LATHAM & WATKINS

Key Topics for the 2024 UK AGM Season

Highlighting the top trending issues for UK listed companies and their investors in this year's AGM and reporting season

January 2024

This publication provides an overview of the top trending issues as we approach this year's AGM and reporting season. We highlight key areas of AGM practices and reporting that will need to adapt to recent legal and regulatory developments, including updates to proxy voting guidelines, the finalisation of the International Sustainability Standards Board's (ISSB's) sustainability standards and the Transition Plan Taskforce's (TPT's) disclosure framework for net zero transition, as well as changes to institutional guidelines on share capital matters following the Secondary Capital Raising Review.

Amid the overall increase in the narrative reporting burden, we are also witnessing a major shift in corporate governance policy following the recent decisions of the government and the Financial Reporting Council (FRC) to withdraw certain corporate reporting and governance proposals. These decisions came after consultation processes raised concerns over imposing additional onerous requirements.

Contents

Climate-Related Reporting

ESG remains a key area of focus for companies, investors, and regulators in 2024. Although this will be the third year since many listed companies first started reporting under the Task Force on Climate-related Financial Disclosures (TCFD) framework, the regulatory landscape continues to evolve.

Coming into the 2024 annual reporting season, companies should familiarise themselves with the plethora of new developments, including the finalisation of the ISSB's initial sustainability standards and the TPT's disclosure framework for net zero transition.

Key points

- Improving quality of disclosures — Given that both premium and standard listed companies have been required to report under the TCFD framework (since 2021 and 2022, respectively), we anticipate heightened regulatory expectations regarding the quality of annual reporting disclosures.

  The FRC's thematic review published in July 2023 noted several areas for improvement. Listed companies should consider specific examples of better disclosure and opportunities for improvement and incorporate them in this year's reporting when relevant and material. The FRC also announced on 6 December 2023 that it would particularly focus on the disclosure of climate-related risks in 2024, including TCFD disclosures.

  Investors may welcome high quality climate-related disclosures which reduce the risk of regulatory challenge. Such disclosures also make it less likely that the board would need to address any "say on climate" resolutions tabled by investors at the AGM to elicit further disclosures/commitments (see chart titled "Climate-related resolutions at FTSE 350 AGMs").

- Implementing board oversight — Companies with material exposure to climate risks should implement and disclose explicit and clearly defined board-level oversight responsibilities for climate-related issues. Failure to do so may result in negative voting recommendations from proxy advisors against the directors who are considered culpable.

- Transitioning to net zero — Companies making net zero commitments should familiarise themselves with, and consider early adoption of, the TPT Framework. In its 2023 Green Finance Strategy, the UK government committed to consult on introducing requirements for the UK's largest companies to disclose their transition plans if they have them. In addition, the Financial Conduct Authority (FCA) has committed to consult in 2024 on strengthening requirements for transition plan disclosures in line with this framework.

- Embracing natural capital — Companies should determine the relative importance of natural capital to their businesses and consider developing a strategy on natural capital to reflect the Taskforce on Nature-related Financial Disclosures (TNFD) recommendations. Although not strictly required by the FCA under the Listing Rules, the TNFD encourages voluntary market adoption of the TNFD recommendations. Following the TCFD's example, the TNFD will track voluntary market adoption through an annual status update report beginning in 2024.

- Preventing greenwashing — Companies should be aware that the FRC has indicated it will challenge companies if it considers reporting of climate-related metrics or targets to be unclear or potentially misleading. Under the FCA's Primary Market Bulletin 36, the FRC will refer matters to the FCA which are identified as containing potentially false or misleading information, including the omission of material facts, likely to cause investor harm or which may breach other relevant FCA rules for ESG matters.

Key Dates (ESG)

2021

1 January 2021
TCFD disclosure requirements apply to premium listed companies for financial years beginning on or after this date.

