



Governance in focus

On the board agenda
– half year update July 2018

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Foreword from William Touche

Dear Board Member,

The conversation about corporate governance in the UK has shifted. The new UK Corporate Governance Code that has now been published by the FRC in July will focus even more on the application of principles which should encourage improvement in the quality of corporate governance narrative for stakeholders to follow. Companies will be asked to explain alignment of purpose, strategy, values and culture. We say “should”, of course, because when companies bring alive their narratives as they are being encouraged to do, we hope that they will be rewarded by proxy agencies moving away from a box-ticking approach to something more thoughtful and by greater engagement from investors.

For our part, we hope that boards will see these changes as a real opportunity to enhance stakeholder understanding of their company with the objective of building trust in business. It will likely take boards some time to consider all the various aspects now being demanded, such as planning and implementing the best way to engage with the workforce. In this age of social media, the reputation of the board both within the company and externally is at stake in these new disclosures. The role of the company secretary in working with the Chair and the CEO will be hugely important in implementing these reforms: producing board guidance, identifying decision points, documenting the discussions held at board level and how the decisions reserved for the board are made, reflecting how stakeholder voices have been heard in the boardroom and ensuring this is all reflected clearly in public reporting. We anticipate the GC100 guidance on how section 172 of the Companies Act should be applied in the boardroom will be published over the summer and, of course, we will keep you well-informed.

This publication is designed as an update for you to help establish the agenda for the rest of 2018, to be read with our “deep dive” into the board agenda from November 2017, which is still available on our website [here](#).

You will be amazed at how much there is to get to grips with – and a good number of the new requirements require planning ahead. Do get in touch with your Deloitte partner or [email our governance team](#) if you want to discuss any of these matters further.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'W Touche'.

William Touche

Vice-Chairman

Leader, UK Centre of Corporate Governance

July 2018

Corporate governance reform – an update

We have seen an unprecedented amount of activity in relation to corporate governance over the past two years. Driven initially by Theresa May as she set out her mission to create an economy that works for all when she became Prime Minister. Further high profile corporate collapses have continued to put pressure on the Government and regulators to respond robustly to the perceived issues. In addition to the BEIS Green Paper there has been a BEIS Committee inquiry on corporate governance, a joint BEIS/DWP

Committee inquiry into the collapse of Carillion and the FRC has consulted on and now issued a new-style UK Corporate Governance Code.

In our publication '[On the board agenda – the 2018 reporting season](#)' issued in November 2017 we provided a summary of the Government's governance reform activities and set out the package of reforms proposed. Here is an update on the progress on those reforms.

Executive pay	Latest position
<p>Secondary legislation to be introduced requiring quoted companies to:</p> <ul style="list-style-type: none"> Report annually the ratio of CEO pay to the average pay of their UK workforce together with a narrative explaining changes in the ratio from year to year and setting the ratio in the context of pay and conditions across the wider workforce; Provide a clearer explanation in remuneration reports of the range of potential outcomes from complex, share-based incentive schemes. 	<p>BEIS issued this secondary legislation on 11 June 2018. It requires disclosures to be included in the Directors' Remuneration Report by all companies that are both quoted and UK registered (companies with fewer than 250 UK employees are not required to provide the pay ratio disclosures).</p> <p>As a reminder, "quoted" means UK registered companies that are quoted on the UK Official List, the New York Stock Exchange, NASDAQ or a recognised, regulated stock exchange in the European Economic Area. It does not include companies listed on the Alternative Investment Market.</p> <p>For further detail of the requirements please see our publication "Governance in brief – BEIS issues legislation to deliver key corporate governance reforms – June 2018".</p> <p>The requirements apply for periods commencing on or after 1 January 2019. However, we are hearing that investors will wish to see pay ratios in December 2018 annual reports.</p>

