JANUARY 2019

UK Superbrands 2018

EQBOARDROOM

Bulletin

Welcome to our monthly bulletin of what's happening within the financial services industry that will impact our EQ Boardroom clients.

Dates for your diary

TUESDAY 12 FEBRUARY

Women's Company Secretary Circle networking drinks

Please contact Boudicca for an invitation to this event

WEDNESDAY 6 MARCH

FTSE 250 Networking

For an invitation to this event, please speak to your Relationship Manager

WEDNESDAY 13 MARCH

Quarterly Client Equivalence Forum

For an invitation to this event, please speak to your Relationship Manager

As we prepare for AGM season this month we focus on proxy advisors, information required to be included in the Annual Report and continue to look at the practical adoption of the new Corporate Governance Code.

Proxy advisors

- Glass Lewis's new 2019 UK Proxy Voting Guidelines
- Institutional Shareholder Services updates Proxy voting guidelines
- Investment Association's Principles of Remuneration 2019 – Key changes

Corporate Governance

- 2018 UK Corporate Governance Code - Frequently Asked Questions published
- Recommendations of the Kingman Review are published
- Wates Principles of corporate governance for Large Private Companies

Information to be included in Annual Reports

- Modern slavery statements review
- Other Information' included in the annual report
- Guidance on Directors' Remuneration Reporting updated

Other highlights

- Review of the implementation of the Market Abuse Regulations published
- Companies House implements new checks on new company registrations