2022

1 January 2022
TCFD disclosure requirements apply to standard listed companies for financial years beginning on or after this date.

6 April 2022
UK Companies Act requirements for climate-related financial disclosures apply to financial years beginning on or after this date.

2023

5 January 2023
EU Corporate Sustainability Reporting Directive came into force.

26 June 2023
ISSB published its sustainability disclosure standards, namely IFRS S1 and IFRS S2.

18 September 2023
TNFD published its nature-related risk management and disclosure framework.

9 October 2023
TPT published its disclosure framework.

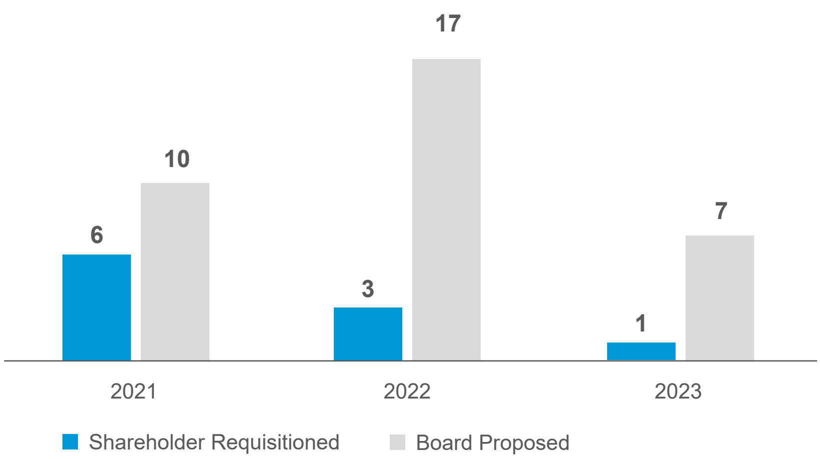
2024

H1 2024
FCA to consult on implementing ISSB standards for listed companies and guidance on transition plan disclosures.

2025

1 January 2025
FCA disclosure rules regarding ISSB standards expected to apply to financial years beginning on or after this date.

Climate-Related Resolutions at FTSE 350 AGMs



Source: Practical Law

Diversity and Inclusion Reporting

2024 is the first year when listed companies' annual reports are required to include boardroom diversity reporting under the Listing Rules.

Companies within the scope of these requirements must make these disclosures in their annual reports for financial years starting on or after 1 April 2022. For companies with a 31 December financial year end, the first disclosures will appear in their annual financial reports published around Q2 2024.

In its Primary Market Bulletin 44, the FCA described its supervisory approach to monitoring diversity and inclusion (D&I) disclosure compliance. If a company includes disclosures that do not meet the requirements, fails to include the disclosures, or fails to provide a clear explanation as required, the FCA will request that the company take corrective action, such as enhancing its disclosures in subsequent annual financial reports, or publishing the missing information via a RIS as soon as possible. This request would be in addition to potential sanctions and/or enforcement actions. The FCA indicates that it will view any non-compliance as a serious matter.

The FTSE Women Leaders Review, published in February 2022, also sets out voluntary gender diversity targets which are largely identical to those of the FCA (albeit just for FTSE 350 companies) to be achieved by the end of 2025.

In addition, the Parker Review's updated report, published on 13 March 2022, expected FTSE 350 companies to set by December 2023 their own percentage target for senior management positions that will be occupied by ethnic minority executives in December 2027. For these purposes, senior management comprises members of the executive committee (or equivalent) and those senior managers who report directly to them.

Key points

- Review governance arrangements for oversight of D&I targets and reporting, including the roles of the board, sub-committees, and senior management.
- Ensure awareness of compliance framework including both new and existing rules and regulations.
- Assess existing public narrative reporting of D&I.
- Establish or enhance company's procedures, systems, and controls over data collection and reporting, including for choosing an appropriate reference date for data collected.
- If it appears the company may not meet the targets or have the relevant data:
  - ensure it can provide clear and meaningful explanations (which could include possible action plans) as to why it has not met the targets or does not have the relevant data; and
  - consider reviewing the effectiveness of its existing board succession and recruitment plans.

