



ashurst

UK Quoted Company Newsletter March 2018

Contents

[New rules for AIM companies on corporate governance](#)

[Proposed new law on addresses of directors and others](#)

[Government consultation on insolvency and corporate governance](#)

[Government response on register of beneficial owners of overseas entities owning UK property or engaging in UK procurement](#)

[2018 AGM and reporting season](#)

[Ashurst publications in the last quarter](#)

NEW RULES FOR AIM COMPANIES ON CORPORATE GOVERNANCE

On 8 March 2018, the London Stock Exchange issued its updated [AIM Rules for companies](#) following on from [AIM Notice 50](#). The rules include an early notification process, guidance on appropriateness for admission and new corporate governance disclosures. Key corporate governance changes are set out below.

AREAS	PROPOSALS
New applicants, pre-admission announcement	From 30 March 2018, an applicant to AIM must, in its pre-admission announcement, state the corporate governance code that the board has decided to apply.
New applicants, admission document	From 28 September 2018, an applicant will have to state in its admission document not only the recognised code that it has decided to apply but also how it complies with that code and, where it departs from it, its reasons. (See also Rule 26 below.)
Rule 26 company information disclosure	From 28 September 2018, AIM companies must additionally disclose on their website (i) a recognised corporate governance code that the board has decided to apply; (ii) how the company complies with it; and (iii) where the company departs from it, an explanation of its reasons. This information should be reviewed annually and state the review date.

The LSE has chosen not to give guidance on what is a "recognised corporate governance code", wishing to give companies flexibility to choose an appropriate industry code for their stage of development, sector and size. Examples given are the Quoted Companies Alliance Code or the

UK Corporate Governance Code, or for companies with a home listing elsewhere than the UK, an appropriate code from their home jurisdiction.

The date of 28 September has been chosen to give AIM companies and their nominated advisers time to prepare. AIM companies that currently apply no corporate governance code will have the most to prepare, having to choose a recognised code and be in a position to disclose (i) how they comply with it and (ii) any departures and reasons. For AIM companies already applying a code, they will need to update their Rule 26 website disclosures. It is, of course, open to companies to explain departures from their chosen code.

PROPOSED NEW LAW ON ADDRESSES OF DIRECTORS AND OTHERS

In February 2018, the Department for Business, Energy and Industrial Strategy (BEIS) [published the draft Companies \(Disclosure of Address\) Regulations 2018](#), to amend company law to make it easier for directors, companies and others to remove historic residential address information from the Companies House register. This is against a backdrop of directors being twice as likely to be victims of identity fraud as well as an escalation in theft of corporate identities. The draft regulations will, among other things, make the key changes set out below and are due to come into force by the end of Summer 2018.

APPLYING TO HAVE A DIRECTOR'S RESIDENTIAL ADDRESS MADE UNAVAILABLE FOR PUBLIC INSPECTION

- The draft regulations will remove the need for directors to demonstrate that there is a serious risk of violence or intimidation due to the company's activities before an historical residential address can be removed from the Companies House register. Going forward, directors will be able to apply to remove their personal address and replace it with a service address on the basis of, for example, being at risk of identity theft and fraud.
- The draft regulations will allow such an application to be made with no time limit (i.e. going back as far as needed, and not only as far back as 1 January 2003 as is currently the case).

In addition, the draft regulations will remove the current 1 January 2003 backstop date for removal of residential addresses by (i) members, former members and subscribers and (ii) any person who has registered a charge, although for

these categories the need to demonstrate serious risk of violence or intimidation will remain, other than for individual members who will now be on a par with directors and can for example apply on the basis of being at risk of fraud.

GOVERNMENT CONSULTATION ON INSOLVENCY AND CORPORATE GOVERNANCE

In March 2018, BEIS issued a [consultation paper](#) on Insolvency and Corporate Governance. It puts forward a number of measures and also seeks views on other aspects as regards businesses that are in or approaching insolvency.

