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Insights

UK CORPORATE BRIEFING MARCH 2025

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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:

FTSE Women Leaders Review – February 2025

The latest report from the FTSE Women Leaders Review provides positive news with women now holding 43% of board roles, no all-men boards and the appointment rate for FTSE 350 companies creeping towards gender parity (46%).

T+1 Settlement

The government announced that it had accepted the AST's recommendations to move to a T+1 settlement cycle on 11 October 2027.

Short selling update

The FCA has updated its website page on the new Short Selling Regulations 2025, published in January 2025. The new regulations set out high level requirements for the new UK short selling regime.

Forfeiture of fully-paid shares was not permitted

In this case, the judge held that a company's articles did not permit the forfeiture of fully-paid shares – and questioned whether that was ever possible.

Take care with how price adjustment mechanisms and indemnity/warranty claims work together

This case highlights the need to consider and make clear how indemnity/warranty claims and consideration determination mechanisms work together.

FTSE WOMEN LEADERS REVIEW – FEBRUARY 2025

The latest report from the FTSE Women Leaders Review provides positive news with women now holding 43% of board roles, no all-men boards and the appointment rate for FTSE 350 companies creeping towards gender parity (46%).

Steady progress is also being made for women in leadership roles with women now holding 35.3% of roles in FTSE 350 companies. However, with one year to go companies are being urged to accelerate their efforts to close this gap.

WOMEN ON BOARDS: 40% RECOMMENDATION

FTSE 350 companies met the 40% target for women on boards three years ahead of the December 2025 target and the latest figures demonstrate that strong progress continues to be made with almost three quarters of all public companies now meeting or exceeding the 40% target. Progress on FTSE 350 boards has been driven by the significant increase in non-executive director roles which are now at parity. The focus now needs to shift to improving the appointment rate for women in executive director roles with women chairs at just 17%, CEOs at 7% and Finance Directors at 22%.

Progress in the 50 largest private companies has been positive but there has been a small reduction from 31.8% in 2022 to 30.5% in 2024 with just over a third of companies achieving or exceeding the 40% target.

Scope	**2023**	**2024**
FTSE 350	42.1%	43.4%
FTSE 100	42.6%	44.7%
FTSE 250	41.8%	42.6%
50 largest private companies	30.6%	30.5%

WOMEN IN LEADERSHIP: 40% RECOMMENDATION

The FTSE 100 is now within reach of this target at 36.6% and the 50 largest private companies are even closer at 36.8%.

With women constituting 36% of direct reports and 29% of executive committee members in the FTSE 350, the pipeline of talent is strong but is challenged by the appointment rate in the FTSE 350 with around six in ten roles still going to men.

Scope	**2023**	**2024**
FTSE 350	34.5%	35.3%
FTSE 100	35.2%	36.6%
FTSE 250	33.9%	34.2%
50 largest private companies	35.6%	36.8%

The outlook: the government recognises that there is still more to do to bring more women into roles such as company chairs and CEOs and to increase the number of women on boards and in leadership who hold executive roles. The government aims to work with FTSE companies and other organisations "to ensure that everyone has an equal opportunity to achieve their full potential based on their talent".

THE PREVIOUS RECOMMENDATIONS FOR THE REVIEW

There were four Recommendations that were announced in February 2022 to fuel progress in delivering gender balance at the top of British business:

- The voluntary target for FTSE 350 Boards and Leadership teams was increased to a minimum of 40% women's representation by the end of 2025.
- Companies should have at least one woman in the Chair, Senior Independent Director role on the board and/or one woman in the Chief Executive Officer or Finance Director role by the end of 2025.
- Key stakeholders should continue to set best-practice guidelines or use alternative mechanisms to encourage any FTSE 350 Board that has not yet achieved the previous 33% target for the end of 2020, to do so.

The scope of the Review was extended beyond FTSE 350 companies to include 50 of the UK's largest private companies.

T+1 SETTLEMENT

As part of the Edinburgh Reforms announced in December 2022 the previous government established an Accelerated Settlement Taskforce ("AST") to examine the case for trades to be settled more quickly in the UK. The current standard settlement period is T+2 ie. the trade is settled and the buyer receives the securities two days after the trade date.

On 19 February the government announced that it had accepted the AST's recommendations to move to a T+1 settlement cycle meaning a trade would be settled the day after it is agreed. This change will take effect on 11 October 2027. Other countries like the USA, Canada and Mexico transitioned to a T+1 settlement in May 2024 and the European Commission has proposed the same date as the UK for their transition to T+1 and ESMA has launched a consultation on this.

The government, the FCA and the Bank of England support the industry recommendation to move to T+1 settlement and call on industry to engage with the recommendations and start planning as soon as possible. Commenting on these changes, the Governor of the Bank of England said "*Shortening the UK securities settlement cycle to T+1 will bring important financial stability benefits from reduced counterparty credit risk in financial markets. It is important that firms and settlement*

infrastructures have robust plans for an orderly transition in October 2027. As part of this effort, the Bank looks forward to continuing dialogue with regulators in other markets which are pursuing similar changes."

Terms of Reference have been published for the next phase of the project, which will continue to be led by the industry taskforce and HMT, the FCA and the Bank as observers. Industry chairs from the EU and Switzerland have also been invited to observe the UK industry taskforce to encourage alignment across Europe.