  This may be particularly relevant to companies with management based overseas (which may be subject to legal restrictions preventing the collection of diversity data).
- Identify any legal restrictions which may prevent collection or publication of the required data.

(Source: Primary Market Bulletin 44)

Overview of Diversity Reporting Requirements

The Listing Rules require in-scope companies (broadly, premium or standard listed companies, excluding OEICs and "shell companies") to incorporate into their annual reports certain disclosures on the diversity of their boards and executive management, including:

- A "comply or explain" statement on whether they have met the following diversity targets:
  - At least 40% of the board are women.
  - At least one of the senior board positions is held by a woman (chair, CEO, senior independent director, or CFO).
  - At least one member of the board is from a minority ethnic background (defined by reference to categories recommended by the Office for National Statistics (ONS), excluding those the ONS lists as coming from a White ethnic background).
- Numerical data on the sex or gender identity and ethnic diversity of their board, senior board positions, and executive management in a standardised table (with issuers able to add to the fields "men" and "women" to include "non-binary" or other gender identities).

Companies in scope of DTR 7.2 (i.e., UK companies with securities admitted to UK-regulated markets and certain overseas listed companies, subject to existing exemptions for small and medium companies) must ensure that the corporate governance statements in their annual financial reports describe the diversity policies of key board committees and have regard to wider diversity characteristics such as ethnicity, sexual orientation, disability, and socioeconomic backgrounds.

Share Capital Authorities

Following the publication of the Secondary Capital Raising Review in July 2022, the Investment Association and Pre-Emption Group have updated their guidance on the routine share capital authorisations that companies seek at their AGMs, in order to improve those companies' capital raising processes.

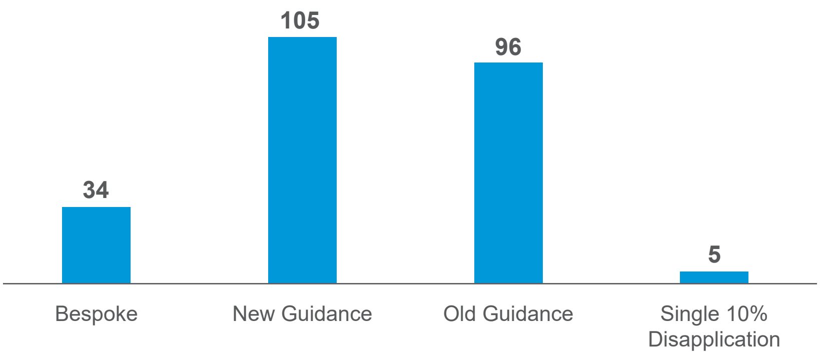
These guidelines apply to all companies (wherever incorporated) with shares admitted to the FCA's premium listing segment. Companies with shares admitted to the standard listing segment, High Growth Segment, or to trading on AIM should also consider the guidance.

Previous Guidance	New Guidance
Annual authorities for pre-emptive fundraisings	
Up to two-thirds of the issued share capital, provided that any amount in excess of one-third may only be used for rights issues	Up to two-thirds of the issued share capital, provided that any amount in excess of one-third may be used for all forms of fully pre-emptive offers (including open offers) (Investment Association's Share Capital Management Guidelines, February 2023)
Annual authorities for non pre-emptive fundraisings	
May disapply pre-emption rights up to 5% of the issued share capital for general purposes and a further 5% for acquisitions or specified capital investments Rolling three-year limit of 7.5% of the issued share capital which applied to non-pre-emptive issues for general purposes	May disapply pre-emption rights up to 10% of the issued share capital for general purposes and a further 10% for acquisitions or specified capital investments Additional 2%+2% for follow-on offers to existing shareholders Additional flexibility for capital hungry companies (Pre-Emption Group's Statement of Principles, November 2022)

Key points

- Companies should consider taking advantage of these changes by seeking shareholder approvals incorporating the additional flexibility for both allotment authorities and pre-emption disapplications under the updated guidelines at their upcoming AGMs.
- Note that the Institutional Shareholder Services (ISS) and Glass, Lewis & Co (Glass Lewis) have updated their policy guidelines to confirm they support proposals to disapply pre-emption rights up to the increased thresholds set out in the updated Statement of Principles.

