Annual reporting and AGMs: trends from the AIM UK 50 2019 AGM season

by Practical Law Corporate

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This article highlights trends from the 2019 annual reporting and AGM season for AIM UK 50 companies, including the corporate governance code applied, board composition and committees, women on boards, section 172(1) statements, auditors and audit tenders, and resolutions proposed relating to directors' remuneration, the re-election of directors, authority to allot and disapplication of statutory pre-emption rights.

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For the purposes of this article, we have reviewed the notices of AGM and annual reports of AIM UK 50 companies, which can be accessed from *What's Market: AGMs: AIM 50: 2019*.

This article covers 51 companies whose shares are admitted to trading on AIM that published their AGM notice while a member of the AIM UK 50 and held their AGM between 1 January and 31 December 2019.

Narrative reporting

What's Market has analysed the disclosures made by AIM UK 50 companies in their annual reports in relation to the areas below.

Corporate governance

While AIM companies previously had to report on their governance arrangements under the *AIM Rules for Companies* (AIM Rules), corporate governance climbed further up the agenda when from 28 September 2018 AIM Rule 26 required AIM companies to disclose on their website a recognised corporate governance code that the board has decided to apply.

In April 2018, the Quoted Companies Alliance (QCA) published its updated QCA Corporate Governance Code (QCA Code) and in November 2019 published a research report, *Corporate Governance on AIM*, in which it surveyed companies on how they found the process of adopting a corporate governance code and any benefits or hindrances. Much like the research report, our analysis below of the corporate governance code applied by AIM UK 50 boards during the reporting financial year shows a notable move towards applying the QCA Code.

> Tim Ward, chief executive of the QCA, comments:
>
> "Adopting the QCA Code has proven to be good for both investors and companies. It has enabled boards to address important issues and ensure a company is effectively communicating how it is run, without distracting it from growth or pushing it to fit a prescribed mould. This allows investors to access richer and clearer information about how AIM companies are managed. We are pleased to see AIM companies have continued to improve their corporate governance disclosures with the QCA Corporate Governance Code enabling them to do this more effectively."

Corporate governance code applied

The AIM Rules require AIM companies to disclose on their website details of a recognised corporate governance code they have decided to apply, explain how they comply with their chosen corporate governance code and, where they depart from the code, provide an explanation of the reasons for doing so.

What's Market has tracked details disclosed in the annual report of the corporate governance code that companies have applied during the 2018/2019 reporting financial year. As illustrated by the chart below, of the 51 companies reviewed:

- 31 companies (61%) disclosed that they have applied the QCA Code.
- 17 companies (33%) disclosed that they have applied the UK Corporate Governance Code (UK Code).
- Two companies (4%) disclosed that they have applied the QCA Code along with aspects of the UK Code appropriate for the relevant company's size and nature of operations.
- One company (2%) disclosed that it has applied the UK Code and the King IV Report on Corporate Governance for South Africa 2016.

Comparing corporate governance code applied in previous and current reporting financial year

The following graph shows how many of the 51 companies reviewed applied the relevant corporate governance code in the 2017/2018 reporting financial year compared to the 2018/2019 reporting financial year (as disclosed in their annual report). Four companies are excluded from the 2017/2018 figures in the graph as they did not disclose applying any corporate governance code during that reporting year. It is interesting to note that there has been a marked shift towards companies applying the QCA Code for the 2018/2019 reporting financial year.

What's Market has analysed from disclosures in the annual report if the 51 companies reviewed have switched to applying a different corporate governance code in the 2018/2019 reporting financial year from the one applied in the previous reporting financial year. It should be noted that some companies may have disclosed in the previous reporting year that they applied a certain code only to the extent appropriate for the relevant company's size and nature of operations.

Our analysis shows that:

- Of the 25 companies that applied the UK Code in the previous 2017/2018 reporting financial year, in the 2018/2019 reporting financial year:
    - 15 companies continued to apply the UK Code; and
    - ten companies switched to applying the QCA Code.
- Of the 17 companies that applied the QCA Code in the previous 2017/2018 reporting financial year, in the 2018/2019 reporting financial year:
    - 16 companies continued to apply the QCA Code; and
    - one company switched to applying the UK Code.
- There were four companies that made no disclosure on the corporate governance code applied in the 2017/2018 reporting financial year. In the 2018/2019 reporting financial year:
    - three of these companies chose to apply the QCA Code; and
    - one company chose to apply the UK Code.
- Of the four companies that applied elements of both the UK Code and the QCA Code in the 2017/2018 reporting financial year, in the 2018/2019 reporting financial year:
    - two companies continued with the same arrangement; and
    - two companies switched to applying the QCA Code only.

