but engage with them in a different way or from a different discipline. Accreditation could also result in higher fees for clients, disincentivising smaller companies.

If there is a need for a formal oversight body, which of these functions should be included in its remit – accreditation, monitoring of compliance, dealing with complaints, reviewing and revising the code?

There is no need for a formal oversight body, given the UK's current regulatory framework and existing guidance. Governance structures have a natural tendency to embrace those who share the basic values of those who currently operate it, and to reject those who do not - there is a real danger that such a body would become a self-serving and conflicted club, policed by those with commercial and/or power agendas, acting as a barrier to entry to what is already an undersized field, excluding adjacent professions who may from time to time add value, with unwarranted time and cost implications for both clients and reviewers.

4 ACTIONS FOR LISTED COMPANIES

Is there a need for some good practice principles aimed at listed companies conducting externally facilitated board valuations? If there is a need for such principles, do you agree that adoption by companies should be voluntary?

The principles in the Code, and in the voluntary Code developed by a number of reviewers and shareholders in 2017 (see above), are sufficient.

Do the draft principles cover all the relevant aspects of the relationship between the company and external reviewer? Are they reasonable and appropriate? Do they go far enough?

There are already sufficient principles in the Code and its supplements.

On the proposed code:

- The involvement of the reviewer in a monitoring role, post review, may or may not be appropriate, depending on the circumstances, and should not be dictated.
- The action plan and timetable should not be prescriptive; frequently recommendations are given which are intended to impact the long term future effectiveness of the Board, not house-keeping points that can be actioned immediately.

Should the principles include a requirement that companies should only engage board reviewers that have signed up to the code of practice for reviewers?

The concept of a separate code and signatories creates a significant and possibly self-serving barrier to entry (see above).

Is there a need for guidance on how companies should report on board evaluations in order to comply with the provisions of the UK Corporate Governance Code?

Yes. Transparency and disclosure are fundamental elements of improving the governance of reviews, and the suggestions with regard to disclosure are helpful.

However, the ARA is not the only form of disclosure; shareholders and other stakeholders can question members of the Board with regard to outcomes and actions.

Does the draft guidance cover all the relevant issues of interest to investors and other users of annual reports? Are the expectations it places on companies appropriate?

Yes.

Should the independent reviewer be expected to certify that the disclosures made by the company are accurate? If so, what form should this take?

No. The ARA is a formal and regulated corporate document, written by the Company. However, all disclosures, including the ARA, should identify the reviewer (and any conflicts), the methodology (including the use of interviews and observation), final outcomes (with reference to accepted recommendations), and the approval process. The reviewer should agree and approve (rather than certify) any formal disclosures, including the ARA, which describe the evaluation.

I hope that these observations are helpful, and I would be delighted to discuss them further.

Dr Tracy Long CBE

Boardroom Review Limited

BACKGROUND

BRL is a trusted authority and adviser to the Chairs and Board members of over one hundred and fifty organisations, offering a confidential independent view of the Board's effectiveness and leadership. Reviews are tailored to the particular circumstances of the Company, whilst drawing on regulatory guidance, examples of good practice and lessons learned from an international portfolio of work, and over 250 evaluations, developed over 15 years into a master framework of reference.

BRL has extensive international experience across all sectors, ranges from, inter alia, mining, oil and gas, water, banking (groups/subs), insurance and investment, pharmaceuticals and med-tech, telecoms, property, building and construction, engineering, shipping, paper and packaging, food retail, travel and leisure, entertainment, publishing, and gambling.

Public sector experience includes mutuals and partnerships, Government agencies and departments, regulators, universities, housing associations and charities, as well as private equity and international Boards based in Europe, the USA and Asia.

See <http://boardroomreview.com/welcome#clients> for more information.

Dr Tracy Long is the founder of BRL, established in 2004. She is an Advisory Director and member of the NomCo of Carnegie Hall, a Trustee of the Windsor Leadership Trust, a Trustee and member of the NomCo of Marlborough College, and a participant in Speakers for Schools. She was awarded the CBE in 2016 for services to governance in the public and private sectors.

Tracy retired in 2016 from the Board of the Department, Culture, Media & Sport), where she was Chair of the Audit & Risk Committee, and a member of the RemCo, and from the Board of Nesta (National Endowment for Science, Technology and the Arts) in 2010. She advised the Cabinet Office on the evaluation of departmental & ministerial boards, and in 2012 contributed to the Civil Service Reform Plan.