



CORPORATE GOVERNANCE UPDATE

In early 2017 we reported that following various scandals affecting business in the UK, the Government had made it clear that it intended to crack down on unacceptable boardroom behaviour.

A report published by the Business, Energy and Industrial Strategy Committee suggested that the existing law governing corporate governance did not require revision. However, the Committee recommended a number of measures including a voluntary code of corporate governance for large private companies.

Since then, the spotlight has remained firmly on issues of corporate governance with events such as the collapse of Carillion in early 2018 adding to the sense that the UK's corporate governance regime should be revisited.

“The Government will aim to make more training and guidance available to directors. This training will be tailored to suit companies of differing sizes and will focus on raising the awareness of directors on their legal duties.”

On 20 March 2018 the Government launched a consultation on Insolvency and Corporate Governance (Insolvency and Corporate Governance Consultation). This consultation sought views on ways to reduce the risk of major company failures occurring through poor governance or stewardship and to increase the responsibilities of directors when companies are in, or approaching, insolvency. Two months later the Government launched a related consultation which explored potential improvements to the UK's corporate insolvency regime.

Having received 93 responses from a range of professional advisers, shareholders can escalate concerns about company management:

- Giving shareholders greater power over the payment of dividends.
- Improving the training and guidance offered to directors.

The key targets in relation to corporate groups are increased transparency through the maintenance of clear records that set out the group structure and the identity of all directors and the enhanced ability of a third party to know with certainty the identity of the company with which it is contracting. To assist in the achievement of these targets the Government will consider the issuance of further guidance to corporate groups, the introduction of a requirement on groups of a

significant size to make available an organogram of their corporate structure and the simplification of the process through which redundant companies are dissolved.

The Government intends to work with investors, regulators and other interested parties to consider whether a safe and secure channel can be established through which institutional investors can privately and formally raise concerns about the management of a company by its directors to regulators, the company board or to both.

The Government has stated that it will, together with legal and accountancy bodies and business groups, consider a comprehensive review of the UK's dividend regime.

The Government has stated its concern over growing trend for companies to only pay an interim dividend and has asked the Investment Association to assess the prevalence of this practice. It will also consider legislating to ensure that there is at least one shareholder vote on dividends each year for a listed company.

The Government will aim to make more training and guidance available to directors. This training will be tailored to suit companies of differing sizes and will focus on raising the awareness of directors on their legal duties. The Government will also consider whether some level of training should be mandatory for directors of large companies.

Insolvency Framework

One of the Government's aims is to improve the insolvency framework to deal with major corporate failures. In particular, the Government will introduce measures to:

- Increase the accountability of directors in group companies that sell subsidiaries in distress.
- Enhance the recovery powers available to insolvency practitioners in relation to value extraction schemes.
- Increase the investigative powers available in instances where directors of dissolved companies are suspected of having breached their legal obligations.

The Government wishes to introduce measures that minimise the risk of deterring legitimate business rescue whilst ensuring that directors are aware of their duties when selling a subsidiary in financial difficulties. Guidance is to be developed outlining the steps that a director should take when considering the sale of an insolvent subsidiary, which will ensure that only those directors that had no reasonable belief that the subsidiary's stakeholders would be no worse off as a result of the sale than if the subsidiary entered liquidation or administration will be at risk of disqualification. It will also reduce the period after the completion of the sale within which a director is at risk from two years to twelve months.



The Company Director Disqualification Act 1986 will also be amended to extend the investigative regime to include all former directors of dissolved companies and to ensure that actions are possible against a former director of a dissolved company without needing to restore that company to the Register of Companies.

Insolvency Framework Consultation

The aim of the Insolvency Framework Consultation was to improve the corporate insolvency framework in order to enable more rehabilitations of viable businesses by proposing measures to help companies in distress. Such measures include the introduction of a new moratorium to assist business rescue and the introduction of a new restructuring process.

The new moratorium, which would be available to companies meeting certain eligibility criteria and qualifying conditions, would prevent creditor enforcement action being taken against a company for an initial period of twenty eight days. This initial period could be extended for a further period of twenty eight days and for a further undefined period with the approval of the creditors or the courts.

The new restructuring process would be binding on all creditors, including those that vote against the plan. Under the Government's proposals, the company would send

a restructuring plan proposal to all creditors and shareholders and that proposal would be filed at court. In the event that no challenges or counter-proposals are brought the creditors and shareholders will vote on the proposal. Creditors holding at least seventy five per cent of the company debt in each class of creditor would need to vote in favour of the proposal for it to pass.

Conclusion

Further detail will be added to the proposals and measures set out in the Government Response in the Autumn of this year and it is likely that further consultation on the details of the proposed measures will be needed.

With the collapse of Carillion still looming large in the background, reform is arguably needed to improve the transparency within corporate structures, to provide more guidance and training to those in positions of power, thereby increasing the quality of governance and stewardship throughout companies, and to improve the tools available to those seeking to rehabilitate companies that are on the verge of collapse. The proposed measures discussed in the Government Response seek to implement and facilitate this reform and, in principle, this is to be encouraged. Legal and commercial uncertainty should however be avoided (particularly in light of the

uncertainty created by Brexit in any event) and it is hoped that further review and consultation prior to any implementation will minimise any unintended consequences.

Should you have any queries, please do not hesitate to contact the author of this briefing:



ALEX KYRIAKOULIS

Partner, London

T +44 (0)20 7264 8782

E alex.kyriakoulis@hfw.com

HFW has over 550 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about our energy capabilities, please visit [hfw.com/energy](https://www.hfw.com/energy)

[hfw.com](https://www.hfw.com)

© 2018 Holman Fenwick Willan LLP. All rights reserved. Ref: 00502

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Souhir Jemai on +44 (0)20 7264 8415 or email souhir.jemai@hfw.com

Beirut Brussels Dubai Geneva HongKong Houston Jakarta Kuwait London Melbourne Paris Perth Piraeus Rio de Janeiro Riyadh São Paulo Shanghai Singapore Sydney