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United Kingdom: Corp 2019

The ICLG to: Corporate Governance Laws and Regulations covers common issues in corporate governance laws and regulations – including transparency and reporting and corporate social responsibility – in 33 jurisdictions

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Chapter content

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1. Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

UK public companies with a premium listing of equity shares traded on the Main Market of the London Stock Exchange. Other publicly-traded companies, such as entities whose shares are admitted to trading on AIM, are subject to similar (but typically less onerous) regulatory regimes.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

Other chapters for United Kingdom

Anti Money Laundering

Aviation Law

Cartels & Leniency

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The UK's corporate governance landscape derives from (or is influenced by) a number of legislative, regulatory and other sources. The key legislation is set out in the Companies Act 2006 (the "Companies Act"), together with the Listing Rules and the Disclosure Guidance and Transparency Rules (the "DTRs") made by the Financial Conduct Authority (the "FCA"). The main governance-focussed regulations are the UK Corporate Governance Code (the "UKCG Code") and the UK Stewardship Code for institutional investors, each of which is currently issued and administered by the Financial Reporting Council (the "FRC"), although the FRC is soon to be replaced by a new regulator (see question 1.3 below). The City Code on Takeovers and Mergers (the "Takeover Code") will also be relevant if the company in question is or may be the subject of a takeover or merger transaction. Finally, companies should also consider the application of guidelines produced by investor protection groups, such as the Investment Association. While such guidelines are technically non-binding, investors in UK companies increasingly expect them to be complied with, or for any areas of non-compliance to be publicly explained.

The Companies Act is the primary statutory rule-book for all UK companies. In the context of corporate governance, it includes (among other things) provisions governing directors' duties, requirements for directors' appointment, removal and remuneration, and various rules in respect of companies' financial (and other) disclosure obligations. The principal constitutional document of a UK company is its articles of association. A company's articles govern the regulation of its internal affairs (including with respect to various governance issues), subject to overriding statutory

Copyright

Corporate Immigration

Corporate Tax

Data Protection

Employment & Labour Law

Fintech

Gambling

Investor-State Arbitration

Merger Control

Mergers & Acquisitions

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Oil & Gas Regulation

Outsourcing

Patents

Private Client

Private Equity

Public Investment Funds

Shipping

Telecoms, Media & Internet

Trade Marks

Vertical Agreements and Dominant Firms

and common law requirements. Although UK companies have substantial discretion over the content of their articles, most (particularly premium-listed public companies) tend to follow a similar format.

The UKCG Code applies to companies with a premium listing of equity shares in the UK by virtue of the Listing Rules. The Listing Rules do not mandate compliance with the UKCG Code; rather, they require companies to state (in their annual report and accounts) whether they have applied the UKCG Code (which consists of 'principles' of good governance together with more detailed 'provisions') and to explain and justify any areas of non-compliance. This is known as the 'comply or explain' regime, which is a common theme throughout the UK corporate governance regulatory framework. The current version of the UKCG Code was published in July 2018, and applies to accounting periods beginning on or after 1 January 2019. The UK Stewardship Code, which also operates on a 'comply or explain' basis, sets out good practice for institutional investors (principally asset owners, asset managers and service providers) when engaging with UK listed companies.

A key feature of the UK corporate governance regulatory framework is its constant evolution in the face of changing 'cultural' expectations. For example, the FRC has recently announced plans to review both how effectively the UKCG Code is being implemented by companies at the end of 2019, with a more detailed review in 2020 (when reporting under the revised code is fully effective), as well as its intention to consult on a new UK Stewardship Code.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The political and economic uncertainty surrounding Brexit means that resilient corporate governance strategies may be more important now than ever before for UK companies. Some of the most important recent corporate governance developments, trends and challenges in the UK market include the following:

