

### Introduction

Welcome to the latest in our series of regular updates containing a round-up of news from our capital markets practice. Among other things, we bring you news of developments in the area of corporate governance including those relating to directors' pay as well as news of changes to the Takeover Code.

### Corporate governance: Executive Remuneration: the New Regime Governing the Remuneration of Directors of Quoted Companies has Received the Royal Assent and is Likely to Come into Force on 1 October 2013

The Enterprise and Regulatory Reform Act 2013, which received the Royal Assent on 25 April 2013, was published on 2 May 2013 and introduces the new, much-publicised, regime to give shareholders a binding vote on the remuneration of directors of quoted companies. In terms of timing for the implementation of the new regime, it is currently anticipated that the first directors' remuneration report to be affected by the changes will be the report published during the company's first financial year beginning on or after 1 October 2013.

Major changes made by the new regime include the following:

- The directors' remuneration report must include a new, separate, section containing details of the company's forward-looking remuneration policy.
- The remuneration policy must be approved by an ordinary resolution of the company's shareholders at least every three years.
- No payment for remuneration or loss of office may be made by the company to a director unless the payment conforms to the most recently approved remuneration policy or has been specifically approved by the company's shareholders.
- Any directors who authorise the company to make a payment to a director that does not conform with approved policy will be potentially liable for any loss suffered by the company.

Under the new system, the remuneration report will continue to include a backward-looking implementation report which will remain subject to an annual advisory vote by shareholders.

Draft regulations<sup>1</sup>, due to be put before Parliament shortly, contain details of the proposed form and content of the directors' remuneration report with a view to improving standards of remuneration reporting.

We will bring you more news when the regulations have been finalised and the implementation date for the new regime confirmed. It will be of the utmost importance for companies to ensure that all necessary steps are taken for the first binding vote to be passed so that a workable policy within which the company can operate is put in place at the earliest opportunity.

Enterprise and Regulatory Reform Act 2013 available at: <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted> (sections 79-82 refer to the new executive remuneration regime).

### Corporate Governance: the QCA Publishes a Revised Edition of its Corporate Governance Code for Small and Mid-size Quoted Companies

On 1 May 2013, the Quoted Companies Alliance ("the QCA")<sup>2</sup> published its revised Corporate Governance Code for Small and Mid-Size Quoted Companies ("the QCA Code") to replace the 2010 edition. The QCA Code is widely accepted as an industry standard for growing companies not governed by the UK Corporate Governance Code including standard listed and AIM companies. It applies key elements of the UK Corporate Governance Code, policy initiatives and other relevant guidance to small and mid-size quoted companies, containing twelve principles of corporate governance and a set of minimum disclosures.

Key changes made by the 2013 edition of the QCA Code include the following:

- Re-ordering the twelve principles to put greater emphasis on the delivery of growth in long-term shareholder value.
- Stressing the key role of the chairman in ensuring good governance.
- Including greater detail on the characteristics of an effective board.
- Focusing on the benefits of good governance (in helping, for example, to build trust between the company, its shareholders and potential shareholders).
- Focusing on the prime importance of companies delivering good quality explanations of their approach, actions and behaviour.
- Further entrenching the principle of constructive engagement between companies and shareholders.

QCA Corporate Governance Code for Small and Mid-Size Quoted Companies 2013 available to buy from the QCA at: <http://www.theqca.com/>

<sup>1</sup> The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013.

<sup>2</sup> The QCA is an independent membership organisation that represents the interests of small to mid-size quoted companies.

## Corporate Reporting: the European Commission Seeks to Introduce New Requirements for the Disclosure of Human Rights, Anti-corruption and Diversity Information

As part of its Company Law and Corporate Governance Action Plan, the European Commission has published (on 16 April 2013) a proposal to require large companies and groups to make new non-financial and diversity disclosures. The proposals include the following:

### *Non-financial information (including information on human rights and anti-corruption)*

Companies listed on an EU-regulated market as well as large unlisted EU companies<sup>3</sup> must include in their annual report a non-financial statement covering:

- Environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters; and
- A description of their policies in these areas (with information regarding the results of such policies); or
- If the company has no relevant policies, an explanation for this.

### *Diversity information*

Companies listed on an EU-regulated market (other than small and medium sized companies) must include in their corporate governance statement:

- Information on their diversity policy, including age, gender, geographical diversity, and educational and professional background; and
- The objectives of their diversity policy, its implementation and the results obtained; or
- If the company has no diversity policy, an explanation for this.

### *Implementation of the EU proposals*

It is unlikely that the proposals made by the European Commission will be implemented until 2016 at the earliest. The proposals allow member states to give unlisted companies a further year's grace before they are required to comply with the proposed new disclosure regime.

### *Implementation of changes to narrative reporting proposed by the UK Government*

In the meantime, it is anticipated that the changes to the narrative reporting system for quoted companies proposed by the UK Government last October will come into effect for financial years ending on or after 1 October this year. There is some overlap between the two sets of proposals: the UK Government has also proposed new disclosures relating to human rights and the gender balance within companies. However, the proposals made by the Commission are more far-reaching. Some of the EU proposals, for example, apply to large unlisted companies as well as to listed companies, and those relating to diversity disclosures extend beyond gender and require disclosure as an obligation rather than on the "comply or explain" basis of the UK Corporate Governance Code.

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups available at: [http://ec.europa.eu/internal\\_market/accounting/docs/non-financial-reporting/com\\_2013\\_207\\_en.pdf](http://ec.europa.eu/internal_market/accounting/docs/non-financial-reporting/com_2013_207_en.pdf)

## UK Takeover Code: New Pensions Obligations: the Takeover Panel Introduces Changes Which Will Align the Role of Pension Trustees in Offer Situations to that of the Target's Employee Representatives

On 22 April 2013, the Takeover Panel announced the introduction of new rules in relation to defined benefit pension plans operated by target companies, where such companies are subject to a takeover bid. The new rules, which apply from 20 May 2013 onwards, provide, amongst other things, for:

- Greater disclosure requirements in offer announcements and documentation for bidders regarding their continued funding of the target's pension plans.
- The requirement for pension plan trustees to be provided with certain information during the course of a takeover.
- The right for trustees to publish their opinion, during the course of a takeover, on the likely impact of a takeover on the target's pension plans.

The changes, which are analogous to the existing provisions governing the bidder's engagement with the target's employee representatives, mean that the target's pensions trustees will now benefit from a greater and earlier involvement in the offer process.

For more details on the changes, please see our recent article at the link below:  
<http://www.squiresanders.com/files/Publication/e2051f6d-cb59-482c-bf77-72aa5ee9c23c/Presentation/PublicationAttachment/17c168fa-d82b-40b3-9cf5-75bb049bf995/UK-Takeover-Code-New-Pensions-Obligations.pdf>

Takeover Panel Response Statement RS 2021/2: Pension Scheme Trustee issues available at:  
<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS2012021.pdf>

<sup>3</sup> Large companies for the purposes of the proposals are those with more than 500 employees and that have either a balance sheet total of more than €20 million or a net turnover of more than €40 million. Subsidiaries that are consolidated in the annual report of another company which meets the new obligations are exempted from the requirements.

## 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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