



martineau

T: 44(0)870 763 2000
F: 44(0)870 763 2001
E: lawyers@martineau-uk.com
www.martineau-uk.com
www.cc-forum.co.uk

CARBON ACCOUNTING

Before any element of a business can be effectively and efficiently controlled it must first be understood. In the case of greenhouse gas (GHG) emissions this involves monitoring and recording either the emissions themselves or the processes and energy use which generates them. Organisations around the world that emit large amounts of GHG are increasingly being required by law to monitor and report their GHG emissions as part of the various statutory emission reduction schemes that are springing up. In addition, some organisations for whom these measures are not mandatory have voluntarily taken steps to quantify their 'carbon footprint' and many have made this information, and the actions they intend to take to reduce the impact of their business on the environment, publicly available.

This, currently voluntary, GHG monitoring and reporting has been dubbed 'carbon accounting', and typically adopts the international carbon accounting standards enshrined in the GHG Protocol. The UK government is aware of the potential importance of carbon accounting in the process of meeting its GHG emission reduction aims and, as a result, is beginning to introduce legal requirements for businesses to keep, and publish, carbon accounts.

Until then, voluntary carbon accounting will become more widespread, as companies respond to pressure for various stakeholders such as the lending and investment community (through the Carbon Disclosure Project), the insurance sector (as illustrated by its "ClimateWise Principles"), supply chains and consumer demand.

Companies Act 2006

In October 2007 certain new provisions of the Companies Act 2006 came into force. These include a requirement that company directors, when carrying out their duties to the company, consider the impact of the company's operations on the environment.

but the smallest companies, a business review to assist those investing in the company to assess, amongst other things, how well the directors are performing their duties. It is arguable, therefore, that all business reviews should include information about the impact of the company's operations on the environment and should demonstrate that the directors have considered this in their stewardship of the company. In the case of publicly quoted companies there are specific requirements to do just that.

It could also be argued that, in order to properly consider the company's environmental impact, directors should be



Companies are required to provide annual reports. These reports must include, for all

required to understand its carbon footprint, and therefore should procure a

carbon accounting process for the company.

There are provisions in the 2006 Act designed to protect shareholders and the company itself from prejudicial action by the company's directors, and these provisions should be borne in mind by directors when considering environmental impacts of a company's business and the new duty described above. In essence, a shareholder may bring what is known as a "derivative action" on behalf of the company for a wrong caused to the company by its directors. In formulating a claim, it is immaterial whether the director's act or omission complained of took place before or after the person seeking to bring or continue the derivative claim became a shareholder of the company.

A derivative action is expressly available for this breach of duty by the directors, even if the director has not benefited personally from the breach, and notably would include a breach of the director's duty to consider environmental impacts when carrying out his duties. Furthermore, a claim can be brought by any shareholder, even in respect of a proposed act or omission involving negligence, default, breach of duty or breach of trust on the part of the director. The shareholder does not have to demonstrate any actual loss suffered by the company, although, if the company has not suffered any loss, nothing more than nominal damages could be awarded and that may lead to something of a pyrrhic victory. All of this opens up the possibility of increased shareholder activism, by individuals or pressure groups acquiring a share in a company with a view to bringing a derivative action against the company's directors where they feel that the board are giving insufficient weight to the interests of



the environment when managing the company's affairs.

Climate Change Act 2008

Further evidence that the UK government recognises the importance of carbon accounting by businesses, and the need for all businesses to produce carbon accounts in comparable form, can be found in the Climate Change Act 2008.

The 2008 Act introduces a pathway for the future introduction of mandatory carbon accounting for UK companies.

Under the Act, the UK government was required to publish guidance on the

measurement and calculation of GHG emissions by 1 October 2009.

Defra Guidance

This guidance, entitled 'Guidance on how to measure and report your greenhouse gas emissions', was published by Defra in September 2009. The guidance document is intended for all organisations, not just big businesses, including voluntary and public sector bodies. However, Defra has also issued a much smaller guide for small businesses, entitled 'Small Business User Guide: Guidance on how to measure and report your greenhouse gas emissions'.

The guidance was issued after extensive public consultation. Its objective is to support UK organisations in reducing their contribution to climate change, by explaining how an organisation can measure its GHG emissions and set targets to reduce them. It is important to note that any business which uses the guidance to measure and report its GHG emissions is not thereby required to submit such reports to the government, and any data created as a result will not be used to calculate the UK national inventory.

The guidance is based on the GHG Protocol and as such it aligns with many widely used national and international voluntary measuring and reporting schemes. The guidance may also help publicly quoted companies which are already required to report information on environmental matters in their business review (as mentioned above).

The guidance provides a format which the government recommends that all businesses follow when publicly reporting their GHG

emissions. It also provides a number of recommendations as to the scope of reported GHG emissions.

Following publication of this guidance, the government now has until December 2010 to prepare and lay before Parliament a report on the pros and cons of carbon measuring and reporting and its effectiveness in helping achieve emission reduction targets.

Finally, by April 2012 the 2008 Act requires the government to make a decision whether to introduce mandatory carbon reporting on companies, which it would do by introducing regulations under the Companies Act 2006. If it decides not to do so, the government must explain to Parliament its reasons.

Emissions Trading Schemes

Of course, for some UK companies, compliance with the EU Emissions Trading Scheme (EU ETS) has been a way of life for some time now, and has driven carbon measurement and reporting as a compliance activity. The EU ETS was launched in 2005, and imposes emissions caps on heavy industry and the power sector across the European Union. Operators of affected installations are able to trade allowances with each other so that emissions reductions can be made where most effective. From 2010, the UK will embark on its own, additional, emissions trading scheme, called the CRC Energy Efficiency Scheme (CRC). The CRC will cover large private and public sector organisations currently not caught by the EU ETS, and will require them to monitor their emissions and purchase allowances, sold by government, for carbon they emit.

For more information on the CRC, see:

www.martineau-uk.com/publication_event/updates/CRC%20Will%20it%20Apply%20to%20you%20.pdf

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**Andrew Whitehead, Senior Partner
Head of Energy & Utilities
T: 44(0)870 763 1528
F: 44(0)870 763 1928
E: andrew.whitehead@martineau-uk.com**

