International Comparative Legal Guides

Corporate Governance 2020

A practical cross-border insight into corporate governance law

13th Edition

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The main corporate entities to be discussed are UK public companies with a premium listing of equity shares traded on the Main Market of the London Stock Exchange. Other publicly traded companies, such as entities whose shares are admitted to trading on AIM, are subject to similar (but typically less onerous) regulatory regimes.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

The UK's corporate governance landscape derives from (or is influenced by) a number of legislative, regulatory and other sources. The key legislation is set out in the Companies Act 2006 (the "Companies Act"), together with the Listing Rules and the Disclosure Guidance and Transparency Rules (the "DTRs") made by the Financial Conduct Authority (the "FCA"). The main governance-focused regulations are the UK Corporate Governance Code (the "UKCG Code") for companies and the UK Stewardship Code for institutional investors, each of which is currently issued and administered by the Financial Reporting Council (the "FRC"), although the FRC is soon to be replaced by a new regulator (see question 1.3 below). The current version of the UKCG Code came into force on 1 January 2019, and the Stewardship Code on 1 January 2020 (see question 2.4 below).

The City Code on Takeovers and Mergers (the "Takeover Code") will also be relevant if the company in question is or may be the subject of a takeover or merger transaction. The UK government announced in December 2019 that it intends to bring forward the implementation of the National Security and Investment Bill, which will increase its powers to scrutinise and intervene in takeovers, mergers and investments in the interests of national security.

Finally, companies should also consider the application of guidelines produced by investor protection groups, such as the Investment Association and the Pensions and Lifetime Savings Association. While these guidelines are technically non-binding, investors in UK companies increasingly expect them to be observed or any non-compliance publicly explained.

The Companies Act is the primary statutory rulebook for all UK companies. In the context of corporate governance, it includes (among other things) provisions governing directors' duties, requirements for directors' appointment, removal and remuneration, and various rules in respect of companies' financial (and other) disclosure obligations. The principal constitutional document of a UK company is its articles of association. A company's articles govern the regulation of its internal affairs (including with respect to various governance issues), subject to overriding statutory and common law requirements. Although UK companies have substantial discretion over the content of their articles, most (particularly premium-listed public companies) tend to follow a similar format.

The UKCG Code applies to companies with a premium listing of equity shares in the UK by virtue of the Listing Rules. The Listing Rules do not mandate compliance with the UKCG Code; rather, they require companies to state (in their annual report and accounts) whether they have applied the UKCG Code (which consists of "principles" of good governance together with more detailed "provisions") and to explain and justify any areas of non-compliance. This is known as the "comply or explain" regime, which is a common theme throughout the UK corporate governance regulatory framework. The current version of the UKCG Code was published in July 2018, and applies to accounting periods beginning on or after 1 January 2019. The UK Stewardship Code, which also operates on a "comply or explain" basis, sets out good practice for institutional investors (principally asset owners, asset managers and service providers) when engaging with UK listed companies.

A key feature of the UK corporate governance regulatory framework is its constant evolution in the face of changing "cultural" expectations. For example, the FRC has announced plans to conduct a detailed review into how effectively the UKCG Code is being implemented by companies (now that reporting under the revised code is fully effective).

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Some of the most important recent corporate governance developments, trends and challenges in the UK market include the following:

- Brexit: The departure of the UK from the European Union (the "EU") on 31 January 2020 marked the start of a transition period that is expected to last until 31 December 2020. During this time, the majority of EU legislation (including any new or amended legislation during the transition period) will continue to apply to the UK. The UK Government has indicated that it will not be extending this transition period, and the UK Parliament has passed legislation to this effect. The European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) provides that the body of EU law (so-called "retained EU law") will be incorporated directly into UK law from the end of the transition period. A range of secondary legislation has been passed to deal with deficiencies in retained EU law arising as a result of the UK's departure. The full effect of Brexit on UK corporate governance remains to be seen, but the impact on companies was clear in the 2019 reporting season, with 37% of FTSE 350 companies referring to Brexit in the viability statements in their 2019 annual reports, compared with 14% in 2018.

