WHITE & CASE

August 2024

Corporate Governance

Key developments

This briefing is the seventh in our series of briefings on corporate governance and is designed to provide a synopsis of topical corporate governance matters impacting companies in the United Kingdom. This briefing tracks developments identified in our previous briefings and outlines new matters of interest.

This briefing focuses on key matters arising since January 2024. If you would like further details on a topic, please contact a member of our Public Company Advisory (PCA) team, whose details can be found at the end of this briefing.

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Reform of the UK Listing Regime

July 2024

On 11 July 2024, the FCA published final updated UK Listing Rules (UKLRs) representing the biggest overhaul to London's listing regime in over three decades. The new rules are a significant step forward for UK capital markets and set out a simplified London equity listing regime with a single listing category, streamlined eligibility requirements and standards more aligned with international markets. The final rules were published by the FCA in Policy Statement PS24/6 and came into force on 29 July 2024.

Since 2008, the number of companies seeking to list on the Main Market of the London Stock Exchange has declined noticeably.

In a bid to reinvigorate London's stock market, the UK Listing Review made various recommendations on how the UK listing regime could be improved in March 2021. Following the UK Listing Review, the FCA initiated a major overhaul of the UK's listing regime, in which it recognised that the additional investor protections provided by a premium listing did not appear to be a significant factor in investment decisions, properly valued by investors or essential to ensure well-functioning markets. The replacement regime is ultimately aimed at facilitating UK listings by a greater diversity of companies, while simultaneously promoting more investment opportunities for investors.

The key changes impacting premium listed companies are as follows:

Topic	Key changes for premium listed companies	Impact
Eligibility	□ No listing requirements for historical financial information, revenue track record and clean working capital statements, although prospectuses still require disclosure of financial track record up to 3-years and a working capital statement. □ Still required to have pre-emption rights for existing shareholders upon new issues of shares for cash. □ Free float remains at 10%.	Less onerous / neutral
Eligibility / Continuing Obligations	□ **Control and independence:** Removing eligibility and ongoing rules requiring that a company has an independent business and has operational control over its main activities. □ **Controlling shareholders:** Mandatory relationship agreements with controlling shareholders – which have been a feature of the UK listing regime for the last decade – are no longer required. □ The requirement that a company be able to carry on its business independently from any controlling shareholder is retained, however, as well as a mechanism for directors to give an opinion on a shareholder resolution proposed by a controlling shareholder which a director considers is intended or appears to be intended to circumvent the proper application of the UKLRs. □ **Dual/multiple class share structures:** Permitting issuers to have dual/multiple class share structures at admission. – Enhanced voting rights only to be held by (i) specified natural persons without a mandated time-based sunset clause or (ii) pre-IPO investors that are legal persons subject to a maximum 10-year period after which enhanced rights should expire. – Dual class share structures cannot vote on ≥15% buybacks not via tender offer, share offerings at ≥10% discount, listing cancellations, listing transfers or on certain employee share schemes, LTIPs and discounted options.	Less onerous / neutral
Listing Principles	□ Six Listing Principles apply to all issuers (regardless of category). □ Significant new guidance added on Listing Principle 1 (adequate procedures, systems and controls) and Listing Principle 2 (dealing with the FCA in open and cooperative manner). New guidance specifically relates to adequate governance arrangements, accessibility of records and directors dealing with the FCA in open and cooperative manner. □ Listing Principles 3 (enabling directors to understand their responsibilities and obligations), 4 (acting with integrity), 5 (equal treatment of shareholders) and 6 (no false market) do not apply to existing standard listed issuers until 30 January 2025. □ Former Premium Listing Principles 3 (equal votes for listed shares) and 4 (proportionate voting rights for listed share classes) are implemented as new listing rules.	More emphasis on directors' roles

Topic	Key changes for premium listed companies	Impact
Sponsors	□ Sponsor's role retained but generally limited to IPOs, reverse takeovers and (where required) for further share issuances. □ Sponsor to provide declarations similar to existing declarations, including that an issuer has met its prospectus obligations and has a reasonable basis for the working capital statement within it. □ Sponsor also required to supply a fair and reasonable opinion in ≥5% related party transactions.	Less onerous / neutral
Significant (≥25%) transactions	□ Requirements removed for shareholder approval, circular and sponsor in ≥25% significant transactions. □ Enhanced market notification (announcement) requirements in ≥25% significant transactions, but no requirement for historical financial information in relation to acquisitions (only in relation to disposals). □ No working capital statement or requirement to re-state historical financial information. □ Certain items allowed to be announced as soon as possible after the information has been prepared or the company becomes aware of it, but no later than completion. □ Requirement for an announcement that completion has taken place and that there has been no material change affecting previous announcements. □ Profits class test removed.	Less onerous
Related party transactions	□ Requirements removed for independent shareholder approval and circular in ≥5% related party transactions. □ Market notification (announcement), independent director approval and board fair and reasonable statement – supported by a fair and reasonable opinion from sponsor – required in ≥5% related party transactions. □ Amended definition of a related party shareholder holding 20% rather than 10%. □ Separate related party regime under the Disclosure Guidance & Transparency Rules will not apply in parallel for ESCC companies.	Less onerous
Other continuing obligations	□ **Reverse takeovers:** Continuing requirement for an FCA approved circular, prior shareholder approval and re-admission prospectus in transactions ≥100% or involving a fundamental change in business. Somewhat enhanced market notification (announcement) requirements. □ **Share buy-backs, non pre-emptive discounted share issuances and cancellation:** Retained the requirement of shareholder votes. □ **Annual reporting:** Comply or explain disclosure against the UK Corporate Governance Code, climate and diversity reporting, and otherwise maintaining most premium listing annual disclosures. □ Independent shareholder votes remain for independent director appointments where the company has a controlling shareholder.	Neutral, but more onerous on record-keeping
Board declaration on admission of securities	□ All first time applicants for listing must provide a board confirmation that the applicant has taken reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations under the listing rules, disclosure requirements, transparency rules and corporate governance rules following admission, and that it has taken into account the FCA's guidance on Listing Principle 1. This confirmation must be provided using the FCA's new Procedures, Systems and Controls Confirmation form.	

