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YOUR 2021 AGM UPDATE AND BEYOND

Despite the progress being made with the UK's Covid-19 vaccination programme, the upcoming AGM season will likely see many of the same challenges posed by the global pandemic as in the last one. Companies will once again need to grapple with the logistics of how to convene their AGMs in compliance with any applicable Government guidance while allowing for maximum shareholder engagement and participation. In addition, companies will need to be prepared for the position to change between the publication of the AGM notice and the date of the meeting itself.

While "closed meetings" were acceptable early on in the pandemic, sentiment has changed, with many investors, proxy advisers and regulators believing that companies have had adequate time to adapt and prepare for this season's AGM so as to provide greater opportunities for shareholders to participate. Equally, whilst the provisions contained in the Corporate Insolvency and Governance Act 2020 (**CIGA**) helped many companies to deal with the challenges they faced last year, these provisions are currently scheduled to expire on 30 March 2021. Primary legislation would be required in order to extend the relevant provisions and the Government has been clear that the opportunity for this is limited, particularly in the short term, and so companies cannot rely on there being equivalent help available this year. Against this backdrop, from a legal standpoint, a "closed meeting" would only be possible if Government legislation and guidelines at the time preclude gatherings of more than a very limited number.

In light of this, we expect to see an increased number of so-called hybrid meetings during the 2021 AGM season with shareholders being encouraged to attend virtually even if physical attendance may be possible. However, many companies may be reluctant, or in some cases unable, to adopt a hybrid meeting format and they will need to consider how to hold a physical meeting which complies with the applicable guidance at the time and allows for some form of shareholder engagement in the event that physical attendance is not possible at the time of the meeting.

Companies will also need to stay on top of narrative reporting requirements and address investor concerns about the prospects of their companies. Investors and regulators expect companies to make fulsome, considered and timely disclosures in their annual and interim reports. In particular, the viability statement may need additional consideration and stress-testing this year.

Key issues

- Companies will need to consider how, in light of the challenges posed by the Covid-19 pandemic, they will hold their AGM and at the same time seek to maximise shareholder engagement.
- In planning for their AGM, companies will need to be prepared to be flexible and ready to adjust the arrangements for the meeting should the Covid-19 situation change between the time of the publication of the AGM notice and the time of the meeting.
- Companies should be mindful of investor expectations as to disclosures, in particular regarding a company's viability and long-term prospects.
- Executive remuneration will be under even more scrutiny this year and listed companies and their remuneration committees should carefully consider guidance issued by proxy advisers.
- Companies will continue to be able to take advantage of the extended period available for the publication of financial statements.
- Premium listed companies should start planning to be ready to state in their annual report (for financial years beginning on or after 1 January 2021) whether they have made disclosures consistent with the Task Force on Climate-related Financial Disclosures' recommendations or provide an explanation for any non-compliance.

At a time when many companies have been forced to furlough employees or make redundancies, and others have had to reduce or cancel dividends, executive remuneration will be scrutinised even more closely this year. To ensure that executives are not perceived as receiving excessive levels of remuneration, when determining executive remuneration, remuneration committees should be mindful of steps taken in relation to the wider workforce and actions their companies have taken that will have affected shareholders. In addition, remuneration committees should also consider any significant changes in their company's share price because shares granted when the share price is depressed may increase in value rapidly once the company's share price stabilises or returns to normal.

As we look ahead, a number of bodies have issued guidance or thought leadership papers in relation to shareholder meetings generally and AGMs in particular. The Chartered Governance Institute published a Guidance Note, which we helped co-author, on 24 February 2021 which is intended to help companies to navigate the potential impact of Covid-19 on 2021 AGMs (see link on page 4). Other groups such as the GC100 and ShareAction have published papers[1] which set out views on whether the way in which shareholder meetings are held should change and on the future of the AGM more generally. Many of the forward- looking suggestions in these papers would require legislative change and therefore reflect longer-term thinking.

In this Update, we examine the above developments and other changes affecting the 2021 AGM season and the preparation of the annual report. We also consider some of the other governance and narrative reporting-related changes on the horizon.

The challenges of holding an AGM during a global pandemic

Before looking ahead to the 2021 AGM season, let's look back briefly at some of the key trends from last year.

March 2020 – June 2020

The 2020 AGM season was immensely challenging. As the scope of the global pandemic became apparent in early Spring, the UK Government introduced a first wave of lockdown restrictions in late March — just ahead of the main AGM season. Companies were left in the difficult position of trying to find a way to hold their AGM both lawfully, in light of the newly introduced restrictions on public gatherings and non-essential travel, and without putting at risk the health of their shareholders and employees. Understandably, the key focus was on ensuring that the necessary business of the AGM was dealt with and that the relevant resolutions were passed.

In order to meet this challenge, the majority of companies looked to the best practice guidance notes[2] published by The Chartered Governance Institute — these notes had the backing and support of the City of London Law Society Company Law Committee, the GC100, the Investment Association (**IA**), the Quoted Companies Alliance and the Financial Reporting Council (**FRC**) and

1 See further "Shareholder Meetings – Time for Change?" published by the GC100 and "Fit-for-purpose? The future of the AGM — Making corporate governance fit for a purpose-driven investment system" published by ShareAction.

2 The initial guidance on contingency planning for AGMs during the pandemic, AGMs and impact of Covid-19 — Guidance note, was published on 17 March 2020. Supplementary guidance, AGMs and impact of Covid-19: Supplement — Guidance note (which we helped co-author) was published on 27 March 2020 to reflect the Government ban on public gatherings of more than two people and restrictions on non-essential travel (the "Stay at Home" measures).

were reviewed by the Department for Business, Energy and Industrial Strategy (**BEIS**). This meant, for the most part, companies held "closed meetings" at which only a bare quorum of directors and employee shareholders attended and offered varying degrees of wider shareholder participation. In most cases, shareholders were urged to appoint the chair of the AGM as their proxy in order to ensure their vote was counted and to submit questions in writing ahead of the meeting. These questions were answered either by the board at the meeting via a webcast or audiocast or answers were published on the company's website.

Some companies went further than this, in some cases holding an online shareholder engagement event ahead of, or following, the AGM. In a small number of cases, companies used technology to enable shareholders to ask questions and (in even fewer cases) vote in real time at the meeting without needing to attend physically. Such arrangements were, however, in the minority because:

- many companies had concerns over the validity of holding a virtual only meeting;
- others had concerns about holding a hybrid meeting (that is, a meeting with both a physical and virtual element) either because they lacked specific provisions relating to such meetings in their articles or because of the logistical challenges involved; and
- for others there were concerns about the robustness of the available platforms in providing this level of virtual participation.

June 2020 — March 2021

Help with holding a valid meeting arrived in June 2020, with the enactment of CIGA which introduced, amongst other measures, temporary flexibilities for companies on how they can hold and conduct general meetings. This initially covered meetings held in the period up to 30 September 2020 but the relevant measures were extended twice and now cover the period until 30 March 2021. CIGA contains express powers which allow a company to hold general meetings on a wholly virtual basis, regardless of whether the company's articles of association allow for this or any concerns there would be over the validity of this but for the provisions set out in CIGA (see further our briefing, *Coronavirus: UK Government publishes draft legislation relating to holding of company meetings*). An extension of the relevant provisions in CIGA beyond the scheduled expiry date at the end of March 2021 would require primary legislation and there is no certainty that the Government will enact any such extension. The Government has indicated that it is continuing to seek the opportunity to introduce primary legislation enabling companies to hold general meetings flexibly, whether by way of an extension to CIGA or something more fundamental. However, it has also said that the opportunity to do so (particularly in the short term) is limited.

