WHITE & CASE

August 2023

Corporate Governance

Key developments

This briefing is the fifth in our series of briefings on corporate governance and is designed to provide a synopsis of topical corporate governance matters impacting companies in the United Kingdom. This briefing tracks the development of certain matters identified in our first, second, third and fourth briefings and outlines new matters of interest.

This briefing focuses on key matters arising since the start of the year. If you would like further details on a topic, please contact a member of our Public Company Advisory ("**PCA**") team, whose details can be found at the end of this briefing.

CONTENTS

FRC publishes updated Statement of Intent on ESG Challenges

The FRC published its ESG Statement of Intent, setting out its initiatives from the past two years and its plans for the future.

January 2023

The FRC has updated its ESG Statement of Intent, which was first published in 2021. The update sets out the FRC's efforts since 2021, both in the UK and internationally, to assist and support stakeholders and drive best practice for ESG reporting and disclosure. The FRC's work has been focused on meeting stakeholders' need for consistent and comparable reporting that can effectively inform decision-making. As such, their initiatives have been, and will continue to be, aimed at developing good practice standards, practical guidance and improved transparency.

Key ESG Activities

The FRC set out the key initiatives it has developed since 2021 to address ESG matters. At a glance, these include:

- Updating its Guidance on the Strategic Report to include climate-related financial risks and opportunities to align with the Taskforce on Climate-Related Financial Disclosures ("**TCFD**") and Streamlined Energy and Carbon Reporting ("**SECR**") requirements
- Reviewing TCFD and wider climate-related disclosures in the financial statements of 25 premium listed companies, and reporting on good practice and areas of improvement
- Publishing guidance and examples of best practice ESG reporting
- Integrating ESG considerations in its supervisory activities, such as in audit risk assessments
- Setting out practices that support auditors in considering climate-related risk
- Supporting the work of the International Sustainability Standards Board ("**ISSB**") through regular engagement and issuing responses to their work

What's Next?

The Statement of Intent also sets out ongoing challenges in ESG reporting and the FRC's planned efforts for 2023 and beyond. These include:

- Developing guidance and best practice on use of ESG data, particularly on the distribution and consumption of ESG data, examining how ESG data is communicated to the market, and how investors, regulators and other stakeholders engage with and consume ESG data to meet their needs
- Assessing materiality processes
- Updating guidance on climate-related risks for FRS 102 preparers
- Updating the Guidance on the Strategic Report
- Publishing a report on metrics and targets for four key industries
- Updating the UK Corporate Governance Code to recognise the growing importance of ESG reporting

Next steps:

The FRC plans to continue conducting reviews and developing best practice guidance to support ESG reporting, both domestically and internationally. Companies should ensure they consider any guidance ahead of preparing their annual disclosures.

Further information:

- Click **here** for a copy of the FRC's updated Statement of Intent on ESG Challenges.
- Click **here** for all of the FRC's published ESG work.

UK Government publishes updated guidance on the register of overseas entities

On 12 January 2023, the Department for Business, Energy and Industrial Strategy ("**BEIS**") published updated technical guidance for the registration and verification for overseas entities.

January 2023

BEIS updated its technical guidance on the register of overseas entities (the "**Register**") to include new sections on trusts, the annual duty for overseas entities to update the Register, and sanctions for non-compliance with the Economic Crime (Transparency and Enforcement) Act 2022 (the "**Act**"). BEIS' guidance aims to help overseas entities that own land in the UK, their beneficial owners and professional advisors by explaining the circumstances in which they must each register their details.

The UK government initially launched the Register on 1 August 2022 (see the **fourth** of our briefings on Corporate Governance Key Developments) as part of its measures under the Act to prevent non-UK incorporated companies using UK land to hide illicit wealth. The Act requires overseas entities to apply to be added to the Register if they are a registered proprietor of a qualifying estate in land in England and Wales which was acquired on or after 1 January 1999, and provide details about their beneficial owners and managing officers (see the **third** of our briefings on Corporate Governance Key Developments).

Duty to update the register

A registered overseas entity has a duty to ensure the information they have submitted to the registrar remains accurate. The overseas entity must deliver the following items to the registrar within 14 days after the 12-month period from either its initial date of registration or its previous update:

- Statements that it (i) has identified or failed to identify one or more registrable beneficial owners; or (ii) believes that anyone has become or ceased to be a registrable beneficial owner during the update period
- A statement that the entity has complied with the duty to take steps to identify registrable beneficial owners
- An overseas entity verification checks statement to confirm it has completed verification checks on all of the overseas entity's beneficial owners and managing officers with an agent assurance code to confirm the agent is authorised to file a verification checks statement for an overseas entity
- Name and contact details of an individual who may be contacted about the statements and information
- If part of the update includes information that a registrable beneficial owner or a person who became or ceased to be a registrable beneficial owner is a trustee: (i) the required information about the trust or as much as the entity is able to obtain; and (ii) a statement as to whether the entity has any reasonable cause to believe that there is required information about the trust that it has not been able to obtain

Information required about trusts

Overseas entities are required to provide the following information about the trust in the following scenarios:

- If a registrable beneficial owner meets the conditions of beneficial ownership by virtue of being a trustee, the entity must provide the name of the trust and the date on which it was created.
- If any person has been a registrable beneficial owner of the overseas entity through their relationship with a trust, the entity must provide the person's name and the date on which they became a registrable owner in that capacity.
- Where the (i) settlor, (ii) beneficiary and (iii) interested persons with rights to appoint or remove trustees of the trust are (a) an individual, the entity must provide their name, date of birth, nationality, usual residential address, and service address; and/or (b) a legal entity, the entity must provide their name, registered office address and service address.

Sanctions for non-compliance with the Act

Breaches of the Act result in sanctions for the overseas entity and either its officers in default or each of its officers. If the overseas entity:

1. Fails to update the register, both the entity and each of its officers in default commit an offence. If the entity's contravention continues, every officer of the entity regardless of their role in the initial offence are liable to pay a daily default fine

2. Fails to register itself by the end of the transitional period and cannot demonstrate it has an application for registration pending or the entity is exempt from registering, every officer of the entity may be liable to a fine or imprisonment or both
3. Fails to comply with notices and a person from the entity in purported compliance with a notice either intentionally or recklessly makes a materially false statement, every officer of the entity is deemed to be in default and may be liable to a fine or imprisonment or both
4. Adds inconsistent information to the Register, the registrar may require the entity to resolve the inconsistency within 14 days of receiving notice
5. Carries out false filings; if a person from the entity knowingly delivers or causes to be delivered a document or statement to the registrar that is misleading, false, or deceptive, that person is liable to a fine or imprisonment or both

Next steps:

The sections of the Act relating to updates and removal from the Register have not yet come into force, and currently there is no indication of when they will receive Royal Assent. This means that overseas entities who wish to update details or be removed from the Register are not yet able to do so.

