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United Kingdom

CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in United Kingdom.

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UNITED KINGDOM
CORPORATE GOVERNANCE

1. What are the most common types of corporate business entity and what are the main structural differences between them?

The two most common types of corporate business entity in the UK are private companies limited by shares and public limited companies ("PLCs"). Each type of company has a share capital, which is held by members called "shareholders". Both private companies and PLCs are regulated primarily by the UK's Companies Act 2006 (the "Companies Act") and secondary legislation made under the Companies Act. Private companies and PLCs are similar in most respects, but there are some important differences, perhaps the most significant of which is that a PLC is permitted to offer equity or debt securities to the public, whereas a private company cannot. For this reason, PLCs are subject to more stringent requirements under the Companies Act, including in relation to minimum share capital, changes to capital structure, paying dividends, the timing and content of financial statements, number of directors and how shareholder decisions are made.

PLCs are eligible to apply for their shares to be admitted to trading on a securities exchange and (if required) to be listed on the UK's Official List maintained by the Financial Conduct Authority (the "FCA"). There are two segments in the Official List – "premium" and "standard". However, following a consultation period, the FCA has recently published detailed proposals to reform the listing regime, including to replace the "dual structure" of premium and standard listings with a single listing segment for commercial companies. As the current structure stands, premium listings are by far more common and so, unless indicated otherwise, when we refer to "listed companies" in this chapter, we are referring to premium listed companies. A listing means that a PLC is subject to more regulations, with the extent of those regulations depending on (among other things) the market to which its shares are being admitted and which category of listing it is seeking (or already has). Please see question 5 below for a further discussion of these regulations.

The term "public limited company" refers to the legal structure of a company and not to whether its securities are admitted to a trading platform. In this sense, a company might be a PLC but not a "public company" in the sense often meant in colloquial parlance. For this reason, it is common in the UK to use the term "publicly traded company" or, erroneously but nonetheless often, "listed company" to describe a company whose shares are publicly traded. Indeed, we occasionally use the expression "listed company" in this chapter, given its widespread use in the market (despite the technical inaccuracy of that description).

Other types of corporate structure beyond limited companies do exist, but they tend to be used only in specific circumstances. For example, partnerships and limited liability partnerships ("LLPs") are often used for professional services businesses, such as accountancy, legal, consultancy, and medical practices, as well as for specific purposes within fund structures. Entities such as open-ended investment companies (the UK equivalent of a "SICAV") are often used for retail investment funds. There are also types of entity that are used in a not-for-profit context (for example, for charitable purposes). Because each of these types of entity are significantly less common, we do not discuss them in further detail in this chapter.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

The public, investors and UK Government (the "Government") have increasingly focused on Environmental, Social and Governance ("ESG") issues in recent years. This is partially reflected in the continued interest by businesses to demonstrate their commitment to ESG training and compliance. In particular, London (and the UK more broadly) is noted as an emerging leader in B Corp accreditations. Listed companies and other large companies are now required to report on climate-related financial disclosures, and there are continuing proposals to mandate net-zero transition plan reporting for the largest companies.

However, the ESG movement has been tempered in some areas. For example, in 2024, the Financial Reporting Council published an updated version of the UK Corporate Governance Code ("UK CGC"). It had originally intended to implement a number of corporate governance recommendations arising from the Government's 2021 White Paper, including more specific provisions on ESG matters. However, these were significantly diluted following a public consultation and stakeholder feedback. Similarly, the Government has withdrawn new draft legislation that would have introduced additional reporting requirements for companies with 750 or more employees and a turnover of £750 million or more (also known as "750:750" companies), citing the need to reduce regulatory burdens and enhance the global perception of the UK as a competitive marketplace.

That said, the UK has not seen quite the level of "anti-ESG" backlash from some investor groups that other jurisdictions (notably, the US) have experienced in the past year. It seems safe to assume that ESG remains, and will remain, a key priority and focus for most UK businesses.

Corporate governance and transparency

The way in which UK companies are managed has remained broadly consistent for decades. However, the new Economic Crime and Corporate Transparency Act 2023 aims to improve corporate transparency in the UK and reform the centralised UK company register (at Companies House) to combat economic crime.

Among other things, the Act will introduce mandatory identity verification for company directors and persons with significant control and will also require most people who file documents at Companies House to do so through a registered authorised corporate service provider. The Government also intends to introduce a long-anticipated ban on corporate entities serving as a director of a UK company (so called "corporate directors"), most likely subject to an exception which will permit a legal entity to serve as a corporate director if: (i) all of the entity's own directors are natural persons; and (ii) the identity of those individuals has been verified.

The changes under the Act will be rolled out through various commencement orders over time. The first changes are expected to come into effect in March 2024 and include:

- greater powers for Companies House to query and remove information from the register;
- new restrictions on company names and registered office addresses, as well as a requirement to provide a registered email address; and
- confirmation when applying to form a company that the company is being formed for lawful purposes and an annual confirmation that its future activities will continue to be lawful.

Climate change

Large businesses in the UK are already required to provide a minimum level of information on their greenhouse gas emissions and energy usage. For financial years beginning on or after 1 January 2021, premium-listed companies must report annually against the recommendations of the Financial Stability Board's Task Force's Climate-related Financial Disclosures (the "TCFD Recommendations"). The same annual reporting requirement applies to standard-listed companies for financial years beginning on or after 1 January 2022.

In addition, for financial years beginning on or after 6 April 2022, certain companies and LLPs must include climate-related financial disclosures in their annual report based on the TCFD Recommendations, making the UK the first G20 nation to enshrine mandatory reporting against the TCFD Recommendations in its domestic law. This requirement applies to the following entities, provided the entity has more than 500 employees: (i) "public interest entities" (which includes companies with securities admitted to a regulated market, as well as banking and insurance undertakings); (ii) companies admitted to AIM (previously known as the 'Alternative Investment Market', an alternative to the London Stock Exchange's Main Market with lighter regulation); (iii) other companies with an annual turnover above £500 million; and (iv) LLPs with annual turnover above £500 million. An entity will only need to disclose information in its annual report if it is material to the entity. However, if an entity does not make the appropriate climate-related financial disclosures, it will need to explain this decision in its annual report.

A 2023 report published by the TCFD indicates a steady growth in companies disclosing this information, albeit with varying levels of disclosure between each company. However, the recent increase in greenwashing claims should be noted and companies should ensure they review and ensure metrics are accurate and not over-stated.

Gender and ethnic diversity

In the UK, organisations with 250 or more employees must publish metrics on the disparity in pay between their male and female employees (their “gender pay gap”). The Hampton-Alexander Review, which set a target of 33% female representation on FTSE 100 company boards by 2020, has largely been seen as a successful step on the path towards gender equality in senior management. The latest FTSE Women Leaders Review (which replaced the Hampton-Alexander Review) reported female representation at 40.5% and 40.1% on UK FTSE 100 and FTSE 250 boards respectively, with the 40% voluntary target for FTSE 350 companies already met three years ahead of the target deadline. According to the Review, the UK sits second in the international rankings for women’s representation on boards at FTSE 350 level, exceeding the level of female representation in countries such as Norway that impose mandatory gender quotas on businesses.

