CLIFFORD CHANCE

2024 AGM SEASON: WHAT ARE THE LATEST TRENDS?

Against the wider backdrop of listing rule reform aimed at ensuring the UK remains an attractive place for companies to be listed, it was interesting to see significant debate about UK executive pay ahead of the 2024 AGM season. This wider context may also have contributed to a decrease in shareholder-requisitioned resolutions and in significant votes against AGM resolutions, compared to previous years. Although climate activists continued to disrupt meetings this season, their activity did not increase from levels seen last year.

This article reviews the 2024 AGM season to identify the latest trends and explore the wider context. We also consider what this might mean for next year's AGM season.

1. The start of a UK market shift on executive remuneration?

There was significant debate about the competitiveness of executive pay in the UK ahead of the 2024 AGM season (see box 1). Genuine concerns exist around recruitment and retention of chief executives of international businesses, where the talent pool is small and competition from non-UK companies is significant. Despite initial headlines suggesting a marked change in both the amount and structure of executive pay for UK listed companies, this did not materialise in practice. The 2024 AGM season was relatively quiet, with few companies experiencing high levels of shareholder dissent on executive remuneration matters, aside from a few notable exceptions.

Box 1: Executive remuneration: The debate so far

Following public comment, including from Julia Hoggett, CEO of London Stock Exchange plc, urging for constructive discussion on the UK's competitiveness, including on its approach to executive pay, the Capital Markets Industry Taskforce (CMIT) sent an open letter on UK corporate governance in November 2023 which called for reform to bolster UK competitiveness and economic growth.

On executive pay, CMIT advocated for investors accepting a 'level playing field' for remuneration frameworks as between the UK and peers in the US and Europe and encouraged simple remuneration structures and straightforward pay reporting. Two specific proposals that CMIT raised were:

- an increase or removal of the Investment Association (IA) dilution limits on the use of shares (which they view as outdated and limiting fast-growing companies); and
- the removal of the IA's guidance that companies moving from traditional long term incentive plans (LTIPs) to time-based 'restricted share awards' (RSAs) should discount RSAs by 50% vs LTIP awards.

The IA did not publish updated guidelines on remuneration on its usual annual timetable of late 2023. Instead it sent a letter to remuneration committee chairs in February 2024 discussing the pressure on UK companies to remain competitive in attracting and retaining top talent and confirming that it was conducting a more wholesale review of its guidelines.

In its discussions with companies, the IA had found three key themes:

- the need to increase pay opportunities through LTIP grant levels to remain competitive, particularly with the US;
- companies wanting to use 'hybrid schemes' which allow both performance-related LTIP awards and RSAs; and
- the UK Corporate Governance Code requirements, especially on retention periods, post-employment shareholding and malus and clawback, devaluing pay packages in the eyes of executives.

New guidelines are expected this Autumn.

For most listed companies, particularly those that are more domestically focused, there was little change in either remuneration structures or remuneration packages for executives.

However several FTSE 100 companies did put forward significantly changed executive pay policies and packages.[1] Where companies did so:

- the levels of shareholder support for remuneration proposals varied widely as between companies, even for proposals which would work in a similar way;
- there was no one preferred structure. Interestingly, where some companies moved from LTIPs to hybrid schemes (e.g. Smith & Nephew and Hunting) a number did the reverse (e.g. Rolls Royce and Glencore);
- investor bodies were clear that pay quantum is not a matter for them to opine on but something for shareholders and companies to agree between themselves; and
- financial performance was an important factor as a strongly performing company or one that needs talent in a turnaround situation may well have more success in securing shareholder support for enhanced remuneration packages.

Looking ahead to the 2025 AGM season, companies considering making substantial changes to executive pay need to undertake significant proactive and early engagement with shareholders to have time to discuss and debate the changes and ensure they are supported.

The fact that we have not seen sweeping change to date suggests that companies and their remuneration committees are assessing carefully whether change is right for them and there is no sense of companies 'following the herd'.

