Oil & Gas
Authority

OGA Governance Guidance

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Contents

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

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1. Scope and purpose of this guidance

1.1 This guidance sets out when the OGA will normally consider the adequacy of a company's governance arrangements and the factors that the OGA will usually take into consideration when doing so.

1.2 As outlined in the OGA Strategy (**"the Strategy"**), the OGA expects that any company holding a production licence for a seaward area (each a **"Licensee"**) will apply good and proper governance at all times, including complying with any governance principles and practices as the OGA may from time to time direct.

1.3 This guidance focusses on the following areas:

- The adoption and application by a Relevant Board (as defined in paragraph 3.1 below) of a recognised corporate governance code, suitable for the size and characteristics of the Licensee (as set out in paragraph 3.3 below).
- The adoption and application by a Relevant Board of the OGA Strategy specific principles (as set out in paragraph 3.11 below).
- A commitment by the Relevant Board to take appropriate steps to assist the UK Government in meeting its net zero target, to align to a common standard of climate reporting and to give due consideration to its corporate social responsibilities (as outlined in paragraph 3.15 below).
- How the OGA will monitor compliance with this Guidance including by requiring the Relevant Board to account for how it has met, and will in future meet, this Guidance (and as further set out in Section 4 below).

1.4 This Guidance is not a substitute for any regulation or law and is not legal advice. It does not have binding legal effect. Where the OGA departs from the approach set out in this Guidance, the OGA will endeavour to explain this in writing to the Licensee.

1.5 Where the OGA makes any assessment of the governance of a Licensee, this is done specifically and exclusively for the OGA's own purposes. This Guidance, and the OGA's assessment, is not intended to replace all the other governance requirements with which each Licensee may have to comply. Third parties should not rely on any statement (or absence of any statement), decision, action or inaction of the OGA, or rely on the OGA in any other way, to satisfy themselves as to adequacy of a Licensee's governance. They will need to carry out their own due diligence on the governance of Licensees

2. Background

2.1 The Introduction to the Strategy states that *"to enable maximising economic recovery of petroleum, relevant persons should consider their social licence to operate, and develop and maintain good environmental, social and governance practices in their plans and daily operations"* and that *"compliance with the Strategy is intended to lead to investment and operational activities that, on an expected basis, add net value overall to the UK."*[1]

2.2 The Central Obligation of the Strategy states that Licensees *"must, in the exercise of their relevant activities, take the steps necessary to:*
a. secure that the maximum value of economically recoverable petroleum is recovered from the strata beneath relevant UK waters; and, in doing so,
b. take appropriate steps to assist the Secretary of State in meeting the net zero target."

2.3 Section 8 of the Energy Act 2016 sets out that, when exercising the OGA's licensing functions, the OGA must have regard to, among other things, (i) *"[t]he need to maintain a stable and predictable system of regulation which encourages investment in relevant activities"* and (ii) *"[t]he need to minimise public expenditure relating to, or arising from, relevant activities."*

2.4 Failure to meet licence commitments will likely impact the delivery of projects and thereby directly impact the delivery of the Central Obligation. In some cases, it may also give rise to increased public expenditure.

2.5 Furthermore, failure to meet such commitments, or the perception that such commitments risk not being met, likely undermines the confidence of Licensees, their investors and other stakeholders active in the Industry, thereby potentially further undermining delivery of the Central Obligation.

2.6 The OGA, therefore, considers that good and proper standards of Licensee governance are necessary – including having capable and responsible Boards who plan and deliver appropriate strategies designed to secure the successful long-term delivery of projects.

2.7 This Guidance is intended to set out a framework of governance for Licensees and should not impose new or additional burdens on Licensees that already have a good and proper governance culture in place and already follow an appropriate governance code.

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

3. Following the guidance

3.1 As stated in Section 1 above, the OGA considers that the governance of a Licensee is the responsibility of the Relevant Board. The OGA considers the **"Relevant Board"** to be the Board of Directors or equivalent with effective control over the Licensee. In some cases that will be the Board of that Licensee. However, the OGA understands that responsibility for governance may, in some cases, be delegated to another Board in the Licensee's group, in which case the OGA will regard that Board as the Relevant Board and expect that Board to apply this Guidance. Licensees should be prepared to identify and inform the OGA as to the Relevant Board in the application of this Guidance. The OGA notes that certain Licensees may be in groups that are organised such that it is not practical for a single Board to take responsibility for all elements of this Guidance. Therefore, it will be acceptable for responsibility to be divided between boards. The OGA does not seek that the definition of Relevant Board be too restrictive, and may not be a single company board, so long as responsibilities are clear.

Corporate Governance

3.2 A main purpose of corporate governance is to facilitate effective, entrepreneurial and prudent management that delivers the long-term success of a company. [2]

3.3 The UK's corporate governance regime, regulatory approach and foundational governance standards have long been admired around the world and the OGA intends that this is emulated by all Licensees to ensure continued investment and a successful basin. As the oil and gas sector's expert regulator, the OGA works closely with other regulators, and we will continue to engage and work with regulatory bodies, such as the Financial Reporting Council (**"FRC"**) and the Financial Conduct Authority (**"FCA"**) in relation to this Guidance, to secure that Licensees are observing appropriate governance standards and to avoid duplicating regulation.

