WHITE & CASE

August 2019

Corporate Governance

Key developments

This briefing is the first in our series of briefings on corporate governance and is designed to provide a synopsis of topical corporate governance matters impacting companies in the UK. Future briefings will track the development of these matters and identify new matters of interest.

This initial briefing focuses on key matters arising since September 2018. If you would like further details on a topic, please contact a member of our Public Company Advisory team, whose details can be found at the end of this paper.

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Remuneration policy and remuneration report disclosures

Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 (the "**Regulations**")

June 2019

The Regulations implement articles 9a (right to vote on a company's remuneration policy) and 9b (information to be provided and the right to vote on the remuneration report) of the Shareholder Rights Directive II, which aims to further strengthen shareholder rights in relation to director remuneration reporting.

Many of the requirements of the Regulation are already well established within the UK's framework for the reporting of director's remuneration.

Key changes to the **remuneration policy**, which were not previously part of UK law, include:

- Additional details to be provided on when shares awarded to directors may be granted or exercised.
- Policy must provide an indication of the duration of directors' service contracts.
- Policy must set out the decision-making process through which it has been determined and highlight changes compared to the previous policy.
- The company must put the date and results of the shareholder vote on the new policy on its website as soon as possible (in our view, if a company already provides an announcement of its poll vote for the purpose of section 341 of the Companies Act 2006, a separate announcement is not required).
- If the company loses the shareholder vote on the policy, it must bring a revised policy to another vote within the year.

Key changes to the **remuneration report** (which were not previously part of UK law) include:

- Report must compare the annual change of each director's pay to the annual change in average employee pay over a rolling five-year period.
- Split of fixed and variable pay for each director to be shown as two additional columns to the existing "Single Figure" table.
- Report must set out changes made to share options granted or offered and the main conditions for the exercise of these compared to the previous year.

Unquoted traded companies are now within the scope of the directors' remuneration disclosure requirements.

The Regulations do not apply to companies whose shares are traded on AIM (as AIM is not a regulated market).

Next steps

- Prepare for new remuneration policy and remuneration report disclosures:
  - New requirements concerning the preparation and content of the **remuneration policy** apply to any new remuneration policy brought to shareholders for approval on or after **10 June 2019**.
  - The first **remuneration reports** that will be required to include the new content will cover financial years ending on or after **9 June 2020**.
- Review the BEIS FAQ document, which focuses on the implementation of remuneration reporting and GC100 and Investor Group revised directors' remuneration reporting guidance (see below).

Further information: Click **here** to access a copy of the Regulation, **here** for a copy of the BEIS Q&A and **here** for a copy of the GC100 and Investor Group guidance.

Audit market and corporate reporting

The Government has commissioned three reviews to comprehensively review and update the regulatory framework for audit and corporate reporting:

Review	Purpose	Status
Independent Review of the Financial Reporting Council ("**FRC**") by Sir John Kingman: **Kingman Review**	□ Independent root and branch review of the FRC	□ Report published on 18 December 2018 □ BEIS proposes to consult on recommendations of Kingman review in late 2019
The Competition and Markets Authority ("**CMA**") market study on the statutory audit market: **CMA Market Study**	□ To address competition problems in the UK audit industry	□ Market study launched in October 2018 □ Update paper published on 18 December 2018 regarding market study of the statutory audit market □ CMA published its final report on 18 April 2018, taking into account recommendations of the Kingman Review □ BEIS launched a consultation on CMA's recommendations for reform of the statutory audit market on 18 July 2019. The consultation closes 13 September 2019
Independent Review into the Quality and Effectiveness of Audit by Sir Donald Brydon: **Brydon Review**	□ To ascertain what the standards and requirements should be for the UK audit profession in the future □ To provide recommendations as to what more can be done to ensure audits meet public, shareholder and investor expectations	□ Report published on 18 December 2018 □ Consultation/call for views launched on 10 April 2019 – closed on 7 June 2019

Additionally, the BEIS Committee has undertaken its own inquiry into the Future of Audit, setting out its recommendations for audit reform and feeds into the above reviews.

Kingman Review

December 2018

The report's proposals are extensive (83 recommendations) and wide-ranging, including:

- **Replacement of the FRC as soon as possible with an independent regulator** reporting directly to Parliament with the Chair and Chief Executive subject to a pre-approval hearing with the BEIS Select Committee – the 'Audit, Reporting and Governance Authority' or "**ARGA**".
- The new body's corporate reporting review work should extend to cover the entire annual report (including corporate governance statement).
- The new regulator should be given **extensive new powers**, e.g. to direct changes to accounts without having to go to court; removal of auditor.
- The government should **review and possibly extend the definition of a 'public interest entity'**.
- Corporate governance requirements such as **viability statements** and **the UK Stewardship Code** should be **fundamentally reformed or possibly abolished**.
- The new regulator should **promote the interests of consumers** of financial regulation.