Board composition

What's Market has analysed the board composition of the AIM UK 50 including the total number of directors on their boards as at their financial year end (as disclosed in the annual report). The 51 boards comprised a total of 330 directors as at their year end, compared in 2018 to a total of 316 directors on the 49 company boards reviewed.

During 2019, the average size of an AIM UK 50 board, including the chair, comprised six directors (rounded to the nearest whole number), with the number of directors on each board ranging from four to nine (the range is comparable to that in 2018).

Of the 330 directorships in 2019, 39% comprised executive directors (including executive chairs, if any) and 61% non-executive directors (including the chair). The figures in 2018 are similar: of 316 directorships, 41% comprised executive directors and 59% non-executive directors.

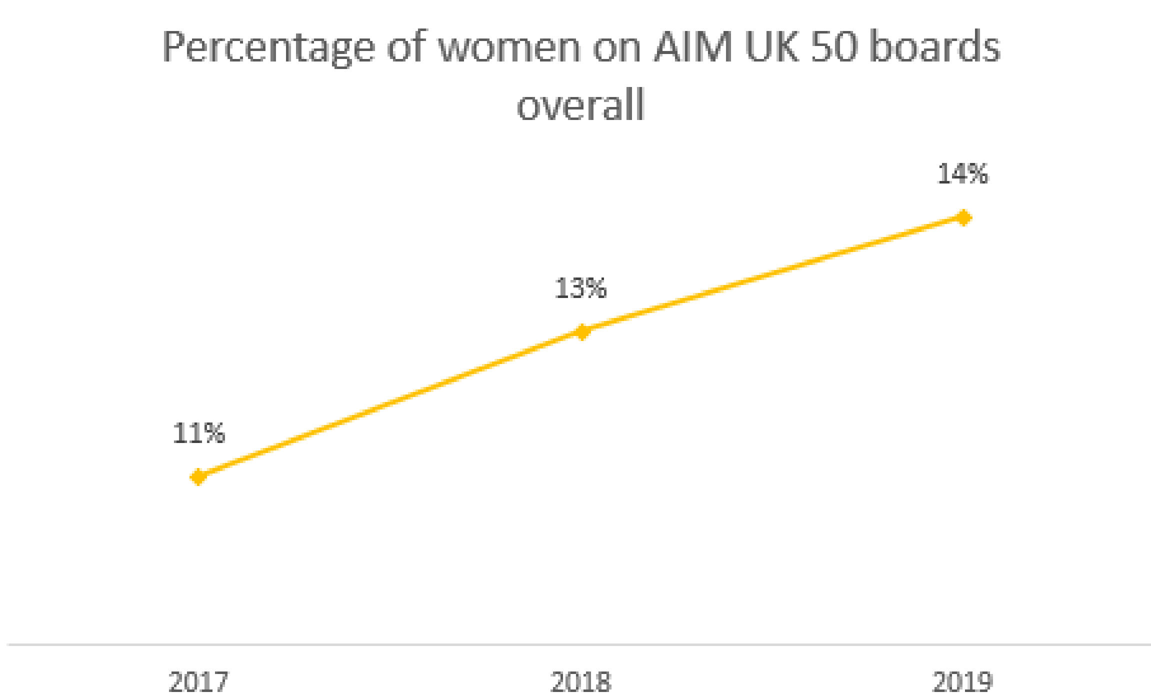
Women on boards

While the Hampton-Alexander Review's report published in 2016 set, among other things, a recommended target of 33% for women's representation on FTSE 350 boards by 2020, the recommendations do not apply to AIM companies (for background, see *Practice note, Gender diversity in boardrooms*).

