Browne Jacobson

Are you compliant with AIM Rule 26?

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AIM companies should state on their website:

- what code the company has decided will apply;
- how the AIM company complies with that code; and
- if no code has been adopted, detail its current corporate governance arrangements.

This information should be reviewed yearly and the date it was last reviewed should be also be set out on an AIM listed companies website.

The governance codes and the changing world of corporate governance

Over the coming months many government departments will be busy making provision for the UK's exit from the EU – and, whilst Brexit developments grab the majority of the headlines, separately there is a huge amount of work going on to implement changes to the UK's corporate governance regime, including capturing AIM listed companies within some of the new arrangements. We only need to recall the media coverage of recent high profile corporate failures, such as Carillion and BHS, to understand why the topic of good governance is high on the political agenda.

The reforms are being introduced through a combination of new statutory reporting requirements and changes to the UK Corporate Governance Code (Code), AIM Rules and QCA.

The 2018 UK Corporate Governance Code

The FRC has published a revised 2018 Code which will apply to accounting periods beginning on or after 1 January 2019. If the 2018 Code is the recognised code an AIM company has chosen to follow, the revised Code is much shorter, sharper and has fewer provisions than the previous version.

The 2018 Code contains important themes on promoting diversity of gender, social and ethnic backgrounds, and enhancing transparency and diversity in a company's succession pipeline. New provisions include:

- Companies should establish a method for gathering workforce views, using one or a combination of:

  - a director appointed from the workforce,

- a formal workforce advisory panel,
- a designated non-executive director.

- A broader role for the remuneration committee.
- Chairs should consider having regularly externally facilitated board evaluations (in FTSE 350 companies, this should happen at least every three years).
- Premium listed companies are required to explain intended actions to consult with shareholders where 20% or more votes are cast against a resolution recommended by the board on executive pay (and other matters).
- Premium listed companies will also be expected to comply with the associated FRC ‘Guidance on Audit Committees’ which provides guidelines for mandatory audit retendering and rotation of auditors. The guidance is based on experiences of audit tenders since the requirement was introduced into the UK Corporate Governance Code in 2012.

QCA Corporate Governance Code

According to QCA research, over half of the 900+ AIM companies have historically chosen adopt the QCA Corporate Governance Code (the QCA Code). A new version of the QCA Code was published on 25 April this year. This caters for small and medium-size firms.

The latest version of the QCA Code addresses the concerns from the Government’s Green Paper consultation on corporate governance reform. New provisions include:

- Ten corporate governance principles;
- Promotes a corporate culture which is based on ethical values and behaviours;
- Promotes stakeholder engagement with shareholders as well as employees, customers, suppliers, regulators and others;
- A change in approach to risk management from reporting risks to actions and outcomes;
- A requirement for companies to disclose and explain any actions or reasons where there are a significant proportion (i.e. 20% and above) of votes against a resolution at a general meeting;
- Suggests that to meet shareholder expectations, companies should consider whether it is appropriate to have a senior independent director (section 4 of the QCA Code); and
- Advises on factors that may hinder directors’ independence.

Conclusion

Given the increased focus of government, stakeholders and society as a whole on the importance of good corporate governance and the need for greater transparency and accountability, AIM companies should be reviewing their existing governance arrangements and preparing to make a comply or exchange statement in respect of their chosen recognised code.

Contact

Sam Sharp

Partner

sam.sharp@brownejacobson.com

+44 (0)115 908 4812

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