In July 2020, The Chartered Governance Institute published another industry-backed guidance note[3], providing companies with guidance on how to apply the provisions in CIGA relating to general meetings in practice. For further details, see our briefing, *Industry guidance published on new flexibilities for holding shareholder meetings*, which examines key aspects of that guidance.

Impact of the global pandemic on AGM resolutions

The 2020 AGM season was everything but business as usual, with companies facing unforeseen challenges affecting their business operations, financial positions and AGMs. Here, we highlight how some companies responded to the pandemic in terms of dealing with various resolutions at their AGMs or general meetings.

Amending articles to allow for hybrid or virtual meetings

We note that during 2020, an increasing number of companies amended their articles of association to include specific provisions addressing hybrid meetings, with some explicitly citing the Covid-19 pandemic as the main driver for these amendments while others have implied this in their AGM notices, emphasising that the changes would provide the board with greater flexibility and are intended to facilitate greater shareholder engagement.

We expect to see more companies seeking to amend their articles this year to include express provisions in relation to hybrid meetings so as to ensure that all of the relevant procedural mechanics are appropriately addressed. There is however still resistance from investor groups to companies having the ability to hold wholly virtual shareholder meetings (quite apart from the continuing uncertainty over the validity of such meetings).

See further our briefing, *Government extends emergency legislation providing flexibility and certainty to companies for holding general meetings until 30 December*, which examines this emerging new trend in more detail.

[3] The July guidance note, Shareholder meetings under the Corporate Insolvency and Governance Act 2020, was prepared with the City of London Law Society Company Law Committee and with the support of the GC100, the IA and the Quoted Companies Alliance and was endorsed by BEIS and the FRC.

As things stand and with new lockdown restrictions currently in place to tackle the more virulent strain of Covid-19 circulating within the UK, the 2021 AGM season is likely to present companies with similar challenges to those seen during the 2020 AGM season. Many companies will have already started their planning (or will do so shortly) for their AGM to be held after 30 March 2021 and are doing so without the comfort of the certainty and flexibilities under CIGA. Further, such companies will be planning without any knowledge of what social distancing rules or other Government restrictions or guidance may be in force at the time of the meeting.

Shareholder engagement and participation

What has become apparent is that there will be much greater expectations on companies to facilitate more meaningful shareholder engagement at AGMs than last year; the "closed door" format seen in 2020 is not likely to be tolerated by investors so readily this time around. In October 2020, the FRC published a review, Corporate Governance AGMs: An Opportunity for Change, which examined the different ways companies held AGMs during the first half of 2020 and whether the approaches taken best served the interests of shareholders. Notably, the FRC called for a significant increase in the use of technology to facilitate robust virtual interaction during the AGM and recommended that shareholders should have the ability to hear from the board before voting on resolutions. The FRC concluded that the best organised and executed virtual and hybrid meetings were those that enabled increased participation by shareholders, and it expressed concerns about "closed meeting" formats which did not enable retail shareholders to participate or vote on the day of the AGM.

With this in mind, companies will need to give careful thought to how best to ensure the business of this year's AGMs can be validly conducted while at the same time trying to ensure effective shareholder participation.

As mentioned above, The Chartered Governance Institute once again convened a working group, which we were part of, to consider these challenges. A guidance note aimed at helping companies plan for their 2021 AGM was published on 24 February 2021 and can be found here.

April 2021 onwards — expectations on convening AGMs

As noted above, the challenge for companies in planning for their AGMs from April 2021 onwards is that the prospects of holding a physical meeting with shareholders attending in person are, at best, uncertain and the situation is likely to be susceptible to change right up to the time of the meeting itself.

Companies are likely to have to be flexible in their approach and contingency planning will be crucial as circumstances may change between despatching the AGM notices and holding the AGMs.

Even where the intention is to hold a physical AGM, companies should consider offering shareholders as much electronic engagement as is possible and proportionate in the circumstances before or during the meeting. Providing this type of engagement should go some way to assuring shareholders that they have the option of participating in the meeting without having to attend it physically.

In addition, given that shareholders may not be able to attend AGMs physically this year, companies will need to ensure that they provide clear messaging to their shareholders about the proxy voting process and the

Impact of the global pandemic on AGM resolutions (cont'd)

Withdrawing or amending final dividends

In an attempt to shore up their financial positions, we saw a significant number of companies:

- where notices had already been despatched or published, withdrawing or amending resolutions declaring a final dividend (i.e. cancelling or reducing the amount of the dividend); or
- where notices had not been despatched or published, notifying shareholders that they did not intend to declare a final dividend for 2020 or would delay doing so and would consider a further interim dividend in lieu of the final dividend later in 2020.

In April 2020, The Chartered Governance Institute issued guidance setting out practical advice on what a company should do if it wishes to withdraw or amend a dividend resolution, noting that:

- where a resolution is amended to reduce the dividend after proxy votes have been submitted, the proxy should aim to give effect to what the person appointing him or her would have wanted if faced with the amended resolution;
- stock exchange announcements in these circumstances are likely to constitute inside information; and
- while there is no legal requirement to include some sort of trading update at the same time as the stock exchange announcement, many companies do provide a general update as background to the board's decision to withdraw or reduce the dividend.

This guidance is expected to remain in place for the 2021 AGM season.

importance of appointing a proxy, in particular where proxy voting will be the exclusive means of voting.

In light of the likely challenges, we expect to see an increased number of so-called hybrid meetings this year where shareholders have the option to attend and participate either in person (or by proxy) at a physical location or virtually by electronic means. Even if attending physically is permitted at the time of the meeting, we would expect that companies will encourage shareholders to attend the hybrid meeting virtually and to appoint the chair of the meeting as their proxy so as to ensure that their vote is counted even if they do not end up attending either in person or virtually. It is likely that companies will encourage shareholders to attend virtually while the physical part of the meeting is attended only by a bare quorum (likely employee shareholders) in order to minimise the health risks.

Even companies whose articles do not expressly contemplate a hybrid meeting may well be able to hold one. However, companies in that position will need to review their articles to check whether they do have this flexibility — this will involve not only checking that there is nothing that would expressly require an in person physical meeting at a single location but also that the provisions of the articles generally are not incompatible with holding a hybrid meeting.

Despite the likely challenges this year, just because a company is able to hold a hybrid meeting, this does not mean that it must do so. There are a range of formats which could be adopted ranging from "closed meetings" through to hybrid meetings. Whilst The Chartered Governance Institute's guidance note indicates that, assuming restrictions on public gatherings remain in place, good practice would be for companies to adopt meeting arrangements which are as far along the spectrum of possible meeting formats towards the hybrid model as is proportionate, it is not prescriptive on this point. Companies should therefore consider carefully what format of meeting will be most appropriate for them given their particular circumstances. Relevant factors will include the likely attendance levels; the wishes of their shareholders; the cost and reliability of the available technology; and the importance of ensuring effective shareholder engagement.

