

## News round-up

### Corporate finance

#### 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 the Government's latest announcement on the reform of executive pay.

#### Corporate governance: executive remuneration: the Government announces further details for reform

On 20 June 2012, the Government made a further statement regarding its plans to give shareholders more power to control the level of executive remuneration. The Government's proposals include the following:

##### New binding shareholder vote

- There will be a new, binding, shareholder vote on a company's forward-looking policy on executive directors' remuneration. Companies will be bound by the policies approved by the shareholders.
- The vote must be held annually, unless the policy remains unaltered from the previous year - subject to the requirement to hold a binding vote at least once every three years.
- The vote will require a simple majority, rather than the 75% majority that had previously been mooted.

##### Exit payments

Earlier proposals to set a limit on the level of exit payments that could be made to directors without specific shareholder approval have been shelved. Instead, this issue has been rolled into the binding vote on the forward-looking policy statement. Enhanced reporting requirements as to the level of exit payments made will be introduced.

##### Advisory shareholder vote

- There will, in addition, still be a requirement for the existing annual advisory shareholder vote on the implementation of the company's remuneration policy over the previous year. This vote will, as at present, require the support of a simple majority.

- If a company loses the advisory vote, it will have to hold a binding vote on its forward-looking policy in the following year.

Details of the above proposals will be published shortly by way of amendment to legislation (the Enterprise and Regulatory Reform Bill) that is currently before Parliament. The Government's intention is that the changes will be on the statute book by October 2013.

#### Increased transparency in reporting on executive remuneration

New regulations will also be introduced governing the content of remuneration reports, both as to a company's forward-looking policy as well as the implementation of its existing policy. Companies will have to publish a single figure showing the remuneration for each director for the previous year. Details as to how it is proposed that this figure will be calculated are awaited.

#### The UK Corporate Governance Code

In the meantime, the Financial Reporting Council ('FRC') has announced that, once the new legislation has been finalised, it will consult on possible amendments to the UK Corporate Governance Code ('the Code') in respect of the following proposals:

- to extend the Code's existing provisions on claw-back arrangements; and
- to limit the practice of executive directors sitting on the remuneration committees of other companies.

It will also consult on whether companies should engage with shareholder, and report to the market, when votes on executive pay have been passed but have failed to gain the support of at least a 'substantial majority' of shareholders.

Department for Business, Innovation and Skills Press Release: 20/06/2012: Government announces far-reaching reforms of directors' pay available at:

<http://news.bis.gov.uk/Press-Releases/Government-announces-far-reaching-reforms-of-directors-pay-67b96.aspx>

FRC Press Notice FRC PN 364 available at:

<http://www.frc.org.uk/press/pub2806.html>

#### Corporate governance: directors' report: greenhouse gas emissions

Following its consultation on the measuring and reporting of greenhouse gas ('GHG') emissions by UK companies, the Department for Environment, Food and Rural Affairs ('DEFRA')

has published a paper (20 June 2012) confirming its aim to introduce regulations requiring quoted companies to report their GHG emissions in the directors' report. It will decide in 2016 whether to extend this requirement to all large companies. Under the proposals, companies will be required to report on GHG emissions for areas within their organisational boundaries, including emissions from overseas activities where appropriate, although they may report on a comply or explain basis where it proves impossible to collect the required information. DEFRA plans to consult on draft regulations (including the implementation date for the new reporting regime) in the autumn.

DEFRA: Measuring and reporting of greenhouse gas emissions by UK companies: Summary of consultation responses available at:

<http://www.defra.gov.uk/consult/files/20120620-ghg-consult-sumresp.pdf>

### **Corporate governance: financial reporting: interim reports: FRC guidance on increased country and currency risk**

Following its guidance of January 2012, the Financial Reporting Council ('FRC') has published (15 June 2012) an up-date for directors of UK listed companies to help in the preparation of interim financial reports in view of the continuing economic uncertainties facing a number of countries.

An up-date for directors of listed companies: responding to heightened country and currency risk in interim financial reports available at:

<http://www.frc.org.uk/images/uploaded/documents/Update%20for%20directors%20June%2020121.pdf>

### **Corporate governance: financial reporting: Sharman report on the reporting of going concern and liquidity risks**

The Sharman Panel of the Financial Reporting Council ('FRC') has published (13 June 2012) its final report and recommendations for improving the reporting of going concern and liquidity risks. The report recommends, among other things, that consideration be given to including a specific statement in the auditor's report on the directors' going concern assessment process and its outcome.

The Sharman Inquiry: Going concern and liquidity risks: Lessons for companies and auditors: Final report and recommendations of the Panel Inquiry available at:

<http://www.frc.org.uk/images/uploaded/documents/Sharman%20Inquiry%20final%20report%20FINAL1.pdf>

### **Corporate governance: EU initiative: women on boards: UK call for evidence**

As previously reported, the European Commission is currently considering whether to propose legislative quotas in order to increase the representation of women on boards in EU member states with a decision is expected in the autumn. On 15 June 2012, the House of Lords EU Sub Committee B on Internal Market, Infrastructure and Employment launched an inquiry to consider whether gender imbalance in the boardroom is an issue for European policymakers and, if so, what form any EU action should take. The House of Lords Committee has published a call for evidence which asks, among other things:

- whether quotas are the only option;
- whether gender diversity should be incentivized; and
- what the effects are of legislative quotas.