Events

- Boudicca hosts Chairman's Circle event
- ProShare Awards 2018

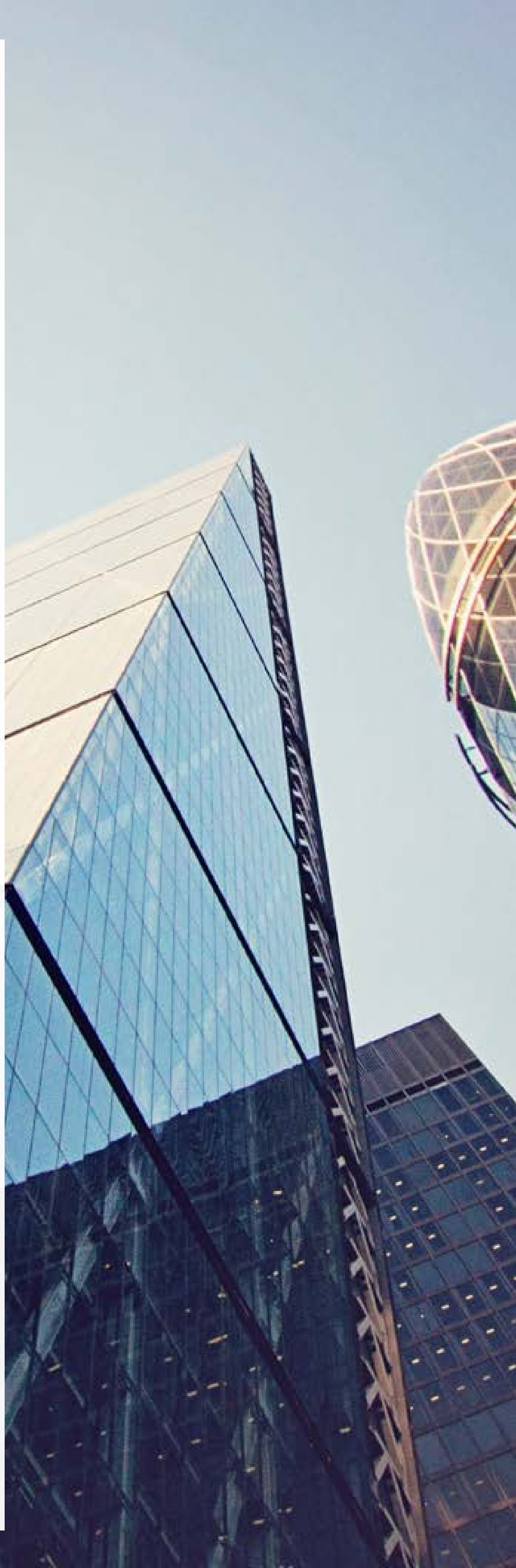
Proxy advisors

Glass Lewis's new 2019 UK Proxy Voting Guidelines

Glass Lewis has published its 2019 UK Proxy Voting Guidelines. These guidelines incorporate recommendations of the UK Corporate Governance Code, requirements of the Companies Act 2006 and global governance best practices. Changes made in the 2019 UK Proxy Voting Guidelines include:

- Board skills and diversity – Glass Lewis's analysis of resolutions proposing the election of a director at FTSE 100 companies specifically includes an assessment of skills disclosure. It expects FTSE 100 companies to provide robust, meaningful assessment of the board's profile in terms of diversity and skills. Gender pay gap information and the executive pipeline will also be taken into account when assessing diversity concerns at board level;
- CEO Pay Ratio – whilst Glass Lewis supports the disclosure of CEO pay ratios they will not at this time have a material impact on voting recommendations;
- Board and Committee responsiveness – policy has been clarified and specifically it has been outlined that Glass Lewis may hold committee chairs and members accountable for a failure to address shareholder dissent;
- Environmental and social risk oversight – Glass Lewis has set out its approach to reviewing environmental and social issues. If material issues are identified they will identify which directors or committees have the responsibility for environmental/social issues. Recommendations to vote against members of the board responsible for environmental/social issues may be made if environmental/social risks have not been managed or mitigated to the detriment of the shareholder. If there is no explicit board oversight of environmental/social issues the recommendation may be to vote against members of the audit committee;
- Executive remuneration – the pay of a company's top executives will be assessed over at least three years when evaluating the link between pay and company performance.

The proxy voting guidelines are available here.

