

Collective Engagement Framework

SUMMARY

2022 Update



THE INVESTOR FORUM

The Investor Forum CIC

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www.investorforum.org.uk

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Important Notice

This document describes the Collective Engagement Framework utilised by the Investor Forum and is being made available for information. Nothing in this document is intended to constitute, nor should it be regarded as a substitute for, legal advice. Specific advice should always be taken from an appropriately qualified person.

Foreword

The Investor Forum was established in 2014 in response to the Kay Review of UK Equity Markets¹. The Forum exists to help bridge gaps that sometimes emerge between companies and their owners. Our purpose is to put stewardship at the heart of investment decision making. To fulfil this purpose, we have two key objectives:

- to make the case for long-term investment; and
- to facilitate collective engagement with UK-listed companies.

We have created a professional platform for institutional investors in UK-listed companies with a public track record that demonstrates the value of collective engagement. We help our Members escalate and, wherever possible, address, material concerns with companies that emerge in the discharge of their stewardship responsibilities.

The Collective Engagement Framework, now in its third iteration, is a unique asset for the Investor Forum and our Members. It has made an important contribution to the development of engagement practice and plays a crucial role in enabling effective collective engagement.

For collective engagement to work effectively, participants must be clear about both the objectives for, and the boundaries of, engagement. They must be assured that they are operating in a safe and secure environment. It was critically important for the Investor Forum to create this comprehensive framework in 2016 and, at a time when collective ESG activity faces significant scrutiny, its value cannot be overstated.

The Framework is, and will remain, a living document which adapts and evolves over time with law, regulation and practical experience. We are, therefore, pleased that our Legal Panel has again concluded that the Framework remains “fit for purpose.” The 2022 update takes into account all applicable laws and regulations as at 12 December 2022. We will continue to conduct regular reviews to ensure on-going compliance and that the Forum remains at the forefront of best practice in collective engagement globally.

The Framework is now a critical piece of UK market infrastructure. We are enormously thankful to the panel of law firms who support us in maintaining and enhancing it. The Legal Panel assist us, not only in the review process, but also on an on-going basis as questions arise in practice, and for this we would like to thank them once again.

Our Legal Panel currently comprises:

- Will Pearce, Matthew Yeowart and Maxim Van de moortel of Davis Polk & Wardwell;
- Michelle Kirschner, Selina Sagayam and Susanne Bullock of Gibson Dunn;
- Jonathan Baird and Patrick Sarch of Hogan Lovells;
- Harry Coghill and Mark Slade of Macfarlanes; and
- Scott Hopkins and Craig Kelly of Skadden, Arps, Slate, Meagher & Flom.

We particularly thank Jonathan Baird for his continuing support and wise counsel as Chair of the Forum's Legal Panel.

Andy Griffiths
Executive Director, The Investor Forum,

London, 31 December, 2022

¹ [The Kay Review of UK Equity Markets and Long-Term Decision Making, Final Report, July 2012.](#)

Introduction

The Investor Forum (the “Forum”) was established in October 2014 by investment industry practitioners to create an effective model for collective engagement by institutional investors with UK-listed companies. Its purpose is to position stewardship at the heart of investment decision-making by facilitating dialogue, creating long-term solutions and enhancing value.

The Forum's structure and approach is designed to provide a safe and secure environment in which to facilitate collective engagement under the auspices of the Forum (“Engagements”) between institutional investors worldwide and UK-listed companies (“Companies”). In particular, these procedures are intended to encourage the participation of international investors.

The Forum is a not-for-profit Community Interest Company funded by its members. The Forum's board of directors (the “Board”) oversees the work of the Forum's executive officers (the “Executive”) and is drawn from members and other key stakeholders. Full membership of the Forum (each full-member being a “Member”) is open to any institutional investor in a UK-listed company, irrespective of where that investor is located, including both asset managers and asset owners. The Forum may also admit other persons as Associate Members on the basis that they do not have the right to participate in Engagements.

One of the key challenges in fostering collective engagement by institutional investors historically has been a concern to prevent inadvertent violation of legal or regulatory requirements. This has been complicated by the increasingly global nature of share ownership and management, with the possibility of multiple jurisdictions being involved in cross-border investment decisions. This is a complex and ever-evolving topic, and no one simple set of rules or procedures can guarantee full compliance.

The Forum's approach has been to seek guidance from a panel of law firms which has worked with the Executive to establish a coherent framework for the management of Engagements (the “Collective Engagement Framework” or “Framework”). This has included putting in place a legal, operating and governance structure which helps to meet the Forum's objectives whilst minimising risk to participants; framing the key legal and regulatory risks; and flagging key points or circumstances during Engagements and the Forum's non-Engagement activities which might require heightened attention.