In addition to the above, the main change is the abolition of references to a standard or premium listing. The UKLRs now provides for 11 listing categories (seven retained categories from the former listing rules, plus four categories which replace the former standard listing of shares category).

Equity Shares in Commercial Companies (ESCC) category – UKLR 5

This is the successor to the former category for the premium listing of shares in a commercial company. Intended as the main category for commercial companies, companies formerly listed on the Premium Segment are automatically 'mapped' to the ESCC category. Companies currently listed in other listing categories (elaborated on below) can potentially apply to transfer to this category by way of a modified transfer process. As outlined above, the eligibility criteria for commercial companies seeking to join the ESCC will be significantly relaxed as compared to those for a premium listing – for instance, there will no longer be a need to demonstrate a three-year revenue track record or provide a clean working capital statement. The continuing obligations are also less stringent.

Transition category – UKLR 22

Existing companies with shares formerly listed on the Standard Segment are automatically 'mapped' to the Transition category, where they will be subject to the same listing rules as before, unless they are eligible for admission to the Shell or International Secondary Listing categories (elaborated on below). The Transition category will be closed to new applicants. Although there is no fixed end date to this category as yet, the FCA has indicated that they may consider removing it upon further consultation in the medium term. Commercial companies in this category can apply to transfer to the ESCC by way of a modified transfer process.

International Commercial Companies Secondary Listing (ICCSL) category – UKLR 14

This constitutes a specific category for listing the equity shares of non-UK incorporated companies which also have a qualifying home listing (i.e. a listing on an overseas market which meets certain criteria). UK incorporated companies are not eligible for the ICCSL category. Unlike the Transition category, this category is open to new applicants. The eligibility criteria and continuing obligations generally mirror the listing rules that existing companies listed on the Standard Segment are subject to, with some notable additions (e.g. the company must notify the FCA as soon as possible if it fails to comply with the applicable rules of the market of its qualifying home listing in any respect).

Shell companies and SPACs category – UKLR 13

This constitutes a specific category for listing the equity shares of shell companies including special purpose acquisition companies (SPACs).

To be eligible for this category, a shell company's constitution will need to impose a requirement for the company to complete an "initial transaction" within 24 months of the date of admission (subject to shareholder approval for up to three further extensions of 12 months each, and an additional 6-month extension in certain circumstances), or otherwise cease operations.

Existing listed shell companies will have a one-year transitional period to either complete their operations or make the necessary changes to comply with the above additional requirements.

Non-equity Shares and Non-voting Equity Shares category – UKLR 16

This constitutes a specific category for listing non-equity shares (e.g. preference shares which are not specialist securities listed under UKLR 17) and non-voting equity shares.

Next steps:

The new UKLRs came into force on Monday, 29 July 2024. At this time the current Listing Rules sourcebook was revoked and replaced by the new UKLR sourcebook. The UKLRs include certain transitional provisions, including those mentioned above and others which for instance clarify the impact on "in-flight" transactions. The FCA has further noted that it will formally review the new UK listing regime in five years' time to assess the impact on all parts of the market.

Further information:

- Click **here** for FCA Policy Statement PS24/6 which includes the final new UKLRs

ESG regulation in the spotlight

The ESG regulatory landscape is fast-evolving. We summarise below some of the broader EU and UK ESG legislative updates and initiatives that UK plcs may be impacted by and wish to monitor.

Megatrend 1

Sustainability reporting

The Corporate Sustainability Reporting Directive (CSRD)

The CSRD entered into force on 5 January 2023 following final approval by the EU Council on 28 November 2022. This legislation requires all large EU companies and listed SMEs to publish regular reports on their environmental and social impact activities. In addition, in-scope companies must report on and describe their due diligence processes relating to sustainability matters.

While implementation will be phased between 2024-2028, non-EU companies will need to comply if they meet applicable turnover tests or have securities listed on an EU regulated market. The European Commission is expected to publish additional rules for non-EU companies, as well as sector-specific standards by 2026.

For more information, see White & Case publication on the topic **here**.

Proposed EU directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

The EU's Green Claims Directive is continuing its legislative journey, but it follows trends seen elsewhere from regulators regarding the use of explicit environmental claims in communicating with consumers. The Commission's proposal aims to create a single set of rules on how so-called 'green' or sustainability claims can be verified within the EU's market. The proposal sets out minimum requirements on the substantiation and communication of voluntary environmental claims and labelling in B2C commercial practices. The Parliament and Council have both agreed their negotiations to finalise the legislation. Those negotiations will begin shortly and will shape the final contours of the Directive.

The UK does not have similar legislation on green claims but some of the regulators in the UK are setting out their expectations in the area. For example, the UK's Competition & Markets Authority (CMA) released their "Green Claims Code" in 2023, and the Financial Conduct Authority (FCA) published in April 2024 their anti-greenwashing rule to clarify their expectations to the firms which they regulate.

For more information, see White & Case publication on the topic **here**.

Megatrend 2

Supply chain due diligence

EU Batteries Regulation

On 17 August 2023, the EU's Batteries Regulation came into force, impacting the design, production and waste management of all types of batteries that are manufactured or sold in the European Union, independent of the origin of the batteries or raw materials. The regulations require companies to conduct due diligence on their supply chains to assess social and environmental risks, introduce a new digital battery passport for electronic vehicle batteries, as well as specific labelling requirements and a carbon footprint declaration to provide consumers with more accurate information on the social and environmental impact of batteries.

The requirements began to apply from 18 February 2024. UK companies operating in the automotive sector and within the EU market will need to comply with the regulations.

The UK's battery strategy published December 2023, laid out the UK's vision for their domestic battery industry and a framework to deliver growth. Following the UK's general election, it is expected that the legislative framework to deliver this strategy will become clearer.

For more information, see White & Case publication on the topic **here**.

EU Deforestation Regulation

In June 2023, the EU's Deforestation Regulation came into force, requiring companies trading in cattle, cocoa, coffee, palm oil, rubber, soya and wood (and their derivatives) to conduct due diligence on their value chains to ensure their products do not result from deforestation or other breaches of environmental and social laws. The regulations will impact any goods that have been produced on or after 29 June 2023 and will prohibit them from being placed on the EU market or exported from the EU from the end of 2024, subject to certain exemptions.