- Spotlight on boards: In recent years, there has been a greatly increased public focus on board composition (including with respect to diversity and inclusion), accountability, transparency, succession planning, remuneration policies (and practices), and on the role of the board in generating cultural change within an organisation. This has, in part, been facilitated by successive UK governments, which have publicly stated that one of their key priorities is the creation of equal opportunities for all, regardless of gender, ethnic background or sexual orientation. Among other things, this has resulted in the publication of a series of independent reports, which have set out of a number of diversity targets for businesses. For example, a government-commissioned report published in 2015 by Lord Davies recommended that, by 2020, all boards of FTSE 350 companies should have 33% female representation, and a 2016 review by Sir John Parker recommended that each FTSE 100 company's board should have one non-white director by 2021. While such targets are not (currently) mandatory as a matter of law, from a corporate governance perspective, a lack of diversity at board level is increasingly being seen as unacceptable.

- Stakeholder issues: There is a growing emphasis on engagement by UK boards and management with stakeholders other than shareholders (as well as, not instead of, continued engagement with shareholders), combined with an increased focus on public reporting by companies on matters other than financial metrics, including environmental, social and governance issues. New requirements include the 'section 172 statement' which companies must now publish in their strategic report (see question 5.2 below) and the need for companies to have in place a specific mechanism for engagement with their workforce (explained at question 4.1 below).

- Audit integrity: Following a recent independent review by Sir John Kingman, the government has confirmed that a new regulator, to be named the Audit, Reporting and Governance Authority ("ARGA"), will be created to replace the FRC. The intention is that the AGRA will provide more robust scrutiny of auditors, following several recent scandals (including the collapse of Carillion and the emergency bail-out of Patisserie Valerie) in which companies had been given a clean bill of health shortly before it became public that they were, in fact, facing significant financial difficulties. A related development has been an increasing focus on perceived links between corporate governance failures and insolvency, a topic which was the subject of various UK government proposals in August 2018 (which included the introduction of insolvency training programmes for board members).

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- GDPR: The General Data Protection Regulation ("GDPR") was introduced in 2018, imposing wide-ranging obligations throughout the EU on businesses regarding their handling and processing of data.

Given the potential severity of the sanctions (a particularly serious breach could result in a fine of 20 million euros or 4% of worldwide annual turnover, whichever is the higher), together with the reputational damage which would result from a breach, GDPR compliance has become a key corporate governance consideration for UK businesses.

- <u>Cybersecurity</u>: Although by no means unique to the UK, cybersecurity is a major challenge to UK corporate governance. A recent survey estimated that 92% of UK businesses had been subject to some form of security breach within the past year, with recent high-profile leaks (such as the Panama and Paradise Papers) further emphasising the magnitude of the potential issues. While the motives behind and forms of cyber attacks are extremely varied, ranging from obtaining private data to total system disruption, it is increasingly important that boards ensure cybersecurity is a prominent part of their company's corporate governance policy.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

Short-termism has been seen as a key market risk for many years, with various reports published by parliamentary committees (most notably, the Kay Review) identifying it as a major reason for underperformance within the UK economy. One of the objectives of the Stewardship Code is to address these concerns through the promotion of greater shareholder involvement in corporate governance. In addition, recent developments (see question 1.3 above) clearly show a trend away from a short-term focus on financial gain for a minority of sophisticated, profit-driven shareholders. In particular, the increasing focus on the interests of non-shareholder stakeholders is symptomatic of the wider changes in the UK corporate governance landscape: the direction of travel is clearly away from short-termism and towards the aim of long-term, sustainable value-creation.

2. Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Active shareholders of a UK public company typically exert their influence on the company's operations through interactions with the company's board of directors or, ultimately, through the exercise (or threat of exercise) of their votes at shareholder meetings. Various corporate matters require shareholder approval, which gives shareholders (particularly, large shareholders) leverage to exert pressure on the board. Such matters include the adoption of new articles of association (or amendments to them), the annual re-election of all board members, the authorisation of the directors' remuneration policy (which must be reviewed and approved every three years), entry into major transactions, the grant of authority to issue new shares, the disapplication of statutory pre-emption rights and the approval of related party transactions. 6.2

The thresholds for the approval of these matters (either a simple majority or 75% of votes being cast in favour) mean that resolutions proposed by the board rarely fail in their entirety. However, given the passively-held nature of many companies' registers (thereby augmenting the effective voting power of a given 'active' holding), together with the adverse publicity generated by an actual or perceived failure to engage with shareholders' concerns, relatively low levels of shareholding can be used to bring significant pressure to bear on boards. The results of a shareholder vote are often viewed as public indications of shareholders' general sentiment regarding the board and management of the company. Where more than 20% of shareholder votes have been cast against a shareholder resolution, the UKCG Code requires that the company must publicly explain the actions it proposes to take to consult with shareholders and, within six months of the vote, publish an update on the shareholder views received and actions taken by the company following the consultation. The company must also publish a statement in its next annual report outlining the effect that any subsequent feedback will have on its corporate strategy.

2.2 What responsibilities, if any, do shareholders have as regards to the corporate governance of the corporate entity/entities in which they are invested?

Generally, shareholders have no legal responsibility to the company or to other shareholders in relation to the governance of the company (although see question 2.4 below). While the Stewardship Code does impose obligations on institutional investors who sign up to it, such adherence is voluntary, and the obligations imposed on such signatories apply on a 'comply or explain' basis. The Stewardship Code (which, as noted above, is in the process of being revised) sets out a series of general expectations as to how investors will monitor investee companies, be willing to act collectively with other shareholders, disclose their voting policies and report on voting activities. The FRC views the Stewardship Code (as applied by shareholders) and the UKCG Code (as applied by investee companies) as being complementary to one another. The new Stewardship Code, when published, is expected to follow a similar format to (and to be consistent with) the new UKCG Code.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have as regards to such meetings?

UK public companies must convene a shareholder meeting at least once a year (the annual general meeting, or AGM). Additional shareholder meetings (known simply as general meetings) may be called

Holders of 5% or more of the voting shares of the company may request that the directors call a general meeting within a prescribed timeframe, and may require that a particular resolution be proposed at such meeting. In addition, shareholders (holding 5% or more of the voting shares or being at least 100 in number) may require the company to put a resolution before an AGM, to include other matters in the business to be dealt with at an AGM, or to circulate to shareholders a statement relating to a resolution or other business to be dealt with at the meeting.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles

or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

An English company is a legal person, distinct from its shareholders. The shareholders (also known as 'members') have rights and obligations *vis-à-vis* the company, as well as one another. The relationship between a company and its members is founded on its constitutional documents (principally, its articles of association) which, under the Companies Act, constitute a statutory contract between the company and its members and between the members themselves.

Because the shareholders are the owners of the company, and because English law generally recognises the principle of 'majority rule' and will not interfere with decisions made (in good faith) by the majority of members, the duties owed by shareholders to the company, and to one another, are typically fairly limited. The limited circumstances where an aggrieved minority shareholder may bring a claim to enforce its rights include an 'unfair prejudice' claim under the Companies Act that seeks to establish the company's affairs have been conducted in a manner that is unfairly prejudicial to its interests, and a 'derivative claim', which may be brought by a shareholder on behalf of, and for the benefit of, the company in respect of a wrong done to the company (for example, with respect to a breach of duty by a director). Such actions are, in practice, very rare.

Generally, shareholders of a UK company cannot be held liable for the acts or omissions of the company. English law recognises the concept of the 'corporate veil', which segregates the legal personality (and, therefore, liability) of the company from that of its shareholders. The limited exceptions to this principle arise in situations where the separate legal personality of the company is being abused by a shareholder for illegitimate purposes (rendering the company a 'sham'). In the normal course, however, shareholders' liability will be limited to the amounts (if any) they have agreed to contribute to the company but have not yet contributed (for example, any unpaid amounts due on a subscription for shares).

