

Review

Corporate Finance



Capital Markets Practice

News round-up

INTRODUCTION

Welcome to the latest in our series of regular alerts containing a round-up of news from our capital markets practice. Corporate governance continues to be in the news and we report on developments in this, and other areas, below.

Companies House: registration of charges: new regulations expected in the summer

In March 2010, the Government published a consultation paper on the Companies House regime governing the registration of charges created by companies and limited liability partnerships. The Government responded to the initial consultation at the end of last year and has now announced (14 April 2011) that it intends to publish draft regulations this summer once it has resolved certain issues arising from responses received to the initial consultation.

Department for Business, Innovation and Skills statement available at: <http://www.bis.gov.uk/Consultations/registration-of-charges?cat=closedawaitingresponse>

Corporate governance: ABI warning to FTSE 350 companies on executive directors' remuneration

The Association of British Insurers (ABI) has written to FTSE 350 companies warning that the ABI's investor voting advisory service, IVIS, will monitor and highlight significant salary increases and that ABI members will robustly challenge any unjustified changes.

ABI letter dated 21 April 2011 available at: http://www.ssd.com/pdf/general/ABI_letter.pdf

Corporate governance: auditors: disclosure by company of non-audit services

The Government has published (7 April 2011) a draft of the Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) (Amendment) Regulations 2011 (the draft Regulations) which amend the Companies (Disclosure of Auditor Remuneration and Limited Liability Agreements) Regulations 2008 (SI 2008/489) (the 2008 Regulations). The amendments seek to reduce the perceived threat to auditor independence in cases where the auditor also provides the company with non-audit services. *For details, [click here](#).*

Corporate governance: directors: up-dated ICSA guidance on 'Joining the right board: due diligence for prospective directors'

The Institute of Chartered Secretaries and Administrators (ICSA) has now published (12 May 2011) an updated version of its Guidance Note: 'Joining the right board: due diligence for prospective directors'. *For details, [click here](#).*

Corporate governance: financial reporting: the FRC's Sharman Inquiry calls for evidence on going concern and liquidity risk reporting

As previously reported ¹, the Financial Reporting Council (FRC) has launched an inquiry, headed by Lord Sharman, to review its Guidance for Directors of UK Companies on going concern statements and liquidity risk which was last up-dated in 2009. On 11 May 2011, the FRC panel of inquiry (the Sharman Inquiry) published a call for evidence to identify lessons for companies and auditors addressing going concern and liquidity risks with comments requested by 30 June 2011. The Sharman Inquiry is expected to publish its preliminary conclusions in the summer of 2011 and its final recommendations by the end of the year.

Sharman Inquiry: Call for Evidence: Going concern and liquidity risks: Lessons for companies and auditors available at: http://www.frc.org.uk/documents/pagemanager/frc/Sharman_Inquiry/Sharman%20Inquiry%20-%20Call%20for%20Evidence.pdf

Corporate governance: UK Corporate Governance Code: FRC consults on changes to the Code to reflect recommendations of report on 'Women on Boards'

The FRC has launched a consultation on whether the UK Corporate Governance Code (the Code) should be revised to require listed companies to publish their policy on gender diversity in the boardroom and report against it annually as recommended in Lord Davies' report, 'Women on Boards', published in February this year. ²

The FRC also seeks views on whether the Code should identify some of the key issues to be considered when boards carry out their regular effectiveness reviews, and on the timing of any changes that might be made to the Code as a result of the consultation.

The consultation closes on 29 July 2011 and the FRC will announce later in the year whether it intends to amend the Code.

FRC Consultation Paper: Gender Diversity on Boards: available at: <http://www.frc.org.uk/images/uploaded/documents/FRC%20Consultation%20Document%20-%20Gender%20Diversity%20on%20Boards2.pdf>

De-regulation initiative: Government seeks to cut red tape

On 7 April 2011, the Government launched its 'Red Tape Challenge'. The Government is seeking to identify which regulations should be scrapped, merged, simplified or improved. The challenge focuses on a number of areas including company, employment, pensions, health and safety and environmental law. *For details, [click here](#).*

How Squire Sanders Hammonds 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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¹ Capital Markets Practice News round-up: issue no. 3/2011.

² For more details, see Capital Markets Practice News round-up: issue no. 3/2011.



The 2008 Regulations provide for large companies to disclose details of the audit and non-audit services provided by their auditor and the fees payable in respect of the same as well as information relating to any liability limitation agreements entered into with their auditors.¹ The draft Regulations amend Schedule 2 of the 2008 Regulations, which contains a list of the types of service in respect of which disclosure must be made, to reflect the classification of non-audit services set out in the Auditing Practices Board's revised Ethical Standards for Auditors².

Comments on the draft Regulations are requested by 30 June 2011. The Government intends that the draft Regulations will come into effect on 1 October 2011.

Draft Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) (Amendment) Regulations 2011 available at: <http://www.bis.gov.uk/assets/biscore/business-law/docs/c/11-818-companies-disclosure-auditor-agreements-regulations-draft>

¹ Disclosure must be made in a note to the annual accounts.

² Standards revised in December 2010.



Among its key recommendations, the Guidance Note suggests that the prospective director:

- holds pre-appointment meetings with a number of directors, the company secretary and certain external advisers, especially if the director will be the chairman of the company or will chair the audit or remuneration committee; and
- discusses with the board the conclusions of the last board evaluation process, together with details of the plans to deal with any areas to be addressed as a result.

The revised Guidance Note also contains a set of due diligence questions which the prospective director can use to help in assessing the company. There is a stronger emphasis on governance, the performance of the board and the role of a non-executive director.

This is the first of a number of guidance notes, previously appended to the Higgs Guidance, scheduled to be up-dated by ICSA in light of the publication in March this year of the Financial Reporting Council's 'Guidance on Board Effectiveness' which has replaced the Higgs Guidance.¹

ICSA guidance on joining the right board: due diligence for prospective directors: available at: <http://www.icsa.org.uk/assets/files/pdfs/guidance/Guidance%20Notes%202011/ICSA%20Guidance%20on%20joining%20the%20right%20board%20May%202011.pdf>



In the area of company law, the Government is seeking comments on 128 sets of regulations in relation to the following areas:

- accounts and returns;
- disclosing information about your business;
- business names; and
- the workings of companies and partnerships.

The process will last from April this year until April 2013. The Government has defined company law as a 'cross-cutting theme' and this area will be open for comment for the entirety of the Government's 'red tape' campaign. Government departments will be required to make comments on all 'cross cutting themes' every four months.

For further information see the Government's web-site: [Red Tape Challenge: Company and commercial](http://www.redtapechallenge.cabinetoffice.gov.uk/company-and-commercial-law/): <http://www.redtapechallenge.cabinetoffice.gov.uk/company-and-commercial-law/>