In the UK, on 9 December at COP28, the Government announced that businesses with at least £50 million in global turnover and use more than 500 tonnes of regulated commodities annually will need to make a declaration to indicate the commodity was not produced on illegally deforested land when importing cattle products, soy, palm oil and cocoa. Unlike the EU's regulations, the UK has not included coffee in their announcement. The UK's regulation requires legislation to come into effect and there is currently no public timeline available for its introduction.

For more information, see White & Case publication on the topic **here**.

The EU Corporate Sustainability Due Diligence Directive (CSDDD)

The CSDDD was formally adopted by the European Institutions in early 2024. The Directive will apply to EU and certain non-EU companies. The Commission is expected to publish a list of non-EU companies expected to fall under the scope of this directive, so UK companies should monitor for this.

The legislation will require in-scope companies to identify, assess and prevent, mitigate and remedy the human rights and environmental risks in their supply chains, as well as integrating due diligence into their policies and risk management. The exact dates of entry into force will be defined by the date it is published in the EU's Official Journal.

EU Forced Labour Ban / UK's Modern Slavery Act

The EU's proposal for a regulation prohibiting products made with forced labour is currently in the final stages of the the EU's legislative process. This legislation would apply a prohibition on all products available on the EU market made with forced labour, including their components and regardless of origin. UK companies looking to export products into the EU from high-risk areas or economic sectors may need to provide proof that the products were not made with forced labour. The Parliament formally agreed the previously agreed compromise on 23 April 2024. The Council must now agree the compromise before it can enter into force.

UK companies will be familiar with the UK's Modern Slavery Act 2015. As the USA's Uyghur Forced Labor Prevention Act was adopted and the EU is moving towards their own ban, the UK may follow in updating its forced labour and modern slavery legislation but that is unlikely before the next general election. In 2022, the Government introduced a Modern Slavery Bill to update the 2015 legislation however it was not passed in that parliamentary session.

For more information, see White & Case publication on the topic **here**.

Megatrend 3

Environmental tariffs

The Carbon border adjustment mechanism (CBAM)

From 1 October 2023, the EU's CBAM reporting obligations started applying, with the levy expected to apply from 1 January 2026. Broadly, the EU CBAM requires importers of certain carbon-intensive goods (including iron and steel; cement; fertilizers; aluminium; electricity; and hydrogen) to pay a charge on their imports. The rationale of the regulation is to address the risk of "carbon leakage", which would occur if the greenhouse gas emissions reductions achieved within the EU under the EU ETS were to be offset by covered operators shifting their operations to jurisdictions outside the scope of the EU ETS and/or by EU firms increasing their imports from such jurisdictions. Despite having a UK ETS system, covered products made in the UK and exported to the EU will need to follow the EU CBAM obligations, however, provisions are included in the CBAM such that the cost can be deducted for EU importers where UK producers (and other non-EU producers) can show they have already paid a price for the carbon used in the production of the imported goods.

In the UK, on 18 December, the Government announced its intention to implement a UK CBAM by 2027. The covered sectors are expected to be slightly different from the ones initially covered by the EU CBAM. The UK CBAM may include products in the aluminium, cement, ceramics, fertiliser, glass, hydrogen, iron, and steel sectors. The UK Government launched consultations with the public in 2024 on the design and delivery of the mechanism. Comments closed in mid-June 2024, and additional information about the design of the proposed UK CBAM will be forthcoming.

For more information, see White & Case publication on the topic **here**.

FRC publishes the 2024 UK Corporate Governance Code, and new guidance to accompany the updated Code

January 2024

On 22 January, the Financial Reporting Council (FRC) announced the publication of the 2024 UK Corporate Governance Code, marking the first amendment to the Code since 2018. This was followed on 29 January by revised guidance on the Code.

When assessing what actions a company needs to take in readiness for applying the new Code it is important to consider the approach the FRC took in revising the Code:

- the FRC has encouraged companies to take a specific outcomes-focused approach to reporting. Companies are now expected to report on how an application of the Principles has made a difference to actions taken by their boards, with a focus on a framework of 'Objective, Decision, Action, Impact' when reporting;
- the FRC continues to uphold the flexibility of 'comply or explain' reporting. As the appropriateness of applying Provisions of the Code is dependent on the strategy, maturity and complexity of a company, the FRC emphasises that providing a high-quality and transparent explanation for why a particular Provision has not been complied with is not weaker or poorer than asserting compliance;
- given the importance in ensuring that certain stakeholders (e.g. proxy advisors) support the approach outlined above, the FRC intends to reflect this understanding in the upcoming 2024 revision of the Stewardship Code; and
- by design, the FRC have not been prescriptive or provided guidance about what certain terms within the new Code mean (e.g. "material controls", or "effectiveness"). Their view is that it is for companies and boards to determine what these terms mean in the context of their business and design their processes, systems and controls accordingly.

The principal changes in each section of the Code are as follows:

Section 1 – Board leadership and company purpose

- New **Principle C:** Governance reporting should focus on board decisions and their outcomes in the context of a company's strategy and objectives. This new principle embeds outcomes-based reporting into the Code.
- Amended **Provision 2:** Boards should not only assess and monitor culture, but also how the desired culture has been embedded throughout the organisation. The FRC, in its Code guidance, notes that this is necessary in order for culture and values to have an impact on behavioural and operational business outcomes.

Section 3 – Composition, succession and evaluation

- Amended **Principle J:** Without any reference to specific groups, diversity, inclusion and equal opportunity should be promoted within board and senior management composition. The list of diversity characteristics has also been removed to indicate that diversity policies can be wide ranging. Equal weight should be given to all protected and non-protected characteristics, so that companies consider the boundaries of diversity beyond gender, ethnicity, etc.
- Amended **Provision 23:** The FRC's recognition that companies may have additional initiatives in place alongside their D&I policies is now reflected in Provision 23. Companies are therefore given more freedom to determine their own approaches towards D&I.