Further information:

- Click **here** for a copy of the BEIS Guidance: Register of overseas entities – registration and verification.
- Click **here** for additional guidance by Companies House.
- Click **here** for a copy of the Economic Crime (Transparency and Enforcement) Act 2022.

Companies House detail plans to introduce software-only filing of annual accounts under new Economic Crime and Corporate Transparency Bill

On 10 February 2023, Companies House published a post discussing powers under the new Economic Crime and Corporate Transparency Bill (the "**ECCT Bill**"). The post considers the plans to introduce software-only filing of annual accounts after the introduction of the ECCT Bill.

February 2023

Companies can currently file accounts at Companies House via multiple methods, such as filing on web-based systems (e.g. WebFiling) or using the joint filing service with HMRC (Company Accounts and TaxOnline). As accounts become more complex, using software-only filing systems has been recognised as the best option to improve the efficiency and accuracy of information provided.

Companies House has stated that their goal is to "create a single, cost-effective, sustainable way of filing accounts" to improve security, transparency and traceability. Through the software, data will be electronically tagged and categorised to a "specialist accounts taxonomy" to make data analysis more streamlined and information more accessible by users, all of which will add value to the register as well as assisting the Companies House intelligence service in fraud detection.

The ECCT Bill will give the registrar of companies the power to instruct the electronic delivery of all filings at Companies House.

What do companies need to do?

The ECCT bill is currently on its third reading at the House of Lords and is yet to receive Royal Assent. Once the bill has been enacted, Companies House will create a timetable to incrementally roll out the changes. Until that point, Companies House has recommended that companies consider doing the following:

- As a director who uses an accountant to file annual accounts, discuss the software filing changes with the accountant to ensure compliance ahead of the incoming changes.
- As a self-filer, presenter or agent acting on behalf of companies and using paper filing or web-based filing, ensure a software package that covers your needs is found ahead of the incoming changes.

Next steps:

There is currently no timeline for making the software-only accounts a legal requirement and Companies House has ensured that there will be time to make the change after the Bill is passed and has received Royal Assent. However, companies can be proactive in this regard as the software is already available to be used.

Further information:

- Click **here** for the Companies House blog post regarding the move to software-based filings.
- Click **here** for details on the Economic Crime and Corporate Transparency Bill.

FTSE Women Leaders publish the second annual "FTSE Women Leaders Review"

On 28 February 2023, FTSE Women Leaders published the second "FTSE Women Leaders Review" 2022. The Review showed positive results across all the monitored categories.

February 2023

The FTSE Women Leaders Review is a government backed, independent, business-led framework. The Review monitors and sets recommendations about women's representation on boards and in senior leadership positions within FTSE 350 companies and the UK's 50 largest private companies.

The FTSE 350 has successfully met the 40 per cent voluntary target – women's representation on boards of FTSE 350 companies stands at 40.2 per cent, up from just 9.5 per cent in 2011. Remarkably, the 40 per cent target has been achieved three years ahead of the target end date. The highlights from the report are summarised below.

2022 Highlights

I. Women in leadership[1]

- The percentage of women in senior leadership positions[2]:
  - FTSE 100: 34.3% (increased by 1.8% from 2021)
  - FTSE 250: 32.8% (increased by 2.1% from 2021)
  - FTSE 350: 33.5% (increased by 2% from 2021)
  - 50 largest UK private companies: 34.3%
- The percentage of women on Executive Committees:
  - FTSE 100: 28.8% (increased by 2.9% from 2021)
  - FTSE 250: 25.7% (increased by 1.3% from 2021)
  - FTSE 350: 27% (increased by 2% from 2021)
- The number of all-male Executive Committees in the FTSE 350 reduced in 2022 to ten (decreased by six from 2021).

II. Women on boards[3]

- The percentage of women on boards:
  - FTSE 100: 40.5% (increased by 1.4% from 2021)
  - FTSE 250: 40.1% (increased by 3.3% from 2021)
  - FTSE 350: 40.2% (increased by 2.6% from 2021)
  - 50 largest UK private companies: 31.8%
- The number of FTSE 350 boards that met or exceeded the previous target of 33 per cent was a total of 319 boards in 2022 (increased by 41 from 2021).
- The number of women Chairs:
  - FTSE 100: 19 (increased by 3 from 2021)
  - FTSE 250: 36 (increased by 4 from 2021)
  - FTSE 350: 55 (increased by 7 from 2021)
- The number of women Senior Independent Directors was:
  - FTSE 100: 37 (increased by 5 from 2021)
  - FTSE 250: 93 (increased by 10 from 2021)
  - FTSE 350: 130 (increased by 15 from 2021)
- The number of women Chief Executive Officers:
  - FTSE 100: 9 (increased by 1 from 2021)
  - FTSE 250: 12 (increased by 2 from 2021)
  - FTSE 350: 55 (increased by 7 from 2021)
- Four companies in the FTSE 350 had both a woman CEO and woman Chair.
- The FTSE 350 is ranked second out of the 11 other indices considered in the Review in terms of the number of women on boards for 2022.

1 Figures as of 31 October 2022.
2 Definition: The Executive Committee & Direct Reports to the Executive Committee on a combined basis.
3 Figures as of 11 January 2023.

Looking forward

The Review has set out the following recommendations for companies to follow to continue to increase women's representation on boards and senior leadership positions.

- The voluntary target for FTSE 350 boards and FTSE 350 leadership teams has increased to at least 40 per cent women's representation by the end of 2025.
- FTSE 350 boards below the 33 per cent women's target should consider women when looking to fill future roles.
- FTSE 350 companies should have at least one woman as Chair or Senior Independent Director and/or one woman CEO or Finance Director by the end of 2025.
- Key stakeholders should continue to set best practice guidelines / use alternative mechanisms to encourage any FTSE 350 board that has not achieved the 33 per cent target to meet it.
- The scope of the Review is to be extended beyond FTSE 350 companies to include the 50 largest private companies in the UK by sales.

Next steps:

Given the success of the UK's voluntary, business-led approach it is unlikely that quota legislation will be introduced in the near term. FTSE 350 companies, and large private companies, should ensure that their policies include the 40 per cent target as part of their overall gender and diversity strategy.

Further information:

- Click **here** for the full FTSE Women Leaders Review report.

FRC publishes Three-Year plan

On 27 March 2023, the FRC published its three-year plan for 2023 – 2026. The plan set out its priorities, intended expenditure and headcount for the following two years.

March 2023

The FRC published its three-year plan, developed following a consultation with stakeholders on the draft plan released late 2022. Responses showed that stakeholders were broadly supportive of the FRC's overall approach to its responsibilities and commitment to delivering reforms. Such reforms are set out in the government's response to the White Paper on restoring trust in audit and governance.