To support firms during the transition, the FCA has set up a webpage on T+1 settlement.

SHORT SELLING UPDATE

The FCA has updated its website page on the new Short Selling Regulations 2025 (the "Regulations"), published in January 2025. The Regulations will set out high level requirements for the new UK short selling regime. The FCA plans to consult on new rules in Q3 2025.

Certain aspects of the Regulations will be implemented once the FCA has finalised the new rules and made any technical and operational changes. This includes the new requirement to publish aggregated net short positions by an issuer. In the meantime, the existing UK short selling regime will continue to apply including the current public disclosure of individual firms net short positions in issuers at the 0.5% threshold and above.

FORFEITURE OF FULLY-PAID SHARES WAS NOT PERMITTED

Key Choice Financial Planning Ltd v Evoy [2025] EWHC 4 (Ch)

This case is a good reminder to pay attention to provisions relating to forfeiture of shares – and to note that, as a matter of law, it may be that a right of forfeiture can only apply in relation to sums due on partly-paid shares.

Mr Evoy and another individual set up a company. In time, Mr Evoy ceased to be director and commenced litigation against the company. He lost that litigation and a large costs order was made against him; when he didn't pay those costs, the company purported to forfeit his shares (which were fully paid-up).

The company's articles included bespoke provisions relating to calls, lien and forfeiture which were largely based on the model articles for public companies. The model articles for public companies allow shares to be issued partly paid and go on to include a right to call for the payment of the rest of the issue price, a lien over the partly paid shares for the unpaid amount, and a right to forfeit the shares if any amount called is not paid (whereas the model articles for private companies require all shares to be fully paid when they are issued - and they don't contain provisions relating to calls, lien and forfeiture). However, the provisions in this case appeared to go further: for example, the lien

was expressed to apply over every share “whether or not partly paid” and in relation to “all monies payable”; and a call was defined broadly as “requiring the shareholder to pay to the company a specified sum of money which is payable by that member to the Company”.

Nevertheless, the judge found that the drafting of the articles only permitted the forfeiture of sums due in respect of partly paid shares. He noted that some of the relevant provisions of the articles included the words “in respect of shares which that member holds” (or similar) and determined that: this connected the call or forfeiture to shares in respect of which the sum called for was due; it couldn’t be the case that a call notice could be issued in respect of any debt, but only be enforced by forfeiture if it related to a call for sums due in respect of shares; and that, accordingly, the reference to “specified sum of money” in the definition of call must be impliedly limited to amounts unpaid in relation to the shares.

So, the decision in this case was made as a matter of ‘construction’ – i.e. the true meaning of the articles as determined by the judge. However, the day before the hearing, the judge had invited the parties to consider the impact of the statement in the company law book, Gore-Browne on Companies, that "a forfeiture of shares for non-payment of debts other than calls is invalid, whatever the articles may say…” – i.e. the proposition that, as a matter of law, it is not possible to forfeit shares for non-payment of debts generally. This proposition is based on the ‘maintenance of capital’ doctrine which generally prevents a company from acquiring its own shares or reducing its capital, save for specified exceptions. The Companies Act 2006 provides an exception for forfeiture of shares – but that exception is only expressed to apply to partly paid shares in relation to a failure to pay any sum due on those shares. So, even if the drafting of a right of forfeiture were to make clear that it applied to fully paid shares and/or debts due generally, that right may not be enforceable.

TAKE CARE WITH HOW PRICE ADJUSTMENT MECHANISMS AND INDEMNITY/WARRANTY CLAIMS WORK TOGETHER

Adie and anor v Ingenuity Digital Ltd [2024] EWHC 2902 (Ch)

In this case, deferred consideration was payable under an SPA, calculated as adjusted EBITDA multiplied by 6, less £6m (which was the amount of the initial consideration). Shortly before signing, a dispute arose with a customer of the target group in relation to an alleged breach of contract and an indemnity was included in the SPA in relation to that breach. After completion, that customer terminated its contract. The amount of the deferred consideration was reduced by an amount equal to invoices that were written off (multiplied by 6) and the buyer also intimated a claim under the indemnity in relation to the breach, including the amount of the written off invoices.

The sellers sought a declaration from the court that on a true interpretation of the SPA: the buyer was not entitled to include the customer dispute as an adjustment to EBITDA for the purposes of

calculating the deferred consideration; and/or the buyer was not entitled to include the customer dispute as an adjustment to EBITDA in that way and also make a claim under the indemnity.

However, the court declined to make either declaration. Broadly, the reasoning was as follows:

- the determination mechanism for the deferred consideration and the customer dispute indemnity were designed to achieve different things (one was determining the enterprise value of the target group, the other was providing pound-for-pound compensation in relation to the customer dispute).
- if the buyer were not able to adjust the price in relation to the customer dispute then it might not be fully compensated;
- the potential for something to impact both the deferred consideration and be subject to a claim under an indemnity must have been obvious and the parties had had ample opportunity to address it if they'd wanted to (as, although the customer dispute arose at a late stage, the indemnity in relation to it had been added to some existing indemnities); and
- whilst the judge acknowledged the sellers' concern about the potential for double recovery, there was no scope to take account of that in the price determination mechanism, which was a prescribed procedure; however, a court might take double recovery into account were the buyer to bring a claim under the indemnity.

RELATED PRACTICE AREAS

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