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2023/4 CORPORATE REPORTING AND AGM SEASON

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Whilst there may be a lot of changes for listed companies in the pipeline, the good news for the 2023/4 Corporate Reporting and AGM season is that not much has changed from last year.

In relation to reporting, this year listed companies must comply or explain against the diversity-related listing rules reporting requirements (which were voluntary last year) and UK companies must now include climate-related financial disclosures in their strategic reports pursuant to the Companies Act 2006 requirements (in addition to complying with the largely overlapping listing rule TCFD disclosure requirements). The FCA and FRC continue to expect companies to improve the quality of climate-related disclosures.

As regards AGMs, we expect to see more companies seeking enhanced authorities regarding the disapplication of pre-emption rights in line with the changes to the Pre-emption Group guidelines towards the end of 2022 (although practice is likely to continue to be mixed). In addition, we are likely to see some companies moving away from offering hybrid meetings/other means of electronic participation in the AGM in response to low take-up of such facilities.

Whilst there may not be much change to legal or regulatory requirements, the legal backdrop continues to evolve and companies need to bear in mind who is reading their annual reports and why. Increasingly, it is not just institutional and retail investors who are interested in what a company has to say, but also regulators, NGOs and climate activists. Regulators are on the look-out for greenwashing and misleading sustainability claims, and NGOs and climate activists continue to try to find new ways to put pressure on companies to change their behaviour, including by causing disruption at AGMs. It is therefore important that companies view their climate and sustainability disclosures through a potential litigation/shareholder activism risk lens. Companies also need to ensure that their annual report disclosures are fair and balanced (i.e. accurate and not misleading by omission) and that are they consistent with the company's stated ambitions and other public disclosures, including those made on websites, in advertising or through other media channels.

At a glance

- No significant changes for the 2023/24 AGM season
- Improved climate-related reporting expected
- Diversity-related listing rules reporting now mandatory
- Companies under increased scrutiny for sustainability claims from regulators, NGOs and climate activists
- Return to physical / in-person meetings (continuing the trend from 2022/23)

Contact the team

Our UK Corporate Transactions and Advisory team is ranked Band 1 in Legal 500. We advise many listed companies in relation to corporate governance, annual reporting requirements and AGM preparation. Please contact any of us with your queries in this area.

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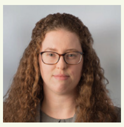

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CORPORATE REPORTING
AREAS FOR IMPROVEMENT

The FRC's ***Annual Review of Reporting*** focuses on the quality of financial statements, with the most common issues raised being impairments and judgements and estimates, reflecting ongoing economic uncertainties, as well as cash flow statements. In relation to TCFD reporting, the FRC notes that going forward it will be more likely to engage with companies whose disclosures do not meet the requisite standards. The review also sets out the FRC's expectations for reporting in 2023/4, which include: (i) clear disclosures about the uncertainties and risks facing companies and their impact on strategy, business model, going concern and viability, and (ii) a clear statement of consistency with the TCFD recommended disclosures.

The FRC's ***Annual Review of Corporate Governance Reporting*** examines the quality of reporting against the UK Corporate Governance Code, and highlights the following areas for improvement:

- Clearer explanation of any non-compliance with the UK Corporate Governance Code
- More detail about the frequency, topic and methods of shareholder engagement, feedback received from shareholders and the outcome of the engagement/impact on decision-making
- Explanation of why the workforce engagement mechanism is effective and how this is reviewed
- Linking together D&I policy and company strategy; Reporting on how targets will be achieved/progress made on achieving targets
- More focus on risk management and internal controls – the FRC found that most companies fail to demonstrate they have effective systems, governance and oversight in place.

The FRC's ***Thematic review of climate-related metrics and targets*** noted that: (i) explanations of actions and milestones to meet targets were sometimes unclear; (ii) companies seem to find it challenging to explain clearly and concisely their plans for transitioning to a low-carbon economy; and (iii) explanations of how climate targets affect the financial statement need improvement.

The FRC's ***report on materiality in practice*** aims to encourage 'better, not more' reporting. The FRC wants companies to: (i) have a 'materiality mindset' when it comes to determining which information to disclose (in particular in relation to climate/sustainability matters where there is more discretion as to what to include); (ii) to take a holistic approach to materiality (applying so far as possible a consistent threshold test as to what is material); and (iii) for reporting to include 'material information' which is useful to investors to inform their decision making. The FRC intends to conduct further work on this area in the next 12 months.