Widespread Adoption of New Pre-emption Guidance



Source: Data from Practical Law. AGM notices of FTSE 350 companies from November 2022 to December 2023

Key Corporate Governance Developments

Listed companies encountered major developments around corporate governance and reporting requirements in the past year. In November 2023, the FRC announced that its Corporate Governance Code will be updated to increase board accountability and reporting in relation to internal controls. However, other changes initially proposed in the FRC's consultation paper in summer 2023 would not be implemented following the FRC's policy shift.

Meanwhile, many companies have previously been preparing for new corporate reporting requirements to be introduced through the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations. These proposed regulations were part of the wider proposals to reform the UK audit and corporate governance regulatory landscape. They were however withdrawn by the government in October 2023 after consultation with companies raised serious concerns over the negative impact of additional reporting requirements on both existing and potential users of the UK capital markets.

Below is a summary of the status of key corporate governance and reporting changes (largely originating from the government response to the BEIS White Paper on "Restoring Trust in Audit and Corporate Governance"):

Proposed Reforms	Status
Directors' statement on internal controls and risk management	Proposals from FRC consultation expected to be incorporated into the new code published in January 2024 (see box below for further details)
Directors' disclosure and attestation requirements in relation to dividends and capital maintenance	Withdrawn by the government in October 2023
Annual resilience statement	Withdrawn by the government in October 2023
Audit and assurance policy	Withdrawn by the government in October 2023
Duty to report on anti-fraud measures	Withdrawn by the government in October 2023
Expanded remit of audit committees to include sustainability reporting and ESG metrics	Withdrawn following FRC policy update in November 2023
New transparency expectations to address overboarding	Withdrawn following FRC policy update in November 2023
Strengthening Code provisions on diversity and inclusion in relation to board composition and succession planning	Withdrawn following FRC policy update in November 2023
Clawback and malus provisions in executive directors' remuneration arrangements	Withdrawn following FRC policy update in November 2023

Proposed Reforms	Status
Audit committee oversight and engagement with shareholders	FRC published “Audit committees and the external audit: minimum standard”. Comply/ explain for FTSE 350 until ARGA makes this mandatory
Replacing FRC with ARGA	Pending enactment of the Audit Reform Bill

New Code Provisions on Internal Controls

The FRC’s Corporate Governance Code is expected to be updated in January 2024 to increase board accountability and reporting in relation to internal controls.

Boards would likely be required to review the effectiveness of risk management and internal control systems. This would include all material controls, including reporting, operational, and compliance controls. However, these would only be required at year-end rather than constitute ongoing reporting obligations.

The FRC is also expected to publish updated risk and internal controls guidance.

2022

May 2022
Government response to BEIS White Paper.

2023

May 2023
FRC published "Audit committees and the external audit: minimum standard".

July 2023
The Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 (the Corporate Reporting SI) laid in Parliament.

May to September 2023
FRC consultation on amendments to the UK Corporate Governance Code.

October 2023
Corporate Reporting SI withdrawn.

November 2023
FRC announced major policy shift and that most proposals in its Code consultation will not be implemented.

November 2023
QCA published its new Corporate Governance Code.

2024

January 2024
FRC expected to publish its new UK Corporate Governance Code.

H2 2024
FRC expected to commence consultation on the Stewardship Code.