The Parker Review, established to conduct an official review into ethnic diversity on UK company boards, found that the boards of leading public companies fell short in reflecting the ethnic diversity of the UK. At the time of writing in 2017, the Review recommended that all FTSE 100 and FTSE 250 companies have at least one individual from an ethnic minority background on their board by the end of 2021 and 2024 respectively. The latest Parker Review status report, published in 2023, reported that 96% of FTSE 100 companies had an ethnic minority director on their board, representing 18% of all director positions, and 67% of reporting FTSE 250 companies had an ethnic minority director (which amounted to 60% of all FTSE 250 boards).

In addition to mandatory gender pay gap metric reporting, listed companies must also comply with board and executive diversity reporting requirements set out in the FCA’s Listing Rules. These require companies to: (i) report against specific gender and ethnicity targets; (ii) provide a numerical breakdown of their directors’ gender and ethnicity; and (iii) explain their diversity policy not only for the board, but also their audit, remuneration and nomination committees.

The Government has also published new guidance on ethnicity pay-gap reporting, which is not mandatory under UK law. This is aimed to assist employers wishing to publish this information voluntary to develop a consistent approach to reporting, especially given that ethnicity pay-gap reporting is more complex than gender pay-gap reporting. Additionally, organisations such as the Investment Association have listed diversity and inclusion as one of the key topics of institutional investor focus in 2023.

3. Who are the key persons involved in the management of each type of entity?

Decision-making in a UK company is split between its economic owners (its shareholders) and its managers (its directors and certain other senior employees). The general rule is that the directors of a UK company are responsible for its day-to-day management, and that shareholders play no part in a company’s management except in certain specific respects (see question 4 below).

A company’s directors are known collectively as its “board”. The role of “director” is a statutory office that carries with it significant powers, responsibilities and liabilities. Directors of a company are considered “fiduciaries” and “quasi-trustees” and are subject to a series of stringent duties to act in good faith, independently, carefully and in the company’s best interests.

There are few restrictions on who can act as a director. In particular, UK companies are not required to have any directors who are resident in the UK. However, a person must be at least 16 years old to serve as a director, and there are certain circumstances in which a person can be disqualified from acting as a director, either by law or under a company’s constitution. In addition, a UK company must have at least one director who is a natural person. As noted in question 2 above, legislation has been enacted (but is not yet in force) which will prohibit UK companies from appointing corporate entities as directors (other than in specific circumstances) and which will require directors to undergo identity verification. The date on which these changes will come into force has not yet been confirmed (at the date of writing this chapter).

The directors of a company can also delegate day-to-day responsibility for specific matters to a committee of persons (see question 6 below) or to specific persons. It is common to delegate responsibility in specific areas to senior managers who are not formally appointed to the board (although they may be permitted to attend board meetings from time to time). For example, responsibility for human resources may be delegated to the Head of HR and responsibility for legal matters to the General Counsel. In some cases, these persons might be described informally as a “director” despite not occupying the statutory office of director. A discussion of “shadow” and “de facto” directors is beyond the scope of this chapter.

4. How are responsibility and management

power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

As a general rule, all day-to-day management of a company's affairs is delegated to its directors. The company's constitution (see question 6 for more discussion) will set out how the directors make decisions, such as by holding board meetings or passing written resolutions.

Legislation and a company's constitution reserve certain decisions for the company's shareholders. For example, the Companies Act sets out certain matters which can only be decided by shareholders (except, in some cases, where the company's constitution delegates the discretion to the directors). These include changes to the company's name, legal form, constitution and capital structure, the removal of directors and auditors, the authority to allot shares and make purchases of a company's shares, and the disapplication of statutory pre-emption rights on the allotment of shares. A company's constitution can (and normally will) allow shareholders to appoint directors, declare final dividends and authorise directors' conflicts of interest, but the general rule is that, except where a matter is reserved to the shareholders, they have no ability to take part in the decision-making process.

Publicly traded companies may need to seek approval from shareholders for other matters, whether under the FCA's Listing Rules or under the relevant securities exchange's rules. These matters may include significant acquisitions or disposals, transactions with related parties and de-listing the company's securities. However, the FCA is currently consulting on replacing the Listing Rules with a new sourcebook, which, among other things, proposes to remove the requirement for shareholder approval on significant transactions (being transactions which represent more than 25% of the company's value), other than reverse takeovers.

Shareholders of PLCs must make decisions at a general meeting. Shareholders of private companies can take decisions at a general meeting, but it is more common (other than for certain private companies with a large number of shareholders) to do so by way of a written resolution. General meetings are regulated partly by the Companies Act and partly by a company's own constitution. A meeting can proceed only if a "quorum" is present, which is typically two shareholders present in person or by a proxy or representative (unless the company has only one shareholder). As a general rule, shareholders have the right to attend, speak and vote at general meetings, although these rights can be varied in the company's constitution. Voting at a general meeting is conducted either on a show of hands (usually, one vote per shareholder) or on a poll (usually, one vote per share). However, members may have the right to demand a poll, and certain publicly traded companies are required to hold votes by way of poll.

A general meeting can be held as a physical meeting, where everyone attends in the same place, or as a hybrid meeting, where a physical meeting takes place but some attendees are able to participate remotely from one or more different locations. It is, however, critical that all attendees are able to see and hear each other, or else the meeting may need to be adjourned. There is some doubt over whether purely virtual meetings, with no physical element, are valid under English law. In addition to a low uptake by companies and the expiration of the Corporate Insolvency and Governance Act 2020 ("CIGA") (which expressly permitted virtual-only meetings), the vast majority of companies hold their annual general meetings (AGMs) and any other general meetings in person or as a "hybrid meeting". Although several companies have amended their constitutional documentation to allow purely virtual meetings following the expiry of CIGA, it remains unclear whether this is permitted by English law.

As noted above, private companies can (and often do) pass shareholder resolutions by way of a written resolution instead. This involves the board circulating a written document to shareholders setting out the proposed resolutions and shareholders simply marking whether they vote in favour or against. Voting on written resolutions is calculated in the same way as on a poll.

Generally, resolutions take the form of either an ordinary resolution, which requires a simple majority of votes in favour, or a special resolution, which requires at least 75% of votes in favour. In many cases, the Companies Act prescribes which threshold applies. In some cases, a company can raise the voting threshold in its constitution, although this is very unusual.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

There is no single, overarching piece of corporate governance legislation in the UK. The UK's corporate governance regime comprises a somewhat disparate array of domestic and EU-derived laws, many of which are not solely corporate governance-focused, as well as regulator and investor guidance, which often varies depending on the size of the business and whether its securities are publicly traded.