Executive pay	Latest position
<p>The FRC will be invited to revise the UK Corporate Governance Code to:</p> <ul style="list-style-type: none"> • Be more specific about the steps that premium listed companies should take when there is significant shareholder opposition to executive pay policies and awards; • Extend the remit of remuneration committees to also oversee pay and incentives across their company and to require those committees to engage with the wider workforce to explain how executive remuneration aligns with wider company pay policy; and • Extend the recommended minimum vesting and post-vesting holding period for executive share awards from 3 to 5 years. 	<p>The FRC has incorporated these proposals into the 2018 UK Corporate Governance Code which was issued on 16 July and has also taken the opportunity to do a fundamental review and to modernise the Code.</p> <p>The changes outlined below include the Government’s requested changes.</p> <p>There are new principles on:</p> <ul style="list-style-type: none"> – alignment of company purpose, strategy, values and corporate culture; – effective engagement with shareholders and stakeholders; – responsibilities of the board to ensure that workforce policies and practices are consistent with the company’s values and support its long-term sustainable success; – consideration of the length of service of the board as a whole and the need regular board refreshment; and – alignment of remuneration and workforce policies to the long-term success of the company and its values. <p>There are new Code provisions on:</p> <ul style="list-style-type: none"> – the board’s role in monitoring and assessing culture; – mechanisms for gathering the views of the workforce; – reporting on how stakeholder interests, and the other matters in s172 CA2006 have influenced the board’s decision making; – succession planning and board member contribution; – diversity and inclusion; – the length of tenure of the chair; – board responsibility for identifying and assessing emerging risks (in addition to the principal risks); – holding periods for long-term incentive schemes; and – pension arrangements. <p>This is a major change and it will be a challenge for boards to ensure the right decisions and actions have been taken by the time the new Code is effective on 1 January 2019. For a detailed run-down of the Code, its package of supporting guidance and our view on the changes, see Governance in brief – FRC issues new UK Corporate Governance Code.</p>
<p>The Investment Association will be asked to develop and maintain a public register of listed companies encountering more than a 20% shareholder vote against pay awards, along with a record of what these companies say they are doing to address shareholder concerns.</p>	<p>In December 2017 the Investment Association launched the public register based on the voting results from the 2017 AGM season. Rather than focusing solely on pay awards the register records votes on any resolution receiving a 20% or more shareholder vote against.</p> <p>There is a near doubling this year of votes against the reappointment of individual directors.</p> <p>You can access the public register at www.theinvestmentassociation.org/publicregister.html</p>

<p>Executive pay</p>	<p>Latest position</p>
<p>The Government will examine the use of share buybacks.</p>	<p>In January 2018 the Government announced a study as there are concerns that some companies use this mechanism to inflate executive pay. The Government will use the research to decide whether further action is required. We expect to hear more on this later in 2018.</p>
<p>Strengthening the employee, customer and wider stakeholder voice</p>	<p>Latest position</p>
<p>Secondary legislation will be introduced requiring all companies of significant size (both public and private - suggested to be a threshold of 1,000 employees subject to further consideration) to explain how their directors comply with the requirements of s172 to have regard to employee interests and to fostering relationships with suppliers, customers and others.</p>	<p>BEIS issued this secondary legislation on 11 June 2018. It requires disclosures to be included in the Strategic Report and the Directors' Report.</p> <p>BEIS has chosen to use a different scope for this legislation than previously indicated. The new Section 172(1) Statement will need to be provided in the Strategic Report by all companies qualifying as large under the Companies Act 2006.</p> <div data-bbox="579 1176 1481 1355" style="background-color: #0070c0; color: white; padding: 10px;"> <p>As a reminder, companies qualifying as large under the Companies Act 2006 meet at least two of the following criteria:</p> <ul style="list-style-type: none"> • Turnover of more than £36m • Balance sheet total of more than £18m • More than 250 employees </div> <p>The Directors' Report requirement is in two parts and can be covered by the Section 172(1) Statement in the Strategic Report where appropriate – there is no need to duplicate. For further detail of the requirements please see our publication “Governance in brief – BEIS issues legislation to deliver key corporate governance reforms – June 2018”.</p> <p>The requirements apply for periods commencing on or after 1 January 2019.</p>
<p>The FRC will be invited to include a new Code Principle strengthening the voice of employees and other stakeholder interests at board level when it consults on changes to the Code later this year. Further, a specific Code provision is suggested requiring premium listed companies to adopt, on the “comply or explain” basis, one of three employee engagement mechanisms: a designated non-executive director; a formal employee advisory council; or a director from the workforce.</p>	<p>See earlier comments in relation to the new FRC Code.</p> <p>In relation to this particular element of the reforms there are two points to note. The FRC has made a conscious decision in the Code to change the reference from ‘employee’ to ‘workforce’ to better reflect the broader spectrum of employment mechanisms in use at present. And the FRC has attempted to allow more flexibility in the engagement mechanisms to be adopted by companies rather than restricting companies to the three set out in the Government’s reforms.</p>

