

Narrative Reporting Reforms – a new human rights reporting requirement for UK Listed Companies

On 18 October, the Department for Business Innovation & Skills (BIS) published [draft regulations](#) amending the regulatory structure for annual reporting by companies incorporated in the UK. The amendments include a new obligation for quoted companies to include in their annual reports information regarding human rights issues to the extent necessary for an understanding of the development, performance or position of the company's business.

The consultation

Company annual reports have for some time been becoming increasingly cumbersome and complex as the list of areas on which companies are required to report back to shareholders has expanded. Increased emphasis on non-financial, narrative information has led to reports of increasing length, and the aim of allowing shareholders to hold management to account has become less achievable as essential strategic information has become lost in the midst of a sea of less important data included to satisfy regulatory requirements. The proposed amendments also respond to a concern about the mismatch between regulatory requirements and best practice, and a desire to bring these closer together in order to encourage clear, focussed and transparent reporting and to increase the usefulness of reports to shareholders.

BIS launched a consultation in the autumn of 2011 pursuant to the coalition government's commitment to

investigate further ways of improving corporate accountability and transparency, with the stated goal of introducing a simpler framework for narrative reporting and reducing related burdens on companies. The consultation considered a number of options for reform in the area, several of which have been included in the draft regulations.

The proposed regulations will amend the Companies Act 2006 (the Act) by removing the requirement for companies to prepare a business review, and replacing it with an obligation to produce a strategic report (with exemptions for small companies), to be included at the front of the annual report. According to the draft regulations, "[t]he purpose of the strategic report is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company)".

The obligation to report on human rights

The draft regulations introduce an express obligation on quoted companies to report on human rights issues through an expansion of the existing list of requirements that extend to the environment, employees and social and community issues, currently found at section 417 of the Act. The proposed section 414C(4) states:

"In the case of a quoted company the strategic report must, to the extent necessary for an understanding of the development, performance or position of the company's business, include –

...

(d) information about –

...

(iii) social, community and human rights issues,

Including information about any policies of the company in relation to those matters and the effectiveness of those policies.

If the report does not contain information of each kind mentioned in paragraphs (d)(i), (ii) and (iii), it must state which of those kinds of information it does not contain."

While respondents to BIS's consultation indicated a preference for any reporting obligation regarding human rights to apply only to companies in sectors where human rights issues were of strategic importance, the proposed amendments impose an obligation on companies in all sectors. The obligation is limited to quoted companies, and non-quoted companies are not required to disclose information about their policies or impact in relation to human rights issues, regardless of whether they operate in countries or sectors where such issues are likely to arise. Many quoted companies already include detailed information on human rights issues within their annual reports or within standalone corporate social responsibility reports as a matter of good practice, in accordance with guidelines issued by the Global Reporting Initiative.

The obligation to report on human rights issues is not absolute, and if listed companies deem that human rights issues are not relevant for an understanding of the development, performance or position of their business, they need only include a reference to the fact that no information relating to human rights is contained in the report. However, a report by the Accounting Standards Board (*Rising to the Challenge*, 2009) noted in respect of the existing reporting requirements relating to

environmental, employee, social and community issues that "[s]ocial pressures make it difficult for a company to flag up non-disclosure in any of these areas, with the result that companies disclose all three, regardless of the importance of each to the business." This approach may be expected to continue in respect of the proposed addition of human rights issues to the list, however the proposed reporting obligation appears to be relatively flexible and may be subject to broad interpretation by companies.

A broader backdrop of reform

The proposed reporting obligation for companies listed in the UK reflects a trend at both domestic and international levels towards the use of reporting requirements by regulators and policy makers to promote corporate respect for human rights. For example:

- At EU level, the European Commission carried out a consultation at the beginning of 2011 in relation to companies' disclosure of non-financial information, including social, environmental, human rights and sustainable development aspects. A legislative proposal for a new European framework for regulation in this area is expected before the end of 2012, however it is not yet known whether there will be express reference to human rights issues included in the requirements, nor whether the changes introduced will be mandatory or voluntary. The UK has to date maintained disclosure requirements that go beyond what has been required at EU

level, and in its impact assessment BIS expressed its "hope that in improving reporting in the UK, we might set a standard that will influence the EU model".

- In the UK, there have been parliamentary efforts to introduce an obligation for large companies to report publicly on measures taken by them to eradicate slavery, human trafficking, forced labour and the worst forms of child labour from their supply chains, and to ensure that this information is made available to customers and investors. A Private Member's Bill to implement this proposal is scheduled for a second reading on 19 October 2012 but is considered unlikely to be passed into law in the near future.
- The Financial Services Bill, which proposes a number of amendments to the Financial Services and Markets Act 2000, is currently under consideration by the UK Parliament. Amendments to the Bill were proposed, relating to the introduction of a duty on the UK's financial regulatory authorities to police the respect for, and reporting on, human rights by companies listed or applying for a listing in the UK. These amendments were withdrawn as legislators expressed a desire to focus on the core objective of the financial services reforms, however the debates on the subject recognised the importance of not allowing a London listing to provide a veneer of respectability for companies involved in human rights abuses, and expressed support for other current human

rights reporting initiatives, including the [Extractive Industries Transparency Initiative](#).

- The US government has introduced an extensive reporting regime for US investors in Burma/Myanmar following the easing of US economic sanctions against the country which includes a requirement to report on human rights issues (see our recent [briefing](#)).
- A number of other governments and international organisations have also introduced or proposed rules which require companies to report on the steps they have taken to ensure respect for human rights (see our recent [briefing](#)), including the adoption by the US Securities and Exchange Commission under the Dodd-Frank Act of rules requiring annual disclosures relating to 'conflict minerals' sourced from and around the Democratic Republic of the Congo, and in

California, of an obligation on retail and manufacturing businesses to disclose information on steps they have taken (if any) to ensure that forced labour is not present in supply chains.

Implementation

The new reporting requirements are due to come into force on 1 October 2013 and will have effect in relation to financial years beginning on or after that date.

BIS has invited any comments on the draft regulations to be provided to narrativereporting@bis.gsi.gov.uk by 15 November 2012.

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