Legislative sources of corporate governance include the following:

- **Companies Act and secondary legislation**: Directors owe certain statutory duties to their company, including a duty in section 172 to promote the success of the company for the benefit of its members as a whole. In discharging this duty, the directors must "have regard" to certain factors, including the company's employees, its operations on the community and the environment, and its relationship with customers, suppliers and others. This applies to all companies, regardless of size and listing status. Under accounting regulations, large companies must report publicly on how their directors have discharged their duty in section 172 and describe specifically how they have had regard to employees, customers and suppliers. Large and publicly traded companies are also required to provide greater disclosure on certain corporate governance and ESG matters, including respect for human rights, anti-corruption and anti-bribery matters. Very large companies are also required to publish an annual "corporate governance statement", explaining the corporate governance arrangements they applied during the previous financial year.
- **Streamlined Energy and Carbon Reporting regime ("SECR"):** Larger companies must report their annual greenhouse gas (GHG) emissions and energy usage. Publicly traded companies are subject to more extensive SECR obligations.
- **Climate Change Act 2008**: The UK's principal climate change statute sets a target of a 100% reduction of UK GHG emissions by 2050 compared with 1990 levels. The bulk of the obligations are placed on the Government, rather than organisations, but the statute includes a carbon-trading regime for larger organisations. As noted in question 2 above, under the UK's gender pay-gap reporting regime, companies with 250 employees or more on a "snapshot date" (currently, 31 March for the majority of public authority employers and 5 April for private, voluntary and other public authority employers) must publish data on the disparity in pay (gender pay gap) between their male and female employees.
- **Modern Slavery Act 2015**: Companies that supply goods or services, do business in the UK and have an annual turnover of £36 million or more must publish an annual "slavery and human trafficking statement", explaining the steps they took in the previous year to eliminate modern slavery in their organisations and supply chains.

Other relevant corporate governance and ESG-related legislation includes the Bribery Act 2010, the Corporate Manslaughter and Corporate Homicide Act 2007, the Equality Act 2010 and the Economic Crime and Corporate Transparency Act 2023. Pension funds are also subject to additional disclosure requirements under pension legislation.

A significant amount of the UK's corporate governance and ESG framework exists not in legislation or regulation, but in guidance and technically non-binding codes:

- For very large private companies, the so-called "Wates Principles" encapsulate similar, albeit less prescriptive, disclosure requirements, including in relation to purpose and leadership, remuneration, and stakeholder relationships and engagement. The Wates Principles are optional and operate on an "apply and explain" basis.
- For private equity investors and their portfolio companies, a separate set of reporting guidelines, known as the Walker Guidelines, exists. Investor associations and proxy advisors regularly issue guidance and policies in relation to corporate governance and ESG matters, both for publicly traded companies and for companies in specific sectors.
- For large publicly traded companies, the UK CGC provides disclosure and governance guidance on various corporate governance matters, including promulgating the company's culture and mission statement and engagement with stakeholders generally and with the company's workforce in particular.
- For small and mid-sized publicly traded companies, other corporate governance codes include (most notably) the Quoted Companies Alliance (QCA) Corporate Governance Code which was recently updated in the last quarter of 2023.

Publicly traded companies are subject to further disclosure requirements. As noted in question 2 above, the FCA's Listing Rules require listed commercial companies to "comply or explain" against the TCFD Recommendations, although, again as noted in question 2 above, for financial years beginning on or after 6 April 2022, a similar obligation applies to a broader range of entities with more than 500 employees.

Under the Disclosure Guidance and Transparency Rules (the "DTRs"), companies whose securities are admitted to a UK regulated market are required to publish a corporate governance statement, stating which corporate governance code they have adopted and how they have complied with it. For listed companies, the FCA's Listing Rules require this to be the UK CGC. Certain publicly traded companies are also required to disclose more extensive information on their directors' remuneration and to develop a binding remuneration policy.

Additional regulations that will or may apply include the UK Market Abuse Regulation, the UK Prospectus Regulation, the Prospectus Regulation Rules and the specific rules of the relevant securities exchange. In January 2024, the Public Offers and Admissions to Trading Regulations 2023 were published, which replace the UK Prospectus Regulation on its repeal.

6. How is the board or other governing body constituted? Does the entity have more than one? How is responsibility for day-to-day management or oversight allocated?

The constitution of a company's board is set out in the company's constitutional documents (principally, its articles of association). The articles will typically set out the minimum and (sometimes) maximum number of directors the company may have, as well (in rare cases) as any specific qualification criteria. A company's board can comprise executive directors and non-executive directors (NEDs). The boards of most non-publicly traded companies comprise only executive directors, although some larger companies may also appoint NEDs. Publicly traded companies will invariably appoint NEDs.

Executive directors take on the day-to-day running of the company and make business decisions. Often, executive directors assume functional titles and roles, such as Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO) and Chief Technical Officer (CTO). NEDs do not take part in a company's management. Rather, they scrutinise the executive directors' decisions and challenge them on strategy and policy. NEDs do not usually assume specific roles, although in larger companies it is common for a NED to serve as the company's Chair and, again in larger companies, a NED will typically serve as the Senior Independent Director (SID). In addition, under the UK CGC, listed companies may appoint a NED as a liaison between the board and the workforce. See question 8 below for more information on NEDs.

Unlike in some jurisdictions, where a company may have a "supervisory board" and a separate "management board", UK companies have only one, unitary board. Despite their day-to-day roles and responsibilities being different, there is no distinction in law between executive directors and NEDs: all are considered directors with the same powers and duties and the same potential personal liability. This means that NEDs must ensure they engage actively in a UK company's affairs, rather than taking a "back seat".

As a general rule, a company's directors take decisions in board meetings. As with shareholder meetings, a minimum quorum is normally required for business to take place; this varies from company to company. Matters are normally decided by a majority of the directors in attendance, with each director having one vote, although this can be modified in the company's constitution. Indeed, weighted voting rights and more complex quorum requirements (e.g. an investor-appointed director being required for a quorum) are common in certain structures, such as private equity backed groups and joint ventures. Although the law is not completely clear, it is now generally accepted that directors can hold board meetings by telephone or video conference, provided all of the directors attending the meeting can see and hear each other. Modern company constitutions specifically allow virtual board meetings. A company's constitution will often also allow its directors to take decisions by a resolution in writing without a meeting. However, because a written resolution eliminates the ability to debate and discuss matters, any board decision taken in writing normally needs to be unanimous.

A company's constitution may allow its directors to delegate responsibility for certain decisions to board committees. Committee members are often directors, although the constitution can allow non-directors (such as senior managers) to serve as committee members. Typical committees include: a nomination committee, which is responsible for director appointments and succession planning; an audit committee, which is responsible for internal audit and reporting and choosing the company's external auditor; a remuneration committee, which is responsible for setting the directors' compensation and, increasingly, for setting workforce remuneration generally; and a risk committee, which may assume certain internal risk-reporting functions of the audit committee and other compliance responsibilities. Increasingly, boards are now establishing further committees as required, such as a sustainability, corporate social responsibility or ESG committee.