In particular, the Collective Engagement Framework has been designed to take into account the need to safeguard against dissemination and creation of inside information, inadvertently or otherwise; the creation of concert parties under the Takeover Code or triggering group filing requirements under Section 13 of the U.S. Securities Exchange Act of 1934; and the creation of concert parties or acquisition of control of, including by exercising a controlling influence over, any company under the U.S. Bank Holding Company Act of 1956 (the “BHC Act”). The Framework was first published in 2016 and is typically reviewed every three years. The first update, published in 2019, considered how the Forum takes into account developments relating to competition law, regulation and practice.

This updated 2022 edition of the Framework demonstrates that the Forum, in conjunction with its Legal Panel:

- underpins all of its activities with an assessment of key legal and regulatory risks; and
- codifies its approach to each activity into operating procedures.

In setting out policies and a framework for our processes, we seek to enhance Member confidence in the Forum's ability to escalate material issues collectively and to further their stewardship objectives.

As part of the review for this, the third edition of the Framework, we have undertaken an in-depth analysis of UK Market Abuse Regulations, particularly relating to investor engagement around active corporate transactions, and relevant aspects of the Takeover Code. We have considered comments made by the FCA on shareholder engagement, including in the FCA's Primary Market Bulletin 42. We are re-assured that the resulting revisions to this document have been minimal. However, this review has highlighted a number of important issues which will be addressed in a separate, standalone, publication designed to clarify, encourage and enhance collaborative engagement best-practice as it relates to transactions.

Given the global nature of the ownership of UK-listed companies, and the international nature of the securities which they may issue, this update takes into account how stewardship activity relating to UK-listed companies is impacted by developments relating to law, regulation and practice in the U.S. and EU. This version of the Framework reflects updated regulatory guidance from the U.S. Federal Reserve relating to the U.S. Bank Holding Company Act of 1956 and includes a discussion of potential changes to SEC group filing requirements under Section 13 of the U.S. Securities Exchange Act of 1934; both of these may bolster the confidence of market participants in undertaking collective engagement under controlled situations.

The 2022 update also takes into account further developments in competition law, regulation and practice in the UK, U.S. and EU related to ESG matters. This has involved detailed discussions with our Legal Panel of evolving practice in dialogue between companies and their shareholders on these matters and how we might best adapt our procedures to facilitate this dialogue whilst continuing to protect participants. In this update, we have recognised that receipt or dissemination of "commercially sensitive information" might be allowed under the auspices of the Forum under heightened procedures, whilst protecting participants from receipt or dissemination of "competitively sensitive information".

Another new feature of the third edition is a section describing the protocols covering the wide range of activities which the Forum now undertakes. Chapter 7 details how we apply the legal and regulatory considerations described in the Framework to maintain a safe and secure environment for participation by our Members across the full range of our activities.

The three key activities undertaken by the Forum are:

- Collective Engagement,
- Facilitated Dialogue events; and
- Stewardship 360 projects.

Collective Engagement is the core activity of the Forum. Engagements enable Members to escalate and, wherever possible, address, material concerns with Companies. The Forum Executive engages with individual Members, typically on a bi-lateral basis, to agree a collective engagement strategy to inform direct engagement with the relevant Company.

Facilitated Dialogues are organised to enhance communication and understanding. These include:

- Meetings organised by the Forum between its Members and a Company (or Companies), in particular to clarify investor understanding of material issues. Member meetings generally involve a group of investors listening to and discussing issues with Companies "real-time" in accordance with an agreed agenda.
- Educational events, such as the Four O'clock Forum series or roundtable discussions which connect a wide range of third-party expert speakers to Members.

Stewardship 360 projects provide Members with a practical mechanism to address a wide range of material issues. These extend beyond Company-specific collective engagement to address broader, often thematic, issues or to ensure well-functioning markets, and

include Working Groups.

Chapters 1 and 2 outlines the procedures which the Forum will typically follow to propose, evaluate and manage Engagements.

Chapters 3, 4, 5 and 6 reflect updated reviews by the Legal Panel of the key regulatory and legal considerations which need to be taken into account to inform the procedures used in Engagements as well as the procedures the Forum follows in its other Member activities.

Chapter 7 is a new chapter which outlines how the Forum manages non-collective engagement activities.

