

2. Guidance for all SHAs (Part A)

Section 1 - Corporate Governance

Introduction

- 2.1 The UKCGC sets out the purpose of corporate governance as being 'to facilitate effective, entrepreneurial and prudent management that can deliver the long term success of a company'. This is relevant to the activities of SHAs, concerned as they are with the long term success and sustainability of a harbour.
- 2.2 The UKCGC applies only to companies with a Premium listing of equity shares and so is directly relevant to the boards of SHAs that are part of such companies. While the UKCGC does not apply to other types of businesses, the Department believes that its principles are relevant to many SHAs when applied on a proportionate basis and taking account of the ownership model of the SHA. For example privately owned SHAs are likely to have different corporate governance arrangements. Further guidance on corporate governance for trust ports and LA owned harbours is in Parts B and C respectively.

Forthcoming changes

- 2.3 In August 2017, the Government announced a package of changes to corporate governance. As part of implementing these changes, in the course of 2018 legislation will be introduced to require:
 - around 900 listed companies to annually publish and justify the pay ratio between CEOs and their average UK worker;
 - all companies of a significant size to publicly explain how their directors take employees' and shareholders' interests into account; and
 - all large companies to make their responsible business arrangements public.
- 2.4 The Government has also invited the Financial Reporting Council (FRC) to revise the UKCGC in relation to executive pay and strengthening employee, customer and wider stakeholder voice in boardroom decision making. The FRC and other stakeholders have also been invited to develop voluntary corporate governance principles for large private companies. These reforms will be reflected, as necessary, in future versions of this guidance.

Guidance

- 2.5 The key principles and other points from the UKCGC in relation to leadership, board effectiveness, accountability and remuneration are set out below⁵.

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Leadership

Principles

- Where relevant, all port business should be headed by an effective board which is collectively responsible for the long-term success of the business. The board's role is to provide leadership within a framework of prudent and effective controls which enables risk to be assessed and managed.
- The board's job is to set an organisation's strategic aims, ensure that the necessary financial and human resources are in place to meet those objectives and to review management performance in meeting them. All board directors must act in the best interests of the SHA consistent with their statutory duties.
- It is important to have a clear division of responsibilities at the head of a SHA between the running of the board and the executive responsibility for the running of the business. It is best practice that no one individual has unfettered powers of decision over the business.
- The chair is responsible for the leadership of the board and ensuring its effectiveness. Part of the chair's role is to set the board agenda, allowing adequate time for discussion of items, in particular strategic issues. Promoting a culture of openness and debate in board discussions is also important.
- Part of the role of Non-Executive Directors (NEDs) on a board is to challenge constructively and help develop proposals on the company's strategy. A further part of a NED's role is to scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.

Board effectiveness

Principles

- The board and its committees need to have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively.
- The board needs to be of a sufficient size so that the requirements of the business can be met. It should include an appropriate combination of executive directors and NEDs such that no individual or small group of individuals can dominate the board's decision taking.
- New directors should be appointed by a formal, thorough and transparent procedure. The search for, and appointment of, board candidates should be made on merit, against objective criteria and with regard for the benefits of diversity on the board, including gender.
- It is important that all directors can allocate sufficient time to the company to discharge their responsibilities effectively. All directors should receive induction on joining the board and should regularly update and refresh skills and knowledge.
- It is important that a board is supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.
- It is good practice for boards to undertake a formal and rigorous annual evaluation of its own performance and that of its committees as well as of individual directors. The chair may decide to act on the results of a performance evaluation by recognising the strengths and addressing weaknesses of a board.

- All directors should be considered for re-election or re-appointment as appropriate at regular intervals, subject to their continued satisfactory performance.

Accountability

Principles

- The board should present a fair, balanced and understandable assessment of its position and prospects. This responsibility covers annual reports and information required to meet statutory requirements.
- A board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.
- Further, a board should establish formal transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors. An audit committee, including three NEDs or two in smaller organisations, should be established to help achieve this.

Remuneration

Principles

- Executive directors' remuneration should be designed to promote the long-term success of the business. Any performance-related elements need to be transparent, stretching and rigorously applied.
- There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.
- The board should establish a remuneration committee, including at least three NEDs (or for smaller organisations two). The committee should have delegated responsibility for setting remuneration for all directors and the chair including, where relevant, pension rights and any compensation payments.



Section 2 - Stakeholder engagement

Introduction

- 2.6 Effective engagement with stakeholders is essential for all SHAs to maintain or improve understanding of the harbour by its stakeholders. Engagement is equally important to understand stakeholder's views about the harbour and key issues from their perspective. All SHAs should therefore seek to engage effectively with a wide range of stakeholders.