Next steps

- Response papers published by CLLS and the Law Society, IA and ICSA.
- Audit Committee to monitor developments.
- Consider including status update in Board and Audit Committee Corporate Governance briefings.
- BEIS to undertake a further consultation on the recommendations of the Kingman review.

Further information: Click **here** to access a copy of the Kingman Review.

Competition and Markets Authority (CMA) audit market study

April 2019

The audit sector has come under increasing scrutiny following the collapse of BHS and Carillion in 2016 and 2018, respectively.

In October 2018, the CMA launched a new market study into statutory audit which identified the following contributing factors to a fall in audit quality:

- **Choice** – the dominance of the Big Four.
- **Long-term resilience of the sector** – the fact that the Big Four are "too few to fail".
- **Incentives** between audited companies, audit firms and investors (in particular, the fact that companies pick their own auditor).

In the CMA's "update paper" of December 2018, the following possible remedies were proposed:

- Legislation to **separate** audit from consulting services.
- 'Measures' to increase audit chair **accountability/scrutiny** of auditor appointment.
- A **'joint audit'** regime whereby at least two firms (one of which must be outside the Big Four) have responsibility for auditing the UK's biggest companies.
- A **market share cap** on the Big Four's access to major audit contracts.

In April 2019, the CMA published its final report on the UK audit industry with the following key recommendations:

- **Regulation of UK companies' audit committees** – audit committees should come under greater scrutiny by ARGA with the power to mandate minimum standards, request information from audit committees, appoint an observer and issue public reprimands.
- **Operational split of audit and non-audit practices** – requiring separate management, accounts and remuneration and an end to profit-sharing between audit and consultancy.
- **Mandatory joint audits** to increase the capacity of challenger firms to the Big Four. Challenger firms would work alongside the Big Four and be jointly liable for the result to increase choice in the market.
- A **five-year review** of progress by the regulator.

The government continues to consult on a number of the CMA recommendations; timetable still to be confirmed. Whilst the Brydon review of the UK audit market is continuing (due to be completed by end of 2019), a conclusion as to what steps to take may be a way off.

Next steps

- Audit Committee to monitor developments.
- Consider including status update in Board and Audit Committee Corporate Governance briefings.

Further information: Click **here** to access a copy of the update paper and **here** for responses received.

BEIS Report on the Future of Audit

Ongoing

In April 2019, the BEIS Committee published a report setting out recommendations for audit reform, which include the following:

- Detection of fraud should be a priority within an audit.
- Scope of audit should cover the entire annual report.
- The auditor should be required to present at the AGM in order to generate shareholder engagement.
- CMA should aim for a structural split or, at the very least, an operational split between audit and non-audit businesses and if operational separation does not produce improvements, there should be a full structural break-up of the Big Four into audit and non-audit businesses.
- Independent appointment of auditors should be considered if audit quality, choice and resilience remain a problem.
- More power given to the FRC (and its successor ARGA) over audit fees.
- Reduced audit rotations to seven-year non-renewable terms.
- The government issued its formal response to the Report in June 2019, welcoming the proposals, but noting that it would be waiting for Sir Donald Brydon's report before considering what action to take.

Next steps

- Audit Committee to monitor developments.
- Consider including status update in Board and Audit Committee Corporate Governance briefings.

Further information: Click **here** for a copy of the BEIS Committee Report and **here** for the BEIS call for consultation.

The UK's company registration framework

BEIS consultation on reforms to Companies House register

Ongoing

On 5 May 2019 BEIS launched a consultation on new proposals to enhance the role of Companies House, increase the transparency of UK corporate entities and help combat economic crime. The Consultation closed on 5 August 2019. If all proposals are implemented, this would amount to the most significant reform of the UK's company registration framework since the register was created in 1844 – some of the proposed changes will go to the core of the Companies Act 2006 (e.g. director identity verification).

The reforms aim to address concerns around:

- accuracy of information held at Companies House;
- abuse of personal information on the register;
- misuse of UK registered entities as vehicles for crime; and
- limited use of cross checks between Companies House and other public and private sector bodies.

The BEIS consultation sought views on proposed reforms set out in five main parts:

- Knowing who is setting up, managing and controlling companies;
- Improving the accuracy and usability of data on the register;
- Protecting personal information on the register;
- Implementation; and
- Ensuring compliance, sharing intelligence and other measures to deter corporate entities abuse.

Next steps

- Legal and Company Secretariat to monitor developments for potential changes to Companies House registers.
- The Government to set out its next steps in a formal response following the closure of the BEIS Consultation.

Further information: Click **here** for a copy of the Government's response to the Joint Committee's Report and **here** for the draft Registration of Overseas Entities Bill.