The revised IA guidelines are awaited with interest.

2. Continued disruption by climate NGOs and other activists

NGOs and activists continue to use disruption of the Annual General Meeting as a means of getting their voice heard and generating publicity for their causes. However, some companies that had previously faced disruption from climate activists were not targeted this year, and the primary targets remained the oil majors and some financial institutions.

Outside AGM venues, there were climate protestors as in previous years, as well as pro-Palestinian groups at the AGMs of several financial institutions, protesting against the provision of financial services to companies that supply weapons used by Israel in Gaza. Inside the meetings there were attempts to disrupt proceedings through singing, chanting, confetti canons and petitions being publicly presented to boards. Some climate activists such as Milieudefensie (Friends of the Earth, Netherlands) choose a less aggressive but equally disruptive approach, by politely and extremely persistently questioning the board on ESG issues.

Whilst disrupting AGMs remains a common method by which they seek to have their voices heard, NGOs and activists are increasingly turning to more high profile ways to exert pressure on boards to reduce greenhouse gas emissions and align with the Paris Agreement's 1.5°C target. In particular, climate litigation is on the rise, with the highest profile case to date being the Milieudefensie litigation against Shell (where the appeal outcome is expected in November).[2] Sparked by its initial success against Shell, Milieudefensie has set its sights on ING and has announced that it intends to bring legal action against it, with 28 other Netherlands-related companies on its potential litigation list.

In the UK, ClientEarth, together with other NGOs, brought a derivative claim against the Shell directors for breach of their duties to manage climate-risk, including failing to comply with the initial judgment given in the Netherlands case – which was an order for Shell to reduce its Scope 1, 2 and 3 emissions by 45% by 2023 (against a 2019 baseline). The English courts refused permission for the derivative action to proceed, reinforcing the position that English courts are unwilling to interfere in business decisions where directors have acted in good faith and have followed the correct decision-making process. However, whilst they did not succeed in the English courts, the case generated significant publicity for ClientEarth and its cause.

1 These include Ocado Group plc, Smith & Nephew plc, Hunting plc, London Stock Exchange Group plc, and AstraZeneca plc
2 Clifford Chance is acting for Shell plc

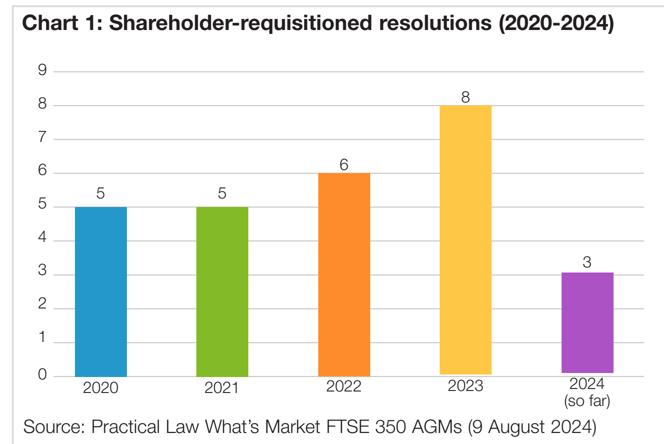
3. Fewer shareholder-requisitioned resolutions

Whereas these had been on the rise, we saw a sharp drop in the number of shareholder-requisitioned resolutions at AGMs this year, with only three resolutions requisitioned at three companies (compared to eight resolutions at six companies in 2023) (see chart 1). In line with previous years, none of these were passed.

One was the regularly recurring requisitioned resolution at HSBC relating to the 'State Deduction' applied to members of one of HSBC's pension schemes. Grafton Group's concerned the alleged unfair impact of share buybacks on LTIP award calculations. The third, requisitioned by Shell shareholders, sought alignment of Shell's medium-term emissions reductions targets relating to Scope 3 with the 1.5°C target of the Paris Agreement.