AREAS	PROPOSALS
Sales of businesses in distress	Potential changes to ensure that parent company directors responsible for the sale of a group subsidiary take proper account of the interests of the subsidiaries' stakeholders and may be held to account if they fail to do so in certain circumstances.
Value extraction schemes	Proposals, aimed at treating all creditors fairly, seeking views on new or updated powers to challenge a transaction or series of transactions entered into before insolvency and which unfairly strip value from a company.
Dissolved companies	Proposals to extend the investigative powers of the Insolvency Service into the conduct of directors of dissolved companies.
Corporate governance in pre-insolvency situations	Views are sought on the following key questions: Are stronger corporate governance and transparency measures required in relation to the oversight and control of complex group structures? What more can be done to promote engaged stewardship of companies by investors including active monitoring of risk? Are reforms required to the legal, governance and technical framework within which companies determine dividend payments? Are directors aware of their duties as regards commissioning and using professional advice? Are new options needed to protect small and medium sized businesses in a supply chain in the event of the insolvency of a large customer?

Although not stated, this consultation seems to be a response at least to the collapses of BHS and, more recently, Carillion. The consultation closes on 11 June 2018.

GOVERNMENT RESPONSE ON REGISTER OF BENEFICIAL OWNERS OF OVERSEAS ENTITIES OWNING UK PROPERTY OR ENGAGING IN UK PROCUREMENT

In March 2018, BEIS published the [Government response](#) to its call for evidence on establishing a publicly accessible register of beneficial owners of overseas companies and other legal entities that own UK property and/or engage in UK government procurement. The Government plans to publish a draft Bill in summer 2018, with a view to the register becoming operational in 2021. See the table below for the key responses.

AREAS	PROPOSALS
Scope of the new register	All legal forms of overseas entity which can hold property will be within the scope of the new register's requirements, other than trusts. As well as capturing freehold property, the new registration requirement will capture all leases of registrable duration. The definition of beneficial owner will be aligned to the definition in the current Persons with Significant Control (PSC) regime, with adaptations for overseas entities that are not similar to UK companies.
Period for registration	Overseas entities that already own UK property will have longer than the originally proposed 12 months to comply with the new regime, and the Government is considering what this period should be.
Compliance and blocking property transfers	The regime will not, as previously proposed, prevent the transfer of beneficial interest in property to an overseas entity that does not have a valid registration. Instead it will allow the beneficial interest, but not legal title, in property to pass to an overseas entity that does not have a valid registration.
Updating the register	The Government is considering increasing the frequency of the required updates to the register from the two year period originally proposed, although event-driven updating will not be pursued. The Government will establish a criminal offence to enforce the requirement to update the register.
Third party transactions	It is impractical to introduce a distinction which ensures that only legitimate lenders are able to repossess and dispose of a property with a restriction against it under the new regime.



2018 AGM AND REPORTING SEASON

In February 2018, we published our annual client briefing on "2018 AGM and reporting season: What to expect". See the [client briefing](#) for the detail. The table below shows some key areas covered

2018 AGM AND REPORTING SEASON
2018 AGM issues
<ul style="list-style-type: none">• Virtual-only and hybrid meetings
<ul style="list-style-type: none">• Changes to articles of association
<ul style="list-style-type: none">• Pre-emption disapplication resolutions
<ul style="list-style-type: none">• Investment Association Public Register
2018 narrative reporting issues
<ul style="list-style-type: none">• Non-financial reporting
<ul style="list-style-type: none">• Diversity reporting
Future developments
<ul style="list-style-type: none">• Proposed secondary legislation on reporting
<ul style="list-style-type: none">• Proposed new UK Corporate Governance Code

In addition, there have been three more recent developments relevant to the AGM season and these are summarised below.