- Board diversity: In recent years, there has been a greatly increased public focus on board composition, especially with respect to the balance of skills and gender, ethnic and cultural diversity. This has resulted in several independent reports, which have set out a number of diversity targets for FTSE 350 companies. The 2016 Hampton-Alexander Review report recommended that, by 2020, all boards of FTSE 350 companies should have 33% female representation. Although this target has not yet been met, an October 2019 report showed significant progress, finding that women comprise at least 25% of the board of 89 FTSE 100 companies (with three of those boards consisting of 50% women) and 33% of FTSE 100 board positions overall being held by women. Likewise, the 2017 Parker Review report recommended a target of at least one director of colour on each FTSE 100 board by 2021 and each FTSE 250 board by 2024. Progress in this respect is less advanced, with 37% of FTSE 100 companies and 69% of FTSE 250 companies not having met the target in 2019. Whilst these targets are not mandatory in law, from a corporate governance perspective, a lack of diversity at board level is increasingly seen as unacceptable. The Institutional Voting Information Service ("IVIS"), an investor monitoring service, is increasingly flagging companies that have failed to achieve board diversity targets.
- Executive remuneration: The trend towards an increased focus on executive pay and how it compares with that of the wider workforce is continuing in the UK. Activist investors are likely to apply pressure on companies to provide a meaningful comparison between CEO and general workforce salaries and pension contributions. Main Market companies are required to publish an annual report on their directors' remuneration for the year, and a three-yearly report on their proposed remuneration in the future. The report must be put to an advisory shareholder vote and the policy to a binding shareholder vote. Activist investors are likely to vote against re-electing remuneration committee chairs if executive pay packages are not to their satisfaction.
- Stakeholder issues: There is a growing emphasis on engagement by UK boards and management not only with shareholders but also with other stakeholders, combined with an increased focus on public reporting by companies on matters other than financial metrics, including environmental, social and governance ("ESG") issues (see question 4.4 below). Companies are required to have in place a specific mechanism for engagement with their workforce, and we will soon be seeing the first "section 172(1) statements" (explained at question 4.1 below).
- Audit integrity: The government has confirmed that a new regulator, the Audit, Reporting and Governance Authority ("ARGA"), will replace the FRC. The ARGA will have wider powers than the FRC and is expected to provide more robust scrutiny of auditors, following several recent scandals (including the collapses of Carillion and Thomas Cook) in which companies had been given a clean bill of health shortly before it became public that they were, in fact, facing significant financial difficulties. An independent review published by Sir Donald Brydon in December 2019 recommended wide-ranging reforms, including establishing a separate audit industry with its own governing principles, increasing stakeholder engagement in the audit process, and replacing the requirement for financial statements to give a "true and fair" view with a new requirement to present a company's financial position "fairly, in all material respects". The Revised Ethical Standard 2019 will apply to auditors from 15 March 2020. It will prohibit auditors from contributing towards decision-making in, or providing recruitment or remuneration services to, a client entity.

Finally, although at the time of writing it is too early to predict the outcome of the COVID-19 outbreak, it is clear that the effects will be significant and wide-ranging. Social distancing and work from home restrictions in the UK have created significant obstacles for public companies that wish to publish their financial results, hold their annual general meeting and engage with stakeholders. Investor bodies are working to find solutions and lobby government for legislative change to help issuers. On the international plane, on 12 March 2020, the International Corporate Governance Network published a viewpoint on COVID-19 as a new systemic risk, and on its implications for corporate governance and investor stewardship.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

