



ashurst

UK Quoted Company Newsletter Q2 2020

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FINANCIAL SUPPORT FOR BUSINESS: SOME KEY ADDITIONS AND CHANGES

Since our [Q1 2020 newsletter](#), a number of new packages of support for businesses have been introduced, some existing schemes have been updated and some schemes are coming to an end. As noted in the Q1 newsletter, the Government has a [website](#) listing much available Government financial support for businesses and linking through to more detailed provisions for each type of support. Key new business support schemes introduced or changed in the last quarter include those set out in the table below.

Job Retention Bonus Scheme and other measures	Announced on 8 July 2020, the Job Retention Bonus Scheme will pay employers £1000 for certain employees who they bring back from furlough if they employ them until the end of January 2021. The detail of the scheme will need to be carefully considered once published. Other measures include a temporary reduction in VAT for hospitality and tourism. See the government Plan for Jobs 2020 for more detail.
Sustainable Innovation Fund	The Sustainable Innovation Fund sits alongside the Future Fund (see below). It aims to provide almost £200 million to help businesses to drive forward cutting-edge new technology and recover from the impacts of COVID-19. It will help support innovations ranging from artificial intelligence systems managing city traffic flows through to reusable packaging materials. Businesses can apply for support through the fund by visiting the Innovate UK website.
The Future Fund	The Future Fund provides convertible government loans to UK-based companies ranging from £125,000 to £5 million, subject to at least equal match funding from private investors. These loans could be an option for businesses that rely on equity investment and are unable to access other government business support programmes because they are either pre-revenue or pre-profit. The fund is open for applications until the end of September 2020.
The Coronavirus Large Business Interruption Loan Scheme	This scheme (discussed in our Q1 newsletter) has been updated and now allows relevant businesses to access loans and other kinds of finance up to £200 million.
The Bounce Back Loan Scheme	This scheme was introduced to enable smaller businesses to access finance more quickly during the COVID-19 outbreak. The scheme aims to help small and medium-sized businesses to borrow between £2,000 and up to 25 per cent of their turnover. The maximum loan available is £50,000, with the Government guaranteeing 10 per cent of the loan with no fees or interest to pay for the first 12 months.
Business support finder facility	A facility has been added to the website to allow businesses to find out what financial support schemes they may be eligible for.

THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020

The Corporate Insolvency and Governance Act 2020 (the Act), which has been expedited through Parliament, came into force on 26 June 2020.

The Act: Provisions for Companies in Financial Difficulties

The Act makes provision, both permanent and temporary, for companies and other entities in financial difficulty. See overleaf for a brief

summary of its measures and see our [client briefing here](#) for more detail. [Regulations](#) are also now in force applying several of the provisions of the Act to limited liability partnerships.

Permanent measures

Restructuring plan. The Act introduces a new restructuring plan which will provide a company encountering financial difficulties with the ability to propose a compromise or arrangement with its creditors and members to restructure its affairs. The framework of the

new restructuring plan is based on the scheme of arrangement procedure (which still remains available to companies wishing to restructure). Additionally, the new restructuring plan allows courts to sanction a plan that binds dissenting classes of creditors and members (rather than just minorities within a class) in order to bind out-of-the-money creditors and equity, provided they are no worse off than in the alternative scenario, and the plan is fair and reasonable. This process of binding dissenting classes is called 'cross-class cram-down'. By using cross-class cram-down, the restructuring plan aims to enable a company to compromise its financial and equity structure without having to resort to the use of a pre-pack administration sale combined with a scheme.

Moratorium. The moratorium is a new procedure for companies needing a formal breathing space to enable them to pursue a rescue plan. It creates a temporary moratorium during which the company enjoys a payment holiday from some of its pre-moratorium debts, and protection from legal and enforcement action being taken against the company. The moratorium leaves the company's management in control of the company (a so-called 'debtor-in-possession' procedure) but includes the appointment of a licensed insolvency practitioner as monitor to provide some oversight and safeguards for creditors. In particular, the monitor is required to assess throughout the moratorium whether rescue of the company as a going concern continues to be likely (although there is some temporary relaxation of this test to address the acute crisis many companies find themselves in because of COVID-19). The moratorium is for an initial period of 20 business days, but is extendable for a further 20 business days by the directors, or for up to one year maximum with creditor consent, or for a longer period if ordered by the court. The Government's hope is that the moratorium will give struggling companies a vital tool to aid survival.

