

Insights

UK CORPORATE BRIEFING JULY 2024

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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:

Listing Rules reform

- The FCA has provided an update on timings for publishing final rules during the election period.

IoD consultation on Director Code of Conduct

- The Institute of Directors has initiated a consultation on a proposed new voluntary Code of Conduct for Directors.

Appointing directors, amending articles by conduct and refusing to register share transfers

- This recent case has points to note concerning the appointment of directors, amending articles of association by conduct and losing the power to refuse to register a share transfer.

W&I policies: check the exclusions very carefully

- This recent case highlights the need to check W&I policy terms – particularly the exclusions - very carefully.

Listing Rules reform

We await the final rules in respect of the Listing Reforms. These were originally due to be published at the end of June and come into force mid-July. However, an FCA Regulation round-up, published on 27 June, has confirmed that the FCA are not planning to publish any major consultations or significant final rules during the election period and while Parliament is dissolved.

If the FCA Board approved the final rules at the Board meeting held on 27 June, the earliest date the final rules would be published is after 17 July i.e. once Parliament reopens.

IoD consultation on Director Code of Conduct

The Institute of Directors ("IoD") has [initiated a consultation](#) on a proposed new voluntary Code of Conduct for Directors ("Code"). This initiative stems from a commission established the previous year, with the objective of formulating a "credible" code to be embraced by directors across various corporate entities.

The Code itself is structured around six core principles, which are reinforced by specific undertakings that outline actionable steps directors are expected to take. These principles guide directors in:

- **Leading by example:** to set a high standard of conduct and professionalism, demonstrating organisational values, ethics, and commitments in directors' actions.
- **Integrity:** consistent adherence to laws and regulations, acting in good faith, safeguard confidential information, upholding ethical standards, and prioritising organisational interests over personal gain and balancing organisational objectives with stakeholders' interests.
- **Transparency:** to be open about decisions and actions, providing accurate, timely, and consistent information to stakeholders, including transparency within the board and disclosing potential conflicts of interest.
- **Accountability:** to be accountable for decisions and actions, subjecting them to scrutiny and providing transparent accounts of directors conduct. This involves seeking feedback, holding management accountable, and being willing to seek advice on contentious matters.
- **Fairness:** decisions should be impartial, consistent, and based on merit, with justification provided. Directors are also encouraged to foster inclusive environments where diversity is valued and everyone is treated respectfully.
- **Responsible business:** to integrate ethical and sustainable practices into business decisions, considering societal and environmental impacts (such as aligning strategic goals with long-term stakeholder interests, emphasising sustainable growth, and balancing financial performance with societal benefits).

The IoD is seeking input from the business community and the public on several key aspects of the Code including whether additional matters should be addressed, if directors should publicly disclose their adherence to the Code, the role of government, regulators, and professional bodies in promoting adoption and whether directors themselves would commit to following the Code.

The consultation period is open until 16 August 2024.

Appointing directors, amending articles by conduct and refusing to register share transfers

[Re Bramber Road Management Ltd, Clarke v Lakha \[2024\] EWHC 51 \(Ch\)](#)

A company was set up to manage a courtyard shared by four office units. The company was run rather informally – and only two of the current unitholders were registered as members, even though the articles envisaged that they all would be. The unitholders fell out and went to court. In the course of settling their dispute, the judge determined some issues that are of wider interest:

1. Although generally - where articles are silent as to how directors are appointed - the members have an inherent power to appoint, in this case the judge construed the articles as vesting that power in the directors (because of general provisions in the articles giving them the power of management and providing that powers not required to be exercised in general meeting were to be exercised by the directors).
2. Applying the Duomatic (unanimous consent) principle, the judge determined that the articles had in any event been amended by the conduct of the members - such that appointments were made by notice by the unitholders (so long as they were also registered members).
3. The affect – under s771 Companies Act 2006 - of the directors not giving notice of a refusal to register a share transfer within two months of it being lodged, was that the power to refuse to register the transfer was lost.

W&I policies: check the exclusions very carefully

[Project Angel Bidco Ltd v Axis Managing Agency Ltd \[2024\] EWCA Civ 446](#)

This case is a good reminder to check W&I policy terms – particularly the exclusions - very carefully. The buyer bought a company that provided construction services. It took out a W&I policy to cover the risk of breach of warranty. After completion, the buyer discovered allegations of failure to comply with anti-bribery legislation which led to a loss of business from the company's major customer, Liverpool City Council.

The buyer made a claim against the W&I insurer for £5m (the policy limit) in relation to the bribery and corruption warranties. But the insurer denied the claim because of an exclusion for "ABC Liability" – defined as "any liability for actual or alleged non-compliance... in respect of Anti-Bribery and Anti-Corruption Laws". The buyer took its claim to court – relying on the policy spreadsheet, that had marked the bribery and corruption warranties as "COVERED". It argued that that there was an obvious mistake in the exclusion wording – which should have read "any liability for actual or alleged non-compliance" (i.e. 'for' not 'or'); and that on that basis it did not exclude a reduction in share value of the company resulting from the allegations.

The Court of Appeal ruled in favour of the insurer (upholding the high court ruling), deciding that: it was understandable why the insurer would want the exclusion to be as stated – and this was a strong pointer against the conclusion that there was an obvious drafting mistake; if there had been a mistake then the manner of correcting it was not clear (as any inconsistency could alternatively be resolved by amending the spreadsheet to state that the bribery and corruption warranties were “EXCLUDED”); and what was clear was that, at least to some extent, the exclusions took precedence over the cover spreadsheet – as it stated that “Notwithstanding that a particular Insured Obligation is marked as “Covered” or “Partially Covered”, certain Loss arising from a Breach of such Insured Obligation may be excluded from cover pursuant to Clause 5 of the Policy.” However, the arguments on each side were acknowledged to be finely balanced and there was a dissenting judgement in favour of the buyer. The main takeaway is simply to take great care with the drafting.

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