The FRC's ***Insights on structured digital reporting*** sets out some good practice tips in relation to tagging and design and usability (for example it recommends companies not to convert pdfs to XHTML, but rather use a native XHTML approach instead) and reminds issuers that they need to devote the same level of care and attention to their XHTML annual report as they apply to their pdf/printed version. It also suggests that companies provide on their website an FCA-validated version of their structured digital report with an Inline XBRL viewer, as well as a pdf version.

2023/24 Corporate Reporting at a glance:

In 2023/24 Annual Reports, listed companies should:

- continue to comply with the climate-related TCFD listing rules (or explain why not). Certain large UK companies must also comply with the new (overlapping) Companies Act 2006 requirements.
- must comply with the new diversity listing rules (the rules became mandatory for FYs starting on or after 1 April 2022, although companies were encouraged to report voluntarily for FY2022).
- review reporting in areas identified by the FRC as areas for improvement
- consider preparing to report against proposed new climate-related listing rules (referring to ISSB disclosure standards and the Transition Plan Taskforce's new disclosure framework).

Helpful links:

FRC: Thematic review of climate-related metrics and targets

BEIS guidance on mandatory climate-related financial disclosures under the Companies Act 2006

FRC: Annual Review of Corporate Reporting 2022/2023

FRC: Annual Review of Corporate Governance Reporting 2023

FRC insights on structured digital reporting

FRC: Materiality in practice: applying a materiality mindset

WHAT'S LEFT OF THE AUDIT AND CORPORATE GOVERNANCE REFORMS?

The UK's audit and corporate governance reforms have been radically scaled back. This scaling-back is driven by the Government's desire to de-regulate in order to support the UK's economic growth and international competitiveness. The Government has stated that it will shortly set out options to reform the wider non-financial reporting framework "to reduce the burden of red tape on businesses" (*see Looking ahead below*).

On 22 January 2024, the FRC published a revised version of the UKCG Code. Importantly, the 'comply or explain' basis of the UKCG Code remains, with the FRC emphasizing the flexibility that this provides and encouraging companies to use it. As expected, the main substantive change relates to internal controls, with directors now having an obligation to establish and maintain an effective risk management and internal control framework, as well as a new requirement for directors to make a declaration in relation to the effectiveness of the company's material internal controls. (See Amendments to Provision 29)

Other changes include:

- a new Principle C: ***Governance reporting should focus on board decisions and their outcomes in the context of the company's strategy and objectives. Where the board reports on departures from the Code's provisions, it should provide a clear explanation.***
- extending the requirement for the board to assess and monitor culture to include how the desired culture has been embedded
- removing references to specific diversity characteristics and encouraging consideration of diversity more widely
- reflecting the consolidation of guidance for audit committees when dealing with the external audit/auditor in the Audit Committees and the External Audit Minimum Standard
- enhanced reporting on Directors' malus and clawback provisions

In its press release, the FRC made it clear that it is for each Board to determine what should comprise its material internal controls The FRC emphasises that the updated guidance (published on 29 January 2024) accompanying the 2024 UKCG Code is not prescriptive. It incorporates previous published FRC guidance and is digitally linked to in the UKCG Code. The FRC will regularly review the guidance to ensure it is relevant and up to date.

The updated UKCG Code will apply to financial years starting on/after 1 January 2025 (with the exception of Provision 29 which, in response to stakeholder feedback and to allow companies more time to develop non-financial controls, will apply to financial years starting on/after 1 January 2026).

Helpful links:

Link to government webpage on proposed new reporting regulations and why they were withdrawn

FRC Corporate Governance Code Consultation

FRC Policy Update

FRC Summary of Principal Changes to 2024 UKCG Code

2024 UKCG Code

FRC Corporate Governance Code Guidance

Audit and CG Reforms at a glance:

- On 16 October 2023, the government withdrew the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023 (including the proposals for a new resilience statement and an audit and assurance policy).
- On 7 November 2023, the FRC issued a policy update on its proposed changes to the UK Corporate Governance Code, saying that most proposals would not proceed.
- On 22 January 2024, the FRC published the revised UKCG Code.
- On 29 January 2024, the FRC published updated guidance to accompany the 2024 UKCG Code.
- Legislation to implement other audit and corporate governance reform measures, including to create ARGA, with wider and stronger enforcement powers, delayed

Amendments to Provision 29

The board should monitor the company's risk management and internal control ***framework [was "systems"]*** *and, at least annually, carry out a review of its effectiveness. The monitoring and review should cover all material controls, including financial, operational, reporting and compliance controls.* ***The board should provide in the annual report:***

- ***A description of how the board has monitored and reviewed the effectiveness of the framework;***
- ***a declaration of effectiveness of the material controls as at the balance sheet date; and***
- ***a description of any material controls which have not operated effectively as at the balance sheet date, the action taken, or proposed, to improve them and any action taken to address previously reported issues.***

(substantive amendments shown in bold).

