SQUIRE SANDERS

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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 European Commission's latest proposals to promote gender balance at board level.

Corporate governance: executive remuneration: the ABI publishes revised Principles of Remuneration

On 26 November 2012, the Association of British Insurers ('ABI') published a revised version of its Principles of Remuneration aimed at the remuneration committees of listed companies. Key changes include the following:

- the Principles have been up-dated to express a clear preference for simple remuneration structures i.e. one annual bonus incentive and one long-term incentive; and
- the guidance underlying the Principles has been restructured to be more user-friendly.

Otherwise there have been very few substantive changes to last year's edition of the Principles, pending the Government's proposed changes to voting and reporting on executive remuneration due to come into force for listed companies for financial years ending on or after 1 October 2013.[1] In the meantime, however, the Principles contain some initial guidance as to the ABI's approach to remuneration reporting under the proposed new regime.

Introduction to the ABI Principles of Remuneration 2012 available at:

http://www.ivis.co.uk/PDF/Introduction%20to%20the%20Principles%20-%20Nov%202012.pdf

ABI Principles of Remuneration: November 2012 available at:

http://www.ivis.co.uk/ExecutiveRemuneration.aspx

[1] For more details of the proposals, please see the June 2012 edition of this publication: issue 6/2012.

Corporate reporting: narrative reporting: the Government consults on proposals to focus reporting on transparency: new disclosure requirements for quoted companies

The Government has published for consultation draft legislation[2] to amend the Companies Act 2006 with the aim of making corporate reporting more transparent. The proposals include the introduction of a new strategic report to replace the business review currently contained in the directors' report. The strategic report will be a concise, stand-alone report, separate from the rest of the directors' report. The Government is not, however, going ahead with its earlier proposals to change the format of the directors' report itself.

The new strategic report

The contents and purpose of the new strategic report will mirror those of the existing business review. Quoted companies[3] will, however, be required under the terms of the amended Companies Act 2006 to include information on their business model and strategy,[4] as well as making certain new disclosures relating to human rights and gender balance within the organization. In a proposal that reflects one of the recommendations made by Lord Davies in his report of 2011 on Women on Boards, quoted companies will be required to include a breakdown of the number of men and women within the organization, both in terms of overall numbers as well as numbers of those in senior executive positions.[5] The proposals will, on the other hand, remove the requirement for quoted companies to report on their essential contractual relations.

[2] The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.

[3] Companies incorporated in the UK with shares listed on the Official List of the London Stock Exchange, officially listed in an EEA State or admitted to dealing on NASDAQ or the New York Stock Exchange.

[4] The inclusion of this information is already currently required under the terms of the UK Corporate Governance Code for companies (wherever incorporated) with a premium listing of equity shares on the main market of the London Stock Exchange.

[5] The UK Corporate Governance Code already requires companies to which it applies to report annually on their boardroom diversity policy in respect of financial years beginning on or after 1 October 2012.

Directors' report

The proposals will also remove from the directors' report certain reporting requirements that are out-dated or duplicated, including those requiring details about asset values and charitable donations, as well as the policy and practice of payments to creditors.

Summary financial statement abolished

Under the new regime, the strategic report will replace the summary financial statement. Accordingly, for the future, companies may, with the consent of shareholders, circulate the strategic report, rather than the annual report and accounts, in the same way as they currently circulate the summary financial statement.

FRC Guidance

The Financial Reporting Council ('FRC') will consult early next year on guidance to help companies comply with the new regime. It is hoped that this will, among other things, clarify the Government's proposals regarding the new disclosures to be made by quoted companies in the area of human rights.

Timetable

Comments on the proposals were requested by 15 November 2012. The new regime will come into force for financial years ending on or after 1 October 2013, at the same time as the Government's proposed changes to voting and reporting on executive remuneration.

