

REGISTRY ROUND-UP

June 2019



Welcome to your June round-up. We are bringing you highlights from the registry world, key dates for you to be aware of, all current and relevant industry updates and a market update provided by Georgeson.

This month we will cover:

Industry update

- > Corporate Transparency and Registry Reform
- > Board Evaluation Consultation
- > Interim Dividend Payments – Investment Association Report
- > Proxy Advisor Disclosures
- > Improved Reporting – Smaller Listed Companies
- > Executive Remuneration – AIM Listed Companies
- > Employee Engagement
- > Global News

Georgeson market update

- > Memo on FTSE 350 Contested Remuneration Report Votes
- > UK
- > International



Industry update

Corporate Transparency and Registry Reform

The Department for Business, Energy & Industrial Strategy (BEIS) has released a consultation looking at enhancements to the UK's business environment, which they hope will not significantly increase the burdens on businesses of all sizes.

The consultation is split into five parts:

- › **Part A: Knowing who is setting up, managing and controlling corporate entities**
Suggests that individuals with key roles (Directors/Company Secretaries) should have identities verified, together with people with significant control (PSCs) and those tasked with filing company information. This section also talks about introducing shareholder verification in some circumstances.
- › **Part B: Improving the accuracy and usability of data on the companies register**
Looks at improving the quality of information being submitted to Companies House and expanding their existing powers to query and seek additional information where deemed necessary (e.g. upon significant increases in share capital). The improved delivery of annual accounts is also considered, as are some improvements to the current PSC requirements.
- › **Part C: Protecting personal information**
Discusses measures relating to how Companies House will store, control access to and keep safe the increased personal data the proposals look to capture.
- › **Part D: Ensuring compliance, sharing intelligence and other measures to deter abuse of corporate entities**
Proposes improvements to data by using cross checks with other government or private sector bodies and improving the sharing of intelligence to more quickly identify criminal behaviour. This part also considers imposing restrictions on the number of directorships that a single individual can hold concurrently.

From reviewing the consultation there are some items we have identified which are likely to have an impact on issuers:

- › Those issuers who are not subject to Chapter 5 of the Disclosure and Transparency Rules (DTR 5) and are either non-listed, or trading on a 'relevant' market, will be required to verify the identity (i.e. name, residential address and date of birth) of investors.
- › For those issuers' trading on a 'relevant' market, verification is only proposed for investors with 5% or higher ownership.
- › The consultation seems to suggest that all shareholders for non-listed companies could be verified if the company 'opts in' or that as an alternative, a threshold at which verification must take place could be introduced, similar to the '5% or higher' proposition for issuers whose securities are traded on a 'relevant' market.
- › Issuers will be required to update the Companies House register within 14 days of any change to the details of a shareholder that meets the requirements for verification.
- › The adoption and amendment of s.1082 of the Companies Act 2006, which would introduce the ability to link verified individuals/entities between different Companies House records.

- › The increased powers of Companies House to query and check information provided to them before publishing it on the register in certain circumstances (for example, upon a significant change in issued capital).
- › New limitations to the number of times a company can shorten their accounting reference date to stop alleged abuses of the system that allow companies to avoid penalties for late filing.
- › The introduction of methods to better indicate why a company is exempt from filing information on persons of significant control, such as linking to their listing.
- › The introduction of a new filing requirement that would require companies to report to Companies House when they open a non-UK bank account and provide supporting information.
- › Introduction of a limitation on the number of directorships that a single individual may hold concurrently, something which could particularly impact companies with large group structures.

Clearly, some of these proposals are likely to increase the burdens on companies, especially those around verification of shareholders. Considering that in some cases the information being proposed for capture is not currently a part of the requirements of a register of members, it seems that BEIS has not considered that many companies who aren't subject to DTR 5 still have highly active registers and therefore may be forced to do far more frequent filings.

The concept of limiting directorships by linking verified identifies does fall into scope with an increasing focus on overboarding, however the proposals aren't clear on how they would take account of subsidiaries of companies with large group structures, for example.

The consultation is open for response until 5 August 2019 and can be found [here](#).