Obligations for proxy advisors

FCA's new responsibilities over proxy advisors

June 2019

The revised Shareholder Rights Directive (SRD II) sets out new obligations on proxy advisors. In light of the important influence proxy advisors have on how shareholders vote, the obligations under SRD II aim to encourage greater transparency in the way proxy advisors carry out their work and the accuracy and reliability of their activities.

Proxy advisors are now required to:

- publically disclose the code of conduct which they apply, and report on its application;
- publically disclose information about the preparation of research advice and voting recommendations, to give clients assurance about the accuracy and reliability of their services; and
- identify and disclose, conflicts of interest or business relationships that may influence their research.

FCA now has power to discipline and investigate proxy advisors who contravene SRD II (implemented in the UK by the Proxy Advisors (Shareholders' Rights) Regulations 2019 which came into force on 01 June 2019.

Next steps

- For listed companies, Legal and Company Secretariat to monitor developments.

Further information: Click **here** to access a copy of the Proxy Advisors (Shareholders' Rights) Regulations 2019.

Case Study: Cathay International Holdings Limited

Cathay International Holdings Limited ("**Cathay**") is a healthcare holding company with a premium listing on the LSE, operating through a number of subsidiaries. On 3 June 2019, the FCA published decision notices in respect of Cathay and two of its directors for breaches of certain Listing Rules and DTRs. The FCA was of the view that the breaches by Cathay to be particularly serious, noting that it was unable to comply with its obligations as a listed company, and that its procedures, systems and controls were so inadequate that it was unable to keep the market properly informed of its financial performance, with the resulting risk that investors would make decisions based on incomplete information.

Below we summarise the actions that led to the Listing Rule and DTR breaches.

Breaches

- **Listing Principle 1**: requires a listed company to take reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations. In the FCA's view:
  - Cathay did not have adequate procedures, systems and controls to comply with its obligations under Chapter 2 of the DTRs in relation to how it would forecast and monitor how it was performing against market expectations of its financial performance. In particular, Cathay had been advised by its appointed advisers in relation to its disclosure obligations and Cathay gave an assurance that it would monitor its financial performance. However, Cathay did not take reasonable steps in this regard.
  - Until 6 December 2015, Cathay failed to produce any completed year-end forecasts covering the whole of its business as to its expectations of its financial performance for the financial year ending 31 December 2015.
  - Performance monitoring did not include any means of assessing whether the performance of Cathay constituted inside information.
  - Cathay's senior management appreciated the risk that their actions or inaction could result in a failure to take reasonable steps to establish and maintain adequate procedures, systems and controls, and failed adequately to mitigate that risk. Cathay thereby acted recklessly.
- **DTR 2.2.1R and Premium Listing Principle 6**: an issuer is required to notify the market as soon as possible of any inside information which directly concerns it (unless reasons for delay apply) and issuers should carefully and continuously monitor whether changes in circumstances of the issuer are such that an announcement obligation has arisen. Premium Listing Principle 6 requires a listed company to communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares. In the FCA's view:
  - As a result of the failings in its procedures, systems and controls, Cathay failed to disclose to the market as soon as possible a material change in its actual and expected financial performance.
  - Cathay's senior management were aware, including from advice given to Cathay by its appointed advisers, of the risk of a breach if Cathay did not make an appropriate disclosure but failed to do so. Cathay thereby acted recklessly.
  - Cathay recklessly breached Premium Listing Principle 6 when it failed to release relevant information to the market, and so created a false market in its listed equity shares.
- **Listing Principle 2**: FCA considered that Cathay breached Listing Principle 6, which requires a listed company to deal with the FCA in an open and co-operative manner. In the FCA's view:
  - Evidence that information provided to FCA about forecasting figures were materially different to the actual process followed.

Penalty

- Cathay was fined £411,000 for breaches of Listing Principle 1, DTR 2.2.1R, Premium Listing Principle 6 and Listing Principle 2.
- As CEO was knowingly concerned in Cathay's breaches and acted recklessly, CEO fined £214,300.
- Finance Director was also knowingly concerned in breach of Premium Listing Principle 6, so was fined £40,200.

Further information: See **here** for FCA Press Release and final notices.

Effectiveness of independent board evaluations

ICSA publishes consultation on independent board evaluations

Ongoing

BEIS has requested a review of the effectiveness of independent board evaluations, to address the concerns that there is a significant variation in the standard and thoroughness of evaluations.

In May 2019, ICSA published a consultation paper.

The purpose of the review is to assess the quality of independent board evaluations and seek views on whether there is a need for:

- A **voluntary code of practice** for providers of independent board evaluation services.
- **Voluntary principles** to be applied by listed companies when engaging external reviewers.
- **Guidance for listed companies** on disclosure of the conduct and outcomes of their board evaluations in accordance with the 2018 UK Corporate Governance Code.

Responses to the consultation report closed on 5 July 2019.

Next steps

- Legal and Company Secretariat to monitor developments to see how the annual review process may be impacted and continue to assess whether the current form of evaluations (internal and external) are effective.