<p>Strengthening the employee, customer and wider stakeholder voice</p>	<p>Latest position</p>
<p>ICSA and the Investment Association have issued joint guidance on practical ways in which companies can engage with their employees and other stakeholders at board level. In addition, the GC100 has been asked to publish new advice and guidance on the practical boardroom interpretation of the directors’ duty in section 172.</p>	<p>The ICSA and Investment Association issued their guidance “The stakeholder voice in board decision making” in September 2017. You can access it at https://www.icsa.org.uk/assets/files/free-guidance-notes/the-stakeholder-voice-in-Board-Decision-Making-09-2017.pdf</p> <p>The GC100 guidance is expected over the summer. We will issue a briefing note when it is available.</p>
<p>Corporate governance in large privately-held business</p>	<p>Latest position</p>
<p>Secondary legislation will be introduced to require all companies of a significant size to disclose their corporate governance arrangements in their Directors’ Report and on their website, including whether they follow any formal code. The Government’s initial view is that these requirements should apply to companies with more than 2,000 employees. A similar requirement for Limited Liability Partnerships of similar scale will also be considered.</p>	<p>BEIS issued this secondary legislation on 11 June 2018. It requires the disclosure to be included in the Directors’ Report by all companies with either:</p> <ul style="list-style-type: none"> • 2,000 or more global employees; • or a turnover over £200 million globally and a balance sheet over £2 billion globally. <p>For further detail of the requirements please see our publication “Governance in brief – BEIS issues legislation to deliver key corporate governance reforms – June 2018”.</p> <p>The requirements apply for periods commencing on or after 1 January 2019.</p>
<p>The FRC will be invited to work with the Institute of Directors, the CBI, the Institute of Family Business, the British Venture Capital Association and others to develop a voluntary set of corporate governance principles for large private companies under the chairmanship of a business figure with relevant experience.</p>	<p>James Wates was appointed as chair of this coalition group and the Wates Corporate Governance Principles for Large Private Companies is a voluntary framework which has been issued for a 12 week public consultation. The aim is to finalise them for publication in December 2018 to align with the introduction of the Government’s new reporting requirement.</p> <p>Please see the box on the next page for the details on the principles.</p>

The Wates Principles for Corporate Governance

Proposing a beautifully simple “apply and explain” approach, companies choosing to report against the Wates Principles are expected to provide a supporting statement for each principle that gives an understanding of how their corporate governance processes operate and achieve the desired outcomes.

Purpose	An effective board promotes the purpose of a company, and ensures that its values, strategy and culture align with that purpose.
Composition	Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.
Responsibilities	A board should have a clear understanding of its accountability and terms of reference. Its policies and procedures should support effective decision-making and independent challenge.
Opportunity and risk	A board should promote the long-term success of the company by identifying opportunities to create and preserve value, and establishing oversight for the identification and mitigation of risks.
Remuneration	A board should promote executive remuneration structures aligned to the sustainable long-term success of a company, taking into account pay and conditions elsewhere in the company.
Stakeholders	A board has a responsibility to oversee meaningful engagement with material stakeholders, including the workforce, and have regard to that discussion when taking decisions. The board has a responsibility to foster good stakeholder relationships based on the company’s purpose.

Updated QCA Corporate Governance Code

To coincide with the change to the AIM Rule 26, which now requires companies to report on the application of a recognised corporate governance code, a revised version of the QCA Corporate Governance Code has been made available. It includes 10 corporate governance principles that companies should follow:

Deliver growth	<ol style="list-style-type: none"> 1. Establish a strategy and business model which promote long-term value for shareholders 2. Seek to understand and meet shareholder needs and expectations 3. Take into account wider stakeholder and social responsibilities and their implications for long-term success 4. Embed effective risk management, considering both opportunities and threats, throughout the organisation
Maintain a dynamic management framework	<ol style="list-style-type: none"> 5. Maintain the board as a well-functioning, balanced team led by the chair 6. Ensure that between them the directors have the necessary up-to-date experience, skills and capabilities 7. Evaluate board performance based on clear and relevant objectives, seeking continuous improvement 8. Promote a corporate culture that is based on ethical values and behaviours 9. Maintain governance structures and processes that are fit for purpose and support good decision-making by the board
Build trust	<ol style="list-style-type: none"> 10. Communicate how the company is governed and is performing by maintaining a dialogue with shareholders and other relevant stakeholders

For more information please see [“Governance in brief - The QCA updates its Corporate Governance Code as AIM tightens rules – May 2018”](#).