The fall in requisitioned resolutions may, in part, be because of market support for the drive to ensure that the UK remains an attractive place for companies to list and be listed. Another possible explanation is that shareholders' threats are being headed-off behind the scenes or in the earlier stages.

Chart 1: Shareholder-requisitioned resolutions (2020-2024)



Source: Practical Law What's Market FTSE 350 AGMs (9 August 2024)

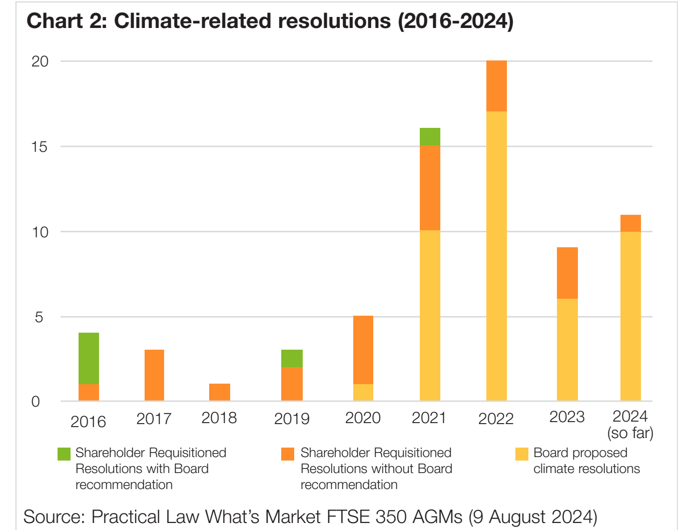
For example, ShareAction co-ordinated the requisition and subsequent withdrawal of a resolution at Barclays, following the board's engagement on a new energy policy to stop financing new oil and gas infrastructure. Dwindling support from some institutional shareholders who have come under fire in the US for basing investment decisions on ESG considerations, may also be playing a part.

One interesting US development concerns ExxonMobil's lawsuit launched against two climate-focused shareholder groups, Arjuna Capital and Follow This (the Dutch NGO that has historically requisitioned resolutions at the 5 largest oil majors: Shell, BP (no requisitioned resolution in 2024), TotalEnergies, Exxon and Chevron) to block their resolution pushing for Exxon to reduce its greenhouse gas emissions. Despite the resolution being withdrawn by the groups in the face of the legal proceedings, Exxon continued its lawsuit. It was later dismissed in June by a federal court in Texas, but only after Arjuna Capital and Follow This irrevocably agreed not to submit a future proposal regarding Exxon's greenhouse gas emissions. It will be interesting to see what effect this ruling has on activist shareholders filing resolutions at US companies in the future, and whether there is a knock-on impact in the UK market.

4. A shift away from 'say on climate' resolutions towards enhanced disclosure of transition plans

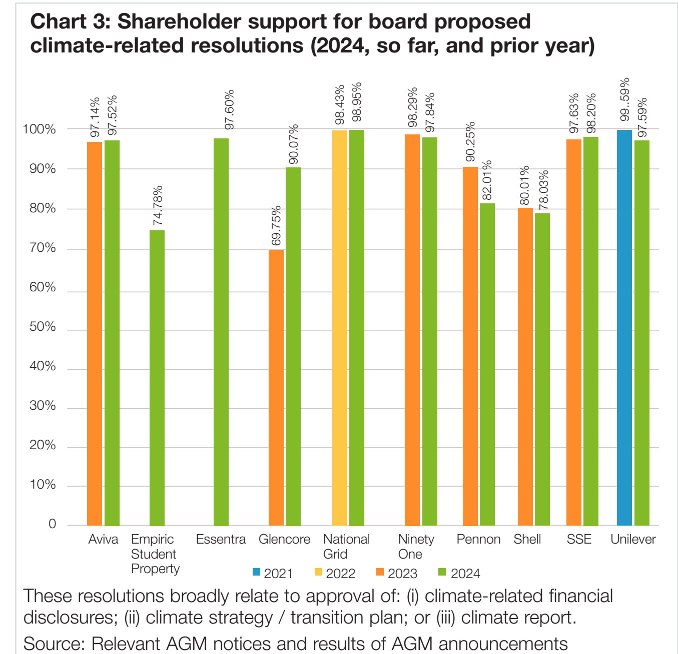
This season, six companies that had previously offered an advisory 'say on climate' resolution continued to do so, with some also putting an updated transition plan to shareholders (in line with commitments to do this every two or three years). Whilst four companies also gave shareholders an advisory 'say on climate' vote for the first time, we do not necessarily see this as an upward trend. As shown in chart 2, the number of advisory 'say on climate' resolutions increased dramatically in 2021 and 2022, and now looks to have stabilised. Shareholder support for 'say on climate' resolutions is generally high – see chart 3.

