

## Increased Annual Report Disclosures for UK Incorporated AIM Listed Companies

Under s172(1) of the Companies Act 2006 (**Companies Act**), a director has a duty to act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard to various factors including the long term consequences of the decision, the interests of the employees and the impact on the environment (**s172 Factors**) (s172 Factors – see the Appendix below for a full list).

In June 2018, new Companies Act provisions were introduced requiring companies to disclose in the Strategic Report of their Annual Report & Accounts (**ARA**) how the Directors have had regard to the s172 Factors in fulfilling their duties under s172(1).

### Who does it affect?

The requirements apply to all UK incorporated public limited companies, and so, by definition, all UK incorporated AIM listed companies.

The requirements also apply to private companies that meet the definition of “large companies” under the Companies Act. These are defined as companies who meet at least two of the following criteria:

- turnover over £36m;
- balance sheet total over £18m; or
- more than 250 employees.

Subsidiaries which qualify as a “large company” will also need to report separately.

### When does this come into effect?

The new requirements apply to financial years commencing 1 January 2019, so will affect annual reports published from 2020 onwards.

### What do UK Incorporated AIM companies have to do?

From 2020 onwards, UK incorporated AIM companies will need to include a s172(1) disclosure statement in the Strategic Report of their ARA describing how the directors have had regard to the s172 Factors when discharging their duty under s172.

Guidance from the Department of Business, Energy and Industrial Strategy in November 2018 suggests that companies should consider three core pillars in making the s172(1) disclosure statement:

1. The issues, factors and stakeholders the directors consider relevant in complying with s172(1) (a) to (f) (see Appendix below) and how they have formed that opinion;

2. The main methods the directors have used to engage with stakeholders and understand the issues to which they must have regard; and
3. Information on the effect of that regard on the company's decisions and strategies during the financial year.

FRC guidance states that: “the Section 172(1) Statement should focus on matters that are of strategic importance to the Company. The level of information disclosed should be consistent with the size and complexity of the business.”

Failure to comply with the requirements of the Companies Act in relation to the content of the Strategic Report can ultimately (where there was knowledge, recklessness or failure to take reasonable steps to secure compliance or prevent approval of the Strategic Report) result in directors being convicted of an offence and the imposition of a fine. Failure to comply with the website disclosure requirement is an offence by every officer of the Company in default and conviction can result in a £1,000 fine against the relevant individual.

### **Our recommendations**

We recommend that Boards of all AIM companies start preparing for this new disclosure requirement now and consider documenting the consideration of specific s172 factors that are relevant to their key decisions. S172 Factors will be considered routinely by most businesses and directors as a matter of good practice and common sense, but the new reporting requirement means that these thought processes will now need to be condensed to prose and communicated to shareholders in the Strategic Report. Boards who are unable to demonstrate appropriate thought processes and consideration of the wider consequences of their decisions may find themselves perceived negatively by stakeholders and potential investors.

Should you require assistance getting to grips with this new disclosure requirement, please contact us at [laura.nuttall@oneadvisory.london](mailto:laura.nuttall@oneadvisory.london), [liam.odonoghue@oneadvisory.london](mailto:liam.odonoghue@oneadvisory.london) or [co-sec@oneadvisory.london](mailto:co-sec@oneadvisory.london).

Alternatively, please feel free to call us on 020 7283 8304.

### **Appendix: relevant legislation**

#### Section 172(1), Companies Act 2006

Duty to promote the success of the company

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- a. the likely consequences of any decision in the long term,
- b. the interests of the company's employees,

- c. the need to foster the company's business relationships with suppliers, customers and others,
- d. the impact of the company's operations on the community and the environment,
- e. the desirability of the company maintaining a reputation for high standards of business conduct, and
- f. the need to act fairly as between members of the company.

Section 414 CZA, Companies Act 2006 (from the Companies (Miscellaneous Reporting) Regulations 2018)

A strategic report for a financial year of a company must include a statement (a "section 172(1) statement") which describes how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172.