Resource type: Project 13

Corporate code principles

These principles have been developed by the Project 13 initiative and are for adoption by Owners. Project 13 seeks to understand and address weaknesses in the traditional approach to delivering UK infrastructure, in particular the need to improve productivity and performance. Good governance is seen as the foundation for driving this reform, which needs to extend across a wide canvas of infrastructure activities, including: selecting projects; articulating the project's objectives and desired outcomes; managing the difficult issues that arise from the extended time-scales over which infrastructure assets are normally developed, built and operated; managing the risks that arise from inherently complex activities; engaging with suppliers and other stakeholders in a coherent and productive long-term relationship; and recognising the benefits that flow from dialogue and knowledge-sharing across the numerous economic and social infrastructure sectors.

The Infrastructure Challenge

Whether it is a project in development, construction or operation, there are certain issues which are of particular importance in the infrastructure sector and which make the effective discharge of governance duties – including stewardship - more challenging. These issues determine the specific response which governance must provide in the case of infrastructure, whether it is a limited company board, a joint venture board, a programme board, or the board of any other delivery model (however bespoke). And regardless of whether it is a public sector or private sector sponsored investment and, if private sector, whether it is listed or unlisted; and regardless of whether it is within a regulated or unregulated sector, these issues are the same:

(1) **Time horizons** – infrastructure investments are mostly for the benefit of future generations not our own, so place uniquely long-term obligations on decision makers
(2) **Role within society** – infrastructure makes modern civilisation possible, so having two implications: (i) the underlying assets affect diverse stakeholders; and (ii) their resilience is usually of critical importance
(3) **Scale** – the concentration of assets and their values are typically at the upper end of capital formation (public or private) – so making cost control, timeliness, value for money, affordability, reliability, efficiency and, conversely, the "cost of failure" – all of paramount importance
(4) **Clarity of Capacity** – the large number of parties who must be aligned for an infrastructure investment to be successful means that blurred lines of accountability and responsibility are not acceptable and there should be clarity of the capacity in which individuals are acting when taking decisions
(5) **Health and Safety** – whilst by no means unique to the infrastructure sector, a zero tolerance to incidents and accidents can only be achieved within the sector if health and safety are placed front and centre by all governance bodies involved in an asset's formation and operation. This challenge is made all the greater by the hazardous activities which are generally inherent to the infrastructure sector, as well as the larger number of parties typically involved in a project or infrastructure operation

(6) **Transparency –** an investment activity with these five characteristics clearly sets the bar unusually high for any board in terms its duties. To be effective a board must enjoy the confidence of those who are, or could be, affected by the activities which the board overseas. Central to confidence is transparency, and it follows that infrastructure boards have an exceptional obligation for transparency if society is to trust those who are accountable for its infrastructure.

The above challenges can be made all the greater where "one-off clients" are formed to deliver an infrastructure asset, which is often the case for very large assets. In these circumstances, there are no pre-existing governance arrangements or policies and so all must be created effectively from scratch. These Project 13 Principles become doubly relevant in these circumstances.

The Wider Governance Context

The "triple bottom line" philosophy of good corporate governance is a good starting point for setting Project 13 principles within a wider context, aka the "three Ps" - people, planet and profit [Shell Sustainability Report 1997]:

- **Social (people):** having regard to all those affected by the infrastructure asset throughout its life-cycle, whether staff working directly or indirectly on the project, those in the supply chain, the users of the infrastructure, or members of society at large who are or could be affected by the asset. Proactive engagement with stakeholders is required to ensure that the benefits derived from an asset and its operations are optimised.
- **Environment (planet):** ensuring that the activities undertaken in forming and operating the asset meet the highest environmental standards and that designs and working practices are as sustainable as possible.
- **Financial (profit):** in this context profit refers to the economic value created by an asset, not just its accounting definition. In the case of infrastructure, there are essentially two aspects to this: (i) delivering value-for-money public services to end-users; and (ii) generating appropriate returns to those whose capital is invested.

The Infrastructure Governance Landscape

There exists a spectrum of delivery models to which these Project 13 principles are intended to apply, as illustrated in the diagram below:

Listed Equity	Private Equity	Joint Ventures	Government Companies	Programme Boards
Private Sector plc	Private sector plc, LLC or LLP, including PFI and PPP	Private sector, or a combination of private and public sector; incorporated or contractual	Public Sector plc, LLC of CLG	Public or private sector

This landscape is best surveyed by starting at the left-hand end where there exists an extensive corpus of code of practice, guidance and supporting literature available.

The UK already has an established corporate governance framework – the Financial Reporting Council's UK Corporate Governance Code and the UK Stewardship Code. Different 'governance' principles and models currently apply to: (1) Shareholders (UK Stewardship Code – under FRC consultation); and (2) Boards (UK Corporate Governance Code and proposed UK legislation on governance in private companies – both under consultation). UK Regulators have also published specific guidance in relation to the sectors they regulate. For example, OFWAT published in January 2014 "Board leadership, transparency and governance – principles", one for Regulated Companies and one for Holding Companies. In developing the Project 13 principles, all of the existing codes of practice and guidance are taken as given. The task in hand is to identify where governance best practice in the infrastructure sector needs to go one step, or in some case, two steps further to fulfil the mission of creating improved productivity and performance.