Ipsso facto (termination) clauses. This new provision will restrict the supplier of goods or services to an insolvent company from terminating the contract for supply when the company goes into a range of insolvency procedures. The measure will preserve the insolvent company's supply contracts in order to aid its rescue plan. There are safeguards for

suppliers to ensure that continued supplies are paid for, and they may apply to court to allow termination on grounds of hardship. In addition, temporarily, the measure does not apply to small company suppliers.

Temporary measures

Suspension of wrongful trading liability.

Directors' potential personal liability for wrongful trading referable to the period from 1 March to 30 September 2020 (unless extended) is being temporarily suspended. Outside of these extraordinary times, the wrongful trading provision is the main deterrent for directors against continuing to trade when there is no reasonable prospect of avoiding insolvency, because continuing to trade beyond this point can result in personal liability. This emergency measure removes the threat of personal liability from directors, with the intention of helping them to continue to trade through the crisis notwithstanding uncertainty over whether the company will be able to avoid insolvency in the future. While the measure provides some welcome relief for directors, they must also factor in that it does not switch off all directors' duties, such as the duty to take into account the interests of creditors where there is a likelihood of insolvency. It can be a difficult balancing act for directors.

Statutory demands and winding-up petitions.

The second temporary measure is designed to remove the ability of creditors to threaten to wind-up a company as a method of debt collection. Because of the paralysing effects of a winding-up petition upon a company's business and bank accounts, threatening to wind-up a company is typically a heavy-handed but effective method of forcing payment. However, over-use during the COVID-19 crisis could simply lead to mass insolvencies, which the Government wishes to avoid. Therefore this measure temporarily removes the threat of winding-up proceedings and statutory demands where the debt is due to COVID-19, hopefully providing businesses with an incentive to follow the government's guidance of reaching realistic and fair agreements with creditors. The measure is due to last until 30 September 2020, unless extended.

The Act: Provisions for Shareholder Meetings and Filings

The Act also introduces a number of temporary relaxations to make it easier for companies (and other qualifying bodies) to hold general meetings in accordance with the government's social distancing legislation and guidelines. It also provides for relaxations on certain filing obligations.

Relaxations for company general meetings (including AGMs and class meetings)

Meeting procedure. For company general meetings which take place between a period beginning with 26 March 2020 and ending on 30 September 2020:

- The meeting need not be held at a particular place (meaning the notice of meeting need not specify a place, although it can do).
- The meeting may be held without any number of those participating being together at the same place (including the quorum).
- The meeting may be held, and votes may be cast, by electronic or other means.
- Shareholders at the meeting will **not** have rights to: attend the meeting in person; participate other than by voting; or vote by any particular means (meaning the company can decide how voting is conducted, e.g. solely by proxy).
- The above provisions apply irrespective of any enactment or the company's articles of association.

Extension of the period for holding an AGM. In addition, companies that are required (whether by statute or their articles) to hold an AGM on a date between 26 March 2020 and 30 September 2020 are given an extension to hold the meeting up to 30 September 2020.

Further regulations. Also, the Act allows regulations to be made about the means by which, the form in which and the period within which any notice or other document relating to a meeting may be given or made available. No draft of these regulations has yet been released, so it remains to be seen exactly what they will say.

Will the flexibilities be used? Whether or not companies choose to take advantage of the Act's relaxations remains to be seen. The extension provision is too late for December year-end companies and of no help to March year-end companies, although the period may be extended by regulations. Although a meeting may be held by electronic means irrespective of whether or not articles permit this, whether many companies will, in the time available and with other more pressing priorities, be able to prepare and practice enough to feel confident that holding it electronically will be successful, remains to be seen. Those companies that do not have protective provisions in their articles covering IT failures for participants will be at risk if they rely solely on the Act. Also, if considering convening the meeting later than usual, thought must be given to when authorities granted at last year's annual general meeting will expire. Finally, companies need to consider not only what the Act allows but also shareholder expectations. For example, shareholder expectations to have an open meeting may increase as relevant restrictions in COVID-19 legislation and social distancing guidance (see next article, for example) are relaxed, notwithstanding the Act.

