Oil & Gas Authority

Response to the consultation on Governance Guidance

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Contents

The response can be found on the OGAs website:
https://www.ogauthority.co.uk/news-publications/publications/

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General information

Purpose of this document

This document sets out the OGA's response to the consultation to seek views on proposed Governance Guidance ("the Guidance") as set out in Supporting Obligation paragraphs 3 and 4 of the OGA Strategy ("the Strategy") which states that the licensees of an offshore license must always apply good and proper governance, including complying with any governance principles and practices as the OGA may from time to time direct.

This response issued:

January 2022.

Territorial extent:

United Kingdom and United Kingdom Continental Shelf

Additional copies:

Other versions of the document in Braille, large print, audio or Welsh can be made available on request. Please contact us using the 'enquiries' details to request alternative versions.

Quality assurance

This consultation has been carried out in principle with the **government's consultation principles**.

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

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Introduction and Background

This document summarises feedback received during the OGA's consultation on Governance Guidance and sets out the OGA's position in consideration of the points raised.

The consultation was conducted between 20th September 2021 and 12th November 2021. The Consultation Document was published on the OGA's website. The OGA also hosted a virtual workshop, facilitated by OGUK, which provided direct feedback from industry.

The consultation sought respondents' views on the OGA's proposed Governance Guidance, in particular from those who will be required to act in accordance with the Strategy. The consultation focused on:

- An adoption of a recognised corporate governance code, suitable for the size and characteristics of the Licensee
- An adoption of certain OGA Strategy specific additional principles
- A commitment to assist the UK Government in meeting its net zero target by having in place good environmental, social and governance ("ESG") practices in their plans and operations.

The OGA received 10 responses to the consultation. These included 7 licensees, 2 industry bodies and 1 from a policy & research body.

[1]https://www.ogauthority.co.uk/regulatory-framework/the-oga-strategy/

Summary of responses received

Overall, respondents welcomed the consultation and found the general approach to governance to be sensible and appropriate. The majority were in support of the overarching central premise for strong corporate governance to retain social licence to operate and UKCS reputation. There was agreement that good and proper governance is an important enabler of long-term corporate success and the UK's globally respected corporate governance regime contributes to continued investment in the UKCS. Most were also supportive of the OGA's general role to promote both good governance alongside wider environmental and social responsibilities (**"ESG"**).

In developing the guidance, the OGA has carefully considered the feedback received, making amendments where appropriate to improve clarity and avoid ambiguity.

[2]https://www.icaew.com/technical/corporate-governance/principles/principles-articles/does-corporate-governance-matter

OGA response to the views expressed

Q1. Do you have any comments on the proposed general approach, as set out in paragraphs 3.2-3.9, whereby the OGA expects offshore Licensees to observe a code that is flexible, and appropriate for a company of its size, structure and character? In doing so, this will ensure investor confidence and delivery of MER and the drive to net zero?

Summary of 9 responses received:

Most respondents expressed concern that the OGA was adding to an already well-regulated area and sought clarity on the OGA role versus other regulators such as the Financial Reporting Council (**"FRC"**) and the Financial Conduct Authority (**"FCA"**).

OGA response to the views expressed:

The OGA notes such concern. As stated under the Strategy, it is our intent not to create regulatory overlap in areas within the remit of other regulatory bodies. The OGA works with, and will continue to complement rather than duplicate, a range of regulatory authorities including the FRC and the FCA, to deliver its remit. As well as promoting the importance of good & proper governance it is the OGA's role to regulate and influence the oil & gas industry, help drive the energy transition, create value and safeguard investor confidence. The industry is responsible for the development of a valuable UK national resource and is facing a unique set of issues and the OGA, as the sector's expert regulator, is appropriately placed to work alongside these other bodies to ensure compliance with appropriate governance standards. Paragraph 3.3 has been revised to reflect this.

The OGA acknowledges requests for it to operate a "light touch" and "flexible" approach, especially where good governance is already demonstrated. The OGA is aligned with industry in this regard, which is reflected in both the comply or explain approach and the monitoring process, which is designed to provide flexibility where appropriate.

Q2. Do you have any comments on the proposals for all licensees to follow a recognised UK Code, or an overseas equivalent?