Board Evaluation Consultation

Within the Government's consultation on insolvency and corporate governance, they requested that ICSA conduct an evaluation of the quality of independent board evaluations within UK-listed companies, in the hope of improving the quality and effectiveness of external evaluations.

ICSA has published a consultation which considers the purpose of such evaluations and reviews the current market practice. It notes that 32 different organisations were used for evaluations by FTSE 350 companies during 2018 with four of the organisations undertaking 63% of the work. This consultation discusses the selection process for reviewers and anecdotally notes that it appears common for companies to have reviewers conduct repeat evaluations. ICSA also notes that along with the outcomes, the quality of explanations of how an evaluation was conducted is variable.

Views are sought on measures to ensure that independent evaluations are robust, objective and enable companies to demonstrate the same. The proposed measures are:

- › Introduction of a voluntary code of practice for providers of board evaluations.
- › Application of voluntary principles by listed companies when engaging external reviewers. Principles are to include measures on reviewer selection process, scope of engagement, access to key stakeholders, reviewer approval for disclosure of process and outcomes to be detailed in the company's annual report.
- › Release of guidance for listed companies on disclosure of evaluation process and outcomes, in accordance with provisions of the 2018 UK Corporate Governance Code.

The consultation is only open until 5 July 2019 and can be accessed [here](#). Subsequently, ICSA intends to publish a report detailing its recommendations and submit this to the Government.

Interim Dividend Payments – Investment Association Report

Based on the feedback received during the consultation on insolvency and corporate governance, BEIS stated that it had concerns at a possible growing trend for companies to pay only interim dividends, which for most companies wouldn't require shareholder approval. They directed the Investment Association (IA) to assess and report on the prevalence of this practice.

The IA's report (found [here](#)) sampled 628 companies which made up the FTSE All-Share as at 1 January 2018 and who held an AGM between 1 December 2017 and 30 November 2018. Within their findings the IA identified that of those companies paying dividends, 22% didn't seek shareholder approval, and the majority of such distributions were interim dividends.

These findings have led the IA to call for companies to publish their distribution policy, so that the IA may establish a working group to develop best practice guidelines. The group will also be tasked with considering whether there should be a mandatory vote on a company's policy and/or yearly distributions.

A company's policy should set out their approach to making decisions on the amount, structure and timing of distributions (including dividends, share buybacks and other capital distributions) so as to provide shareholders with an opportunity to engage with companies on their approach.

Proxy Advisor Disclosures

As part of the UK Government's implementation of the amended Shareholder Rights Directive (SRD II) new regulations have been published (found [here](#)) that will require proxy advisors to make certain disclosures regarding their business.

SRD II and these regulations are designed to respond to growing concerns over a lack of transparency in the way proxy advisors carry out their business. This could lead to investors accessing poor quality, inaccurate or unreliable advice, therefore undermining their ability to conduct effective stewardship.

Key aspects of the regulation are:

- > **Code of conduct**

Proxy advisors must publish on their website a report detailing how they have applied a code of conduct and explain departures from that code. If they do not apply a code of conduct an explanation must be publicly disclosed.

- > **Assurance**

Information about the preparation of research, advice and voting recommendations must be published on the organisation's website. This should include methodologies employed, quality control and the nature of dialogue with companies and investors.

- > **Conflicts of interest**

Any actual or potential conflicts must be disclosed to clients where such conflicts may have an influence on the voting recommendations.

- > **Oversight**

The Financial Conduct Authority (FCA) will maintain a public list of proxy advisors and will be responsible for enforcing the regulations. The FCA will have powers to sanction for non-compliance but this won't mean that proxy advisors are regulated or authorised by the FCA.

The regulations will come into force on 10 June 2019, the same date by which SRD II must be implemented by EU member states.

Improved Reporting – Smaller Listed Companies

In order to assist smaller quoted companies, the Financial Reporting Council (FRC) and the Institute of Chartered Accountants in England and Wales have published a guide (found [here](#)) which builds on themes discussed in the paper entitled 'Improving the Quality of Reporting by Smaller Listed and AIM Quoted Companies' published by the FRC in 2015.

The guide is aimed at those listed companies who have a market cap of between £20 million and £100 million or those AIM listed companies with a market cap greater than £5 million.