Further information: Click **here** to access a copy of the Consultation.

The Modern Slavery Act 2015

Annual Report on Modern Slavery and review of the Modern Slavery Act 2015

Ongoing

The UK Modern Slavery Act 2015 requires large businesses[1] to publish an annual statement outlining any steps such business has taken to prevent modern slavery in their operations and supply chains.

In March 2019, the UK Government published updated guidance on making an annual modern slavery statement.

The Government also commissioned an independent review of the Modern Slavery Act 2015. The Independent Review's Final Report was laid before Parliament in May 2019, and made more than 80 recommendations.

On 9 July 2019, the Government published its response to the independent review of the Modern Slavery Act. The Government has:

- Accepted certain recommendations, including:
  - the creation of a central government registry of all published statements;
  - updating statutory guidance following consultation, such as clarifying the organisations in scope and the contents of the statements;
  - requiring organisations to consider due diligence beyond first and second tier suppliers; and
  - encouraging companies to express commitments for future steps on specific due diligence.
- Rejected other recommendations, such as:
  - to designate responsibility for the statement to an individual board member;
  - to amend the Companies Act 2006 to place a duty on companies to refer to their modern slavery statement in their annual report; and
  - the creation of an offence under the Company Directors Disqualification Act 1986.

On a number of the recommendations, the Government has launched a consultation, open until **17 September 2019**, to address:

- the contents of statements;
- transparency, compliance and enforcement (including the impact of a single reporting deadline and penalties for failure to comply); and
- public sector supply chains.

On enforcement options, the Government emphasised that it was already working to tackle non-compliance by carrying out an audit of thousands of companies; further to this audit, non-compliant organisations risk being publicly named.

Next steps

- Review your company's modern slavery risk assessments, procedures and policies and bolster if necessary to ensure clear reporting lines and contents.
- Ensure that your company's Modern Slavery Statement is suitably detailed (considering all six areas listed under s.54 of the Modern Slavery Act 2015) and is prominently displayed on the company website.
- Consider responding to the Government consultation.
- If your company has reported that it has taken no steps to address modern slavery, consider how you will be impacted by a change in legislation and what steps you will need to take to comply

Further information: Click **here** to access a copy of the second interim report, **here** to access a copy of the final report and **here** to access guidance on publishing an annual modern slavery statement.

1 Any body corporate or partnership, wherever formed or incorporated that (i) carries on a business (or part of a business) in the UK; (ii) supplies goods or services; (iii) with a minimum annual turnover of £36 million.

2019 UK Stewardship Code

Consultation on draft 2019 UK Stewardship Code

April 2019

In January 2019, the FRC launched its consultation on the draft 2019 UK Stewardship Code (the "**Code**") and published its proposed revisions. This consultation closed on 29 March 2019.

Key proposed changes to the Code include:

- **New definition of 'stewardship'** which identifies the primary purpose of stewardship as looking after assets of beneficiaries that have been entrusted to the care of others.
- **Setting higher standards** for asset owners and asset managers regarding how stewardship responsibilities are integrated into investment processes.
- **Reference to environmental, social and governance (ESG) issues** which signatories will be expected to take into account when fulfilling their responsibilities.
- **More rigorous reporting requirements** which will require signatories to make public disclosures about their stewardship activities in two parts: (i) a Policy and Practice Statement upon signing the Code and (ii) an annual Activities and Outcomes Report.

In March and April 2019, the FRC received responses to its consultation and proposed revisions from the Pensions and Lifetime Savings Association ("**PLSA**"), the International Corporate Governance Network ("**ICGN**") and the British Private Equity and Venture Capital Association ("**BVCA**"):

- **PLSA** supports the general shift in the revised Code to a more stretching level and in particular supports the expansion of the Code to cover asset classes beyond equity, the explicit reference to environmental, social and governance factors and the differentiated guidance for different parts of the investment chain (including for service providers).
- **ICGN** supports a number of areas but also highlights areas for further consideration including: defining stewardship, time horizon, resourcing and a wider range of asset classes.
- **BVCA** believes the code is less applicable to private equity and venture capital firms because there exists already bespoke stewardship and governance practices (e.g. the Walker Guidelines for private equity firms).

In May 2019, the FRC received a response from the BEIS Select Committee, which believes that the Code overall has not been effective in encouraging long-term investment or engagement between investors and company boards. It recognises that whilst the new draft code is an improvement, it does not believe that it goes far enough and that the wording is strong enough to provide a platform on which the new regulator can build a reputation for proactively driving up standards – the Select Committee suggests that a new approach is considered.

Next steps

- On 9 July 2019, the FRC stated that the revised Stewardship Code will be published in October 2019.
- Update board on the proposed changes to the UK Stewardship Code in anticipation of their adoption.
- Consider increased threat of opportunistic shareholder activism arising from changes, particularly given the increased focus on ESG matters.

