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Insights

CORPORATE BRIEFING - NOVEMBER 2023

Nov 01, 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:

The Takeover Panel publishes changes to Rule 21

- The Takeover Panel has amended Rule 21.1 of the Code so that the board of a target company would no longer be restricted from taking an action that either is not material or is in the ordinary course of its business and which would not result in an offer or bona fide possible offer being frustrated.

The Economic Crime And Corporate Transparency Act receives royal assent

- The ECCTA has received royal assent, introducing a suite of wide-ranging reforms to tackle economic crime and improve transparency over corporate entities.

2023 UK Spencer Stuart Board Index

- The 2023 UK Spencer Stuart Board Index highlights a fall in the proportion of first-time, female, and minority ethnic directors and a prioritisation for plc experience due to the challenging economic environment.

Removal of bankers' bonus cap

- In a joint policy statement, the PRA and the FCA have decided to remove the bonus cap, identified as a factor in limiting labour mobility and as part of a drive to encourage competition in the UK post-Brexit.

FRC Annual Review of Corporate Reporting

- The FRC has set out its expectations for the coming reporting season amidst the current economic background of high inflation, high interest rates and ongoing economic uncertainty.

Government withdraws proposed reporting requirements

- The government has formally announced that it has withdrawn draft regulations which would have added additional corporate and company reporting requirements to large UK listed and private companies.

TCFD 2023 Status Report

- The Taskforce on Climate-related Financial Disclosures has published its 2023 Status Report looking at companies' progress in making climate-related financial disclosures and highlighting some of the challenges they face in making such disclosures.

Call for evidence on Scope 3 greenhouse gas emissions reporting

- The Department for Energy Security & Net Zero has issued a Call for Evidence for feedback on the costs, benefits and practicalities of Scope 3 greenhouse gas emissions reporting in the UK.

Digital Takeover Code

- The Takeover Panel has launched a digital version of the Takeover Code with pop up boxes for defined terms and links to associated Practice Statements aiding navigation around the Code.

THE TAKEOVER PANEL PUBLISHES CHANGES TO RULE 21

Following on from its earlier consultation, the Code Committee of the Takeover Panel has published its amendments to Rule 21 of the Code which take effect on 11 December 2023 and apply to on-going transactions which straddle this date.

The principal changes amend Rule 21.1 so that the board of a target company would no longer be restricted from taking an action that either is not material or is in the ordinary course of its business and which would not result in an offer or bona fide possible offer being frustrated. The aim of the changes are to increase flexibility for target companies to carry on their ordinary course activities, including where these involve buying and selling assets, and to provide greater clarity as to the action that will and will not be restricted.

Separately the Panel Executive has published changes to Practice Statement No. 5 (Rule 13.5 – invoking conditions and pre-conditions).

For more details see our insight >

THE ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT RECEIVES ROYAL ASSENT

The Economic Crime and Corporate Transparency Act (ECCTA) introduces a suite of wide-ranging reforms to tackle economic crime and improve transparency over corporate entities. Under the ECCTA, Companies House will have enhanced abilities to verify the identities of company directors, remove fraudulent organisations from the register and share information with criminal investigation agencies. This represents the biggest shakeup in its 180-year history. The ECCTA will also make significant changes to the law of corporate criminal liability.

For more details see our insight >

2023 UK SPENCER STUART BOARD INDEX

Spencer Stuart has published its Board Index examining the latest data and trends in boards of the top 150 FTSE companies, noting the following:

LESS DIVERSITY AMONG NEW DIRECTORS

Bearing in mind economic uncertainty, boards have been increasingly opting for experienced and proven hands leading to a 44% drop in newly appointed non-executive directors ("NEDs") with a minority ethnic background. 51% of new NEDs are women compared to 60% in 2022.

MORE WOMEN IN BOARD LEADERSHIP

60% of boards now have at least one woman in either chair, senior independent director ("SID"), CEO, or CFO but women occupy just 20% of the four senior leadership roles. 22 women chair boards compared with 20 last year. However, the report found efforts to address gender imbalance on boards has been slowing down, with no increase in women NEDs and only 18 boards achieved gender parity in 2023, down from 26 in 2022.

ETHNIC DIVERSITY

Following the targets set by the Parker Review for one ethnic minority director on each FTSE 100 board by 2021 and on each FTSE 250 board by 2024, only six FTSE 100 companies were found to be "non-compliant" as of April 2023. 41 out of the 53 FTSE 250 companies met the target. 13% (12% in 2022) of all directors self-identify as having a minority ethnic background.

OVERBOARDING AND EXTERNAL COMMITMENTS

Scrutiny over the extent of directors' commitments has led to a slight decrease (from 65% to 62%) in NEDs having additional listed company board commitments. 31% of NEDs hold executive positions in other companies, down from 33%.