Chart 2: Climate-related resolutions (2016-2024)



Source: Practical Law What's Market FTSE 350 AGMs (9 August 2024)

Chart 3: Shareholder support for board proposed climate-related resolutions (2024, so far, and prior year)



These resolutions broadly relate to approval of: (i) climate-related financial disclosures; (ii) climate strategy / transition plan; or (iii) climate report.

Source: Relevant AGM notices and results of AGM announcements

Instead of offering shareholders the opportunity to have their ‘say on climate’ by voting for/against the board’s climate strategy, listed companies are being encouraged to focus their efforts on disclosing information about their transition plans, using the Transition Plan Taskforce's Disclosure Framework (now under the responsibility of the IFRS Foundation). Whilst not yet a requirement for listed companies, the new government made it clear in its pre-election manifesto that, as part of its plan to make the UK the 'green finance capital of the world', it would require UK-regulated financial institutions and FTSE 100 companies to develop and implement credible transition plans that align with the 1.5°C goal of the Paris Agreement, mirroring the EU's approach in the Corporate Sustainability Due Diligence Directive.

Disclosure of transition plans should provide shareholders with all the information they need to engage with the company on its climate strategy, and separately to hold the board to account e.g. by voting against the re-election of certain directors, should they choose to do so. As such we suspect that the 'say on climate' resolution may fall out of favour over time.

This year we saw some of the first companies to publish transition plans in 2021 update them, a process which includes reflecting on progress to date, the challenges faced and whether targets remain realistic. Some companies are also reconsidering their approach to ESG and sustainability more generally, perhaps wanting to focus on a smaller number of areas where they can make the largest impact. As companies reflect on ESG policies and targets, they should bear in mind the potential for ESG-related information to be inside information (see box 2).

Box 2: Monitoring progress against ESG targets and inside information analysis

As with any other type of information, ESG-related information has the potential to be inside information.

This will be the case if the relevant criteria for inside information are met, i.e. the information is of a precise nature; which has not been made public; relating directly or indirectly to the company or its shares; and which, if made public, would be likely to have a significant effect on the price of the company’s shares.

The extent to which ESG-related information (such as the updating of a sustainability target or that a particular sustainability target will not be met) would be likely to have a significant effect on price, depends on whether it is information of a kind which a reasonable investor would be likely to use as part of the basis of their investment decision. As the significance of ESG factors to some investors has increased, so does the chance of it being relevant to a reasonable investor – but the position is less clear than for the traditional types of financial/performance information that companies and their disclosure committees and advisors are used to considering.

The FCA made clear back in 2020[3] that companies must be cognisant of the possibility that ESG information might be inside information, and that companies needed to adapt the procedures, systems and controls which support their disclosure obligations, to deal with ESG-related information as necessary.

