REGISTRY ROUND-UP

October 2018

Welcome to your October 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

- Shareholder Rights Directive
- Diversity Reporting
- Public Register of Significant Votes Against
- Dividend Procedure
- Insolvency and Corporate Governance
- Global News

Georgeson market update

- UK Activism
- International Activism

Latest on the blog

UK Corporate Governance Code

Take a look at our webpage about recent changes to the UK Corporate Governance Code and its impact on companies

READ MORE

Shareholder Rights Directive

The implementing regulation on the Shareholder Rights Directive II (SRD) was published in the Official Journal of the European Commission on 4 September (found here) and will come into force on 3 September 2020.

The regulation details the minimum standards to be applied to the following areas:

- Shareholder Identification requests and responses
- Transmission of information for General Meetings and Corporate Actions
- Confirmation of Entitlement
- Notices of Participation to attend the General Meeting and electronic voting arrangements
- Vote confirmation arrangements for both pre- and post-meeting
- Corporate Action arrangements

As we have highlighted previously, implementation requirements may differ between Member States depending on the definition of the shareholder and the appetite of regulators to enforce communications to the level of beneficial owners. However, as the regulation only covers minimum standards, collaborative industry engagement will be necessary over the next 12-18 months to expand these into broader communication protocols.

At the time of writing, we do not envisage significant changes in the UK and Irish markets due to the fact that Issuers have visibility of shareholders via the share register, and direct communication arrangements are already enforced. The most notable exception is for Vote Confirmation arrangements in view of the fact that this is a new requirement.

We will continue to represent your interests via national regulators and stakeholder groups and will keep you informed of our progress.

For more information on SRD, you can view our recently released briefing note here.

Diversity Reporting

The University of Exeter Business School, on behalf of the Financial Reporting Council, has conducted research looking at board diversity reporting, which can be found here.

This research has found that only 15% of FTSE 100 companies are fully compliant with diversity reporting requirements found in the UK Corporate Governance Code. Under these requirements, companies are obligated, amongst other things, to describe their diversity policy and the process for board appointments.

Other key findings found within the research include:

- 98% of FTSE 100 and 88% FTSE 250 companies have a board diversity policy in place
- Many companies need to develop a clearer strategy to drive improvements in diversity

Companies need to be cognisant that the revised company reporting requirements, which will take effect from 1 January 2019, calling on boards to include a statement from their nomination committee on how their diversity policy is being applied and links to achieving the company's objectives.

Public Register of Significant Votes Against

The Investment Association (IA), the organisation tasked with maintaining the public register of significant votes against resolutions, has published some analysis (found here) looking at the voting trends from the 2018 AGM season.

During this voting season, the IA has found that:

- there have been 237 resolutions added to the register, which is an increase of 25% based on 2017
- 29 companies appeared on the register in 2018 for the same resolutions as in 2017
- resolutions regarding executive pay declined for the FTSE All-Share companies, but this season saw a sharp rise in objections to FTSE 100 company pay

Dividend Procedure

This month has seen the London Stock Exchange (LSE) publish their dividend timetable for 2019 (found here); there have been no substantive changes since the 2018 edition was released.

As in previous years, a dividend timetable which follows the timing and guidance set out in the published LSE timetable requires no advance notification to the LSE, provided that key information is announced via a Regulatory News Service (RNS) under the correct headline category.

An announcement must include:

- Dividend amount and whether it will be paid gross or net
- Whether the dividend has been designated as an interest distribution or if it will be paid wholly or partially as a property income distribution
- Record and payment dates
- The availability of any dividend options (SCRIP, DRIP, DRIS, Currency) and the last time/date for receipt of an election

Insolvency and Corporate Governance

The government has now released a response to its consultation on insolvency and corporate governance (found here). This consultation sought views on ways to reduce the risk of a company failing through poor governance, and stewardship and improvements that could be made to the insolvency framework in such circumstances.

In light of the responses, the government has announced its plans to take forward various actions which will be subject to further consultation where necessary.

Transparency requirements and group structures

One aspect of the consultation looked at concerns regarding the oversight and control of complex group structures and considered how they should be managed and governed. The government has announced that it will pursue options which will require groups to provide explanations of their corporate and subsidiary structures, which could require groups of a significant size to provide clear diagrams together with a narrative explanation.

The government is also considering simplifying the process for dissolving redundant companies and streamlining group structures.

Shareholder stewardship

The consultation highlighted concerns regarding shareholder stewardship, especially that of institutional shareholders. It considered whether and how it could be made stronger and more effective.

The Department of Work and Pensions is currently consulting on new regulations that would ensure pension trustees set out in their statements of investment principles, how they take account of material considerations and what their policies are in relation to stewardship.