Section 4 – Audit, risk and internal control

- Amended **Principle O:** Boards are responsible not only for establishing, but also for maintaining the effectiveness of, a company's risk management and internal control framework.
- New **Provision 29:** The FRC's expectation with respect to the board's role in monitoring and reviewing a company's risk management and internal control framework has been broadened. Going forward, boards are required to provide in the company's annual report:
  - a description of how the board has monitored and reviewed the effectiveness of the framework;
  - a declaration of effectiveness of the material controls as at the balance sheet date; and
  - a description of any material controls which have not operated effectively as at the balance sheet date, the action taken, or proposed, to improve them and any action taken to address previously reported issues.

Section 5 – Remuneration

- Amended **Provision 37:** Directors' contracts and/or other agreements or documents which cover director remuneration should include malus and clawback provisions.
- New **Provision 38**: A company's annual report should contain a description of its malus and clawback provisions, including the circumstances in which malus and clawback

provisions could be used, a description of the period for malus and clawback and why the selected period is best suited to the organisation, and whether the provisions were used in the last reporting period (in which case, a clear explanation of the reason should also be provided).

The 2024 Code applies to all companies with a premium listing on the London Stock Exchange, regardless of where they are incorporated. The 2024 Code will apply to financial years beginning on or after 1 January 2025 (with the exception of Provision 29 – following stakeholder feedback indicating that boards will need more time to develop their approaches to internal controls – which will only apply to financial years beginning on or after 1 January 2026). The 2018 Code will apply until such time.

Next steps:

Conduct a gap analysis and prepare roadmap to ensure readiness for the proposed changes (e.g. ensure clear determination of company's culture; review and revise terms of reference; assess existence and appropriateness of assessing whether the company's desired culture has been embedded; review DEI initiative; assess appropriateness of risk framework; and determine level of assurance needed for control effectiveness).

Hold training sessions for your Board on the impact of the proposed changes to the Code.

Review the best practice set out in the FRC's 2023 Review of Corporate Governance Reporting (frc.org.uk) which sets out examples of what good outcomes based reporting looks like and prepare internal functions for the change in reporting style required.

To the extent that there are known areas of non-compliance with the Code which will be reported in the FY 2024 Annual Report and Accounts, companies should ensure that key shareholders are made aware in advance to manage their voting.

Further information:

- Click **here** for the 2024 UK Corporate Governance Code
- Click **here** for the guidance to the 2024 UK Corporate Governance Code
- Click **here** for the FRC's summary of the key changes

Economic Crime and Corporate Transparency Act 2023: Key phases of implementation

March / May 2024

This year has seen the phased implementation of the Economic Crime and Corporate Transparency Act 2023 (ECCTA) which received Royal Assent on 26 October 2023. The legislation introduces powers that allow UK authorities to proactively target criminals abusing the UK's corporate, real estate and business sectors, and combat financial crime including fraud, money laundering and terrorist financing activities and is therefore wide ranging in scope and requires companies to change their approach, in particular, their engagement with Companies House.

ECCTA is being implemented in phases given the practical considerations such as the need for guidance to be published on certain provisions. While some key areas of future change are not yet in effect, some have already been brought into force on 4 March and 2 May. This note briefly covers a few of the more significant ECCTA provisions.

In force 4 March 2024

- The four new overarching objectives of the Registrar of Companies (the Registrar) were introduced. These are to: (1) ensure delivery of requisite documents; (2) ensure that information on the register is accurate; (3) ensure that the Registrar's records do not create a false or misleading impression; and (4) prevent the carrying out/facilitating of unlawful activities. To this effect, the Registrar has been given new powers to ask for additional information in relation to filings, reject documents for discrepancies, require discrepancies to be resolved and disclose information to persons or public authorities as needed. We are already seeing increased scrutiny of the documents which are being submitted to Companies House.
- Where it was previously an offence under the Companies Act 2006 (the "CA 2006") for a person to knowingly or recklessly deliver or cause to be delivered to the Registrar a document / make a statement to the Registrar that is misleading, false or deceptive in a material particular, the relevant provision of the CA 2006 has now been amended such that the offence to cause something to be "recklessly delivered" has been replaced with the offence of something being delivered "without reasonable cause". There is no definition of what "without reasonable cause" means in this context.
- On incorporation, subscribers must confirm that the company's purpose is lawful. In their annual confirmation statements, all companies must confirm that their future activities will be lawful. As a consequence, where law firms (or corporate service providers) incorporate companies or submit annual filings, clients are being asked to provide email confirmations of the lawfulness of the company's purpose/ that its future activities will be lawful before filing forms.

In force 2 May 2024

- Under a newly established civil penalties regime, the Registrar is now able to impose a financial penalty of up to £10,000 (preceded by a warning notice procedure) on a person if it is satisfied that they have committed misconduct amounting to a relevant offence under the CA 2006 (subject to an appeal process).

Not yet in force (with no scheduled implementation dates thus far)

- A new standalone offence of "failure to prevent fraud" will be established, under which a large organisation may be criminally liable for failing to prevent fraud committed for its benefit by a person associated with it (e.g. an employee, agent or subsidiary undertaking of the organisation). The criminal offence is punishable by an unlimited fine. There will only be a single defence of having had "reasonable prevention procedures" (with government guidance awaited on what these constitute) in place at the time that the fraud was committed.
- It will be necessary to register at Companies House as an "authorised corporate service provider" ("ACSP") before being able to file forms and documents at Companies House on behalf of a company (unless an officer or employee whose identity has been verified). Further, there will be specific identity verification requirements in relation to, or on filings in relation to, categories of persons/entities (e.g. directors, persons with significant control, etc.). ACSPs will have additional obligations to Companies House, such as the need to make a declaration that they have completed all necessary identity verification checks on their clients and the need to maintain relevant records.

Next steps:

Be alert to changing practices and procedures of service providers, including any updates they may make to their terms and conditions to reflect the ECCTA.

Monitor developments for when new phases of the legislation will come into force.

Further information:

- Click **here** for the full ECCTA 2023 legislation
- Click **here** for the ECCTA 2023 factsheet

FRC publishes a review examining the quality of corporate reporting by the UK's largest private companies

January 2024

Following previous signals that the annual reports of large private companies would be an area of supervisory focus for corporate reporting reviews in 2023/24, the FRC, on 31 January, published a thematic review examining the quality of corporate reporting in the annual report and accounts of 20 UK companies with revenues ranging from £1.5 billion to £24 billion, employing between 1,000 and 145,000 people.