Further information: Click **here** to access a copy of the consultation, **here** for the PLSA response, **here** for the ICGN response, **here** for the BVCA response, and **here** for the BEIS response.

Energy and Carbon Reporting regulations

Guidance on Revised Environmental Reporting Guidelines

January 2019

The Government published updated Environmental Reporting Guidelines to help companies comply with their obligations under the Streamlined Energy and Carbon Reporting ("**SECR**") regime.

The SECR regime will apply in respect of financial years beginning on or after **1 April 2019**.

Changes require all UK quoted companies to report on their global energy use in addition to greenhouse gas emissions in their annual Directors' Report.

There are also requirements for large unquoted companies to disclose their annual energy use and greenhouse gas emissions and related information.

Next steps

- Consider whether the new disclosures apply and if so, how to go about recording and obtaining the data to be disclosed.

Further information: Click **here** to access a copy of the revised guidelines.

UK Corporate Governance Code

New UK Corporate Governance Code

January 2019

The UK Corporate Governance Code 2018 (the "**New Code**") supported by Guidance on Board Effectiveness has come into force, applying to accounting periods beginning on or after 1 January 2019.

Key changes are:

- **Workforce and stakeholder voice**: to support the move towards strengthening the voices of employees and other stakeholders in the boardroom, the board must describe in the annual report how the interests of the company's other stakeholders, and the matters set out in s.172 Companies Act 2006, have been considered in board discussions and decision-making.
- **Engagement with employees**: three options for increased employee engagement: (i) a director to be appointed from the workforce, (ii) a formal workforce advisory panel, or (iii) a designated non-executive director.
- **Voting opposition of more than 20%**: companies to consult with shareholders where more than 20% vote against a board recommendation for a resolution, to publish an update within six months of the vote and to include in the company's annual report a summary of the impact on the board of the shareholder feedback.
- **Over-boarding**: when making new appointments, the board should take into account other demands on directors' time.
- **Board evaluations**: the nomination committee section of the annual report should include details of the nature and extent of external evaluators' contract with the board and individual directors.
- **Diversity**: board to build diversity across all levels of the workforce.
- **Remuneration committee responsibilities expanded**: in connection with review of workforce remuneration and alignment of incentives with the company's culture.
- **Experience of chair of remuneration committee**: the chair must have served on the remuneration committee for at least 12 months prior to appointment as chair of that committee.
- **Tenure of the chair**: no longer than 9 years.
- **Culture**: board to assess and monitor culture.
- **Removal of some of the FTSE 350/small company exemptions**: in relation to board composition and annual re-election of directors.
- **Whistleblowing**: there should be means for the workforce to raise concerns and the board should ensure there are arrangements for follow-up.

Next steps

- Conduct gap analysis against the New Code.
- Governance documents (e.g. committee terms of reference, matters reserved for the board, CEO/CFO terms of reference) to be updated to take the New Code into account.

Further information: Click **here** to access a copy of the new Code and **here** for supporting Guidance on Board Effectiveness.

The Companies (Miscellaneous Reporting) Regulations 2018

Companies (Miscellaneous Reporting) Regulations 2018

January 2019

The Companies (Miscellaneous Reporting) Regulations 2018 came into force on **1 January 2019**.[2]

These Regulations require mandatory disclosures in the following areas:

- **S.172 statement**: "large companies" will need to include a statement in their strategic report describing how the directors have complied with their duty to have regard to the matters in section 172(1) (a) to (f) of the Companies Act 2006 when performing their duties. This statement must be made available on a website maintained by or on behalf of the company.
- **Engagement with employees, suppliers and customers statement**: companies with more than 250 UK employees are required to include a statement in their directors' report summarising how the directors have:
  - engaged with employees, how they have had regard to employee interests and the effect of that regard, including on the principal decisions taken by the company in the financial year; and
  - had regard to the need to foster the company's business relationships with suppliers, customers and others, and the effect of that regard, including on the principal decisions taken by the company during the financial year.
- **Corporate governance arrangements statement**: very large private and public unlisted companies must include a statement as part of their directors' report stating which corporate governance code has been applied, how it has been applied and any departures.
- **CEO pay ratio:** quoted companies with more than 250 UK employees are required to publish, as part of their directors' remuneration report, the ratio of their CEO's total remuneration to the median (50th), 25th and 75th percentile full-time equivalent remuneration of their UK employees and certain supporting information.
- **Share price impact reporting**: all quoted companies must illustrate, in the directors' remuneration policy within their directors' remuneration report, the effect of future share price increases on executive pay outcomes.

Next steps

- Ensure your team is aware of useful resources, including the BEIS FAQ guidance, the GC100 and Investor Group guidance and the FRC's Guidance on Strategic Report.

Further information: Click **here** to access a copy of the Regulations and **here** for access to the BEIS FAQ issued to help companies understand how they will be affected by the reporting requirements.

