FIT Remuneration Consultants

October 2017

Executive Reward Briefing

The IA's Public Register goes live

The Investment Association has today issued a press release saying that it is writing to all the companies listed on the FTSE All Share which sustained votes of 20% or more in respect of any resolutions at their 2017 AGM – and also to those companies which **withdrew** resolutions. As we reported in our August Executive Briefing, the Government committed in August to ask The Investment Association (IA) to set up a public register which would not only list the companies which sustained significant opposition to executive pay "and other" resolutions and also record how those companies plan to address shareholders' concerns. The Government will consider further action unless it considers that "active and effective" steps are being taken to respond to concerns.

The Register will include:

- A description of the resolution
- The voting result
- The link to the AGM results announcement – which, in accordance with the UK Corporate Governance Code, is already obliged (on a 'comply of explain ' basis) to say what actions the Board intends to take to understand the reasons behind the result.
- A link to any further statement the company has made on actions taken since the vote.

The Public Register will be launched in "Q4 of this year" and be continually updated. We understand that companies who will be on the inaugural list will have until 24th November to say how they are responding to shareholders' concerns.

FIT'S view: we estimate that at least 50 companies will find themselves on the 2017 list – based on our analysis of the FTSE All Share with AGMs held in 2017 and looking at remuneration resolutions. The list will be extended by the inclusion of non-remuneration resolutions which have incurred heavy votes against which reportedly will add at least another 50 companies.

Any companies which expect to be on the list should consider whether they want to report further at this stage on how they are responding. It is clear that the Government sees this list as a way of 'naming and shaming'. Margot James, Business Minister, is quoted as saying: "While the majority of British companies put responsible practices at the heart of their business, including ensuring pay is in line with performance, there are some that fail to address their shareholders' concerns about bosses' pay."

The implication here is clear and many, if not most, companies which have been re-designing their approach to pay over the last few months and have engaged with shareholders and the voting guidance services will know that it is quite possible to put responsible practice at the heart of their business and, at the same time, attract significant opposition from shareholders.

It is also clear that, despite the ideas on long-term incentives floated by the IA's Executive Remuneration Working Group in 2016, there is little consensus among shareholders on "the right answer". The vast majority of innovations including proposals to introduce restricted share plans, as well as 'combined' plans (which rely on the deferral of shares earned in the year) have sustained significant votes against (or the resolutions have been withdrawn) even where these proposals reduced pay potential, an objective which the Government and shareholders have both said is desirable. We hope that the Public Register does not have an unintended consequence of stifling pay design which is tailored to each company's business model and strategy as explicitly encouraged by the Government in its Green Paper response in the summer.

"Strengthening the stakeholder voice"

The Institute of Chartered Secretaries and Administrators (ICSA) and the IA have also now published their guidance to companies on stakeholder engagement – as requested to do so by the Government in its response to the Green Paper on corporate governance reforms. They start the report with 10 core principles – see box.

The Government has asked the Financial Reporting Council to consult on changes to the Corporate Governance Code on stakeholder engagement. Three mechanisms will be proposed to improve employee engagement: the appointment of a designated non-executive director, a formal employee advisory council or a director from the workforce. The ICSA/IA guidance contains examples of companies which have taken noteworthy actions and also talks about using existing committees to address specific stakeholders. The Remuneration Committee is highlighted in particular and the guidance says that the remit of Remuneration Committees could be extended to include an overview of pay and benefits throughout the company (as many Remuneration Committees already have). Overall it is a useful document which we think boards and company secretaries will find helpful as they work through the approaches that they want to take.

THE STAKEHOLDER VOICE IN BOARD DECISION MAKING – CORE PRINCIPLES

- Boards should identify, and keep under regular review, who they consider their key stakeholders to be and why.
- Boards should determine which stakeholders they need to engage with directly, as opposed to relying solely on information from management.
- When evaluating their composition and effectiveness, boards should identify what stakeholder expertise is needed in the boardroom and decide whether they have, or would benefit from, directors with directly relevant experience or understanding.
- When recruiting any director, the nomination committee should take the stakeholder perspective into account when deciding on the recruitment process and the selection criteria.
- The chairman - supported by the company secretary - should keep under review the adequacy of the training received by all directors on stakeholder-related matters, and the induction received by new directors, particularly those without previous board experience.
- The chairman – supported by the board, management and the company secretary – should determine how best to ensure that the board's decision-making processes give sufficient consideration to key stakeholders.
- Boards should ensure that appropriate engagement with key stakeholders is taking place and that this is kept under regular review.
- In designing engagement mechanisms, companies should consider what would be most effective and convenient for the stakeholders, not just the company.
- The board should report to its shareholders on how it has taken the impact on key stakeholders into account when making decisions.
- The board should provide feedback to those stakeholders with whom it has engaged which should be tailored to the different stakeholder groups.

Stop press: Gender pay gap

At the time of writing, 173 employers (or employing entities) have posted their data on the Government's website https://gender-pay-gap.service.gov.uk/Viewing/search-results?p=2

We estimate that there are about 14,800 companies to go before next April. We are working with several clients on interpreting the regulations, analysing pay data and reviewing action plans. Let us know if we can help.

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If you wish to discuss anything arising from this briefing, please ask your usual contact at FIT or call us on 020 7034 1111.