As noted in question 2.2 above, the Stewardship Code applies (on a 'comply or explain' basis) to shareholders who voluntarily commit to abide by its terms. Its aim is to assist institutional investors in their decision making and compliance with certain key stewardship principles, including the public disclosure of voting activities, conflict management policies and the effective monitoring of investee companies.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Consistent with the principle that the company is a separate legal entity from its shareholders, directors duties (see question 3.6 below) are owed to the company, rather than to shareholders. As such, shareholders do not have direct rights of action against directors for breach of their duties owed to the company. The articles of association constitute a contract between the company and its members, but not between the company and its directors.

However, in certain limited circumstances, shareholders can (normally subject to court approval) take action to enforce directors' duties, or to compel certain steps be taken by the company.

For example, as noted in question 2.4 above, a shareholder could bring a 'derivative' claim (on behalf of the company) against the directors for breach of duty, breach of trust, negligence or default. Shareholders may also (at common law) take action against the company to prohibit actions which would constitute a breach of the company's constitution and/or to remedy abuses by directors of their fiduciary powers.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

Under the DTRs, a shareholder must notify the company if the percentage of voting rights which they hold exceeds or falls below 3% (for a UK issuer), or any percentage point above that level. The company must then make an announcement to notify the market by the end of the trading day following receipt of the notification. All shareholders must (under the Companies Act) disclose their shareholding to the company, if requested to do so (even if it does not meet the thresholds outlined above). Additional disclosure requirements under the Takeover Code apply (broadly) if the company enters an 'offer period' (typically, when a takeover or merger transaction is in contemplation or where an offer has been made for the company) such that all holders of 1% or more must disclose their position and any subsequent dealings. In addition, under the Takeover Code, a mandatory bid may be triggered if a shareholder acquires a 30% interest in the voting rights of a company (with 'concert party' holdings counted towards the threshold). Limits on the size of shareholding which can be acquired without approval from a regulator may be applied in certain sectors, such as certain financial services businesses.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Such disclosures are not generally required. However, in a takeover or merger situation, a bidder is required (under the Takeover Code) publicly to disclose its intentions with regard to a number of matters in relation to the target (including its management, employees and business locations). As discussed below, certain shareholders may also voluntarily disclose their motivations for acquiring stakes in listed entities, and their intentions or wishes for the company.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism plays a pivotal role in the governance and accountability of UK corporate entities. Traditionally, shareholder activism in the UK was undertaken behind closed doors, essentially through private lobbying of listed companies' boards by institutional investors. In recent years, however, activists have adopted other more publicity-based approaches (alongside or instead of the traditional ones), including public statements of voting intentions ahead of shareholder meetings and public lobbying for changes to business strategy, governance arrangements, board composition and/or management positions. Executive remuneration is often a key focus, with investors voting against (or threatening to vote against) remuneration reports or policies and, sometimes, against the re-election of the company's remuneration committee chair. The power of significant (including significant minority) shareholders to requisition a general meeting,

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propose a resolution at the AGM and/or requisition the circulation of a statement (see question 2.3 above) can be important weapons in an activist's armoury.

The increasingly public nature of some activists' engagements with UK companies has extended to the use of social media. While a useful tool for activists to seek to rally other shareholders to their cause, social media must be used with caution. In particular, activists must ensure that they comply with the market abuse regime applicable in the UK. While shareholder activism is not specifically regulated in the UK, Regulation (EU) No. 596/2014 (commonly referred to as the Market Abuse Regulation, or "MAR") specifically prohibits the dissemination of false or misleading information regarding a company. Activist shareholders must therefore take care when making public pronouncements about a company (whether through social media or otherwise), as any statement that is subsequently regarded as having been misleading may result in the commission of an offence under MAR.

