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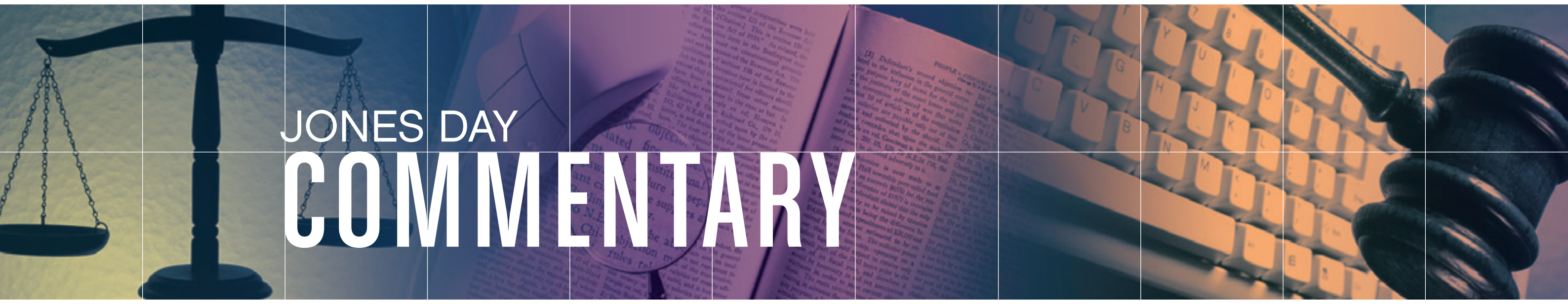

MANDATORY GREENHOUSE GAS EMISSIONS REPORTING FOR UK LISTED COMPANIES

On 20 June 2012, the UK Deputy Prime Minister, Mr Nick Clegg, announced at the Rio +20 Summit that all companies listed on the Main Market of the London Stock Exchange will be required to report their annual levels of greenhouse gas ("GHG") emissions from the start of April 2013. The announcement, which will initially affect an estimated 1,100 companies, follows a public consultation on policy options undertaken during the course of 2011. A further consultation on the draft regulations to implement policy will soon follow.

BACKGROUND

The introduction of GHG emissions reporting rules has been four years in the making. Section 85 of the Climate Change Act 2008 provided that the UK Government was either to make regulations, under the Companies Act 2006, by 6 April 2012 requiring the reports of company directors to include information about GHG emissions, or to lay a report before Parliament explaining why no such regulations have been made.

The original April 2012 deadline was missed whilst several policy options were still being considered, including a review as to whether the requirements to report would represent an unnecessary regulatory burden. Settling on the current proposals, the Government considers that the compulsory data to be reported under the new rules will provide another tool in helping the United Kingdom meet its commitment to cutting UK carbon emissions to 50 percent of 1990 levels by 2050. It builds on the regulatory framework established by the EU emissions trading scheme for the heaviest polluters and the United Kingdom's own cap and trade emissions trading system for other large energy users established by the CRC Energy Efficiency Scheme introduced in 2010.

Businesses seem largely won over by the proposals because a compulsory approach will provide a step change in enabling companies to manage and reduce emissions on a transparent basis. The proposals seek to provide a single consistent standard and provide information that will form the basis upon which energy efficiency decisions can be taken, which in turn should allow companies to save money through reduced energy costs. Whilst the number of companies initially affected is limited as the rules will not extend to cover private companies or those listed on the Alternative Investment Market at the outset, those companies may well fall within the scope of the rules in the future. A review of the rules will be undertaken in 2015, and, in 2016, the Government will then take a decision as to whether to extend the requirement to all "large companies" for the purposes of the Companies Act 2006. In addition to the fully listed companies caught by the original rules, this would affect about another 24,000 businesses.

TO WHAT EXTENT WILL GROUP OPERATIONS AND INTERESTS BE COVERED?