3.4 The OGA recognises that Licensees active in the UK continental shelf (**'UKCS'**) come in a variety of shapes and sizes, with different management and ownership structures, and with interests in Licences at different stages of the development cycle.

3.5 This means that a 'one-size-fits-all' approach to corporate governance is not appropriate. However, the OGA does expect all Licensees to observe a recognised corporate governance code that is appropriate for a company of its size and character.

3.6 The OGA recognises that many Licensees are already observing an existing corporate governance code (or are part of a group of companies under common ownership already observing an existing corporate governance code). Provided that the OGA considers that code to be appropriate for the Licensee, then the OGA would not normally expect the licensee to comply with any additional code.

3.7 In its adoption and application of an existing corporate governance code, the OGA will expect the Relevant Board to seek to reflect its spirit and follow a 'comply or explain' approach. It is expected that the Licensee would, if requested, provide the OGA with a descriptive statement under the principle of comply or explain which should state how the Relevant Board complies with the Guidance, identify areas of non-compliance, and explain the reasons for such non-compliance by reference to their own circumstances.

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

3.8 In the UK, the following are recognised corporate governance codes appropriate for companies of different sizes and with different characteristics:

- The UK Corporate Governance Code 2018
- The Wates Principles of Corporate Governance 2019
- The QCA Corporate Governance Code 2018

The Licensee may be able to point to other UK codes that it considers appropriate for a company of its size and characteristics and the OGA would consider that. Where the Relevant Board of a Licensee is overseas, the requirement in this Guidance to adopt a recognised corporate governance code will normally be satisfied by that Licensee group observing an appropriate governance code from that country. We will normally accept, where appropriate, and where the Licensee is part of a group of companies under common ownership, the observance of these governance requirements, by the Relevant Board, may be demonstrated primarily at national or Group level, if not independently by the Relevant Board of the licensee.

3.9 If the parent of a Licensee group which exercises effective control over a Licensee chooses not to observe an appropriate existing corporate governance code, whether from the UK or other country, the OGA will expect the Licensee's Board of Directors or equivalent to adopt and observe one of the UK corporate governance codes that is appropriate for that company.

OGA Strategy specific governance principles

3.10 In addition to observing the principles of a corporate governance code outlined in paragraphs 3.3 to 3.9 above, the OGA also expects that all Licensees, in their application of this Guidance, will observe the governance requirements set out below in paragraphs [3.11] to [3.15], which the OGA considers to be essential to the delivery of the OGA Strategy.

3.11 *Purpose and Leadership, Board composition, and Director Responsibilities*

In addition to fulfilling their statutory duties as directors and the principles on board composition outlined in the relevant corporate governance codes discussed from paragraph 3.2 above, the OGA expects that a Relevant Board, and its Committees will:

- Possess appropriate senior level knowledge and experience of offshore upstream operations and of the specific requirements of the UKCS, its challenges, ways of working, and all aspects of the OGA Strategy, including the requirement to assist the Secretary of State in meeting the net zero target.
- Have knowledge of and ensure compliance with the OGA's requirements as to fitness of persons (legal and natural) who exercise control over the Licensee. The OGA has set out its fitness criteria at https://www.ogauthority.co.uk/licensing-consents/licensing-system/licensee-criteria/
- Include an experienced (and normally Consultative Committee of Accountancy Bodies (**"CCAB"**), or equivalent, qualified) financial officer with responsibility for the internal control and risk management systems of the Licensee or group (having regard to the unpredictable nature of the oil and gas industry) and for the integrity of the financial statements issued by the Licensee or the group.

3.12 *Delivery of licence commitments and the OGA Strategy*

The OGA expects a Relevant Board, and its Committees, to promote the long-term success of the Licensee in the UKCS, as set out in paragraph 2.6. In doing so, a Relevant Board should:

- Identify opportunities to create and preserve value and establish systems of oversight to identify and mitigate risks to ensure all existing contractual liabilities and licence commitments are met.

- Consider the indirect financial risks to third parties, when allocating financial resources between projects or participating in the acquisition or disposal of licences or licensees if these actions result in a material increase in the risk of a licensee becoming insolvent or being unable to meet licence commitments.

  The third parties that Relevant Boards should consider include, but are not limited to, joint venture partners, investors, users and owners of shared infrastructure, regulators, employees, contractors and suppliers.

- Adopt a prudent application of appropriate company law as it applies to the issuing of dividends or other capital distributions (excluding routine capital movements within a group where these will not impact on the ability of the Licensee to meet its future liabilities and obligations), reflecting the highly cyclical nature of the industry and the subsequent impact on the licensee's ability to meet actual and contingent liabilities.

