REGISTRY ROUND-UP

August 2020

Welcome to your August round-up, where we bring you key dates and the latest industry highlights from the world of registry along with a market update provided by Georgeson.

This month we cover:

Industry update

- Shareholder Rights Directive
- European Single Electronic Format Regulation
- Economic Crime Levy
- Big Four Audit Separation
- The Role of Investment Managers
- Global News:
    - Duties and Responsibilities of Boards
    - Board and NEOs Race and Ethnicity Data
    - Eliminating Disparate Racism

Georgeson market update

- FTSE 350 Contested Remuneration Report Votes
- UK
    - COVID Bailout Should Have Strings Attached
    - Move Away From LTIPs
    - 33% Gender Diversity Target
- International
    - EU Climate Benchmarks
    - COVID Era Activism
    - 'On Watch' Over Climate Failures

Industry update

Shareholder Rights Directive

The UK government has published the [Companies (Shareholders' Rights to Voting Confirmations) Regulation 2020] that will see aspects of Chapter Ia of the amended Shareholder Rights Directive be implemented from 3 September 2020.

The statutory instrument focuses on two elements. The first deals with providing receipts for votes lodged electronically on a poll (i.e. either via handset voting or perhaps in connection with remote participation), or in the highly unusual circumstances where an issuer has enabled electronic 'voting in advance' under Section 322A of the Companies Act (voting in advance should not be confused with the traditional mechanism of proxy appointments). The receipt needs to be provided to the party lodging the vote (shareholder, proxy or corporate representative) by electronic means as soon as reasonably practicable. The second element deals with the introduction of post-meeting vote confirmations that can be requested by shareholders to confirm that their vote has been applied as requested.

To understand more about the statutory instrument and the directive please see our latest blog.

European Single Electronic Format Regulation

In last month's newsletter we provided the latest guidance from the Department for Business, Energy & Industrial Strategy on the requirement to implement this regulation impacting annual reports and accounts with financial years beginning on or after 1 January 2020.

However, the latest consultation paper from the Financial Conduct Authority (FCA) proposes implementation is delayed by a year because of COVID-19. These proposals are contingent on the Brexit transition period ending on 31 December 2020, at which point the FCA will have the power to delay implementation.

The consultation is open until the 28 August 2020.

Thoughts from our Governance Advisory Services team

Whilst the proposals have been delayed, it is prudent for companies to consider these reforms and that Audit Committees become comfortable that the company will be able to comply with this requirement. Companies may wish to press ahead with plans to meet this requirement early.

Economic Crime Levy

As part of the UK government's ongoing drive to prevent money laundering and counter-terrorist financing, HM Treasury has published a consultation which seeks to introduce a new economic crime levy.

The levy is designed to raise funds, hoped to be in the region of £100m, from organisations regulated for AML purposes to support and continue to allow the government to enhance their work on addressing money laundering.

The consultation, which closes on the 14 October, seeks views on what the levy will pay for, how it should be calculated and distributed across the AML regulated sector (c.90k organisations). If successfully implemented the first levy payments will be made in the financial year 2022/23.

The levy is seen as the fairest way the private sector can contribute to the long-term sustainable resourcing of the government's financial crime plan. Other components will include public sector funding and possible changes to proceeds of crime legislation.

The levy will be based on a transparent calculation using the volume of activity and risk the organisation poses as a basis and may consider an organisations' revenue. The consultation envisages the calculation would consist of three elements:

1. Levy base
2. Small business exemption
3. Money laundering risk weighting

Big Four Audit Separation

The Financial Reporting Council (FRC) has published the principles that will underpin the introduction of operational separation related to audit practices. Changes were called for by recent reviews into the audit sector, the Council's work and their oversight of the market.

Operational separation looks to ensure that audit practices are focused on high-quality audits that are conducted in the public interest and do not rely on being cross subsidised by other services provided by the firm to the client company.

The principles require firms to provide an implementation plan to the FRC by 23 October 2020 and ensure separation is completed by 30 June 2024.

The principles set out a range of desired outcomes which include 1. audit practices prioritise audit quality and protect the auditor from internal influences that may divert their focus from the quality of the audit, 2. the culture of the practice supports audit quality and the public interest, and 3. auditors should be acting in the public interest and work for the benefit of the shareholders.

The 22 principles are split into groups that address:

- Governance
- Scope of separate practice
- Financial and Remuneration
- Transparency and Accountability

Thoughts from our Governance Advisory Services team

This is an important development and Audit Committees will need to pay close attention to developments and consider whether additional reporting is required to ensure that the company has had regard for the matters set out by the FRC. There will be an expectation that Audit tenders have consideration for these factors.

The Role of Investment Managers

At a recent webinar hosted by the Investment Association, the Interim Chief Executive of the Financial Conduct Authority talked to a number of areas regarding the work of investment managers and the support the regulator can provide in recapitalisations.

During the webinar, Chris Woolard sought to understand if there are types of Issuers who may not be served by public or private markets as they try to recover from the current crisis and how the regulator can balance and meet the needs of issuers and investors, ensuring there is market confidence.

