

Introduction

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice. Among other things, we bring you news of changes to the Takeover Code, and the introduction of a new employment status – the ‘employee shareholder’.

Takeover Code: the Takeover Panel announces changes to the profit forecast and merger benefit statements regime to come into force on 30 September 2013

On 24 July 2013, the Takeover Panel ('the Panel') published changes to the Takeover Code ('the Code') following its July 2012 consultation paper: Profit forecasts, quantified financial benefits statements, material changes in information and other amendments to the Takeover Code (PCP 2012/1). The changes, which will come into effect on 30 September 2013, introduce a new profit forecast regime, intended to make the regime less burdensome in certain situations, and expand the scope of the regime relating to merger benefit statements.

Profit forecasts

The key changes introduced by the new regime include:

- new definitions of 'profit forecast' and 'profit estimate' to bring the Code's definitions more closely in line with the definitions in the UKLA's Prospectus Rules;
- the Code will no longer require reports from the reporting accountant and financial adviser to be included in the offer document or target circular in respect of a profit forecast published before a takeover approach is made;
- the Panel will also be able to give a dispensation from the profit forecast reporting requirements:
 - where a profit forecast issued after a takeover approach has been made is published in the 'ordinary course' of a company's practice;
 - where the profit forecast is a long term profit forecast i.e. it relates to a period ending more than 15 months from the date of its first publication; and
 - on a securities exchange offer, where the value of the securities offered is not material in relation either to the enlarged share capital of the offeror or to the value of the offer.

Merger benefits statements/quantified financial benefits statements

The changes extend the application of the regime on merger benefit statements to recommended securities offers and to quantified statements made by a target during an offer period as to the financial benefits of the offer not succeeding. The new rules will be incorporated into Rule 28 of the Code and the term 'merger benefit statements' changed to 'quantified financial benefits statement'.

Material changes in information

Other key changes to the Code coming into force at the end of September this year include a change to Rule 27 to require the parties to an offer to make prompt announcement of any material new information, as well as of any material changes to a published offer.

Further details of the changes are set out in the Takeover Panel publications referred to below.

Takeover Panel Response Statement RS 2012/1: Profit forecasts, quantified financial benefits statements and material changes in information available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201201.pdf>

Takeover Panel Instrument 2013/4: Profit forecasts, quantified financial benefits statements and material changes in information available at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/Instrument-2013-4.pdf>



Corporate governance: executive pay: the new regime for the remuneration of directors of quoted companies: the GC100 and Investor Group publish their Directors' Remuneration Reporting Guidance

On 12 September 2013, the GC100 and Investor Group¹ published their Directors' Remuneration Reporting Guidance ('the Guidance') intended to help quoted companies comply with the new directors' remuneration reporting requirements contained in The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 ('the Regulations'). To cap: the new regime applies to the first directors' remuneration report to be published during the company's first financial year beginning on or after 1 October 2013.

The new-look directors' remuneration report must include the following:

- an annual statement from the chair of the remuneration committee: this should summarize the major decisions on directors' remuneration and any substantial changes made during the year, together with details of the context of the committee's decisions;
- the company's forward looking-remuneration policy: this should include:
 - a future remuneration policy table;
 - an illustration of the application of that policy to the directors;
 - the company's policy on payment for loss of office;
 - a statement regarding factors taken into account in deciding policy; and
 - the views of shareholders in the formation of the policy.

The policy section need only be included in the report at three-yearly intervals unless circumstances demand otherwise (for example, on a change of policy in the interim); and

- an annual report on the implementation of the company's remuneration policy: this should include:
 - a 'single total figure' table of remuneration for every person who was a director during the relevant financial year;
 - details of awards made during the year under long-term incentive plans;
 - a summary of the directors' interests in shares;
 - the percentage change in the remuneration of the chief executive officer;
 - details of the members of the remuneration committee and the committee's advisers;
 - the results of shareholder voting on the directors' remuneration report or policy at the last general meeting of the company; and
 - a statement on how the company's policy will be implemented in the following year.

The Guidance contains practical steps to help companies implement the new regime and to promote effective engagement with investors. Whilst the Guidance generally follows the provisions of the Regulations, it also recommends that companies make certain additional disclosures, with the aim of helping investors make better-informed decisions. The Guidance will be reviewed from time to time as practice develops.