For example, one approach could be to plan for a physical meeting at a single location with the ability for shareholders to attend in person at that physical location, should Government guidelines permit this. If this approach is adopted, companies should encourage shareholders to appoint the chair of the meeting as their proxy to ensure their vote is counted even if ultimately it is not possible for them to attend the meeting. As with the physical element of a hybrid meeting, careful thought would need to be given to how to hold such a meeting in a Covid-19 secure way and yet be able to accommodate those who might legitimately attend in person on the day. Additional thought would also need to be given to how to maximise shareholder engagement and participation in the event that physical attendance is not possible at the time of the meeting (e.g. because of a continuing national lockdown or tight restrictions on gatherings).

Possible options for ensuring that shareholders can ask questions and make an informed voting decision which could be combined with physical or hybrid AGM formats include:

- hosting an online Q&A ahead of the meeting with, ideally, answers being provided ahead of the proxy deadline;

Impact of the global pandemic on AGM resolutions (cont'd)

Capital raisings and disclosure requirements

In April 2020, the Pre-Emption Group (**PEG**) published a statement on its expectations for issuances in the current circumstances, recommending that investors, on a case-by-case basis, consider supporting issuances by companies of up to 20% of their issued share capital on a temporary basis, rather than the 5% for general corporate purposes with an additional 5% for specified acquisitions or investments, as set out in the Statement of Principles and adopted by most listed companies at their AGMs. The recommendation was initially in place until 30 September 2020, but was extended to 30 November 2020. However, it has not been extended further and, as things stand, companies are once again more restricted in their flexibility to raise new capital.

Unsurprisingly, the PEG's recommendation was welcomed by a number of companies who raised additional capital to help them remain solvent during the economic downturn brought about by the pandemic. The recommendation meant that the PEG did not object to the use of cashbox structures which went beyond the "standard" disapplication authorities obtained from shareholders at the AGM provided that a number of conditions were met, including that, so far as possible, the shares are offered on a soft pre-emptive basis.

Companies that have taken advantage of this flexibility will need to make additional disclosures (over and above those outlined in the PEG's Appendix of Best Practice in Engagement and Disclosure) in their next annual report and accounts, including information about the consultation undertaken prior to the issuance and the efforts made to respect pre-emptive rights, given the time available.

- hosting shareholder engagement events – again ideally before the proxy deadline; and
- where the meeting is not actually a hybrid meeting, providing a live webstream or audio-cast of the AGM with a facility for asking questions in real time during the meeting.

Where a hybrid meeting format is being adopted, companies will have to adapt the way in which they would normally conduct an in person only physical meeting. Obviously, any shareholders physically present at the place of the meeting will be able to ask questions in the usual way. However, shareholders who are attending virtually must also have the ability to ask questions and be appraised of the answers to all questions raised at the meeting. If the technology facilitating the virtual part of a hybrid meeting would only allow questions to be asked via a chat function, companies should seek advice on whether this would be sufficient to meet any applicable requirements for shareholders to be able "to speak" and "to be heard" at the meeting. In the absence of specific provisions in the articles which provide for this to be achieved electronically, a telephone or audio facility will need to be provided so that shareholders can "speak" when asking questions. Consideration will also have to be given to the conduct of the meeting itself to ensure that those participating virtually can do so on the same basis as those attending physically. This extends to how questions and proceedings are moderated by the chair and how the electronic and physical poll votes are conducted. All of this will be important to ensure that the hybrid meeting is validly held.

The current expectation is that more companies are likely to hold hybrid meetings this year than was the case last year, including a number of the larger listed companies, assuming there is nothing in their articles which would preclude this. A small number of companies did hold wholly virtual meetings during the 2020 AGM season but, in the absence of the "saving" provisions in CIGA, there remains uncertainty over the legal validity of entirely virtual meetings.

As noted above, the guidance published by The Chartered Governance Institute is likely to prove extremely helpful to companies as they navigate these challenges and ensure the validity of the AGM.

Climate change activism and banks

Climate change shareholder activism has become of a feature of AGMs in the last few years: on average, there have been one or two instances each year of activists requisitioning climate change resolutions. In 2019, we saw such requisitions in relation to Shell and BP — and, in 2020[4], Barclays received such a requisition (see further below). Companies in the fossil fuel industry as well as banks that provide finance to such companies have been on the receiving end of such resolutions, and we expect to continue to see this kind of activism in the future.

Earlier this month, ShareAction requisitioned a climate change resolution for inclusion in HSBC's 2021 AGM agenda. Last October, HSBC announced its ambition to become a net zero carbon emissions bank by 2050. The

Are changes required to resolutions for the 2021 AGM season as a result of Brexit?

Depending on the drafting, changes may be required to certain resolutions (and/or explanatory notes) as a result of Brexit. This may be the case where the resolution (and/or note) is drafted on an EU-wide basis and there have been changes to UK law which narrows the application to the UK only. One typical resolution this may apply to is a "political donations and expenditure" resolution which many companies include in their annual AGM.

The political donations and expenditure regime provides that political donations made by a company to political parties, other political organisations and independent election candidates or political expenditure incurred by a company must be authorised in advance by shareholders. Before the end of the implementation period (i.e. 31 December 2020), the scope of the defined terms "political party", "political organisation", "independent election candidate" and "political expenditure" extended to the EU so that the regime applied in relation to political activity within the EU. Following the end of the implementation period, these definitions refer only to the UK, narrowing the scope of the regime to the UK.

Listed companies should check their annual resolutions and notes on authority for political donations and expenditure in AGM notices for references to European political activity and consider whether to narrow their scope to the UK.

Likewise, listed companies should also check their annual resolutions and notes for references to EU legislation which may no longer be appropriate (e.g. share buyback resolutions which refer to the EU Market Abuse Regulation).

[4] Refer to the section entitled "Climate Change Activism – implications for AGMs" in our briefing, *Your 2020 AGM Update and Beyond*, for further details, including for suggestions for boards on the actions to take if faced with such a situation.

requisitioned resolution calls for HSBC to publish more detail on how that will be achieved.

HSBC is the second bank that ShareAction has targeted recently regarding climate change resolutions: last year it requisitioned a climate change resolution at Barclays' 2020 AGM. In that case, the requisitioned resolution was not supported by the Barclays board and, instead, the board put forward its own climate change resolution which was overwhelmingly supported and passed by shareholders (over 99% of votes cast voted in favour). ShareAction's resolution failed to pass with only around 25% of votes cast being in favour of it.

On a broader climate change note, there is increasing pressure on listed companies to offer shareholders an annual, or at least periodic, non-binding advisory vote on climate related matters and this year Unilever is going to propose a resolution on this to its shareholders. See further "*Say on climate — push for shareholders to have a vote on climate action plans*" below.

Narrative Reporting

Companies are facing unprecedented challenges to their businesses as a result of Covid-19. The pandemic has highlighted the importance of companies' ability to anticipate, identify and respond to emerging risks rapidly. Good quality reporting is required so that investors have as clear an understanding of company performance and position as is possible. Companies need to ensure that their Covid-19 disclosures are sufficient to enable investors to understand the impact on their performance, cash flows and financial positions[5]. There is also an ongoing need to review all forecasts and forward-looking guidance to ensure that they remain appropriate in light of the changing situation.