The FRC states that they had anticipated the legislation creating the Audit, Reporting and Governance Authority ("**ARGA**") would have been enacted in 2023 but are now predicting it will be formally created in 2024. As such, they have reprioritised their work to focus on changes they can make using their existing powers and remit ahead of the transition from the FRC to ARGA.

Approach to regulation

The FRC announced their objectives across the four divisions: regulatory standards, supervision, enforcement, and corporate services between during 2023/2024.

1. **Regulatory Standards division**: responsible for UK and international policy influencing agenda, setting UK audit, assurance, ethical, Financial Reporting Standards accounting and technical actuarial standards, with the objective of promoting innovation in reporting. Actions include development and maintenance of standards and codes, including completion of the periodic review of the UK Financial Reporting Standard (FRS 102), review of the UK Corporate Governance Code and adoption of a revised International Standard on Auditing (UK) 500 Audit Evidence.
2. **Supervision division**: delivers the FRC's "monitoring and oversight" obligations, encompassing audit, accounting, corporate reporting and actuarial work. Supervision during the three years focuses on addressing strategic objectives, promoting improvements and innovation in corporate reporting and audit. Actions include undertaking audit quality and corporate reporting reviews and publishing a report on findings (including thematic review), implementation of the FRC Scalebox, and review of audit firms and responsible individuals who audit public interest entities.
3. **Enforcement division**: delivering timely and proportionate enforcement regimes, and ensuring that there is action taken against those who deliver poor quality reporting. This section supports root cause analysis to be fed into quality improvement plans. Actions include upskilling in audit enforcement procedures and publication of annual enforcement review to deliver transparency around enforcement actions and improve behaviours via messaging case outcomes.
4. **Corporate Services division**: focuses on supporting the effectiveness of all activities as part of the FCA's transformation objective. Actions include developing and implementing funding model and information management strategy to enable improved regulatory capacity and realise efficiencies.

Next steps:

The ARGA is now predicted to be enacted in 2024, but the FRC continues to acknowledge the uncertainty around the timing of the legislation. The FRC also published the Position Paper to set out the actions the FRC will take in the period before the ARGA is enacted to give stakeholders an idea of what to expect in the immediate future and will publish an updated workplan and timeline to support stakeholders' understanding of their activities and resource allocations in these areas.

The FRC have stated that when the timetable leading up to the enactment of the ARGA becomes clearer, they will communicate any changes to stakeholders.

Further information:

- Click **here** for the full FRC: Three-Year Plan report.
- Click **here** for the FRC's Position Paper.

Parker Review Committee publish annual update report on ethnic diversity on UK boards

On 13 March 2023, the Parker Review Committee (the "**Committee**") published a report regarding ethnic diversity in UK businesses. The study, carried out jointly with the Department for Business and Trade ("**DBT**"), considered the ethnic diversity of FTSE 350 boards through a voluntary census. The Committee has also announced new recommended targets to improve ethnic diversity within large UK private companies and FTSE 350 senior management teams.

March 2023

Background

The Committee published a report in 2017 that made various recommendations to improve ethnic diversity in the UK's leading companies. These recommendations included that all FTSE 100 boards should have at least one director from a minority ethnic background by 2021, and for FTSE 250 companies to achieve the same target by 2024 (dubbed the "one by 2021" target). The Committee has published its annual update for 2022 on the FTSE 350's progress towards meeting these targets.

Results

All FTSE 100 companies and 90 per cent of FTSE 250 companies responded to the survey. The key findings were:

- Ninety-six FTSE 100 companies achieved the "one by 2021" target by December 2022 (increased by seven since December 2021).
- Forty-nine FTSE 100 companies have more than one director from an ethnic minority background on their board.
- Sixty-seven per cent of FTSE 250 respondents had ethnic representation on their boards by December 2022 (increased by 12 per cent since December 2021).
- Directors from ethnic minority groups encompass 18 per cent of all FTSE 100 directors and occupy around 10 per cent of the key influential board roles (Chair and executive director positions).
- Directors from minority ethnic groups hold 11 per cent of board positions of FTSE 250 companies, including 34 Chair and executive director roles.

Overall, the Committee is pleased with the progress being made by the FTSE 350 to improve ethnic diversity on boards and in senior management positions.

New recommendations: FTSE 350 senior management teams

A voluntary recommendation posed by the Committee states that, by December 2023, each FTSE 350 company should set an appropriate target for the percentage of its senior management team[4] who should be from an ethnic minority background, to be achieved by December 2027. The aim of the recommendation is to ensure activities to improve board diversity are matched by actions at all levels of the company.

Additionally, FTSE 350 companies are expected to set out their chosen target in their annual reports from 2024 onwards.

New recommendations: large private companies

The Committee have, for the first time, distributed recommendations to 50 of the UK's largest private companies. These companies must, by December 2027:

- Have at least one ethnic minority director on their board
- Set their own targets for the percentage of its senior management team who are from an ethnic minority background

These private companies will be requested to provide data on the inclusion of ethnic minorities from December 2023 and should also report on the progress against these targets annually in their company reports and to the Committee.

Next steps:

Companies, particularly large private companies, should expect continued focus and attention on ethnic diversity and take a pro-active approach to encouraging and supporting ethnic diversity not just at the board level, but also within senior management teams. This includes setting and measuring targets and providing transparency in its reporting to stakeholders.

Nomination Committees should ensure that they are aware of the market expectations in respect of targets, revise their policies and report against them accordingly.

Further information:

- Click **here** for the full report from the Parker Review Committee.

4 Defined as 'members of the executive committee ad senior managers who report directly to them.'

Economic Crime and Corporate Transparency Bill – new corporate offence amendment

On 11 April 2023, the Home Office announced that it had tabled an amendment to the Economic Crime and Corporate Transparency Bill (the "**ECCT Bill**"). The proposed amendment would have created a new offence to prevent fraud and false accounting offences as committed by employees or agents.

April 2023

In March 2023, the government published the Economic Crime Plan 2023 – 2026, setting out new actions to improve the UK's response to economic crime through enhanced cooperation between the public and private sectors. The Home Office proposed an amendment to the bill which would create a new corporate criminal offence for failure to prevent fraud and false accounting offences committed by employees or agents. Additionally, the amendment would follow the Law Commission's 2022 "Options Paper: Corporate Criminal Liability" regarding options for reform of the law relating to corporate criminal liability, including the expansion of bribery and tax evasion offences.

Failure to prevent fraud offence

The new proposed offence provides that an organisation will be in breach if an employee or an agent ("associated person") commits a specified fraud or false accounting offence under UK law, where an employee or agent commits a specified fraud offence for the organisation's benefit (or another person to whom they provide services on behalf of the organisation).