Government Consultation Paper: The Future of Narrative Reporting: A New Structure for Narrative Reporting in the UK (published 18 October 2012) available at:

http://www.bis.gov.uk/assets/biscore/business-law/docs/f/12-979-future-of-narrative-reporting-new-structure.pdf

Corporate governance: women on boards: EU initiative: the European Commission publishes proposals to improve gender balance at board level

On 14 November 2012, the European Commission published proposals for legislation to improve the gender balance of corporate boards. In light of objections from various Member States, and in a move welcomed by the UK Government, the Commission has dropped its earlier plans to introduce mandatory quotas. The key provisions of the proposed Directive (which will apply to listed companies[6], excluding small and medium-sized enterprises[7]) include the following:

Non-executive directors ('NEDs')

- The objective for gender balance: the Commission proposes that board members of the 'under-represented sex' should hold 40% of NED positions and that companies should meet this objective by 1 January 2020. The 40% figure is a target rather than a mandatory quota.

- Recruitment procedures: companies that fail to meet the target will be required to make NED appointments on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, gender-neutral and unambiguous criteria. Given equal qualification, priority must be given to the under-represented sex.

Executive directors

The proposals will also require companies to publish their own, voluntary, targets to bring about gender balance among executive directors by 1 January 2020.

Reporting requirements

Companies will have to make annual disclosure of the gender split of the board and of the steps taken to meet both the 40% target for better gender balance among NEDs and the company's own voluntary target for gender balance among executive directors.

Sanctions

Companies will not be sanctioned for failing to meet the targets. However, sanctions (to be determined by each Member State) will be applied to a company which:

- having failed to meet the 40% target for gender balance among NEDs, has not introduced the recruitment procedures described above;

- is in breach of the obligation to publish its voluntary target for gender balance among executive directors; or

- is in breach of the other reporting requirements.

Next steps and time-frame for implementation: the proposals are now subject to consideration by the European Parliament and the Council of the European Union. Once the Directive has been adopted at the European level, Member States will have a period of two years within which to implement its provisions into national law. The Directive is unlikely to be implemented at national level before 2016.

Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related matters available at:

http://ec.europa.eu/justice/gender-equality/files/womenonboards/directive_quotas_en.pdf

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[6] Companies incorporated in a Member State whose securities are admitted to listing on a regulated market in one or more Member States, including the main market of the London Stock Exchange but not AIM.

[7] Companies with less than 250 employees and an annual worldwide turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million.

Corporate governance: equity capital markets: the Government responds to the Kay Review of UK Equity Markets and Long-Term Decision Making

On 22 November 2012, the Government issued its response to the findings of the Kay Review of UK Equity Markets and Long-Term Decision Making ('the Kay Review'). To recap: the Kay Review, published in July this year, contained a number of recommendations to encourage market participants to make investment decisions based on enhancing the performance of UK companies and supporting long-term growth, and to restore relationships of trust and confidence in the investment chain.[8]

The Government supports the recommendations of the Kay Review and will now consider whether any changes to law or regulation will be needed to put its recommendations into practice. The Government reports that work to this end will also include the following:

- seeking to end mandatory quarterly reporting in an attempt to reduce the excessive focus on short-term earnings;
- endorsing clear minimum standards of behaviour for all investment intermediaries to ensure they act in the long-term best interests of their clients;[9]
- encouraging industry to set up an Investors' Forum to promote constructive engagement with companies; and
- endorsing Good Practice Statements for directors, asset managers and asset holders to promote the need for:
  - trust-based relationships;
  - collective action by institutional shareholders;
  - improved disclosure of costs in the investment chain;
  - enhanced transparency and fairness in stock lending; and
  - closer correlation between pay and long-term performance.

The Government will publish an update with details of progress in the summer of 2014.

Ensuring equity markets support long-term growth: The Government response to the Kay Review available at:

http://www.bis.gov.uk/assets/biscore/business-law/docs/e/12-1188-equity-markets-support-growth-response-to-kay-review

[8] For more details on the recommendations of the Kay Review, please see the July 2012 edition of this publication: issue 7/2012.

[9] The Government has asked the Law Commission to review the legal obligations on intermediaries to take appropriate long-term factors into account and has also asked the Financial Services Authority to ensure that the regulatory framework promotes high standards of behaviour throughout the investment chain.

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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