

Business Briefing – February 2010

Institute of Directors ("IoD") and ICSA announce launch of working group on board performance evaluation

On 15 January 2010, the IoD and ICSA formed a working group that includes independent stakeholders including directors, institutional investor representatives, and academics, with the aim of developing best practice guidance on externally facilitated board evaluations. Both organisations have expressed their belief that the regular evaluation of the performance of company boards with independent external facilitation of this process can contribute to better standards of corporate governance. The Financial Reporting Council has agreed with this view, and has proposed the addition of a provision in the new UK Corporate Governance Code stating that evaluation of the board should be externally facilitated at least every three years. The Walker Review expressed a similar viewpoint.



The IoD and ICSA hope to encourage greater use of external board performance evaluation through the publication of best practice guidance. In addition, the proposed guidance will seek to address any potential conflict of interest issues that may arise in the conduct of such evaluations.

ICSA's Chief Executive David Wilson has said, *"ICSA very much welcomes Sir David Walker's emphasis on the need to develop appropriate standards for the board evaluation process... We also consider that all board evaluation service providers will be in a better position to manage conflicts in a transparent and objective manner if they adopt a common approach."*

Miles Templeman, Director General of the IoD added, *"If external board evaluation processes are to become more meaningful - both in terms of adding value to boards and providing sufficient reassurance to shareholders - we believe that it would be useful to apply a more consistent board evaluation approach."*

The ICSA's announcement can be downloaded via the following link:
<http://www.icsa.org.uk/assets/files/pdfs/Press/Board eval final.pdf>

Business Briefing – February 2010

FRC Consults on Stewardship Code for Institutional Investors

In November 2009, following Sir David Walker's report on the corporate governance of banks and other financial institutions, the government requested that the FRC take on responsibility for the oversight of a stewardship code that will set out best practice for institutional investors when engaging with the UK listed companies in which they invest.



On 19 January 2010 the FRC began its consultation on the content, operation and oversight of this code. Sir Christopher Hogg, Chairman of the FRC said, "*The benefits of a code which can help to bring about more effective engagement between companies and shareholders are potentially significant. They should lead to sustainable and enduring improvements in the governance and performance of UK listed companies and greater clarity in the respective responsibilities of asset managers and asset owners, which will assist the ultimate owners to hold to account those acting on their behalf.*"

To deliver those benefits the code must set standards of stewardship to which mainstream institutional investors should aspire, and maintain the credibility and quality of these standards. It must foster a proper sense of ownership amongst institutional investors in the interests of their clients, and its success should be based on more effective communication between shareholders and the boards of the companies in which they invest."

The FRC seeks views on:

- Whether the code published by the Institutional Shareholders' Committee in November 2009 provides a suitable basis for the Stewardship Code, in either its existing or an amended form;
- What the responsibilities for engagement of institutional shareholders and their agents are to the beneficial owners whose money they manage;
- How adoption of the standards in the code by UK and foreign investors can be encouraged;
- What information investors should disclose on their engagement policy and practice; and
- What arrangements should be put in place to monitor how the code is applied.

The FRC's consultation ends on 16 April 2010 and the outcome of the consultation will be announced in May or June. Capita Company Secretarial Services will be submitting a response to this consultation and we would welcome readers' thoughts on the above. Please submit any comments before 16 April 2010 via the Business Briefing email address: bus.brief@capitaregistrars.com.

The full text of the FRC's consultation can be downloaded via the following link: www.frc.org.uk/press/pub2216.html

ABI revamps Guidelines on Executive Remuneration

On 15 December 2009 the Association of British Insurers ("ABI") released an updated version of its guidelines on executive remuneration policies and practices ("the Guidelines") for the first time since December 2007. Although these apply to all companies, they are especially relevant to listed companies.



The Guidelines include relatively few amendments, mainly focusing on a new acknowledgement of risk management as one of the considerations relevant to executive remuneration and incentives. The ABI said that *"Independent Remuneration Committees exist to resolve the potential conflict of interest between executive directors and shareholders. Their policies should be transparent, use simple structures, and deliver alignment with the strategy of the company so as to contribute to the creation of sustainable long term value. Policy should not focus excessively on the short-term or promote inappropriate risk taking."*

The ABI's main conclusions include:

- Remuneration Committees should be accountable to shareholders for their decisions, especially when these involve the use of discretion;
- Remuneration structures that seek to increase tax efficiency should not result in additional costs to the company or an increase in its own tax bill. Remuneration Committees should be aware of the potential damage to the company's and shareholders' reputation from implementing such schemes;
- Shareholders discourage the payment of annual bonuses to main board directors when the business has suffered an exceptional negative event. In such circumstances shareholders should be consulted on bonus policy and any proposed payments should be carefully justified;
- Retention awards to main board directors rarely work. Retention concerns on their own are not sufficient grounds for remuneration to increase.