Click **here** for the revised GC100 and Investor Group directors' remuneration reporting guidance issued to take into account new Companies (Miscellaneous Reporting) Regulations 2018.

2 Amend the reporting requirements contained in Part 15 Companies Act 2006, in the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008 and the Communities Interest Companies Regulations 2005.

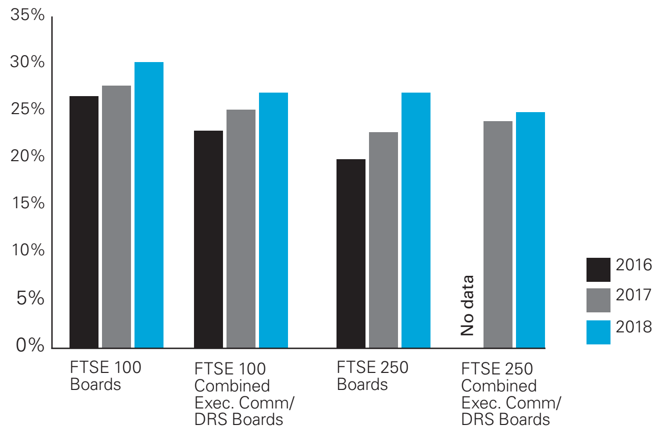
Investment Association to target diversity laggards and overgenerous executive pensions

Investment Association announces Institutional Voting Information Service (IVIS) policy changes on board diversity and pension contributions for executive directors

February 2019

- On executive pensions:
  - companies with year-ends on or after 31 December 2018 with remuneration policies that do not explicitly state that new executive directors will have their pension contribution set in line with the majority of the workforce will be 'red topped';
  - new executive directors from 1 March 2019 with pension contributions above the majority of the workforce will receive a 'red top' on the remuneration report; and
  - current executive directors receiving pension contributions of 25% of salary or more will be 'amber topped' on the remuneration policy and remuneration report.
- On diversity, IVIS will:
  - 'red top' FTSE 350 companies with fewer than two women on the board;
  - 'amber top' FTSE 350 companies with more than one woman, but less than 25% female total representation, on the board; and
  - 'amber top' FTSE Small Cap companies with less than 25% female total representation on the board.

FTSE Women Leaders: Hampton Alexander Review 2018



Next steps

- Consider whether your current corporate governance arrangements expose the company to the risk of any red or amber topped reports.
- Consider in conjunction with your Investors Relations team whether any shareholder engagement is needed.

Further information: Click **here** for the IVIS press release.

The Wates Corporate Governance Principles for Large Private Companies

Wates Corporate Governance Principles

December 2018

In December 2018, a new code for corporate governance of large private companies was launched which applies to accounting periods beginning on or after **1 January 2019**.

The Wates Corporate Governance Principles provide a framework to help private companies meet legal requirements and promote long-term success in the sector.

The six Wates Corporate Governance Principles for Large Private Companies are:

- **Purpose and Leadership**: an effective board both develops and promotes the purpose of a company and ensures its values, strategy and culture align with that purpose.
- **Board composition**: an effective board requires an effective chair and a balance of skills, backgrounds, experience and knowledge.
- **Director responsibilities**: each individual director, as well as the board as a whole, should have a clear understanding of its accountability and terms of reference.
- **Opportunity and risk**: a board should promote the long-term success of the company by identifying opportunities to create and preserve value and establish means of identifying and mitigating risk.
- **Remuneration**: a board should promote executive remuneration structures aligned to sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.
- **Stakeholders' relationships and engagement**: a board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce.

Next steps

- Private companies to ensure that the board is aware of Wates Principles and be prepared to report against the principles in 2020.
- Take opportunity to review the company's governance framework.
- Private companies to consider the role of the Company Secretary.

Further information: Click **here** to access the Principles.

Pensions and Lifetime Savings Association policy and voting guidelines for 2019

Pensions and Lifetime Savings Association (PLSA) publishes its 2019 Corporate Governance Policy and Voting Guidelines (the "2019 Guidelines")

January 2019

Most changes have been made to the section on UK Voting Guidelines to reflect the new UK Corporate Governance Code 2018.

Additional guidance now in the 2019 Guidelines includes:

- **Section 1 (Board leadership and company purpose)** – encourages closer analysis of company statements to assess whether there is clear evidence of corporate purpose, culture and values and how these align with the company's strategy.
- **Section 2 (Division of responsibilities)** – clear division of chair and CEO roles, greater consideration of director commitment to a company and disclosure of other commitments, and greater clarity of any relationships between independent non-executive directors and the company which could compromise the directors' ability to hold management to account.
- **Section 4 (Audit, risk and internal control)** – encourages greater attention to the composition and effectiveness of the audit committee.
- **Section 5 (Remuneration)** – encourages continued scrutiny of senior executive pay and pressure on companies to provide clear rationales for increases, and remuneration policies should be clearly linked to incentivising behaviours consistent with company purpose and values.