The 2018 AGM season – it’s getting personal

We have noted previously how investors are increasingly using their votes on annual director re-election to demonstrate dissatisfaction with the contribution of individual directors. This growing trend is more transparent now that we have the Investment Association’s Public Register of all resolutions receiving 20% or more of votes cast against the resolution.

For 2018, in the period to 7 June, there have been 55 votes on director re-election receiving 20% or more votes against, more than double the number in 2017, when in the same period there were 26. We should point out that none of the votes in 2018 have exceeded 50% against, so the directors concerned have all been reappointed, but there is still a clear message being sent about specific concerns.

As in 2017, the key reasons disclosed in 2018 for the opposition were as follows:

Independence	A vote against due to a perceived lack of independence. In particular, concern has been raised where the individual is also the chair of the Audit Committee or on the Remuneration Committee.
Remuneration	Often where there are issues around remuneration policies there can be votes against the Remuneration Committee Chair and in a few cases the entire Remuneration Committee and the Board Chairman.
Over-boarding	Holding too many board mandates continues to attract concern from investors. In some cases, companies made clear that the director concerned was re-balancing their portfolio but many responded to state that they were satisfied that the director was demonstrating an appropriate level of commitment to their board.
Other	We also saw significant votes against on the grounds of being an executive chairman, poor attendance at meetings and against the Chair of a board where there was no female representation.

Independent Review of the Financial Reporting Council (The Kingman Review)

The Government launched a review of the FRC in April 2018 headed up by Sir John Kingman. The review is due to report by the end of 2018. Its remit is to examine the role and powers of the FRC, to assess its governance structures, impact, and whether the powers it has are sufficient.

The intention is to ensure the regulatory structure is sound and sufficiently robust to be successful once the UK has left the EU.

There is an open **call for evidence** on FRC effectiveness, strength of corporate governance standards, audit regulation and financial reporting. The consultation period opened on 6 June 2018 and closes on 6 August 2018.

Corporate reporting – working towards your year-end report

A few tips and reminders for areas you may wish to build into the audit committee agenda during the remainder of 2018:

Corporate Reporting Review Briefing

In June 2018, the Corporate Reporting Review (CRR) Team issued a concise **briefing** setting out the CRR’s view of current “hot topics” for preparers of listed company reports, many of which are relevant to interim reports. We have included key areas below.

Area of reporting	Points for your agenda
<p>New accounting standards – IFRS 15, IFRS 9 – focus required at interim stage</p>	<p>The FRC has announced a thematic review relating to the implementation of new standards within 2018 interim accounts. This is also a key area covered in the CRR’s briefing.</p> <p>The FRC points out that IAS 34 “Interim Financial Statements” requires companies to give a description of the nature and effect of a change of accounting policy since the last annual report. Therefore it expects to see:</p> <ul style="list-style-type: none"> – quantitative disclosure to be accompanied by informative and detailed explanation of the changes, tailored to the company’s specific circumstances and transactions; – any key judgments made by management in applying the new concepts and methodologies that are introduced by the new standards to be clearly explained; and – an explanation of how the transition has been implemented. <p>The FRC points out that even companies that are not required to apply IAS 34 should include disclosure sufficient to provide meaningful information.</p> <p>We anticipate that the quantity of disclosure each company produces on each standard will depend on the complexity of the circumstances of individual industries and individual company circumstances. It is well worth the audit committee’s time to consider the quality of the disclosure in the interim report and seek the views of the external auditor.</p> <p>Getting this right at interim stage, will mean that almost all the difficult work will already be done by the time of the annual report!</p>

Area of reporting	Points for your agenda
Other matters in the CRR Briefing	<p>In addition to new accounting standards, the CRR Briefing also discusses topical issues and areas identified from recent CRR reviews.</p> <p>Topical issues:</p> <ul style="list-style-type: none"> • The transparency of supplier finance arrangements, such as reverse factoring – the CRR expects companies to disclose “the nature of any material supplier financing arrangements, the implications for the company’s liquidity and the relevant amounts”, along with any significant accounting judgements. • Asset impairment, where the CRR plans to pay specific attention to disclosures in market sectors where there have been a number of profit warnings or impairment issues and also to the FRC’s priority sectors of financial services, oil and gas, general retailers and business support services. <p>Areas identified from recent CRR reviews:</p> <ul style="list-style-type: none"> • A reminder that materiality for disclosures should be determined with reference to IFRS figures, not just alternative performance measures. • Classification issues with respect to cash flow statements. • Careful application of IAS 33 when calculating earnings per share (EPS). • A reminder regarding the requirements of the Companies Act 2006 for new interim accounts to be filed before a dividend is paid that is in excess of the reported distributable profits in the most recent audited accounts.