These companies were selected from a variety of industries, including Automobiles and Parts, Retailers, Energy and Chemicals, etc. The sample covered companies with year-ends falling between September 2022 and December 2022. Broadly, parent companies of privately owned groups prepared consolidated accounts, subsidiaries of UK-listed companies prepared individual accounts under FRS 101, while subsidiary companies of overseas entities were a mix of those that prepared an intermediate level consolidation and those that presented only individual accounts.

Overall, the FRC found the quality of corporate reporting to be 'mixed'. To deliver consistently high-quality reporting, the FRC encourages companies to consider the findings and expectations highlighted in the report when drafting their annual reports and accounts. Companies are advised to focus their efforts on the disclosure of the most significant, complex or judgemental matters. Companies yet to publish their annual reports in 2024 should assess their reporting in light of the findings of the FRC review.

Key findings

On strategic reports:

- The best strategic report disclosures demonstrated that greater volume does not equate to better quality reporting – they focused on the elements of development, performance and position which are key for an understanding of the company, explaining them in a clear and concise manner consistent with the disclosures in the financial statements.
- Companies are advised to 'take a step back' and consider whether, when taken as a whole, the review and analysis is balanced.

On group structures:

- The FRC observes that to enable stakeholders to fully understand a company's business, disclosures should seek to explain the nature of its operations and how it fits into a wider group structure (if applicable).

On judgements and estimates:

- Better examples of judgements and estimates disclosures were tailored to a company's specific circumstances, included details of the specific judgement involved and clearly explained the rationale for the conclusion that was reached.

On accounting policies:

- In the case of complex transactions and balances, accounting policies were often generic and untailored, with boilerplate wording used. The FRC emphasises that companies should focus on tailoring accounting policies and providing more in-depth explanations for their most material and complex transactions. Policies should also be kept under review to ensure that they remain complete, relevant and accurate.
- Entity-specific policies are particularly critical for revenue, where better examples explained the nature of each significant revenue stream, the timing of recognition and how the value of revenue was determined.

On material provisions:

- The level of detail provided on the nature of the obligation and the associated uncertainty in relation to some material provisions was lacking – however, clear disclosure of such information is needed for stakeholders to fully understand the risks affecting a company.
- The best examples provided company-specific details, which were proportionate to the size of the balance and explained the obligations giving rise to material provisions, the expected timing of outflows and included an indication of the uncertainties in the amount and/or timing.

On financial instrument risks:

- The disclosure of financial instrument risks (e.g. liquidity risk) was relatively boilerplate and generic. Better examples explained the company-specific nature of each risk and quantified the company's exposure and sensitivity to potential future changes.

Next steps:

Ensure that the relevant functions responsible for the different sections of the annual report are aware of the FRC review and that the review findings are factored into annual report drafting.

Further information:

- Click **here** for the FRC's Thematic Report

Case Study: BP plc and Bluebell Capital Partners

February 2024

London-based Bluebell Capital Partners wrote to BP chair Helge Lund shortly after acquiring a small stake in the FTSE 100 energy major, asking that it abandons its pledge to cut oil and gas production by 25% by 2030 compared with 2019 levels. Bluebell, which had targeted Glencore, Danone and BlackRock with shareholder activism campaigns in the past, regards BP's strategy to transform the company into a clean energy provider and move away from hydrocarbons at a greater pace than needed as "irrational" and destructive to shareholder value.

In its letter, Bluebell also challenges BP's investment in its transition businesses. The activist investor calls for a reduction in BP's investments in bioenergy, hydrogen and renewables between 2023 and 2030 by US$28 billion (or approximately 60%). This would necessitate a halt in all investment in renewable power projects, which generally have a lower return on investment than oil and gas, especially for companies such as BP which tend to have higher borrowing costs than specialist green energy providers.

Despite the activist investor pressure, BP's chief executive Murray Auchincloss has reiterated the company's commitment to the plan. He maintains that BP can still increase earnings from its oil and gas business amidst a reduction in oil and gas output to cut emissions, by focusing on its most profitable projects. Moreover, the energy giant intends to move forward with its plans to continually invest in clean energy technologies (e.g. biofuels), in order to build future revenue streams for the company against the eventually declining demand for oil and gas.

Indeed, it appears that Bluebell's calls for a change in strategy will face strong opposition from BP's leadership and from environmentalists, many of whom argue that the company is still not doing enough to cut emissions. Dutch activist group Follow This has even, by contrast, forced shareholder votes at BP, Shell, Chevron and ExxonMobil in recent years, calling for stronger emissions reduction targets.

Further information:

- Click **here** for Bluebell's letter to BP

Publication of third annual FTSE Women Leaders Review

February 2024

On 27 February, FTSE Women Leaders published the third FTSE Women Leaders Review 2023, which presents the continued progress towards achieving greater gender balance on the boards of FTSE 350 companies.

The Review's ultimate target is for companies to have 40% women in leadership roles by December 2025 (the "2025 Deadline").

Recommendations

To ensure companies are on track to meet the 2025 Deadline, and to achieve the wider goal of gender-balanced boards and leadership teams across British business altogether, the Review sets out four key recommendations:

1. FTSE 350 companies should have a voluntary target of 40% female representation in their boards and leadership teams.
2. FTSE 350 companies should have at least one woman in the chair or senior independent director role on the board and/or one woman in the CEO or CFO role.
3. Key stakeholders should continue to set best practice guidance, or have alternative mechanisms in place, to encourage FTSE 350 boards that have not achieved the previous target (to have 33% women in senior roles by 2020) to do so. At the same time, FTSE 350 boards below 33% should factor in the existing underrepresentation when considering additional appointments.
4. To provide consistency of regulatory approach, the scope of the Review will extend beyond FTSE 350 companies to include the largest 50 private companies in the UK by sales.

Below are the latest published figures as set out in the Review.