While this Framework is typically formally reviewed every three years, the Forum's procedures for evaluating and managing Engagements and other activities are regularly reviewed in light of practical experience as well as any changes to law and regulation, if applicable. This version of the Framework takes into account all applicable law and regulation as at 12 December 2022.

The full Framework is available to Members and a summary version is made publicly available on our website.

Investor Forum

Collective Engagement: 10 Key Features

1. **Trusted facilitator, not an adviser** – The Forum acts as a trusted facilitator for, and not an adviser to, Members, as agreed in their Membership application. Members retain full voting and other investment rights in respect of their shareholdings. No control is ceded to the Forum or other Members.
2. **Opt In/opt out** – A Member actively chooses to participate in an Engagement involving a Company in which it is a shareholder. It can also choose to opt out of an Engagement at any time.
3. **Complementary to Member's direct engagement** – Members may, and are actively encouraged to, continue their direct interaction with Companies outside the Forum's auspices. However, in unusual circumstances where its individual actions may be inconsistent with, or prejudicial to, the Engagement and other Members, a Member could be asked to leave an Engagement.
4. **Confidentiality** – Members must agree to comply with confidentiality obligations during an Engagement. Disclosure of identities and public statements must be agreed by participants during an Engagement. For avoidance of doubt this does not restrict the Forum from disclosing information to regulators when required.
5. **Nominated gatekeeper** – Members name a nominated gatekeeper. They retain full control as to whether or not they receive information, who receives that information, whether they want to participate in an Engagement, which individuals participate, and their option to withdraw from an Engagement.
6. **Bilateral engagement model** – A bilateral model is the normal method of communication between the Executive and Members involved in Engagements.
7. **No inside or competitively sensitive information** – The Forum is not intended to be a means of facilitating the exchange of inside or competitively sensitive information (i.e., commercially sensitive information that relates to sales, pricing, margins, particular customer relationships or forward-looking business strategies that could be used by recipients to inform their own commercial decisions) between Companies and Members or among Members themselves. Participation in an Engagement will not exempt any person from any law or regulation governing either inside or competitively sensitive information.

The Forum will actively seek to avoid obtaining inside information from Companies and Members and will not pass on any inside information that it may receive to Members without their prior consent and in circumstances where it would be lawful to do so, e.g. where the disclosing party would be acting in the proper course of its employment, profession or duties. In the event that inside information is, or may possibly have been, received or generated by the Forum, the Executive will follow specific procedures to identify and quarantine this information and take specialist advice when required. Any person proposing to disclose inside information in the context of an Engagement will be responsible for ensuring that disclosure complies with applicable law and regulation. In the event that any competitively sensitive information regarding an entity is received by the Executive from Members or a Company it would not be disclosed to any other Member, Company or third party unless it was first suitably aggregated such that it was no longer competitively sensitive.

- 8. No-concert party and no-group** – Members must agree that they will not, while participating in an Engagement under the auspices of the Forum, form a concert party in respect of the relevant Company, including by requisitioning or threatening to requisition the consideration of a board control-seeking proposal or seeking to obtain control of the relevant Company, or otherwise form a group that could trigger regulatory reporting or other regulatory requirements.

Each Member participating in an Engagement will be required to confirm that it will adhere to the Forum's no-concert party and no-group undertaking contained in Appendix II (the "No-Concert Party and No-Group Undertaking") in respect of the Company which is the subject of the Engagement. Engagements are monitored and Members can be asked to leave (or if necessary, be expelled) from an Engagement if their behaviour compromises the Forum's activities. The Executive will engage with the Takeover Panel and seek specialist advice when required.

- 9. Heightened procedures** – At various points in an Engagement heightened procedures may be deemed necessary, including seeking specialist advice. Particular attention will be paid to the case of Engagements involving Companies with dual U.S. or other foreign listings and Companies that are subject to the U.S Bank Holding Company Act.
- 10. Conflict of interest avoidance** – The Forum maintains control procedures to avoid conflict of interests which could impact either its own governance or individual Engagements, encompassing policies and procedures for the Executive and the Board. Members are reminded of their own obligations to manage conflicts of interest and should note that participation in an Engagement is not a substitute for, and does not release them from, those obligations.