Next steps

- Ensure that the board is aware of the revised PLSA policy.
- Review internal policies and procedures and consider any amendments necessary to reflect the updated PLSA policy.

Further information: Click **here** to access the PLSA policy.

Electronic execution of documents

Bar Council publishes response to Law Commission consultation on electronic execution of documents

November 2018

The Bar Council agrees with the Commission's conclusion that electronic signatures are capable of meeting a statutory requirement for signature without the need for legislative reform.

Under current law, a deed must be signed in the physical presence of a witness.

The Law Commission is currently seeking views on whether:

- the government should set up a group of industry experts to monitor the use of electronic signatures and advise on changes which could help businesses as new technology emerges, e.g. virtual witnessing, or a move away from the concept of witnessing to possible technological equivalents such as creating computer-based signing platforms; and
- the concept of deeds is fit for purpose in the 21st century.

Next steps

- Keep track of any reforms to the law which enable your business to take advantage of available technology in executing documents.

Further information: Click **here** for access to the Bar Council's response

Click **here** for access to the Law Commission's consultation

Gender balance in FTSE leadership

Hampton-Alexander Review on improving gender balance in FTSE leadership

November 2018

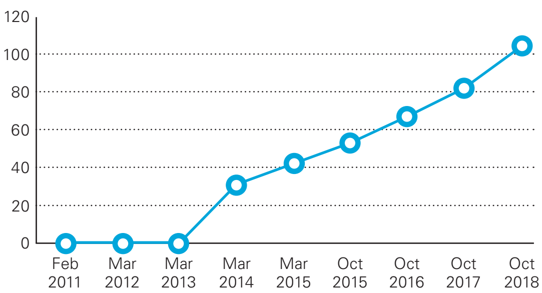
- In November 2018, the third annual Hampton-Alexander review on improving gender balance in FTSE leadership was published.
- Key takeaways include:
  - the number of women on boards reached 30% in 2018, compared with 28% in 2017;
  - if progress continues at the same pace, the FTSE 100 is "on track" to achieve the 33% target for women on boards by 2020;
  - within the FTSE 350, there are still five all-male boards and 74 companies with just one woman on their board; and
  - the FTSE 250 is currently not on target for 2020 board representation.

Next steps

- Ensure the board is aware of the need to improve board diversity in order to achieve the 2020 target.
- Review internal recruitment policies and consider what practical steps the board and/or company needs to take to meet the 33% target by 2020.

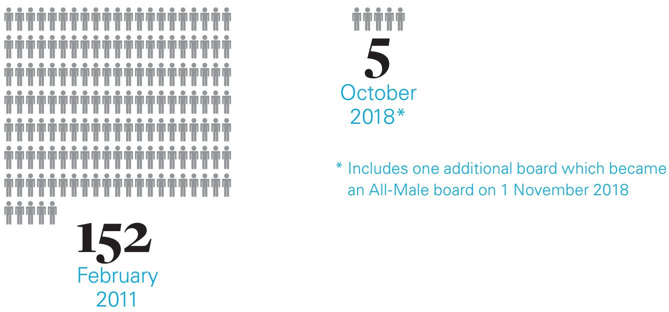
Further information: Click **here** for access to a copy of the review.

FTSE 350 – Number of companies with 33%+ Women on boards: Hampton Alexander Review 2018



Source: BoardEx October 2018

FTSE 350 – Number of All-Male boards: Hampton Alexander Review 2018



Source: BoardEx October 2018

Disclosures on energy consumption and efficiency

Energy Consumption and Efficiency Reporting Regulations

November 2018

In November 2018, the government published the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018, effective from **1 April 2019**.

These regulations require legal entities to make additional disclosures in the directors' report in relation to a company's energy consumption and efficiency.

Additional disclosures required from quoted companies are:

- the annual quantity of energy consumed by their activities;
- the proportion of emissions figures that relate to their UK activities; and
- the measures they took to increase their energy efficiency.

Exceptions to these reporting requirements are available where:

- The entity concerned consumed 40,000 kWh or less during the relevant period.
- The disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

Subsidiaries do need to report individually if they are included in a group report that complies with the regulations.

Unquoted companies (and LLPs) will be exempt if, for the relevant financial year and the year before that, they have two or more of the following:

- Turnover of not more than £36 million.
- A balance sheet total of not more than £18 million.
- Not more than 250 employees.

Next steps

- Prepare for the upcoming implementation of these regulations by updating relevant personnel and raising relevant internal policies and procedures to ensure that relevant data is recorded for reporting purposes.

Further information: Click **here** for access to a copy of the regulations.

Investor agenda for corporate ESG reporting

Principles for Responsible Investment (PRI) and the International Corporate Governance Network (ICGN) publish paper on investor agenda for corporate ESG reporting

October 2018

Despite recognition of the importance of environmental, social and governance (ESG) reporting, there is no consensus on the treatment and inclusion of ESG factors in company disclosure and reporting.