- **Pre-Emption Group expectations for disapplication thresholds re-confirmed.** The Pre-Emption Group issued a [further announcement](#) (following their announcement in July 2017) re-confirming that despite the Prospectus Regulation introducing a new exemption from the obligation to publish a prospectus for issues of up to 20 per cent of issued share capital, it will not be changing its Statement of Principles and that that the 10 per cent limit in the Statement of Principles still applies. The announcement also states that whilst decisions about specific placings are for individual shareholders, the Statement of Principles reflects the agreed position

supported by the Investment Association and the Pensions and Lifetime Savings Association. It further states that companies and investors are encouraged to use the Statement of Principles and its Appendix of Best Practice when engaging on pre-emption issues.

- **Government research on how companies use share buybacks.** The Government has [announced new research](#), to be conducted by PwC and Professor Alex Edmans of the London Business School, into how companies use share buybacks. The research will look at the motivations for and effects of doing share buybacks and whether action is required to prevent them being abused (for example by investigating whether they are used to artificially inflate executive pay). The findings will be published later this year.
- **PIRC revised voting guidelines.** In March 2018, Pensions & Investment Research Consultants (PIRC) issued its 2018 UK shareholder voting guidelines replacing its 2017 edition. The guidelines represent the latest expression of PIRC's view of what constitutes good governance practice (to the extent that companies choose to follow them). Key changes or updates include the following.
 - Strengthened guidance stating that PIRC will oppose the re-election of a chairman beyond his/her initial appointment if he/she has significant independence issues (excluding tenure).
 - Boosted guidelines on executive chairmen, where PIRC states that holding an executive chair position will justify a recommendation to vote to oppose.
 - Strengthened guidelines on audit and remuneration committees, where PIRC will oppose the re-election of any non-independent member.
 - Changed guidelines on directors and attendance at board or committee meetings, where PIRC will now oppose the re-election of any director who misses any meeting without adequate justification.
 - In relation to virtual-only meetings, noting that PIRC will oppose amendments to articles of association that permit virtual-only meetings.

CORPORATE GOVERNANCE UPDATE

Over the course of 2017, we have reported a number of corporate governance developments, some of which are still work in progress. Here, we provide a brief update.

DEVELOPMENTS	STATUS
FRC consultation on UK Corporate Governance	<p>Consultation closed on 28 February 2018. The FRC is currently analysing more than 200 responses.</p> <p>As stated in the consultation, the FRC is aiming to publish the new Code in early summer 2018 to be effective for reporting periods beginning on or after 1 January 2019.</p>
<p>New secondary legislation on:</p> <p>Pay ratio reporting.</p> <p>Reporting on share-based incentive schemes.</p> <p>Reporting on Section 172 of the Companies Act 2006.</p> <p>Corporate governance for large private companies.</p>	<p>Awaited.</p> <p>The Government response to its Green Paper on corporate governance reform stated that the intention was to put the draft legislation before Parliament by the end of March 2018, with a view to the changes coming into force by June 2018 for reporting years beginning on or after that date.</p>
<p>Guidance</p> <p>ICSA and IA guidance on the stakeholder voice in board decision making</p> <p>GC100 guidance on section 172</p>	<p>Published</p> <p>Awaited</p>
FRC guidance on the strategic report	<p>Awaited</p> <p>The FRC stated, in a press release issued in December 2017, that it will publish the revised guidance after the Government has published its secondary legislation on section 172 reporting.</p>



ASHURST PUBLICATIONS IN THE LAST QUARTER

Ashurst has published a number of client updates and briefings in the last quarter of 2018 and a selection of them are collected here.

In particular, in April 2018 we published our Public M&A Q1 2018 Update looking at recent news and regulatory developments in UK Public M&A covering, among other things, an update on the Government's proposals to introduce new rules to protect the UK's national security (in particular in the context of foreign investment) as well as mention of new and updated practice statements. And in March 2018, we published our briefing on "Pensions White Paper: more power to the Pensions Regulator; more duties on employers and directors" in which we consider the Government's plans to beef up the Pensions Regulator's powers and impose stricter duties on employers with defined benefit pension schemes, particularly when entering into corporate transactions which may affect the pension scheme.

