Labour's plans for Corporate Governance

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In Labour's 2019 General Election Manifesto, the party has signalled its desire to reform comprehensively corporate governance. The party has cited the examples of Carillion, BHS and more recently Thomas Cook as symptoms of a perceived 'short termism and corporate greed'. In the words of Shadow Chancellor John McDonnell in a speech given just over a week ago, Labour are seeking to 'rewrite the rules of our economy'. What could this actually mean for UK companies and the Companies Act 2006 should the Labour Party be elected?

Labour wants to revise drastically the Companies Act 2006 to "require companies to prioritise long-term growth while strengthening protections for stakeholders, including small suppliers and pension funds". This includes proposals which are particularly relevant for large plcs or listed companies but also matters which may affect smaller, privately-owned companies.

For private companies, the following proposals may be relevant:

- Rewriting the Companies Act "so that directors have a duty to promote the long-term interests of employees, customers, the environment and the wider public", which could increase the burden of directors' fiduciary duties, beyond their existing statutory duty to promote the success of the company;
- As part of their review of corporation tax reliefs, Labour plans to review the Enterprise Investment Scheme (EIS) and the Seed Enterprise Investment Scheme (SEIS), with potential scope to reduce or even abolish these reliefs;
- Introducing measures to deal with late payments to small businesses and self-employed people, including "banning late payers from public procurement";
- Allowing struggling companies to go into "protective administration", with the aim of selling such companies as going concerns to prevent them falling into administration; and
- Requiring one third of a board's makeup to be comprised of elected worker-directors, and "give them more control over executive pay", and in the case of larger companies (likely those with 250 employees or more), there would be the option for a unitary or two-tier board structure, with the second tier comprising employees, customers and long term investors.

For larger or listed companies, additional proposals include:

- Introducing a broader 'public interest test' "to prevent hostile takeovers and asset-stripping";
- Requiring large companies, meaning any UK company with 250 employees or more, to set up "Inclusive Ownership Funds", in which up to 10% of a company's shares will be eventually owned collectively by employees. Annual dividends would be capped at £500 per employee, with any surplus allocated to the Climate Apprenticeship Fund; and
- Introducing strict environmental impact criteria for companies listed on the London Stock Exchange "so that any company that fails to contribute to tackling the climate and environmental emergency is delisted."

Responses to these proposals from industry leaders has been mixed. Carolyn Fairburn, Director General of the Confederation of British Industry, fears that Labour's proposals would deter investors from the UK. Edwin Morgan, Director of Policy at the Institute of Directors, believes that "the vast majority of business leaders are on board with Labour's ambitions of tackling climate change and injecting dynamism to all parts of the country…but attempts to reform UK corporate governance must start from the recognition that our present system is an asset to the economy".

For private companies, the loss of SEIS and EIS relief could have a significant impact on very early-stage investment. Any broadening of directors' duties is also likely to be closely watched.

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