In addition to activism playing a role in day-to-day governance and business for listed companies, activists can also often play important roles (for example, by buying into a target company's shares) in takeover situations. Activists who adopt this strategy often choose to argue publicly for a better price (a practice known as 'bumpitrage'), and may be rewarded with a short-term profit, particularly if a rival would-be acquirer is willing to enter into a bidding war. The increasingly prevalent role of activists in UK takeovers is controversial, not least because, normally, their focus will be on achieving a better bid price, rather than on (for example) whether the transaction is in the interests of other stakeholder groups or for longer-term interests (as discussed in question 1.3 above). Whilst not prohibited, when a company is in a takeover or merger situation (such that persons may be deemed to be 'acting in concert' with one another), collective shareholder action can also give rise to the application of particular rules under the Takeover Code, including the mandatory bid obligation referred to in question 2.6 above.

3. Management Body and Management

3.1 Who manages the corporate entity/entities and how?

While the board of directors is ultimately responsible for the management of the company, day-to-day running of the company's operations is usually undertaken by the executive management team, led by the CEO (who is invariably a director). The executive management team should report to (and be held accountable by) the board.

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The UKCG Code emphasises that there should be a clear division of responsibilities between the leadership of the board and the management of the business. For example, the board should be led by a non-executive chair who is independent on appointment, and the UKCG Code provides that, other than in exceptional circumstances, the roles of chair and CEO should not be held by the same individual.

The UKCG Code also contains various specifications regarding the composition of the board, including the mix of executive and (independent) non-executive directors (in the case of larger companies, requiring a majority of the latter). Each director must ensure that they are able to dedicate sufficient time and efforts to the discharge of their duties, and consequently should not accept too many directorships (a practice known as 'overboarding'). Additional rules on overboarding apply to directors of certain regulated companies, such as in the financial sector.

The UKCG Code recommends that certain matters be delegated to board committees which consist primarily or exclusively of non-executive directors. Whilst these committees may inform the opinions of the board, any final approval should ultimately rest with the board. The committees recommended by the UKCG Code are as follows:

- a nomination committee, which is responsible for appointments to the board and senior offices of the company;
- a remuneration committee, which is responsible for setting the company's remuneration policy for directors and senior executives, as well as the wider workforce; and
- an audit committee, responsible for establishing formal and transparent arrangements for the application of corporate reporting and risk management principles, and for establishing and maintaining an appropriate relationship with the auditors of the company.

It is also common for other committees to be established where necessary, for example a risk committee.

3.2 How are members of the management body appointed and removed?

Directors are appointed or removed through an 'ordinary resolution', being a resolution passed by a simple majority of votes cast by shareholders present and voting at a shareholders' meeting. The UKCG Code (and, often, the articles of the company) requires that each director must retire immediately prior to each AGM before presenting themselves for re-election by the shareholders at the AGM. Directors may be appointed (on an interim basis) by other members of the board, but will usually be required to retire immediately before the next AGM, alongside the other directors, and stand for re-election by the shareholders.

New directors are typically sought, approved and recommended to the board and shareholders by the nomination committee. The UKCG Code recommends that the chair should not remain in post for longer than nine years, but recognises that this may need to be extended in order to facilitate appropriate succession planning in some cases. The UKCG Code also recommends that gender and ethnic diversity be considered when approving appointments to the board (see question 1.3 above), whilst also recognising that ultimately appointments should be made on the basis of merit.

The constitution of the company may also give the board the power to remove directors. This will usually occur where the resignation of the relevant director is requested by all or a large majority of the other directors, although in practice most director resignations are voluntary.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

Under the Companies Act, the directors must prepare a remuneration report for each financial year (which is subject to an advisory vote of shareholders), and must submit the company's remuneration policy to shareholders every three years (which must be approved by an ordinary resolution). The Companies Act prohibits payments to directors which are outside the scope of the company's remuneration policy. It also prohibits a company from entering into a service agreement with a director with a fixed term of longer than two years. In practice, where a director's service agreement has a fixed duration, it will invariably be limited to one year, as required by the UKCG Code.