Area of reporting	Points for your agenda
<p>Reporting of performance metrics – FRC Lab report</p>	<p>The FRC’s Financial Reporting Lab issued a report in June on reporting of performance metrics (known as alternative performance measures or APMs where the metrics are not GAAP measures).</p> <p>Key principles for disclosure investors seek in reporting of performance metrics are that they should be:</p> <ul style="list-style-type: none"> • Aligned to strategy: <ul style="list-style-type: none"> – insight into business model, strategy and competitive advantage and measures success; – demonstrates how the company creates long term value; – used internally to make business decisions and manage, monitor and incentivise achievement of strategy. • Transparent: <ul style="list-style-type: none"> – how metrics are calculated and defined so that investors can make their own assessments; – clear reconciliations of non-GAAP to GAAP; – clear explanation of why metrics have been used and why non-GAAP is a more faithful representation of value generated than GAAP. • In context: <ul style="list-style-type: none"> – shows performance, position and prospects, with an explanation where performance is different from what the company was trying to achieve. • Reliable: <ul style="list-style-type: none"> – information about the process and controls over developing, monitoring and reporting reliable metrics; – clarity over the level of scrutiny metrics are subject to, including at board level. • Consistent: <ul style="list-style-type: none"> – calculated consistently year on year and presented consistently across reporting formats; – a track record, preferably over five years; – enough detail to allow effective comparisons with similar companies. <p>The Lab report includes a helpful table covering each principle and offering questions that boards can ask themselves to identify whether the information they present is as useful to investors as it can be.</p> <p>The next stage of the Lab’s project will include examples of how companies have put the principles into practice and will be published in Autumn 2018.</p>
<p>Longer term viability statement – prospects</p>	<p>The FRC has explained that it envisages a two stage process for the longer term viability statement, with separate narrative on each aspect – the first being the longer term prospects of the company – and the second being the directors’ reasonable expectation of viability for the period of their assessment of viability. It is expected both by investors and by the FRC that the period over which directors assess the prospects of the company should be considerably longer than the period for the viability assessment.</p>

Area of reporting	Points for your agenda
Principal risks disclosure	<p>In the light of the FRC Lab report on risk and viability reporting, published at the end of 2017, plus the changes brought in by the non-financial reporting amendments to the Companies Act, the FRC and investors are looking for much more granular and company-specific detail on principal risks.</p> <p>In particular, boards and audit committees should focus on articulating how risks are specific to the company, how they are categorised and prioritised, how movements in principal risks are explained and the detail and specificity of the disclosures of mitigating activity.</p> <p>When directors are considering priority areas in respect of risk disclosures, key current issues include:</p> <ul style="list-style-type: none"> • Cyber risk – see our recent publication Cyber risk reporting in the UK • Brexit – is there up to date information on the company's approach and how this will impact the business model? • IT systems – recent issues encountered by a major bank have highlighted that technology failure can cause considerable difficulty and raise attention of Government and regulators.
Audit committee reporting	<p>In addition to the new requirements which came in for December 2017 year ends via the FRC's Guidance on Audit Committees, investor expectations are outlined in the FRC's A&A Lab report on audit committee reporting published in December 2017.</p> <p>Key to audit committee communication is the work done on significant risks. In particular, is it clear, from reading the audit committee report, why the significant issues relating to the financial statements were deemed to be significant, what challenges the audit committee raised on those issues and what the conclusion was?</p> <p>Audit committees should also carefully consider whether the internal audit scope covers the areas of principal risk – is the third line of defence effective? Disclosure in this area is increasingly the subject of external attention.</p>
Company purpose	<p>There is an increased focus on company purpose and how this aligns to strategy, values and culture. This comes through in the planned new Code provisions and also in the FRC's planned update to its Guidance on the Strategic Report.</p> <p>The Code will come into effect for the year commencing 1 January 2019, so boards will be spending some time on this area in the coming months, and of course leading companies will wish to include as much as they can in their 2018 annual report.</p>
s172 – reporting on stakeholders	<p>The FRC has been calling for improved disclosure on stakeholder identification and how their views are gathered and taken into account in the boardroom. After all, s172 is a provision of the 2006 Companies Act.</p> <p>Legislation will come into effect for the year commencing 1 January 2019, so if you are not engaged in this already, you should really now be engaging in activities to identify key stakeholders, and working on articulating how the board gathers and takes into account their views. And of course, remember there are other areas of s172 other than stakeholder engagement that the new statement must also address.</p>