Narrative reporting during the pandemic has been — and will continue to be — challenging. Generally, companies with 31 December year ends did not have to include much on Covid-19 in their annual reports last year — as those reports were looking back to the 2019 financial year before the emergence of Covid-19. It is likely, however, that for such companies, reporting in 2021 will be very different.

The FRC has been quick to acknowledge the reporting difficulties posed by the pandemic. To assist companies with their narrative reporting, the FRC has offered guidance in a number of areas, notably in relation to what disclosures investors expect to see from companies and going concern, risk and viability reporting.

The FRC has also published updated and consolidated guidance for companies on corporate governance and reporting during the COVID-19 pandemic which (i) highlights key areas of focus for boards in maintaining strong corporate governance and (ii) provides high level guidance on pervasive corporate reporting issues.

In addition, the Financial Conduct Authority (**FCA**) has provided listed companies temporary relief measures in relation to deadlines for publication of financial statements (see further "*FCA extends temporary relief for delayed publication of financial statements*" below).

FRC's Thematic Review of financial reporting effects of Covid-19

In July 2020, the FRC published Covid-19 Thematic Review: Review of financial reporting effects of Covid-19, following its review of a sample of interim and annual reports and accounts with a March period end.

The FRC found that although companies provided sufficient information to enable a user to understand the impact Covid-19 had on their performance, position and future prospects, some reports (particularly interim reports) would have benefited from more extensive disclosure.

It should be borne in mind that in the UK we were only beginning to feel the effects of the pandemic from March onwards: the FRC itself acknowledged that disclosures will develop as more interim and annual reports covering longer Covid-19 impacted periods are published.

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5 As highlighted in the FRC's Annual Review of Corporate Reporting.

FRC's Financial Reporting Lab Reports

In June 2020, the FRC's Financial Reporting Lab published two reports[6] providing practical guidance to companies in areas of reporting that investors have highlighted as being critical during the pandemic. Reporting practices evolved since their publication and the FRC published updates to each report in October (Resources, action, the future — COVID 19 and Reporting in times of uncertainty — a look forward and Going concern, risk, and viability — COVID-19 and Reporting in times of uncertainty — a look forward). The October reports look back at key elements highlighted in the June reports, consider current practice, and examine how investor information needs continue to develop. The reports highlight examples of good disclosures in company reports and explain why such disclosures are helpful or useful. Set out below are some of the key observations and suggestions made by the FRC in the October reports.

Resources, action, the future

The FRC noted that:

- as the crisis extends, cash shortages might again become an issue for companies — even if they have previously taken actions to bolster their cash positions, as further cash may be needed to fund current operations or new opportunities. Investors will want to know about the evolving cash position and the uses (and planned uses) of cash. Clarity on repayment of any Government schemes utilised would also be helpful;
- the focus of some companies' disclosures regarding actions they have taken in response to the pandemic's impact on their business was shifting from the actions taken when the economy was "stopped" to the actions they are taking to "restart" their operations. The FRC considers that providing clear disclosure regarding the actions taken by management at different stages in the recovery process is very useful, and such information should also be provided as further lockdown measures are put in place by governments or as economic recoveries continue; and
- information investors may find useful in formulating their views on the prospects of a company could include: (i) an explanation of management's view of the company's future and prospects in the context of actions taken and the challenges faced; (ii) more granular information by geographical location in which the company operates, to illustrate the nature of differing external pressures per location; and (iii) details regarding opportunities that may exist for the company in future.

Going concern, risk and viability

The FRC noted that, while the majority of companies provided information about the scenarios they have considered when assessing going concern and viability, some scenarios can be limited to generic information being provided regarding the underlying assumptions. Further, information presented in interim and quarterly information is far less detailed than that provided in

[6] The first report, COVID-19 – Resources, action, the future — Reporting in times of uncertainty, provided practical advice to companies following the FRC Lab's infographic issued in March 2020 setting out the disclosures investors expect to see from companies — unsurprisingly, these centred around issues such as the availability of cash, liquidity, and viability. The second report, COVID-19 – Going concern, risk and viability — Reporting in times of uncertainty, provided specific guidance on going concern, risk and viability disclosures.

annual reports. The FRC believes it would be useful for companies to provide a detailed update each time they report to the market.

Looking forward, the FRC suggests that discussion of the process for identifying scenarios, determining the related inputs and adjusting them for changes in circumstances and how they are monitored and evaluated over time, would be useful. Further, the actions management has taken to mitigate such changes should be explained. As time passes, companies should also consider providing an update about the status of the scenarios outlined and their progress against them.

The FRC noted that Covid-19 had been included by almost all companies as a new primary or emerging risk and, for most entities, this risk was considered to be pervasive and significant at least in the short term. Such an approach, however, can reduce visibility around how individual components of the risk unwind which will become increasingly important as we transition into a post-Covid-19 situation. Some companies have adopted a different approach and have disclosed the effects the pandemic has had on their other risks and how the 'rating' of these risks has changed since their previous reporting. The FRC is of the view that a 'blended' approach (in which a new Covid-19 risk has also been identified with other risks tailored to take the effect of Covid-19 into account) could also be useful.

Looking ahead, the FRC highlights that disclosing the effects of the components of Covid-19 on other risks, rather than as a separate risk, may provide more useful information to users. It notes that Covid-19 was an event that triggered a cascade of other risks, and in the longer term, the longevity and nature of the impact on the individual components of risk will be different. Therefore, what becomes important is understanding the impacts, the actions and the mitigations at that component level rather than pandemic risk as an individual risk. The component risks associated with it (e.g. Government regulation, lockdowns, effect on employees, securing funding and financing and the general economic impact) may extend to the medium and longer term. Instead of removing a principal (or emerging) risk, companies could tailor the explanation of the risk.

FRC Annual Letter to Audit Committees

In its annual end of year letter to CEOs, CFOs and Audit Committee Chairs, the FRC noted that companies with 31 December year ends will be publishing their annual reports against the backdrop of economic uncertainties resulting from Covid-19 and the UK's exit from the EU and that it is likely that public health measures taken in response to Covid-19 will continue into the first quarter of 2021. In these circumstances, the FRC encourages companies to consider carefully whether they should be lengthening their reporting timetables, making use of the extensions to reporting deadlines (from four to six months from the end of the financial year) announced by the Financial Conduct Authority (**FCA**) which remain in place, and this message was repeated in a joint statement by the FCA and the FRC (see further "*FCA extends temporary relief for delayed publication of financial statements*" below). Other key issues highlighted in the letter include:

- users should be provided with clear and transparent information that is of interest to them such as going concern and viability;
- where judgements have been made involving significant estimation uncertainty, increased disclosure of relevant sensitivities or ranges of possible outcomes should be made to help users of the accounts

New obligations to provide confirmation of voting to shareholders

New regulations came into force on 3 September 2020 which will require traded companies to provide a confirmation of receipt of votes cast on a poll by electronic means. In addition, shareholders will have the right to request information from the company to help them determine that, where they have cast their vote on a resolution by way of poll at a general meeting, their vote has been validly recorded and counted. Ahead of their AGMs, companies should speak to their registrars to ensure that they are able to satisfy these requirements. For more information about these requirements, see our briefing, *New obligations for traded companies to provide confirmation of voting to shareholders.*

understand the assumptions made and the extent of the changes that might be reasonably possible in the next twelve months;

- narrative disclosures in the strategic report should quantify the historical effect of the pandemic, but the FRC discourages the arbitrary splitting of items between Covid-19 and non-Covid-19 financial statement captions as such splitting is likely to be highly subjective and therefore unreliable;
- all UK companies that use alternative performance measures are expected to continue to apply the European Securities and Markets Authority Guidelines on APMs;
- companies should carefully assess what information would be most useful to users in relation to the impact of Brexit on the company, and reports should explain company-specific risks and uncertainties; and
- many companies had not sufficiently explained how directors had discharged their section 172 duty (see further "*Section 172 Statements*" below).