3.13 *Audit, risk, internal control and reporting*

In addition to pre-existing principles outlined in the relevant corporate governance codes discussed from paragraph 3.2 above, and notwithstanding the role which a range of other regulators have in this regard, the OGA expects that a Relevant Board, and its Committees should:

- Ensure compliance with all applicable financial accounting principles, for example as set out within the International Financial Reporting Standards (**"IFRS**") and by the International Accounting Standards Board (**"IASB"**), and to follow the expectations set out therein.
- Ensure that the Licensee is in full and open compliance with the IASB's provision set out within International Accounting Standard (**"IAS"**) 37 (and other relevant IFRS's) on disclosure of provisions, contingent liabilities, and contingent assets, and make reference to any other relevant accounting standards such as recommendations by FRC as part of any thematic review.
- Have a clear understanding of internal control, accountability and responsibilities to support external assurance, effective decision making and independent challenge.

3.14 *Environmental Governance*

The Central Obligation of the OGA Strategy includes that Licensees take appropriate steps to assist the Secretary of State in meeting the net zero target when securing the maximum value of economically recoverable petroleum. Furthermore, the Introduction to the OGA Strategy emphasises the importance of industry's continued social licence to operate and the need to develop and maintain good Environment, Social and Governance (**"ESG"**) practices in their plans and daily operations.

The OGA's Stewardship Expectation 11, on Net Zero [**SE11**], outlines the OGA's expectation that among other things Licensees reduce, as far as reasonable in the circumstances, greenhouse gas emissions from all aspects of their upstream operations.

The OGA, therefore, expects that a Relevant Board, and its Committees should seek to:

- Establish and embed a culture of greenhouse gas emission reductions in Licensee operations.
- Measure, report, align, and track the Licensee's performance against relevant environmental targets set by the UK Government and/or the oil and gas industry.
- Have due regard to the UK Government's Net Zero Strategy and (where applicable and in scope) to any related mandatory reporting requirements.
- Secure that the Licensee considers any recommendations as outlined by the OGA ESG Taskforce [**Recommendations**] to influence and promote best practice and ESG reporting.

3.15 *Corporate Social Responsibility*

The OGA expects that a Relevant Board, and its Committees, should give due consideration to its social responsibilities attendant with the Licensee's operations and interactions with stakeholders. Whilst not binding, the OGA expects the Relevant Board, and its Committees should ensure that the Licensee considers:

- Principles of diversity and inclusion
- The North Sea Transition Deal [**NSTD**].
- The OGA's Supply Chain Expectation [**SE12**].
- OGUK's Supply Chain Principles [**Principles**].
- The Department of Business, Energy and Industrial Strategy Prompt Payment Code [**Code**].

4. Delivering on the guidance

4.1 The OGA will not systematically monitor compliance of Licensees with paragraph 3 of the Strategy and/or this Guidance, nor does this Guidance seek to impose a general requirement on Licensees to report on their compliance therewith.

4.2 Rather, the OGA will look out for actions or behaviours that it considers may not be consistent with the Guidance. When doing so, and in particular (but without limitation), the OGA will consider evidence from: (i) the Stewardship Review process; (ii) its ongoing engagement with industry; (iii) discussions with other regulators; and (iv) discussions with investors. When indications of inadequate governance are identified, the OGA may address these directly with the Licensee including undertaking a review of the Licensee's governance arrangements.

4.3 The OGA may also review a Licensee's governance as part of its consenting and authorisation processes. In particular, if an application to acquire a Licence interest (or the acquisition of a Licensee), or an application for a consent to undertake an activity, would, if granted, be expected to materially change the size and characteristics of the Licensee (or the group of companies under common control with the Licensee), then the OGA may choose to undertake a review at that time.

4.4 As part of an OGA review, the Licensee may be required to account for how it has met, and will in future meet, paragraph 3 of the Strategy. If the OGA review was precipitated by concerns that the OGA has about the actions or behaviours of a Licensee, then the Licensee should, in responding to those concerns, consider what has led to them, including whether any governance failing has played a part.

4.5 In its response to an OGA governance review, the OGA would expect a Licensee to identify the corporate governance code that the Relevant Board has been observing and to evidence and explain that this is appropriate for the size and characteristics of the Licensee. It should also discuss how it has applied the Strategy specific principles and/or identify areas of non-compliance, with reasons based on their own particular circumstances. Where a change to the size and characteristics of the Licensee, or the group of companies under common control with the Licensee, is anticipated that consideration be given as to the appropriate corporate governance code for the new Licensee or group.

4.6 If through its review the OGA considers a Licensee's governance to be inadequate, then the Licensee will be asked to propose changes to its governance arrangements that will address those concerns. If the OGA considers that the proposed changes are inadequate or previous arrangements have not been followed, the OGA may then seek to exercise its power to direct the Licensee to comply with stated governance principles and practices.

4.7 If, in the OGA's view, a failure of governance amounts to a failure to comply with the OGA Strategy, then the OGA will also consider whether or not to investigate that suspected failure to comply under its **Sanctions Procedure**. It is not the OGAs intent to seek to impose sanctions or invoke its power to direct until all other opportunities of interaction have been exhausted.

4.8 The OGA expects all Licensees to have incorporated this Guidance, to the best of their ability, within their Corporate Governance framework by Monday, 18th July 2022.

Oil & Gas Authority

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