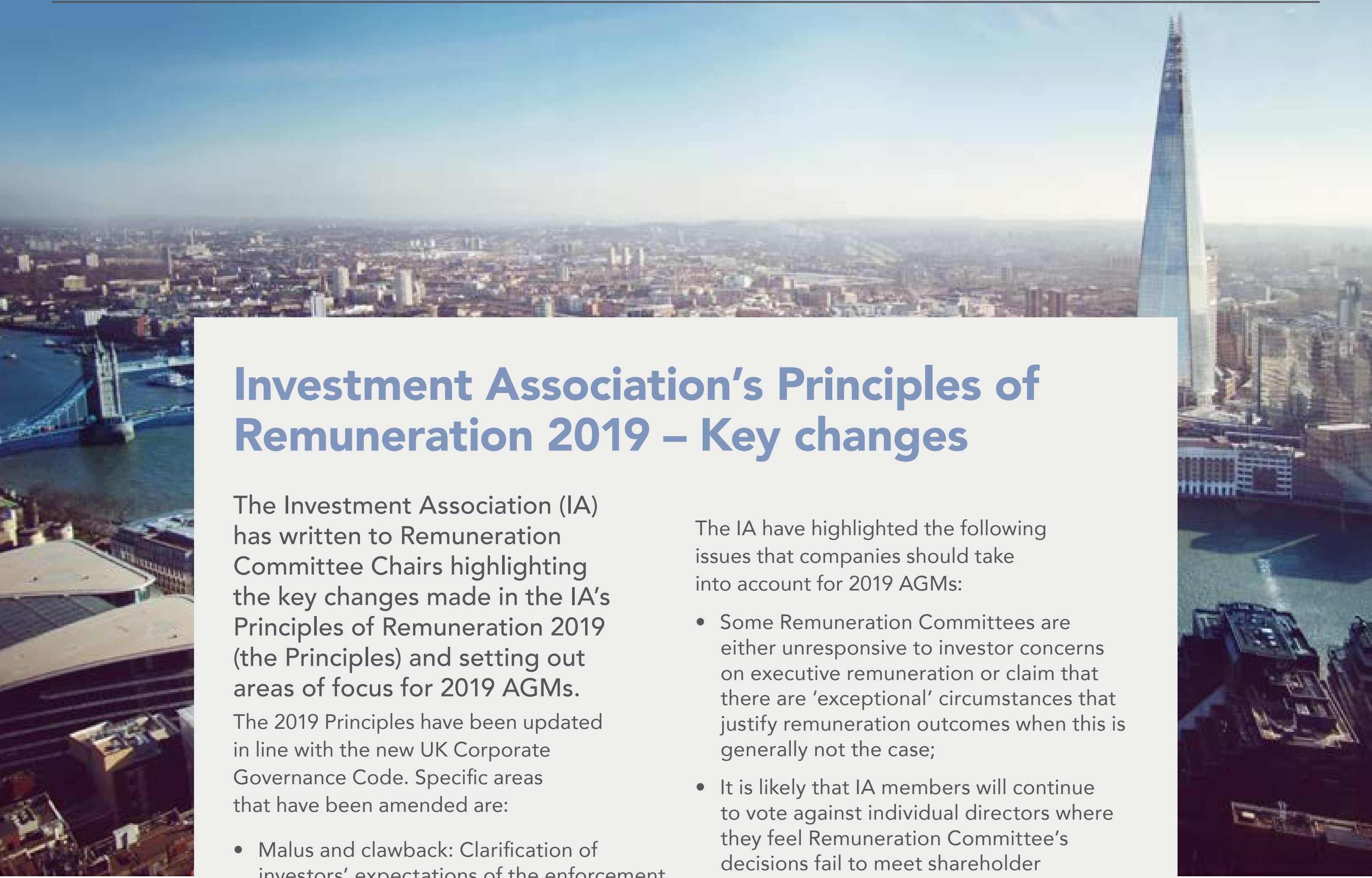


Institutional Shareholder Services (ISS) updates Proxy voting guidelines

These guidelines will be effective for shareholder meetings held on or after 1 February 2019. Amendments to the guidelines include:

- Appointment of external auditors – A recommendation to vote against the appointment of an auditor may be received if the lead audit partner(s) has been linked with a significant auditing controversy;
- Director elections – A recommendation to vote against an individual director may be received in cases where egregious actions related to the director's service on other boards raise substantial doubt about that individual's ability to effectively oversee management and to serve the best interests of shareholders at any company;
- Director elections: Attendance – ISS have clarified that a recommendation to vote against the re-election of a director may be received for repeated absences over a period of time in the absence of a suitable explanation. This applies to all directors, not just those with multiple outside directorships;
- Remuneration: annual bonus - The target bonus should typically be set at no more than 50 percent of the maximum bonus potential; any payout above this level at target should be supported by a sufficiently robust explanation;
- Remuneration: LTIPs - Performance periods longer than three years are encouraged. Share awards should be subject to a total vesting and holding period of five years or more, in line with the recommendations of the Code. When there has been a material decline in a company's share price, remuneration committees should consider reducing the size of LTIP awards at the time of grant;
- Dilution limits – It is clarified that share-based incentive schemes should operate within accepted UK market standards. Namely, no more than 10 per cent of the issued share capital should be issued under all incentive schemes in any rolling 10-year period, and no more than 5 per cent of the issued share capital should be issued under executive (discretionary) schemes in any rolling 10-year period, in line with the guidelines established by the Investment Association;
- Remuneration: NED fees - The fees payable to NEDs should not be excessive relative to similarly-sized companies in the same sector;
- Smaller companies – Minimum governance disclosure requirements in the annual report have been extended to include details of compliance against a "recognised corporate governance code";
- Social and environmental practices – ISS will additionally consider whether there are significant controversies, fines, penalties or litigation associated with the company's environmental or social practices when reviewing environmental and social shareholder proposals.