Submissions are requested by 10 July 2012. In the meantime, the UK Government continues to maintain that a voluntary approach in this area is proving effective.

Select Committee on the European Union Sub-Committee B: call for evidence: EU women on boards proposals available at:

<http://www.parliament.uk/documents/lords-committees/eu-sub-com-b/GenderImbalanceintheBoardroom/genderbalancecfe.pdf>

### **Due diligence: Transparency International UK publishes final guidance on anti-bribery due diligence for transactions**

Further to its draft of June 2012, Transparency International UK has published its final guidance for anti-bribery due diligence in mergers, acquisitions and investments. Among the changes made to the draft, the final version emphasizes a more proportionate approach to the anti-bribery due diligence process.

Transparency International UK: Anti-bribery due diligence for transactions: guidance for anti-bribery due diligence in mergers, acquisitions and investments available at:

<http://www.transparency.org.uk/our-work/publications/227-anti-bribery-due-diligence-for-transactions>

## Listing Rules: the FSA consults on proposed changes to the Rules on the cancellation of listing and sponsors' annual notifications

The Financial Services Authority ('FSA') is considering minor changes to the Listing Rules. The proposals, set out in Chapter 7 of the FSA's quarterly consultation paper CP12/11 (No. 33) published on 6 June 2012, include the following:

- Cancellation of listing: an extension of the exemption in LR 5.2.12R<sup>1</sup> so that it applies to:
  - all equity shares, including those with a standard listing;
  - overseas issuers subject to equivalent local legislation similar in effect to UK insolvency or reconstruction procedures; and
  - a wider range of insolvency or reconstruction measures, including out-of-court procedures such as a voluntary winding-up.
- Changes to the timing and format of the annual written notification requirement for sponsors in LR 8.7.7R
  - Sponsors will be required to make the notification (confirming, with reasons, why they continue to satisfy the criteria for approval as sponsors) in accordance with the following arrangements:
    - in January each year (instead of on the anniversary of the date of their approval as a sponsor); and
    - by forwarding a completed "sponsor annual notification form" (in the format appended to the consultation paper).

Responses to the proposed changes are requested by 6 August 2012.

FSA consultation paper CP12/11 available at:

<http://www.fsa.gov.uk/static/pubs/cp/cp12-11.pdf>

<sup>1</sup> The exemption in LR 5.2.12R provides that the usual requirements for a cancellation of listing (including a circular, shareholder approval, 20 business days' wait and RIS notification) do not apply to a cancellation of the listing of equity shares with a premium listing as a result of either a takeover or restructuring effected by scheme of arrangement or an administration or liquidation of the issuer following a court order made under the Insolvency Act 1986.

<sup>2</sup> GC100 is an association of general counsel and company secretaries of FTSE 100 companies.

<sup>3</sup> PLUS operates PLUS Stock Exchange plc (PLUS-SX), a recognised investment exchange (RIE).

## Listing Rules: GC100 publishes up-dated Listing Rules Guidelines

GC100<sup>2</sup> has published up-dated editions of its Listing Rules Guidelines which have been revised to reflect changes in the Listing Rules and the Disclosure and Transparency Rules, as well as in market practice. The Guidelines are contained in the following three parts:

Part I: Guidelines for establishing procedures, systems and controls to ensure compliance with the Listing Rules available at:

<http://corporate.practicallaw.com/9-519-0929>

Part II: Guidelines on the requirement to maintain insider lists available at:

<http://corporate.practicallaw.com/4-518-7156>

Part III: Guidelines on obligations to notify dealings and Model Code compliance available at:

<http://corporate.practicallaw.com/9-518-6569>

## PLUS stock exchange: closure announced

PLUS Markets Group plc ('PLUS')<sup>3</sup> announced to its shareholders on 14 May 2012 that it plans to close. This development comes in light of the failure of a formal sale process. In order to minimise disruption, it will wind down its regulated activities over a six-month period and will assist companies traded on the PLUS-quoted market to find alternative arrangements for trading their shares. Further announcements will be issued by PLUS in due course.

## Prospectus regime: amendments to the regime implemented on 1 July 2012

The EU Directive amending the Prospectus Directive and Transparency Directive (2010/73/EU) ('the Amending Directive') was due to be implemented by member states by 1 July 2012. The Amending Directive was partially implemented in the UK last year and the completion of its implementation will be effected by further changes to:

- the Financial Services and Markets Act 2000 ('FSMA'); and
- the Prospectus Rules, the Listing Rules and the Disclosure and Transparency Rules ('the Rules').

The aim of the Amending Directive is to clarify and simplify the existing regime. Among other things, it introduces changes to the requirements relating to the prospectus summary, the final terms, the definition of 'qualified investor' as well as the supplementary prospectus.

The Prospectus Regulations 2012 (SI 2012/1538), which amend FSMA, came into force on 1 July 2012 and the final instrument published by the Financial Services Authority ('FSA') to amend the Rules, the Prospectus Directive Amending Directive Instrument 2012 (FSA 2012/29), also came into force on that date.

The Prospectus Regulations 2012 available at:

[http://www.legislation.gov.uk/ukxi/2012/1538/pdfs/ukxi\\_20121538\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/1538/pdfs/ukxi_20121538_en.pdf)

FSA: Prospectus Directive Amending Directive Instrument 2012 available at:

[http://media.fsahandbook.info/Legislation/2012/2012\\_29.pdf](http://media.fsahandbook.info/Legislation/2012/2012_29.pdf)

## 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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