SUSTAINABILITY COMMITTEES

With heightened accountability for company conduct and societal impact, 55 boards (37%) have a committee overseeing either corporate social responsibility, sustainability or ESG.

REMUNERATION

The average base fee for a NED has seen an annual increase of 2% over the past decade, reaching £72,051 in 2022. The report also highlights a significant disparity in remuneration between the chair and that of the SID and NEDs, with the chair's average total remuneration being 3.5 times that of the SID and 5.6 times that of the NED.

REMOVAL OF BANKERS' BONUS CAP

In December 2022 the Prudential Regulatory Authority ("PRA") and the Financial Conduct Authority ("FCA") launched a consultation to remove the current bankers' bonus cap requirements set by the EU in 2014.

In a joint policy statement, the PRA and the FCA have decided to remove the bonus cap, identified as a factor in limiting labour mobility and as part of a drive to encourage competition in the UK post-Brexit. The changes would, amongst other things, facilitate effective competition by allowing UK firms to compete for and attract new talent sooner and give firms the flexibility of being able to restructure pay faster contributing to a better alignment of incentives and financial rewards.

The changes will come into force on 31 October 2023 and will apply to a firm's performance year which is ongoing on that date with the aim of allowing firms full flexibility in determining when to make changes to remuneration structures.

FRC ANNUAL REVIEW OF CORPORATE REPORTING

The Financial Reporting Council ("FRC") has set out its expectations, in its Annual Review of Corporate Reporting, for the coming reporting season amidst the current economic background of high inflation, high interest rates and ongoing economic uncertainty. The Report found that the general quality of corporate reporting across the 263 FTSE 350 company reports reviewed has been maintained and discusses the top ten issues on which the FRC raised substantive questions with companies, its findings from thematic and other reviews and its overall expectations for 2023/2024, driven by its findings as well as matters which are likely to present reporting challenges for companies.

Please read our insight for further details >

GOVERNMENT WITHDRAWS PROPOSED REPORTING REQUIREMENTS

In March 2021 the government published a white paper on the reform of the UK's audit, corporate reporting and corporate governance system including a package of measures aimed at improving the UK's audit, corporate reporting and corporate governance systems in the wake of accounting and corporate governance scandals.

After consultation with companies and amid rumours that the proposals were being reviewed, the government has formally announced that it has withdrawn draft regulations which would have added additional corporate and company reporting requirements to large UK listed and private companies including an annual resilience statement, distributable profits figure, material fraud statement and triennial audit and assurance policy statement. The move by the government is part of an effort to reduce red tape and comes amid strong support from businesses and investors to reform and simplify existing reporting requirements.

The government is still proposing to transform the Financial Reporting Council into a new Audit, Reporting and Governance Authority with increased scope and powers.

TCFD 2023 STATUS REPORT

The Taskforce on Climate-related Financial Disclosures ("TCFD") has published its 2023 Status Report looking at companies' progress in making climate-related financial disclosures and highlighting some of the challenges they face in making such disclosures. The TaskForce has continued to see significant momentum around adoption of and support for its recommendations, including the recent publication of two sustainability disclosure standards by the International Sustainability Standards Board.

The report, based on more than 1350 large companies in specific sectors around the world over a three-year period, found that the percentage of companies disclosing TCFD-aligned information continues to grow with 58% of companies disclosing in line with at least 5 of the 11 recommended disclosures in 2022 but more progress is needed. It remains concerned that too few companies are disclosing decision-useful climate-related financial information — especially as it relates to the impact of climate change on their businesses, strategies, and financial planning, which may hinder investors, lenders, and insurance underwriters' efforts to appropriately assess and price climate related risks.

CALL FOR EVIDENCE ON SCOPE 3 GREENHOUSE GAS EMISSIONS REPORTING

Under the Streamlined Energy and Carbon Reporting ("SECR") framework, some of the UK's largest companies are required to disclose their Scope 1 (direct emissions from owned or controlled sources) and Scope 2 (indirect emissions from the generation of purchased energy) emissions in their annual reports. The disclosure of Scope 3 (indirect emissions, not included within Scope 2 emissions, that occur in the value chain) emissions remains largely voluntary even though they account for approximately 80-95% of total emissions for many companies and reducing these would contribute to reaching the UK's net zero target by 2050.

The government is therefore seeking views on the costs, benefits and practicalities of Scope 3 reporting to help inform the government's assessment of IFRS S2, the International Sustainability Standards Board's climate-related standard which contains requirements for companies to disclose Scope 3 information. It is also taking this opportunity to gather evidence to inform a post-implementation review of the current SECR disclosure requirements.

DIGITAL TAKEOVER CODE

The Takeover Panel ("Panel") has launched a digital version of the Takeover Code ("Code") with pop up boxes for defined terms and links to associated Practice Statements aiding navigation around the Code.

RELATED PRACTICE AREAS

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