Women on boards (figures as at 11 January 2024):

Metric	FTSE 100		FTSE 250		FTSE 350	
	2022	2023	2022	2023	2022	2023
% of women on boards	40.5%	**42.6%** ▲	40.1%	**41.8%** ▲	40.2%	**42.1%** ▲
Number of boards which have met or exceeded the 40% target for women on the board (ahead of the 2025 Deadline)	-	**72**	-	**163**	-	**235**
Number of female chairs	19	**16** ▼	36	**37** ▲	55	**53** ▼
Number of female senior independent directors	37	**48** ▲	93	**114** ▲	130	**162** ▲
Number of female CEOs	9	**11** ▲ (as at 1 February)	12	**10** ▼	21	**21**

Overall, 238 companies in the FTSE 350 had at least one woman in the four key roles (chair, senior independent director, CEO and CFO).

Women in leadership roles (figures as at 31 October 2023):

Metric	FTSE 100		FTSE 250		FTSE 350	
	2022	2023	2022	2023	2022	2023
% of women in senior leadership positions (i.e. a company's executive committee and its direct reports)	34.3%	**35.2%** ▲	32.8%	**34%** ▲	33.5%	**34.5%** ▲
% of women on executive committees	28.8%	**30.4%** ▲	25.7%	**26.7%** ▲	27%	**28.2%** ▲

The number of all-male executive committees in the FTSE 350 decreased slightly from 10 in 2022 to 9 in 2023.

Next steps:

Ensure that you have appropriate succession plans in place to at director, executive and senior leadership level to meet the required target.

Further information:

- Click **here** for the full FTSE Women Leaders Review 2023

Parker Review Committee publishes 2024 Update Report

March 2024

On 11 March, the Parker Review Committee published the Update Report: Improving the Ethnic Diversity of UK Business. With support from the Department for Business and Trade (DBT), the report sets out findings from the committee's latest voluntary census on the ethnic diversity of the boards and senior management of FTSE 350 companies and 50 of the largest UK private companies.

The Parker Review's first report published in 2017 made various recommendations to improve the ethnic and cultural diversity of the UK's leading companies, the most significant of which was the "one by '21" target, whereby FTSE 100 companies should have at least one ethnic minority director on their boards by December 2021. FTSE 250 companies were given the same target to be achieved by December 2024.

In order to address gaps identified in previous years' data, the scope of the review was recently extended to include the senior management teams (and not just boards) of FTSE 350 companies, and for data to be collected from large private companies. As a way of generating greater incentive to increase opportunities for ethnic minorities, these companies were also asked to set individual targets for what the proportion of ethnic minority representation in their senior management teams should be by the end of 2027. The 2024 report is therefore the first to consider data submitted by respondents in relation to the above extended scope.

Key findings from the 2023 survey

As at 31 December 2023:

- 96% of FTSE 100 companies, 70% of FTSE 250 companies and 44% of private companies had at least one ethnic minority director on their boards.
- The percentages of ethnic minority representation in board directorships were 19% for FTSE 100 companies, 13.5% for FTSE 250 companies and 11% for private companies.
- On average, the percentages of ethnic minority representation in senior management were 13% for FTSE 100 companies and 12% for FTSE 250 companies.
- The average individual targets relating to the proportion of ethnic minority representation in senior management teams by 2027 were 17% for FTSE 100 companies and 15.5% for FTSE 250 companies.

Looking towards future reports, the committee remains encouraged by the FTSE 350's overall progress towards improving ethnic diversity amongst company leadership, but hopes to witness greater engagement and reporting from the 50 largest UK private companies (by way of an increase in the number of voluntary responses submitted by them).

Next steps:

Companies who have not yet met the December 2024 target should consider whether they are on track and if not be prepared to report accordingly.

Companies, through their Nomination Committees, should ensure that their succession plans take into account the current targets.

Those companies who did not respond to the 2023 survey should note the potentially negative reputational impact and re-consider whether they want to respond to future surveys.

Further information:

- Click **here** for the full Parker Review 2024 Update Report

1 This percentage represents 22 out of 50 private companies invited to participate in the survey. However, out of the 36 private companies which did respond to the survey by providing their board data, the relevant percentage would be 61%.

Pre-Emption Group publishes first report on companies' use of updated Statement of Principles on the disapplication of pre-emption rights

March 2024

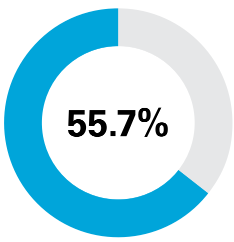
In November 2022, the Pre-Emption Group (PEG) issued a revised Statement of Principles on the disapplication of pre-emption rights, implementing the recommendations set out in the UK Secondary Capital Raising Review. This signified the first update made since 2015 to the Statement of Principles.

The 2022 revised Statement of Principles increased the level of disapplication authority that companies can routinely seek shareholder approval for, by way of special resolutions at their AGMs, to 20% of their existing issued share capital (10% for general corporate purposes, and a further 10% for use in connection with an acquisition or a specified capital investment).

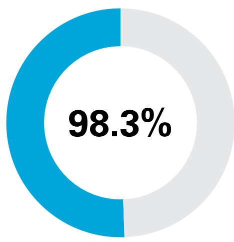
As the new principles were adopted in November 2022, companies had time to amend their 2023 AGM resolutions to obtain approval for the increased authorities. On 5 March 2024, the PEG published the PEG Annual Monitoring Report, its first report examining the adoption of the revised Statement of Principles by FTSE 350 companies which provided a useful insight into the approach companies were taking to the new thresholds.

Key findings from the report

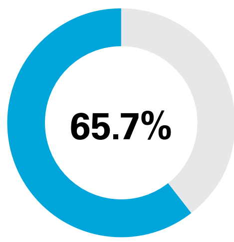
Of the FTSE 350 companies which held an AGM between November 2022 and July 2023:



sought enhanced disapplication authority as permitted under the revised Statement of Principles



had all disapplication resolutions passed by shareholders, with only a small number witnessing significant dissent



requested authority for a specified capital investment, on top of the authority for general corporate purposes

Overall, the PEG reported "widespread adoption" of these new principles and "broad shareholder support" for disapplication authority requests. As emphasised by PEG chair Sir Keith Skeoch, the success of this regime plays a key role in making fundraising structures more time and cost-efficient and is therefore crucial in enhancing the competitiveness of the UK market altogether.

Next steps:

For those companies who have not sought increased authority for the 10%+10% thresholder or sought authority for follow-on offers, consider if this approach would be appropriate.