Each section of the guide provides practical tips and questions that audit committees could consider when challenging management on current financial reporting. The guide has been split into sections covering:

- > Understanding the importance of high-quality financial and non-financial reporting
- > Nurturing a culture of improvement, time and planning
- > Skillsets and experience
- > Using the auditors wisely

Executive Remuneration – AIM Listed Companies

KPMG has published a report (found [here](#)) looking at executive remuneration in AIM-listed companies. Amongst their findings they have identified that within the Top 50 AIM companies, 42% have adopted the UK Corporate Governance Code in order to comply with the 2018 changes to AIM Rule 26. This means that 58% have adopted the Quoted Companies Alliance Code.

Other findings from the report show that a third of companies have paid a bonus in the range of 80% to 100% of the maximum bonus available for an executive, that performance share plans are more common and that only 7% of executive directors are women.

The report explains that while disclosure and voting requirements for executive pay are less prescriptive for AIM-listed companies, there is a growing trend towards being more in line with those companies on the main market to follow what is seen as best practice.

The report looks at the recent changes to the UK governance landscape, offering samples of executive remuneration from basic salaries to additional incentives, so it may be useful in aiding remuneration committees in benchmarking their existing schemes.

Employee Engagement

The Local Authority Pension Fund Forum (LAPFF) has published a report which, having surveyed the FTSE All-Share, considers how companies are looking to comply with the new Corporate Governance Code's requirements on board engagement with the company's workforce.

The report (found [here](#)) has identified that 66% of companies have decided how they intend to comply with the new aspects of the Code, while 18% have opted to explain their non-compliance. Of those who have decided to comply, the majority of respondents (73%) have stated that they will be appointing a designated non-executive director. A further 27% will be establishing a formal workforce advisory panel.

It is clear that few companies will be looking to appoint a director from their workforce, with the stated reason being predominately down to the size of the workforce. This was followed by the thought that such an appointment would create a conflict of interest and could be seen as tokenistic, together with a lack of appropriately skilled or suitable candidates.

Global News

ACSI Call for Stewardship Code

The Australian Council of Superannuation Investors (ACSI) has called for a Stewardship Code to be developed and made to apply to all institutional investors within Australia.

This recommendation forms part of a wider call for a review of the regulatory framework on stewardship within the Australian market and a call for greater recognition of the importance of ESG issues.

ACSI's policy statement can be found [here](#).

Best Interests of Corporation

The recent federal budget contained proposals to make amendments to the Canada Business Corporations Act, and one of the amendments would amend s.122 (Duty of care of directors and officers).

This section currently provides that every director and officer while exercising their powers and discharging their duties shall act honestly and in good faith and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The proposed amendment would introduce an additional subsection entitled 'Best interests of the corporation' and would state that while acting with the best interests of the corporation that directors etc. may also consider other factors including shareholders, employees, pensioners, consumers, the environment and the long terms interests of the corporation.

The full proposals can be found [here](#) in the accompanying legislation to the federal budget.

Corporate Culture Oversight

PwC has published a helpful report full of tools that are aimed at helping management and boards evaluate, monitor and influence corporate culture.

The report entitled 'Why do boards need to know their company's culture? Hint: to make sure it's an asset, not a liability' provides a sample culture 'thumbprint' to aid in understanding the strengths and challenges associated with the dominant characteristics of an organisation's current culture. It also provides sample monitoring metrics, a culture dashboard and identifies logical allocations of culture oversight among key board committees.

The report can be viewed [here](#).

ESG Reporting Guide (Society 23/05)

Nasdaq has published a global environmental, social and governance (ESG) reporting guide for all public and private companies to help them in their ESG disclosure efforts regarding the most commonly used reporting methodologies and frameworks, such as the UN's Global Compact and Sustainable Development Goals.

Their guide covers 30 metrics identified by Nasdaq as being the most meaningful, practical and achievable split evenly across the environmental, social and governance categories.

