Debevoise & Plimpton

The Debrief

FRC Publishes 2024 UK Corporate Governance Code

31 January 2024

The Financial Reporting Council (the "FRC") has published the 2024 UK Corporate Governance Code (the "Code"), which will come into effect on 1 January 2025 (except for Provision 29, which will come into effect on 1 January 2026). The current UK Corporate Governance Code, last updated in 2018 to promote good corporate governance and applicable to all issuers with a premium listing on the London Stock Exchange on a "comply or explain" basis, will remain in force until the Code takes over. The FRC's statement on the Code is available here. Following the consultation on the proposed amendments to the current version of the UK Corporate Governance Code, the final version of the Code was formulated with the aim of ensuring the competitiveness of the UK listing regime whilst not compromising on governance standards.

KEY UPDATES

The Code is split into five sections, covering: (i) board leadership and company purpose; (ii) division of responsibilities; (iii) composition, succession and evaluation; (iv) audit, risk and internal control; and (v) remuneration. The FRC believes that compliance with the Code will ensure companies are following best practice in respect of corporate governance.

The updates to be brought in by the Code are focused on risk management and internal controls. Under **Principle O**, boards are now required not only to establish effective risk management and internal control frameworks, but also to maintain such frameworks. Further, **Provision 29** will require companies to carry out, at least annually, a review of the effectiveness of all material controls, including financial, operational, reporting and compliance controls and to describe in the company's annual report how the board monitored and reviewed such frameworks. The annual report disclosure must include a declaration as to the effectiveness of such controls as of the balance sheet date, as well as a description of any material controls that have not been effective and the action taken or proposed to improve the relevant control.

Other important updates that the Code will introduce include:

- **Principle C.** This is a new principle that has been introduced to encourage governance reporting through emphasising board decisions and their outcomes in the context of the company's overall strategy and objectives, rather than generic, boilerplate statements that provide little insight.

- **Principle J.** This principle has been altered such that diversity, inclusion and equal opportunity are still promoted, but without referencing specific groups, reflecting that these policies can be broad.

- **Provision 2.** This provision has been amended to provide that companies are required to assess how culture has been embedded, in addition to assessing and monitoring company culture.

- **Provision 37.** This provision has been amended to provide that directors' contracts and/or other director remuneration agreements should include malus and clawback provisions.

- **Provision 38.** This provision has been introduced to provide that companies include in their annual report a description of the malus and clawback provisions, including: (i) when such provisions can be exercised; (ii) the period for such provisions in directors' contracts (and why this is the appropriate period for the company in question); and (iii) whether these provisions were used in the last reporting period (and a clear explanation, if so).

The Code will continue to operate on a "comply or explain" basis, meaning that companies will have the option to deviate from the Code as long as they provide a clear justification for doing so. The FRC has been eager to emphasise this principle in the release of the Code, in response to many companies having commented that the current regime feels more like "comply, or else" and that, as such, it is restricting their flexibility.

On 29 January 2024, updated guidance on the Code was published and, although not part of the Code, such guidance provides important context as to how company boards should comply with the Code. As well as clarificatory comments on the Code, the guidance also contains a series of prompts and questions that boards may wish to consider in order to ensure they are adopting best practices in their compliance with the Code. For example, with respect to Provision 2 on the embedding of company culture, the guidance points to middle management as being critical, in addition to regular internal and external reviews.

COMMENT

Considering how to enhance the competitiveness of the London listing regime without compromising the high standards of UK corporate governance has long been a challenge for regulators. Striking the right balance has been an especially important question recently for UK regulators as they look to make London a more attractive listing venue for issuers.

Indicative of the difficulty in striking the right balance is the fact that only a small number of the initial 18 proposed changes to the current UK Corporate Governance Code put forward by the FRC in its May 2023 consultation were taken forward in the updated Code. The Institute of Directors stated that the Code does a "good job" in striking the right balance, noting that the "more prescriptive proposals" from the May 2023 consultation were dropped.

Another key reform to the London listing regime that is intended to become effective in the second half of 2024 is the replacement of the premium and standard segments for equity shares by a single listing category (covered by us in detail here). The current UK Corporate Governance Code applies, and the Code will apply, only to companies listed on the premium segment, although in practice other companies often voluntarily comply in order to demonstrate a high standard of corporate governance. It is expected that, once introduced, all companies listed on the proposed single segment would be required to adhere to the Code on a "comply or explain" basis.

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