Section 172 Statements

As part of the preparation of the annual strategic report for the 2020 financial year, companies will be focused on the preparation of their Section 172 Statement. For 31 December year end issuers, this will be their second Section 172 Statement and it is expected that such statements are likely to be under closer scrutiny this coming year, with companies being held to account on:

- whether they have lived up to their stated purpose;
- how they have looked to engage with key stakeholders, in particular their employees, during the pandemic; and
- how the directors have considered stakeholders' interests when making decisions during this most challenging of years.

Following a review of Section 172 Statements, the FRC found that many companies did not sufficiently explain how their directors discharged their section 172 duty, and in particular the responsibility to have regard to the consequences of decisions in the long term. A number of companies reported on the methods of engagement with stakeholders but neglected to reflect a two-way dialogue or explain how the feedback affected decision making. Others treated the statement as simply one of compliance instead of reflecting how they specifically met the requirements.

Following discussions with investors and others as part of an FRC Lab project on corporate disclosures about stakeholders, including Section 172 Statements, the FRC published a tip sheet. The tip sheet provides guidance to companies on how to build useful content into the Section 172 Statement and how it can be best presented. It also includes recommendations for how the process of the preparing the statement can be supported. The guidance reminds companies that the statement should not be just a box-ticking exercise where the company duplicates the section 172 requirements and states that it has complied. Rather, the statement should be an authentic reflection of what happened during the year under review and what is actually material to the company. The process of preparing the statement should begin early — the board should consider throughout the year which key decisions and engagement activities could be included in the statement.

Workforce engagement

Although the Code provides that a company should engage with its workforce using one or more of three recommended methods (or any alternative arrangements), the overwhelming majority of companies adopt the designated non-executive director method, and a few adopt the formal workplace advisory panel method. A significant number of companies have alternative arrangements in place to engage with their workforce, such as employee forums, town halls, European works councils, employee engagement committees and organised company events where employees can meet the board.

There have only been a handful of instances where companies have appointed directors from the workforce — notably, Capita plc, FirstGroup plc, Frasers Group plc (formerly Sports Direct International plc), and RHI Magnesita N.V. and TUI AG.

It will be interesting to see whether more companies adopt this approach in 2021, but we do not expect a significant increase.

For further insights on the Section 172 Statement, refer to our briefing, *From Shareholders To Stakeholders Section 172 Statement: Telling your Story*.

Reporting against the new Corporate Governance Code

2020 was the first year that we saw companies report against the new 2018 UK Corporate Governance Code (the **Code**), which:

- emphasises the importance of aligning the company's strategy and purpose with its corporate culture and ensuring a high quality and diverse board composition;
- requires the board to understand the views of the company's key stakeholders and to describe in the annual report how their interests and the other matters set out in section 172 CA 2006 have been considered in board discussions and decision-making (this requirement sits alongside the statutory requirement for companies within scope to publish a Section 172 Statement in their strategic report); and
- recommends that a company engages with its workforce using one or more of three methods (or any alternative arrangements): a director appointed from the workforce; a formal workplace advisory panel; or a designated non-executive director.

In November 2020, the FRC published its annual review of corporate governance reporting. The central theme permeating the report was a call for better quality reporting through better application of the Code, and that many companies had not met the reporting expectations. In many cases, the FRC found that reporting was not coherent or cohesive, and that companies turned reporting into a tick-box exercise to claim compliance with the Code. Although there were many examples of good reporting, the FRC commented that the overall practice of many other companies continued to be to offer vague explanations as to their application of the Code.

The FRC also called for more work to be done in terms of monitoring culture, with only a minority of companies setting out in detail how they plan to assess their culture beyond the use of surveys and site visits.

Companies fared better at stakeholder engagement, but the FRC remained concerned with the lack of reporting on feedback received and the outcomes from stakeholder engagement processes. The lack of evidence of any feedback from processes was repeated in relation to remuneration policies. Whilst the FRC was pleased to see that most companies had taken into account Code changes in their remuneration policies and that many companies had considered workforce remuneration when setting executive remuneration policies, they noted that often there was little or no discussion of how these new policies were debated with, or explained to, shareholders and wider stakeholders prior to implementation.

Given that the impact of the pandemic in the UK did not become apparent until March 2020, its impact was not captured by many of the reports reviewed — as such, the FRC did not comment in any detail on this issue. It will however be an area of focus for next year when the FRC will evaluate how well companies reported on their responses to the pandemic.

Perhaps, not surprisingly, the FRC's conclusion in relation to corporate governance disclosures echo the findings of the FCA in its November paper, Corporate Governance Disclosures by Listed Issuers. In that paper the FCA also expressed concerns that some disclosures appeared to be boilerplate and did not change significantly from year to year. It recommended that

Delay in implementation of ESEF mandatory reporting requirements

In November 2020, the FCA published a Policy Statement (**PS20/14**), in which it confirmed that is has postponed the European Single Electronic Format (**ESEF**) reporting requirements relating to the filing and publication of machine-readable financial statements and mandatory tagging of basic financial information. The mandatory requirements were originally scheduled to apply in respect of financial years starting on or after 1 January 2020 but have now been pushed back by one year and will now apply to financial years starting on or after 1 January 2021. Issuers may however voluntarily publish and file their annual financial reports using ESEF for their 2020 financial year if they wish to. ESEF requirements for the tagging of notes to the financial statements will remain on schedule, with these requirements applying to financial years starting on or after 1 January 2022.

disclosures could be improved by the inclusion of examples and cross-references to disclosures elsewhere in the annual report that evidence good corporate governance.

The FCA also highlighted difficulties in evaluating how issuers apply the Principles of the Code relating to board diversity reporting. In this regard, it is also worth noting the recent call from the IA for greater transparency on ethnic diversity on boards, citing that almost three-quarters of FTSE 100 companies failed to report the ethnic make-up of their boards in the 2020 AGM season. The IA noted that investors have previously asked companies to include this information, alongside gender diversity, in their annual reports (FTSE 100 boards are expected to have at least one director from an ethnic minority background by 2021 under the Parker Review). The IA highlights that investors expect companies not just to state in their annual report whether they meet the Parker Review targets but to disclose the percentage of the board that comes from an ethnic minority background — this expectation is also set out in the IA's Shareholder Priorities for 2021 (see "*Updated proxy adviser guidelines for 2021*" below, which also highlights that Glass Lewis, in its updated proxy adviser guidelines for 2021, has called for meaningful disclosure against the Parker Review targets).

It is also worth noting that, as reported in the media, a number of institutional investors, such as Legal and General Investment Management (**LGIM**) and Aviva Investors, have publicly made clear their expectations on the issue of ethnic diversity in the boardroom and have stated that they will vote against director re-elections where companies have failed to achieve appropriate ethnic diversity in their boardrooms.