Relaxations for company filings

Annual accounts of public companies. The filing deadline for accounts of certain public companies has been temporarily extended. At its simplest for example, this means that for a December year-end public company, its accounts filing deadline moves from 30 June 2020 to 30 September 2020. The extension is automatic and does not need to be sought. [Guidance](#) has been issued by Companies House giving examples showing how the extensions work and discussing the position for public companies who were in default or had a late filing penalty. The extended filing period under the Act may be further extended by regulations.

Other filings. The Act also allows regulations to be made to extend the filing deadlines of certain other documents, such as the accounts of private companies and forms such as annual confirmation statements and company charges. [Regulations](#) were made and are now in force to temporarily extend these and other deadlines. For example, the deadline for filing for private company accounts is extended from nine months to twelve months. For annual confirmation statements, the deadline for filing is extended from 14 days after the end of the relevant period to 42 days after (and several other filing periods are similarly extended such as filing of director changes and changes to the PSC register). For company charges, the 21 day deadline for registering a charge against a company's assets is extended to 31 days.

RESTRICTIONS ON COMPANY MEETINGS NOW RELAXED

The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations

2020 came into force on 4 July 2020. They have revoked the previous regulations that had provided for a restriction on gatherings of more than two people, which had in effect meant that shareholders could not attend company meetings.

With the coming into force of these regulations, shareholder attendance at company general meetings is no longer prohibited although relevant COVID-19 secure guidance to protect customers, visitors and workers (social distancing etc measures) will still need to be followed. This will be dependent on the place where the meeting is held. For example, see

the [guidance for offices](#) or [guidance for the visitor economy](#).

On the other hand, as described in the table above, for general meetings held before 30 September 2020, the Act allows (ie at a company's option), a company to, for example, refuse entry to shareholders and to only permit voting by proxy, ie to keep to a closed meeting of the type we have been seeing in the last few months. In deciding their approach to general meetings, boards will need to consider not only what the Act allows but also what is best for the company, employees and shareholders. They should also bear in mind that shareholder expectations to have an open, business as usual meeting are likely to increase as relevant restrictions in COVID-19 legislation, such as in these regulations and in social distancing guidance, are relaxed.

GUIDANCE ON BEST PRACTICE AT ANNUAL GENERAL MEETINGS: SOME KEY POINTS

BEIS and the Financial Reporting Council (FRC) have issued several iterations of their [Q&A on measures in respect of company filings, AGMs and other general meetings during COVID-19](#). They issued the latest version on 8 June. Although several of the Q&As are now redundant as the Act is in force, they make a number of points that remain applicable. For example the Guidance reiterates the below amongst other things.

Balancing considerations of safety with expectations for engagement	Not all companies will choose to utilise the Act's flexibilities and since the social distancing measures will inevitably change, companies should monitor the nature of the restrictions and the content of guidance and take a view on what approach best balances the safety of members and their legitimate expectation to be afforded engagement with the board.
Channels for engagement	Where the physical exclusion of members still appears the only safe option, companies should explore other channels by which they can engage, such as participation by electronic means, real-time transmission of proceedings and/or giving members the opportunity to raise questions before the meeting.
Best practice essentials	Whichever type of meeting is held, best practice essentials include: timely communications to members; clear explanations of the procedure for the meeting, for proxy voting and for how changes will be communicated; giving members the opportunity to ask questions and receive responses in advance of voting, either at a real-time on-line meeting or via proxy; and making the answers to all questions raised available to all, both in the meeting and in written form afterwards.
Looking ahead	Companies could consider offering a meeting to shareholders when restrictions are lifted. Also, the FRC will work alongside representatives of companies and shareholders to produce a fully considered assessment of best practice for hybrid format annual general meetings.