Principles

- All SHAs should engage effectively and openly with a wide range of stakeholders that have an interest in their harbour.
- SHAs should periodically assure themselves that stakeholders have been identified and that engagement with them is appropriate and effective.
- SHAs should also consider how the voice and views of stakeholders can be taken into account in their work, including in governance.

Supporting discussion

- 2.7 Ports and harbours often have a significant effect on their locality, for example as places of employment or locations of other businesses, so play an important role in generating economic activity and growth at local, regional and in many cases national level. Ports and harbours can also be a source of some other less desirable effects on their local area, through being a source of road traffic, noise and emissions from vehicles.

- 2.8 Current company law already reflects the importance of stakeholder interests in corporate governance. The Companies Act 2006⁶ puts a duty on all companies to promote the success of a company for the benefit of shareholders, and in doing so to have regard to stakeholder interests, amongst other matters. These include the interests of employees, the need to foster business relationships with suppliers, customers and others, as well as the impact of the company's operations on the community and environment.
- 2.9 Stakeholders have a particular significance for trust ports. In the absence of shareholders or elected representatives, trust port boards are accountable to their stakeholders. This has significant implications for trust port boards, see Part B.

Types of stakeholder

2.10 Stakeholders will vary from harbour to harbour, but are likely to include, amongst others and in no particular order the following and as represented in figure 3 below :

- local communities
- harbour users – both commercial and leisure and their representative organisations
- local economy, such as local businesses including suppliers
- local government
- central government
- others – including employees, MPs and elected representatives



Figure 3 SHA and stakeholders

⁶ Section 172

- 2.11 SHAs may have a commercial relationship with some stakeholders, such as port users or local businesses.
- 2.12 The Trust Port Study recommended that as part of best practice the nature and extent of stakeholder and community engagement should form part of a port's ongoing self-assurance process. The Study also recommended that a regular review of stakeholder engagement should act as a challenge as to whether stakeholders have been appropriately identified and engaged with effectively, and provide the opportunity for each port to develop and assess appropriate stakeholder engagement strategies. Although aimed at trust ports, the Department believes that all SHAs should follow these recommendations.
- 2.13 Such reviews should take into account new and emerging structures at local and regional level, such as sub-national transport bodies and changes to local government structures.

Methods of engagement

- 2.14 Different stakeholders may well have different views and interests on particular matters, which may not be consistent. It is important for SHAs and boards to engage with their stakeholders to consider these views and reflect them, where appropriate in the governance and operation of the harbour or port. Many SHAs do this effectively with well-developed stakeholder engagement activities and functions included as part of corporate social responsibility programmes.
- 2.15 There are a range of approaches SHAs can consider using to provide information to and develop relationships with stakeholders. These include:
- websites, regularly updated with information about the SHA and its activities, as well as information about how to contact the harbour (including complaints)
 - social media
 - formal advisory committees of port users
 - advisory committees for local communities
 - public forums and meetings
 - direct communications, such as newsletters
 - consultation on specific projects or subjects
 - community engagement programmes and partnerships, including the use of port community funds where a port contributes financially to a fund that helps support a range or benefits for the local community
 - port master planning exercises (see box below)
- 2.16 While best practice and previous guidance has moved away from representative board appointments to trust port boards, there are a variety of other options for strengthening the voice of stakeholders on boards that SHAs might consider. These include:
- establishing stakeholder advisory panels and a means for the board to seek views on key issues relevant to stakeholders;
 - designating a NED with particular responsibility of ensuring that stakeholder views are heard at board level;

- selecting a NED partly on the basis of their special knowledge or experience of the position of the SHA within the local community and local economy. The NED would have the same responsibilities and duties as other NEDs. One trust port has selected two NEDs on this basis; and
- SHAs are best placed to determine which of the above approaches and which others are best suited for effective stakeholder engagement for their particular circumstances.

2.17 Particular requirements for how trust ports should engage with stakeholders are contained in Part B.

Port Master Plans

In 2008 DfT produced Guidance on the Preparation of Port Master Plans, to assist ports in the preparation of such plans. This document continues to provide useful guidance on the purpose and contents of a master plan, how it can be developed and in what circumstances ports should prepare one.

Master plans are generally more likely to be appropriate to larger ports and/or those where development is likely in the medium to long term

The aim of master plans is to set out a port's strategic planning for the medium to long term, including how it expects to grow and develop its business over this period. In doing so these plans can be a very useful way of informing stakeholders about how a port expects to develop in the coming years, while helping regional and local planning bodies, including transport infrastructure providers, in making their own plans and strategies.

The Guidance includes information on the content of a master plan. Stakeholder engagement forms an essential part of the process of producing a master plan and in the period once the plan has been produced. The Guidance envisages three phases of consultation with stakeholders:

- informal pre-consultation and dialogue with a wide range of stakeholders;
- consultation on a draft plan for discussion; and
- a formal consultation process.