During the reporting stage of the ECCT Bill, the "failure to prevent" offence was updated in two ways: firstly, organisations will be held accountable for failing to prevent one of the principal money laundering offences, in addition to failing to prevent fraud. Secondly, the applicability of the offence to "large corporate bodies" only has been removed and as such, the new offence will apply to companies regardless of their size.

The organisation will have a defence if it can prove that it had reasonable fraud prevention procedures in place, or that it was reasonable not to have such procedures. There will be no requirement for knowledge of, or an order to commit, the fraud itself. It is expected that the government will publish guidance as to reasonable preventative measures prior to enactment.

The maximum penalty for a convicted organisation will be an unlimited fine.

Specified fraud and false accounting offences under the new offence

The following fraud and false accounting offences would be captured under the new offence, as outlined in the schedule:

- Fraud by false representation (s 2 Fraud Act 2006)
- Fraud by failing to disclose information (s 3 Fraud Act 2006)
- Fraud by abuse of position (s 4 Fraud Act 2006)
- Obtaining services dishonestly (s 11 Fraud Act 2006)
- False statements by company directors (s 19 Theft Act 1968)
- False accounting (s 17 Theft Act 1968)
- Fraudulent trading (s 993 Companies Act 2006)
- Cheating the public revenue (common law offence)

Money laundering offences are not included. This is because they are considered to be covered under the existing anti-money laundering regulatory and supervisory regime, and to prevent any overlap.

When does the failure to prevent fraud offence come into force?

The government is expected to publish guidance on reasonable fraud prevention procedures once the ECCT Bill has received Royal Assent. It is after this point that the offence will come into force.

Next steps:

The amendments to the ECCT Bill will be scheduled for consideration by the House of Commons later this year. Government guidance as to what constitutes reasonable preventative measures has not yet been published but companies can proactively address fraud and compliance risks by reviewing their existing internal policies, procedures and responses to fraud.

Further information:

- Click **here** for the Economic Crime and Corporate Transparency Bill.
- Click **here** for the government's factsheet on the failure to prevent fraud offence.

Companies House – guidance on reporting a discrepancy about a beneficial owner on the PSC register

On 1 April 2023, Companies House published an updated version of guidance regarding a beneficial owner on the PSC register.

April 2023

Under the original regime of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("**MLR**"), a relevant person (which includes company service providers, credit and financial institutions, and independent legal professionals) must report any discrepancies in the beneficial ownership information regarding an entity it discovers as part of its initial customer due diligence process to Companies House.

Reporting "material discrepancies" is an obligation under the MLRs. A material discrepancy is where information (such as names, dates of birth, nationalities and addresses) held by an obliged entity is "significantly different" from the information recorded by Companies House. From 1 April 2023, as per the "Guidance: Report a discrepancy about a PSC or a registerable beneficial owner" article published by Companies House, this reporting requirement is only required if it can be reasonably be considered to be linked to:

- Money laundering
- Terrorist financing
- Concealing details of the customer's business

Entities that are obligated to report under the MLRs must also now do so throughout a business relationship, rather than just at the start.

The requirement to report discrepancies also extends to discrepancies regarding information on the register of overseas entities. Therefore, entities that are obligated to report under the MLRs will also need to report material discrepancies about registerable beneficial owners of an overseas entity (subject to registration under Economic Crime (Transparency and Enforcement) Act 2022).

Next steps:

Firms should review and update their compliance policies to ensure that the obligations under the MLR are captured within the scope of the policy, including guidance around reasonable grounds to suspect a link to money laundering, terrorist financing and concealing details of a customer's business.

Further information:

- Click **here** for guidance on reporting a discrepancy about the PSC.
- Click **here** for anti-money laundering guidance for the legal sector.

Audit Committees and the External Audit: Minimum Standard

On 22 May 2023, the FRC published its report entitled "Minimum Standard: Audit Committees and the External Standard" ("**Minimum Standard**").

May 2023

On 18 March 2021, the government published its "White Paper: Consultation on restoring trust in audit and corporate governance" (the "**White Paper**"). This paper sought views on wide-ranging reforms to strengthen the UK's audit, corporate reporting, and corporate governance system.

Following this, on 31 May 2022, the government published its "Response Document: Restoring trust in audit and corporate governance" (the "**Response Document**"), which summarised the responses it received to the initial White Paper. In the Response Document, the government expressed its intention to grant statutory powers to the Audit, Reporting and Governance Authority ("**ARGA**") to mandate minimum standards for audit committees in relation to the appointment and oversight of external auditors.

The FRC has now published the Minimum Standard and an accompanying "Feedback Statement and Impact Assessment: Audit Committee Minimum Standard" ("**Feedback Statement**"). This statement summaries the 37 responses received to the initial consultation (including responses from corporates, investors, trade associations, audit firms, accountancy bodies and members of the public), and sets out revisions that have been made to the original draft Minimum Standard to reflect stakeholder feedback. These changes are merely for clarification purposes, they are not to be seen as substantive amendments.

The Minimum Standard

The Minimum Standard will apply to audit committees of all UK incorporated FTSE 350 premium listed companies. Additionally, there is anticipated legislation that will make compliance with the Minimum Standard mandatory for companies that are within the FTSE 350 index. While companies outside the FTSE 350 index will not be required to comply, the FRC has stated that companies who aspire to join may wish to comply in order to avoid disruption in the event they successfully join the FTSE 350.

The Minimum Standard focuses on the following responsibilities of audit committees:

- Requiring that the company manages its non-audit relationships with audit firms to ensure that it has a fair choice of suitable external auditors at the next tender, in light of the need for greater market diversity and market opening measures that may be introduced
- Conducting the tender process and making recommendations to the board concerning the appointment, reappointment and removal of the external auditor, and approving the remuneration and terms of engagement of the external auditor
- Engaging with shareholders on the scope of the external audit, where appropriate
- Ensuring that the external auditor has full access to company staff and records
- Inviting challenge by the external auditor, giving due consideration to points raised and making changes to financial statements in response, where appropriate
- Reviewing and monitoring the external auditor's independence and objectivity
- Reviewing the effectiveness of the external audit process
- Developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, considering relevant regulations and ethical guidance and reporting to the board on any improvement or action required
- Reporting to the board and shareholders on how it has discharged its responsibilities relating to the external audit

The Minimum Standard considers the responsibilities listed above in more detail for the remainder of the report.

Next steps:

Going forward, companies which have a premium listing on the London Stock Exchange and are included in the FTSE 350 (or aspire to be) should ensure that their audit committee policy meets the standards set out in the Minimum Standard.

Further information:

- Click **here** for the White Paper: Consultation on restoring trust in audit and corporate governance.
- Click **here** for the Response Document: Restoring trust in audit and corporate governance.
- Click **here** for the Minimum Standard: Audit Committees and the External Standard.