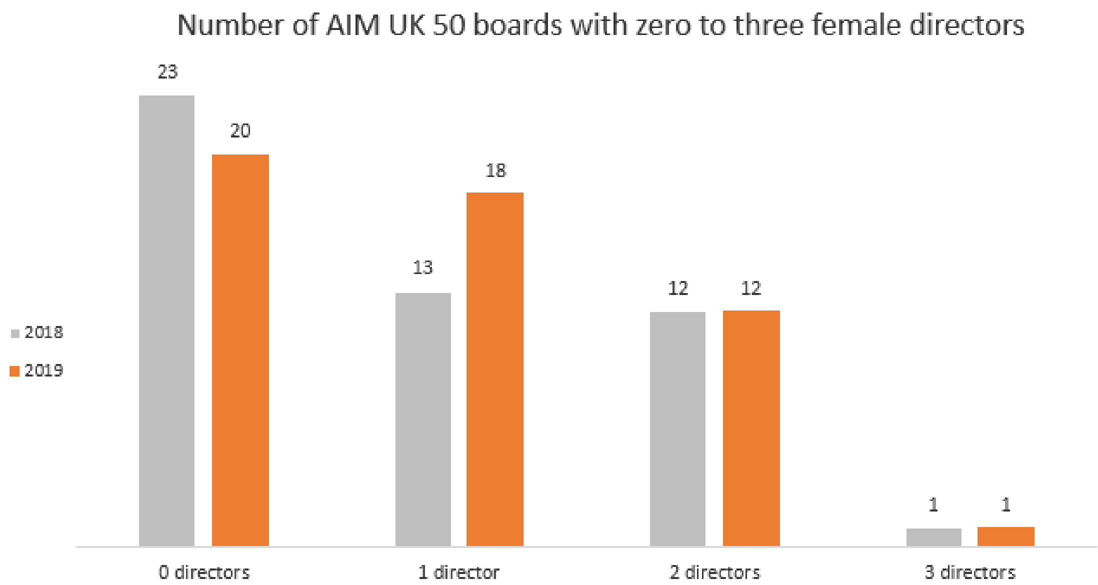
In the report, *Annual reporting and AGMs 2019: What's Market practice?*, What's Market analysed women's representation on FTSE 350 boards during the 2019 AGM season. The report found that women held 33% of FTSE 100 board positions (as as at 18 October 2019) and 26% of FTSE 250 board positions (based on What's Market data on the percentage of women on each FTSE 250 board at their respective year end).

The data from What's Market shows that AIM UK 50 companies are lagging behind their FTSE 350 counterparts but there has been some improvement in gender diversity on boards compared to previous years.

Of the 330 board positions of the 51 AIM companies reviewed, 45 (14%) of those positions were held by women, comprising six executive directors and 39 non-executive directors. The 2019 figures represent a slight increase from previous years. In 2018, of the 316 board positions, 40 (13%) were held by women; in 2017, of the 314 board positions, 36 (11%) were held by women. While the figures show an upwards trajectory in the gender diversity of boards, there have not been significant increases as the graph below shows.



In 2019, there has been a decrease in the number of boards with no female directors and an increase in boards with one female director compared to 2018. The following graph shows a comparison between 2018 and 2019 of the number of AIM UK 50 boards with a range of between zero and three female directors on their boards disclosed as at their financial year end.



In 2019, our analysis of the board composition of AIM UK 50 companies as at their financial year end disclosed in the annual report shows that:

- 39% (20 companies) had no female directors on their boards at all.
- 35% (18 companies) had less than 25% female directors.
- 25% (13 companies) had between 25% and 49.9% female directors.
- There were no companies with 50% or more female directors on their boards.

Board committees

What's Market has analysed disclosures in the annual report on whether AIM UK 50 boards have a remuneration, audit or nomination committee. Of the 51 companies reviewed:

- 100% have a remuneration committee (one board's committee is constituted as a remuneration and nomination committee and included in the figures).
- 98% (50 companies) have an audit committee.
- 76% (39 companies) have a nomination committee. (One board's committee is constituted as a remuneration and nomination committee and included in the figures. A board that dissolved its nomination committee during the reporting year and another board's committee that only meets on an ad hoc basis when there is a need to appoint a new director are excluded from the figures.)

