

REGISTRY ROUND-UP

June 2018



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:

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Registry Review 2018

The last 12 months in Registry

Our team takes you through our latest services and developments, as well as an overview of key industry and legislative topics

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Industry update

Mergers and Acquisitions – Government to Lower Threshold for Intervention

As of 14 May 2018, two orders have been passed:

- The Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018, and
- The Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018

These orders will come into force from 11 June 2018 and will lower the thresholds the Government need to meet, enabling them to intervene in more transactions.

In October 2017, the Department for Business, Energy and Industrial Strategy (BEIS) ran a consultation, discussing short- and long-term reforms to the UK merger control public interest intervention regime. The two parts to this consultation closed in November 2017 and January 2018, with the Government publishing its response to the short-term reforms in March 2018. The Government's response to the consultation was featured in the April edition of our Registry round-up, which can be found [here](#).

The updated thresholds, which will only apply to 'relevant enterprises', are as follows:

- The UK turnover threshold for the target will be reduced from £70 million to £1 million
- Where a merger involves an enterprise which has a 25% or more share of supply of the relevant goods/services in the UK (as well as where the merger leads to an increase in the share of supply to, or above, the 25% threshold)

The 'relevant enterprises' to which the lower thresholds apply include firms that develop items for military use, quantum technology, or the design and maintenance of computer hardware. The lower thresholds will come into force from 11 June 2018, and the two new orders can be found [here](#) and [here](#).

EU Company Law

On 25 April 2018, the European Commission published two proposals for directives: a proposal to make it easier for companies to merge, divide and transfer their registered office within the EU, and another to make it possible to establish a company entirely online.

The proposed procedures for cross-border conversions and divisions include new, harmonised rules on cross-border conversions, enabling businesses to move or reorganise without unnecessary legal complexities, and at a lower cost, throughout the Single Market. The procedures remain similar to those established by the existing Merger Directive but will be adapted to take into account the risks for potential abuses, as well as including additional new rules for simple mergers. They include further measures aimed at providing adequate safeguards to protect the rights of employees, shareholders and creditors, as well as to prevent abusive use of the cross-border procedure.

Following on from the Digital Single Market Strategy published by the European Commission in May 2015, the second directive proposes to make it possible for all companies to be able to register, file and update their corporate information online. To prevent abuse, national authorities can use each other's information about banned directors, and a personal appearance by the founders may be required if there are suspicions of fraud. The directive also proposes to bring into force a 'once only' principle, which would mean that once the company information is filed with a register, the company does not need to submit the same information multiple times in order to comply with the requirements set by Member States.

The draft directive on cross-border conversions, mergers and divisions can be found [here](#), and the draft directive on the use of digital tools and processes in company law can be found [here](#).

Access to Public Markets for Small-Medium Enterprises

The European Commission has proposed new rules which will give small and medium enterprises (SMEs) greater access to financing via public markets.

The proposals have been developed following a public consultation and look to make relevant amendments to the market abuse and prospectus regulations ([here](#)) and MiFID II ([here](#)). A consultation on the draft delegated regulation looking at the technical adjustments to MiFID II is currently available for consultation until 21 June.

The Commission has proposed to adapt current obligations on registers of persons with access to price sensitive information. This should reduce administration and allow those issuers with three or more years of listing on a growth market the ability to produce a lighter prospectus when looking to move to a regulated market.

EU Adopts 5th Anti-Money Laundering Directive

The European Council has adopted the 5th Anti-Money Laundering Directive (found [here](#)) which makes amendments to the 4th Anti-Money Laundering Directive that came into force at the end of June 2017.

The principal changes include:

- Widening access to information on beneficial ownership and improving the transparency in the ownership of companies or trusts
- Increasing the cooperation between financial intelligence units
- Improving checks on transactions involving high-risk third countries

The Directive will need to be entered onto the official journal of the EU at which point it will come into force twenty days later. Following this, member states will have 18 months to transpose the Directive into local law. This will mean that the UK Government will have to decide if they are going to adopt the directive during the Brexit transition period.

Registration of Share Transfers

Around the end of a tax year, one of ICSA's frequently asked questions is 'what date should be shown in the company's share register as the date of a share transfer?'

The simple answer is that the date on which the transfer occurred is the date when an entry was made on the register. However, ICSA has written an article which can be found [here](#) to provide an explanation of why this is the case, the time limits for updating the register and the significance of the date.

The confusion stems from a belief that the transfer may have already occurred and the date should reflect a prior event, such as the date the transfer form was executed. This isn't the case, however, and the article explains why.

Financing Sustainable Growth

On Friday 25 May, the European Commission published a number of legislative proposals looking at financing sustainable growth. Once the European Parliament and Council review and agree with the proposals, they are anticipated to be adopted from late 2019.

One of the proposals will introduce consistency and clarity on how institutional investors integrate environmental, social and governance (ESG) factors into their decision making. While exact requirements will be specified through the use of a delegated act, it is expected that investors will have to demonstrate how their investments are aligned to ESG objectives and how they comply with such objectives.