Building tax into your agenda

Getting the balance right

The role of the board is to ensure that the company pays the right amount of tax. Companies like to strike the right balance for tax, making sure the company is managing cost and uncertainty, whilst also ensuring that the associated risk has appropriate governance oversight and the reputation of the business is protected.

Focus on managing cost and uncertainty

Brexit – are you ensuring tax considerations are factored into any business changes taking place in response to Brexit, which may include supply chain changes or movement of people?

US tax reform – now that the dust has settled, what is the impact to your business? Should anything more be done? Is it time to consider changes to investment structures that are no longer optimal from a tax perspective?

Changes to EU and UK taxation regulations – recent and forthcoming developments such as new restrictions on loss relief and interest expense limitations should inform decision making around, for example, the location of external and intra-group debt. Furthermore have you assessed how your business may be impacted by European Commission State Aid investigations into tax regimes, including the UK’s Controlled Foreign Company (CFC) rules?

Taxation of the digital economy – how could your business be affected by changes to taxing the digital economy, which is an area of focus in the UK and the EU?

Transfer pricing – if you operate across jurisdictions, do you understand and can you clearly explain the value chain, and do transfer pricing arrangements reflect reality in terms of where value is created? Does your documentation demonstrate the alignment of transfer pricing outcomes with value creation?

Focus on governance and risk

Own taxes – there are heightened expectations for senior management to get assurance over the business’ own tax affairs, for instance to monitor the UK published tax strategy and compliance with the Senior Accounting Officer regime.

Taxes of others – in addition, there is now a further expectation that senior management will take responsibility for the tax affairs of others as a consequence of the new corporate criminal offence for failing to prevent the facilitation of tax evasion.

Transparency – at the same time there are greater tax transparency requirements with the need for all disclosures to be accurate and consistent.

Technology – finally, businesses are ensuring their finance and tax reporting platforms are robust and aligned with regulatory requirements, such as Making Tax Digital.

Need to know about: State Aid

The European Commission is investigating whether the “Financing Exemption” in the UK Controlled Foreign Companies (CFC) rules constitutes an unlawful regime under EU State Aid rules. The Commission may reach its decision as early as this year. If the Commission decides that this aspect of UK law, which in effect provides a partial exemption from UK tax on certain cross-border financing activity, is indeed an unlawful regime then the UK will likely be required to recover the aid (i.e. the tax benefit granted) from taxpayers. It would be expected that there would be appeals to the European and UK Courts.

A large number of UK-listed companies have availed themselves of this regime and many have made disclosures of potential liabilities in their financial reporting pending the Commission’s final decision.

Boards are encouraged to ensure that they understand whether their businesses have any exposure to this issue, the financial amounts involved, and decide how the business would deal with disclosure and potential payment obligations in the event of a negative decision.

Data privacy: board supervision of the new regime

GDPR implementation: accomplished?

The excitement of 25 May 2018 as the final implementation date for the General Data Protection Regulation (GDPR) has come and gone and filled all of our inboxes with consent requests and updated data privacy policies.

Over the last few years, companies have put in a great deal of work to reach this point. Privacy standards have been enhanced and alongside those the expectations of individuals and the commitment we see from companies.

Boards should now have a better understanding of the personal data their organisation holds and how it is used. Some companies will have been on a journey to see data privacy as an enabler – a way to reach customers more effectively and foster trust – and not as a burden.

Of course, the new data protection regulations – the GDPR, which has direct effect across all EU member states and, in the UK, the Data Protection Act 2018 (DPA 2018) – which together form the new data protection regime in the UK, are here to stay.

It's worth remembering that data privacy compliance is not a race to a finish line just crossed, but a continuous journey. Privacy laws and the expectations placed on companies by consumers and regulators will continue to evolve as technology itself evolves. How then should the board prepare for and continue to monitor this new world of data protection?