The updates to the ISS proxy voting guidelines are available here.



Investment Association's Principles of Remuneration 2019 – Key changes

The Investment Association (IA) has written to Remuneration Committee Chairs highlighting the key changes made in the IA's Principles of Remuneration 2019 (the Principles) and setting out areas of focus for 2019 AGMs.

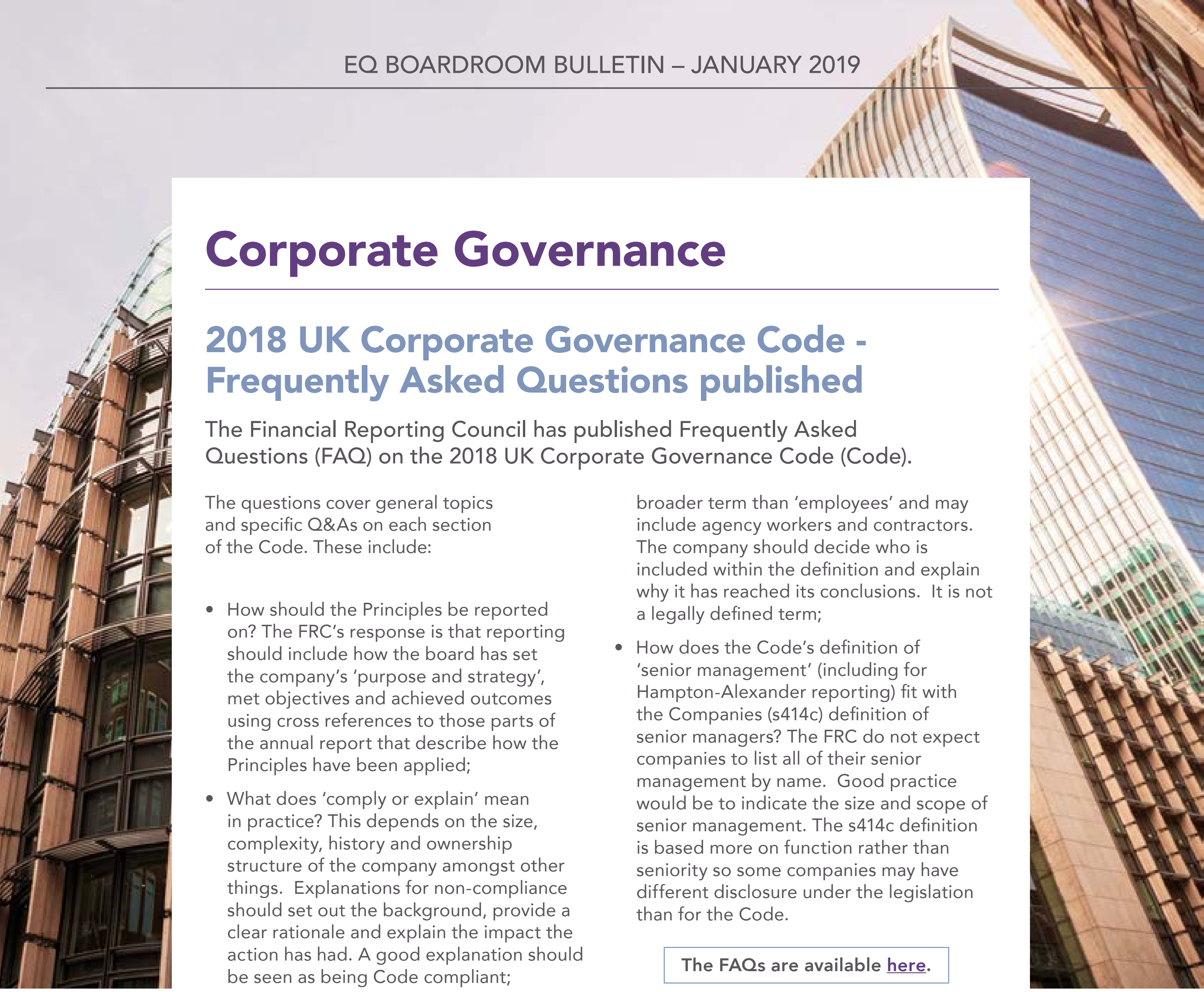
The 2019 Principles have been updated in line with the new UK Corporate Governance Code. Specific areas that have been amended are:

- Malus and clawback: Clarification of investors' expectations of the enforcement processes companies should have in place to implement clawback and malus provisions;
- Shareholding requirements and post-employment holding periods: The Principles have been updated to outline which shares can count towards the shareholding guidelines and the expectation of investors on post-employment holding periods;
- Pensions – The IA consider that pension contribution rates for executive directors should be in line with the majority of the company's workforce. New directors and those changing roles should be appointed on this contribution level. Contribution rates for current executive directors should be reduced over time with no compensation for this change;
- Restricted share schemes: A majority of IA members are willing to consider the introduction of restricted share schemes. Support for such schemes will depend on circumstances at individual companies and other conditions being in place;
- Leaver provisions: Updated for current best practice.

The IA have highlighted the following issues that companies should take into account for 2019 AGMs:

- Some Remuneration Committees are either unresponsive to investor concerns on executive remuneration or claim that there are 'exceptional' circumstances that justify remuneration outcomes when this is generally not the case;
- It is likely that IA members will continue to vote against individual directors where they feel Remuneration Committee's decisions fail to meet shareholder concerns;
- Remuneration Committee's need to consider the wider employee pay context when making decisions;
- Engagement with shareholders over remuneration should be a genuine process for obtaining views rather than a rubber stamp exercise;
- The IA encourage all companies to include the CEO pay ratio and support the use of the Option A methodology set out in the regulations;
- Companies should look to follow GC100 Guidance on remuneration;
- Any increases to levels of remuneration should be justified and restraint should be shown in the overall quantum;
- Robust transparency is required for financial and non-financial targets linked to pay.

The 2019 Principles of Remuneration and 2018 Letter to Remuneration Committee Chairs are available here.



Corporate Governance

2018 UK Corporate Governance Code - Frequently Asked Questions published

The Financial Reporting Council has published Frequently Asked Questions (FAQ) on the 2018 UK Corporate Governance Code (Code).

The questions cover general topics and specific Q&As on each section of the Code. These include:

- How should the Principles be reported on? The FRC's response is that reporting should include how the board has set the company's 'purpose and strategy', met objectives and achieved outcomes using cross references to those parts of the annual report that describe how the Principles have been applied;
- What does 'comply or explain' mean in practice? This depends on the size, complexity, history and ownership structure of the company amongst other things. Explanations for non-compliance should set out the background, provide a clear rationale and explain the impact the action has had. A good explanation should be seen as being Code compliant;
- Who does 'workforce' refer to when used in the Code? The FRC states that this is a broader term than 'employees' and may include agency workers and contractors. The company should decide who is included within the definition and explain why it has reached its conclusions. It is not a legally defined term;
- How does the Code's definition of 'senior management' (including for Hampton-Alexander reporting) fit with the Companies (s414c) definition of senior managers? The FRC do not expect companies to list all of their senior management by name. Good practice would be to indicate the size and scope of senior management. The s414c definition is based more on function rather than seniority so some companies may have different disclosure under the legislation than for the Code.

The FAQs are available here.

Recommendations of the Kingman Review are published

In April 2018, the Government set up an independent review of the Financial Reporting Council (FRC) led by Sir John Kingman. The recommendations of the Kingman Review have now been published.

The objectives of the review were to:

- Put the FRC in a position to stand as a beacon for the best in governance, transparency and independence; strengthening its position and reputation.
- Ensure that the FCA's structures, culture and processes; oversight, accountability, and powers; and its impact, resources, and capacity are fit for the future.
- The Annual Review of Corporate Governance and Reporting 2017/2018 is available here.