Short-termism has been seen as a key market risk for many years, with various reports published by parliamentary committees (most notably, the Kay Review) identifying it as a major reason for underperformance within the UK economy. One of the objectives of the Stewardship Code is to address these concerns through the promotion of greater shareholder involvement in corporate governance. In addition, recent developments (see question 1.3 above) clearly show a trend away from a short-term focus on financial gain for a minority of sophisticated, profit-driven shareholders. In particular, the increasing focus on the interests of non-shareholder stakeholders is symptomatic of the wider changes in the UK corporate governance landscape: the direction of travel is clearly away from short-termism and towards the aim of long-term, sustainable value-creation.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Active shareholders of a UK public company typically exert their influence on the company's operations through interactions with the company's board of directors or, ultimately, through the exercise (or threat of exercise) of their votes at shareholder meetings. Various corporate matters require shareholder approval, which gives shareholders (particularly, large shareholders) leverage to exert pressure on the board. These matters include adopting new articles of association (or amendments to them), the annual re-election of all board members, authorising the directors' remuneration policy (which must be reviewed and approved every three years), approving major transactions by the company, granting authority to issue new shares, disapplying statutory pre-emption rights and approving related party transactions.

The voting thresholds for these matters (either a simple majority or 75% of votes cast in favour) mean that resolutions proposed by the board rarely fail in their entirety. However, given the passively held nature of many companies' registers (which augments the effective voting power of a given "active" holding), together with the adverse publicity generated by an actual or perceived failure to engage with shareholders' concerns, relatively low levels of shareholding can be used to bring significant pressure to bear on boards. The results of a shareholder vote are often viewed as public indications of shareholders' general sentiment regarding the board and management of the company. Where more than 20% of shareholder votes have been cast against a shareholder resolution, the UKCG Code requires the company to explain publicly the actions it proposes to take to consult with shareholders and, within six months of the vote, to publish an update on the shareholder views received and actions it has taken following the consultation. The company must also publish a statement in its next annual report outlining the effect that any subsequent feedback will have on its corporate strategy.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Generally, shareholders have no legal responsibility to the company or to other shareholders in relation to the governance of the company (although see question 2.4 below). While the Stewardship Code does impose obligations on signatories, adherence is voluntary, and the obligations apply on a "comply or explain" basis. The Stewardship Code sets out a series of general expectations as to how signatories will monitor investee companies, be willing to act collectively with shareholders, disclose their voting policies and report on voting activities. The most recent version of the Code has been extended beyond asset managers to asset owners and service providers, and includes a new requirement to report annually on stewardship outcomes in a single stewardship report. It also now imposes additional expectations, including a requirement to take ESG factors into account when making investment decisions, to ensure that investment decisions are aligned with the requirements of clients, to explain how stewardship principles have been exercised across a variety of asset classes other than listed equity (such as private equity), and to explain the culture and strategy of the signatory's organisation. The FRC views the Stewardship Code and the UKCG Code as complementary to one another.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

UK public companies must convene a shareholder meeting at least once a year (the annual general meeting, or "AGM"). Additional shareholder meetings (known simply as general meetings) may be called throughout the year if approval is required for matters that were not foreseen at the time of the AGM (for example, to approve a major corporate transaction).

Holders of 5% or more of the voting shares of the company may request that the directors call a general meeting within a prescribed timeframe, and may require that a particular resolution be put to the meeting. In addition, the holders of 5% or more of the voting shares, at least 100 individual shareholders, can require the company to put a resolution to an AGM, to include other matters in the business to be dealt with at an AGM, or to circulate to shareholders a statement relating to a resolution or other business to be dealt with at the meeting.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

An English company is a legal person, distinct from its shareholders. The shareholders (also known as "members") have rights and obligations *vis-à-vis* the company, as well as one another. The relationship between a company and its members is founded on its constitutional documents (principally, its articles of association) which, under the Companies Act, constitute a statutory contract between the company and its members and between the members themselves.

Because the shareholders are the owners of the company, and because English law generally recognises the principle of "majority rule" and will not interfere with decisions made in good faith by a majority of members, the duties owed by shareholders to the company, and to one another, are typically fairly limited. The limited circumstances where an aggrieved minority shareholder may bring a claim to enforce its rights include an "unfair prejudice" claim, alleging that the company's affairs have been conducted in a manner that is unfairly prejudicial to its interests, and a "derivative claim", which is a claim brought by a shareholder on behalf of, and for the benefit of, the company in respect of a wrong done to the company (for example, a breach of duty by a director). However, particularly in the context of a publicly traded company, these kinds of claim are very rare.