Summary of 6 responses received:

Most respondents focussed on the potential for confusion and additional administrative burden arising where there is a parent company located overseas following the governance regime of that country and requested clarity on how the application of an appropriate code applies.

There were also several requests for clarity with regards the Relevant Board and its interactions with the UKCS business.

OGA response to the views expressed:

The OGA agrees that any governance assessment should take account of complex ownership structures and is aware that there are many licensees with foreign parent companies operating on the UKCS. Paragraph 3.1 of the Guidance has been revised to reflect that it is not intended to add any undue regulatory burden to those entities, and the OGA seeks that comfort be taken from the proposed comply or explain approach. It is not the OGA's intent, in most situations, that Relevant Boards be required to introduce additional procedures to comply with the OGA Guidance as well as overseas requirements so long as Relevant Board has satisfied itself that the principles of good and proper governance are covered to an equivalent standard within that overseas code.

The principles behind comply or explain require that companies hold true to good governance without being compelled by a regulatory body. In practice, the OGA expects that when carrying out its governance assessment, that explain rather than comply will in many situations apply.

With regards to the provision relating to Relevant Board, the OGA seeks to provide a recognition of overseas headquarters and has revised paragraph 3.7 to be sufficiently flexible to accommodate a variety of group structures or domiciles as appropriate. The OGA expects that a Licensee will be able to deliver against the guidance through reference to relevant actions carried out at combination of national or group level. The OGA notes though that model clauses provide the OGA with a power of licence revocation where the Licensee ceases to direct and control either its operations under the licence; or any commercial activities in connection with those operations, from a fixed place within the United Kingdom.[1]

The OGA expects that the principle of comply or explain will ensure that licensees that do not observe a recognised UK code or overseas equivalent can still demonstrate good & proper governance in line with the Strategy. Furthermore, the OGA acknowledges that in some cases, Relevant Board might include more than one company board and seeks that the definition of Relevant Board is not too restrictive.

The OGA is aware that in some situations an ultimate parent company board might not be the most closely associated with the UKCS business and provided there is appropriate channels of communication between this board and local, UK, management teams with more proximity to UKCS operations, knowledge and activities, that is likely to be sufficient under the Guidance, provided that the Licensee is ready to explain to the OGA how it has satisfied itself that the principles of good and proper governance required by the Guidance have been observed. The OGA has also provided comfort in the guidance that the “Relevant Board” could be identified at a subsidiary corporate level more proximate to the Licensee business.

Q3. Do you already follow a pre-existing UK (or domestic) code? If so, which?

The OGA is grateful to respondents for their answers to this question.

Q4. In addition to UK Corporate Governance principles outlined in the recognised Codes, as defined in paragraph 3.8 of the proposed Guidance, do you have any comments on the additional Strategy specific principles under Purpose and Leadership, Board composition and Director Responsibilities?

On director responsibilities, 6 respondents questioned what the proposed guidance referred to on “fitness of persons”.

A further 4 raised concern that the OGA might inadvertently cross director inter-geographic responsibilities.

OGA response to the views expressed:

The OGA has revised paragraph 3.11 of the Guidance and has set out its fitness criteria at - **https://www.ogauthority.co.uk/licensing-consents/licensing-system/licensee-criteria/**

The OGA recognises director responsibilities under UK Companies Act legislation, in particular s.172 of the Companies Act 2006 regarding the promotion the success of the company for the benefit if its members as a whole. The OGA seeks to create and ensure the right conditions for investment on the UKCS, and Licensees should have appropriate understanding of, regard to and application of the OGA Strategy, which is intended, among other things to lead to investment and operational activities that, on an expected basis, add net overall value to the UK. In that regard, the Relevant Board and its directors should seek to promote the long-term success of the licensee in the UKCS.

The OGA has clarified paragraph 3.11.

Q5. Do you have any comments on the Strategy specific principles under Delivery of Licence commitments?

Whilst several respondents recognised the importance in principle, of considering risks to 3rd parties, the majority (9) noted concern and proposed areas for the OGA to consider. Respondents felt that many companies were already obliged to comply with their statutory duties under UK Company Law as well as under the obligations within the OGA Strategy and its Central Obligation, and therefore expressed concern over the value-add and its potential to impinge on confidential decision making.