FCA consults on reform proposals to improve framework for listing regime for equity share

On 3 May 2023, the FCA published a review on the effectiveness of the primary markets. The review has come after extensive engagement on the listing regime and recommendations from the UK Listing Review, and puts forth significant reform proposals to improve the FCA's framework for listing commercial companies' equity shares.

May 2023

The FCA received feedback from a range of market participants that the premium listing standards are regarded to be "overly burdensome", and this has deterred some companies from listing in the UK. In July 2021, the FCA opened a discussion as to the purpose listed markets should serve within the capital markets, and a follow up discussion in May 2022 proposing a possible single listing segment model to replace the current standard and premium listing categories.

The proposals (described below) would result in a more permissive, disclosure-based regime with the aim of improving the competitiveness of the UK equity market. The FCA has highlighted that the changes will shift the balance of risk and scrutiny, with greater risk being passed onto investors, and shareholders having more responsibility to hold companies to account.

Structure of the proposed single listing category

The FCA plans to replace the existing standard and premium listing segments with a single listing segment for equity shares in commercial companies ("**ESCC**"), to be known as a "UK listing".

Key changes from the current admission thresholds and continuing obligations for listed companies include:

- **Simplified eligibility criteria**: companies seeking admission currently require a three-year financial revenue earning track record, three years' audited historical financial information and the requirement for a "clean" working capital statement. Under the new regime, these eligibility rules will no longer be required.
- **Initial and continuing obligations on independence and control**: Listing Rule 6 and Listing Rule 9, which require a company to have an independent business and operational control over its main activities, are proposed to be modified and simplified (set out in Chapter 4 of the report).
- **Permissive approach to dual class share structures (DCSS)**: to introduce a more flexible approach to DCSS; e.g. by allowing enhanced voting rights to be exercised on all matters and at all times (other than to approve the issue of new shares at a discount greater than 10 per cent) and extending the current sunset period for such share structures from five to ten years.
- **Adjustment to the controlling shareholders regime**: to replace the mandatory requirement for a relationship agreement between controlling shareholders with a "comply or explain" model that promises greater flexibility.
- **Removal of shareholder approval for Class 1 and related party transactions**: the current rules require that for Class 1 transactions (except reverse takeovers) and related party transactions ("**RPT**"), the company obtains prior shareholder approval of the transaction at the general meeting. The proposed amendments remove this requirement and the associated requirement to publish an FCA approved circular. A Class 1 transaction will, under the new proposals, require an announcement to the market, and no other announcements will be required for transactions below this threshold.[5]
- **Listing Principles**: it is proposed that a single set of Listing Principles underpin the reformed regime, which will combine the existing Listing Principles with some modifications to promote good corporate governance and accountability.
- **A modified sponsor regime**: the new regime will expand the role of the sponsor to include all companies in the single segment.

The FCA also intends:

- To retain the rules on pre-emption rights, shareholder approval for cancellation of listings and the UK Corporate Governance Code as investor protections which currently apply to premium listed companies, and to extend them to all companies in the new unified segment
- To retain the existing listing regime for non-equity securities and shares issued by investment vehicles

There is also a new proposal for a new listing category for equity shares in shell companies including special purpose acquisition companies.

Next steps:

The current consultation closed on 28 June 2023 and the FCA aims to release a further consultation on the wider proposed changes (together with draft rules) in autumn 2023.

Further information:

- Click **here** for "CP23/10: Primary Markets Effectiveness Review – Feedback to DP22/2 and proposed equity listing rule reforms".

5 Class 1: a transaction by a premium listed company where any percentage ratio is ≥ 25% under any one of the Listing Rule's class tests. The class 2 threshold is ≥ 5%.

Chartered Governance Institute UK & Ireland: tackling greenwashing from a governance perspective

On 3 May 2023, the Chartered Governance Institute UK & Ireland (“**CGI**”) published a report on tackling greenwashing from a corporate governance perspective (the “**Report**”).

May 2023

Organisations are facing increasing pressures from regulators, investors and the public to tackle climate change. There is a temptation to distort information in order to appease stakeholders. This not only carries reputational risks but more recently has led to serious legal repercussions in the form of litigation and financial penalties, not to mention the damage it does to climate action efforts.

The report published by the CGI contextualises the importance of greenwashing from a corporate governance perspective, considers the different forms of greenwashing and why the issue of greenwashing is a problem. Specifically, the report covers:

- What are the different forms of greenwashing?
- How is greenwashing a governance issue?
- Why is greenwashing problematic?
- What are the existing and upcoming laws and regulations about greenwashing?
- What are the reputational, legal and financial risks for organisations which are accused of greenwashing?
- How should governance professionals manage greenwashing?

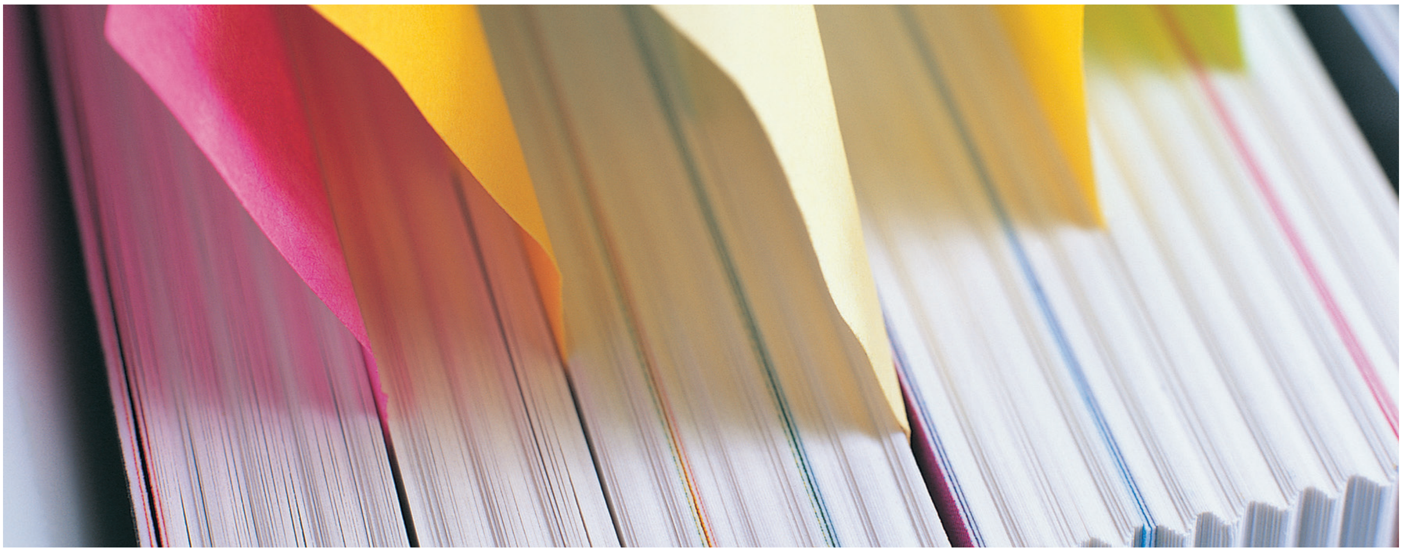
The CGI has set out a framework through which governance professionals can build “greenwash-proof organisations”, as well as highlighting principles governance professionals should ensure to include in their work e.g., transparency disclosures, increasing board capacity and ensuring accountability.