Generally, the shareholders of a UK company cannot be held liable for the acts or omissions of the company. English law recognises the concept of the "corporate veil", which segregates the legal personality (and liability) of a company from that of its shareholders. The limited exception to this principle is where the separate legal personality of the company is abused by a shareholder for illegitimate purposes (rendering the company a "sham"). In the normal course, a shareholder's liability will be limited to the amount (if any) it has agreed to contribute to the company but has not yet contributed (for example, any unpaid amounts due on a subscription for shares).

The Stewardship Code defines "stewardship" as "the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society". Activities that would be captured by this definition include: conducting adequate analysis prior to investment; holding issuers to account on material issues; working with others to influence issuers (for example, shareholder activists); and publicly reporting on the outcome of these activities.

As noted in question 2.2 above, the Stewardship Code applies, on a "comply or explain" basis, to signatories who voluntarily commit to abide by its terms.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Consistent with the principle that the company is a separate legal entity from its shareholders, directors' duties (see question 3.6 below) are owed to the company, rather than to shareholders. As such, shareholders have no direct right of action against directors for breach of duty owed to the company. The articles of association constitute a contract between the company and its members, but not between the company and its directors.

However, in certain limited circumstances, shareholders can (normally subject to court approval) take action to enforce directors' duties or to compel certain steps be taken by the company. For example, as noted in question 2.4 above, a shareholder may be able to bring a "derivative" claim on behalf of a company against the company's directors for breach of duty, breach of trust, negligence or default. Shareholders can also (at common law) take action against a company to prohibit actions which would constitute a breach of the company's constitution and/or to remedy abuses by directors of their fiduciary powers.

That said, there are certain limited circumstances where the directors of a company can assume a duty of care directly to shareholders. This includes, for example, when recommending that shareholders vote in a particular way on a resolution, such as to approve a major corporate transaction. If the directors act negligently in these circumstances, breaching their duty of care, a shareholder who suffers loss as a result may be able to bring direct action against the directors. Whether a duty of care arises (and, if so, whether that duty has been breached) needs to be assessed on a case-by-case basis.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Under the DTRs, a shareholder must notify the company if the percentage of voting rights which they hold exceeds or falls below 3% (for a UK issuer) or any whole percentage point above that level. The company must then make an announcement to notify the market by the end of the trading day after it receives the notification. All shareholders must (under the Companies Act) disclose to the company any interests they hold in the company's shares if requested to do so (even if they do not meet the thresholds above).

Additional disclosure requirements under the Takeover Code apply (broadly) if the company enters an "offer period" (typically, when a takeover or merger transaction is in contemplation or where an offer has been made for the company) that require all holders of 1% or more to disclose their position and any subsequent dealings. In addition, under the Takeover Code, a mandatory bid may be triggered if a shareholder acquires a 30% interest in the voting rights of a company (with "concert party" holdings counted towards the threshold). Limits on the size of shareholding that can be acquired without approval from a regulator may be applied in certain sectors, such as certain financial services businesses.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Generally, no. However, in a takeover or merger situation, a bidder is required (under the Takeover Code) to disclose its intentions publicly with regard to a number of matters in relation to the target (including its business, employees and pension schemes). As discussed below, certain shareholders may also voluntarily disclose their motivations for acquiring stakes in listed entities, and their intentions or wishes for the company.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism plays a pivotal role in the governance and accountability of UK corporate entities. Traditionally, shareholder activism in the UK was undertaken behind closed doors, essentially through private lobbying of listed companies' boards by institutional investors. In recent years, however, activists have adopted other more publicity-based approaches (alongside or instead of the traditional ones), including public statements of voting intentions ahead of shareholder meetings and public lobbying for changes to business strategy, governance arrangements, board composition and/or management positions. Executive remuneration is often a key focus, with investors voting against (or threatening to vote against) remuneration reports or policies and, sometimes, against the re-election of the company's remuneration committee chair. The power of significant (including significant minority) shareholders to requisition a general meeting, propose a resolution at the AGM and/or requisition the circulation of a statement (see question 2.3 above) can be important weapons in an activist's armoury. Activists employ a variety of different strategies to exert pressure on boards, ranging from hostile attacks to more constructive, long-term collaboration.