5. The rise of a new digitally-enabled AGM?

This year several FTSE 100 companies held ‘digitally-enabled’ AGMs[4], following the lead of Marks and Spencer who has done this for a couple of years. These digitally-enabled meetings have typically been broadcast from a physical location, for example the company’s offices, under ‘studio conditions’, with shareholders not physically present during the broadcast. Shareholders have been strongly encouraged to attend virtually, and the notice typically states that shareholders who turn up at the broadcasting location will be directed to join virtually and given support to do so. The board convenes at the physical venue for the broadcast, or in some cases some directors join virtually. But in either scenario, shareholders are not in the same room as the board, so this is not the same as a conventional hybrid meeting (which combines a traditional physical meeting with the ability for shareholders to join the meeting electronically).

While these digitally-enabled AGMs may pass the test with regard to legal validity (although concerns remain about the validity of wholly virtual meetings), companies, especially those with a large retail shareholder base, may need to weigh up the benefits against a potential backlash from shareholders who are being prevented from engaging ‘in person’ with the board. We saw this in relation to Marks and Spencer Group plc’s AGM last year.

Accordingly, where a company is considering adopting a digitally-enabled AGM under studio conditions, it will need to consider whether to provide other opportunities for the board to engage with shareholders to help mitigate against a potential backlash. Additionally, companies will need to check that the digitally-enabled approach is consistent with the provisions of their articles of association. It will be interesting to see whether more FTSE 100 companies adopt this new AGM format next year.

So far in 2024, five companies have adopted a wholly-virtual approach to their AGM. There are differing risk appetites among companies in relation to concerns over the legal validity of this approach and differing levels of support for this approach within the legal community. We do not expect there to be a significant change in the number of companies adopting the wholly-virtual approach in 2025.

3 https://www.fca.org.uk/publication/primary-market/tn-801-1.pdf
4 These include AstraZeneca plc, BAE Systems plc and Haleon plc

Box 3: Physical, digitally-enabled or conventional hybrid meetings?

- As can be seen in chart 4, once again the vast majority of FTSE 350 companies held physical meetings (79.3% in 2024 vs 80.8% in 2023). Of these, 15.1% included dial-in facilities for shareholders to listen to proceedings remotely (down from 15.7% in 2023).
- Five companies held fully virtual meetings. 43 companies (18.5%) held hybrid meetings (of which 27 were FTSE 100), compared to 48 in 2023 (of which 33 were FTSE 100).[5]
- In total 77.2% of companies offered shareholders the opportunity to ask questions in advance of the AGM (similar to 2023). More companies this year (22.8%) offered remote attendees the ability to ask questions live using the chat function (53 companies in 2024 vs 40 in 2023), and fewer offered live questions via telephone (32 companies in 2024 vs 45 in 2023).
- The move away from hybrid or dial-in attendance facilities, as well as facilities to ask questions remotely by telephone has been in response to low uptake of these facilities by shareholders in the past few years. This is a trend that seems likely to continue.

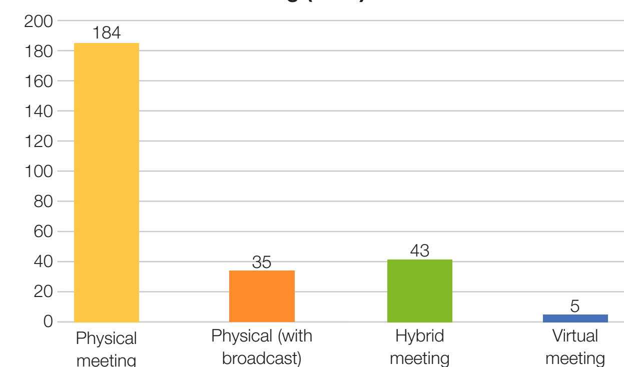
6. More listed companies are taking up the full permitted additional headroom (disapplication of pre-emption rights)

This season we saw an increase in the number of companies taking advantage of the flexibility to seek to disapply pre-emption rights for up to 24% of their issued share capital.

