

Insights

## UK CORPORATE BRIEFING JANUARY 2025

Jan 15, 2025

### SUMMARY

Welcome to the Corporate Briefing, where we review the latest developments in UK corporate law that you need to know about. In this month's issue we discuss:

#### **Corporate reporting – revised financial thresholds**

New regulations have been laid before Parliament to increase the company size thresholds for small and medium-sized companies for financial years beginning on or after 6 April 2025.

#### **ISS Proxy Voting Guidelines for 2025**

The ISS has published its Proxy Voting Guidelines effective for meetings held on or after 1 February 2025.

#### **Private Equity: PERG 17<sup>th</sup> report**

The Private Equity Reporting Group has published its latest annual report on conformity with the Guidelines for Disclosure and Transparency in private equity originally recommended by Sir David Walker in 2007.

#### **Court decides that model articles do work for sole directors**

A recent case has determined that a sole director does have authority to act under the model articles, despite two other recent cases that suggested otherwise.

## CORPORATE REPORTING – REVISED FINANCIAL THRESHOLDS

New regulations have been laid before Parliament to reduce the burden on businesses and address stakeholder concerns that the current reporting thresholds for businesses are no longer appropriate. The legislation will also remove duplicative or obsolete reporting requirements from the Directors' Report.

The Companies Act 2006 classifies a micro-entity, small, medium-sized or large company by reference to their turnover, balance sheet and the number of employees with the thresholds determining some of the information a company needs to disclose in their annual report. For financial years beginning on or after 6 April 2025 the following classifications will apply to companies that meet two out of three of the following thresholds:

## SMALL COMPANY

Annual turnover	Not more than £15m (previously £10.2m)
Balance sheet	Not more than £7.5m (previously £5.1m)
Average number of employees	Not more than 50 (no change)

## MEDIUM-SIZED COMPANY

Annual turnover	Not more than £54m (previously £36m)
Balance sheet	Not more than £27m (previously £18m)
Average number of employees	Not more than 250 (no change)

These changes are aimed at correcting the effect of inflation that has pulled a large number of companies into larger size classifications and to give more companies and LLPs the opportunity to take advantage of less burdensome reporting regimes afforded by a different size classification.

Under existing rules, a company must meet the qualifying conditions for two consecutive years to qualify as a certain size. However, under transitional provisions for financial years beginning on or after 6 April 2025, when a company considers a previous financial year, the new thresholds should be applied to enable companies and LLPs to benefit from these new thresholds as soon as possible.

## CHANGES TO THE DIRECTORS' REPORT

These changes include removing disclosure requirements about:

- important events that have occurred since the end of the financial year;
- likely future developments and research and development;
- the employment of disabled people; and
- engagement with employees and customers and suppliers – this overlaps with information required to be included in the section 172 statement.

## ISS PROXY VOTING GUIDELINES FOR 2025

The ISS has published its [Proxy Voting Guidelines for 2025](#), effective for meetings held on or after 1 February 2025. As previously proposed and highlighted in our [December Corporate Briefing](#), the finalised updates to the UK Policy include:

- **Remuneration:** this reflects the Investment Association's ("IA") latest Principles of Remuneration and the UK Corporate Governance Code 2024 provisions on malus and clawback - companies are expected to disclose in the annual report on remuneration, the circumstances and period in which malus and clawback could be used and details on whether such provisions were used in the reporting period.
- **Remuneration - dilution limits:** in line with the IA's Principles of Remuneration, the previous 5% dilution limit for the issue of new shares or the re-issue of treasury shares under executive (discretionary) schemes in any rolling 10-year period has been removed. The 10% cap for all company share schemes in any rolling 10-year period remains.
- **Remuneration for smaller companies:** this update recognises the latest version of the QCA Corporate Governance Code (2023) which recommends that smaller companies put their remuneration reports to an annual advisory shareholder vote and that remuneration policies should also be put to an advisory vote where a binding vote is not mandated.
- **Board and ethnic diversity:** the amendments clarify that the FCA requirement is for companies to report against the targets, as opposed to actually meeting them although progress against the targets is expected. The ISS may consider recommending a vote against the chair of the nomination committee if companies have not made progress in meeting the disclosure requirements in the Listing Rules in respect of board and ethnic diversity, in the absence of a satisfactory rationale.
- **Remuneration at financial institutions:** reference to CRD V has been removed reflecting the position that since 1 October 2023 UK banks and investment firms are no longer subject to the variable-to-fixed remuneration cap.