FCA extends temporary relief for delayed publication of financial statements

As noted above, in their joint statement published on 27 January 2021, the FCA and the FRC reminded listed companies of the temporary relief measures introduced in March 2020 and encouraged them to use the measures where necessary to ensure that the quality of reporting is not compromised.

One of the measures is in relation to the temporary relief first announced in March 2020 for an extended period for the publication of financial statements. This means that listed companies have an additional two months in which to publish their audited financial statements (i.e. within six instead of four months of the financial year end) meaning that, by way of example, a company with a 31 December financial year end will have until 30 June 2021 (as opposed to 30 April 2021) to publish its financial statements. Listed companies also will have an additional month to publish half yearly financial reports (i.e. within four months instead of three months of the financial half year end).

The FCA, in its summary of the measures, states that the temporary reliefs for delayed publication of financial statements will remain in place until the disruption abates and that when it decides to end the measures, it will provide companies with plenty of notice so they have time to prepare.

In addition to the temporary relief measures for the delayed publication of financial statements discussed above, companies will continue to benefit from a three-month extension for filing their financial statements with Companies

House (albeit the grant of an extension will be discretionary[7] after 5 April 2021).

The FCA also reminded listed companies of their disclosure obligations in relation to inside information under the Market Abuse Regulation (which remains in force).

Updated proxy adviser guidelines for 2021

Glass Lewis: On 24 November 2020, Glass Lewis published its 2021 UK Proxy Paper Guidelines. Key changes include:

- *Board and workforce diversity* – (i) FTSE 350 companies should provide meaningful disclosure regarding their performance against the board ethnic diversity targets set out in the Parker Review, (ii) Glass Lewis will recommend against the chair of the nomination committee of any FTSE 350 board that has failed to meet the 33% board gender diversity target set out by the Hampton-Alexander Review where a cogent explanation or plan to address this issue has not been disclosed, and (iii) in extreme cases where boards have failed to respond to legitimate concerns regarding a company's workforce diversity and inclusivity policies, practices and disclosure, Glass Lewis may recommend voting against the chair of the governance committee (if any) or the chair of the board.
- *Board succession* – Glass Lewis will usually recommend a vote against the nomination committee chair when the tenure of the chair of the board exceeds nine years and a defined succession plan and definitive timeline for retirement has not been disclosed.
- *Virtual shareholder meetings* – Whilst Glass Lewis states its unequivocal support for companies facilitating the virtual participation of shareholders in general meetings, it still has concerns over virtual only meetings which it believes can hinder shareholder participation. Where a meeting is convened with limited in-person attendance, Glass Lewis expects that clear procedures should be set and disclosed to ensure that shareholders can effectively participate and meaningfully communicate with company management and directors. Where there is insufficient disclosure of such procedures, Glass Lewis may recommend that shareholders hold the governance chair (if any) or board chair accountable.
- *Amendments to articles for hybrid/virtual meetings* – Glass Lewis will generally support proposed amendments that would allow for companies to hold hybrid meeting. Glass Lewis also outlines its expectations in respect to proposals that seek to amend a company's articles of association to allow for virtual only shareholder meetings and/or the virtual attendance of directors at shareholder meetings.
- *Environmental and social initiatives* – Glass Lewis will assess shareholder proposals on environmental and social issues in the context of financial materiality and will generally support proposals that seek to promote relevant disclosure that serves the long-term interests of shareholders.

Institutional Shareholder Service (ISS)*:* ISS has also published its policy updates for 2021. Key changes include:

- *Board gender diversity* – For FTSE 350 companies, ISS will generally recommend a vote against the chair of the nomination committee (or other directors on a case-by-case basis) if the board does not comprise at least 33% women. Mitigating factors include compliance with the relevant board diversity standard at the preceding annual meeting and a firm, public commitment to comply with the relevant standard within a year and other relevant factors as applicable. In 2021 only, for FTSE 350 companies, a public commitment to bring the composition of the board in line with the recommendations of the Hampton-Alexander Review by the following annual meeting will be considered an acceptable mitigating factor, regardless of the previous composition of the board.

[7] At present, companies are able to apply for a fast-tracked, automatic and immediate three-month extension for the filing of accounts at Companies House where they cite coronavirus as a factor affecting timely completion or audit of financial statements. This "automatic" extension expires on 5 April 2021 but will be replaced with an application process to Companies House with companies being granted a discretionary three-month extension where they cite coronavirus as a factor affecting timely completion or audit of financial statements.

- *ESG oversight* - Under extraordinary circumstances, ISS will consider recommending a vote against individual directors for demonstrably poor risk oversight of environmental and social issues, including climate change.
- *Over-boarding* – Confirmation that, with regard to director commitments, ISS may apply a more lenient view as to whether a director is over-committed for directors who serve on the boards of less complex companies (for example, externally managed investment companies).
- *Executive Remuneration* – In determining whether to approve the remuneration policy, ISS will have regard to the extent to which pension contributions are aligned with those available to the wider workforce and, separately, whether the company has an appropriate post-employment shareholding requirement in place.

***The IA**:* The IA has published its Shareholder Priorities for 2021. Key changes in relation to expectations for 2021 include:

- *Climate Change* – IVIS will Amber top the ESG report of any company in a high-risk sector (i.e., financial services, energy, transportation, materials and buildings, and agriculture, food and forest products) that does not address all four pillars (governance, risk management, strategy and metric and targets) of the Task Force on Climate-related Financial Disclosures (**TCFD**).
- *Stakeholder engagement* – An expectation that companies will make disclosures outlining the approach taken to engaging, communicating and supporting their stakeholders during the disruption caused by the pandemic. These should include how the board reflected the views of their stakeholders in key decision making.
- *Audit quality* —Companies should meet the 2020 shareholder expectations (including that audit committees clearly disclose how they ensured that their auditors had delivered a high-quality audit) and demonstrate how they have judged the quality of the audit they have received. The IA will continue to work with companies and audit committees to communicate expectations and showcase effective case studies and to work with BEIS and the FRC to ensure that companies disclose how they judge audit quality. IVIS will introduce a colour top approach in 2022 if progress is not made in 2021.
- *Diversity* – An expectation by investors that companies will take action to improve the ethnic diversity of their boards, including greater consideration of how the boards reflect their employee base and the consumers and communities they serve. IVIS will Amber top any FTSE 350 company that does not disclose either the ethnic diversity of its board or the credible action plan it has in place to achieve the Parker Review targets. The IA noted that progress is needed in relation to gender diversity of the executive committee and their direct reports and that investors expect companies to disclose the gender composition of the executive committee and their direct reports. IVIS will continue to colour top companies where they fall short of investor expectations on gender diversity.

Executive Remuneration in focus during the pandemic

Investor bodies and proxy advisers have been particularly focused on the impact of Covid-19 on executive pay during the pandemic, expressing their expectations on pay decisions and increasing focus on disclosure and remuneration committee (**RemCo**) discretion.

In November 2020, the IA published an update of its "Principles of Remuneration" for 2021 along with an updated version of its April 2020 guidance on the impact of Covid-19 on executive pay.

The IA makes it clear that RemCos should be even more mindful of the wider employee context through this period and the impact that it should have on pay outcomes for executive directors.

