



## Governance in Brief

### Your summary of the latest corporate governance developments

#### Headlines

- Vince Cable launches a government consultation on corporate governance and economic short-termism.
- Takeover Panel sets out proposals for significant changes.
- Healthy support for the FRC Stewardship Code.
- ICSA publishes revised terms of reference for board committees.
- New regime on issuer liability now in force.

#### Vince Cable launches a government consultation on corporate governance and economic short-termism

**In Brief:** Responding to concerns that the capital markets are increasingly focused on the short term and are failing to promote long term business success, the government has issued a call for evidence on the existence of short-termism and market failures in UK equity markets. The government hopes to identify the issues and their causes, whether in law or behaviour, to ensure efficient, effective and transparent allocation of capital and the long-term sustainability of UK companies. There is also consideration of the impact of directors' remuneration and takeovers. Launching the review Vince Cable said:

"I want a serious examination and debate into the role of investors and the time horizons over which they operate; the factors influencing board decisions; the reasons for the growth of directors' pay; the impact of the investment chain; why returns from equity have reduced; and why takeovers that are economically damaging still take place."

Below are some of the questions on which views are sought:

#### The board of directors

- Do UK boards have a long term focus – if not, why not?
- Does the legal framework sufficiently allow the boards of listed companies to access full and up-to-date information on the beneficial ownership of company shares?

#### Shareholders and their role in equity markets

- What are the implications of the changing nature of UK share ownership for corporate governance and equity markets?
- What are the most effective forms of shareholder engagement?

#### Directors' remuneration

- What are the main reasons for the increase in directors' remuneration? Are these appropriate?
- Are shareholders effective in holding companies to account over pay?

#### Takeovers

- Do boards understand the long term implications of takeovers, and communicate the long term implications of bids effectively?
- Should shareholders of an acquiring company in all cases be invited to vote on takeover bids, and what would be the benefits and costs of this?

There are many issues to consider and it is unclear what direction the government will take. In addition to this review, a European Commission Green Paper on corporate governance in listed companies is due to be published late this year or early next year and this will cause further uncertainty around UK corporate governance. We urge boards to take the opportunity to express their views on the issues raised.

**Date:** 25 October 2010

**Source:** Department for Business, Innovation and Skills

**Deadline for comments:** 14 January 2011

**Further info:** <http://www.bis.gov.uk/assets/biscore/business-law/docs/10-1225-long-term-focus-corporate-britain.pdf>

### **Takeover Panel sets out proposals for significant changes**

**In Brief:** Whilst it has decided against making some of the fundamental changes set out in the consultation document (e.g. raising the minimum acceptance condition threshold for offers above 50% plus one of the voting rights of the offeree company), proposed amendments to the Takeover Code have been put forward with the objective of:

- increasing the protection for offeree companies against protracted 'virtual bid' (i.e. where a potential offeror announces that it is considering making an offer but without committing itself to doing so) periods;
- strengthening the position of the offeree company;
- increasing transparency and improving the quality of disclosure; and
- providing greater recognition of the interests of the offeree company employees.

To the extent that the Code Committee has concluded that there is a case for proposing amendments to the Code, the Code Committee will publish one or more public consultation papers in due course setting out the proposed amendments in full in accordance with its usual procedures for amending the Code.

**Date:** 21 October 2010

**Source:** The Takeover Panel

**Further info:** <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2009/12/2010-221.pdf>

### **Healthy support for the FRC Stewardship Code**

**In Brief:** The FRC has published the names of UK and international institutional investors who have signed up to the Stewardship Code. 68 institutions have published statements of support for the Code, including 48 asset managers, 12 asset owners and eight service providers. There has also been support from a wide range of international investors, including the California Public Employees Retirement Scheme (more commonly referred to as CalPERS) and the Australian Council of Superannuation Investors.

Commenting on the announcement by the FRC, Business Secretary Vince Cable said:

"I am pleased to see that the Stewardship Code has attracted support from across the industry, reflecting that the UK is leading the way in this important area. I would encourage more investors to pledge their support and adhere to these best practice principles."

**Date:** 19 October 2010

**Source:** The Financial Reporting Council

**Further info:** <http://www.frc.org.uk/press/pub2397.html>

### **ICSA publishes revised terms of reference for board committees**

**In Brief:** In conjunction with its Improving Board Effectiveness consultation, ICSA has produced new and revised ICSA guidance notes on the terms of reference for board committees. The notes are the first in the series to be published and cover the audit, nomination, remuneration and risk committees.

The ICSA website states that the new guidance is aimed primarily at the corporate sector and that the terms of reference draw on the experience of company secretaries and outline the role and responsibilities of each committee. ICSA has drawn on good practice in some of the UK's top listed companies and designed the terms of reference for those companies seeking to be fully compliant with the recommendations in the UK Corporate Governance Code and the Walker Review (hence the inclusion of terms of reference for a risk committee which is not a requirement of the UK Corporate Governance Code). Areas covered include duties, membership, frequency of meetings, reporting responsibilities and notice and minutes of meetings.

**Date:** 21 October 2010

**Source:** The Institute of Chartered Secretaries and Administrators

**Further info:** <http://www.icsa.org.uk/about-icsa/latest-from-icsa/article/icsa-publishes-new-terms-of-reference>

## New regime on issuer liability now in force

**In Brief:** In our April edition of Governance in brief we noted that HM Treasury had finalised regulations to amend the Financial Services and Markets Act 2000. It is important to note that the new regime is now in force and applies to any information published via a recognised information service (RIS) by issuers on the Official List and AIM on or after 1 October 2010.

There is a new liability on issuers to pay compensation to third parties who have suffered loss as a result of misstatements, or dishonest omissions in information published by the issuer, or dishonest delay by the issuer in publishing information.

An issuer would be liable to pay compensation to a person who acquires, continues to hold or disposes of the securities, and suffers loss in respect of the securities as a result of delay by the issuer in publishing information.

**Date:** 1 October 2010

**Source:** HM Treasury

**Further info:** [http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20101192\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20101192_en.pdf)

## Time to take action

- We urge boards to take the opportunity to express their views on the issues raised in the government's call for evidence on short-termism and corporate governance.
- Be aware of the potential implications for bidders and targets arising from the proposed changes to the Takeover Code.
- Consider the direct or indirect implications of the UK Stewardship Code for your company and your engagement with investors.
- Review your board committees' terms of reference in light of the new guidance notes from ICSA and determine if any amendments or updates are required.
- Familiarise the board with the new issuer liability regime, avoid delaying release of financial information beyond the stated regulatory requirements and take legal advice where necessary.

## On the horizon

- EC Green Paper on corporate governance of listed companies.
- Updated Higgs Guidance.
- Revised Guidance for audit committees.

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