Further information:

- Click **here** for the full PEG Annual Monitoring Report

Department for Business and Trade consultation on changes to non-financial reporting requirements for medium-sized companies

May 2024

The Government is exploring revising legislation to change the reporting requirements for companies to ensure proportionality of reporting, especially in the interests of smaller businesses. In doing so, the government hopes to allow these companies to "focus on their growth and delivering for their customers".

Practically, the anticipated effects are estimated to be as follows:

- 5,000 large companies would be reclassified as medium-sized companies and be able to access more proportionate reporting obligations.
- 13,000 medium-sized companies would be reclassified as small companies, enabling them to benefit from exemptions to statutory audit requirements and the ability to file simpler accounts.
- 113,000 small companies would be reclassified as micro-sized companies and be able to file simpler accounts.

Another planned change includes the removal of low-value, obsolete or duplicative requirements from the Directors' Report (e.g. information on financial instruments, likely future developments, research and development, engagement with employees, suppliers and customers) and Directors' Remuneration Report and Policy (in particular, content that had been introduced into UK law following the implementation of the EU Shareholder Rights Directive). The government also intends to facilitate the issuance of digital annual reports and correct certain "technical issues" identified in the audit regulatory framework after the assimilation of EU law into UK law.

In totality, these changes are on track to deliver an annual deregulatory saving of approximately £145 million to small and medium-sized UK companies.

The DBT launched a consultation on 16 May primarily focused on medium-sized companies, as part of the wider goal to simplify the UK reporting landscape and allow companies to redivert their resources away from regulatory compliance and on to growth and economic output.

Next steps:

The consultation has recently closed on 27 June and the DBT is currently reviewing responses.

Further information:

- Click **here** for the full details of the consultation

Department for Business and Trade publishes policy paper on the framework and terms of reference for the development of UK Sustainability Reporting Standards

May 2024

Within the wider programme of work being undertaken alongside the FCA to develop a Sustainability Disclosure Requirements (SDR) regime within the UK, the government made a commitment in its 2023 Green Finance Strategy to establish a framework to assess and decide whether to endorse the International Financial Reporting Standards (IFRS) Foundation's Sustainability Disclosure Standards for application within the UK context. This year, on 16 May, the DBT published a policy paper explaining this endorsement process in greater detail, as well as the associated roles and responsibilities of the government, regulators, standard-setters and advisory committees.

Section A of the policy paper summarises the overall 'endorsement' and 'implementation' framework, shedding light on how UK Sustainability Reporting Standards will be developed and implemented in the UK. It makes clear, amongst other things, that:

- The Secretary of State for Business and Trade (Secretary of State) will hold overall responsibility for making endorsement decisions regarding IFRS standards in the creation of UK Sustainability Reporting Standards. Nonetheless, he will be supported by recommendations and advice from the Technical Advisory Committee (see below) and the DBT.
- Once the UK Sustainability Reporting Standards are created and finalised, it will become available for voluntary use by UK companies – the term 'endorsement' does not create any legal obligation. It should however form the basis of any future requirements in, or amendments to, UK legislation and regulation.

Sections B and C of the policy paper set out the terms of reference for the Technical Advisory Committee (TAC) and the Policy and Implementation Committee (PIC), two committees established to assist in putting into effect the overall framework. The former will assess IFRS Sustainability Disclosure Standards on a technical basis and make independent decisions on endorsement to be passed onto the Secretary of State, while the latter will coordinate the implementation of any UK Sustainability Reporting Standards. The TAC consists of members from a range of relevant professional backgrounds, and the PIC comprises UK government and regulator representatives from the Bank of England, Department for Energy Security and Net Zero, Department for Environment, Food and Rural Affairs, Department for Work and Pensions, HM Treasury, etc. Therefore, a secondary function of the PIC will also be to consider how the endorsement of any IFRS standards interacts with the remits of their respective organisations.

To reflect publication of the new policy paper, the DBT has also updated its Guidance on the UK Sustainability Reporting Standards.

Further information:

- Click **here** for the full Policy Paper
- Click **here** for the updated Guidance on the UK Sustainability Reporting Standards
- Click **here** for the 2023 Green Finance Strategy

Progress made by industry bodies on disclosure of climate transition plans

May 2024

As part of the wider 2023 Green Finance Strategy, in Q2 2024, key industry bodies involved in the net-zero transition agenda published updates that will accelerate large UK companies and issuers being required to disclose their climate transition plans.

Guidance published by the UK Government's Transition Plan Taskforce (TPT)

The TPT was announced at COP26 in November 2021 and was launched in April 2022, with a mandate to establish the "gold standard for transition plans". Initially, the mandate for the TPT's work was for a two-year period but this was recently extended to 31 July. In October 2023, the TPT published a voluntary Disclosure Framework ("TPT Disclosure Framework") which was designed to build upon the approach to transition planning in UK regulations and FCA rules, implementing recommendations from the Task Force on Climate-related Finance Disclosures (TCFD) and the Glasgow Finance Alliance for Net Zero (GFANZ). The International Sustainability Standards Board (ISSB) has previously developed a climate-related disclosure standard (IFRS S2), where companies are required to disclose details about their transition plan, if such a plan exists. The TPT Disclosure Framework aims to provide more detailed recommendations on how companies can effectively disclose in line with this ISSB standard.

On 9 April, the TPT announced the publication of its final set of transition plan resources (building on the TPT Disclosure Framework) including (a) sector-specific transition 'deep-dives' on 7 different sectors (including asset management, financial institutions, utilities & power, food & beverage, metals & mining and oil & gas); (b) sector summary guidance covering 30 sectors of the global economy; (c) guidance on transition planning cycles; (d) a paper on private sector transition planning in emerging markets; and (e) various independent advisory pieces on how transition planning can extend beyond net-zero ambitions. The sector-specific 'deep-dives' covers sectors where TPT identified high levels of GHG emissions, a need for transition finance and a requirement for higher quality guidance. The sector-summary guidance suggests practical measures that industry players can take in terms of decarbonisation levers, metrics to track progress (including those in relation to corporate governance) and recognised GHG emission targets. The publishing of the final set of resources, completes the "Build Your Transition Plan" suite of resources, that aims to prepare companies to build robust and credible transition plans.