Developing your KPIs

Boards may wish to focus on the number of subject rights requests of different kinds the organisation deals with and how timely responses are, in addition to detail on any data breaches.

It is worth bearing in mind that time horizons for companies to react are much tighter under the new regime and that a lot of work may need to go into meeting requests the organisation receives. Subject rights requests such as the right to information, the right to subject access, the right to rectification and the right to be forgotten should be met within 30 days. Data breaches need to be reported within 72 hours.

Key questions for the board

Current position

- Do you know how compliant the business is at present? Is it worth getting a current picture of the level of compliance through a desk top assessment, compliance check or audit of policies, processes and controls?
- Does the board know the level of cyber insurance it currently has and how far that would cover any data privacy breach – remembering that fines under the GDPR can be up to 4% of global turnover for the worst breaches?
- Does internal audit have data privacy on the current year's audit plan? If not, should it?

Future considerations

- How will data privacy be built into future strategic decisions? Does the board have this expertise itself or will it need an internal or external expert to advise on the impact of board decisions for data privacy?
- Should data privacy be a matter reserved for the board as a whole or should regular updates be delegated to another committee – for instance, the audit committee or the risk committee – with key recommendations brought to the board?
- How regularly should updates on data privacy, including data privacy breaches, be brought to the board or the designated committee? What is the route and how quickly will the board hear about these matters?
- What KPIs or performance metrics should be tracked and reported upon – for instance, the incidence and cost of different subject rights?

Appendix: Areas for your agenda – a reminder

All Governance in brief and Governance in focus publications can be found at www.deloitte.co.uk/governancelibrary. Need to Know and other accounting publications can be found at <https://www.iasplus.com/en-gb>

Requirements for 2018

Agenda item	Reference material – with clickable links where available	On the board agenda? Timing?
<p>Final activity and disclosures around implementing IFRS 15 Revenue from Contracts with Customers</p> <p>Periods commencing on or after 1 January 2018</p>	<p>Need to Know – disclosing the new adoption of accounting standards</p> <p>Page 09</p>	
<p>Final activity and disclosures around implementing IFRS 9 Financial Instruments</p> <p>Periods commencing on or after 1 January 2018</p>	<p>Need to Know – disclosing the new adoption of accounting standards</p> <p>Page 09</p>	
<p>Complete implementation of IFRS 16 Leases</p> <p>Periods commencing on or after 1 January 2019 – early adoption permitted</p>	<p>Need to Know – disclosing the new adoption of accounting standards</p>	
<p>Data privacy and GDPR – ensuring fully in place including reporting key KPIs to the board or board committee</p> <p>Effective 25 May 2018</p>	<p>Page 14</p>	
<p>Taxation – including state aid decision expected during 2018</p>	<p>Page 13</p>	
<p>2018 UK Corporate Governance Code – consider board’s approach to implementing key elements such as board independence</p> <p>Periods commencing on or after 1 January 2019 – action needed in advance</p>	<p>Governance in brief – FRC issues new UK Corporate Governance Code</p> <p>Pages 03 – 04</p>	

Agenda item	Reference material – with clickable links where available	On the board agenda? Timing?
<p>Payment practices and performance reporting requiring director sign-off</p> <p>For December year end companies, the first report is expected by 30 July 2018</p>	<p>Governance in brief – new duty to report on payment practices and performance</p>	
<p>Diversity disclosures – board diversity policy, objectives and outcomes under DTR 7.2.8AR</p> <p>Periods commencing on or after 1 January 2017</p>	<p>On the board agenda H2 2017 (page 20)</p>	
<p>For AIM companies: Select “recognised corporate governance code” and include disclosure on website</p> <p>By 28 September 2018</p>	<p>Governance in brief: The QCA updates its Corporate Governance Code as AIM tightens rules</p> <p>Page 07</p>	
<p>For large private companies: Select corporate governance code, if desired, and consider future reporting obligations.</p> <p>Periods commencing on or after 1 January 2019</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Pages 05 – 06</p>	
<p>CEO pay ratio – see Requirements for 2019 below.</p> <p>Periods commencing on or after 1 January 2019 – however investors are pushing for disclosure in 2018</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Page 02</p>	