In addition to activism playing a role in day-to-day governance and business for listed companies, activists can also often play important roles in takeover situations (for example, by buying into a target company's shares). Activists who adopt this strategy often choose to argue publicly for a better price (a practice known as "bumpitrage") and may be rewarded with a short-term profit, particularly if a rival would-be acquirer is willing to enter into a bidding war. The increasingly prevalent role of activists in UK takeovers is controversial, not least because, normally, their focus will be on achieving a better bid price, rather than on (for example) whether the transaction is in the interests of other stakeholder groups or for longer-term interests (as discussed in question 1.3 above). Whilst not prohibited, when a company is in a takeover or merger situation (such that persons may be deemed to be "acting in concert" with one another), collective shareholder action can also trigger particular rules under the Takeover Code, including the mandatory bid obligation referred to in question 2.6 above.

The Investment Association maintains a public register of FTSE companies that have experienced shareholder dissent at a level of 20% or more at general meetings so as to record the actions (if any) taken by companies to deal with shareholder concerns.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

While the board of directors is ultimately responsible for the management of the company, day-to-day running of the company's operations is usually undertaken by the executive management team, led by the CEO (who is invariably a director). The executive management team should report to (and be held accountable by) the board.

The UKCG Code emphasises that there should be a clear division of responsibilities between the leadership of the board and the management of the business. For example, it states that the board should be led by a non-executive chair who is independent on appointment, and that, other than in exceptional circumstances, the roles of chair and CEO should not be held by the same individual.

The UKCG Code also contains various specifications regarding the composition of the board, including the mix of executive and (independent) non-executive directors ("NEDs") with, in the case of larger companies, the majority of directors being independent NEDs. Each director must ensure that they are able to dedicate sufficient time and efforts to discharging their duties and so should not accept too many directorships (a practice known as "overboarding").

The UKCG Code recommends that certain matters be delegated to board committees consisting primarily or exclusively of NEDs. Whilst these committees may inform the opinions of the board, any final approval should ultimately rest with the board. The UKCG Code recommends the following committees:

- a nomination committee, which is responsible for appointments to the board and senior offices of the company;
- a remuneration committee, which is responsible for setting the company's remuneration policy for directors and senior executives, as well as the wider workforce; and
- an audit committee, responsible for establishing formal and transparent arrangements for the application of corporate reporting and risk management principles, and for establishing and maintaining an appropriate relationship with the auditors of the company.

It is also common for other formal committees to be established where necessary, for example a risk committee. In addition, large companies and companies in certain sectors may establish less formal committees to deal with certain matters, such as ESG or sustainability concerns.

3.2 How are members of the management body appointed and removed?

Directors are appointed or removed through an "ordinary resolution": a resolution passed by a simple majority of votes cast by shareholders present and voting at a general meeting. The UKCG Code and, usually, the articles of the company, require each director to retire immediately before each AGM in order to seek re-election at the AGM. The board can appoint additional directors on an interim basis, but these directors are usually required to retire immediately before the next AGM, alongside the other directors, and stand for re-election by the shareholders.

New directors are typically identified, approved and recommended to the board and shareholders by the nomination committee. The UKCG Code recommends that the chair should not remain in post for longer than nine years, but recognises that this may need to be extended in order to facilitate appropriate succession planning in some cases. It also recommends that gender and ethnic diversity be considered when approving appointments to the board (see question 1.3 above), whilst also recognising that ultimately appointments should be made on the basis of merit.

The company's articles may also give the board power to remove directors. This will usually occur where all or a large majority of the board request a director to resign, although in practice most director resignations are voluntary.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

Under the Companies Act, the directors must prepare a remuneration report for each financial year of the company. This report is a retrospective summary of the directors' remuneration during the preceding financial year. It is subject to an advisory (non-binding) vote of shareholders. The directors must also submit a forward-looking remuneration policy (which forms part of the remuneration report) to shareholders every three years. The policy sets out the framework and limits for the directors' remuneration in the future. It is subject to a binding vote of the shareholders. Both votes are by ordinary resolution.