GC100 and Investor Group: Directors' remuneration reporting guidance, 12 September 2013, is available at:

<http://uk.practicallaw.com/groups/uk-gc100-investor-group>

Corporate governance: narrative reporting: the FRC consults on strategic report guidance

The Financial Reporting Council ('FRC') has recently issued a consultation paper containing draft guidance on the preparation of the new strategic report following the publication of The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (SI 2013/1970) ('the Regulations')². The Regulations will apply to reports produced in relation to financial years ending on or after 30 September 2013 and, among other things, introduce the requirement for a 'strategic report' in place of the existing 'business review'.

The FRC has requested comments by 15 November 2013 and its final guidance will, in due course, replace the Accounting Standards Board's "Reporting Statement: Operating and Financial Review".

FRC Exposure Draft: Guidance on the Strategic Report available at:

<http://www.frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Exposure-Draft-Guidance-on-the-Strategic-Report.aspx>

Listing Rules: the FCA is consulting on up-dates to the Listing Rules to reflect the new directors' remuneration report regulations and the new strategic reporting regulations

On 28 August 2013, the Financial Conduct Authority ('FCA') published consultation paper CP 13/7 with proposed amendments to the Listing Rules to reflect:

- the new directors' remuneration report regulations³; and
- the new strategic reporting regulations⁴.

The new strategic reporting regulations will apply to reports produced in relation to financial years ending on or after 30 September 2013 while the changes to the directors' remuneration reporting regime will apply to the first directors' remuneration report to be published during the company's first financial year beginning on or after 1 October 2013.

¹ The GC100 is the association of general counsel and company secretaries of the FTSE 100. The 'Investor Group' is comprised of representatives from the UK investor community.

² For more details on the Regulations, see issue no. 6/2013 of this publication.

³ For more details, see issue 6/2013 of this publication.

⁴ For more details, see issue 6/2013 of this publication.

Given that the new directors' remuneration report regulations contain reporting requirements similar to those set out in chapter 9 of the Listing Rules, the FCA proposes to delete LR 9.8.8R, except for LR 9.8.8R (9) (details of any unexpired term of any directors' service contract) which is applicable to premium listed overseas incorporated issuers and which will continue to apply.

The FRC also proposes to replace existing references to 'summary financial statements' with references to 'a strategic report with supplementary information' to reflect the revised term introduced by The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.

The FRC has requested comments by 9 October 2013 and intends to implement the changes on 1 January 2014. The changes will apply to premium listed companies incorporated in the UK with financial years ending on or after that date. Those companies with a financial year-end falling before that date should continue to comply with the existing requirements of chapter 9 of the Listing Rules, as well as with the new directors' remuneration report regulations when appropriate.

FCA CP 13/7 Consequential Changes to the Listing Rules resulting from the BIS Directors' Remuneration Reporting Regulations and Narrative Reporting Regulations available at:

<http://www.fca.org.uk/static/documents/consultation-papers/cp13-07.pdf>

The 'employee shareholder': a new employment status has been introduced with effect from 1 September 2013

A new employment status – that of 'employee shareholder' – was introduced on 1 September 2013 by The Growth and Infrastructure Act 2013. Although it is still early days, this development does not yet appear to have generated much interest. Under the new regime, employee shareholders will receive £2,000 or more of shares in the business (of which the first £50,000 will be exempt from Capital Gains Tax on any increases in value, and the first £2,000 exempt from Income Tax and National Insurance at allocation) in exchange for forfeiting certain of their employment protection rights (primarily the right to claim unfair dismissal, except where the dismissal is automatically unfair or discriminatory, and the right to a statutory redundancy payment). The regime includes a number of employee safeguards:

- employees must receive independent legal advice (paid for by the prospective employer) prior to entering into an employee shareholder agreement;
- a 7-day cooling-off period during which the agreement is not valid;
- employers must provide a written statement about the shares and the rights they carry; and
- existing employees are protected from detriment and dismissal if they refuse to switch to an employee shareholder agreement.

On 1 September 2013, the Department of Business, Innovation and Skills ('BIS') published guidance intended to help employers who wish to make use of the new employment status. The BIS guidance is available at:

<https://www.gov.uk/employee-shareholders>

HMRC guidance on the tax treatment of employee shareholder shares and obtaining a share valuation of employee shareholder shares is available at:

<http://www.hmrc.gov.uk/employeeshareholder/index.htm>

How Squire Sanders Can Help

We would be pleased to discuss with you in more detail any of the matters raised in this article.

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