Next steps:

Companies should remain mindful of the risks of greenwashing claims and consider implementing a framework within their organisation. We note that a “one size fits all” approach does not generally work, and companies should work closely with their legal function to develop an appropriate framework for their business.

Further information:

- Click **here** for the full report “Tackling greenwashing from a governance perspective”.



FRC: UK Corporate Governance Code Consultation

On 24 May 2023, the FRC published a consultation on the UK Corporate Governance Code ("**UKCGC**"), which focusses on the legislative and governance reforms to the UKCGC proposed by the government to increase the effectiveness of the UKCGC.

May 2023

The report follows the FRC's consultation "Restoring Trust in Audit and Corporate Governance", published in 2022, after which the government invited the FRC to strengthen the UKCGC. The proposed changes to the UKCGC relate to audit, risk and internal control and aim to strengthen board accountability and reporting for internal controls.

Proposed key changes to the UKCGC

1. **Board leadership and company purpose**: a new Principle to Section 1 requires companies to focus on activities and outcomes when reporting their governance activity, to demonstrate the impact of their actions, and how the UKCGC has been applied.
2. **Division of responsibilities**: proposed amendments have been made to address investor concern about multiple board positions held by individual directors, known as "overboarding". The FRC has suggested that directors' other commitments be considered and disclosed in both annual reports and annual board performance reviews, and how the director is able to make sufficient time for their role.
3. **Composition, succession and evaluation**: there are proposed changes to Principle J, such that the phrasing specifically refers to the requirements of companies to promote equal opportunity, and diversity and inclusion of protected and non-protected characteristics, including cognitive and personal strengths.
4. **Audit, risk and internal control**
   - **Audit and assurance policy**: PIEs are required to produce an Audit and Assurance Policy ("**AAP**") under draft government legislation; however the FRC proposes that all companies reporting against the UKCGC should consider producing an AAP on a "comply or explain" basis using the legislation as a guide as to what should be included.
   - **Sustainability and ESG reporting**: changes have been made to the UKCGC to reflect the wider responsibilities of the board and audit committee generally for expanded sustainability and ESG reporting. The FRC proposed that the annual report should describe, where commissioned by the company, the assurance of ESG metrics and other sustainability-related information.
   - **Risk management and internal controls**: the FRC proposes to strengthen board accountability and reporting in relation to internal controls and specifically requires the inclusion for an explicit directors' statement about the effectiveness of the company's internal controls, including those over financial reporting, but also about wider operational and compliance risks and the basis for that assessment.
5. **Remuneration**: proposed amendments aim to strengthen the links between a company's remuneration policy, its overall corporate performance and delivery of its long-term strategy, including its ESG objectives. The new Principle O sets out the "overarching expectations" of remuneration policies, emphasising the importance of transparency and link to long-term sustainable success.

Next steps:

Responses to the consultation are requested by 13 September 2023. Responses from the GC100 and City of London Law Society are expected to be provided and published by the FRC. The FRC intends that the revised UKCGC will apply to accounting years commencing on or after 1 January 2025, allowing sufficient time for implementation.

At this stage, companies should await the FRC's response after the closing of the consultation period to determine the FRC's position on UKCGC amendments which should hopefully arrive in Q4 2023.

The key message from the FRC coming out of engagement with them as part of the consultation process is that they want the UKCGC to be flexible to allow companies of different sizes and at different stages in their development to determine for themselves what is appropriate in terms of complying with the UKCGC. They want to encourage explanation of non-compliance without such explanations being always seen in a negative light.

Further information:

- Click **here** for the "Corporate Governance Code Consultation".

UK Government calls for evidence in review of non-financial information reporting framework

On 24 May 2023, the Department for Business and Trade ("**DBT**") announced that they would be conducting a review of the non-financial reporting requirements with which UK companies are required to comply in their annual reports.

May 2023

The DBT, working with the FCA, has published a "Call for evidence: Non-financial reporting review", which seeks to evaluate the non-financial information on which UK companies are required to report in their annual reports and to meet broader requirements that sit outside the Companies Act 2006 (the "**Act**"). The call for evidence builds on the government's policy paper published on 10 May 2023, "Smarter regulation to grow the economy", which focused on the government's vision to reduce reporting burdens and drive economic growth, especially in light of Brexit.

Governments and regulators have steadily increased non-financial reporting requirements in response to stakeholder and investor demand. While the increased reporting was introduced to provide further transparency and accountability, it has led to an increasingly complex list of disclosure requirements in annual reports. This report is part of the first phase of the government's process to consider the potential options for refreshing and rationalising the current reporting requirements. The government seeks to ensure that the reporting framework is fit for purpose and provides useful information to the market.

Next steps:

Responses to the call for evidence are requested by 16 August 2023. The government will use information gathered to develop detailed proposals for consultation in 2024. In our experience companies often struggle with non-financial reporting requirements and we suggest that companies take this opportunity to provide feedback.

Further information:

- Click **here** for the announcement: "Smarter regulation non-financial reporting review: call for evidence".

FRC Lab: update on disclosure of dividends report

On 29 June 2023, the FRC Lab published an insight report revisiting the disclosure of dividends, updating the previous report on the same topic, published in November 2015.

June 2023

2015 Report

In November 2015, the FRC Lab published a report entitled "Disclosure of dividends – policy and practice". The purpose of the study was to explore aspects of distributable profit disclosure, focusing specifically on dividend disclosure. The report highlighted the importance of dividend disclosure, which is fundamental to both companies and investors as they demonstrate and assess Board stewardship and use them as a measure of consistent and sustainable returns. Good dividend disclosure was stated to provide an understanding of the Board's considerations in setting the policy, related to the company's strategy, explained how it would be implemented and made clear the associated risks, constraints and judgments.

2023 Update

The 2023 report's findings are in line with those from 2015, but reconsiders conclusions in light of new legislative developments and the current economic climate, highlighting reporting tips and recent examples to assist companies in their disclosure. Specifically, the FRC referenced the government's proposals to introduce new reporting requirements in relation to dividends in its "Response Document: Restoring trust in audit and corporate governance". The proposals require public interest entities ("**PIE**") with at least 750 employees and £750 million annual turnover to disclose their distributable reserves and explain the Board's long-term approach to the amount of and timing of shareholder returns.