MERGER CONTROL: NEW PROTECTIONS FOR BUSINESSES

In June 2020, BEIS issued a [press release](#) stating that new provisions would be introduced into the Enterprise Act 2002 (the

2002 Act) to protect UK businesses that are critical to combating COVID-19 and future public health emergencies. BEIS states that "*these new powers will enable the government to intervene if a business that is directly involved in a pandemic response, for example,*

a vaccine research company or personal protective equipment manufacturer – finds itself the target of a takeover ”

Shortly after, an additional subsection was inserted into the 2002 Act which provides that the need to maintain the UK's capability to combat, and mitigate, public health emergencies is a "public interest consideration" which means the Secretary of State can intervene in relevant merger situations. BEIS has also issued [guidance](#) for those affected, or potentially affected, by the amendments to the 2002 Act as regards transactions that they believe may have a public health emergency dimension.

Additionally, the press release announced that expanded powers would be introduced to scrutinise and intervene in mergers in three sectors of the economy central to national security, namely the artificial intelligence, cryptographic authentication technology and advanced materials sectors. Orders have been published to expand powers to scrutinise and intervene in mergers in the three further sectors by way of lowering the thresholds for scrutiny to happen. These orders are subject to debate before they enter into force

FCA: HALF-YEARLY FINANCIAL REPORTS, GOING CONCERN ASSESSMENTS AND SHAREHOLDER ENGAGEMENT

In May 2020, the FCA published [Primary Market Bulletin No. 28](#) focusing on matters arising from the COVID-19 pandemic, including the following:

Temporary relief for the timing of publication of half-yearly financial reports

In response to the corporate reporting challenges faced by listed companies during the COVID-19 pandemic, the FCA has extended the deadline by which listed companies must publish their half-yearly financial reports by one month.

Under the FCA's forbearance, provided the half-yearly financial reports are published within four months, the FCA does not expect an issuer to request a suspension of its securities if it breaches DTR 4.2.2R, nor will the FCA take any steps unilaterally to suspend the listing, although it reserves the right to take this action

if necessary for other reasons. Issuers subject to these rules will not face enforcement action for breach of DTR 4.2.2R provided they publish their half-yearly financial reports within four months of the period to which the report relates.

This temporary relief complements the previous [FCA Statement of Policy: Delaying annual company accounts during the coronavirus crisis](#), published in March 2020, and is consistent with [ESMA's statement on financial reporting deadlines in light of COVID-19](#), published in March 2020.

See also the FCA's related [Q&A](#) published in May 2020.

Market practice on going concern assessments

The FCA recognises that some issuers have concerns about how to address COVID-19-related uncertainties in the "going concern" assessment they perform when producing financial statements. Issuers may face difficulties if the auditor's review of the assessment highlights a need for the auditor to include remarks in its opinion, with the concern being that additional remarks will be viewed unduly negatively by investors and intermediaries. Whilst the FCA stresses the importance of investors being properly informed about the impact of COVID-19 and continues to urge issuers and auditors to be clear and transparent about these impacts in their financial statements, it notes that it is equally important that investors and intermediaries understand what these disclosures mean and that they react appropriately. Market participants, including intermediaries, should not draw unduly adverse inferences from such disclosures, nor from issuers using extra time to complete their financial reports, as permitted. (See also mention below of the FRC Lab report on, amongst other things, going concern.)

Shareholder engagement

The FCA continues to encourage shareholder engagement to ensure that investors are appropriately informed of the issuer's actions, including the effects of COVID-19 on its business. Shareholder engagement includes formal disclosures through financial reports and trading updates. The FCA also encourages

issuers to consider other forms of shareholder engagement and participation, such as avenues allowing shareholders to ask questions of management at non-physical general meetings.

In a similar vein, the FCA encourages issuers to help deliver soft pre-emption rights by exercising their rights to be consulted on, and to direct, bookrunners' allocation policies. The

FCA suggests that issuers with a large number of smaller shareholders could consider ways in which such shareholders could participate in capital raisings, recognising that this may not always be possible, due to time pressures or legal risk.

FCA EXPECTATIONS OF MARKET CONDUCT

Alongside Primary Market Bulletin No. 28, the FCA published [Market Watch 63](#), in which it sets out its expectations of market conduct against the backdrop of increased capital raising events and alternative working arrangements arising from COVID-19.