The report sets out 83 recommendations' the main one of which is to replace the FRC with an independent statutory regulator with a new mandate, leadership and powers. The regulator would be called the Audit, Reporting and Governance Authority (ARGA).

Summary of the main Kingman Review recommendations

- The FRC to be replaced as soon as possible with a new independent regulator accountable to Parliament - the Audit, Reporting and Governance Authority.
- The regulator should have an overarching duty to promote the interests of consumers of financial information, not producers.
- The new regulator should be better equipped to ensure that its work and decision-making is informed by market analysis, particularly the dynamics of the audit market. The current self-regulatory model for the largest audit firms should end.
- The new regulator should work towards a position where individual audit quality inspection reports, including gradings, are published in full upon completion of Audit Quality Reviews (AQRs). This is acknowledged to be a major step and as a first step the publication of AQRs could be on an anonymous basis.
- The regulator's corporate reporting work should be extended from its current scope to cover the whole annual report. It should be given stronger powers to require documents and other relevant information.
- A stronger enforcement regime should be put in place by the Government working with the regulator that will hold all directors to account for their duties to prepare and approve true and fair accounts.
- The regulator should be required to promote brevity and comprehensibility in accounts and annual reports.
- Guidance and discussion documents should be more effectively used and only issued if genuinely useful.
- The Stewardship Code should clearly differentiate excellence in stewardship and focus on outcomes rather than policy statements. If this can't be achieved it should be abolished.

Some of the recommendations contained in the Kingman Review would require primary legislation but others could be implemented more quickly. At present there is no timetable for when changes may come into force.

In addition, Sir John Kingman was requested to consider whether there is a case for change in the way in which audits are currently procured and audit fees and scope are set. He responded in a letter to the Secretary of State which sets out a radical proposal for auditors of Public Interest Entities (PIEs) to be appointed by an independent body rather than by the board and shareholders. This body would also set the audit fee. The letter goes on to acknowledge the objections to this proposal and concludes that at the very least two other changes are considered in relation to PIEs:

- Giving the right of AGRA (the proposed new regulator) to appoint an auditor in very specific circumstances such as where quality issues had been identified or there has been a large shareholder vote against an auditor.
- Giving AGRA the right to approve audit fees for PIEs where there is a case in the interests of quality.

The Kingman Review and letter to the Secretary of State are available here.

Wates Principles of corporate governance for Large Private Companies announced

The launch of the Wates Principles of corporate governance for Large Private Companies has been announced by the Financial Reporting Council.

The Wates Principles provide a corporate governance framework for these companies to help them meet legal requirements and to promote the long term success. The six Wates Principles are:

- Purpose and Leadership – An effective board develops and promotes the purpose of a company and ensures that its values, strategy and culture align with that purpose;
- Board Composition - Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company;
- Board Responsibilities - The board and individual directors should have a clear understanding of their accountability and responsibilities. The board's policies and procedures should support effective decision-making and independent challenge;
- Opportunity and Risk - A board should promote the long-term sustainable success of the company by identifying opportunities to create and preserve value and establishing oversight for the identification and mitigation of risks;
- Remuneration - A board should promote executive remuneration structures aligned to the long-term sustainable success of a company, taking into account pay and conditions elsewhere in the company;
- Stakeholder Relationships and Engagement - Directors should foster effective stakeholder relationships aligned to the company's purpose. The board is responsible for overseeing meaningful engagement with stakeholders, including the workforce, and having regard to their views when taking decisions.

The foreword to the Wates Principles states that it is hoped a wide range of companies – not just those who are now legally required to report on corporate governance – will use them for their governance arrangements. A company that does adopt the Wates Principles should follow them using an 'apply and explain' approach. Guidance is provided on each Principle as to how a company may incorporate the Principle into its governance practices. Reporting on the six principles takes effect from 1 January 2019.

The Wates Corporate Governance Principles are available here.