 Environmental (E)	 Social (S)	 Corporate Governance (G)
E1. GHG Emissions E2. Emissions Intensity E3. Energy Usage E4. Energy Intensity E5. Energy Mix E6. Water Usage E7. Environmental Operations E8. Climate Oversight / Board E9. Climate Oversight / Management E10. Climate Risk Mitigation	S1. CEO Pay Ratio S2. Gender Pay Ratio S3. Employee Turnover S4. Gender Diversity S5. Temporary Worker Ratio S6. Non-Discrimination S7. Injury Rate S8. Global Health & Safety S9. Child & Forced Labor S10. Human Rights	G1. Board Diversity G2. Board Independence G3. Incentivized Pay G4. Collective Bargaining G5. Supplier Code of Conduct G6. Ethics & Anti-Corruption G7. Data Privacy G8. ESG Reporting G9. Disclosure Practices G10. External Assurance

The guide is based on a 'respond or explain' concept for each metric and can be viewed [here](#).



Georgeson market update

[Memo on FTSE 350 Contested Remuneration Report Votes](#)

Memo on FTSE 350 Contested Remuneration Report Votes

The FTSE 350 Contested Remuneration Report Memo provides an overview of proxy advisor recommendations on FTSE 100 and FTSE 250 companies that received more than 20% opposition on their remuneration report resolutions during March and April 2019 as well as details of each of these proposals.

If you would like to receive a copy of the memo, please email daniele.vitale@georgeson.com.

[UK](#)

FirstGroup Bows to Activist Pressure

The Daily Telegraph reports that [FirstGroup bows to activist pressure with break-up plans](#).

“The FTSE 250 company revealed a strategic overhaul of its operations while admitting that it does not expect to turn a profit on the troubled South Western train network. The bus and rail operator has been under attack from Coast Capital Management, an activist investor with a 9.8pc stake that wants to replace half the board, slice the business in two and jettison its rail operations.”

Renewed Attack on Whitbread

The Sunday Telegraph reports that [Activist Elliott renews attack on Whitbread by plotting radical overhaul of Premier Inn](#).

Revered Wall Street activist Elliott Advisors is poised to renew its attack on Whitbread, putting it on a collision course with boss Alison Brittain for the second time in little over a year.”

Protest Against Drive to Disclose More on Boardroom Chats

Reuters reports that [Funds protest UK drive to disclose more on boardroom chats](#).

“Some of Britain’s biggest asset managers are protesting proposals that they disclose more details about their discussions with company boards on issues such as climate change and child labour. The Financial Reporting Council (FRC), which sets best practice for funds’ oversight of the firms they invest in via the UK Stewardship Code, wants managers to be more open about how they tackle environmental, social and governance (ESG) issues. But some of the biggest money managers argue too much disclosure could damage efforts to change corporate behaviour.”

[International](#)

Ruthless, Secretive and Sometimes Seedy

Institutional Investor reports about [The Ruthless, Secretive, and Sometimes Seedy World of Hedge Fund Private Investigators](#).

“Singer’s Elliott has an aggressive reputation, known to search for information on its opponents – a skill honed in its battles with sovereign debtors, including Argentina and Peru. [...] In recent years, though, Elliott has turned its tactics

on corporate chieftains, becoming the most feared activist hedge fund around the globe. Last year, the \$35 billion fund subjected 24 companies to its demands – far more than any other fund. And while it might be the most feared, it is far from alone.”

ESG Review 2019

ISS has published a report entitled [ESG Review 2019: The State of Play of Corporate Responsibility](#).

“The ESG Review 2019 is an annual analysis of the state of adherence by companies across the globe to ESG criteria. It provides insights into significant ESG developments and presents research findings that inform different responsible investment strategies. This includes ISS ESG products and services like Norm-Based Research, Corporate Rating and Climate research. The findings demonstrate positive trends in corporate sustainability performance, and a continued rise in the number of reported controversies across all ESG topics.”

Curb Metrics That Inflate Executive Pay

Bloomberg reports that [Investors ask SEC to curb metrics that inflate executive pay](#).

“The Council of Institutional Investors wants the SEC to do more to ensure that adjusted performance metrics aren’t used to justify excessive payouts to executives. The council has asked the Securities and Exchange Commission to require companies to explain in their proxy statements why and how they use alternative performance metrics to set CEO compensation.”

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