



Governance in Brief

Your summary of the latest corporate governance developments

Headlines

- UK Bribery Act 2010 – just three months to comply.
- Deloitte urges the need for alignment between company stewardship and the Government's Plan for Growth.
- Government's Plan for Growth includes proposals on corporate governance.
- FRC announces inquiry into going concern assessments.

UK Bribery Act 2010 – just three months to comply

In Brief: From 1 July 2011 new and more stringent UK legislation will be in force to regulate bribery and corruption offences committed both in the UK and abroad. This timetable has been triggered by the issue of final adequate procedures guidance for the UK Bribery Act 2010 by the Ministry of Justice (MOJ).

The uncertainty and delays about the final guidance are now behind us and the Act is now very much a reality. So, after a number of months of initial consultation followed by a further period of recent review by Government and input from business, can organisations with business operations in the UK now be clear about what's expected of them to comply with the new legislation?

The revised guidance has been expanded in two key ways:

- it is a fuller and more comprehensive document which seeks to address many of the previous key areas of concern voiced by the business community including corporate hospitality and entertainment; the obligations of businesses to manage bribery risks within their supply chains; the impact of share listings in the UK; and the treatment of joint ventures and subsidiaries in the context of the actions of "associated persons"; and
- the finalised guidance has introduced the concept of proportionality. The guidance is explicit that companies are expected to adopt a proportionate approach to their management of bribery and corruption risk.

Whilst the finalised guidance has gone a long way to address many of the concerns aired over the past few weeks, the MOJ has by no means gone so far as to produce the checklist or safe harbour style guidance that many businesses might have hoped for. Businesses will still need to conduct their own assessments of the bribery and corruption risks faced by their operations and draw their own conclusions as to what policy and procedural enhancements might be required to address those risks.

The six general principles that are set out in the finalised guidance are:

- **Proportionate procedures** – an organisation should have anti-bribery and corruption procedures that are proportionate to the specific risks faced by the business and to the nature, scale and complexity of its operations.
- **Top level commitment** – senior management should demonstrate their commitment to preventing bribery, establish a culture that supports this commitment and communicate the company's anti-bribery policy throughout the organisation.
- **Risk assessment** – the company should perform a regular and comprehensive assessment of the nature and extent of its corruption risks.
- **Due diligence** – the company should understand the background and reputation of the parties with whom it does business.
- **Communication (including training)** – the company's anti-bribery policies should be effectively embedded in day to day business processes.
- **Monitoring and review** – the company should implement appropriate monitoring and review mechanisms to ensure compliance with relevant policies and procedures.

Doubtless questions will remain for many about how the new legislation will be enforced and, in particular, how discretion will be exercised by the authorities when bringing prosecutions. However, it is now even more important for companies to ensure that they have a robust risk assessment process and that any necessary changes to policy and procedures have been identified and implemented by 1 July 2011. Failure to do so will mean that there will be no possibility of an "adequate procedures" defence should the authorities bring an action against an organisation for a bribe that has been paid on their behalf.

Deloitte has extensive experience in helping companies understand what is required of them under the UK Bribery Act 2010 and is well positioned to support them in assessing and managing their risks. Please ask your local Deloitte contact or **Kirsty Searles** or **Nathalie Christie** for further information.

Date: 30 March 2011

Source: The Ministry of Justice

Further info:

<http://www.justice.gov.uk/guidance/bribery.htm>

Deloitte urges the need for alignment between company stewardship and the Government's Plan for Growth

In Brief: In the Deloitte response to the FRC's discussion paper "Effective Company Stewardship: Enhancing Corporate Reporting and Audit", we have highlighted the Government's Plan for Growth which emphasises that, while the UK model of corporate governance is not essentially flawed, the volume of reporting requirements for UK business and the associated costs have increased. The Plan for Growth also indicates that businesses and investors have stressed that there are ways to be more flexible and targeted in applying rules on reporting, accounting and audit. This is a view shared by Deloitte, as indicated in our letter to the Prime Minister in relation to the EC Green Paper on the role of audit.

In this context, our principal points on the FRC's effective company stewardship paper were as follows.