1 respondent also referred to issuance of dividends and other capital distributions and sought clarity on the intent therewith.

OGA response to the views expressed:

The OGA acknowledges respondents' views on this section.

The OGA considers that good and proper governance can be demonstrated by having capable and responsible boards who plan and deliver appropriate strategies designed to secure the long-term delivery of projects.

The OGA acknowledges the requirements under Companies Act s.172 and does not seek to impact commercial rights and obligations or that a licensee be obliged to bear an unacceptable level of risk. Instead, it seeks to ensure that Relevant Boards take decisions on the use of capital (including the allocation of capital to new and existing projects) that do not unduly jeopardise the Licensee's solvency or its ability to meet licence commitments, bearing in mind foreseeable operational risks and the cyclical nature of oil and gas prices.

The OGA has clarified paragraph 3.12 to reflect this.

On issuance and other capital distributions, the OGA notes the respondent's comment and clarifies its intent to ensure appropriate flexibility through the principle of comply or explain, and that it is not the intent for this provision to encroach into routine corporate practice of moving capital within a group unless this impacts on a licensee's ability to meet its licence commitments and/or is detrimental to the confidence of new and current investors to invest in exploration and production of petroleum from UK waters.

Q6. Do you have any comments on the Strategy specific principles under Audit, risk, internal control and reporting?

Most respondents felt that this section was duplicative to the role and responsibilities of the FRC and FCA.

OGA response to the views expressed:

Paragraph 3.13 seeks to *"ensure that the Relevant Board and its committees have a clear understanding of internal control, accountabilities and responsibilities to support external assurance, effective decision making and independent challenge."*

Under comply or explain, a Relevant Board may also be called to explain the application of any applicable financial accounting principles as set out currently within the IFRS or as recommended by the FRC. This includes but is not limited to IAS 37 and the disclosure requirements set out in IAS37 paragraphs 84-92 around the recognition and disclosure of decommissioning costs, and any other relevant IFRSs.

The OGA intends to complement the work of the FRC, FCA and other regulatory bodies as expert industry regulator.

Q7. Do you have any comments on the Strategy specific principles under Environmental Governance?

Respondents' views (6) were two-fold, noting the need for the OGA not to duplicate or be misaligned with new climate disclosure rules such as Sustainability Disclosure Requirements and the Sustainability Standards Board, and to provide clarity on the role and intent of the OGA's ESG Taskforce, which hitherto does not have a mandatory role.

OGA response to the views expressed:

The OGA acknowledges the significant amount of new policy announcements since the launch of the Governance Guidance consultation in October and in particular the UK Government's Net Zero strategy which provides more detail on environmental reporting and standards.

The OGA notes comments raised by respondents related to the role and standing of the ESG Taskforce. The OGA ESG Taskforce does not seek to duplicate policy, regulatory or legislative requirements, but seeks to promote best practice, influence better practice, and support industry in its ESG reporting. It will work with other regulators and bodies to promote the importance of ESG for investors and supports calls for clarity in reporting.

The OGA seeks to ensure that the ESG Taskforce remains relevant, useful on topic and is sufficiently impactful. As with other OGA Taskforces, the ESG Taskforce is an important vehicle for driving innovation and improvements. The OGA does not intend to enshrine the Taskforce within the Guidance but does expect to work with Licensees to deliver best practice. This has been clarified in paragraph 3.14.

Q8. Do you have any comments on the Strategy specific principles under Corporate Social Responsibility?

There was broad support from respondents to the benefits of corporate social responsibilities being included within the Guidance.

3 respondents stated concern that the inclusion of the North Sea Transition Deal (**"NSTD"**) with the guidance would potentially create an in-balance with the tripartite intent of the deal.

OGA response to the views expressed:

The OGA Strategy is clear that the relevant persons should consider their social licence to operate, and develop and maintain good environmental, social and governance practices within daily plans and operations.

The UK oil and gas sector has the potential to be an exemplar of good social practice. With its global supply chain, and heightened exposure to different working conditions and challenges, many in the industry are already demonstrating innovative polices and strong commitments on corporate social responsibility.