Cybersecurity and Artificial Intelligence

Cybersecurity and artificial intelligence (AI) are among the key focal points for companies, investors, and regulators in 2024. Cyberattacks, targeting valuable company and consumer data, are increasingly prevalent and sophisticated, affecting a broad range of industries. Conversely, general awareness of the potential of AI has emerged to the fore in the past year, as businesses begin to recognise the opportunities and risks associated with this technology.

At the AI Safety Summit hosted at Bletchley Park in November 2023, the UK demonstrated its commitment to being a global AI leader and a science and tech superpower. Boards should monitor developments within this fast-moving space and implement policies and procedures to take advantage of opportunities and overcome any risks from the use of AI.

Key points

- Oversight — Boards should develop appropriate governance frameworks for cybersecurity and AI that sets out clear roles and responsibilities, as well as policies and procedures for managing these risks and opportunities. Data governance policies and procedures should be kept under review to protect the privacy and security of the data collected and processed and provide assurances that it is used in a responsible and ethical manner.

  According to the Corporate Governance Institute's research earlier this year, only 13% of FTSE 350 companies had implemented or begun to implement policies and processes for the ethical use of AI. Two-thirds of FTSE 350 boards had yet to discuss such policies, with a quarter stating they did not see a need to.
- Expertise — According to the FRC's Review of Corporate Governance Reporting 2023, boards should have (or have access to) sufficient expertise relating to cybersecurity and AI, whether through training or tapping into management.
- Reporting — Both the Corporate Governance Institute and FRC recommend that companies outline the risks, opportunities, and medium- to long-term importance of these issues to their business and market. Companies operating in industries at greater risk of cyberattacks (such as healthcare and financial services) should provide more detailed reporting on their cyber resilience. All companies should consider disclosing their approach to using AI.

Proxy Voting Policy Updates

ISS and Glass Lewis have updated their respective UK proxy voting guidelines for 2024. The Glass Lewis voting guidelines are effective for all companies with AGMs on or after 1 January 2024, and the ISS voting guidelines are effective for all companies with AGMs on or after 1 February 2024.

Key Glass Lewis Updates

Glass Lewis' updates for 2024 reflect the top trending topics for investors and companies, including cyber risk, oversight of climate and other ESG risks, and board diversity and composition.

- Director accountability for climate-related issues — A new section of the guidelines states that companies, particularly those whose greenhouse gas emissions represent a financially material risk, should provide clear and comprehensive disclosure of their climate-related risks, including how they are being mitigated and overseen. Glass Lewis may recommend adverse voting if a company with increased climate risk exposure fails to provide thorough TCFD disclosures or has not clearly defined board oversight responsibilities for climate-related issues.
- Overboarding — The updated guidelines clarify that Glass Lewis will consider a director to be overboarded when they (i) serve as an executive director of any public company while serving on more than one additional external public company board; or (ii) serve as a non-executive director on more than five public company boards in total. Glass Lewis counts chair positions at UK companies as two board seats given the increased time commitment.
- Cyber risk oversight — A new section of the guidelines encourages disclosures regarding the role of the board in overseeing cybersecurity issues. Glass Lewis may recommend against appropriate directors if cyberattacks have caused material risk to shareholders and the company's disclosure or oversight are considered insufficient.
- Pensions — Glass Lewis clarified that it expects pension provisions for executive directors to be in line with those available to the majority of the wider workforce, absent a cogent rationale.
- Combined incentive plans — Glass Lewis expects combined incentive plans to generally have a minimum vesting period of three years. At least part of the award should be in the form of equity or equity-based instruments, quantitative underpin/gateway conditions should apply to deferred awards, and there should be some strategic rationale provided for the plan.

