

Insights

CORPORATE BRIEFING - JULY 2023

Jul 03, 2023

SUMMARY

Welcome to the Corporate Briefing, where we review the latest developments in UK corporate law that you need to know about. In this month's issue, we discuss:

FRC research on the influence of proxy advisors and ESG rating agencies

- Recent research from the FRC suggests that the influence of proxy advisors and ESG rating agencies may be less evident than previously assumed.

EU position on proposals for a corporate sustainability due diligence directive

- The European Parliament has recently adopted measures which will require in-scope companies to adopt human rights and environmental due diligence measures on their operations, subsidiaries and value chains.

Financial promotions rules for cryptoassets

- The UK financial promotion regime is being amended to bring the promotion of cryptoassets within its scope.

FRC RESEARCH ON THE INFLUENCE OF PROXY ADVISORS AND ESG RATING AGENCIES

The FRC has published [research](#) on the influence of proxy advisors and ESG rating agencies on the actions and reporting of FTSE 350 companies and investor voting. This makes an interesting read and highlights:

- the importance proxy advisors place on compliance with the UK Corporate Governance Code;
- the divergence of views amongst proxy advisors on specific resolutions;

- the influence of proxy advisors and ESG rating agencies may be less evident than previously assumed; and
- that ESG ratings may not actually inform voting decisions.

The research is based on in-depth interviews, survey responses and roundtable discussions with companies, investors, proxy advisors and ESG rating agencies.

Read our '[FRC research on the influence of proxy advisors and ESG rating agencies](#)' insight for more details.

EU POSITION ON PROPOSALS FOR A CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

On 1 June 2023, the European Parliament [adopted](#) amendments to the Corporate Sustainability Due Diligence Directive which will require in-scope companies to adopt human rights and environmental due diligence measures on their operations, subsidiaries and value chains.

The new rules will apply to EU-based companies, regardless of their sector, including financial services, with more than 250 employees and a worldwide turnover over 40 million euro as well as to parent companies with over 500 employees and a worldwide turnover of more than 150 million euro. Non-EU companies with a turnover higher than 150 million euro will also be included if at least 40 million of the turnover was generated in the EU.

Fines of at least 5% of a company's net worldwide turnover may be imposed for non-compliance.

According to the text adopted, the new obligations will apply in three or four years depending on the company's size with smaller companies being able to delay application by a further year.

FINANCIAL PROMOTIONS RULES FOR CRYPTOASSETS

The UK financial promotion regime is [being amended](#) to bring certain 'qualifying cryptoassets' within its scope. The definition is very broad and includes any cryptographically secured digital representation of value or contractual rights that is transferable and fungible but does not include cryptoassets which are electronic money.

Consumer research has shown that there is a growing mismatch between consumers' investment decisions and their stated risk tolerance, including for cryptoassets. Even though cryptoassets will continue to be high risk and largely unregulated, the FCA hopes that these changes will reduce the number of unauthorised or unregistered firms from promoting cryptoassets to UK consumers. Going forward, there will be four routes to legally promoting cryptoassets to consumers:

- the promotion is communicated by an FCA authorised person;

- the promotion is made by an unauthorised person but approved by an FCA authorised person;
- the promotion is communicated by a cryptoasset business registered with the FCA (there will be a bespoke exemption for cryptoasset businesses registered with the FCA, but which are not otherwise authorised persons, to communicate their own cryptoasset financial promotions to UK consumers); and
- the promotion otherwise complies with an existing exemption in the Financial Promotion Order (the exemptions for high net worth individuals and self-certified sophisticated investors will not apply).

The financial promotions regime will apply to all firms marketing cryptoassets to UK consumers, regardless of whether the firm is based overseas or what technology is used to make the promotion. A breach of these provisions will be a criminal offence punishable by up to two years imprisonment, an unlimited fine or both.

The new legislation will apply from 8 October 2023 and the Government is planning to introduce a 4-month transitional period to ensure compliance with the regime. Firms wishing to market to UK consumers should consider which of the four routes they will use to lawfully communicate their promotions and existing authorised firms should notify the FCA if they plan to approve cryptoasset financial promotions.

RELATED PRACTICE AREAS

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