The OGA notes concern that reference to the NSTD in the Guidance may cause potential imbalance between industry and government obligations. In response, the OGA notes that the Guidance requires only that licensees give consideration, in taking decisions, to the commitments made within the deal; it does not create an obligation to carry out any activities.

The OGA has clarified paragraph 3.15.

Q9. Do you have any comments on the mechanisms under which it is proposed the OGA will monitor and enforce delivery of the Guidance, including the power to direct, and existing OGA sanctions procedures?

In general respondents welcomed the OGA's stated intent to avoid systematically monitoring licensee governance arrangements. A number of respondents requested clarity on the OGA internal process for governance reviews and in particular 2 respondents sought assurance that any internal process will not delay routine OGA decision-making such as part of the consents and authorisations process.

Concern was also noted that there may in effect be an "enduring right of review" given the potential number of consent authorisations and requests for clarity around the power to direct.

OGA response to the views expressed:

The OGA is in the process of developing a governance review process which will sit within existing processes and controls and are aligned with industry in ensuring that a governance review not impact pace, and OGA timeliness in decision making.

The OGA's role is to regulate and influence the oil & gas industry and help drive the energy transition, as well as creating value for investment. The OGA agrees with industry, that any sanctions process or power to direct will likely only be considered after all other opportunities of interaction have been exhausted. The OGA intends that it will normally start with stewardship, using measured escalation, engagement and dialogue, to encourage good behaviour to solve a problem. Any enforcement and direction will likely be used where the OGA considers a serious governance failing, and to which the OGA sees no remedy. In the event of egregious behaviour, contrary to the Strategy, the OGA would propose sanctions.

The OGA has reflected this in paragraph 4.7.

Q10. What impacts do you consider this Guidance to have on industry, mindful of the importance of good & proper governance?

6 respondents noted concern that increased regulatory oversight could be duplicative with other regulators and could impact investment into the UKCS.

OGA response to the views expressed:

The OGA notes concern and reassures industry that the intent of the guidance is to ensure appropriate corporate conduct across licensees.

The UK oil and gas sector is responsible for the development of a valuable national resource and is facing a unique set of challenges. The OGA as the sector's expert regulator works alongside other regulatory bodies to ensure compliance with appropriate governance standards. It intends to work closely with other regulators to minimise duplication.

Q11. Do you believe this Guidance can be incorporated within your company within six months of the Guidance being published (c. H2 2022)?

6 respondents confirmed that, insofar as there is sufficient flexibility in its application, that H2 2022 would be achievable.

1 respondent put forward a preference that a 12-month grace period would allow a more reasonable and achievable timescale.

OGA response to the views expressed

The OGA notes views expressed and is aligned with industry on ensuring some flexibility in implementing the guidance.

Q12. Do you have views or quantitative estimates of the potential impacts (costs and benefits) of the proposed Guidance on your business or industry overall?

6 respondents highlighted the view that a "light touch" approach would achieve benefit to industry with the lowest business cost.

1 respondent stated the benefits to industry from enhanced interaction with the OGA at certain points to ensure investor confidence, and that commercial arrangements could benefit from robust governance provisions.

OGA response to the views expressed:

The OGA notes the comments expressed and will ensure this is considered.

Conclusion and next steps

The guidance provides a framework against which the OGA will, in future, assess licensees' demonstration of good and proper governance, as is required by the Strategy. By publishing the guidance the OGA has outlined actions that it believes will satisfy that requirement and will also help industry to comply with the Strategy.

Based on the responses provided, the OGA has updated the draft guidance on which respondents gave their views during the consultation period. The OGA has published the guidance alongside this document and intends that this Guidance takes effect six months from publication.

Regulatory Impact Assessment

As outlined above in the response to question 12 in the consultation, no quantitative evidence was received which would support the development of a full impact assessment. The OGA Governance Guidance will be included in the OGA's next Business Impact Target (**'BIT'**) return, which considers the impact on business of changes to regulatory policies and practices under the government's BIT framework.

Oil & Gas Authority

Oil and Gas Authority is a limited company registered in England and Wales with registered number 09666504 and
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