The IA acknowledged the significant challenges that companies are still facing and expects that RemCos will want to 'sensitively balance' incentivising executive performance at a time where management are being asked to demonstrate significant leadership and resilience. RemCos are reminded that executives should not be 'isolated' from the impact of Covid-19 in a way that is not consistent with the approach taken for the general workforce and should also be aware of the pandemic's impact on society. RemCos will also need to take into account the impact of Covid-19 on company share prices and the corresponding impact that may have on share awards to executives.

Outside of Covid-19, the reduction of executive directors' pensions contributions to align with the majority of the workforce also remains an area of focus for the IA.

Updated Shareholder Expectations on pay during the Covid-19 pandemic

In April 2020, the IA provided additional guidance on shareholder expectations during the COVID-19 pandemic. The guidance was updated in November 2020. Key points to note include:

- *Government aid and loans* — Confirmation that investors do not expect companies taking Government loans or other forms of aid to pay any annual bonuses for either FY2020 or FY2020/21, unless there are 'truly exceptional circumstances'. RemCos should also disclose how they have taken into account the impact of any indirect support measures (such as business rate relief) on remuneration outcomes.
- *Dividend payments for FY 2019 or FY 2019/20* — Expectation that RemCos clearly disclose how the cancellation of an intended dividend has been reflected in 2019 or 2020 remuneration outcomes.
- *Performance measures and long-term incentive plans (**LTIPs**)* — Adjusting performance for 'inflight' LTIP awards is discouraged and confirmation in the annual report will be needed that companies have not adjusted performance targets. Shareholders would not expect LTIP grants to be cancelled and replaced with another grant, because of Covid-19. Shareholders also do not expect RemCos to compensate executives with a higher variable pay opportunity in 2021 for any lower remuneration received in 2020 due to the pandemic. For future LTIP grants, performance targets must remain sufficiently stretching and should not be adjusted to compensate for reduced remuneration outcomes due to Covid-19 (with enhanced disclosure needed on setting the targets).

Updated IA Principles of Remuneration for 2021

Key changes include:

- *Use of non-financial performance measures* – The IA notes that companies are increasingly incorporating material ESG risks into their incentive plans. However, as with any other performance condition, ESG performance conditions must be clearly linked to the company's strategy. The IA also notes the increasing use of strategic targets and/or personal objectives in annual bonuses and reminds RemCos that shareholders continue to expect that financial metrics will comprise the majority of any annual bonus.
- *Post-employment shareholding requirements* – RemCos should state the structures or processes they have in place to ensure the continued enforcement of the post-employment shareholding requirement, particularly once a director has left the company.
- *Deferral of bonuses* – Where a bonus opportunity is more than 100% of salary, a proportion should always be deferred into shares.
- *Pension contributions for new and incumbent directors* — See "*Approach to Executive Directors' Pension Contributions for 2021*" on the next page.

- *Salaries* — Expectation that companies show 'continued restraint' on salary increases and on overall quantum of pay (with any increases, if necessary, in line with changes to the wider workforce).
- *Bonuses* — Where RemCos' discretionary powers are used this should be matched with increased disclosure on rationale and outcomes. This includes disclosure on how RemCos have determined financial targets and why any pay-outs have been made under non-financial elements only. Companies may also consider whether a higher portion of bonus should be deferred into shares.
- *Windfall gains* — Confirmation that disclosure is needed of the approach taken and factors considered when judging if there has been a windfall gain from any LTIP grant made in 2020. For those companies that reduced the size of the grant of a new award, this should also be stated.

The emphasis remains on appropriate use of RemCo discretion to help navigate a company's response to Covid-19. In terms of response to the pandemic, the IA appears to continue to advocate, in many areas, taking a medium to long-term approach on pay decisions. RemCos should review pay arrangements and practices carefully, in order to consider the parameters of flexibility and discretions in bonus and LTIP awards.

Other statements by proxy advisers on Covid-19 and executive pay

Other proxy advisers and investor bodies have also made recent statements on Covid-19 and pay, dealing with themes and issues that are similar to the IA's priorities. For example, Glass Lewis published a paper on 26 January 2021 clarifying that it will adopt a 'pragmatic and contextual approach' to evaluating remuneration practices and on 25 January 2021, ISS published its own guidance note setting out how it is likely to approach Covid-19 and pay matters. As with the IA, the expectation of both ISS and Glass Lewis is that where a company has cancelled dividends or where employees have been made redundant, furloughed or had their salaries cut, these measures should be taken into account in executive pay outcomes. Other areas of focus include guidance on discretionary adjustments to the terms of incentive plans (with adjustments to 'in flight' awards again generally discouraged), adjustments for windfall gains and the importance of the RemCo taking on-board wider stakeholder perspectives in decision making.

Approach to Executive Directors' Pension Contributions for 2021

The IA is continuing its focus on ensuring that pension contributions for executive directors are aligned with those available to the majority of the company's workforce. The approach for 2021 is as follows:

- *Pension contributions for new directors* — The position remains unchanged. Any new director (or director changing role) and any new directors' remuneration policy (**DRP**) should have pension contributions in line with the majority of the workforce or result in a Red Top from IVIS on the report or DRP.
- *Incumbent directors' pensions contributions* — The position remains that a RemCo is expected to set out a 'credible action plan' to align the contributions of incumbent directors to the majority of the workforce by the end of 2022. Where the RemCo has not disclosed a credible plan, IVIS will now Red Top the report if the pension contribution is 15% or more (previously 25%).

On the horizon

Climate change reporting — introduction of new Listing Rule

On 21 December 2020, the FCA published Policy Statement PS20/17 regarding the introduction of a much anticipated new rule in the Listing Rules. The new rule applies for accounting periods beginning on or after 1 January 2020 and requires commercial companies with a UK premium listing (including sovereign-controlled commercial companies) to include a compliance statement in their annual financial report stating whether they have made disclosures consistent with the TCFD recommendations and recommended disclosures or provide an explanation if they have not done so.

The new rule should not come as a surprise to listed issuers as this has very much been the direction of travel[8], with increased regulatory pressure for alignment of climate-related disclosures with the TCFD recommendations regime.

It is accompanied by guidance to help listed companies determine whether their disclosures are consistent with the TCFD's recommendations and recommended disclosures. The guidance also clarifies the limited circumstances in which the FCA would expect in-scope companies to explain rather than disclose.

The FCA has also published a Technical Note clarifying existing disclosure obligations (which apply to a wider scope of issuers than the new rule) in relation to ESG matters (including climate change), in EU legislation and the FCA Handbook. In its view, in certain circumstances, these disclosure obligations may already require issuers to disclose information on ESG matters.

In terms of next steps, in the first half of 2021, the FCA aims to:

- publish further consultation papers to extend the application of the new rule to a wider scope of issuer; and
- consult on potential TCFD-aligned disclosures by UK-authorised asset managers, life insurers and FCA-regulated pension providers designed to better inform their clients and end investors.

Say on climate — push for shareholders to have a vote on climate action plans

As noted in "*Climate change activism and banks*" above, there have been calls over recent years for companies to give shareholders more of a voice on climate action plans. In December 2019, The Children's Investment Fund (**TCI**) wrote to companies, including Airbus, Moody's and Google's parent company Alphabet, warning them to improve their pollution disclosures or it would vote against their directors. TCI also warned it would vote against auditors where the annual report and accounts failed to report material climate risks and threatened to "dump" investments where a "portfolio company refuses to disclose emissions and does not have a credible plan for their reduction". Other investors have expressed similar sentiments.