UK company law does not require a board to establish committees, nor does it set out the membership requirements or remit of committees. However, companies whose securities are traded on a UK regulated market are required to establish an audit committee, and the UK CGC also recommends that listed companies also establish a nomination committee and a remuneration committee. The UK CGC also sets out specific independence requirements for members of audit, nomination, and remuneration committees. Delegating to a committee does not absolve the directors of their responsibilities. A company's directors remain primarily liable for running a company. They will need to act diligently and reasonably when delegating their duties to, and selecting the members of, a committee.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

The power to appoint directors is set out in a company's constitution (principally, its articles of association). Usually, the board has the power to appoint an additional director to the board without seeking shareholder approval. However, for publicly traded companies and (occasionally) for non-publicly traded companies, a director appointed by the board will be subject to re-election by the shareholders, usually at the next AGM. In addition, a company's constitution normally gives its shareholders the power to appoint directors by ordinary resolution. This is subject to new requirements introduced by the Economic Crime and Corporate Transparency Act 2023 requiring company directors to undergo identity verification (see question 2 above).

A director leaves office by resigning, being removed or automatically vacating office. Generally speaking, a director can resign voluntarily at any time. A company's constitution may set out certain circumstances in which a director automatically vacates office. These usually include where the director dies, is declared bankrupt, is disqualified from acting as a director, fails to attend a certain number of successive board meetings or cannot be contacted, or becomes physically or mentally incapable of performing the role of director. Although described as "automatic", in many cases the board must agree that the relevant circumstances have arisen, effectively amounting to a removal. Other than in these circumstances, a director can be removed only by the company's shareholders passing an ordinary resolution under the Companies Act. The procedure for doing this is more complex than other shareholder resolutions. The director in question must be given extended notice of the proposed resolution and is entitled to circulate a statement and make representations to the shareholders. For listed companies, the UK CGC encourages a transparent procedure for the appointment of directors and, if a company has a nomination committee, this will be part of its function. It is common for the nomination committee's terms of reference to encompass the search and selection process, as well as succession-planning for when directors retire. The office of director is separate from employment status. So, although a company may be entitled to remove a director, the director may nonetheless be entitled to claim for breach of their employment contract or unfair dismissal if the removal is not justified by some ground.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

As noted in question 6 above, the boards of many non-publicly traded companies comprise executive directors only. The boards of larger and publicly traded companies typically comprise a mix of executive directors and NEDs. There are no restrictions in law on who can serve as a NED. However, the UK CGC sets out certain criteria for listed companies. These include that at least half of the company's board (excluding the Chair) should comprise independent NEDs, the roles of CEO and Chair should not be combined, and the CEO of a company should not go on to become its Chair. The UK CGC states that a listed company should identify each NED considered to be independent in its annual report. If the company has established a nomination committee, that committee will have responsibility for nominating new directors, arranging succession-planning for existing directors and implementing the company's diversity policy. The UK CGC sets out a list of non-exhaustive criteria that may impair (or appear to impair) a NED's independence. These include where a director: is or has been an employee of the company or group within the last five years; has, or had within the last three years, a material business relationship with the company (either directly or indirectly); has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme or is a member of the company's pension scheme; has close family ties with any of the company's advisers, directors or senior employees; holds cross-directorships or has significant links with other directors through involvement in other companies or bodies; represents a significant shareholder; or has served on the board for more than nine years.

Board committees – particularly audit and risk committees – are often tasked with considering specific corporate governance and/or ESG matters. As noted in question 6 above, some entities establish dedicated sustainability, ESG or health and safety committees to provide oversight of corporate governance and ESG matters and report to the board on these issues. There is no requirement in law to have an ESG committee. However, dedicated ESG committees can play a role by aligning the company's agenda with changing ESG trends or requirements and to recommend changes to the board.

9. What is the role of the board with respect to setting and changing strategy?

Responsibility for setting and changing the company's overall business strategy, including ESG matters, rests with the company's directors. As noted in question 6 above, the directors can delegate responsibility for certain discrete elements of strategy, including ESG matters, to specific persons, but responsibility ultimately lies with the board. In reaching decisions on strategy, a company's directors must bear in mind their statutory duties to the company, including (in particular) their duty under section 172 of the Companies Act to promote the success of the company for the benefit of its members as a whole. In particular, when discharging their duty under section 172, the directors must have regard to the likely consequences of any decision in the long term. The directors must therefore consider carefully whether the company's strategy and business plan are likely to generate value for shareholders. In doing so, directors must focus not solely on current shareholders, but rather the shifting body of shareholders over time. Larger companies are required to explain their business model and strategy in their annual report, as well as the principal risks they face. The Financial Reporting Council ("FRC"), the UK's principal corporate reporting supervisory body, has issued a substantial body of guidance on matters that directors should consider when deciding on the company's strategy and describing risks. Historically, risks have arguably concentrated on commercial concerns, but increasingly companies are expected to report on corporate governance and ESG matters in their risk statement.

For listed companies, the UK CGC requires the company to publish a so-called "longer-term viability statement". This statement must set out the principal risks to the company's continued viability over a protracted period of time. There is no prescribed period of time for a longer-term viability statement, although typically periods have ranged from three to five years. The role of the board in setting the company's strategy in relation to corporate governance and ESG issues is important so that others involved in implementing the strategy appreciate the importance of ESG matters. It is increasingly common for companies to establish nonfinancial key performance indicators (KPIs) to measure the extent to which the company is achieving its ESG objectives, and some companies are even feeding these KPIs into director remuneration metrics and performance evaluations.

10. How are members of the board compensated? Is their remuneration regulated in any way?

Directors' remuneration will be governed by their service contracts with the company. The Companies Act sets out various restrictions on payments to directors, for example, including in connection with loss of office. However, for non-publicly traded companies, directors' remuneration is largely unregulated. That said, as with all matters, when setting their remuneration, the directors of a company will need to ensure they are complying with their statutory duties, including to promote the company's success. Global proxy advisers also issue guidance on directors' remuneration. For example, the latest Institutional Shareholder Services (ISS) guidelines state that executive annual salary increases are expected to be low and ideally lower proportionally than general increases across the workforce (rather than "in line" with general increases across the workforce).

For certain types of publicly traded company, the directors must publish a formal directors' remuneration policy. The policy forms part of the company's directors' remuneration report (see below) and sets out the proposed remuneration, including incentive arrangements, for the directors over a specific period of time. The remuneration policy, which is forward-looking, must be put to a binding vote of the shareholders at least once every three years, and the remaining parts of the remuneration, which are backward-looking, must be put to an annual advisory (non-binding) shareholder vote. The company may not make any payments to directors outside of the terms of its remuneration policy. Whilst there is no legal requirement for them to do so, it is not uncommon for directors of larger and publicly traded companies to hold shares (or contingent entitlements to receive shares) in the company that will be linked to their performance as director. Indeed, it is common for directors of companies, particularly publicly traded companies, to be remunerated by means of share awards. For listed companies, the UK CGC sets out parameters in relation to the grant and vesting of share awards, and various investor associations have issued guidance on this point.

