

Independent Board Reviews: What Next



FTSE 350 companies are required, under the UK Corporate Governance Code, to ensure that their annual board evaluations are facilitated by an external adviser every three years.

The Chartered Governance Institute UK & Ireland (CGI), recently published its report on a consultation into the effectiveness of such independent board evaluations.

Background

Board evaluation is relatively new, having evolved out of the recommendation by the Higgs Review in 2003 that boards carry out a performance review annually. Since then, the sector has burgeoned. There is now a sense that a disparate collection of firms offering these services each interprets the purpose and process of a performance review in its own way, without a uniform standard. It is an industry dominated by a handful of players.

In 2018, the All-Party Parliamentary Corporate Governance Group of the UK Parliament published a report which noted that most board evaluation firms were still initially identified by word-of-mouth and many then retained for several years.

The lack of regulations governing board effectiveness advisers has been a growing concern. Without recognised qualifications for this advisory role and clear guidance on the remit and standard of both independence and coverage, stakeholders – in particular investors – may well draw false comfort from a board review on the collective and individual effectiveness of the company's directors.

While a business with an effective board may well be considered less likely to disappoint shareholders with its business model or strategy, the CGI report

stresses that the expectation of the predictive powers of a board effectiveness review might be unrealistic.

The extent of the assurance being provided must be made clear, suggests the report. The definition of the purpose of board reviews needs to be agreed, as do the responsibilities of the board and the external reviewers on the contents, and the extent to which it should be used by shareholders to guide their judgement.

Recommendations

It seems like a missed opportunity that the CGI does not include a recommendation that the UK Corporate Governance Code be amended to clarify the purpose of board reviews in terms of informing any judgement on the efficacy of the board as it stands. However, it makes some useful recommendations:

- establishment of a code of practice for firms which offer board reviews to FTSE 350 companies, with associated disclosure requirements when companies report on their board review process – a draft of the code is included in the report,
- the setting of minimum standards for what constitutes an external review i.e. not just the use of external software or similar tools – in other words some form of human expertise to help present and interpret the feedback which frames the board's discussions is inferred as the minimum requirement,
- suggestions for principles of good practice to which FTSE 350 companies should adhere in relation to board reviews – the report includes suggested drafting for these principles,
- a recommendation that the FRC should develop some good practice guidance for reporting on board reviews, including the need for companies to seek the agreement of the external reviewer on how any observations attributed to them are described – again a draft is appended,
- a definition of what is meant by an 'independent' board reviewer, with a recommendation that threats to independence, for example the provision of other services or annual reappointment over a number of years, should be disclosed,
- proposals on dealing with (and preferably avoiding) conflicts of interest between the board reviewer and company.

Bringing additional rigour and understanding to board reviews is welcome, and perhaps, long overdue. The CGI report is a step in the right direction. Some of its recommendations require further action on the part of the Department of Business, Energy and Industrial Strategy (BEIS), the regulator the Financial Reporting Council (FRC) and others before they come into effect. But there is also much in the report that can be implemented immediately.

The full report is available [here](#).

How Indigo can help

We are independent and free from the conflicts of interest linked to so many of the concerns which this report seeks to address.

Our speciality is corporate governance and company secretarial services. We have the critical experience and expertise needed to facilitate a board review.

To discuss the options, please contact:

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