Information to be included in Annual Reports

Modern slavery statements review

The Business & Human Rights Resource Centre (BHRRC) has published its third report reviewing the modern slavery statements published by FTSE 100 companies required by the Modern Slavery Act. The basic finding is that most companies still publish generic statements with little detail. 93 companies met the minimum requirements, which was a large improvement from last year when only 47 companies met the minimum requirements. The average overall score for reporting was 31%. The best performing companies were Marks & Spencer, Diageo, Morrisons, Sainsbury's, British American Tobacco, Tesco, Burberry, Vodafone, Unilever, BT, Kingfisher and National Grid. These company's reports on modern slavery showed that they understood the risks, reported on actions taken and provided information in detail.

The BHRRC report makes several recommendations that it believes government and companies should take. Those for companies include:

- Companies should carry out human rights due diligence which includes direct engagement with key stakeholders whose knowledge of the local operating context can help identify risks;
- Companies should disclose the modern slavery risks which are identified in their operations and supply chains;
- Companies should collaborate with their peers to investigate modern slavery risks in common supply chains and develop initiatives to bring about industry-wide change.

Further information is available here.

'Other Information' included in the annual report

The Financial Reporting Council (FRC) has published a report into Auditors' work on the information in the front end of annual reports looking at 'Other Information' included in the annual report. 'Other Information' includes all information in an annual report apart from the financial statements and audited parts of the Remuneration Report. There is sometimes a misconception from investors and other stakeholders that all of the annual report has been fully audited by the Auditors when this is not the case. Instead, as part of an audit of the financial statements, the Auditor is required to consider whether 'Other Information' is materially inconsistent with the audited financial statements or the auditor's knowledge in the auditor's report.

Findings in the FRC's report include:

- The extent and quality of the work on 'Other Information' varies considerably between and within audit firms. This may be due to the lack of prescription in auditing standards of what is expected;
- A number of cases were found where insufficient work was carried out by the Auditors to support the statements made in the auditors' report on 'Other Information';
- There was variation in quality across all sizes of companies included in the review (FTSE 100, FTSE 250 and other Premium Listed)

The FRC makes several recommendations to Auditors in order to improve their review of 'Other Information' including use of more prescriptive and targeted procedures to guide audit teams. The FRC also advise Audit Committees to ensure they provide the Auditors with high quality documentation and engage with Auditors at the planning and completion stages specifically on work carried out by the Auditors on 'Other Information' contained in the annual report.

The FRC's report is available here.

Guidance on Directors' Remuneration Reporting updated

The GC100 has published updated Guidance on Directors' Remuneration Reporting (the Guidance) following the introduction of new remuneration reporting regulations.

New material has been added to the Guidance to cover the new regulations and existing material has been revised to take account of evolving practice. The areas that are new or amended include:

- Annual Statement by the Remuneration Committee Chair – The Guidance now includes items to be considered in order to comply with the requirement to report on the use of any discretion by the remuneration committee;
- Single figure table – Includes guidance on reporting on the amount of incentive awards that are attributable to share price appreciation;
- CEO Pay Ratio reporting – The guidance looks at methodology, consistency of reporting and location of this disclosure;
- Illustrations of application of remuneration policy – Guidance is included on the requirement to give an indication of maximum remuneration receivable assuming share price appreciation of 50% during the performance period.

The GC100's revised guidance is available here.

Other highlights

Review of the implementation of the Market Abuse Regulations (MAR) published

In its most recent publication of Market Watch, the Financial Conduct Authority (FCA) has published findings from its review of the implementation of the Market Abuse Regulations (MAR) with a focus on the market soundings regime and insider lists.