Under the Companies Act and secondary legislation, companies are required to report on their directors' remuneration. The level of disclosure increases incrementally with the size of the company. At one end of the spectrum, directors of certain publicly traded companies must prepare a directors' remuneration report for each financial year, setting out details of its directors' remuneration for the previous financial year, including a breakdown of individual remuneration for each director and the ratio of the CEO's pay to that of the company's workforce generally. The remuneration report (other than the remuneration policy section) is subject to an annual non-binding shareholder vote. Investor associations have published guidance on director remuneration reporting generally. For example, the GC100 Investor Group has issued best practice guidance for director remuneration disclosures. In particular, it encourages companies to explain any deviations from the company's policy implementation procedure and to indicate the percentage change of each director's salary or fees, benefits and short-term incentives in comparison to the average of full-time employees. For listed companies, the UK CGC sets out detailed provisions on directors' remuneration and the procedure for determining an individual director's remuneration. This includes the composition and role of the remuneration committee in setting directors' remuneration.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

A director owes statutory duties to their company under sections 171 to 177 of the Companies Act. These are duties:

- to act within their powers, which includes acting in accordance with the company's constitution;
- to promote the success of the company for the benefit of its members as a whole;
- 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 (if any) in a proposed transaction or arrangement with the company.

As noted in questions 5 and 9 above, when considering what is most likely to promote a company's success, directors must "have regard" to wider stakeholder needs, 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 community and the environment; the desirability of the company to maintain a reputation for high standards of business conduct; and the need to act fairly as between shareholders of the company. In addition to these statutory duties, directors also owe certain residual legal duties to the company of which they are a director. These include a duty of confidence and, some argue, a general duty of "loyalty". A director's duties are owed to the company, not to its shareholders. It is the company that must therefore bring legal action against a director who is in breach of duty.

The remedies available to the company against a director depend on the nature of the breach and the specific duty breaches, but commonly they will include a right to claim damages or compensation, to recover any property that has been misappropriated, and to recover any profit the director has made. Because a director's duties are owed to the company, the general rule is that a shareholder is unable to bring direct action against a director. However, in certain circumstances, a shareholder may be able to bring legal action against a director in the company's name, and there are certain (unusual) circumstances in which directors can assume liability directly towards shareholders (see question 18 below). If a company is insolvent or approaching insolvency, the primary focus of the directors' duties shifts from the company's shareholders to its creditors and, in some very limited situations, certain director duties to the company can continue after liquidation.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

The Companies Act prohibits a company from absolving its own directors of liability for any negligence, default, breach of duty or breach of trust committed while in office. Similarly, the Companies Act prohibits a company from indemnifying its own directors, or the directors of any of its associated companies, from liability of this kind. The purpose of these prohibitions is to ensure that directors cannot abuse their position of trust and use a company's reserves to protect themselves from liability for their own reckless acts. There are certain exceptions to this rule. For example, a company is allowed to indemnify its directors against liability they incur towards someone other than the company or an associated company in connection with acting as a director. This is known as a qualifying third-party indemnity. There are some exceptions to this: the company cannot indemnify a director against criminal and civil fines, or against the costs of criminal or civil proceedings in which the director is unsuccessful. In addition, companies are permitted to indemnify their directors against any liability incurred in connection with acting as a director of a company that administers an occupational pension scheme for the company. This is known as a qualifying pension scheme indemnity. Finally, companies are permitted to take out directors' and officers' liability (D&O) insurance to provide cover for their directors and officers (and often other senior executives) in relation to claims made against them for "wrongful acts". The D&O insurance market in the UK is well-developed. A company seeking D&O insurance should retain a broker to advise it on the most appropriate policy for it, as well as legal advisers to review the terms of cover and any potential applicable exclusions and qualifications. However, there is no prohibition on a shareholder indemnifying a director against liability (unless the shareholder is an associated company). Indeed, where a director has been appointed as the representative of a shareholder (for example, in a joint venture or in a private equity backed company), it is common for the shareholder to provide indemnification for the director as part of agreeing to take on the role.

13. How (and by whom) are board members typically overseen and evaluated?

There is no specific legal requirement for directors to undergo oversight or performance evaluations. Instead, the directors of a company are expected to monitor their own performance as part of their broader duties to the company. In practice, oversight and evaluation of members of management varies from company to company, depending on the management structure and complexity of the company. For smaller private companies, the evaluation process may be limited to an annual review by the company's internal HR function. For larger private and public companies, the evaluation process is likely to be more rigorous and detailed, especially for listed companies where shareholders typically take a deeper interest in the actions and behaviour of management. For listed companies, the UK CGC requires a formal and rigorous annual performance review of the board, its committees, the Chair and individual directors. In FTSE 350 companies, this type of review should happen at least every three years. The Chair should consider arranging a review by an external reviewer and should act on the results of any review by recognising the strengths and addressing any weaknesses of the board. Each director is encouraged to engage with the process and take appropriate action where required. The UK CGC states that NEDs should scrutinise management, individual executive directors and the Chair and hold them to account against agreed performance objectives. The Chair should hold separate meetings with NEDs without the executive directors present to facilitate scrutiny.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

There is no strict legal obligation for directors to consult with shareholders. However, consulting with shareholders is naturally sensible in light of the directors' overriding duty under the Companies Act to promote the success of the company for the benefit of its members as a whole. Where the company is closely held, is backed by a financial sponsor or is a joint venture, it is common for the company and its shareholders to enter into a shareholders' agreement. This may require the company and the directors to consult with shareholders, provide them with information and even seek their consent before taking a proposed action.

For publicly traded companies, it is common for the board to engage regularly in dialogue with the company's shareholders, particularly any significant institutional investors. Shareholders of publicly traded companies also have numerous opportunities to engage with the company's boards: AGMs (and any other general meetings) provide a regular forum for discussion between the board and shareholders. For listed companies, the UK CGC requires the Chair to monitor and foster a healthy relationship with shareholders by seeking regular engagement to understand their views on governance and performance against the company's strategy. Again, for listed companies, the UK CGC requires the board to appoint one of its independent NEDs as a "Senior Independent Director" to act as a second intermediary (other than the Chair) between the board and shareholders. Finally, the chairs of any board committees should also seek engagement with shareholders on significant matters related to their areas of responsibility.