The report concludes that high-quality disclosure continues to be a vital source of information for investors. However, returns should be considered in the context of the wider economic environment and not on a year-on-year basis only. The FRC therefore emphasises that the best disclosure "reflects and adjusts" to the changing context and, whilst companies have promised a progressive dividend policy, investors expect disclosure to progress alongside it.

Next steps:

With upcoming legislative changes proposed under the Response Document, including dividend disclosure, companies should begin considering disclosure beyond the dividend paid, considering how a dividend policy is analysed by investors. Such requirements are now expressly required under the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023, which were laid before Parliament on 19 July 2023.

Further information:

- Click **here** for the FRC Lab's 2015 report.
- Click **here** for the FRC Lab's 2023 updated report.
- Click **here** for the government's response document for restoring trust in audit and corporate governance.
- Click **here** for the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023.

FRC research report: audit committee chair's views on ESG

On 19 June 2023, the FRC published a research report discussing audit committee chairs' ("ACC") views on, and approaches to, ESG activities and reporting.

June 2023

The FRC's report involved qualitative interviews with 40 ACCs of public interest entities ("PIE"), conducted between November 2022 and March 2023. The sample included consisted of 40 companies (11 FTSE 100 companies and 18 FTSE 250 companies, nine companies listed elsewhere and two unlisted entities) that operated across 12 sectors (including financial services, chemicals, real estate and healthcare).

The following observations were taken from the report:

- The majority of the ACCs viewed ESG as an important part of good business practice. The importance of ESG matters has increased since the COVID-19 pandemic as environmental and social issues in particular were being discussed across organisations and sectors.
- The ACCs showed an interest in ESG and a good understanding of the initiatives taken in their organisations, e.g. reducing plastic, combatting carbon emissions, and increasing charity engagement. However, the ACCs' main role related to risk and compliance, as well as ensuring ESG is effectively reported on, rather than being directly involved in the decision-making process.
- A small number of ACCs felt tensions could mount when trying to prioritise ESG activities with profit-making responsibilities, but others found ESG components connected and worked well together.
- The success of ESG can be dependent on executive management's interest levels and the company's access to ESG resources. Similarly, it was noted that the interest of shareholders has an impact on the business' attitude towards ESG, and greater interest from shareholders tends to lead to ESG being given greater importance.
- Any cynicism tends to be directed towards the environmental and social elements of ESG, and governance is a well-established part of the Corporate Governance Code.

Next steps:

We recommend that companies share the FRC report with their Audit Committees as it provides an interesting insight into the views of Audit Committee Chairs on ESG activity and reporting.

The role of the audit committee with regards to corporate governance is becoming increasingly important in light of the proposed changes to UK Corporate Governance Code and the requirements of the audit committee in relation to assurance of environmental, social and governance matters.

Further information:

- Click **here** for the full FRC report.
- Click **here** for the FRC press release.

ClientEarth v Shell plc – Directors' duties and Members' rights of action

In ClientEarth v Shell plc, the High Court refused permission for an environmental non-profit organisation to continue a derivative claim against the directors of Shell plc ("**Shell**") under Part 11 of the Companies Act 2006 (the "**Act**"). ClientEarth brought the claim on the basis of alleged breaches of Shell's directors' statutory duties in their management of the company's climate change risk.

June 2023

Legal background

Part 11 of the Act provides for a statutory derivative claim to be brought, allowing shareholders to bring proceedings on behalf of the company. The cause of action may be against a director, another person or both, but must arise from an act or omission of negligence, default, breach of duty or breach of trust.

The statutory derivative claim must be brought in the court, and comprises a two-step process:

- **Step 1**: the court is required to determine whether the application discloses a *prima facie* case for giving permission to continue the derivative claim. If the first test is not satisfied, the court must dismiss the case.
- **Step 2**: the court will determine whether permission should be given for the derivative claim to continue at a permission hearing. Whether permission is given depends on the circumstances under section 263(2)[6] of the Act, and a number of discretionary factors under section 263(3)[7] of the Act.

ClientEarth's derivative claim

ClientEarth's allegations against the directors of Shell fell into three categories:

1. The directors had failed to set an appropriate emissions target, in particular that they failed to ensure that Shell had a "measurable and realistic" pathway to meeting the net zero target so as to align with what are set to be future expected market conditions consistent with the Paris Agreement.
2. The directors' strategy as regards the management of climate risk did not establish a reasonable basis for achieving the net zero target and was not aligned with the Paris Agreement.
3. The directors failed to comply with the Dutch Order (imposing a 45 per cent emissions reduction obligation on Shell by 2030) as they had not prepared a plan to ensure timely compliance.

It was argued that the directors were in breach of their section 172 (to act in a way that would be most likely to promote the success of the company) and section 174 (to exercise reasonable care, skill and diligence) duties under the Act. ClientEarth also claimed that the directors were in breach of a further six supplementary duties relating to climate risk that were alleged to be "necessary incidents" to their statutory duties.

In addition to the assertion that the directors had breached their duties, ClientEarth also sought a mandatory injunction requiring the directors to adopt and implement a climate risk management strategy that complied with their statutory duties.

High Court Decision

The High Court dismissed the application on the following grounds:

- The application and evidence did not present a *prima facie* case for giving permission, and therefore failed the first leg of the two-stage test (as outlined above).
- ClientEarth had failed to show that there is a universally accepted methodology as to how Shell could achieve the emissions reductions described in their strategy. The judge noted that the key was the fundamental differences of opinion between ClientEarth and the directors as to the right way to achieve the net zero targets.
- The Court rejected ClientEarth's attempt to formulate additional duties and further obligations regarding Shell's specific climate risk.
- The terms of the mandatory injunction were too imprecise for enforcement by the Court.
- The Judge additionally considered the discretionary grounds set out in section 263(3), stating that ClientEarth was not bringing the claim for the success of the company, but rather to impose its own views on how to deal with climate change risk.

6 S 263(2) factors are: a) whether a person acting within the duty to promote the success of the company would seek to continue the claim; b) whether the act or omission in question has been authorised by the company (if the act or omission is yet to occur); and c) where the act or omission has already occurred, whether it was authorised by the company before or since it occurred.

7 S 263(3) lists a number of other factors including, but not limited to, whether the member bringing the claim is acting in good faith, whether the company has decided to pursue the claim, and whether the act or omission would likely be ratified by the company.