Whilst recognising the uncertainty caused by COVID-19 and the operational difficulties of social distancing, the FCA's key message is that all market participants are expected to continue to act in a way that supports the integrity and orderly functioning of financial markets, including complying with all their obligations under relevant regulation, such as the Market Abuse Regulation (the MAR).

Particular focus on the following is encouraged by the FCA:

- ensuring inside information continues to be appropriately identified and handled by all persons involved in the information chain so that it is not misused for insider dealing or for commercial advantage;
- ensuring inside information is appropriately disclosed by issuers so that investors are not misled;
- maintaining robust market surveillance and suspicious transaction and order reporting by relevant market participants;
- meeting the transparency and short position covering requirements under the Short Selling Regulation for market participants to support the effective functioning of the market; and
- identifying and managing conflicts of interest that may arise around capital raising events.

On inside information in particular, the following matters are covered, among others:

- the FCA reminds issuers of the importance of maintaining adequate procedures, systems and controls to comply with their disclosure obligations under MAR and stresses that issuers should continue to assess what information amounts to inside information, as the COVID-19 pandemic and public policy response may impact the nature of the information that is material to a business' prospects and material in the context of its recapitalisation;
- the FCA stresses that issuers should carefully monitor whether any new information is materially different from previous forecasts and guidance publicly announced and which would now be likely to be misleading to investors, such as missing previous forecast earnings; if so, issuers must consider whether such information constitutes inside information and whether it must be disclosed to the public as soon as possible;
- in view of the different risks that arise from working from home, the FCA notes that issuers may want to reaffirm that persons on insider lists are aware of when they have access to inside information and of their legal and regulatory duties in relation to insider dealing and the unlawful disclosure of such information; and
- on delayed disclosure, given market uncertainties and changed working arrangements, the FCA states that issuers should be extra vigilant about the possibility of leaks and rumours and whether there has been a breach of confidentiality. Issuers should prepare holding announcements in advance to be used in the event of an actual or likely breach and disclose the information as soon as possible once the conditions for delay are no longer met.

The FCA also reminds market participants of their MAR inside information obligations more generally, such as disclosure of inside information, selective disclosure and market soundings.

AIM: ONE MONTH EXTENSION OF HALF-YEARLY REPORTING DEADLINE

In June 2020, the London Stock Exchange published an edition of [Inside AIM](#) in which it announced that, with effect from 9 June 2020, AIM companies are permitted an extra month within which to publish their half-yearly reports. Pursuant to AIM Rule 18, an AIM company must notify its half-yearly report without delay and, in any event, within three months of the end of the period to which it relates.

An AIM company must notify its intention to use the additional one-month period via an RIS prior to its reporting deadline under AIM Rule 18 and its nominated adviser must separately inform AIM Regulation. The temporary extension will be kept under review and an orderly transition to usual reporting periods will be announced when the disruption to AIM companies arising from COVID-19 subsides.

FCA BEST PRACTICE NOTE ON INSIDE INFORMATION

In June 2020, the FCA published [Primary Market Bulletin No. 29](#) which includes the final version of a best practice note on identifying, controlling and disclosing inside information and which is aimed at government departments, industry regulators and public bodies. Amongst other changes to the draft version of the note, clarification has been added on the interaction between MAR and other legislation pursuant to which the relevant bodies may be requested to disclose information, specifically the Freedom of Information Act (the FOIA). Disclosing inside information further to a FOIA request will not in itself make the disclosure lawful and the relevant body will first need to be satisfied that the disclosure would be lawful under article 10 of MAR (which provides that unlawful disclosure of inside information arises where a person discloses inside information, except where the disclosure is made in the normal exercise of an employment, a profession or duties).

FRC AND FRC LAB PUBLICATIONS

In June 2020, the FRC Lab issued two reports featuring practical guidance for companies in

areas of reporting that investors consider most critical.

COVID-19 - going concern, risk and viability: reporting in times of uncertainty.