- Any significant change to the corporate reporting regime should be introduced only after the proposed change has been fully researched, analysed on cost/benefit grounds and subject to detailed consultation. In addition, the FRC should plan such changes so that they are introduced in reasonable batches at effective dates set sufficiently in advance. A constant drip-feed of modest amendments is both costly and damaging to British business.
- Annual reports need to tell clearly and succinctly the story. This is best achieved by a principles-based approach rather than prescriptive regulation. This approach is relevant to those standards applied both to auditors and to the preparers of annual reports.
- We welcomed the simplicity and focus of the guidance issued in August by the FRC within the FRRP's 2010 report. This provided nine key areas to focus on, to ensure that the annual report "tells the story" in an accessible and concise manner. In our view, this guidance should frame any further refinements to the existing reporting requirements.
- In our experience, audit committees have greatly enhanced certain governance functions. We are supportive of the proposal in the Discussion Paper to make their activities more visible to the users of accounts by including formal reports from the audit committees, signed by their chairmen. However, there is a delicate balance to be maintained. Delegating certain tasks to this sub-group of the Board is sensible, but we would not like to see change that is at risk of damaging the unitary nature of British boards by having one particular group of directors taking prime responsibilities in certain areas. We are confident that the FRC will have regard to this.

- Investor involvement in the appointment of auditors is to be encouraged, but the appetite for engagement in this process varies within the investor community. We are confident Boards would welcome guidance on how they may achieve greater engagement across the investor community.

- A measured approach is necessary when embracing technological change. Companies need to take care not to disenfranchise investors by moving prematurely to electronic reporting alone.

Date: 29 March 2011

Source: Deloitte

Further info:

http://www.deloitte.com/view/en_GB/uk/services/audit/corporate-governance/index.htm

<http://www.frc.org.uk/about/effcompsteward.cfm>

Government's Plan for Growth includes proposals on corporate governance

In Brief: The Government has indicated that in order to make the UK one of the best places in Europe to start, finance and grow a business, it must take action to remove regulatory burdens, improve corporate governance, improve access to finance, promote British exports, and encourage innovation.

On corporate governance, narrative reporting is recognised as an important part of the UK's internationally respected corporate governance framework which contributes to the attractiveness of the UK as a location for global business. Studies of UK narrative reporting conclude that the increasing length and complexity of reports goes against presentation of a clear, coherent and relevant picture of the business.

The Plan for Growth states that the Government will materially simplify narrative reporting for quoted companies to make it clearer and more focussed. In this regard it is hoped that such simplification will enable quoted companies to provide clear and relevant information to investors about strategy, performance and risk in a simpler and more concise report, with supporting information provided on the company's website.

The Government is expected to seek views from business by the end of July 2011 on the best ways to reduce burdens.

For example, by removing any requirements which duplicate similar reporting; improving non-regulatory guidance; and promoting a framework for company reporting which makes it as easy as possible for businesses to adapt to national and international developments.

Date: 23 March 2011

Source: HM Treasury and The Department for Business, Innovation and Skills

Further info: http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

FRC announces inquiry into going concern assessments

In Brief: The FRC has launched an inquiry to identify lessons for companies and auditors addressing going concern and liquidity risks. The inquiry will draw on the experience of companies and auditors who have had to address these issues in times of difficulty, including the credit crisis. The inquiry will recommend measures, if any, which are necessary to improve the existing reporting regime and related guidance for companies and auditors in relation to these matters.

The inquiry is being led by Lord Sharman of Redlynch, and will additionally include David Pitt-Watson (of Hermes) and Roger Marshall (of the ASB). In particular, the inquiry will examine:

- how companies ensure the adequacy, timeliness and reliability of the internal information used to monitor going concern and liquidity risks;
- how the board and, separately, the audit committee approach going concern and liquidity risks, particularly in situations where these issues are of heightened importance;
- how the consideration of going concern and liquidity risk can best be incorporated into other aspects of stewardship and reporting;
- how auditors approach these matters; and
- whether the existing reporting regime and related guidance should be developed.

It is expected that preliminary conclusions will be provided in the summer and final recommendations by the end of the year.

Date: 8 March 2011

Source: The Financial Reporting Council

Further info:

<http://www.frc.org.uk/press/pub2531.html>

Time to take action

- Be aware of the 1 July 2011 deadline and use the Bribery Act guidance to develop proportionate procedures on bribery and establish a robust risk assessment process.
- Given the FRC inquiry, it is expected that the Financial Reporting Review Panel will be looking at going concern and risk disclosures going forward.

On the horizon

- EC Green Paper on corporate governance of listed companies.

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Designed and produced by The Creative Studio at Deloitte, London. 10551A

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