The Companies Act prohibits payments to directors outside the scope of the remuneration policy. It also prohibits a company from entering into a service agreement with a director with a fixed term, or which can only be ended by notice, of more than two years. In practice, where a director's service agreement has a fixed duration, it will invariably be limited to one year, as required by the UKCG Code.

The determination of directors' (including NEDs') remuneration is typically undertaken by the remuneration committee, subject (as above) to the approval of shareholders. The Investment Association produces remuneration principles annually, the most recent version of which recommends considering alternative investment structures (aside from long-term incentive plans) and ensuring that remuneration committees have sufficient discretion to ensure that vesting outcomes in relation to management equity incentive arrangements are not excessive and are in line with company objectives.

For financial years beginning on or after 1 January 2019, UK listed companies with more than 250 employees must disclose the ratio of CEO remuneration to the median, lower quartile and upper quartile of their UK employees. Mandatory CEO pay ratio reporting will begin around April 2020, but a number of companies have incorporated reporting into their annual reports already, with 37% of FTSE 350 companies voluntarily disclosing pay ratio disclosures in the 2019 reporting season.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

"Persons discharging managerial responsibilities" ("PDMRs") (which includes the company's directors) must disclose their shareholdings in the annual report. They, and persons closely associated with them, must also immediately notify the company of any transactions by or on their behalf in the company's financial instruments so that the company can make an appropriate announcement. PDMRs are prohibited from dealing in their company's shares during "closed periods", which include the period of 30 calendar days prior to publication of financial results. Companies may voluntarily impose longer periods during which directors and PDMRs are prohibited from dealing in the company's financial instruments.

In addition, PDMRs (and, indeed, anyone else) is prohibited from trading in a company's financial instruments while in possession of "inside information" (as defined in the Market Abuse Regulation).

3.5 What is the process for meetings of members of the management body?

The company's articles will set out the procedure for meetings of the board, including the requisite quorum. The articles will generally allow flexibility in respect of meetings and will normally explicitly permit telephone meetings and written directors' resolutions. The UKCG Code recommends that board meetings be held sufficiently regularly to ensure that directors are able to discharge their duties in an effective manner, although the board will generally retain discretion to determine the frequency of board meetings (and board committee meetings). The company's annual report will contain information regarding the number of board meetings which were held and attendance by individual directors. The board will also be expected to attend meetings at short notice where unexpected matters arise.

The articles of association will also typically permit the board to delegate its functions, including to committees of the board (see question 3.1 above), although final approvals in respect of material matters are typically undertaken by the board.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Directors owe seven "statutory directors' duties" to their company under the Companies Act. Although these are all of equal status, in practice the principal duty of each director is to act in the way he or she considers in good faith is most likely to promote the success of the company for the benefit of the shareholders as a whole. Furthermore, directors owe duties to act within their powers, to exercise independent judgment, to exercise reasonable care, skill and diligence, to avoid conflicts of interest, not to accept benefits from third parties, and to declare an interest in a proposed transaction or arrangement. In addition, directors are subject to certain statutory administrative requirements, such as the obligation to maintain statutory books and the duty to file returns. The Insolvency Act 1986 also imposes certain liabilities on directors, for example where they allow the company to continue to trade when they know (or ought to have known) that there was no prospect of the company avoiding insolvent liquidation.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The board of directors is responsible for approving and implementing the strategy of the company and establishing corporate governance principles. The key challenges for the management body include ascertaining effective ways in which the company may seek to address the key current issues in corporate governance (see question 1.3 above).

Diversity remains one of the key challenges and focuses for boards, as discussed in question 1.3 above.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

A company can indemnify its directors for costs incurred in successfully defending claims by the company and for liabilities to third parties (excluding fines and regulatory penalties). The company may also purchase and maintain directors' and officers' ("D&O") insurance policies for its directors.