The full text of the updated ABI Guidelines can be downloaded via the following link:
http://www.ivis.co.uk/PDF/ABI_Executive_Remuneration_Position_Paper.pdf

Business Briefing – February 2010

Narrative reporting under scrutiny

FRC warns it will take a tough stance on reporting

The new chief executive of the FRC, Stephen Haddrill, formerly director general of the Association of British Insurers, has indicated in a letter to the *Financial Times* that he takes issue with the suggestion that "management statements in annual reports are widely disregarded as advertorial, and as such, the FRC should be concerned only with the accounting sections of a report."



He wrote, "*We may all be highly attuned to puff and bluster at the moment after the experience of the last couple of years, but after every crisis we have seen that the willing suspension of disbelief quickly kicks in as recession gives way to recovery. Over-optimistic guff will at some point play its part again in puffing up another bubble, and the more we all tolerate it, the faster its work will be done...At the FRC we intend to shine a light on spin when we find it, at whatever end of the report and accounts.*"

ICSA says "quality of reporting still not up to scratch"

On 13 January 2010 the ICSA published a report arguing that there is room for improvement in corporate reporting amongst FTSE companies. The ICSA based its conclusion on the observations of the judges of the 2009 ICSA Hermes Transparency in Governance Awards.

The report acknowledges that every company is unique and analysis of a company's disclosure is subjective, however there were several common themes.

The judges found that, the quality of disclosure varied greatly between top FTSE 100 and low FTSE 100, not just between the FTSE 100 and the FTSE 250. Some FTSE 250 companies even performed better than their FTSE 100 counterparts and companies in more sensitive or controversial business activities.

ICSA has said that "it seemed that some award categories were generally weaker than others - reporting on board evaluation was a clear example of this." The report claims that this demonstrates the need for companies to "lift their game and strive for continuous improvement."

ICSA found that in some cases there were immense discrepancies in the quality of reporting within individual reports, e.g. in some cases the remuneration report was excellent, whilst the audit committee report was relatively poor. ICSA suggests that companies should consider why this may be the case, and how such differences in quality can be avoided if stakeholders are to receive consistently high quality reports that reflect well on the whole company.

Business Briefing – February 2010

One key theme that emerged from the Awards is that rather than a 'comply or explain' approach, companies should instead 'explain and comply (or apply)'. ICSA's report suggests that "greater emphasis is needed on evidence of progress on governance issues, and especially on achievements and outputs".

Sir John Parker, Chairman of National Grid and Chair of Judges for the Awards said, *"Good disclosure gives great visibility of companies' brands, their ethos, and values as well as the competence and ability of the board," he adds. "The best disclosure demonstrates that good governance is a business enabler and the best companies demonstrate that governance is truly embedded in the company and is not regarded as a compliance exercise to be completed once a year for the Annual Report disclosure under the Combined Code."*

ICSA's article regarding its views on the quality of reporting can be accessed via the following link: <http://www.icsa.org.uk/assets/files/pdfs/Press/postawards.pdf>

Business Briefing – February 2010

National Association of Pension Funds ("NAPF") publishes corporate governance policy update

In January 2010, the NAPF published an update to its 2009/2010 corporate governance policy and asked the ICSA to draft standard wording for circulars regarding the use of the 14 day notice period by traded companies (i.e. companies listed on the Main Market and not AIM) under the Shareholder Rights Directive ("the Directive"), which has been in effect since 3 August 2009. The ICSA is currently consulting with its members on the wording.



Regulation 9 of the Directive provides that the minimum notice period for AGMs remains at least 21 days, however the rules relating to meetings other than the AGM have changed. These now must be called on at least 21 days notice, unless a resolution is passed permitting them to call general meetings on not less than 14 days notice, provided that certain conditions are met. For further information regarding these conditions, please see our August 2009 Business Briefing, which can be found on our website via the following link: www.capitacosec.co.uk

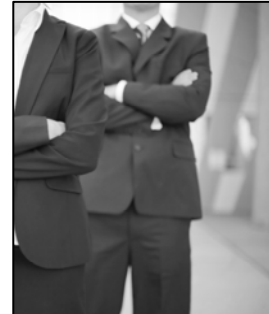
NAPF's policy discourages the use of the shorter notice period other than in "exceptional circumstances". Its 2009/2010 policy update states, "*The ability for companies to hold meetings at short notice is important and commercially desirable in certain circumstances. However, we expect that companies will give as much notice as is practicable when calling a general meeting. Therefore the additional flexibility afforded by the Directive to call a meeting at 14 days' notice should only be used in limited circumstances where it would clearly be to the advantage of the shareholders as a whole... Companies are encouraged to outline the circumstances in which a short-notice meeting may be called when tabling the enabling resolution.*"

NAPF's 2009/2010 corporate governance policy can be downloaded via the following link: <http://www.napf.co.uk/Policy/Governance.cfm>

Business Briefing – February 2010

FSA toughens its stance

On 29 January 2010, the FSA published a updated version of the FSA Handbook that proposes to extend the FSA's monitoring regime as a result of its decision to be "more intrusive" when it comes to monitoring regulated businesses. The update includes a consultation paper, *Effective corporate governance (significant influence controlled functions and the Walker review)*, which sets out the FSA's proposals. The consultation closes on 28 April 2010.