REMUNERATION
WHAT'S NEW?

The 2023/24 AGM reporting season currently looks like it will, for most, follow a fairly similar path on remuneration and executive pay to last year, with few surprises - despite early indications to the contrary.

Proxy adviser and investor guidelines
The Investment Association has not yet issued its revised guidelines on remuneration for the 2024 AGM season. However, Legal & General Investment Mangers (LGIM) and Glass Lewis have issued updates on what they will be looking out for in 2024 in relation to executive remuneration, as summarised below.

- LGIM announced that it would consider US-style pay deals, including hybrid arrangements, if a company could justify why it needed to deviate from traditional pay deals. This was in response to concerns that many UK companies were considering listing or seeking a secondary listing outside of London.
- Glass Lewis announced that it would continue to consider voting against policies that increased overall quantum and/or did not align executive pensions with the wider workforce. It also added further detail to guidelines concerning long-term incentive design, pre- and post-cessation shareholding requirements and the grant of awards to individuals who already have a significant shareholding in the company. For banks seeking to take advantage of the abolition of the bonus cap, Glass Lewis would expect to see a significant reduction in fixed pay.

2024 Proxy adviser guidelines
The updated 2024 Glass Lewis proxy voting guidelines and ESG guidelines include:

- clarifications about expected attendance at board meetings (at least 75% except in first year or where mitigating circumstances are disclosed);
- expanding its director accountability for climate-related issues policy to more companies; and
- expanding its cyber risk oversight policy to require more reporting following a material cyber incident.

Interestingly, Glass Lewis does not seem to have fully reflected the February 2023 updated IA share capital management guidelines. Instead, it indicates that the second third of any allotment authority should be used for fully pre-emptive rights issues only. It is not clear whether this is because the guidelines have not been fully updated yet or whether there has been a deliberate decision not to follow the IA's guidelines. Whilst we do not think that this should prevent companies who wish to take advantage of the increased flexibility of the revised IA guidelines from doing so, companies may wish to clarify this with Glass Lewis if an opportunity to do so arises.

ISS has also published its updated proxy voting guidelines, which include removing the transitional provisions relating to complying with the FCA's diversity listing rules, a footnote to clarify what is meant by a significant shareholder (a 3% holding) and amendments to reflect the IA's updated share capital management guidelines.

FRC remuneration reporting – key points to consider:

- Provide clear explanation of: (i) the consideration and exercise of any discretions to adjust variable pay, e.g. to reduce windfall gains that may have arisen from share awards granted during the Covid-19 pandemic; and (ii) the extent to which committees have had regard to company and individual performance as well as external factors.
- Explain how pay policies and performance metrics link and relate to the company's strategy.
- Describe ESG targets clearly so that shareholders can assess their credibility, reliability and measurability and see how they are linked to the ESG targets reported in the company's TCFD disclosures.
- Be mindful to balance incentivising executive performance with the impact of the cost-of-living crisis on employees /stakeholders.
- Explain in more detail how recovery and withholding might be enforced.
- Describe in more detail how the company engaged with the workforce to explain how executive remuneration aligns with the wider company pay policy.

Helpful Links:

Glass Lewis 2024 UK Benchmark Policy Guidelines

ISS 2024 UK Proxy Voting Guidelines

LOOKING AHEAD

Companies should keep a watchful eye on the developments highlighted below as although these will not apply to this year's reporting, it may be appropriate to consider whether changes need to be implemented over the coming months in order to be able to report as and when these become requirements:

Endorsement of ISSB Sustainability Disclosure Standards IFRS S1 and IFRS S2 (ISSB Standards) in the UK: The government has stated that it will consider the endorsement of the ISSB Standards by July 2024. The government has stated that the UK endorsed standards will only diverge from the global baseline if absolutely necessary for UK specific matters.

FCA consultation on changes to the climate-related disclosure listing rules and on transition plan disclosures: In the first half of 2024, the FCA intends to consult on: (i) updating its TCFD climate-related disclosure listing rules to refer to the UK-endorsed ISSB Standards; (ii) changing the 'comply or explain' basis of the rules to mandatory; and (iii) enhanced transition plan disclosure requirements, referencing the Transition Plan Taskforce's Disclosure Framework (which is aligned with IFRS S2). The FCA expects the new listing rules to be finalised by the end of 2024 and to apply for financial years starting on/after 1 January 2025.