The regulator is also seeking a discussion on how smaller Issuers whose securities or debt instruments aren't large enough to be traded daily could best access capital markets, such as ensuring periodic disclosures. For larger Issuers, there is the potential to explore a way to simplify processes for follow-on equity issuances, while ensuring pre-emption rights are not over-ridden and essential disclosures are maintained.

Global News

Duties and Responsibilities of Boards

The OECD has published the latest edition in their corporate governance series. This publication considers the duties and responsibilities of boards within a group structure and covers 45 jurisdictions.

The publication which is purchasable from the OECD takes a general look at the landscape of group structures globally, what their economic role is and the challenges they present from a corporate governance perspective.

The report also looks at both the legal and regulatory approaches taken by different jurisdictions while addressing the differences and similarities. There is a focus on taking into account group interests, conflicts of interest, allocation of responsibility for policies and oversight. There are also case studies which provide specific information on methods being adopted in Colombia, India, Israel and Korea.

Thoughts from our Governance Advisory Services team

Our Corporate Secretariat team will be happy to speak with you further regarding group structures and Director responsibilities, including Director training.

Board and NEOs Race and Ethnicity Data

ISS, who use board race and ethnicity data for speciality and custom voting policies and some of their data feeds, is requesting companies disclose this information directly to them so as to mitigate the risk of inaccuracies from relying on indirect sources and so have begun writing to boards.

ISS state that if companies don't have sufficient diversity in their boardroom, especially on their committees to satisfy investors, then they may receive adverse vote recommendations.

Some of ISS's speciality policies seek 30% of the board to be diverse either by race, ethnicity or gender and, considering that they have recently released a range of ESG related indices, it wouldn't be unexpected to see a diversity index in the future.

Eliminating Disparate Racism

The global law firm Nixon Peabody has published an article entitled 'How employers can do their part to tackle and dismantle systemic racism'.

The report provides an explanation on the meaning of 'disparate impact racism' and details steps that can be taken to ensure that an organisation's practices and policies aren't inadvertently perpetuating discrimination.

Steps include:

- Analysing workforce demographics, policies and practices related to recruitment, retention and dismissal
- Investigate practices that promote diverse hiring, retention and development of underrepresented groups
- Addressing unjustified pay disparities
- Using data analysis to test practices and address gaps

On a related matter, a recent virtual CEO summit held by the Yale School of Management identified that racism and social inequalities are top of the CEO's agenda and that they recognise the importance of speaking up and acting on these matters. CEOs are cognisant that the public are calling for companies to address these matters and understand the specific measures being put in place.

Thoughts from our Governance Advisory Services team

When reporting on this information, companies should be able to explain what steps they have taken during this period to improve, as well as what steps they wish to take over the next year with clear, measurable, challenging goals.

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 in the period from April 2020 to June 2020 as well as the details of each of these proposals.

If you would like to receive a copy of the memo, please email Nicolo Dallantonia.

UK

COVID Bailout Should Have Strings Attached

CityAM reports that Two-thirds of Brits think coronavirus bailouts should have strings attached.

"Almost two-thirds of Brits think large companies should only receive public bailout money if they agree to conditions such as protecting jobs and reducing carbon emissions, according to polling published today that adds to pressure on the Bank of England."

Thoughts from our Governance Advisory Services team

Companies will want to clearly articulate how they handled their response to COVID-19 and the impact it had, not just financially but on the wider market and key stakeholders. They should also be able to express the preparations they've made should there be a further incident and the potential impact this could have.

Move Away From LTIPs

Proxy Insight reports that ISS backs moves away from LTIPs at two large UK companies.

"Two large UK companies have won ISS' backing for a move away from Long-Term Incentive Plans (LTIPs). Telecoms giant BT and fashion house Burberry both intend to scrap their LTIPs and replace them with restricted share schemes."

Thoughts from our Governance Advisory Services team

Director remuneration continues to be a hot topic with shareholders and institutional investors. Remuneration Committees should continue to review and challenge director remuneration, ensuring clear, robust and challenging objectives are set.

33% Gender Diversity Target

Reuters reports that AXA's fund arm sets 33% gender diversity target on company boards.

"AXA Investment Managers will set a 33% target for gender diversity on listed company boards in developed markets and may vote against companies which fail to meet this mark."

International

EU Climate Benchmarks

The European Commission announces that Sustainable Finance: Commission adopts new rules for EU Climate Benchmarks.

"As part of the European Commission's sustainable finance agenda, new rules have today been adopted which set out minimum technical requirements for EU Climate Benchmarks, as well as a number of Environmental, Social and Governance (ESG) disclosure requirements. EU Climate Benchmarks help investors who wish to adopt climate-conscious investment strategies and make informed decisions."

COVID Era Activism

Lexology hosts a piece on Shareholder Activism in the COVID-19 Era.

"The COVID-19 pandemic poses unprecedented challenges for businesses and their boards of directors. One of the critical matters boards always contend with is the threat of shareholder activism."

'On Watch' Over Climate Failures

Financial Ness reports that BlackRock puts 191 companies 'on watch' over climate failures.

"The New York-headquartered fund group told the companies that they could face consequences at next year's round of shareholder meetings if they fail to address climate-related risks." Blackrock said, "Of the 244 companies we identified as not making sufficient progress in 2020, we have placed 191 companies 'on watch' regarding climate disclosure."

Here is the full report.