This issue gained further publicity with the launch of the high-profile campaign "Say on Climate" in November 2020, the aim of the campaign being to force U.S. and European listed companies to cut their greenhouse gas emissions by enlisting global investors to demand an annual advisory vote on such companies' climate plans at AGMs. This movement is gaining support from investors and proxy advisers, such as Glass Lewis and ISS. Of note, within the corporate sphere, Unilever and Moody's are early adopters of giving their shareholders a say on climate action plans (see further "*Say on Climate campaign: successes and early adopters*" below).

If the campaign continues to gain momentum, we may well see more companies giving their shareholders an annual (or periodic) non-binding

Investor demand for climate change-related disclosures continues to grow

In recent years, there have been growing demands by investors for greater disclosure of companies' plans for transitioning to a net zero economy. In line with many other investors, Larry Fink, CEO of BlackRock, has again focused on climate change issues and the push for sustainability in his latest annual letter to company CEOs, published in January 2021. The letter asks companies to disclose a plan as to how their business models will be compatible with a net zero economy and to disclose how this plan is incorporated into their long-term strategy and is reviewed by their boards. The letter also expresses support for moving to a single reporting standard for sustainability disclosures "which will enable investors to make more informed decisions about how to achieve durable long-term returns" — BlackRock itself endorses reporting against the TCFD recommendations and the recommendations of the Sustainability Accounting Standards Board.

[8] In a speech to the Commons on 9 November 2020, the Chancellor confirmed the Government's intention to mandate climate disclosures by large companies and financial institutions by 2025. The expectation is that the new disclosure requirements would cover a large portion of the UK economy, including listed commercial companies, UK-registered large private companies, banks, building societies, insurance companies, UK-authorised asset managers, life insurers, FCA regulated pension schemes and occupational pension schemes.

advisory vote on climate action plans. As reported in the media, The Investor Forum has urged the UK Government to consult on introducing a "say on climate" vote, with this advisory vote being akin to the "say on pay" vote in relation to the executive remuneration report[9].

Say on Climate campaign: successes and early adopters

Aena – investor pressure and use of shareholder resolutions

In October 2020, following a year of pressure, TCI used a shareholder requisitioned resolution to force Spanish airports operator Aena to draft a new climate plan and submit it to an annual vote – this was the first example of a company adopting an annual shareholder vote on its climate action plan. 98% of shareholders backed the annual vote (including BlackRock) and it had ISS and Glass Lewis support.

TCI aims to replicate that model at many more companies in the next two years by mobilising investors to sponsor similar resolutions requesting companies to disclose their greenhouse gas emissions, present a plan to reduce them, and give shareholders an annual non-binding advisory vote on that plan.

TCI has already filed resolutions at seven US-listed issuers: Moody’s Corp, S&P Global, Union Pacific Railroad, Charter Communications, Alphabet, Canadian Pacific Railway and Canadian National.

Unilever and Moody's — early adopters

On 14 December 2020, Unilever announced that it would put its climate action plans to cut greenhouse gas emissions to a shareholder vote at its AGM in 2021 – becoming the first blue-chip company voluntarily to give investors a say on its climate strategy. The plan will be updated on a rolling basis and Unilever will seek an advisory vote every three years on any material changes made, or proposed to be made, to the plan. Unilever will also report on its annual progress against the plan in 2022.

In December 2020, Moody's announced its commitment to the principles outlined in the Say on Climate campaign, and that it would include a shareholder vote on its plan to manage emissions at its 2021 AGM — Moody's is the first S&P 500 company to voluntarily give its stockholders a say on its climate strategy.

The Future for Corporate Reporting

On 8 October 2020, the FRC published a discussion paper, *A Matter of Principles The Future of Corporate Reporting*, intended to start a discussion about potential changes to the current system of corporate reporting[10], with a view to making it more effective and engaging for those with an interest in a company. The FRC proposes moving towards a more objective-driven reporting framework (a so-called "reporting network"), supported by overarching principles intended to establish coherence across all company reporting. The framework would be supported by content communication principles that apply at an individual report level to provide guidance on how each of the reports comprising the reporting network should be written so that they communicate effectively.

At the heart of the reporting network would be a stakeholder-neutral business report, intended to enable users to understand how the company creates long-term value in accordance with its stated purpose. The intention is that the current strategic report would form the basis of the business report. In its discussion paper, the FRC emphasises the need for corporate reports to be prepared for a wider stakeholder audience and not limited to shareholders and

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9 The Investor Forum states, in Thinking Aloud: "Say on Climate": An opportunity to deliver impact in the UK, that, in its view, BEIS could "effectively replicate the approach that it developed to elevate the status of the remuneration report and require an annual non-binding vote to approve the report".

10 It should be noted that the proposals set out in the discussion paper have been developed in the context of broader developments in the audit sphere, including reports issued following the independent review of the FRC by Sir John Kingman and the independent review of the quality and effectiveness of audit by Sir Donald Brydon.

investors and proposes a new definition of corporate reporting which is focused on all stakeholders. This would see a significant shift away from the current focus of corporate reporting which is generally considered to be for the benefit and use of shareholders and investors. Sitting alongside the business review would be a company's financial statements, to be published as a standalone document, along with a new mandatory public interest report (**PI Report**). The objective of the PI Report (which, under the FRC's proposals, would be a standalone report) would be to enable users to understand how a company views its obligations in respect of the public interest (including, for example, the impact of its activities on stakeholders and the environment), how it has measured its performance against those obligations and to provide information on future prospects in this area. For further information on the FRC's discussion paper, see our briefing, *FRC publishes discussion paper on the future of corporate reporting*.

Comments on the discussion paper were invited by 5 February 2021. It is likely that, if adopted, these proposals would require changes to primary legislation. To date, the Government has not commented on the publication of the paper, nor whether this is a key area of focus for them at this time, particularly given the current pressures on Parliamentary time.

Other key areas where we expect to see developments in 2021

We expect to see further developments in the area of audit, particularly in relation to the following:

- BEIS Select Committee inquiry into the future of audit;
- the independent review of the FRC by Sir John Kingman, published in December 2018;
- the independent review of the quality and effectiveness of audit by Sir Donald Brydon, published in December 2019 — as to which please see our briefing, *Widescale audit reforms proposed by Brydon*; and
- the Competition and Markets Authority review on the Statutory Audit Market, published in April 2019 — as to which please see our briefings, *CMA proposals to reform the statutory audit market* and *BEIS responds to CMA's proposals to reform the Statutory Audit Market and launches consultation.*

It is expected that the Government will publish a white paper in early 2021. Depending on the availability of Parliamentary time, we expect the FRC to be replaced this year by the Audit, Reporting and Governance Authority as previously announced and as recommended by the review led by Sir John Kingman.

In addition, we note the publication in December 2020 of a research paper entitled Audit Committee Chair's view on, and approach to audit quality, which sets out the findings from a research project commissioned by the FRC. The paper concludes that the development of standards for audit committees would support a more consistent approach to promoting audit quality.

Another area where we expect to see reform is in relation to ethnicity pay gap reporting. The Government announced in July 2020 (in response to the BEIS Committee recommendations to prevent future corporate collapse) that it intends to report in due course on its 2018 consultation on ethnicity pay gap reporting.

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