

HORIZON SCANNING 2020

KEY LEGAL

DEVELOPMENTS 2020



CORPORATE GOVERNANCE

2020 will see companies report against the 2018 UK Corporate Governance Code for the first time. Amongst other things, companies will need to explain the methods used for workforce engagement and provide clear explanations for any chair who has been on the board for more than nine years. As in 2019, companies will need to report on significant votes (20% or more) cast against a resolution at the 2020 AGM. This includes publishing an update of action taken within six months of the AGM and including a final summary in the annual report.

A revised Stewardship Code will apply from 1 January 2020. It contains new expectations about how investment and stewardship is integrated, including environmental, social and governance issues.



WORKPLACE HARASSMENT

Discrimination and harassment remain in the spotlight, with the Government considering various proposals to impose greater obligations on employers, including introducing a statutory code of practice on sexual harassment and a possible mandatory duty to protect employees from discrimination and harassment.



CORPORATE REPORTING

New reporting requirements apply to UK companies for financial years beginning on or after 1 January 2019 including:

- ▶ large companies to explain compliance with s.172 Companies Act 2006;
- ▶ quoted (on the Official List) companies with 250+ employees to publish the ratio of CEO pay vs average employee pay; and
- ▶ large private and unquoted public companies (2000+ employees) to disclose their corporate governance arrangements. The Wates Principles provide a framework for this.

For financial years beginning on or after 1 January 2020, quoted companies will need to prepare their reports in a single electronic reporting format.



MODERN SLAVERY

The Government has consulted on potential changes to the Modern Slavery Act 2015 including introducing a single reporting deadline, mandating the topics organisations must cover and introducing civil penalties for non-compliance.



MERGER CONTROL

New rules, expected to be introduced in 2020, will significantly enhance the Government's ability to intervene in transactions which may raise national security concerns and are likely to be particularly relevant to:

- ▶ critical infrastructure – i.e. civil nuclear, communications, defence, energy, and transport sectors;
- ▶ certain advanced technology sectors;
- ▶ critical direct suppliers to Government and emergency services sectors; and
- ▶ military and dual-use technologies.



DATA PROTECTION

Regulators are starting to exercise their increased powers under GDPR. Whilst very significant fines have been levied against Facebook and Google, the general trend to date across the EU has been for more modest fines. However, more recently, the UK ICO issued notice of its intention to fine BA £183m and Marriott Hotels £99m for GDPR-era data security breaches (the final amount of each fine has not yet been confirmed).



GENDER DIVERSITY

Glass Lewis (2020 Proxy Guidelines) will consider recommending a vote against the chair of the nomination committee at any FTSE 350 board that has neither met the 33% target nor explained the reasons for not doing so.

Women now hold 32.4% of FTSE 100 board positions and 29.6% of FTSE 250 board positions. Whilst the 33% gender diversity target for women on boards is likely to be met in 2020, companies will not achieve their 33% target for the two leadership layers below the board unless half of all available roles go to women in the coming year.



PAY & PENSIONS

The scrutiny of executive remuneration continues and many FTSE 350 companies will renew their remuneration policy at the 2020 AGM. The Investment Association will 'red top' companies with existing directors who are paid more than 25% of salary as a pension contribution unless there are plans to reduce this.

Gender pay gap reporting is an ongoing annual obligation. Employers must publish their third report by 4 April 2020. Gender pay gap data is now being cited in sex discrimination claims.



MINIMUM ENERGY EFFICIENCY STANDARDS

From 1 April 2020, new regulations will prohibit landlords from letting residential properties in England and Wales which are rated F or G on their Energy Performance Certificates. From 1 April 2023 the regulations will extend to existing commercial leases. Exemptions are available but need to be registered and are time limited. Climate change targets make it increasingly likely that the minimum rating will change to a B or C in the lead up to 2030 – the Government is consulting on this.



INSOLVENCY AND CORPORATE GOVERNANCE

In light of recent high profile corporate collapses, the Government is considering reforms to improve public confidence. Proposed measures include increasing director and shareholder accountability and strengthening creditor protection. At present there is no clarity on the extent or timing of the proposed reforms.

Another proposal is to make directors and others jointly and severally liable for tax of a company in certain circumstances if the company is insolvent. One of those circumstances is where the individual is responsible for, knowingly benefits from, or otherwise enables or facilitates the company to enter into a tax avoidance arrangement or engage in tax evasion.



OFF-PAYROLL WORKING

From 6 April 2020 certain businesses will need to be ready for the new off-payroll working rules relating to IR35. The rules will affect payments made in respect of workers who provide their services through personal service companies. Responsibility for determining whether the IR35 rules apply will shift to the client.



ENERGY USE

For financial years beginning on or after 1 April 2019, quoted and large unquoted UK companies must report on their greenhouse gas emissions arising from electricity use, the combustion of gas or the combustion of fuel for transport.



NEW REGISTER OF OVERSEAS OWNERS OF REAL ESTATE

New rules, expected to be in force in 2021, will require overseas entities owning, acquiring and disposing of UK real estate to provide information on their beneficial ownership.



LIBOR DISCONTINUED

LIBOR may no longer be maintained beyond 2021. The successor so far as Sterling is concerned is likely to be SONIA – the Sterling Overnight Index Average – which will involve extensive changes to documents if adopted. The Loan Market Association has produced an exposure draft of a facility agreement featuring SONIA for discussion.

GETTING IN TOUCH

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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We have significant experience in advising clients on complex governance matters. BCLP provides companies and their boards with advice in connection with the extensive and evolving laws that impact them, as well as traditional corporate fiduciary responsibilities. Our team members regularly advise company clients on:

- ▶ The FCA, stock exchange and UK corporate governance disclosure requirements
- ▶ Shareholder proposals and dealing with activist shareholders
- ▶ Takeover and defence matters including under the UK Takeover Code
- ▶ ISS and Glass Lewis as well as institutional investor corporate governance policies
- ▶ Matters relating to audit, remuneration and nominating/corporate governance committees
- ▶ Design and implementation of risk and corporate compliance programs and codes of conduct
- ▶ Fiduciary responsibilities of directors and officers
- ▶ Establishment of special committees for mergers, acquisitions, spin offs, going private transactions and other special matters
- ▶ Ongoing director education
- ▶ Executive remuneration
- ▶ Diversity and inclusion
- ▶ Environmental and social issues
- ▶ Modern slavery
- ▶ Internal investigations
- ▶ Corporate reporting

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