In this report, the FRC Lab considers: going concern, risk and viability. It highlights some key considerations for companies and gives examples of good reporting. For example, as regards going concern, the report notes that where material uncertainties exist, what is important are the disclosures around these uncertainties and management's consideration of them. On risk, the report states that investors want to understand how risks have changed due to COVID-19, how they specifically affect the company and how management have responded. On viability statements, the report says the current crisis is a test of the value of viability statements. A viability statement with realistic scenarios and clear assumptions provides an opportunity for boards to communicate their longer-term prospects even when the short-term outcome is less certain.

COVID-19 - resources, actions, the future: reporting in times of uncertainty.

Noting the expectation of investors to be kept updated on a timely basis and the challenge for companies to avoid situations where helpful information could have been in the public domain and was not, this Lab [report](#) looks at three key areas: resources, including the availability of cash; actions to manage short-term expenditure and ensure viability; and the future, looking at how decisions taken now ensure the sustainability of the company and impact customers, suppliers and employees. The report includes examples of reporting from a range of publications including annual reports, websites and investor presentations.

During the last quarter, the FRC has issued a number of publications including the following.

Review of audit firms' going concern policies and procedures. In June 2020, the FRC [wrote](#) to audit firms summarising its review of audit firms' going concern policies and procedures during COVID-19. The letter notes that various "emergency procedures" put in place by audit firms (some of which are listed in the appendix to the letter, such as having an additional review by a central technical team or a further partner) lead to

benefits such as allowing an increased challenge of audited entities as regards their assumptions, stress testing and disclosures in their financial statements.

Editorial updates to 2018 Guidance on the Strategic Report. In May 2020, the FRC [issued](#) editorial changes to appendices of its 2018 Guidance on the Strategic Report. They include clarification that a public company must include a section 172(1) statement in its strategic report, even if it meets the medium sized company size criteria.

The FRC Transformation Programme. In May 2020, the FRC issued an [update](#) about its journey towards becoming the Audit Reporting and Governance Authority (ARGA). The FRC's transformation programme comprises six workstreams: setting up the new regulator; audit scope and regulation; corporate regulation; corporate reporting; corporate governance; and market reform. On corporate reporting for example, the FRC states that it will enhance its Corporate Reporting Review processes and increase the scope and number of reviews this year. It also states that it continues to work with BEIS to implement the recommendations for ARGA's new enforcement powers, in particular greater powers to hold non-accountant directors to account for their duties in relation to financial reporting.

Guidance for companies on corporate governance and reporting (including interim reports). In May 2020, the FRC issued [guidance for companies](#) to assist during the COVID-19 crisis looking at areas such as financial statements and interim reports, strategic report and viability statement and dividends and capital maintenance.

INVESTMENT ASSOCIATION PUBLICATIONS

In the last quarter, the Investment Association (IA) has published the following publications to assist companies.

[Executive remuneration in UK listed companies – shareholder expectations during the COVID-19 pandemic.](#) In April 2020, the IA issued guidance to listed companies. The IA recognises that remuneration committees should sensitively balance the need to incentivise executive performance at a time when management are being asked to

demonstrate significant leadership yet ensure that the executive experience is commensurate with that of shareholders, employees and other stakeholders. For more detail, see our [client briefing](#).

[Investors stand with UK plc in letter of support to FTSE Chairs.](#) In April 2020, in order to show their support for investee companies in the current challenging times, the IA issued a letter to FTSE 350 chairs noting their support in a number of areas but also indicating their members' views. Topics covered are: engagement and communication; financial reporting; AGMs; dividends; executive pay; and long-term capital raising.

See also the table at the end of the newsletter on other corporate governance developments in brief including mention of revised guidelines from Institutional Shareholder Services.

COMPANIES HOUSE GUIDANCE

In response to COVID-19, Companies House has, in recent months, made a series of announcements about updates to its services and working practices including: pausing the company strike-off process; extending filing services to enable a selection of registrar's powers forms to be uploaded and submitted online; and permitting companies to apply for extensions for filing their annual accounts (see page 3 for more on this in the item on the Corporate Insolvency and Governance Act 2020). See the links below for more information.

COMPANIES HOUSE GUIDANCE

[Coronavirus guidance for Companies House customers, employees and suppliers](#) (last updated 26 June 2020)

[Guidance about the upload service](#) (last updated 24 June 2020)

[Guidance about applying for more time to file your company's accounts](#) (last updated 26 June 2020).