The government also sees the revised Shareholder Rights Directive as a key component in improving stewardship, as there are requirements for asset owners and managers to publicly disclose their policy of engagement and state annually how they have implemented the policy.

Dividend Payment framework

This aspect of the consultation considered if the concept of 'distributable profits' remains fit for purpose or if more transparency and accountability to shareholders for dividend decisions and broader choices on how surplus profit should be allocated.

While the government expect the new s.172 reporting requirements will lead to better reporting, they intend to also bring forward other measures.

They will continue to work with legal, accountancy and business groups to review the current dividend regime, which could include requirements for disclosures on the audited figure for available reserves and distributable profits within company's annual reports. They may also look to introduce the concept of a solvency-based dividend regime as seen in North America and Australia. This would require companies to make a statement that after the payment of a dividend the company is still able to pay its debts.

Boardroom effectiveness, directors' training and guidance

The consultation considered if when using professional advice that directors did so with sufficient awareness of their legal duties under the Companies Act. While many respondents felt that directors had a good awareness of their legal duties, it was felt that more training could be provided due to limited experience of dealing with companies in financial distress or entering into insolvency.

With this in mind, the government will proceed with improving access to training and guidance which is tailored to different sizes of companies and is also considering if some level of training should be mandatory for large company directors.

Global News

Annual Governance Principles Survey (Society - 20/09)

Institutional Shareholder Services (ISS) has announced the results of their annual Governance Principles Survey (found here) which received responses from over 600 organisations globally.

The key findings from the survey include:

- **Auditors**
  Investor respondents cited regulatory fines or other penalties as a key factor used when evaluating the auditor's independence and performance
- **Audit Committees**
  It was felt that shareholders should consider the skills and experience of audit committee members, including the number of financial experts when evaluating the committee
- **Board Diversity**
  The results this year saw an increase in respondents expressing that no female board members on a public company were problematic especially when considering the board recruitment process

Georgeson market update

UK Activism

Shares for workers

Reuters reports that Labour plans to make companies give shares to workers.

"Large companies would be forced to transfer as much as 10 per cent of their shares to their workers under plans set out by Britain's opposition Labour Party on Monday. […] The party has announced plans to nationalise key industries, including water, energy and rail, and to give workers a third of seats on company boards. Labour said that every company with more than 250 employees would have to create an 'Inclusive Ownership Fund', transferring at least one per cent of their shares into the fund every year, up to a maximum of 10 per cent."

Pay revolt ends Chair's tenure

The Guardian reports that Royal Mail chair resigns after shareholder pay revolt.

"Peter Long quits to focus on role at Countrywide as postal group aims to placate investors."

International Activism

Board survives despite evident dissatisfaction

The Irish Times reports that Ryanair board survives AGM intact but dissatisfaction evident.

"Ryanair looks likely to face increasing pressure from shareholders in the future to make changes to its board, even though investors voted to re-elect key figures such as long-serving chairman David Bonderman at its annual general meeting. Ahead of Thursday's meeting, advisory firms such as Glass Lewis called on shareholders to oppose the re-appointment of Mr Bonderman, who has served for 22 years, and long-serving non-executive Kyran McLaughlin, appointed 17 years ago. However, in the end 70.5 per cent of them voted to re-elect Mr Bonderman and 66.8 per cent supported Mr McLaughlin. Those majorities were lower than the 98.5 per cent attracted by chief executive Michael O'Leary and the 99.7 per cent drawn by recent appointees Emer Daly and Róisín Brennan. Speaking afterwards, Mr Bonderman said he would reserve his position on how long he intended staying in the Ryanair chair. However, Mr O'Leary made it clear that he wanted him to remain."

Fight to Limit Reach of Proxy Advisers

The Wall Street Journal reports that Public Companies Score a Win in Fight to Limit Reach of Proxy Advisers.

"The Securities and Exchange Commission on Thursday rescinded a pair of letters written by staff that had given mutual-fund managers greater assurance to rely on a consultant's recommendations about matters up for a vote at a public company's annual meeting. Companies and Republican lawmakers say the letters had boosted the influence of consultants known as proxy advisers that sometimes oppose big CEO pay packages. The U.S. Chamber of Commerce had pushed to quash the letters and more tightly regulate two top proxy advisers who they say form a duopoly that has sweeping influence over governance matters."

ASEAN Disclosure Index 2018

FTI has published the ASEAN Disclosure Index 2018: How ASEAN's Top 180 Listed Companies Fare on Disclosure Standards.

"Mandatory standards are legalistic, covered as required compliance, and adherence to them is a matter for legal practitioners and enforcement agencies. This report deliberately looks beyond mandatory standards and focusses on non-financial voluntary disclosure, in keeping with the direction of disclosure regulations in other jurisdictions and with an eye on institutional investor expectations. For example metrics for board evaluation or whistleblowing incidents reveal a transparent corporate culture."