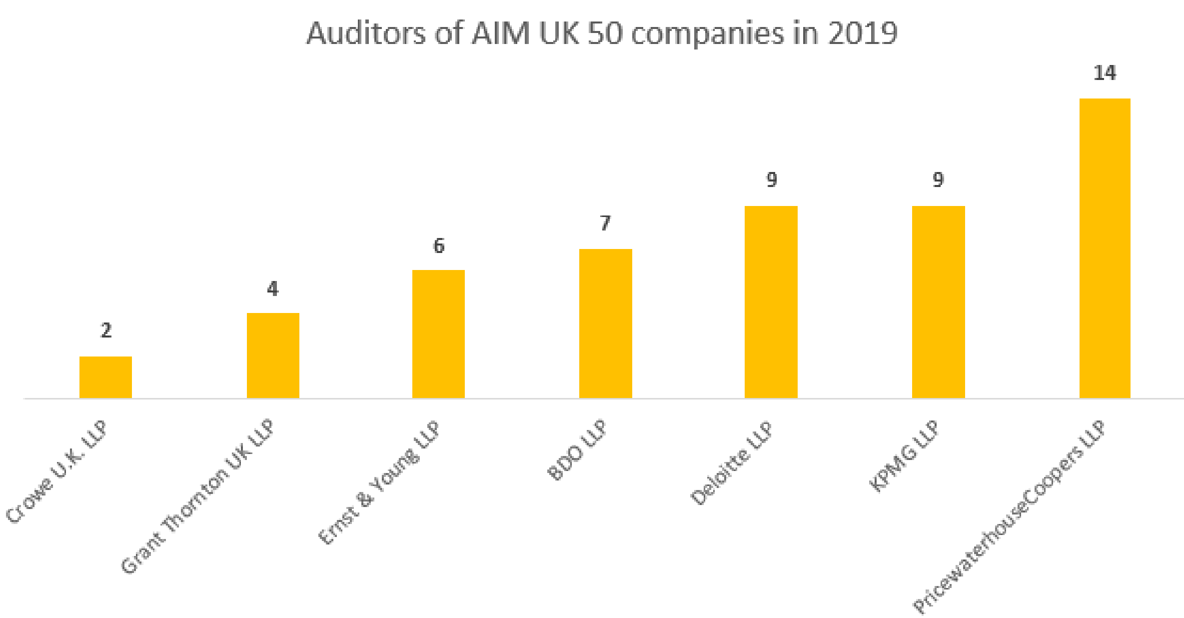
Section 172(1) statements

For financial years beginning on or after 1 January 2019, UK incorporated companies that fall within the scope of the Companies (Miscellaneous Reporting) Regulations 2018 (SI 2018/860) are required to include in their strategic report a section 172(1) statement describing how the directors have had regard to the matters set out in section 172(1)(a) to (f) of the Companies Act 2006 when performing their duty under section 172. Although we will only start to see these mandatory disclosures by companies within scope during the 2020 reporting season, What's Market has monitored if companies have made a section 172(1) statement during the 2019 reporting season where they have specifically identified it as such. The following are examples of companies that have either specifically disclosed a section 172(1) statement or made an informative disclosure regarding section 172:

- IQE plc on pages 38 and 39 of its *annual report 2018*.
- Majestic Wine PLC (now, following a change of name, Naked Wines plc) on pages 50 and 51 of its *annual report 2019*.
- Blue Prism Group plc on page 38 of its *annual report 2018*.

Auditors and audit tenders

As illustrated by the graph below, in 2019 there were seven firms of auditors that were the auditors of the 51 companies reviewed, with 74% of companies having auditors that are one of the "Big Four" accountancy firms.



Eight (16%) of the 51 companies reviewed put out to tender the external audit in the reporting year, resulting in five companies appointing a new firm of auditors and three companies re-appointing the same firm of auditors following the tender process. Only one of these eight companies appointed a firm of auditors outside the Big Four as a result of the tender.

AGM notice

What's Market has analysed the resolutions proposed in the notices of AGM of the AIM UK 50 companies that published their notice between 27 November 2018 and 8 November 2019 and held their AGM during 2019.