In the 2023 AGM season (following the updates in November 2022 to the Pre-Emption Group's Guidelines), companies were able to seek this additional level of authority (comprising 10% for general purposes, a further 10% for the purpose of an acquisition or specified capital investment and an additional 2% in respect of each 10% for a follow-on offer to retail shareholders). In 2023, 33% of companies sought to give themselves the full permitted headroom, with 40% of companies seeking a 10% authority only. So far in 2024, the number seeking the full 24% authority has risen to 40.9%, with those seeking a 10% authority dropping to 31%.

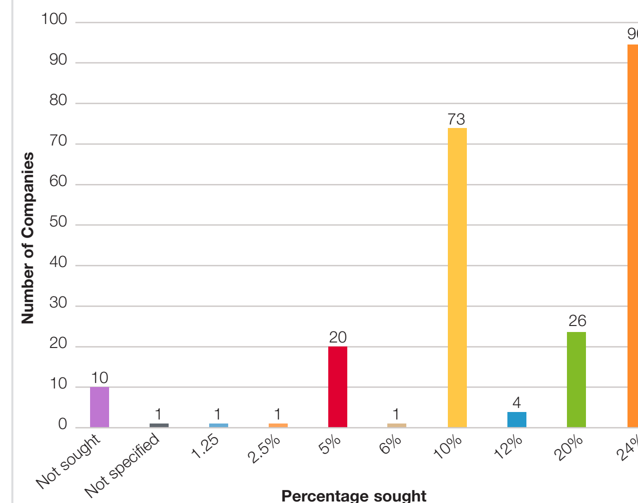
This trend perhaps indicates greater confidence among companies that did not seek the additional headroom last year, that shareholder support will be there. Additionally, the changes permitting companies to take additional headroom came relatively close to the start of the 2023 AGM season, meaning some companies may have deferred their uptake until the 2024 AGM season. The level of support for the disapplication of pre-emption rights authorities remains high.

Chart 4: Format of meeting (2024)



Source: Practical Law What's Market FTSE 350 AGMs (9 August 2024)

Chart 5: Disapplication of pre-emption rights: maximum authority sought (2024)



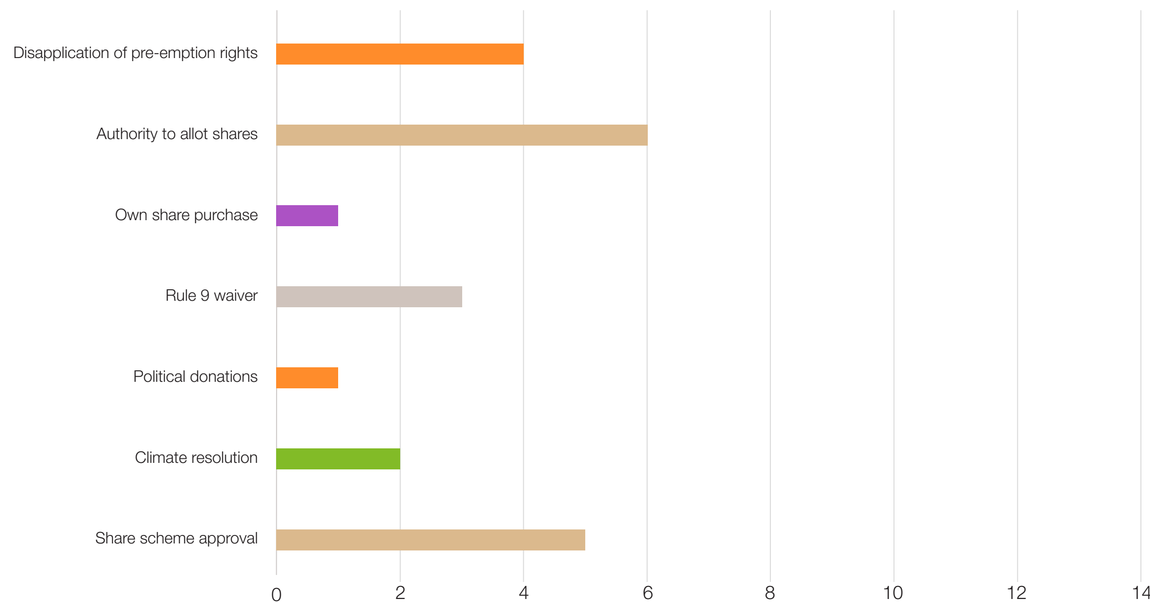
Source: Practical Law What's Market FTSE 350 AGMs (9 August 2024)