CLIMATE CHANGE AND RELATED DEVELOPMENTS

Showing the breadth and depth of concerns over climate-related risks and opportunities, here are some key developments from the last quarter.

The EU Taxonomy Regulation	The EU Taxonomy Regulation has been adopted by the European Parliament. It is intended to help create the world's first classification system for sustainable economic activities and so create a common language that investors can use when investing in projects and economic activities that have a substantial positive impact on the climate and the environment. By enabling investors to re-direct investments towards more sustainable technologies and businesses, the Regulation is intended to assist the EU to become climate neutral by 2050.
Streamlined energy and carbon reporting – first annual reports containing disclosures are due	<p>As we mentioned in our March 2019 newsletter and our 2020 AGM and reporting season briefing, the Government's policy on streamlined energy and carbon reporting (SECR) came into force in April 2019 for relevant companies with financial years beginning on or after that date. Therefore, March year end companies are the first to have to report under the SECR in annual reports which will start to be published shortly, if not already. For relevant December year-end companies, who need to be preparing now, their 2020 annual reports published in 2021 will need to contain the necessary disclosures.</p> <p>By way of brief recap, SECR requires more reporting by quoted companies than has been the case. They now need, for example, to report on energy usage and energy efficiency measures on top of the emissions reporting they have been doing for some time. Also, in a significant extension, SECR also brings into the regime for the first time large unquoted companies and large limited liability partnerships. Although such entities have less onerous disclosure requirements than quoted companies, SECR will still necessitate thought and preparation to enable the necessary data to be collected so that the disclosures can be made.</p>
FCA consults on climate-related disclosures by listed issuers	As we mentioned in the Q1 2020 newsletter, in CP 20/3 , issued in March 2020, the FCA is proposing that premium listed commercial companies be required to disclose, on a comply or explain basis, climate-change related disclosures aligned with the recommendations of the Taskforce for Climate-related Financial Disclosures (TCFD). The FCA proposes new Listing Rules to achieve this. It is also consulting on a Technical Note to clarify existing obligations. The period of the consultation has now been extended until October 2020.
CFRF guide to climate-related financial risk management	In June 2020, the Climate Financial Risk Forum (jointly established by the Prudential Regulation Authority and the FCA and comprising members from banks, insurers, asset managers and others) published a guide on climate-related financial risk management . The guide aims to help financial firms to understand the risks and opportunities that arise from climate change and to support firms to integrate them into their risk, strategy and decision-making processes. The guide concentrates on four key areas of risk management, scenario analysis, disclosures and innovation. Whilst aimed at financial firms, the guide may prove useful to others looking to manage their climate-related risks and opportunities.
PLSA opens forum to find pension answer to climate risk	The Pensions and Lifetime Savings Association (PLSA) is inviting pension schemes, the wider financial services industry, the public and stakeholders to give their views on the practical ways the retirement savings sector can address climate risk. It is also inviting interested parties to submit evidence on questions including what are the biggest practical challenges to effective consideration and implementation of climate-aware investment strategies? Evidence and views can be submitted until August 2020.

NON-FINANCIAL REPORTING DEVELOPMENTS

There are a number of current initiatives in the non-financial reporting arena and some of these are summarised briefly below.

ICAEW. In June 2020, the Institute of Chartered Accountants in England and Wales published a report entitled "[Non-financial reporting: ensuring a sustainable global recovery](#)". The ICAEW recommends, among other things, a move towards the establishment of a single principles-based and internationally recognised global framework providing comparability and consistency for non-financial reporting. It notes the call by capital markets participants for global reporting standards enabling greater transparency, comparability and consistency. The ICAEW considers that EU action (see below), if properly framed, can contribute to a global solution, while also addressing EU regulatory objectives.

European Union. In February 2020, the European Commission launched a consultation

on a review of the Non-Financial Reporting Directive (2014/95/EU) (NFRD). By way of background, the Commission noted the increasing demands by users of this information including investors and other stakeholders, for more and better information from companies about their social and environmental performance and impacts. The consultation sought views on possible revisions to the provisions of the NFRD. The consultation period closed in June 2020.