These and other relevant Ashurst briefings are accessible by clicking on the following links:

Public M&A

- [UK Public M&A Update Q1 2018](#)

Employment and pensions

- [Pensions White Paper: more power to the Pensions Regulator; more duties on employers and directors.](#)
- [Government proposes overhaul of workers' rights – the Taylor Review of Modern Working Practices.](#)
- [Two important deadlines for companies operating employee share plans.](#)

Business conduct and risk

- [Section 7 failure to prevent bribery offence: adequate procedures defence finally tested](#)

Tax

Tax newsletter including articles on:

- [HMRC use of Accelerated Payment Notices and Partner Payment Notices.](#)
- [New rules to govern disclosure of VAT schemes to HMRC.](#)
- [New rules, effective April 2019, to apply a withholding tax on royalties.](#)
- [When is expenditure incurred on decommissioning for claiming capital allowances?](#)
- [BBC presenter using a personal service company is taxed as an employee under IR35.](#)

Competition

Competition law newsletter including articles on:

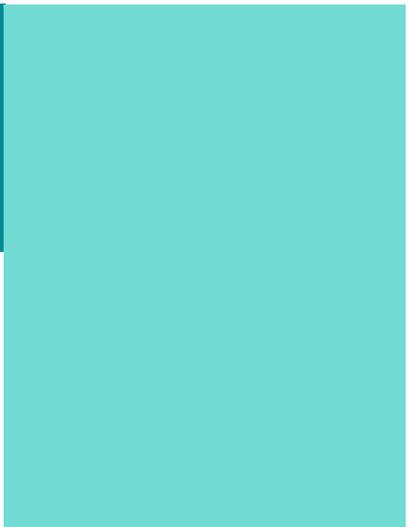
- [UK to amend merger control rules to protect national security \(Mergers\)](#)

Dispute resolution

- [Terminating contracts: getting your notice right.](#)
- [Bribery and corruption: what now for 2018.](#)