The government's plans to consult on transition plans

On 16 May, the government published an update on the implementation of economy wide SDRs, as first set out in the paper entitled "Greening Finance: A Roadmap to Sustainable Investing" (October 2021). In this update, the government confirmed its aims to make UK-endorsed IFRS standards available in Q1 2025 and, subject to positive endorsement, decide on sustainability-linked disclosure requirements for UK companies that fall outside the FCA's regulatory perimeter.

The government confirmed the important role of transition planning across the economy and that it intends to consult on how the UK's largest companies can most effectively disclose their transition plans in Q2 2024.

FCA measures in relation to transition planning

On 22 May, the FCA published the Primary Market Bulletin 48 which included an update on the FCA's consultation timeline on transition plans, based on the ongoing process of endorsement of the ISSB standards. In the Bulletin, the FCA noted that a positive endorsement decision and creation of a set of voluntary UK Sustainability Reporting Standards is expected by Q1 2025. Following this, the FCA intends to consult on strengthening its expectations for listed companies' transition plan disclosures with reference to the TPT Disclosure Framework.

Next steps:

Continue to monitor the transition from voluntary disclosure of climate transition plans to mandatory disclosure.

Conduct a gap analysis of your current transition plan disclosures against the TPT gold standard.

Continue to engage with key stakeholders as to what their expectations are around preparation and publication of climate transition plans and in particular, be alert to shareholder requisitioned resolutions.

Further information:

- Click **here** for the announcement by the TPT of its final set of transition plan resources
- Click **here** for the Sustainability Disclosure Requirements: Implementation Update 2024
- Click **here** for the FCA's Primary Market Bulletin 48

Governance in the news

FCA publishes finalised guidance on the Anti-Greenwashing Rule (23 April 2024)

The FCA notes that the new rule and guidance, both of which came into force on 31 May, is designed to protect consumers by ensuring that sustainable products and services being sold are accurately described, and any sustainability-related claims being made about such are fair, clear and not misleading. It aims to enhance consumers' ability to make informed decisions aligned with their sustainability preferences.

Click **here** for the FCA's finalised guidance on the Anti-Greenwashing Rule.

Institute of Directors consults on a code of conduct for directors (6 June 2024)

The code, which will apply to directors of organisations of all sizes in the private, public and not-for-profit sectors, has been developed to provide directors with a behavioural framework or "roadmap" against which better decisions can be made, in order to build and maintain the trust of the wider public in their business activities. The Institute of Directors notes that this code should represent a voluntary commitment and is not intended to create a new burden of compliance. The code is structured around six principles, including "integrity", "transparency" and "responsible business". The consultation is currently accepting responses until 16 August.

Click **here** for the full consultation document.

Corporate Sustainability Due Diligence Directive comes into force (25 July 2024)

First introduced in February 2022 with the aim of fostering sustainable and responsible corporate behaviour, the Corporate Sustainability Due Diligence Directive (CS3D) has now been finalised and entered into force. The CS3D, which will undergo phased implementation, requires companies that meet certain net turnover thresholds to integrate due diligence measures into their policies and risk management systems to identify and address human rights and environmental risks in their own operations as well as those of their subsidiaries and business partners.

Click **here** for the full text of the CS3D.

Audit Reform Lab report reveals auditors' failures to raise alarm before 75% of UK corporate collapses (19 May 2024)

The think-tank based in the University of Sheffield has analysed the audit reports of the 250 largest publicly listed companies that collapsed between 2010 and 2022, and found that three in four audit reports had been remiss in providing alerts that companies risked going bankrupt, in the form of a "material uncertainty related to going concern" warning in the year before collapse. The report raised serious concerns that auditors are not being challenging enough when performing a core function. It identified the FRC's penalties as being too small to act as a sufficient deterrent.

Click **here** for the full report.

Shell plc investors support the move to weaken climate targets (21 May 2024)

Shell's 2021 strategy had included pledges to cut the net carbon intensity of its energy products by 20% from 2016 levels by 2030, and cut the same by 45% by 2035. However at the oil major's 2024 AGM, approximately 78% of shareholders voted in favour of the group's newly revised energy transition strategy under which it will cut emissions more slowly than previously planned, owing to "uncertainty around the pace of change in the transition". Shareholders also rejected a resolution filed by activist group Follow This which called for tighter climate targets. Despite this, chairman Andrew MacKenzie reaffirmed Shell's commitment to a 2050 net zero goal.

Tensions underlying the topic of executive remuneration in the 2024 AGM season

Debates surrounding executive remuneration have taken centre stage in this year's AGM season, specifically regarding the tensions inherent in addressing the widening gulf in executive pay between the UK and the US.

- Smith & Nephew plc survived a major shareholder revolt over a near 30% potential pay rise for its Texas-based chief executive, Deepak Nath, witnessing a significant 43% of shareholder votes against Nath's remuneration proposal.
- Shareholders of Ocado Group plc cast approximately 80% of votes in favour of chief executive Tim Steiner's revised pay scheme which includes a bonus share award that would contribute to a 1,800% uplift in his total remuneration package. This went ahead despite multiple proxy advisors having warned that such would be "materially above market norms".

The overall impact of these increased pay packages pushed through for executives in the face of investor opposition on median UK chief executive remuneration in the short term, remains somewhat limited – they were successfully introduced by only a handful of companies this year, and most of the increase was in the form of long-term incentives. Debates over the disparity between US and UK remuneration and whether UK-listed companies with a large international presence are able to attract top executives are likely to be ongoing, and we will be keeping a lookout for trends in next year's AGM season.

The White & Case UK Public Company Advisory (PCA) team advises UK public companies on their day-to-day legal affairs. In particular, the team engages with listed companies outside of their transaction cycle and provides advice across a range of matters, with particular expertise in corporate governance and corporate advisory. The team is experienced in company secretarial matters and regularly provides support to non-legal functions (as well as legal and company secretarial teams) within PLCs. Our clients range in size and maturity from newly listed companies to mature companies and from small cap companies to global FTSE 350 companies.

The PCA team is part of the network of White & Case offices offering public company advisory services, with specialist practice teams in the US, Germany, Italy and France.

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