BCLP. Client Intelligent

Insights

ARE BOARDS ENGAGING WITH STAKEHOLDERS/THEIR WORKFORCE?

Feb 26, 2020

SUMMARY

This year companies have to report for the first time on how the directors have considered stakeholder interests and how the employee voice is reflected in the boardroom. This article examines the new reporting requirements and identifies a number of questions boards should consider in this regard.

Under UK company law (section 172 Companies Act 2006) directors have a duty to promote the success of the company for the benefit of its members as a whole. In promoting the success of the company, the directors are required to have regard to other stakeholders beyond their shareholders, including their employees, suppliers, customers, the community and environment. Under provisions, introduced in 2018 to the Companies Act 2006, directors in large[1] UK companies are required to explain in their strategic report when reporting in 2020, on how they have met these duties.

The UK Corporate Governance Code 2018 (the 'Code') reinforces this message by requiring boards to report on how the interests of key stakeholders and the matters set out in section 172 have been considered in board discussions and decision-making (Provision 5). Companies are also required to take effective action when receiving significant shareholder votes (20% or more) against resolutions ie. announce what action they intend to take to consult shareholders, publish an update within six months of the shareholder meeting and provide a final summary in the annual report (Provision 4).

Another aim of the new Code is to strengthen the 'employee voice' in the boardroom with boards being asked to establish one or a combination of methods, set out in the Code, for workforce engagement or to explain what alternative arrangements are in place and why they are effective.

For companies on AIM, the QCA Corporate Governance Code (the 'QCA Code'), Principles 2 and 3, require the board to understand and meet shareholder needs and expectations and to take into account wider stakeholder and social responsibilities.

The Code and the QCA Code work on a ‘comply or explain’ basis. Companies can explain non-compliance but should avoid a ‘tick-box approach’.

56%	60%	66%
Percentage of FTSE 100 companies that discussed stakeholders in the chair’s statement[2]	Percentage of FTSE 350 companies who have included a statement in annual report on a workforce engagement mechanism (the most popular method is a designated NED)[3]	Percentage of AIM companies which have explained how the company obtains feedback and of the response to that feedback[4]

Other reviews/articles have been published which provide additional commentary and statistics particularly around the mechanisms for workforce engagement e.g. the FRC Annual Review of the UK Corporate Governance Code and the PLC GC100 poll on workforce engagement.

Some questions to consider when engaging with stakeholders/the workforce and reporting this year:

- Have you identified the company’s key stakeholders in the year under review ie. internal (workforce) and external (eg. suppliers, customers, shareholders and regulators) and how you have engaged them? This should be more than just disclosing the number of meetings.
- Have you identified what issues are important to and/or raised by stakeholders?
- Have you disclosed the effect of discussions with employees and other stakeholders on board decisions?
- What’s the flow of information from stakeholders and what are their expectations of the company?
- To what extent do insights from stakeholder engagement shape the operating environment and ultimately, strategic thinking?
- Has the company sought input from enough stakeholders to be comfortable that it has a rounded view?
- Can the company describe how stakeholders are prioritised and why?
- Does management provide feedback on how complaints and concerns have been dealt with?
- Is the chair pro-actively communicating with shareholders (and not just those with a significant (ie. 10%) holding? Face-to-face meetings with the chair are usually welcomed, as are meetings with non-executive directors.

- Which of the options for workforce engagement outlined in the Code has the company adopted?
- Is the company's approach to stakeholder engagement part of the induction programme for new directors?

---

1. A company that meets at least 2 out of 3 of the following: (i) turnover of more than £36m; (ii) balance sheet total of more than £18m; (iii) more than 250 employees
2. Black Sun – The Ecosystem of Authenticity (a review of how the FTSE 100 reported in 2018)
3. PLC Annual reporting and AGMs 2019: What's market practice? Findings from review of 283 FTSE 350 companies.
4. QCA/UHY Hacker Young – AIM Good Governance Review 2019/20

RELATED PRACTICE AREAS

- Corporate
- M&A & Corporate Finance
- Securities & Corporate Governance

MEET THE TEAM

Adam Bogdanor

London

adam.bogdanor@bclplaw.com
+44 (0) 20 3400 4808

Tessa Hastie

London

tessa.hastie@bclplaw.com
+44 (0) 20 3400 4516