



Implementation of the Companies Act 2006

PIRC's Response to the DTI consultation

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1. Introduction

We welcome the opportunity to respond to the consultation on the implementation of the Companies Act 2006. Pensions & Investment Research Consultants Ltd (PIRC) has been an independent adviser to pension funds and other institutional investors for over 20 years. PIRC's clients have combined assets in excess of £750 billion and include some of the largest pension funds, investment management companies and insurance companies in the UK and overseas. Together, they comprise a diverse group of institutional investors with long-term liabilities and broad fiduciary duties.

PIRC undertakes company research on corporate governance and corporate social responsibility issues at public companies, and provides advice to clients on proxy voting strategies and other active shareholder initiatives. Our comments are based on two decades of practical experience, which inform our views on the strengths and weaknesses of disclosures, governance structures, and the interaction of statute, regulation and codes of practice.

We have only commented on those areas where we have particular views and expertise.

Question 2. 29 Do you agree that:

(a) whether companies are exempt from the requirement to supply addresses of all shareholders should depend on whether they are traded on EU regulated markets?

(b) companies that are traded on EU regulated markets should be required to provide addresses of shareholders who held 5 per cent or more of any class of shares at any time during the year in question.

We understand the government's rationale that a threshold is required for companies traded on regulated markets below which disclosure would be unduly onerous. We agree with this analysis, but we wonder if there are any reasons why such a threshold should not operate at the same level as the requirements for disclosure of voting rights that the FSA has proposed in policy statement PS06/11, i.e., at the level of a 3 per cent holding. We also consider that the distinction should be between public and private companies rather than between companies traded on regulated markets and others. We see no reason why AIM companies should not be covered by these disclosure rules.

Question 2. 35 Do you have any comments on the government's proposed approach to the statutory instruments on political donations?

PIRC supports the government's proposed approach to the statutory instruments on political donations.

Question 2. 39 Do you agree that companies need to report more effectively on the way in which they take pay and employment conditions elsewhere in the group into account in deciding directors' remuneration? If so, how do you think this could be done?

The need to report effectively on the way in which pay and conditions elsewhere in the group is taken into account as regards directors' remuneration is important for a number of reasons. Directors' pay needs to be justified to a number of different stakeholders – investors, staff within the company and, not unimportantly, the wider public. We are all aware of how this issue continues to promote disquiet in public debate, especially the view (justified or otherwise) that executive directors are receiving inflated remuneration awards that are out of proportion compared with the pay environment operating lower down in the company, and are being remunerated with little reference to the success or otherwise of the business they manage. These concerns do need to be dealt with if the market is to retain the confidence of wider society.

Disclosure in relation to how executive pay compares with pay elsewhere is desirable in the sense that, generally, there should be a bias towards further and better quality disclosure as virtuous in itself (whilst wishing to avoid information overload). It is also desirable in that further and better disclosure may result in behavioural change – awards being kept better in line with general pay trends as a result of a wider number of issues being considered as relevant to deciding levels of directors' pay beyond the trinity of "attract, motivate, retain" – or may simply lead to remuneration committees providing better justifications for the conclusions on directors' pay that they arrive at. In our opinion, either of these outcomes would be welcome as a step forward from a public interest perspective.

On a practical level, the remuneration report should include the mean annual pay for the year under review (separate figures for basic salary and total remuneration including performance-related aspects) for executive directors and the median figure for all employees and for the lower decile of employees. Figures should also be provided for the previous year in order to enable a comparison of the rate of pay increase to be carried out. An explanation should be provided where rates of increase in basic salary are clearly divergent for directors against all employees. We would like to see a statement on the treatment of pensionable service for executive directors as opposed to general company practice. A statement of the number of employees, including as a proportion of the total, receiving the minimum wage would be a useful addition for companies operating in the travel and leisure sector and the retail sectors and possibly some others.

We would like to see an emphasis on companies disclosing not simply some key additional data on this matter, but also engaging in a genuine narrative about how information was evaluated and used in coming to appropriate conclusions. This approach enables stakeholders to move beyond boilerplate statements in order to truly gain an understanding of the remuneration committee's thinking.

We would also be keen to see further reporting on the gender and ethnic breakdown of employment, as well as disclosure on the breakdown of pay rates between genders and ethnicities for comparative jobs.

We are aware of a potential tension between more comprehensive disclosure and the ability to identify key information easily. Remuneration reports are not the easiest of disclosure formats as matters stand. We consider, however, that these proposals represent a reasonable middle ground in terms of balancing the requirement for clarity against the need for disclosure in relation to this important area.

Question 2. 42 Do you agree with the proposal to retain these reporting requirements (disclosure of employee information in respect of the employment of disabled persons and employee involvement)? Please explain your reasons.

We support the retention of these reporting requirements. In general terms it is our view that companies and their stakeholders gain when disclosure is more transparent. An effective regime that mandates reporting where appropriate is required. Much of the reporting that does take place in relation to these issues is formulaic as it is, but that is no reason to do away with the requirement to report at all.

Question 2. 43 Do you agree
(a) with the approach set out to guidance relating to the new offences, and
(b) that the principal terms of limited liability agreements should be set out in notes to accounts?

We agree that the principal terms of limited liability agreements with auditors should be set out in the notes to the accounts.

Question 2. 64 Do you agree that every company should be able to have somewhere other than its registered offices for public inspection of records for which there is a statutory public right of inspection of its statutory records?

If so, do you also agree that every company should be required to provide details of the place other than its Registered Office where it enables inspection of any of its records for which there is a statutory right of inspection and also to provide details of which records can be inspected at that place:

- (a) in its Annual Return;**
- (b) in its annual report and accounts;**
- (c) on its website, if any; and**
- (d) immediately, to anyone who asks for this information?**

We agree that it is sensible for there to be an alternative to the registered office where records may be kept, and that companies should keep their records in a

single place to enable easier inspection. We would prefer such information to be made available electronically, but in the absence of this, the proposals are a definite step forward. We further agree that a company should be required to provide details of the place other than its registered office where records may be inspected in all of the above mentioned forms.

**Question 2. 65 Do you agree that
(a) the existing requirement should be retained to make records available for inspection for not less than 2 hours during period between 9am and 5pm on each business day for all companies with an exemption for private companies.
(...)**

PIRC does not have a view as to whether private companies should be exempted from this requirement or not. We consider that the existing requirement should be maintained for public companies.

Question 2. 67 Those exercising their statutory right to inspect a company's record should be free to copy the record while the company should not be under any obligation to facilitate such copying?

In our view companies should make reasonable efforts to facilitate the copying of records, instituting a fair charge if necessary. The basic reason for enabling interested parties to scrutinise company records is to encourage a transparent approach towards stakeholders. If this can be assisted through reasonable facilitation of copying, then we see no reason why what is hardly an onerous requirement might not be placed on companies.

In general terms, we support greater electronic disclosure, considering that executive directors' service contracts should be published on company websites.