The issue of remuneration is not addressed in the proposals, however the FSA has indicated that it will "be dealt with as part of our separate ongoing work on that topic".

Graeme Ashley-Fenn, the FSA's director of permissions, decisions and reporting said, "*Our more intrusive approach continues to place a great deal of emphasis on governance and therefore the senior management at firms... This starts with a firm's own due diligence. Our experience shows that once a firm gets its corporate governance right; with a strong and effective board, everything else flows from that.*"

The FSA's proposals and consultation are available via this link:
http://www.fsa.gov.uk/pubs/cp/cp10_03.pdf

Business Briefing – February 2010

And finally...

ICSA "steering group" begins Higgs Review

On 3 February 2010, ICSA announced the list of members for its Higgs review steering group, which consists of high-profile chairmen from the FTSE100 and FTSE250.

The Chairman of the FRC, Sir Christopher Hogg, commented, "*The quality of the guidance attached to the Code will have a material impact on the Code's effectiveness...I am grateful to the ICSA and the members of the powerful and experienced steering group they have assembled for undertaking this important task on behalf of the FRC.*"

The full list of members of the ICSA Higgs review group can be accessed via the following link: <http://www.icsa.org.uk/assets/files/pdfs/Press/Higgs%20review.pdf>

UK Payments Council Board phases out cheques for payment of dividends

On 16th Dec 2009, the UK Payments Council Board (the "Board") announced that it has set a target date of 31 October 2018 to close the central cheque clearing and phase out cheques completely. Following this, on 7 January 2010 the Irish Payment Services Organisation issued an announcement welcoming the UK initiative and proposing 2016 as a realistic end date for cheques in Ireland. The redundancy of cheques will mean that companies across the UK and Ireland will no longer be able to use this method to pay shareholder dividends from 31 October 2018. The Board described this payment method as being in "terminal decline", citing that there were 40% fewer cheques issued in 2008 than in 2003, and over the twelve months to September 2009 volumes fell by 12%.

Although the target date is over eight years away, companies may wish to prepare for the inevitable sooner rather than later by reviewing their articles and amending them at the next AGM if necessary, thereby ensuring sufficient time is given for the transition from cheques to other payment options. In fact, due to the current economic climate, some companies have already discovered that it can be more cost effective to offer their shareholders the payment of cash dividends only by electronic means, and no longer pay dividends by cheque at all. Ultimately, this will result in dematerialised shareholders receiving their dividends via CREST, certificated holders needing to complete a bank mandate in order to receive their payment and an annual consolidated tax voucher that can be provided in PDF form on a secure website.

Business Briefing – February 2010

Capita Registrars is a market leader in the payment of dividends, with extensive knowledge and a wealth of experience in providing the right options for companies and their shareholders by providing multiple payment options, including:

- Direct payment (*an electronic payment made via BACS*);
- CREST (*dividends paid via CREST*);
- Options for overseas shareholders;
- Consolidate tax vouchers;
- Dividend Re-Investment Plan (*re-investment of dividends back into your company*);
- Scrip (*receive future dividends in the form of fully paid New Shares*); and
- Paperless processing

Please visit www.capitaregistrars.com/corporate/reference/news.asp?id=71 where further information on this service is available, or bus.brief@capitaregistrars.com

PwC study reveals UK chief executives' pay hit by cost cuts

A recent study by PwC has revealed that the base salaries of chief executives of the largest UK companies rose more slowly than average pay last year. For the first time in a decade as tougher economic conditions forced boardroom restraint.

One in six chief executives of FTSE 100 and FTSE 250 companies did not receive a bonus in 2009, which PwC says indicates that boards are linking executive pay more closely to performance.

PwC analysts said "the slowing salaries and falling bonuses reflected an effort by boards to share the pain of the economic downturn and hold top executives more responsible for corporate performance".

A *Financial Times* article detailing PwC's findings can be downloaded via the following link: <http://www.ft.com/cms/s/0/6b708a9e-0600-11df-8c97-00144feabdc0.html>

Companies House Updates Forms

In January 2010, Companies House informed companies that it will be updating some of the new company forms. The affected forms and the changes to these include:

- **SH03** - Return of purchase of own shares has new wording to section 2: "Please show the aggregate amount paid on shares purchased for cancellation", as well as a date box added to the signature.
- **OS CH03** - Change of details of a director for overseas companies - has a new prompt on the form at section 7.

Business Briefing – February 2010

- **OS NM01** - Registration of change of name of an overseas company - will have new wording in section 2 stating "Is the company changing its existing corporate name to a new corporate name?"
- **IN01/c** - Application to register a company checklist amended will include the wording "You have enclosed the Memorandum of Association."

The updated forms are available on the Companies House website and can be accessed via the following link: <http://www.companieshouse.gov.uk/index.shtml>