LONDON CORPORATE PARTNERS AND CONSULTANTS

Rob Aird	T: +44 (0)20 7859 1726	E: rob.aird@ashurst.com
Yann Alix	T: +44 (0)20 7859 1551	E: yann.alix@ashurst.com
Chris Bates	T: +44 (0)20 7859 2388	E: chris.bates@ashurst.com
Simon Beddow	T: +44 (0)20 7859 1937	E: simon.beddow@ashurst.com
Patrick Boyle	T: +44 (0)20 7859 1740	E: patrick.boyle@ashurst.com
Simon Bullock	T: +44 (0)20 7859 3151	E: simon.bullock@ashurst.com
Nick Bryans	T: +44 (0)20 7859 1504	E: nick.bryans@ashurst.com
Michael Burns	T: +44 (0)20 7859 2089	E: michael.burns@ashurst.com
David Carter	T: +44 (0)20 7859 1012	E: david.carter@ashurst.com
Nick Cheshire	T: +44 (0)20 7859 1811	E: nick.cheshire@ashurst.com
Adrian Clark	T: +44 (0)20 7859 1767	E: adrian.clark@ashurst.com
Karen Davies	T: +44 (0)20 7859 3667	E: karen.davies@ashurst.com
Julia Derrick	T: +44 (0)20 7859 1117	E: julia.derrick@ashurst.com
Mark Eelsey	T: +44 (0)20 7859 1721	E: mark.eelsey@ashurst.com
Nick Elverston	T: +44 (0)20 7859 3143	E: nick.elverston@ashurst.com
James Fletcher	T: +44 (0)20 7859 3156	E: james.fletcher@ashurst.com
David Futter	T: +44 (0)20 7859 1594	E: david.futter@ashurst.com
Nick Goddard	T: +44 (0)20 7859 1358	E: nick.goddard@ashurst.com
Richard Gubbins	T: +44 (0)20 7859 1252	E: richard.gubbins@ashurst.com
Amanda Hale	T: +44 (0)20 7859 3144	E: amanda.hale@ashurst.com
Bruce Hanton	T: +44 (0)20 7859 1738	E: bruce.hanton@ashurst.com
Nicholas Holmes	T: +44 (0)20 7859 2058	E: nicholas.holmes@ashurst.com
Naomi Horton	T: +44 (0)20 7859 1526	E: naomi.horton@ashurst.com
Hiroyuki Iwamura	T: +44 (0)20 7859 3244	E: hiroyuki.iwamura@ashurst.com
Isabelle Lentz	T: +44 (0)20 7859 1094	E: isabelle.lentz@ashurst.com
Adam Levitt	T: +44 (0)20 7859 1633	E: adam.levitt@ashurst.com
Logan Mair	T: +44 (0)20 7859 1902	E: logan.mair@ashurst.com
Nikhil Markanday	T: +44 (0)20 7859 1328	E: nikhil.markanday@ashurst.com
Tom Mercer	T: +44 (0)20 7859 2988	E: tom.mercer@ashurst.com
Robert Ogilvy Watson	T: +44 (0)20 7859 1960	E: robert.ogilvywatson@ashurst.com
Sergei Ostrovsky	T: +44 (0)20 7859 1821	E: sergei.ostrovsky@ashurst.com
David Page	T: +44 (0)20 7859 1908	E: david.page@ashurst.com
James Perry	T: +44 (0)20 7859 1214	E: james.perry@ashurst.com
Geoffrey Picton-Turbervill	T: +44 (0)20 7859 1209	E: geoffrey.picton-turbervill@ashurst.com
Jason Radford	T: +44 (0)20 7859 1145	E: jason.radford@ashurst.com
Nick Rainsford	T: +44 (0)20 7859 2914	E: nick.rainsford@ashurst.com
Michael Robins	T: +44 (0)20 7859 1473	E: michael.robins@ashurst.com
Jan Sanders	T: +44 (0)20 7859 1246	E: jan.sanders@ashurst.com
Jennifer Schneck (US)	T: +44 (0)20 7859 1744	E: jennifer.schneck@ashurst.com
Antony Skinner	T: +44 (0)20 7859 1360	E: antony.skinner@ashurst.com
Cameron Smith	T: +44 (0)20 7859 1125	E: cameron.smith@ashurst.com
Michael Smith	T: +44 (0)20 7859 1004	E: michael.j.smith@ashurst.com
Nick Stalbow	T: +44 (0)20 7859 1802	E: nick.stalbow@ashurst.com
Eric Stuart (US)	T: +44 (0)20 7859 3654	E: eric.stuart@ashurst.com
Jeffrey Sultoon	T: +44 (0)20 7859 1717	E: jeffrey.sulton@ashurst.com
Huw Thomas	T: +44 (0)20 7859 1238	E: huw.thomas@ashurst.com
Philip Thomson	T: +44 (0)20 7859 1243	E: philip.thomson@ashurst.com
Terence van Poortvliet	T: +44 (0)20 7859 2424	E: terence.vanpoortvliet@ashurst.com
Philip Vernon	T: +44 (0)20 7859 1705	E: philip.vernon@ashurst.com
David Wadham	T: +44 (0)20 7859 1064	E: david.wadham@ashurst.com
Piers Warburton	T: +44 (0)20 7859 1099	E: piers.warburton@ashurst.com
Nick Williamson	T: +44 (0)20 7859 1894	E: nick.williamson@ashurst.com



ashurst

www.ashurst.com

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at Broadwalk House, 5 Appold Street, London EC2A 2AG T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 www.ashurst.com.

© Ashurst LLP 2018. Ref: 63407614 10 April 2018