In response to the High Court's dismissal, ClientEarth requested an oral hearing. The High Court maintained its original dismissal of ClientEarth's claim. The newly released judgment primarily repeats the original decision; however, there are a few points to highlight:

- The six supplementary duties were emphasised differently at the oral hearing, whereby the duties arise as a "matter of logic" once the directors have identified climate strategy as a commercial objective most likely to promote the success of the company, and on this basis, ClientEarth claimed the court could intervene with the adoption of the climate strategy. The court rejected this, stating that ClientEarth's formulation was inconsistent with the established principle that it is for the directors to determine how to promote the success of the company and that if the court should not interfere with the commercial question of the strategy to adopt, the same principle should apply to the means by which strategy is implemented. Overall, the court maintained its view that ClientEarth's approach to the formulation of these supplementary duties owed by the directors to Shell was insufficient compared to how the legislature has formulated the general duties.
- A significant amount of evidence put forward by ClientEarth was unsupported by expert analysis, which the court deemed did not constitute evidence on which the court could properly rely for the purposes of establishing a *prima facie* claim. Additionally, ClientEarth failed to consider the "size and complexity" of the business and the competing considerations for the directors in their management decisions, not just their response to climate change. The evidence did not explain how the directors had gone so wrong in the balancing of those competing considerations.
- The court also agreed with Shell in that the court must consider the precise nature of the relief sought and the prospects of the court granting relief. The mandatory injunction sought was deemed by the court to be too imprecise to be suitably enforced. The declaratory relief did not carry the same issues, but the court failed to see what the legitimate purpose of granting a declaration would fulfil.

ClientEarth now plan to request leave to appeal.

Commentary

The decision is relevant in considering the extent to which directors must take climate change risks into account, as well as the extent of directors' duties generally. The long-standing principle is that it is up to the discretion of the directors acting in good faith to manage the company. However, ClientEarth's claim sought to prescribe to the directors a broad range of actions that they were allegedly required to consider when making climate-related decisions.

The Court determined that the directors have the authority to assign the weight to give to the various factors that should be considered when complying with their general duties and that climate change was just one of those factors. The core of the claim was a difference in opinion as to the approach that should be taken in relation to climate risks and this was deemed to be an "impermissible attempt" to interfere with decisions taken by the directors in good faith. As such, the case was dismissed.

Next steps:

Whilst ClientEarth's claim was dismissed, this case highlights the challenge posed to companies by derivative actions. The judgment reinforces directors' discretion as to how best to balance competing factors in their decision-making but boards should ensure that they are considering material climate risk (to the extent applicable) and factoring this into their strategy.

Further information:

- Click **here** for the full judgment.
- Click **here** to read the full oral judgment.

Governance in the news

MSCI publishes global annual report on board gender diversity of publicly listed companies (March 2023):

MSCI published its 2022 progress report covering the gender diversity of corporate boards. The annual report provides an overview of the changes in gender diversity across MSCI's ACWI Index covering 2,811 constituents. Some key findings of the report include:

- 24.5 per cent of board seats were held by women, increasing from 22.6 per cent in 2021.
- The percentage of female CEOs increased to 5.8 per cent, from 5.3 per cent in 2021.
- Healthcare was the top sector for female representation both in director positions held by women, at 27.3 per cent, and companies with at least 30 per cent of director seats being held by women, at 45.4 per cent.

Click **here** for the MSCI report.

FTSE 100 executive salaries rise by 12% despite cost of living crisis (10 April 2023):

According to data from Deloitte*, median overall pay for FTSE 100 chief executives increased by 12 per cent last year, to £4.15mn. Furthermore, more than 90 per cent of CEO salary increases were set below the average increase awarded to the workforce, and the median annual bonus payout was set at 76 per cent of the maximum award, 9 per cent lower than the previous year. This was due, in part, to the pandemic as companies set lower targets.

The boost to executive salaries was deemed to be a point of scrutiny during the 2023 AGM season in light of the cost of living crisis.

**data was based on the 2022 annual reports of 55 companies with financial years ending on or after 15 September.*

Click **here** for the Financial Times article.

Controversy over executive pay continues in UK (4 May 2023):

On 3 May, 60 per cent of Unilever investors rejected a plan to pay Unilever CEO, Hein Schumacher, a base salary of €1.85mn. While the decision was not final, the scale of the rebellion was particularly shocking as the vote was only one of 13 rejections at a FTSE 100 group since 2000. The event is a clear example of the mounting frustration around executive pay increases during a cost of living crisis.

Despite the increasing controversy, it is likely that these figures will continue to climb as regulators and politicians try to make London attractive for talent.

Click **here** for the Financial Times article.

FCA sets out steps to improve whistleblower confidence (4 May 2023):

Following a survey of whistleblowers, the FCA has announced plans to implement several measures to "improve the confidence of whistleblowers". This includes informing them about actions taken based on their information or reasons for not taking action. It also includes improving the use and collection of whistleblowers' information across the FCA by enhancing its end-to-end whistleblowing processes and webform. Finally, the FCA also plans to collaborate with the Department for Business and Trade in support of a review of whistleblowing legislation. All of this will be done whilst keeping within the legislative constraints regarding confidentiality.

Click **here** for the FCA article.

FTSE Russell launches the FTSE UK ESG Risk-Adjusted Index Series (15 May 2023):

FTSE Russell has launched ESG adjusted variants of the flagship FTSE indices, which balances methodology risk and return characteristics against ESG characteristics to provide ESG alternative investments. By applying a range of product and conduct exclusions and materially reducing carbon emissions and reserves exposure of the Index, it is geared towards companies with better ESG characteristics. The CEO has explained that the launch is "a starting point for incorporating ESG considerations into the flagship UK series.

Click **here** for the FTSE Russell press release.

FRC publishes report on the influence of proxy voting advisors and ESG rating agencies (June 2023):

The FRC published a report presenting its findings from an independent research project launched in August 2022. The research sought to understand the impact proxy voting advisors and ESG rating agencies had on reporting by FTSE 350 companies and investors.

Highlights of the report include:

- 75% of investors surveyed were asking for voting research to be based on their own in-house voting policies, rather than against the proxy advisor's policies.
- there was a divergence between companies and investors on the expected quality of research reports prepared by proxy advisors, with nearly 50% of companies stating they were dissatisfied, compared to only 6% of investors.
- most companies only hoped to receive positive ESG ratings from agencies due to the concern that investors may place reliance on the headline ratings. Companies stated that the fear of receiving a negative rating itself was not a significant concern.

Click **here** for the FRC report.

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.

The PCA team is part of the network of White & Case offices offering public company advisory services, with specialist practice teams in the US, Germany, Italy and France.

Philip Broke
Partner, London
T +44 20 7532 2110
E pbroke@whitecase.com

Lachlan Low
Counsel, London
Lead PCA contact
Chartered Company Secretary
T +44 20 7532 2349
E lachlan.low@whitecase.com

White & Case LLP
5 Old Broad Street
London EC2N 1DW
United Kingdom
T +44 20 7532 1000

whitecase.com