

BEIS WHITE PAPER: RESTORING TRUST IN CORPORATE GOVERNANCE

The Department for Business Energy and Industrial Strategies Consultation Paper "Restoring trust in audit and corporate governance" seeks to address issues in governance and financial reporting following a series of business failures including Carillion, BHS, Thomas Cook and Patisserie Valerie.

In our recent webinar, Steven Fox chaired a panel discussion involving fellow Clifford Chance partner [specialising in M&A and corporate governance] David Pudge, Gareth Wright, CFO of Informa plc and John Boulton, Policy Director at ICAEW, to discuss whether the proposals provide much needed innovation to ensure public confidence, or whether they represent unnecessary regulatory and political overreach.

The webinar followed closely after media reports that the Government was considering watering down some of the more far-reaching proposals in light of concerns raised by companies about the increase in the regulatory burden and the potential impact on the competitiveness of the UK as a place to establish and carry on business. A number of those concerns were echoed by the panellists during the session.

What's in the BEIS paper?

The 600 page report suggests strengthening reporting obligations, widening their scope to a larger number of companies and creating a new regulator, the Audit Reporting and Governance Authority (ARGA) to reduce the risk of future audit failures. It comes alongside a number of other reviews which may change the corporate governance and auditing landscape including the UK Listing review, proposals for enhanced climate change related reporting and a proposal from the Financial Reporting Council for a more holistic framework for corporate reporting.

David Pudge says: "These proposals have the potential to have the biggest impact on UK corporate reporting since the 2006 Companies Act."

What is the UK Government's aim?

The UK Government wants improved governance, which will lead to better quality information, better external assurance of that information, which should lead to more reliable financial statements and better decision making by directors, stakeholders and investors.

What are the challenges?

In addition to concerns about the potential impact on the competitiveness of the UK these include:

- It has the potential to bring high costs of compliance and place a big burden on directors – with additional responsibility comes additional risk.
- ARGAs are likely to have investigatory and enforcement powers and the ability to impose civil penalties from fines to public reprimands and prohibiting somebody from being a director.
- There are concerns in the legal community about a potential for overlap and conflict between how ARGAs might seek to impose its powers and the view a court might take in the event of a breach of duty.
- There is a question over the cohesiveness of the package of reforms being proposed.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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