Source: Glass Lewis 2024 Policy Guidelines United Kingdom

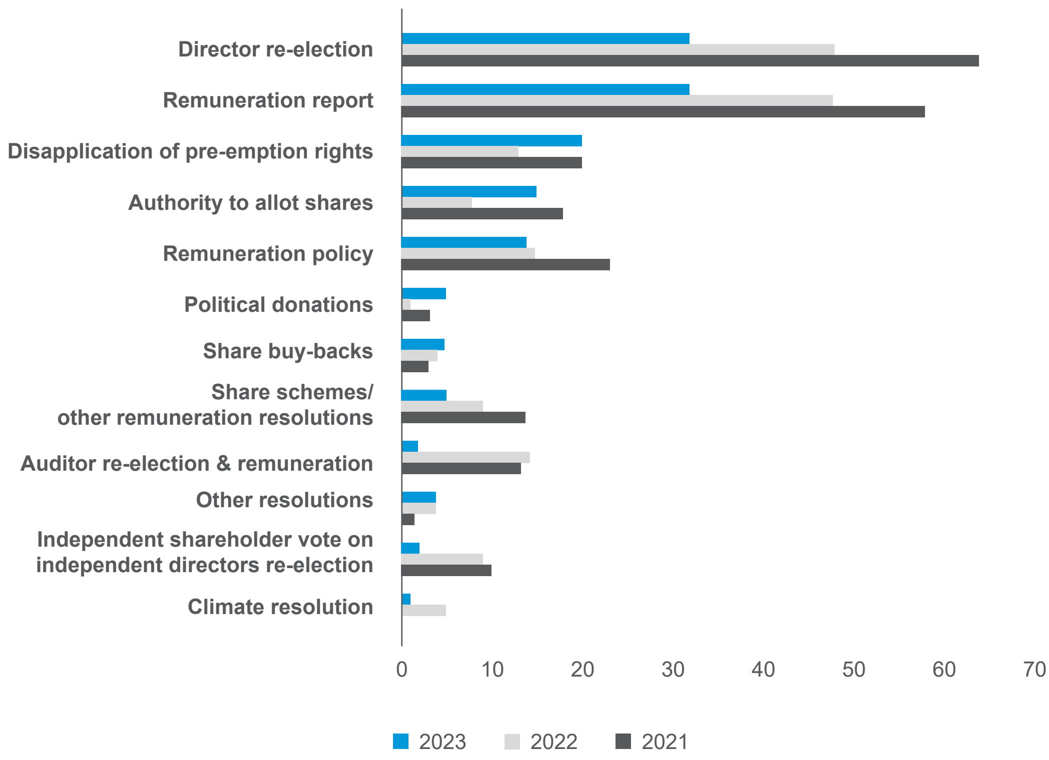
Key ISS Updates

ISS updates for 2024 are minor/technical in nature.

- Board diversity — Updates to reflect the application of the Listing Rules' board diversity reporting requirements to all premium and standard listed companies for the 2024 AGM season.
- Board independence — Now explicitly states that a significant shareholder (in the context of the list of factors affecting whether a director is considered independent) is a holder of 3% (or higher) of the share capital.
- Allotment authorities — Incorporated the recommendations of the Investment Association's 2023 Share Capital Management Guidelines which permit routine authorities to allot up to two-thirds of the issued share capital, provided that any amount in excess of one-third may be used for all forms of fully pre-emptive offers (and not just rights issues as was previously the case).

Source: ISS EMEA Policy Updates 2024

Matters Receiving Significant Shareholder Dissent



Source: The Investment Association's Public Register, which details companies in the UK FTSE All Share that have received significant opposition by shareholders to a resolution

Contacts

Mark Austin
Partner
mark.austin@lw.com
+44.20.7710.1044
London

Chris Horton
Partner
chris.horton@lw.com
+44.20.7710.4539
London

James Inness
Partner
james.inness@lw.com
+44.20.7710.3019
London

Anna Ngo
Partner
anna.ngo@lw.com
+44.20.7710.1000
London

Johannes Poon
Knowledge Management Lawyer
johannes.poon@lw.com
+44.20.7710.3085
London