REGISTRY ROUND-UP

July 2020

Welcome to your July 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:

CERTAINTY | INGENUITY | ADVANTAGE

Corporate Insolvency and Governance Act

On Friday 26 June the Corporate Insolvency and Governance Act came into force, introducing emergency measures in response to the COVID-19 situation. As we covered in last month's newsletter, amongst other things, this piece of legislation provides companies with the legal cover where they have held closed-door meetings since 26 March.

The legislation will give companies the ability to hold closed-door meetings and virtual or hybrid meetings regardless of the provisions found in their current articles until 30 September. The legislation may be extended beyond this date at the discretion of the government based on the situation at that time.

Companies will also have more flexibility with meeting other statutory obligations such as filings with Companies House.

Other aspects of the legislation include:

- Temporary relaxation of the personal liability that could be imposed on directors
- Stopping statutory demands served between 1 March and 30 September to form the basis of a winding-up petition
- Not allowing winding-up petitions to be presented between 27 April and 30 September unless insolvency is non-COVID-19 related

European Single Electronic Format Regulation

As we have covered in previous newsletters, the European Single Electronic Format (ESEF) regulation has been incorporated into the Disclosure and Transparency Rules (specifically 4.1.14) and will require issuers to publish their accounts in the required ESEF format for financial years beginning on or after 1 January 2020.

The Department of Business, Energy & Industrial Strategy has now published guidance that outlines the government's position on the delegated regulation in relation to directors' sign off of accounts.

The guidance explains that directors will not have to consider ESEF tagging when bearing in mind if the accounts meet the requirements of Companies Act and provide a true and fair view of the organisation's financial position.

Risk Committee – Terms of Reference

The ICSA: Chartered Governance Institute has released a new guidance note and template terms of reference for risk committees.

The new publications reflect the risk management obligations seen within the latest edition of the UK Corporate Governance Code and the Financial Reporting Council's guidance on risk management. This guidance is also the companion piece to the similar publication made earlier this year regarding audit, nomination and remuneration committees.

The Institute feels that the terms of reference are likely to be important to regulated companies such as those within the financial services sectors. But they have a wider appeal to organisations that see their risk committee as separate from their audit committee.

Essential elements of the risk committee are covered by the guidance, including areas such as membership, roles and responsibilities and appropriate reporting.

Schemes of Arrangement and Beneficial Owners

The decision of the courts in a case from March this year has recently been released. It is likely to be of relevance to organisations considering a Scheme of Arrangement and may be considered as part of the review being undertaken by the Law Commission on intermediated securities.

Mr Justice Fancourt in Re Sirius Minerals PLC (2020) found that, where the documentation had been sent to registered members, there was no requirement to send those documents to beneficial holders even if the company had contact information for beneficial holders.

However, the judge also noted that the law as it stood did give rise to a 'genuine issue about shareholder democracy'.

CSDR – Settlement Discipline

The UK government has announced that in light of the UK's departure from the European Union that there are a number of regulatory reforms that are in the process of being implemented. But they need to be addressed before the end of the current transition period.

The UK government has decided that an aspect of the Central Securities Depositary Regulation (CSDR) regarding settlement discipline will not be implemented. It was due to apply in February 2021. UK firms should continue to apply the existing industry-led structure.

This announcement has been welcomed by a number of organisations including the Quoted Companies Alliance who stated they have been working for several years to highlight the potentially negative impacts of the proposed settlement discipline regime on the liquidity of small and mid-cap securities.

COVID-19 FRC Lab Reports

The Financial Reporting Council's (FRC) Lab has released several reports that aim to provide practical guidance to companies on reporting and investor expectations in light of the ongoing pandemic:

- COVID-19: Resources, action, the future
  This report considers resources such as the availability of cash and actions that companies can take on matters such as short-term expenditure. It also covers how to communicate decisions taken to ensure the sustainability of the organisation, taking into account their impact on other stakeholders. The areas covered in this report reflect those questions investors are seemly seeking information on as detailed in a publication by the Lab in March 2020.
- COVID-19: Going concern, risk and viability
  This report recognises that a going concern is not binary and can exist even when there are several material uncertainties. It calls for organisations to make clear disclosures on the uncertainties that they may be facing and management's view of them. Investors want to understand how previously reported risks have changed and the impact of changes on the organisation.

Global News

The Book of Jargon – ESG

Latham & Watkins has released a glossary containing 1,000+ acronyms, slang and terminology related to environmental, social and governance. The book of jargon is available online or in a pdf format.

Aimed to provide those who practice in this area a US-oriented tool that decoded the jargon, the book was created in associated with the World Business Council on Sustainable Development.

Climate Change – Board Toolkit

The non-executive director network – Chapter Zero – The Directors' Climate Forum has published a new boardroom toolkit on climate change. It has been designed to aid directors to understand, meaningfully engage and act on the associated business risks and opportunities linked with climate change.

The toolkit uses frameworks and case studies structured around phases of prioritisation, strategy and action. Each of these phases lays out the board vs management roles and contains links to other resources for all parties to use and become informed so that they can develop and execute an effective strategy.

Corporate Governance: Activism and M&A

Georgeson's Cas Sydorowitz joined the Directors Club and the Centre for Corporate Governance to discuss the impacts that the COVID-19 crisis has on the world of corporate governance, including the increased interest of funds and activist investors in listed companies due to the stock markets prices adjustments during the current situation.

Watch the webinar.

Doubt on the Future of AGMs

The Financial Times reports that Coronavirus casts doubt on the future of the AGMs.

"As the pandemic upends the annual meeting season, calls grow for an overhaul of shareholder events."

Make COVID-19 Transformations Stick

The Good Governance Institute argues on How to make COVID-19 transformation stick.

"One, almost universal comment on change during the first phase of the pandemic has been: 'we managed to achieve things in weeks that we had failed to manage in years.' As the next phase of the pandemic unfolds, leaders are keen to retain these gains and develop them even further."

New Era for Corporate Governance

Proxy Insight has published a survey on COVID-19: A New Era for Corporate Governance.

"Companies have gotten off to a strong start in responding to COVID-19. Only about 8% of respondents have a bad word to say about issuers' handling of the situation. However, the hard work still lies ahead."

Is This the End of ESG?

Responsible Investor asks Is COVID-19 the end of ESG and the beginning of existential risk management?

"As we assess the carnage of this crisis, it may be time for an entirely new concept. We may in the future look back on the next decade as one of "existential risks" - the ramp up of climate change, new technologies threatening privacy and society, another pandemic, increased geopolitical tension, higher antibiotic resistance, and unknown unknowns. As investors and society navigate this decade, it does not appear that ESG risk management is really designed to prepare us for this."