Various European Supervisory Authorities have published their respective responses to the consultation and also a [joint letter](#), noting several themes in common with the ICAEW paper. For example, the need for a higher level of standardisation of non-financial disclosure requirements not just at the European level in the short term, but with the aim of achieving international standardisation in the long term. Also, the importance of requiring detailed disclosure standards covering a larger group of companies setting out mandatory rather than voluntary requirements which will aid comparability by investors.

MISCELLANEOUS CORPORATE AND GOVERNANCE DEVELOPMENTS IN BRIEF

ICSA. In June 2020, ICSA, The Governance Institute published updated [terms of reference for a risk committee](#). In April 2020, ICSA published a [guidance note on the withdrawal or amending of dividend resolutions](#).

PLSA. The PLSA and the Investor Forum have published a toolkit to help pension schemes assess the effectiveness of their asset managers' delivery of stewardship given the much greater profile of stewardship and engagement. The guidance is entitled - [Engaging the engagers: A practical toolkit for schemes to achieve effective stewardship through their managers](#)

Modern slavery. In April 2020, the Home Office launched a new [web page](#) with guidance for businesses on addressing and reporting on modern slavery risks (pursuant to s 54 Modern Slavery Act 2015) during the COVID-19 crisis. The guidance notes that, as well as focusing on health and safety concerns of their workers, organisations must also consider how fluctuations in demand for their products and changes in their operating models may lead to new or increased risks of labour exploitation. Additionally, the guidance states that if a business needs to delay the publication of its modern slavery statement due to COVID-19, it will not be penalised so long as it publishes the statement within six months of the due date and includes the reason for the delay.

Institutional Shareholder Services. In April 2020, Institutional Shareholder Services (ISS) issued an [update](#) to its policy guidelines to take account of the impacts of COVID-19. The update is to be read in conjunction with the relevant underlying country guidelines. For example, referencing guidelines where ISS favours hybrid general meetings over virtual meetings, ISS states that companies which choose to hold virtual-only meetings should explain why, should try and provide shareholders with engagement opportunities and should commit to return to hybrid meetings as soon as possible. Other areas covered include dividends, option repricing and capital raisings.

ASHURST PUBLICATIONS IN THE SECOND QUARTER OF 2020

Ashurst published a number of client updates in the second quarter of 2020, a selection of which are set out below.

Corporate, Finance and Restructuring

[UK Public M&A update Q2 2020](#)

[Comparing the UK's COVID-19 emergency loan schemes](#)

[Accessing the Covid Corporate Financing Facility: A step by step guide](#)

[CLBILS: new restructuring aspects explained](#)

[Virtual executions and electronic signatures](#)

[Docusign: remote execution of documents](#)

[Corporate Insolvency and Governance Act 2020 is now in force](#)

[Corporate Insolvency and Governance Act: The Restructuring Plan](#)

[Corporate Insolvency and Governance Act: The Moratorium](#)

[Corporate Insolvency and Governance Act: Ipso Facto \(Termination\) Clauses](#)

Competition

[UK merger control expanded: public health intervention and technology mergers](#)

[Supermarkets, hospitals, ferry services and dairy sector receive rare exclusion orders to permit COVID-19 coordination](#)

[ECJ upholds Marine Harvest gun-jumping judgment](#)

[EU guidance on COVID-19 coordination and the return of the "comfort letter"](#)

Employment, Incentives and Pensions

[The Corporate Insolvency and Governance Bill has become law but does it address pension scheme fears?](#)

[Investment Association guidance on executive pay and COVID-19](#)

[The Coronavirus Job Retention Scheme: Q&As for employers](#)

[Employer's vicarious liability](#)

Dispute Resolution

[Business interruption insurance: issue to consider](#)

[COVID-19 and beyond: drafting for future pandemics and dealing with the fallout from this one](#)

[Market conduct and discipline in the context of Coronavirus - the FCA's latest Market Watch](#)

[The FCA's expectations of financial crime systems and controls during COVID-19](#)

Tax

[New IR35 determination rules delayed to 2021](#)

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