5 Chart 4 does not specifically reflect digitally-enabled meetings, some of which are counted as hybrid and others as virtual

7. Fewer instances of shareholders casting 'significant votes against' resolutions

While in 2023, the number of significant votes against director re-election was relatively high (sitting only behind significant votes against remuneration reports in terms of types of resolution with the most significant opposition), this has decreased in 2024. This year, 12 companies saw significant votes against proposed director re-elections (where the resolution was ultimately passed) with one company – Ferrexpo – seeing a resolution to approve the re-election of a director fail.

The number of significant votes against remuneration reports and remuneration policies in 2024 within the period under review was also low, with only five companies in each case seeing significant votes against, representing a significant decrease from 2023. One company – Plus500 Ltd. – saw its resolution to approve the directors' remuneration report fail. More recently, C&C Group also saw its remuneration report voted down (although this occurred after the period under review).



Source: Practical Law What's Market FTSE 350 AGMs (9 August 2024)

Concluding remarks from the editors

For many smaller companies the AGM is likely to continue to be a quiet affair, with very few shareholders attending (whether in person or virtually). For these companies, keeping the AGM as simple and cost effective as possible is likely to be key, with low take up of additional means of participation leading to fewer companies offering these facilities to shareholders. For other companies moving to a digitally-enabled format may be a further option to consider. Companies considering this option will need to bear in mind shareholder views and the need to ensure that the meeting is validly held in accordance with the company's articles of association and company law. Other considerations include that the format may lead to greater shareholder participation, if attendees feel that it minimises disruption and contributes towards the meeting being run safely and effectively. Additionally, digitally-enabled meetings can be more efficient, by minimising unnecessary travel and expenditure on large (and often underutilised) venues.

A major positive feature is relative stability in the legal and regulatory environment. The new government is continuing to progress reforms started under the previous government and wanting to do so without further delay. So far, for example, we have seen the FCA sticking to its timetable for the new listing rules to be introduced in July 2024. We also saw a proposed Audit Reform Bill in the July King's Speech, intended to give the FRC wider and stronger enforcement powers, including against directors for breach of their financial reporting duties. Decisions about adopting the ISSB sustainability disclosure standards and disclosure of transition plans are yet to come, with further announcements awaited. Whilst the pre-election manifesto was bold in its ambitions to make the UK a leading sustainable financial centre, these decisions inherently involve a difficult balance between the desire to de-regulate to promote economic growth and the desire to increase transparency and facilitate international comparability. It will be interesting to see where this ends up.

CONTACTS

Alanna Hunter
Partner
T: +44 207006 4393
E: alanna.hunter@
cliffordchance.com

David Pudge
Partner
T: +44 207006 1537
E: david.pudge@
cliffordchance.com

Andrew Patterson
Partner
T: +44 207006 6160
E: andrew.patterson@
cliffordchance.com

Kate Norgett
Corporate Governance Director
T: +44 207006 2023
E: kate.norgett@
cliffordchance.com

Dominic Ross
Partner
T: +44 207006 1063
E: dominic.ross@
cliffordchance.com

Katherine Moir
Partner
T: +44 207006 3688
E: katherine.moir@
cliffordchance.com

Sarah Boyd
Lawyer
T: +44 207006 5016
E: sarah.boyd@
cliffordchance.com

Isabelle Hessell Tiltman
Head of Corporate Thought Leadership
T: +44 207006 1681
E: isabelle.hessell-tiltman@
cliffordchance.com

C L I F F O R D

C H A N C E

© Clifford Chance 2024
Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571
We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications.
This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

JOB0000003164