Requirements for 2019 and beyond

Agenda item	Reference material – with clickable links where available	On the board agenda? Timing
<p>CEO pay ratio – in the Directors’ Remuneration Report; need to manage internal and external messaging; also note complex to gather needed information for new disclosures</p> <p>Periods commencing on or after 1 January 2019 – however investors are pushing for disclosure in 2018</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Page 02</p>	
<p>S172 of the Companies Act – identifying key stakeholders and understanding current engagement activity and areas to develop – new disclosure requirements in the Strategic Report</p> <p>Periods commencing on or after 1 January 2019</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Page 04</p>	
<p>UK employee engagement disclosure in the Directors’ Report – noting the methods proposed by the Code for employee engagement which should be in place by 1 January 2019¹</p> <p>Periods commencing on or after 1 January 2019</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Page 04</p>	
<p>New disclosures on business relationships in the Directors’ Report¹</p> <p>Periods commencing on or after 1 January 2019</p>	<p>Governance in brief – BEIS issues legislation to deliver key corporate governance reforms</p> <p>Page 04</p>	

¹ Note that if disclosures on UK employee engagement and business relationships have been addressed by the s172 disclosure in the Strategic Report, a cross-reference from the Directors’ Report will be sufficient.

Agenda item	Reference material – with clickable links where available	On the board agenda? Timing
<p>Gender pay gap – second year of reporting – looking for indicators of change and / or discussion of planned change</p> <p>Reporting by 5 April 2019</p>	<p>On the board agenda 2018 (page 21)</p>	
<p>Diversity disclosures – gender diversity of the executive committee and their direct reports (“Hampton-Alexander disclosures”)</p>	<p>On the board agenda 2018 (page 20)</p>	

Also look out for

Agenda item	Reference material – with clickable links where available	On the board agenda? Timing
<p>Climate change – substantial investor interest, increasing regulatory interest, decisions to be made on how much to include in s172 statement and whether to adopt TCFD disclosures</p>	<p>https://www.tcfhub.org/home/recommendations</p>	
<p>Internal audit – is the internal audit function fit for purpose and ready for new challenges?</p>	<p>Becoming agile – elevate internal audit https://www2.deloitte.com/uk/en/pages/finance/articles/agile-internal-audit-planning-performance-value.html</p>	
<p>Diversity disclosures – consider disclosures on ethnic diversity at board level (Parker review) and company level (McGregor-Smith review)</p>	<p>On the board agenda 2018 (page 20)</p>	
<p>FRC’s annual improvement disclosure recommendations</p>	<p>Recent interim advice at: https://www.frc.org.uk/news/june-2018/corporate-reporting-review-briefing</p>	
<p>GC100 guidance on s172 in the boardroom</p>	<p>Expected during 2018</p>	
<p>FRC’s updated Guidance on the Strategic Report</p>	<p>Expected during 2018</p>	
<p>FRC’s A&A Lab second report on reporting by auditors to audit committees</p>	<p>Expected during 2018 The first report on the reporting of audit committees is at this link</p>	

The Deloitte Centre for Corporate Governance

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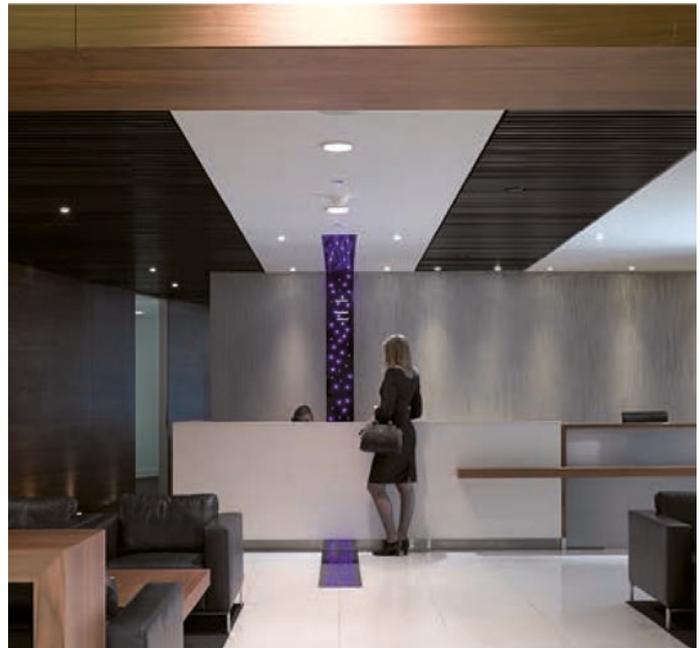
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