Generally the FCA found that there is good understanding of the obligations under MAR. However, there are areas where companies are struggling to comply. Key areas of note in the report in relation to insider lists are:

- Insider lists received by the FCA vary in quality. Companies should ensure that all staff with access to inside information are included on the list and all fields, including relevant personal information, should be completed;
- 63% of those companies surveyed chose to use a permanent insider list to record those individuals who have access at all times to inside information. The FCA requests that the number of employees on these lists should not be disproportionately large and remain restricted to employees who have access at all times to inside information. Those employees who do not have access at all times to all inside information should be on deal-specific or event-based insider lists;
- Companies must ensure that they identify when they are in possession of inside information and control it as well as carry out proper training of directors and employees;
- Completed insider lists should be provided within two days of a request by the FCA and any chronology of events within five days. Receiving the insider list when requested from a company in a complete and timely fashion is seen by the FCA to be very important as it demonstrates that robust systems and procedures are in place;
- Companies should be able to identify whether they have inside information outside of normal reporting timetables and in an accelerated manner;
- Using ‘confidential’, ‘project’ and ‘prohibited’ dealing lists to record employees who may have access to confidential information that isn’t inside information can be a very useful tool to aid compliance if information then becomes inside information due to changing circumstances.

The FCA’s Market Watch Review 58 is available here.

Companies House implements new checks on new company registrations

Companies House has announced new checks of all applications to register a company in order to determine whether they break United Nations financial sanctions placed on individuals or corporate bodies because of activities they are engaged in.

Individuals or corporate bodies subject to UN financial sanctions are known as designated persons (DPs). From 12 December 2018, Companies House will check details of directors, secretaries, members and people with significant control when registering a company or LLP to see whether there are any matches to a DP. If it is believed the details match a DP, the application will be rejected and the company will need to resubmit the application with evidence that the person is not a DP. This evidence could include details from a passport, driver’s licence or birth certificate.

The announcement is available here.

Events

Boudicca hosts Chairman's Circle event

In December Boudicca hosted a very informative evening bringing together over 30 board-level directors and senior market practitioners from across the FTSE indices spectrum.

The evening paired the intricacies of whisky tasting with discussions on corporate governance, environmental, social and governance criteria, shareholder activism and the forthcoming 2019 AGM season.

The aim of The Chairman's Circle is to provide a supportive environment for non-executive directors and executives to discuss and debate best practice governance, and sound out non-mainstream ideas. IN 2019, the Chairman's Circile will culminate in the Non-Executive Director Awards, which will take place on 27 March at Claridges in London.

For more information on future events, please contact Boudicca

ProShare Awards 2018

The annual ProShare Awards took place in December shinning a spotlight on those individuals, teams and companies whose hard work, dedication and inspiration are recognised and celebrated.

To be a winner, the judges said, required original thinking, planning or communication, exceptional performance, showing originality and innovation.

Many congratulations to all our client winners and nominees. We are very proud to call ourselves your partner and look forward to working with you this coming year and for many years to come.

EasyJet

Winner of Best Overall Performance in Fostering Employee Share Ownership
(5,0001 – 50,000 employees)

The judges' agreed that easyJet 'walks the walk' as well as 'talking the talk' when it comes to employee share ownership. Half of easyJet employees participate in share plans and many hold shares outside of these plans – facilitated in part by the provision of a global nominee, vital for such a mobile and pan-European workforce.

Smiths Group

Highly commended in the Most Effective Communication (up to 5,000 employees)

The judges commended Smiths Group for their use of augmented reality, quite literally bringing their Sharesave communications to life and achieving a highly creditable take up.

Royal Mail

Winner of Best Overall Performance in Fostering Employee Share Ownership (50,001+ employees)

Five years ago when Royal Mail underwent one of the highest profile corporate actions in recent British corporate history, employees were given generous opportunities to participate in the company's SIP and SAYE schemes. 80% of the workforce owns shares in the business through participation in one or more of the share plans offered. 64% of employees said that being a shareholder impacted on how they view their role at work.

Robin Kerner

Congratulations to Robin for his Award for Services to Employee Share Ownership

We've known Robin through his contribution to the share plans industry and more recently through his work with National Grid, and thank him for his many years of support for our industry.