The determination of directors' (including non-executive directors') remuneration is typically undertaken by the remuneration committee, subject (as above) to the approval of shareholders.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Directors and other 'persons discharging managerial responsibilities' ("PDMRs") must disclose their shareholdings in the annual report. They, together with persons closely associated with them, must also immediately notify the company of any changes to their holdings to enable the company to make an appropriate announcement. Directors (and PDMRs) are prohibited from dealing in their shares during 'closed periods', which include the period of 30 calendar days prior to the publication of the annual report or any other period where they are in possession of 'inside information' (as defined in, and regulated under, MAR). Companies may voluntarily impose longer periods during which directors and PDMRs are prohibited from dealing in the company's securities.

3.5 What is the process for meetings of members of the management body?

The articles of association will set out the procedure for meetings of the board, including the requisite quorum. The articles will generally allow flexibility in respect of the meetings, with telephone meetings and written directors' resolutions normally being explicitly permitted. The UKCG Code recommends that board meetings are held sufficiently regularly to ensure that directors are able to discharge their duties in an effective manner, although the board will generally retain discretion to determine the frequency of board meetings (and board committee meetings). The annual report of the company will contain information regarding the number of board meetings which were held and attendance by individual directors. The board will also be expected to attend meetings at short notice where unexpected matters arise.

The articles of association will also typically permit the board to delegate its functions, including to committees of the board (see question 3.1 above), although final approvals in respect of material matters are typically undertaken by the board.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The principal duty of each director under the Companies Act is to act in the way he considers, acting in good faith, would be most likely to promote the success of the company for the benefit of the shareholders as a whole. Furthermore, directors owe a duty to act within their powers, to exercise

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independent judgment, to exercise reasonable care, skill and diligence, to avoid conflicts of interest, not to accept benefits from third parties and to declare an interest in a proposed transaction or arrangement. In addition, directors are subject to certain statutory administrative requirements, such as the obligation to maintain statutory books and the duty to file returns. The Insolvency Act 1986 also imposes certain liabilities on directors, for example where they allow the company to continue to trade when they know (or ought to have known) that there was no prospect of the company avoiding insolvent liquidation.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The board of directors is responsible for approving and implementing the strategy of the company and establishing corporate governance principles. The key challenges for the management body include ascertaining effective ways in which the company may seek to address the key current issues in corporate governance (see question 1.3 above).

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3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

A company may indemnify its directors for costs incurred in successfully defending claims by the company and for liabilities to third parties (excluding fines and regulatory penalties). The company may also purchase and maintain directors' and officers' ("D&O") insurance policies for its directors.

However, the Companies Act prohibits a company from indemnifying its directors for any liability for negligence, default, breach of duty or breach of trust in relation to the company. Any provision in the articles purporting to grant an indemnity of this kind will be void. These restrictions are not applicable to non-director employees.

Additional insurance can also be acquired for specific purposes, for example with respect to potential liabilities under public documents (such as a prospectus) or for warranties under a sale and purchase agreement.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

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The directors are responsible for setting and changing the strategy of the company, and are expected to review and update this on a regular and ongoing basis.

4. Other Stakeholders

4.1 What, if any, is the role of employees in corporate governance?

Directors are increasingly required to consider the interests and concerns of the company's employees (and other stakeholders) in their decision-making processes. Recent amendments to the UKCG Code require that the board should adopt one of three workforce-engagement methods: a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director. Alternatively, if a board does not choose any of the three methods outlined above, it is open to

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that board to adopt alternative arrangements for workforce-engagement and to explain why these are considered effective.

As these changes to the UKCG Code are recent, it is too early to determine the approach that most listed companies will take to these requirements (as noted in question 1.2 above, the new UKCG Code only applies to accounting periods beginning on or after 1 January 2019). However, initial indications from those who have voluntarily complied with the new UKCG Code early, or who have indicated how they intend to comply in due course, are that very few companies will appoint a director from the workforce, and that most will either designate one of the non-executive directors as being responsible for consulting with the workforce or will put in place alternative arrangements. The UKCG Code specifically uses the word 'workforce' rather than 'employees' in order to emphasise the importance of flexible and agency workers as well as those on full-time contracts. Furthermore, the UKCG Code recommends that companies establish sufficient procedures to enable members of the workforce to raise concerns in confidence, and for these to be investigated in an appropriate manner.