Other than legislation, certain institutions (most notably, the Investor Forum) have lobbied for a notion of “collective engagement” and been instrumental in facilitating dialogue between institutional investors and companies. In the UK, the FRC has published the Stewardship Code, which sits alongside the UK CGC and is designed to encourage institutional investors, asset managers and their service providers to engage in sustainable and responsible investment and stewardship. Whilst previously aimed primarily at investments in listed companies, the Code now applies to investments across all asset classes, including private equity portfolios. Adherence to the Code is (with a few small exceptions) voluntary, with signatories required to report annually on their methods of engagement. However, it presents an incentive for renewed efforts.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

UK companies can have any number of classes of share, with different rights and restrictions attaching to each class. Indeed, dual- and multi-class capital structures are common in private equity and venture capital backed structures, joint ventures and other closely held companies. Specific rights that can be varied include (among other things) dividend entitlements, voting rights and board appointment rights. It is common for a company to issue equity shares (such as “ordinary shares”), which give the holder a right to participate in a percentage of the company’s profits and typically carry full voting rights, and non-equity or debt shares (such as “preference shares”), which give the holder a right to a fixed return and usually carry more limited, or no, voting rights. Despite the name, however, non-equity/debt shares are not a debt instrument and do not confer the right to enforce payment or force a company into liquidation. It is not uncommon for a publicly traded company to have both equity and non-equity shares admitted to trading.

Dual-class listings are not as common in the UK as in other jurisdictions (such as the United States), in part because dual-class listings are permitted on the premium listing segment (and hence are eligible for inclusion in the FTSE market indices) only if they satisfy certain conditions. These include conditions relating to the maximum ratio of voting rights and enhanced voting rights relating, for example, on removing directors, which must include sunset provisions causing them to expire not more than 5 years from the date of the listing. In theory, companies can admit dual-class share structures to other markets, including the standard segment of the Official List or to AIM, the High Growth Segment and the AQSE Growth Market. However, these markets are typically seen as having more limited profile, or as catering for more specialised companies.

As noted in question 1 above, the FCA has published detailed proposals to reform the listing regime, which includes a proposal to replace the “dual structure” of premium and standard listings with a single listing segment. The proposals would allow dual-class share structures to be listed within this segment with requirements slightly more relaxed than those that apply at present.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

All UK companies are required to disclose certain financial and non-financial information, both generally and through their annual report and accounts. This information must be made available to shareholders and filed publicly on the open register at Companies House. Publicly traded companies are also required to publish their annual reports and accounts to the market through regulatory information services. The information a company is required to disclose varies significantly, depending on the size of the company, whether it is publicly traded or not (and, if it is, on which markets). For these purposes, a company’s size is determined by reference to its turnover, its balance sheet total and its average number of employees. In addition, specific requirements apply to banking and insurance companies.

Information that all companies must disclose to the public include:

- Copies of its constitutional documents, including its articles of association and copies of certain resolutions passed by the shareholders.
- Details of its directors, company secretary and registered office, and (except for certain publicly traded companies) details of persons with significant control over it.
- Full details of its share capital, including details of any share issues, redemptions and buy-backs and any reductions in the company’s share capital.
- Basic financial information for each financial year, including the company’s profit and loss

account (or statement of comprehensive income) and its balance sheet (or statement of financial position).

The level of financial information, particularly in the notes to the financial statements, increases dramatically as the size of a company increases. The level of detail is too great to encapsulate in this chapter, but suffice to say that a large, publicly traded company's annual reports and accounts can run to hundreds of pages.

All companies (except the very smallest) must also prepare and file an annual directors' report. This contains relatively basic information on the company's directors and its audit. However, large companies must also include information on how, during the financial year, the directors had regard to the need to foster the company's business relationships with suppliers, customers and others and, if the company had more than 250 UK employees in the year, how the directors engaged with those employees. Large companies must typically also include information in their directors' report on the company's GHG emissions and energy usage during the financial year.

Large and medium-sized companies must also publish an annual strategic report. The report must set out information on the company's strategy and business plan, as well as on various corporate governance and ESG-related items, including the impact of the company's business on the environment, disclosures around the company's employees, social, community and human rights issues, and the company's policies in relation to each of those matters. Large companies must also include a section 172(1) statement in their strategic report, setting out how its directors took the various factors set out in section 172 of the Companies Act into account when fulfilling their duty to promote the company's success. Certain publicly traded companies must also publish a non-financial information statement within their strategic report. This overlaps considerably with existing content requirements for the strategic report but covers additional matters, such as human rights and anti-corruption and anti-bribery matters.

As noted in question 10 above, certain publicly traded companies must also publish a directors' remuneration report and a directors' remuneration policy. As noted in question 5 above, publicly traded companies and very large private companies are required to publish a corporate governance statement explaining their corporate governance arrangements. This requirement may derive from accounting legislation, the DTRs, the Listing Rules and/or securities exchange rules, depending on the size of the company and where its securities are traded. There are subtle differences, including whether the company must comply with a particular corporate governance code, but the requirement is broadly similar.

As noted in question 5 above, companies with 250 or more UK employees as at 31 March in each year must publish gender pay gap information, setting out certain prescribed metrics on the disparity in pay (gender pay gap) between their male and female employees. Large companies must also publish information on their invoice payment practices and policies. Essentially, this requires a company to provide information on how promptly it pays invoices of smaller businesses, and its policies for dealing with payment.

Companies that do business in the UK, supply goods and services and have an annual turnover of at least £36 million must publish an annual slavery and human trafficking statement setting out the steps they took to eliminate slavery and human trafficking in their organisation and supply chains.

Finally, alongside these requirements, there are additional disclosure requirements that apply to publicly traded companies under the Listing Rules, the DTRs and the Market Abuse Regulation. For example, all publicly traded companies are required to disclose any inside information to the market without delay (except in certain circumstances where they are permitted to delay disclosure). In addition, most publicly traded companies are required (at the least) to notify the market of any significant transactions and transactions with related parties, if (indeed) they are not required to seek shareholder approval.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

Under the Companies Act, shareholders holding 5% or more of a company's total voting rights can require a company's directors to convene a meeting of the company's shareholders. The request must state the general nature of the business to be dealt with at the meeting and the text of any resolution intended to be moved at the meeting. The directors must circulate a notice of general meeting within 21 days of receiving the request and convene a general meeting within 28 days of that notice. If they fail to do so, the petitioning shareholders can convene the meeting themselves. Shareholders of private companies have a corresponding statutory right to require the company's directors to circulate a written resolution. However, shareholders have no right to circulate a written resolution if the directors fail to do so and would instead need to call a general meeting. As a result, we do not see this mechanism used frequently.

Shareholders holding 5% or more of a company's total voting rights (or at least 100 members each holding on average £100 of paid-up capital) can also require the directors to circulate to shareholders a statement of not more than 1,000 words with respect to any matter or business proposed to be dealt with at an upcoming general meeting. The request must identify the statement to be circulated and be received by the company at least one week before the general meeting to which it relates.

Finally, shareholders holding 5% or more of a PLC's total voting rights (or at least 100 members each holding on average £100 of paid-up capital) may require a resolution or matter to be put before the company's AGM. (Private companies are not required to hold an AGM.) This request must identify the resolutions of which notice is to be given and must be received by the company not later than six weeks before the AGM to which the request relates (or, if later, the time at which notice is given of the AGM).

