

GOVERNMENT PUBLISHES NEW REPORTING REGULATIONS FOR PRIVATE COMPANIES

On 11 June 2018, the Government published new regulations¹ (the "Regulations") introducing new reporting requirements for private companies including:

- a requirement for all large companies (whether listed or unlisted) to include a s.172(1) Companies Act 2006 statement in their strategic report;
- a separate requirement for all large companies (whether listed or unlisted) to include information in their directors' report on how the directors have had regard to the need to foster the company's business relationships with suppliers, customers and others; and
- a requirement for all companies with more than 250 UK employees to include information in their directors' report on how the directors have engaged with employees.

The Regulations will impact a number of portfolio companies.

These requirements were first set out in the Government's August 2017 response to its 2016 Green Paper on Corporate Governance Reform, intended to strengthen and update the UK corporate governance framework and enhance public trust in the way large private and quoted companies are run.

The Regulations are intended to give effect to the new statutory reporting requirements and to come into force on 1 January 2019 for financial years starting on or after that date.

The Department for Business, Energy & Industrial Strategy has published Q&A to accompany the Regulations ("BEIS Q&A").

Section 172(1) Statement

The Regulations require that all large² companies required to produce a strategic report must include a statement describing how the directors have had regard to the matters set out in s.172(1)(a)-(f) Companies Act 2006 during

Key issues

- New reporting obligations to take effect for financial years starting on or after 1 January 2019
- Large companies must prepare an annual statement describing how directors have had regard to their statutory duties in s.172(1) CA 2006
- Greater disclosure required about engagement with employees, suppliers and customers
- Large private companies to report on their corporate governance arrangements

¹ The Companies (Miscellaneous Reporting) Regulations 2018.

² Companies meeting two out of the three of the following (i) turnover of more than £36m; (ii) balance sheet total of more than £18m; and (iii) more than 250 employees.

the financial year under review. Any subsidiary companies that meet the qualifying conditions will need to prepare their own s.172(1) statement, although they may, where appropriate, make reference to group statements and policies. In circumstances where a subsidiary meets the qualifying conditions but not the parent, where the parent prepares consolidated group accounts, the parent will still qualify through the process of consolidation and must therefore also prepare a statement.

The statement must be made available on a website that is maintained by or on behalf of the company (such as the website of a parent company). A failure to make the statement available on a website is a criminal offence for the directors.

The BEIS Q&A also makes clear that the s.172(1) statement needs to be provided in a separately identifiable statement within the strategic report, but that it can cross refer to other parts of the report (Part D, Q7). Unquoted companies will need to ensure that disclosures made by cross-referencing other parts of the annual report are included with the statement if published on a website without the rest of the annual report in order to ensure that the statement can be understood as a standalone statement.

The BEIS Q&A provides guidance as to what information should be included in the s.172(1) statement. In particular, companies should consider including some or all of the following: the issues, factors and stakeholders the directors consider relevant in complying with their s.172(1) duties and how they have formed that opinion; the main methods the directors have used to engage with stakeholders and understand the issues to which they must have regard; and information on the consequential impact on the company's decisions and strategies during the financial year (Part D, Q3). The statement should shed light on matters that are of strategic importance to the company and be consistent with the size and complexity of the business (Part D, Q4).

Reporting on engagement with employees, suppliers, customers and others

The Regulations also require the directors of companies with more than 250 UK employees to include a statement in their directors' report summarising how the directors have engaged with employees and had regard to employee interests, and the effect of that regard, including in relation to principal decisions taken by the company during the financial year. It is worth noting that the obligation is in relation to employees, not "workers"; however, given the current focus on different types of workers, there may be merit in having regard to the wider workforce interests.

In addition, the Regulations require large³ companies to include in their directors' report a statement summarising how the directors have had regard to the need to foster the company's business relationships with suppliers, customers and others and the effect of that regard, including on the principal decisions taken by the company during the financial year.

Given the information that companies are expected to address in their s.172(1) statement and the overlapping requirements of the above reporting requirements, companies may choose to include the above information in their

Section 172 Companies Act 2006 Duty to promote the success of the company

- 1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to —
 - a) the likely consequences of any decision in the long term,
 - b) the interests of the company's employees,
 - c) the need to foster the company's business relationships with suppliers, customers and others,
 - d) the impact of the company's operations on the community and the environment,
 - e) the desirability of the company maintaining a reputation for high standards of business conduct, and
 - f) the need to act fairly as between members of the company.

³ Refer to footnote 2.

strategic report. Where they do so, they will need to include a statement in the directors' report stating they have done so.

Corporate governance reporting for large private companies and public unlisted companies

The Regulations also require companies with (a) more than 2,000 employees; or (b) a turnover of more than £200million and a balance sheet total of more than £2billion, to provide a statement of their corporate governance arrangements in their directors' report. There is an exemption for listed companies which are already required to provide a corporate governance statement in accordance with the FCA's Disclosure and Transparency Rules.

Every company meeting the qualifying thresholds must comply with the above requirement, including subsidiaries of listed companies that prepare a corporate governance statement and subsidiaries of parent companies that prepare a consolidated directors' report. In circumstances where a subsidiary (but not the parent) meets the qualifying condition and the parent prepares consolidated group accounts, the parent company does not have to publish a corporate governance statement as part of the group directors' report.

The statement must include details of the corporate governance code the company has applied for the financial year and if the company has not applied any corporate governance code they must explain the reasons for this decision and explain what corporate governance arrangements were applied instead. The statement must be available on a website that is maintained by or on behalf of the company.

A "coalition group" chaired by James Wates (which includes the FRC, the British Venture Capital Association, the CBI and others) has developed corporate governance principles for large private companies. The principles have been named the Wates Corporate Governance Principles for Large Private Companies. The objective is for the six principles to become the code upon which large privately-owned companies will choose to report - on an 'apply and explain' basis - by stating for each principle how the company's corporate governance processes operate to achieve the desired outcomes.

The principles are currently subject to a consultation which ends on 7 September 2018. The final form is expected to be published at the end of the year.

For further information about how the new reporting requirements set out in the Regulations may affect your business, please contact either your usual Clifford Chance contact or any of the authors of this briefing.

Click on the links below for a copy of the Regulations and the BEIS Q&A:

[The Companies \(Miscellaneous Reporting\) Regulations 2018](#)

[BEIS Q&A](#)

Wates Corporate Governance Principles for Large Private Companies

The six principles are:

- Purpose – An effective board promotes the purpose of a company, and ensures that its values, strategy and culture align with that purpose.
- Composition – Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.
- Responsibilities – A board should have a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge.
- Opportunity and Risk – A board should promote the long-term success of the company by identifying opportunities to create and preserve value and establishing oversight for the identification and mitigation of risk.
- Remuneration – A board should promote executive remuneration structures aligned to sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.
- Stakeholders – A board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce, and have regard to that discussion when taking decisions. The board has a responsibility to foster good relationships based on the company's purpose.

CONTACTS

Spencer Baylin
Partner

T +44 20 7006 1519
E Spencer.Baylin@cliffordchance.com

Christopher Sullivan
Partner

T +44 20 7006 5050
E Christopher.Sullivan@cliffordchance.com

Tamsin Collins
Professional Support
Lawyer

T +44 20 7006 2971
E Tamsin.Collins@cliffordchance.com

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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2019

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.