However, the Companies Act prohibits a company from indemnifying its directors for any liability for negligence, default, breach of duty or breach of trust in relation to the company. Any provision in the articles purporting to grant an indemnity of this kind will be void. The rationale for this is that the directors should not be able, effectively, to absolve themselves of their fiduciary duties. (These restrictions do not apply to non-director employees.)

Additional insurance can also be acquired for specific purposes, for example with respect to potential liabilities under public documents (such as a prospectus) or for warranties under a sale and purchase agreement.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

The directors are responsible for setting and changing the strategy of the company, and are expected to review and update this on a regular and ongoing basis.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

The primary duty of the company's board is to promote the company's success for the benefit of its members (i.e. shareholders). This is subject to three qualifications. First, at common law, if a company is insolvent or is approaching insolvency, the board's primary focus switches from the company's shareholders to its creditors. Second, without derogating from their primary duty, a company's board must, when taking decisions, "have regard" to certain other matters and stakeholders. These are set out in section 172(1) of the Companies Act and include (among other things) the company's employees, its need to foster good relations with suppliers, customers and others, and the impact of its operations on the community and the environment. Finally, a company's articles can include a purpose other than the benefit of the company's members, although this is very rare for a publicly traded company.

For financial years beginning on or after 1 January 2019, the Companies (Miscellaneous Reporting) Regulations 2018 have introduced increased emphasis on reporting and disclosures, particularly with respect to the company's engagement with its stakeholders. For example, the corporate governance statement of companies caught by the legislation must now disclose the way in which the board has engaged with key stakeholders such as employees and suppliers. Furthermore, companies are required to publish a "section 172(1) statement" in their strategic report (part of the annual report) describing how the directors have considered their duties under section 172(1) of the Companies Act when performing their duties. This statement will therefore need to cover specific stakeholders (such as suppliers, customers and others) and the impact of the company's business on the community and the environment.

Both the FRC and the Department for Business, Energy and Industrial Strategy ("BEIS") have recommended that the section 172(1) statement explain the methods used by the company to engage with stakeholders and better understand their interests and the effect that this engagement has had on the company's strategic direction during the course of that year.

The GC100, a collection of general counsels and company secretaries of FTSE 100 companies, has issued general guidance to assist directors in discharging their section 172 duty. The guidance recommends that boards consider how the company, its board and management interact with stakeholders in both day-to-day business interactions and through specific structures which have been implemented for the purposes of stakeholder engagement.

At the time of writing, the requirement to consider various stakeholders is coming into sharp relief as businesses face significant disruption and potential financial difficulty as a result of the COVID-19 outbreak. Directors are likely to need to engage ever more frequently and deeply with their workforce, customers and suppliers and to reflect this in their section 172(1) statement.

As noted in question 4.2 below, this includes considering the impact of the company's operations on the community and the environment. Main Market companies are already required to publish information on their global greenhouse gas emissions and energy usage. More companies are also publishing further climate change-related disclosures on a voluntary basis, and it is expected that this requirement will become mandatory for certain companies at some point in 2020 or 2021 (as discussed in question 4.4 below). Companies are also required to publish and explain the ratio of CEO remuneration to that of other employees in the company's directors' remuneration report (as discussed in question 3.3 above). Finally, the amendment of the Stewardship Code has seen the introduction of the requirement for signatories to publish an annual report of stewardship activity and outcomes.

4.2 What, if any, is the role of employees in corporate governance?

A recent FRC report notes that workforce-related matters have become increasingly important to investors in recent years, with the report finding overwhelming support amongst investors for clearer company disclosures in this regard. Directors are increasingly required to consider the interests and concerns of the company's employees (and other stakeholders) in their decision-making processes. Recent amendments to the UKCG Code require that the board should adopt one of three workforce-engagement methods: a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. Alternatively, if a board does not choose any of the three methods outlined above, it is open to that board to adopt alternative arrangements for workforce-engagement and to explain why these are considered effective. A recent analysis of annual reports published by FTSE 350 companies found that 60% of these companies stated that they have opted for a designated non-executive director.