The proposal (found [here](#)) will require investors to publish written policies on their website regarding the integration of sustainability risks in their decision making. Disclosure of the risks should include such information as to aid

transparency, including but not limited to:

- Procedures and conditions applied for integrating sustainability risks
- The impact risks would have on financial product returns
- How investors remuneration policies are consistent with the integration of risks

Global News

Australian Asset Ownership Stewardship Code

On 17 May, the Australian Council of Superannuation Investors (ACSI) published the Australian Asset Owner Stewardship Code (found [here](#)). The code has been developed with asset owners and aims to provide an increased level of transparency about stewardship practices. It is hoped this will improve accountability to beneficiaries, other stakeholders and play a key role in influencing the behaviour of asset managers.

The code lays out six principles which should be implemented on an 'if not, why not' basis:

- Public disclosure of approach to responsibilities
- Public disclosure of voting policy and activity
- Company engagement
- Monitoring of stewardship activities
- Report to stakeholders on stewardship activities
- Better align the operation of financial systems and regulatory policies with interests of investors

Corporate Governance Principles

The ASX Corporate Governance Council has issued a consultation (found [here](#)) on the fourth edition of their Corporate Governance Principles and Recommendations. Under ASX listing rule 4.10.3 companies are required to benchmark their governance against the recommendations and where they do not conform, disclose this fact and provide reasons.

The consultation which closes on 27 July looks to address a number of issues including:

- Corporate values and culture
- Anti-bribery and corruption policies
- Gender diversity at board level
- Carbon and cyber risk

The fourth edition will retain the existing eight core principles but will contain significant changes to principle three which concerns a company acting ethically and responsibly. The Council is also proposing to expand the existing 29 recommendations to 38.

What's New in Governance?

The Stanford Rock Centre for Corporate Governance has published an article entitled '[How Netflix Redesigned Board Meetings](#)' in which the authors highlight two unique practices that aim to significantly enhance directors' access to and understanding of key company information without improperly encroaching on management.

The first of the practices entails directors attending (but not participating) in ordinary day-to-day management meetings, which is aimed at providing the directors with a different perspective of the management team and the CEO.

The second of the practices have transformed how board memos are written. These are 30-page online narrative memos which link to supporting analysis but simultaneously allow open access to all data and information on the company's systems, and provide the board with the ability to ask questions directly of the subject authors. The memos are written by the top executives and are shared with both the board and the other executives.

These new practices have allowed Netflix's board meetings to be significantly more efficient, with greater focus on questions and discussion rather than the presentation of materials.



Georgeson market update

UK Activism

What Price Will the 'Big Four' Pay?

Sky News reports about [Carillion collapse: What price will 'big four' auditors pay?](#)

"If MPs on the Business and Work and Pensions select committees get their way, the days of the 'big four' audit firms – Deloitte, EY, KPMG and PwC – could be numbered. The pair's joint report on the collapse of Carillion recommends that the Government refers the audit market to the Competition and Markets Authority (CMA), something for which the regulator's incoming chairman, the former MP Andrew Tyrie, has already indicated an appetite. There are two specific terms of reference suggested by the committees to such an investigation. One is that the CMA considers breaking up the big four into more audit firms. The other is 'detaching' audit arms from those providing other professional services, such as consulting, something into which all of the big four have branched out during recent years and which has proved highly lucrative for them."

Overboarding

The Financial Times reports that [Investors revolt against directors with too many jobs.](#)

"'Overboarding' joins governance and pay as AGM target."

International Activism

Companies Taken to Task Over Diversity

Reuters reports [AXA's investment arm takes companies to task over diversity.](#)

"AXA Investment Managers will vote in protest against companies which do not explain how they will boost the number of women on their boards, joining growing demands for workplace diversity. AXA IM, one of Europe's biggest fund managers and part of French insurer AXA Group, said the move followed five years of unsatisfactory private engagement with firms considered to have too few, if any, female decision-makers."

What CEOs Get Wrong

The Harvard Business Review reports about [What CEOs Get Wrong About Activist Investors.](#)

"We have written extensively on shareholder activism, and one of us co-authored a study in the Journal of Finance showing that, on average, activists produce value for targeted companies. Because of the empirical evidence, and also as a result of our experiences and observations, we believe that instead of viewing shareholder activists as meddlesome outsiders, managers should view them as a source of potential value – albeit one with both great potential risk and cost."

Sustainability Cloak

The Financial Times reports that [Activists don sustainability cloak to whip up support.](#)

Board Accountability

State Street Global Advisors has published [Board Accountability in Europe: A Review of Director Election Practices Across the Region](#).

“State Street Global Advisors (SSGA) believes that board accountability is fundamental to strong corporate governance; annual director elections provide increased accountability and encourage board members to be more responsive to shareholder interests thereby improving board quality. There is still significant variation in director election terms in Western Europe which ultimately impacts board quality. Within Europe, board accountability is weakest among German companies, where directors stand for election only once every five years. Other European markets with weak board accountability include France, Spain, Netherlands and Belgium, where board terms are four-year but due to staggered board elections, at least a portion of the board is up for election in any given year. The excessive terms of office in Germany and other European markets will be a key area of focus for SSGA’s Asset Stewardship Team for the following year. In our view, the problem of excessive terms of office would best be addressed at market level. Investors, companies and regulators need to work together to promote change and we aim to push for positive systemic market-wide change on this issue.” See [here](#) for the full document.

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