Taskforce on Nature-related Financial Disclosures: The final version of the TNFD Framework was published in September 2023. The government has said that it intends to explore how best to incorporate the final TNFD Framework into UK policy and legislation, with the government stating that this would take place in Q4 2023 (updated timing not yet confirmed).

UK Green Taxonomy: The government was expected to consult on the UK Green Taxonomy in autumn 2023 (updated timing not yet confirmed). Once the Taxonomy is finalised, the government has stated that certain companies will be expected to report against it (disclosing the percentage of their capital expenditure, operational expenditure and turnover that relates to Taxonomy-aligned activities) on a voluntary basis for at least two years after which mandatory disclosures will be considered.

Non-Financial Reporting Review: In May 2023, the FRC and the Department for Business and Trade launched a call for evidence which sought views on the non-financial information that UK companies are required to include in their annual reports, as well as thinking ahead to future reforms (including the ISSB Standards and transition plan disclosures). The call for evidence closed in August 2023. The government intends to publish a follow-up consultation paper in H1 2024.

New Parker Review targets: In March 2023, the Parker Review made a request for all FTSE 350 companies, by December 2023, to set a percentage target for ethnic minorities in their senior management teams to be achieved by December 2027. FTSE 350 companies should report their targets and progress to the Parker Review annually, as well as reporting these figures in their annual reports (from FY 2024).

Helpful Links:

International Sustainability Standards Board IFRS S1

International Sustainability Standards Board IFRS S2

Link to government webpage explaining endorsement process for ISSB Standards

FCA Primary Market Bulletin 45 on ISSB IFRS S1 and S2

UK Government's Mobilising Green Investment - 2023 Green Finance Strategy

DBT NFR Review Call for Evidence

Parker Review update - Improving the Ethnic Diversity of UK Boards

PLANNING FOR YOUR 2024 AGM

Things to consider:

1. **What is the most appropriate AGM format:**
The number of FTSE 350 companies holding physical meetings increased again in the 2023 AGM season, following a large increase in the 2022 AGM season as in-person meetings became possible again (202 in 2023 vs 194 in 2022). However, the number of companies offering some form of dial-in facility for shareholders to listen to the proceedings remotely decreased (39 in 2023 vs 46 in 2022) as did the number of companies, particularly FTSE 250 companies, holding hybrid meetings (48 in 2023 v 69 in 2022). The low take-up of online facilities in the 2022 AGM season led to some companies choosing not to offer these facilities in the 2023 AGM season, which is a trend that seems likely to continue.

2. **Shareholder Q&A:**
In 2023 the number of companies offering shareholders the opportunity to ask questions in advance of the AGM remained at about 75%. However, fewer companies offered remote attendees the option to ask questions live during the AGM whether using the chat function (42 companies in 2023 v 99 companies in 2022) or via a telephone line (33 companies in 2023 v 50 companies in 2022), again reflecting limited use of such facilities by shareholders in the 2022 AGM season.

3. **Enhanced authorities to disapply pre-emption rights:**
There was a mixed approach to this in 2023, e.g. 49% of FTSE 350 companies sought the enhanced maximum 10%+2% and 10%+2% disapplication of pre-emption rights authority, with proportionately more of the FTSE 250 seeking the maximum authority. Based on how market practice has been developing, we expect to see an increase in the number of companies taking advantage of the enhanced authorities in 2024.

4. **Climate-related resolutions:**
Eight FTSE 350 companies tabled climate-related resolutions at their 2023 AGM, down from 17 in 2022 (the reduction is in part due to the fact that many companies who are proposing ‘say on climate’ resolutions to approve their climate strategy/transition plan have undertaken to do so every three years). In the 2023 AGM season, three FTSE 100 companies tabled shareholder requisitioned climate-related resolutions (and two of those companies also tabled a board-proposed resolution). None of the shareholder requisitioned climate-related resolutions were passed.

5. **Remuneration:**
Looking ahead, we expect there to be continued and greater discussion on and around the topic of the ability of UK companies to remain competitive and both compete for and retain the best talent within certain global sectors, and the extent to which executive pay does and should play a part in that. These discussions in 2024, will likely inform and shape corporate governance reform in relation to executive pay later in the year and for the 2025 AGM season.

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