Directors' remuneration

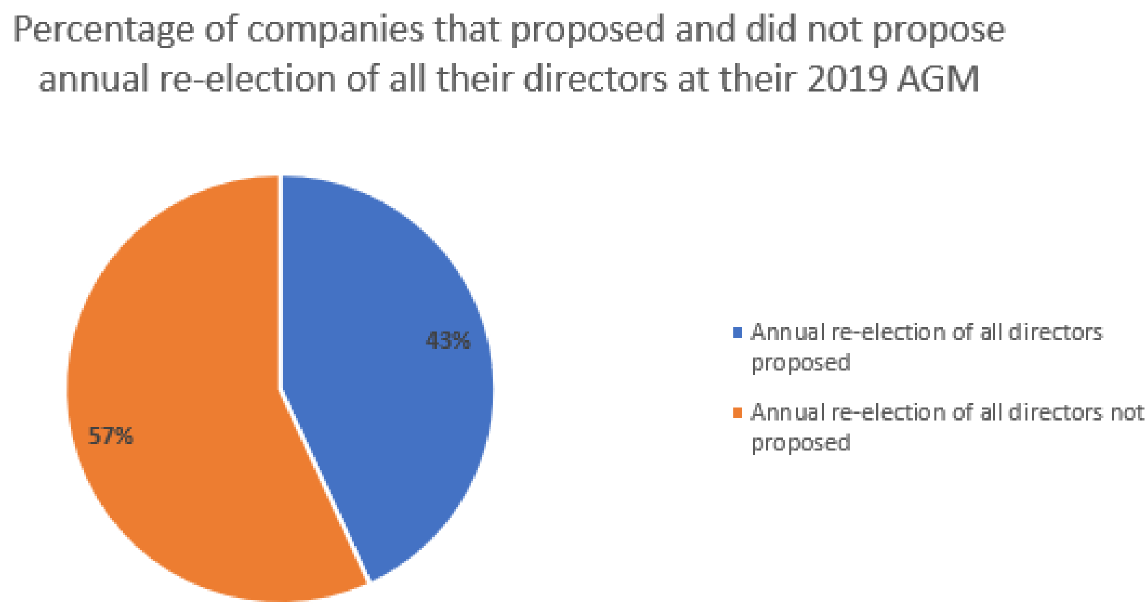
AIM companies are not subject to the directors' remuneration reporting requirements in the Companies Act 2006 (for background on the regime, see *Practice note, Directors' remuneration report*). However, as a matter of good corporate governance practice, some AIM companies propose resolutions to approve a directors' remuneration report and, more unusually, a directors' remuneration policy at their AGM. What's Market has monitored if any such resolutions were proposed during the 2019 AGM season. Of the 51 companies reviewed:

- 65% (33 companies) proposed a resolution to approve their directors' remuneration report.
- 6% (three companies) proposed a resolution to approve their directors' remuneration policy.

(One company included in the figures above proposed resolutions to endorse, rather than approve, the remuneration implementation report and the remuneration policy respectively.)

Election and re-election of directors

Unless an AIM company has chosen to comply with Provision B.7.1 of the 2016 UK Code (Provision 18 of the 2018 UK Code) or the company's articles require it, the directors of an AIM company are not required to submit themselves for re-election annually at the AGM. What's Market has tracked which companies proposed resolutions to approve the re-election of all their directors at their 2019 AGM, as illustrated in the graph below.



Authority to allot shares

What's Market has tracked which AIM UK 50 companies proposed resolutions seeking authority to allot shares at their 2019 AGM. Of the 51 companies reviewed:

- 48 companies (94%) sought authority to allot shares up to one-third of their issued share capital.
- 17 companies (33%) sought an additional one-third authority to allot in keeping with the Investment Association's *Share capital management guidelines* which allow for allotments of up to two-thirds of the company's issued share capital, provided that any amount over one-third is applied to fully pre-emptive rights issues only. Although not strictly applicable to them, AIM companies are encouraged to adopt the guidelines.

Disapplication of pre-emption rights

What's Market has monitored those AIM UK 50 companies that proposed resolutions seeking authority to disapply statutory pre-emption rights at their 2019 AGM. Of the 51 companies reviewed:

- 15 companies (29%) proposed a resolution to disapply statutory pre-emption rights of up to 5% of the company's issued ordinary share capital only.
- 19 companies (37%) proposed a resolution to disapply statutory pre-emption rights of up to 5% of the company's issued ordinary share capital and in respect of an additional 5% of the company's issued ordinary share capital, including in either the explanatory notes or the resolution a statement confirming that the company intends to use the additional authority only in connection with an acquisition or specified capital investment in line with the Pre-emption Group's *statement of principles* (with which AIM companies are encouraged to comply). Of these, 18 companies proposed two separate resolutions relating to the standard and additional

5% authority in line with the Pre-emption Group's expectations whereas one company proposed one resolution relating to both.

- 11 companies (22%) proposed a resolution to disapply pre-emption rights in respect of up to 10% of the company's issued ordinary share capital, without making any such statement in line with the Pre-emption Group's statement of principles.
- Two companies (4%) proposed such resolution in respect of an amount exceeding 10% of the company's issued ordinary share capital, ranging from 15% to 24.99%.
- Four companies (8%) did not propose any resolutions relating to the disapplication of pre-emption rights.

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