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

In theory, shareholders have a right to bring action against a company for breach of its constitution. If the company has entered into a shareholders' agreement with its shareholders, the shareholders may be able to bring action against the company if it breaches that agreement. However, actions of this kind are not common, and a shareholder will always need to consider the commercial merit in suing its own investment. In addition, broadly speaking, where a publicly traded company publishes a misleading statement and a person relies on that statement to acquire, continue to hold or dispose of securities, that person can claim directly against the company for any loss they suffer. Because a director's duties are owed to the company, rather than shareholders, the general rule is that a shareholder cannot bring direct action against a director. However, in certain circumstances, a shareholder may be able to bring legal action against a director in the company's name under a so-called "derivative claim". This is notoriously difficult for a variety of reasons, and a shareholder looking to do this needs to remember that any damages awarded will go to the company, not to the shareholder bringing the action. Derivative claims are more common in relation to private companies; derivative claims against directors of publicly traded companies are virtually unheard-of. There are also certain (limited) circumstances in which the directors can assume a direct duty to (and so be sued by) shareholders. For example, where the directors publish information which they know shareholders will rely on, they may be assuming a duty of care to shareholders and could be personally liable to them for negligent misstatement if the information is inaccurate. Similarly, where the directors of a company include information in a circular to shareholders in connection with a resolution or shareholder action, they are under a duty to ensure it contains all relevant information and does not omit any material details. A good example of this is the case of *Sharp v Blank* [2019] EWHC 3078 (Ch), where shareholders brought action against the directors in connection with a proposed takeover. For publicly traded companies, however, generally speaking shareholders exert their main influence by voting for or against resolutions at the company's AGM.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

In the UK and around the world, shareholder activism activity is increasing. Shareholder activism is more common in the UK than it used to be but still plays a relatively modest role in influencing company behaviour than it does in other jurisdictions, such as the United States. In part, this reflects the fact that the UK has, broadly speaking, taken a "top-down" approach to governance, requiring companies to disclose their policies and practices under legislation and codes of practice and allowing investors to make their investment choices based on those disclosures. This contrasts with jurisdictions such as the United States, which arguably employ (or have historically employed) more of a "bottom-up" approach, in which it is left to shareholders to exert pressure on companies to change behaviour.

Investors in the UK are increasingly reviewing the governance credentials of publicly traded companies as part of their investment decision process. Governance related disclosures in annual reports and prospectuses have been placed under greater scrutiny, arguably leading to an increased risk of investor and activist claims where disclosures are inaccurate. Activist investor groups, such as ShareAction, and collective engagement groups, such as the Investor Forum, have given individual investors and smaller ESG conscious shareholders a greater voice, holding companies to account by proposing resolutions, publishing articles on issuer non-compliance with ESG regulations and guidance, and providing rankings for both countries and organisations (such as banks).

For example, in 2021, HSBC's AGM was targeted by ShareAction due to the bank's ranking as the second largest financier of fossil fuels in the EU and the perceived lack of direction for climate positive action within the bank. In December 2022, HSBC announced its commitment to stop financing new oil and gas fields. This follows a previous shareholder resolution coordinated by ShareAction asking HSBC to update its oil and gas policy. ShareAction has since been engaging with HSBC on the contents of its new energy policy, contributing to HSBC's new commitment, according to ShareAction.

A more recent, though unsuccessful, example is ClientEarth's derivative action claim against the directors of Shell in response to the allegedly inadequate implementation of a climate change risk management strategy. However, these actions have not been successful, in part because the courts will generally defer to the directors of a company as the persons in the best position to make strategic decisions for the company and to evaluate the interests of shareholders.

Shareholder activism need not relate to ESG matters. A recent increase of shareholder activism has been seen in relation to bumpitrage, whereby shareholders of a company being taken over threatens to vote against a deal in order to manipulate a higher offer. Though numbers are still low, recent data shows that this is on the increase in the UK.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

Under the Companies Act, PLCs and publicly traded companies must hold an AGM each year. Private companies can, but are not required to, hold an AGM and, other than special purpose companies, such as charities and private members' clubs, it is rare for a private company to do so. Shareholders and directors have a statutory right to call a general meeting provided it complies with the procedure as set out in the Companies Act (see question 17 above).

The format of most AGMs is relatively similar and the typical matters dealt with include: approval of the directors' remuneration report and (if required) remuneration policy; the appointment and re-appointment of directors and auditors; seeking authority to issue and allot shares, disapply statutory pre-emption rights and conduct on-market buy-backs (up to specified levels); any amendments to the company's constitution; and any other matters, such as adopting or amending an employee share scheme and authorising charitable and political donations. In addition, a PLC must lay its annual reports and accounts before its members in a meeting. Technically this does not need to be done at the AGM, but the AGM is commonly used for this purpose. It is customary to allow the shareholders to vote on the reports and accounts, although (apart from the directors' remuneration report and (if required) remuneration policy) this is not required and the vote has no legal effect.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Generally, there are no organisations that provide voting recommendations to investors of private companies. In practice, this kind of activity is limited to publicly traded companies.

A number of different organisations provide guidance to institutional shareholders on how to vote on shareholder resolutions of publicly traded companies. Within the UK, these include the Investment Association, the Pensions and Lifetime Savings Association (PLSA), Pensions Investment Research Consultants Limited (PIRC) and, notably, the Pre-emption Group (PEG). In 2022, PEG published an updated version of its Statement of Principles, updating its recommendations on the expected limits within which listed companies may disapply statutory pre-emption rights on new share issues. Mirroring the allowance applicable during the Covid-19 pandemic, the updated Principles now recommend a limit on non-pre-emptive issues of 20% (as opposed to 10% pre-pandemic). This includes a recommended limit of 10% for any purpose and a further 10% for an acquisition or specified capital investment (raised from 5% and 5% previously). PEG now also recommends a further 2% disapplication in each case for a "follow-on offer", designed to facilitate participation by retail investors in secondary issuances.

Global proxy advisers, such as ISS and Glass Lewis, also issue voting guidelines and policies specifically for the UK. These proxy advisers are subject to transparency requirements relating to the advice and voting recommendations they give.

Finally, some institutional investors also publish guidelines on how the investment funds they manage will vote on particular shareholder resolutions. In general, the majority of publicly traded companies pay close attention to these investor and proxy adviser guidelines. In most cases, a company will be able to depart from a particular voting recommendation if it can justify this to investors.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

The basic legal position is that other stakeholders do not have any input into the corporate governance of a company. However, directors have a statutory duty to consider the interests of other stakeholders when making decisions relating to the company. In addition, certain stakeholders may be able to influence the policy of a company (potentially to a significant extent) through their contractual relationship with it. For example, a lender providing debt finance to a company will include specific covenants in the loan agreement that prevent the company from taking action that might imperil repayment of the loan. Providers of debt finance have also begun to place a greater emphasis on ESG investments, again particularly in those seeking to reduce or reverse climate change. Equally, where a person is providing significant equity finance to a company, it is common for them to enter into a shareholders' agreement (sometimes called an investment agreement) with the company and the other shareholders which gives them a significant degree of control over the company and its day-to-day business. This may take the form of veto rights over certain matters, as well as appointing one or more directors and/or observers to the company's board.