A group of leading investor organisations has come together to provide guidance and an investor's perspective on ESG reporting issues.

Key points raised in the discussion paper are:

- There is a **clear business case for ESG reporting** – such reporting would help companies to identify risks and opportunities.
- There is no single set of metrics or framework which would satisfy all users of ESG data. But this should not dissuade companies from seeking to **identify and publish material ESG issues and relevant KPIs in annual reports**.
- Investors (from value perspectives) and companies (from strategy and value-creation perspectives) need to think more about systemic issues, including the **Task Force on Climate-related Financial Disclosures (TCFD) recommendations**, the **UN Sustainable Development Goals (SDGs)** and their links to individual companies.
- The paper goes on to identify a set of **key elements of corporate ESG reporting** and how to report on them. Elements identified include: terminology; purpose; board responsibility, stakeholder engagement; audience; KPIs; forward-looking information and materiality.

Next steps

- Ensure that the board are aware of the themes arising from this paper.
- Look to adopt the suggested approach in corporate ESG reporting.
- Consider the impact this investor agenda may have on shareholder activism.

Further information: Click **here** for access to a copy of the paper.

Update on business model, risk and viability reporting guidance

FRC publishes "where are we now?" review of business model and risk and viability reporting

October 2018

Following the publication of FRC guidance on business model disclosures and risk and viability disclosures (in October and November 2017 respectively), the FRC has now reviewed how reporting has progressed and how companies responded to suggestions for good practice disclosure presented in that guidance.

- **Business model reporting**:
  - despite some improvement, investors still emphasise the need for reporting to be more consistent and clearly linked throughout the annual report; and
  - successful business model disclosures often acted as a guide for the content of the rest of the report.
- **Risk reporting**:
  - there continues to be a lack of detail in certain areas such as mitigating actions and links to the business model and KPIs, and on Brexit preparedness, including the current stage of implementation of mitigating activities and numerical breakdowns to assess impact.
- **Viability reporting:**
  - a lack of consistency in viability statements means they do not always provide investors with useful information and continued focus on the quality of the disclosure is required; and
  - not many companies have adopted the recommended two-stage approach to provide (i) an assessment of viability and (ii) an assessment of prospects.

Next steps

- Ensure that the board is aware of these suggestions for good practice reporting.
- Revise internal procedures and reporting practices to ensure that the standard of reporting as recommended in the FRC review is met.

Further information: Click **here** for access to a copy of the review.

Recognised corporate governance code – requirement for all AIM companies

AIM companies must apply a recognised corporate governance code

September 2018

- AIM Rule 26 has been amended such that, from **28 September 2018**, AIM companies must disclose details of the recognised corporate governance code that it has adopted and how the company complies with this code or, where it deviates, its reasons for doing so ("comply or explain").
- The LSE has not provided a prescribed list of corporate governance codes.
- The QCA Corporate Governance Code and the UK Corporate Governance Code are established benchmarks which AIM companies may wish to adopt.
- Disclosures must be made on the company's website and reviewed on an annual basis.

Next steps

- If relevant, consider what corporate governance code best suits your organisation's needs.
- Conduct a gap analysis against the relevant code.
- Ensure that relevant "comply or explain" disclosures have been made and ensure procedures are in place for continual review of your company's compliance with its adopted code.

Further information: Click **here** for access to a copy of the AIM rules.

Analysis of board diversity reporting across the FTSE 350

FRC publishes Board Diversity Reporting analysis across FTSE 350

September 2018

- Analysis shows that overall the quality of diversity reporting has improved since 2012, when it was first included in the UK Corporate Governance Code.
- 98% of FTSE 100 companies and 88% of FTSE 250 companies have a board diversity policy.
- Roughly 20-30% of FTSE 100 and 10% of FTSE 350 companies are rated "best in class", demonstrating a maturity of approach to gender diversity and beginning to consider how to increase ethnic diversity.
- The FTSE 350 still has a long way to go, with many treating reporting as a compliance exercise rather than understanding the strategic importance of the issue.

Next steps

- Ensure that the board are aware of this analysis and the need to incorporate the FRC's recommended approach to diversity within your organisation.
- Ensure that diversity reporting has a suitably detailed and considered approach.

Further information: Click **here** for access to a copy of the analysis.

The White & Case UK Public Company Advisory ("**PCA**") team advises UK public companies on their day-to-day legal affairs. In particular, the team engages with listed companies outside of their transaction cycle and provides advice across a range of matters, with particular expertise in corporate governance and corporate advisory. The team is experienced in company secretarial matters and regularly provides support to non-legal functions (as well as legal and company secretarial teams) within PLCs. Our clients range in size and maturity from newly listed companies to mature companies and from small cap companies to global FTSE 350 companies.

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