

Information notice

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Board assurance for the 2014 price review – Board leadership, transparency and governance

This information notice updates the guidance included in '[Setting price controls for 2015-20 – final methodology and expectations for companies' business plans](#)' ('our methodology') on Board assurance.

The 2014 price review is our process for setting the price and service package (the 'price controls') that each of the monopoly water and sewerage and water only companies in England and Wales must deliver in each of the five years between 2015 and 2020.

We expect each company to prepare a Board assurance statement to accompany its business plan for the 2014 price review. They will send us their plans by 2 December 2013.

Background

In our methodology we said that we expected each company's Board – the whole Board – to take responsibility for signing off its business plan. We expect each Board to give us a statement, in its own words, stating how it considers that all the elements

(and supporting data) add up to a business plan that is high quality.

We also said that each company Board needs to:

- explain the governance processes of the Board; and
- demonstrate how it has provided:
 - strategic leadership;
 - a transparent process; and
 - compliance with the relevant licence conditions and with the UK Corporate Governance Code (the 'UK Code').

Most companies have obligations in their licence requiring them to:

- conduct the appointed business as if it were substantially the company's sole business and the company were a separate public limited company, and publish such information about its annual results as the [Listing Rules \(including the Transparency and Disclosure Rules\) of the Financial Conduct Authority \('FCA'\)](#) require to be announced by a company whose shares are for the time being listed on the London Stock Exchange; and

- have particular regard to the UK Code.

In our methodology we said that in assessing and categorising each company's business plan, we will take account of the nature and extent of the company's assurance. This includes the extent to which each company's Board statement provides assurance that its plan is of high quality and demonstrates the quality of that assurance.

Since we published our methodology we have written to all companies and published '[Board leadership, transparency and governance – principles](#)' ('our principles'). This set out the minimum standards that we expect companies to meet in terms of their Board's leadership, governance and transparency. We have stated that we expect companies to:

- have a voluntary code of practice on Board leadership, governance and transparency by 1 April 2014; and
- fully meet our principles and comply with their code by 1 April 2015.

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water and sewerage sectors in England and Wales.

We have published [the responses we have received so far to our consultation](#). We will confirm our final Board leadership, transparency and governance principles in January 2014.

Updated guidance on Board assurance

The companies have asked us whether and how they should take account of our principles in their Board assurance statement in their business plan.

There are two alternative approaches that companies can take to demonstrate that they are meeting the governance requirements set out in our methodology:

- by setting out how they meet the requirements of the UK Code and all relevant requirements of the licence; or
- by setting out the approach that they are taking to developing a governance code that meets or exceeds the principles that we expect to apply to companies operating in this sector and how they are complying with the relevant obligations in their licence.

We are offering these alternative approaches as we recognise that some companies will not be able to demonstrate that they are currently fully meeting the requirements of our methodology, but are committed to bringing their Board leadership and governance up to the minimum standards of our principles.

Complying with the UK Code

Companies that are able to demonstrate that they are fully compliant with the UK Code, and all other licence obligations relating to governance, will be in a position to meet the requirements included in our methodology.

We expect companies that take this approach to take steps to assure themselves that their actual practices meet the spirit of the UK Code and that they are conducting the company as if it were a separate public limited company.

We recognise that there are areas for judgement in meeting the 'comply' or 'explain' approach in the UK Code. Comply or explain is not a blanket opportunity for companies to disregard the UK Code's provisions. The UK Code notes that the Listing Rules require companies to apply the main principles in the UK Code.

The UK Code recognises that an alternative to following a provision may be justified in particular circumstances if good governance can be achieved by other means. A condition of doing so is that the reasons for it should be explained clearly and carefully. The company should also illustrate how its actual practices are consistent with the principle of the UK Code to which the particular provision relates.

We also recognise that a company can demonstrate compliance with the UK Code if it has provided a credible and reasonable explanation why a departure from

a particular provision (or, exceptionally, a particular principle) is appropriate and proportionate in its circumstances. In explaining any departures from compliance with the UK Code, companies must continue to have regard to their licence obligation to act as if they were a separate public limited company. We expect any explanations to meet the high standard that applies to listed companies.

Meeting or exceeding our principles

We recognise that meeting all the provisions of the UK Code – including the provision of explanations for any non-compliance consistent with the spirit of the UK Code – may remain challenging for some companies at this time. Some of its provisions may not be relevant to some of the ownership structures that are currently in place. It is for these reasons that we have decided to allow companies that find themselves in this position to use a commitment to compliance with our principles as an alternative means of meeting our methodology.

In our recent document, we set out a series of principles that we consider should apply, as a minimum, to companies operating in this sector whether listed or unlisted.

Companies that choose to adopt this approach should set out the path they are taking to developing a governance code that meets or

exceeds our principles – and how they are complying with relevant requirements of their licence. We do not require companies to demonstrate compliance with the principles at this time, but we do require commitment to the timetable set out above. We recognise that leading companies may wish to proceed rapidly to putting a governance code in place voluntarily.

Quality of reporting

Our examination of companies' reports over the past year has shown that some companies need to:

- take action to improve the quality and transparency of their reporting; and
- make significant changes to their governance arrangements to ensure that they can meet the spirit of the UK Code and conduct the appointed business as if the company were a separate public limited company.

More information

[‘Setting price controls for 2015-20 – final methodology and expectations for companies’ business plans](#), July 2013

[‘Board leadership, transparency and governance – principles’](#), September 2013

[Financial Conduct Authority’s Listing Rules \(including transparency and disclosure rules\)](#)

[Companies’ licences](#)

[2014 price review webpages](#)

We expect most companies should be able to demonstrate full compliance with the relevant annual reporting requirements in the FCA’s Listing Rules, including the Disclosure and Transparency Rules.

We have been pleased to see improvements to the disclosures that companies have made in their 2012-13 annual reports. These have contributed to improving the transparency of reporting.

Enquiries

If you have any questions or comments about this information notice you can send them to price.review@ofwat.gsi.gov.uk.

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