## PRIVATE EQUITY: PERG 17<sup>TH</sup> REPORT

The Private Equity Reporting Group ("PERG") has published its [latest annual report](#) on conformity with the Guidelines for Disclosure and Transparency in private equity (the "Guidelines") originally recommended by Sir David Walker in 2007.

Key findings from the report, which covers 90 portfolio companies that fall within the scope of the Guidelines, include:

- the vast majority (81) of portfolio companies were compliant with only nine not complying with any of the Guideline's components: enhanced disclosures, publication of reports and provision of data (this is a lower number of non-compliance compared to 2023);

- a growing number of portfolio companies are submitting a Statement of Compliance (78% vs 60% in 2023) demonstrating a growing level of understanding amongst portfolio company owners of the Guidelines and their requirements;
- the trend of basic disclosure around social, community and human rights issues as well as gender diversity information has continued but there has been a deterioration this year in the standard of compliance with financial key performance indicators.

A refreshed set of guidelines has also been announced which will see greater levels of transparency expected of firms. The changes include:

- increased disclosure on principal risks and uncertainties, environmental matters and diversity, equity and inclusion; and
- a modified scope to ensure the Guidelines are capturing large UK companies that are acquired and owned by private equity. These include increasing the enterprise value at which a transaction is caught and adding in an additional revenue test to better reflect the size of the FTSE 250 and activity in the market.

## COURT DECIDES THAT MODEL ARTICLES DO WORK FOR SOLE DIRECTORS

*Re KRF Services (UK) Ltd [2024] EWHC 2978 (Ch)*

Each year numerous private companies are formed with ‘model articles’ – the standard set of rules for how a company is governed, as provided under the Companies Act 2006. Many of those companies have sole directors, but two recent high court cases had decided that – under those rules - a sole director does not have authority to act, either at all (*Re Fore Fitness Investments Holdings Ltd* [2022] EWHC 191) or if the company had ever had more than one director (*Re Active Wear Limited (in Administration)* [2022] EWHC 2340).

However, in this most recent case the judge has decided that a sole director does have authority to act. This is a helpful decision but, as these three cases illustrate, high court judges don’t have to follow previous high court decisions. So, we continue to recommend that new companies are incorporated with model articles that are amended to make the authority of a sole director clear – and that, where the authority of a sole director may be called into question, existing companies take the opportunity to ratify their decisions and amend the articles, as appropriate.

To understand why the authority of a sole director had been called into question, we need to get into the drafting of articles 7 and 11 of the Model Articles:

- Article 7(1) sets a general rule that decisions are to be taken by a majority decision at a board meeting or unanimously; and 7(2) goes on to provide that if the company only has one director

- and isn't required to have more than one director - then the general rule doesn't apply and the sole director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

- Article 11(2) provides that the quorum for board meetings cannot be less than two (and unless the directors set another number, it will be two); and 11(3) goes on to provide that if the total number of directors is less than the quorum, the directors must not take any decision (other than to appoint further directors or call a general meeting to enable the shareholders to appoint further directors).

The *Fore Fitness* case had held that a requirement for a quorum of two was a requirement that the company have at least two directors. And, whilst the judge in the *Active Wear* case didn't accept that as a general proposition – noting that to do so would mean that article 7(2) would be redundant – he did determine that a sole director would not have authority to act if the company had previously had more than one director. However, the judge in this case read the articles in a (previously conventional) way that makes them work for a company with a sole director, as follows: 11(2) sets the quorum for a board meeting where there are multiple directors, but doesn't set a minimum number of directors of the company; and where there is a sole director, 7(2) applies, disapplying the decision-making provisions of Model Article 11 and allowing the sole director to take all decisions that could be taken by the board.

## **RELATED PRACTICE AREAS**

- Corporate

## MEET THE TEAM



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