Employees and other workers generally have little ability to exert influence on a company's overall governance and policy, other than through industrial action. However, the UK CGC requires listed companies to engage actively with their employees and sets three methods that companies can consider adopting: (i) appointing a director from the workforce; (ii) creating a formal workforce advisory panel; or (iii) designating a NED with responsibility for workforce engagement. If the company does not choose any of these methods, it should explain what alternative arrangements it has put in place and why it considers that them to be effective.

One clear exception to the 'no outside stakeholder influence' general rule is that the Government and regulators can and do exert significant influence on a company's corporate governance. The Government has significant powers to pass secondary legislation to require companies to make disclosures regarding corporate governance and, if it has a majority in the UK Parliament, can pass primary legislation to any effect it wishes. Regulators have a wide berth to pass new rules and regulations requiring companies (particularly publicly traded companies) to comply with codes of practice.

On a macro level, there is a general perception that younger investors, consumers and stakeholders – "millennials" and "Generation Z" – are becoming more ESG-conscious than previous generations and have created a greater demand for "responsible" or "sustainable" investment policies and practices. Younger stakeholders are perceived as placing greater importance on (for example) climate change, social justice and other non-financial imperatives than has historically been the case. This seems to be driving organisations to act more and more competitively in demonstrating their ESG credentials. In addition, younger individuals are also making up an increasing proportion of the workforce in large UK corporates, often prompting organisations to strengthen their internal corporate governance and ESG measures by providing increased employee engagement, more expansive employee benefits (such as enhanced parental leave) and improving waste reduction and recycling. In the public markets, providers of equity finance are relying increasingly on both externally and internally developed ESG ratings. There has been accelerated growth in recent years of ESG rating agencies (such as FTSE ESG, Sustainalytics, Refinitiv and MSCI), which assess and rate global companies based on their corporate governance and ESG performance. This can involve reviewing issuer's annual accounts and reports for ESG-related topics.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

As noted in questions 5, 9 and 11 above, the directors of a company must have regard to certain matters when discharging their duty under section 172 of the Companies Act to promote the company's success for the benefit of its members as a whole. In particular, they must have regard to the impact of the company's operations on the community and the environment, the company's relationship with customers, suppliers and others, the company's employees, and the desirability of the company maintaining a reputation for high standards of business conduct. However, the directors do not owe a duty to other stakeholders and it is clear that, whilst they must consider these other stakeholders, their interests are at all times subordinate to those of the company's shareholders or, if the company is insolvent or approaching insolvency, its creditors. In practice, this is the long and short of the position for non-publicly traded companies. However, as noted in question 16 above, large companies (which will invariably include publicly traded companies) must publish an annual section 172(1) statement setting out how the directors have had regard to the matters in section 172 when performing their duty to promote the company's success, as well as specific information on GHG emissions and energy usage, and engagement with customers, suppliers and employees. This provides motivation for boards to consider more actively the position of other stakeholders when taking decisions.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

See questions 2, 5 and 16 above for more information on particular areas of ESG and legal obligations. Generally speaking, more and more companies are giving active thought to ESG matters when setting their strategy and making business decisions. Section 172(1) statements and stakeholder reporting shine some light on the approach employed by directors in this regard, but inevitably they provide only a reductionist summary of what goes on behind closed doors. There is no public right of access to a company's board papers, not even for shareholders, and so in reality it is impossible to gauge how seriously and to what extent boards are considering ESG matters, or whether public statements are merely pandering to investor sentiment or the zeitgeist generally. However, it is undeniable that ESG matters have taken centre stage in recent years, and that, unless companies provide more transparency in their decision-making processes, Government and regulators will continue to push for more disclosure and regulation.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Shareholders are under no duty to engage with the companies in which they invest. Should they want to, investors can simply sit back and watch what happens to their stocks. However, clearly it is in the interests of significant shareholders and investors to understand and influence the corporate governance of entities in which they are invested, both from a presentational perspective and to protect the value and integrity of their investments. As noted in question 14 above, the FRC has published the Stewardship Code (the "UKSC"), a voluntary code of practice and disclosure for investors and asset managers. The UKSC, which is aimed at asset owners and asset managers, as well as "service providers" (investment consultants, proxy advisors, accountants, actuaries, and data and research providers) sets out various principles and reporting guidelines, which differ depending on the category of organisation and investment. FCA-authorised asset managers are required (under the FCA's Conduct of Business Rules) to "comply or explain" against the UKSC. The Pensions Regulator also encourages adherence to the UKSC.

In addition, a number of UK investors, the bulk of whom are investment managers, have signed up to the United Nations Principles for Responsible Investment (the "PRIs"), which (at the time of writing) have 5,366 signatories. The PRIs are six overarching principles to incorporate corporate governance and ESG issues into investment, including at decision-making process level, by disclosing appropriately and by incorporating them into any portfolio companies. The PRIs are described as voluntary and aspirational, offering a menu of possible actions for incorporating ESG issues. The PRIs also explain to organisations how to write a responsible investment policy to assist with improving ESG integration, and organisations are asked to provide evidence of how the policy is being complied with.

Occasionally, the question is raised as to whether significant investors and shareholders should be legally required to assume a more active role in company stewardship. This is often posited as a potential counterweight to the concentration of power in a company's board and to counteract concern about short-termism (see question 26 below). In reality, it is difficult to see any Government seeking to impose significant obligations on shareholders. The nature of a shareholder's relationship with a company is purely one of economic ownership (which is safeguarded by the ability to exercise voting rights on matters where shareholders are entitled to vote). A share is simply an asset which carries certain rights (e.g. voting), which has a value that could go up or down, and which the shareholder hopes in future to realise for liquid funds. It seems antithetical to this setup that such an asset should also carry responsibilities and liabilities for its holder to engage in the management of the issuing company. However, one area on which to keep an eye is the potential expansion of the UKSC to more kinds of regulated investor.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

There are (and have been for some time) concerns about short-termism in the UK markets. Regulators, investment associations and public interest bodies frequently voice the argument that short-term investors, such as hedge funds, are disinterested in the long-term success of a company and therefore less inclined to engage with companies in which they invest or to attribute any importance to culture or sustainability. Efforts to combat short-termism remain limited, in part due to the difficulty in regulating it. Any attempt to promote long-term holding by reducing or eliminating quick trades will naturally begin to inhibit the freedom to buy and sell in the market and stock liquidity. Arguably the closest we have seen regulation come to combatting short-termism is the EU Short Selling Regulation (which, following the UK's withdrawal from the European Union, continues to apply in the UK with modifications). That Regulation prohibits the short selling of certain securities unless certain exemptions apply and imposes certain market notification obligations. However, this is clearly limited to a very particular activity and does not address the issue of short-termism more generally. To date, most efforts have focussed on requiring companies to set out their longer-term vision and encouraging investors to engage with them on it. This is designed to ensure that boards do not overly prioritise short-term investors by focussing unduly on one-or two-year strategies and timelines.

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