Before proceeding to address this subject, we must first turn to the extreme right-hand end of the diagram and say something about Programme Boards. Such boards are almost ubiquitous within the infrastructure sector and whilst not a board in the strict legal sense, like the board of a plc, they nonetheless discharge many of the same functions in terms of being accountable for the conduct, management and stewardship of large investments, albeit typically during the early stages of an asset's life-cycle – namely its development and formation – although their function can extend into operational phases. Programme boards very much belong to the connected family of infrastructure governance bodies and the principles discussed below are generally (but not always) relevant to their effective functioning as they are to a plc board.

Project 13 principles flexible adoption

In line with the FRC approach, we have sought to frame the Project 13 principles with inherent flexibility so that they can be adapted and adopted in a way which fits best with the host organisation. We also propose that the FRC "Comply or Explain" approach should be adopted to allow organisations to explain where circumstances mean that they have chosen to take an alternative approach. We nonetheless hope and expect that most infrastructure sponsors, developers, owners, manager and operators would wish to adopt these principles, in recognition of the long-term benefits that will accrue to their organisations and the UK infrastructure sector in general, as a result.

In the table below we set out in the left-hand column the five sections of the FRC Corporate Code, and in the right hand columns the Project 13 principles which we propose should be adopted in relation to that section.

FRC Corporate Governance Code[1]	Project 13 Principles for the Board
Section 1: Leadership Every company should be headed by an effective board which is collectively responsible for the long-term success of the company. There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the	The board should appoint an Independent Chair. The Independent Chair would be responsible for steering robust and effective board debate and steward interactions between shareholder, the Board, sub committees and management.

[1] FRC UK Corporate Governance Code, Main Principles of the Code

running of the company's business. No one individual should have unfettered powers of decision. The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role. As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.	The board should publish and maintain an asset management strategy which embeds throughout the company an approach to asset construction, maintenance and operation on the basis of long-term partnerships and collaboration with the supply chain.
Section 2: Effectiveness The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively. There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. All directors should be able to 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 their skills and knowledge. The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.	The board should be structured in a way that is manageable and be the right size and shape to be effective as a collective whole. Boards should not necessarily have a Director appointed to represent each different Investor's interests as the default position. The board should be sufficiently diverse in terms of skills/knowledge and experience. Measures should be taken to drive this representation in particular where the Investor is dominated by one investor community The board should appoint Non-executive Directors who are independent from management and the shareholders and who have an appropriate level of sector and industry experience. The board should put in place mechanisms to ensure that the perspective of the supply chain and other stakeholders are represented in board discussions. The board should create the conditions which incentivise investment, in partnership with the supply chain, in innovation in asset development, maintenance and operation. The board should establish initial and periodic documented board effectiveness reviews. A requirement not only for the board to have a sufficiently diverse set of skills, background and perspectives but also to periodically consider the Board's skills and diversity, the quality of debate and decision making, adequacy of conflict management processes and its overall effectiveness in a structured and documented manner.
Section 3: Accountability The board should present a fair, balanced and understandable assessment of the company's position and prospects. The board is responsible for determining the nature and extent of the	The board should provide transparency in the form of non-financial reporting and comply or explain with regards to additional reporting and governance standards in the annual reports and on specified

principal risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems. The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting, risk management and internal control principles and for maintaining an appropriate relationship with the company's auditors. 6 The UK Corporate Governance Code (April 2016).	matters including tax, business planning, environmental and social metrics. The board should take measures to mitigate conflict arising where lines of individual duty and accountability and responsibility become blurred where directors and shareholders hold multiple roles. The board should require that procurement processes for new assets, renewals and maintenance, lead to purchasing decisions on the basis of whole life value for money.
Section 4: Remuneration Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should 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 Long-term success of an organisation should be measured taking into account overall asset condition, capacity and productivity. The board should align remuneration to matters other than financial returns (such as metrics relating to environmental and social performance like H&S for e.g.)
Section 5: Relations with shareholders (Active participation and satisfactory dialogue) There should be a dialogue with shareholders based on the mutual understanding of objectives. The board, as a whole, has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. The board should use general meetings to communicate with Investors and to encourage their participation.	The board should put in place transparent asset measurement and reporting systems and publish at least annually a statement of asset condition, capacity and productivity.
Section 5: Relations with shareholders (Customer Focus)	Shareholders should have a role in appointing Directors and auditors and satisfying themselves that an appropriate governance structure is in place. The board should establish an advisory committee made up of company management, shareholder directors, independent directors and other key stakeholders under agree Terms of Reference to focus on customer service.
Section 5: Relations with shareholders (Public Sector Duty of Care)	The board should adapt decision making processes, and accompanying reporting of those decisions, to consider the long term consequences of any decision, interest of employees and the impact of the Company's operations on the community and the environment. The board should establish a 'public interest' committee where directors and stakeholder representatives across multiple groups could specifically impact the decisions on all stakeholders

	and drive stakeholder and public interest considerations into board strategy and decision making and provide enhanced risk mitigation and value creation over the long term. - The committee should be predominantly composed of board members and the status of the committee should be as a committee of the board - The chair of the committee should be required to make an annual public statement on behalf of the board of the company

References

1) Hermes, 2017, Corporate Governance of Public Sector Infrastructure Assets
2) Hermes, 2018, Governance of Public Service Infrastructure
3) Financial Reporting Council, 2012, UK Stewardship Code
4) Financial Reporting Council's, 2012 UK Corporate Governance Code