The UKCG Code specifically uses the word "workforce" rather than "employees" in order to encompass not only full-time employees, but also part-time employees and flexible and agency workers. Furthermore, the UKCG Code recommends that companies establish sufficient procedures to enable members of the workforce to raise concerns in confidence, and for these to be investigated in an appropriate manner.

4.3 What, if any, is the role of other stakeholders in corporate governance?

Although non-shareholder stakeholders do not have a formal role in corporate governance, boards are increasingly encouraged to understand and take account of their views (as discussed in question 1.3 above). The new UKCG Code, as well as recent regulations that relate to the Companies Act, require companies to include in their annual reports a statement as to how the company has considered the interests of certain specific stakeholders (see question 5.2 below).

In addition, in discharging their duty to promote the success of the company (see question 3.6 above), the directors are obliged to have regard to a number of matters, including the likely consequences of any decision in the long term, the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the environment and the desirability of the company maintaining a reputation for high standards of business conduct.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Increased public focus on climate change and sustainability has resulted in a greater demand for companies to have regard to these issues when implementing their corporate governance strategies. This is apparent in the Stewardship Code, which provides that the purpose of stewardship is to create "sustainable benefits for the economy, the environment and society". This translates into a requirement for signatories to take ESG matters into account in their decision-making process.

Stakeholders are applying increasing pressure on companies to improve the accessibility and accuracy of data that can be used to assess compliance with ESG requirements. Already publicly traded companies are required to disclose their global greenhouse gas emissions and energy usage. In addition, at the time of writing, the FCA is consulting on requiring premium-listed commercial companies to make disclosures consistent with the recommendations for disclosures regarding climate-related financial risks issued by the Financial Stability Board's Task Force on Climate-related Financial Disclosures and to explain any failure to do so.

Directors are increasingly expected to consider the impact of a company's operations on the wider community (see question 4.3 above). As such, it has become common practice for companies to produce an annual corporate social responsibility ("CSR") report outlining these considerations. Companies are also required to include certain CSR information in the annual report (see question 5.2 below).

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The board is responsible for periodic disclosure in the form of annual reports and half-year reports, as well as the publication of relevant announcements to the market, where required. Although the entire board is responsible for this, enforcement action may be taken against an individual director who is "knowingly concerned" in a failure to make a necessary disclosure.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Listed companies must make public announcements in a wide range of corporate governance-related situations. In addition to obligations to make public announcements at the time of the events in question, these are typically made by way of the company's annual report and include matters such as changes to the board and the approval of shareholder resolutions (other than those constituting ordinary business). For financial years beginning from or after 1 January 2020, listed companies must prepare their annual financial report in a single electronic format.

The company must also, as described above, disclose that it is subject to the UKCG Code and, in its annual report, describe how it has complied with the UKCG Code's requirements (or explain why it has not). These disclosures must be published on its website.

Under the UKCG Code and the DTRs, listed companies that meet certain requirements must include a corporate governance statement in a separate section of the directors' report (contained within the company's annual report), or in a separate report published together with the annual report, or in a document published on the company's website and cross-referred to in the directors' report.

A listed company's annual report must contain information surrounding the company's diversity and inclusion policy and how this is implemented. It must also demonstrate how this is related to company strategy. The remuneration report must provide sufficient information regarding the remuneration of directors. The company's risk management and internal control policies must also be disclosed.

As discussed in question 4.1 above, certain large companies must now publish a "section 172(1) statement" in their strategic report. Furthermore, the Stewardship Code now requires signatories to publish an annual report of stewardship activity and outcomes (as discussed in question 2.2 above). As discussed in question 4.4 above, more companies are voluntarily publishing data relating to climate change and the FCA is consulting on introducing mandatory reporting requirements for premium-listed commercial companies in 2020 or 2021. Finally, companies are required to publish and explain the ratio of CEO remuneration to that of other employees in the directors' remuneration report (as discussed in question 3.3 above).

5.3 What is the role of audits and auditors in such disclosures?

Auditors are required to review the reports which are produced alongside the audited financial statements and any separate corporate governance statement and to produce their own report confirming the adequacy of disclosures, whether the relevant legal requirements have been met and whether the disclosures contain any material misstatements.

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