Investor Forum Collective Engagement: Summary of Procedures

Phase 1: Collective Engagement Proposal

The decision whether or not to formally initiate an Engagement normally follows the steps summarised below, presented in detail in Chapter 1:

- **Step 1: Engagement Proposals by Members** – Members of the Forum can propose (a “Proposal”) a collective engagement (an “Engagement”) with a UK-listed company (a “Company”) under the auspices of the Forum;

OR

- **Engagement Proposals by the Executive** – The Forum's Executive reserves the right to propose an Engagement to Members for consideration;

OR

- **Engagement Proposals by Companies** – Any UK-listed Company can propose an Engagement between itself and Members.
- **Step 2: Engagement Proposal evaluation** – The Engagement Proposal will be evaluated by the Executive against the following criteria:
 1. **Principles** – Is the proposed Engagement consistent with the Forum's principles?
 - Is it proactive and grounded in economic rationale;
 - Is there a long-term focus; and
 - Is there likely to be a constructive solution?
 2. **Prospect of support** – Is there a reasonable prospect of securing sufficient support among the Company's largest shareholders to foster a meaningful dialogue with the Company?
 3. **Safe and secure** – Is there a reasonable expectation of conducting the Engagement in accordance with the Forum's policies and procedures and all applicable laws and regulations?
- **Step 3: Engagement Proposal consultation** – Once the Executive has determined that the proposed Engagement is consistent with the criteria above, it will undertake a consultation with major shareholders of the Company to determine the level of Member support for the proposed Engagement.
- **Step 4: Engagement Proposal decision** – After consultation with Members, taking note of any particular risks which could require heightened procedures and of the Forum's own resourcing constraints, the Executive will decide whether or not to proceed with the proposed Engagement.

Phase 2: Collective Engagement Management

Once the decision has been taken to proceed, an Engagement will typically follow the process summarised below, and presented in more detail in Chapter 2:

- **Step 1: Engagement Initiation** – All Members will be canvassed to determine whether they are shareholders and, if so, if they would like to participate in the Engagement. Non-Members who are key shareholders in the relevant Company may be invited to join an Engagement. Upon entering an Engagement, all participants will be required to agree or

re-affirm their agreement to abide by the Forum's Code of Conduct, No-Concert Party and No-Group Undertaking and any specific procedures of the Engagement (including any heightened procedures). Members can exit an Engagement at any time by notifying the Forum in writing.

- **Step 2: Engagement Strategy formation** – The Executive will typically communicate on a bilateral basis with Members who have joined the Engagement to develop a range of constructive outcomes that are consistent with long-term, strategic objectives and an indicative timetable for the Engagement (the "Engagement Strategy"). This process helps to foster an open dialogue in which opinions are robustly presented to the Executive. Communicating on a bilateral basis also provides an extra layer of protection against unintended receipt, communication or generation of inside information. Similarly, this approach also protects against unintended receipt or communication of commercially sensitive information and the creation of a concert party (under the Takeover Code) or group (for SEC or other legal or reporting requirements). A strategy will be developed in an iterative fashion which is intended to impartially describe the range of views, but does not seek to form agreement between Members, in particular in relation to their investment or voting decisions.
- **Step 3: Procedures for Company contact** – Communication with the Company will be undertaken by the Executive in a constructive manner, with the aim of helping the Company to understand the range of views of participants regarding the Company's long-term potential and obstacles to realising this potential. The goal is to collaborate to frame positive solutions to cope with real issues and to invite participation of the Company's entire board in these discussions. In so far as within its control, the Executive will seek to keep communication between itself and the Company confidential with the Members participating in the Engagement. However, escalation strategies will be considered and agreed with Engagement participants when necessary, which could involve public communications.
- **Step 4: Engagement monitoring** – Engagements will be monitored for consistency with the Forum's principles and Code of Conduct and with the objective of maintaining a safe and secure environment. Heightened procedures can be invoked if necessary, and specialist advice or regulatory guidance sought as required. An Engagement can be altered or terminated at any time.
- **Step 5: Engagement conclusion** – Conclusion of an Engagement will be considered if the outcome(s) specified in the strategy are achieved; it is determined that they are unlikely to be achieved; there is no longer sufficient Member support to pursue the Engagement; the Engagement is determined by the Executive to be inconsistent with or to exceed the remit of the Forum; continuation of the Engagement may be prejudicial to the Forum or its Members as a whole or any other reason in the Forum's sole discretion. A communication strategy will be agreed, including the possibility of public statements if a satisfactory outcome is not achieved.
- **Step 6: Engagement evaluation** – The Executive will undertake a review of each Engagement to better understand the reasons for success and failure and lessons to be learned. As far as is practicable and agreed by participants, aspects of finished Engagements will be made public, typically in an annual report, so that they contribute to the wider discussion of stewardship and corporate governance. Periodic review of lessons learned, in discussion with wider stakeholders, will be undertaken to see how the process of engagement can be enhanced.



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