4.2 What, if any, is the role of other stakeholders in corporate governance?

Although non-shareholder stakeholders do not have a formal role in corporate governance, boards are increasingly encouraged to understand and take account of their views (as discussed in question 1.3 above). The new UKCG Code, as well as recent regulations that relate to the Companies Act, require companies to include in their annual reports a statement as to how the company has considered the interests of certain specific stakeholders (see question 5.2 below).

In addition, in discharging their duty to promote the success of the company (see question 3.6 above), the directors are obliged to have regard to a number of matters, including the likely consequences of any decision in the long term, the interests of the company's employees, the need to foster the company's business relationships with suppliers, customers and others, the impact of the company's operations on the environment and the desirability of the company maintaining a reputation for high standards of business conduct.

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4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Directors are increasingly expected to consider the impact of a company's operations on the environment and wider community (see question 4.2 above). As such, it has become common practice for companies to produce an annual CSR report outlining these considerations. Companies are also required to include certain CSR information in the annual report (see question 5.2 below).

5. Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The board is responsible for periodic disclosure in the form of annual reports and half-year reports, as well as the publication of relevant announcements to the market, where required. Although the entire board is responsible for this, enforcement action may be taken against an individual director who is 'knowingly concerned' in a failure to make a necessary disclosure.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Listed companies must make public announcements in a wide range of corporate governance-related situations. In addition to obligations to make public announcements at the time of the events in question, these are typically made by way of the company's annual report and include matters such as changes to the board and the approval of shareholder resolutions (other than those constituting ordinary business). The company must also, as described above, disclose that it is subject to the UKCG Code and, in its annual report, describe how it has complied with the UKCG Code's requirements (or explain why it has not). These disclosures must be published on its website.

Under the UKCG Code and the DTRs, listed companies that meet certain requirements must include a corporate governance statement in a separate section of the directors' report (contained within the company's annual report), or in a separate report published together with the annual report, or in a document published on the company's website and cross-referred to in the directors' report.

A listed company's annual report must contain information surrounding the company's diversity and inclusion policy and how this is implemented. It must also demonstrate how this is related to company strategy. The remuneration report must provide sufficient information regarding the remuneration of directors. The company's risk management and internal control policies must also be disclosed.

The introduction of the Companies (Miscellaneous Reporting) Regulations 2018 has resulted in an increased emphasis on reporting and disclosures, particularly with respect to the company's engagement with its stakeholders. For example, the corporate governance statement of companies caught by the legislation must now disclose the way in which the board has engaged with key stakeholders such as employees and suppliers. Furthermore, companies are required to publish a 'section 172 statement' in their strategic report (which forms part of the annual report), describing how the directors have considered their duties under section 172(1) of the Companies Act when performing their duties. As noted in question 4.2 above, this includes considering the interests of specific stakeholders (such as suppliers, customers and others), and the impact of the company's business on the community and the environment. Companies are also required to publish and explain the ratio of CEO remuneration to that of other employees in the directors' remuneration report.

5.3 What is the role of audit and auditors in such disclosures?

Auditors are required to review the reports which are produced alongside the audited financial statements and any separate corporate governance statement and to produce their own report confirming the adequacy of such disclosures, whether the relevant legal requirements have been met and whether the disclosures contain any material misstatements.

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This reference book will definitely be a great resource whenever we conduct preliminary due diligence and/or consider launching a drug product in a foreign market. The book is well laid out, concise, and easy to read. Having this information in one quick reference book will definitely speed up the time it takes to do some aspects of market analysis. I would strongly recommend this book to other pharmaceutical business executives, business development colleagues, and sales & marketing, legal and regulatory affairs executives.

Andrew D. Gall, Executive Vice President
METHAPHARM INC., Ontario, Canada