Company law requires directors' reports to cover all of the companies that are the subject of the financial portion of the Annual Report. This means that (subject to the "comply or explain" regime discussed below) companies will not be able to choose what organisational boundaries apply to their group-wide GHG emissions information in the directors' report but will be required to report their emissions on the same organisational basis as in their financial report. Accordingly, companies will have to include information on their group-wide GHG emissions, including their overseas activities where appropriate. This will ensure that investors and stakeholders will see the true picture of the company's emissions on a group-wide consolidated basis.

WHAT GHG EMISSIONS INFORMATION WILL BE REQUIRED?

Companies will be required to report on all six GHGs covered in the Kyoto Protocol i.e. carbon dioxide, methane, hydrofluorocarbons, nitrous oxide, perfluorocarbons and sulphur hexaflouride. The reporting will be in carbon dioxide equivalents. Companies will be able to use the already produced Department of Environment, Food and Rural Affairs ("DEFRA") and Department for Energy & Climate Change ("DECC") guidance on emissions conversion factors when calculating their emissions. The UK Guidance is based on the GHG Protocol, the internationally recognised standard for corporate accounts and reporting of GHG emissions, and it also aligns with the International Organisation for Standardisation ("ISO") 14064-1. Where it is not possible to collect the information required, principally in respect of overseas operations, the rules will allow the company to state the extent to which it has been able to report through a "comply or explain" clause.

SCOPE OF EMISSIONS COVERED

The regulations will provide that companies, as a minimum, will have to report their Scope 1 and Scope 2 emissions and will encourage the reporting of significant Scope 3 emissions.

Scope 1 covers direct emissions related to activities owned or controlled by an organisation that releases emissions straight into the atmosphere, including, for example, emissions from combustion in owned or controlled boilers, furnaces and vehicles and from chemical production in owned or controlled processing equipment.

Scope 2 covers indirect emissions being released into the atmosphere associated with consumption of purchased electricity, heat, steam and cooling. These are indirect emissions that are a consequence of the organisation's activity which occur at sources which the organisation does not own or control.

Scope 3 covers other indirect emissions which are effectively a consequence of the organisation's actions, which occur at sources which the organisation does not own or control and which are not covered by Scope 2 emissions. Examples would include business travel by means not owned or controlled by the organisation.

BASE YEAR, METHODOLOGY AND VERIFICATION

The new regulations will require a company to report the emissions for a base year of their choice and require that they report if the base year has been recalculated. Current guidance suggests that companies should set a base year recalculation policy and provide guidance on how to determine if the base year should be recalculated. Recalculation should ensure that appropriate comparisons can be made between different years despite changes in the company structure.

Those affected by the rules will be required to state the method and tools they have used to calculate their emissions i.e. the UK Guidance or another recognised standard or framework.

Verification of data in the context of environmental reporting has proved to be a difficult topic so far, but it has been confirmed that there will not be an additional requirement to include a further assurance or verification requirement in the company's annual accounts specifically on GHG emissions data within the report. Instead, and as provided for by section 496 of the Companies Act 2006, the auditor will be required to state in his report on the directors' report whether the information it contains is consistent with the accounts to which it relates.

CONCLUSIONS

As a result of the new rules, the United Kingdom will be the first country in the world to make it compulsory for certain companies to include GHG emissions data for their entire organisation in their annual reports. In doing so, the Government is hoping that this will encourage other countries to follow suit and enable investors and stakeholders to see which companies are managing their previously hidden long term costs of GHG emissions. Whilst the draft regulations are eagerly awaited by business so that the precise nature and extent of the reporting obligations can be fully understood, the Government has now given a clear indication of their likely scope and content. It seems that it will merely be a matter of time before the net of organisations covered by the rules extends beyond just the fully listed companies as the United Kingdom continually strives to take the lead in its ambitious plans to reduce GHG emissions ahead of any new binding global agreement.

LAWYER CONTACTS

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