REGISTRY ROUND-UP

September 20

Welcome to your September 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

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- Directors' Duties Practical Guidance
- Global News:
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Georgeson market update

- UK
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Irish COVID Bill

The Irish government have passed The Companies (Miscellaneous Provisions) (COVID-19) Bill and, in a similar manner to the Corporate Insolvency and Governance Act passed in the UK, this bill (now 'Act') permits the postponement of annual general meetings and allows for meetings to be held electronically rather than at a physical venue.

A summary of the provisions within the bill confirm that Irish companies can utilise their legislation until the 31 December 2020, which is longer than what was provided within the UK's legislation. Both general and creditor meetings can be held electronically if they do not opt to postpone their meeting until 31 December.

Our Company Secretarial team will be glad to talk to you further regarding this.

Directors' Duties and Sustainable Corporate Governance

As part of the European Commission's continued effort to understand and combat the concept of 'short termism' they have published a study on the duties of directors and sustainable corporate governance.

The objective of the study is to identify the root causes for short termism in corporate governance, consider their relationship with current market practices and frameworks and then to identify potential EU solutions.

The issues identified have been placed into seven key categories including:

- Directors' duties
- Enforcement
- Board composition and remuneration
- Sustainable business strategy
- Stakeholder engagement

Thoughts from our Governance Advisory Services team

There has been a growing importance placed on Directors' duties and sustainability including appropriate disclosures and reporting. Our Company Secretarial team will be glad to discuss this further with you.

Directors' Duties Practical Guidance

The Chartered Governance Institute have released a practical guide on a Directors' general duties under the UK Companies Act 2006.

While the guide considers each of the seven duties laid out between s.171 – 177 of the Companies Act, its key focus is on s.172 in light of the requirements for companies to provide statements on how they are promoting the success of the company while considering all stakeholders.

The guide talks to six factors that directors should have regard for when considering these matters, and provides examples:

1. Long-term consequences of decisions;
2. Interests of the employees;

3. Fostering business relationships with suppliers;
4. Impact of operations on the community and environment;
5. Maintenance of a strong reputation; and
6. Act fairly between members.

Some of the practical aspects discussed in regard to these matters include how directors should not attempt to balance the interests of the company and those of other stakeholders. When making a decision there is no absolute wrong or right and judgements must be made in good faith.

The guidance note provides practical information on the completion of a s.172 statement whether a company is complying with the UK Corporate Governance Code or, for instance, the Wates Principles. The document recognises that the statement should focus on matters of strategic importance.

Thoughts from our Governance Advisory Services team

Directors' duties remain an area of continued and important focus. Our Company Secretarial team will be glad to speak to you further regarding this matter, including directors training (induction and ongoing), as well as best practice for corporate report.

Global News

Board Refreshment and Succession Planning

Recognising the increased focus on board succession planning and board diversity evident in the 2018 Corporate Governance Code and from investors, PwC & Spencer Stuart have recently published their board refreshment framework, designed to reflect a strategic and well considered process rather than a reactive, ad-hoc approach.

Some of the suggested actions include:

- Putting board refreshment and succession planning on the board agenda regularly
- Assessing gaps by conducting skills and attributes analysis
- Utilising board evaluations to inform the refreshment process
- Having a waterfall chart to understand and plan for director departures and leadership changes.

Thoughts from our Governance Advisory Services team

Succession planning remains an area of key focus for many companies and Boards. Nomination Committees should keep this under regular review and make appropriate disclosures. Our Company Secretarial team will be glad to discuss this further with you.

ESG Highlights

A recent EY publication reported on Four ESG Highlights from the 2020 Proxy Season within the USA Fortune 100. Analysis of 78 proxy statements filed as at 15 June found that:

- 50% of companies (up from 24% in 2017) disclosed the board's racial and ethnic diversity based on self-identification.
- 77% of proxy statements highlighted an organisation's human capital initiatives and commitments (i.e. workforce diversity), whereas in 2017 only 37% reported such information.
- 69% assigned board or committee oversight of human capital with oversight most commonly delegated to the remuneration committee.
- 77% of proxy statements highlighted a company's environmental sustainability initiatives and commitments.

Thoughts from our Governance Advisory Services team

ESG continues to gain increasing focus and appropriate corporate reporting disclosures are required. Our Company Secretarial team will be glad to discuss this further with you.

Human Rights Framework

The UN Principles for Responsible Investment (PRI) have issued a consultation on a new human rights framework. The purpose of the consultation is to lay out a framework for institutional investors to implement the respect for human rights into their investment activities.

The development of the framework would accompany the existing obligations on institutional investors under the OECD standards.

UK

Blue chip firms cut bosses' pay

The Daily Telegraph reports that Bosses' pay cut at 36 blue chip firms after Covid crisis struck.

"Median total pay for FTSE 100 bosses fell to £3.6m last year, the lowest since 2011, according to new research"

"The High Pay Centre and CPID annual assessment of FTSE 100 pay packages shows that median pay for chief executives fell by 0.5% between 2018 and 2019 at £3.63m. However, this is still 119 times that of the average (median) UK full-time working earning £30,353."

Digital AGMs no replacement for a sandwich with the Directors

The Financial Times asks Will digital AGMs replace meeting directors over a prawn sandwich?

"Virtual annual meetings are the post-pandemic norm but shareholders are worried over the loss of face-to-face engagement."

International

Virtual Meetings Silence Shareholders

Reuters reports that U.S. activists complain that virtual shareholder meetings let companies silence them.

"This year, Danhof often found himself ignored, as companies held their shareholder meetings remotely during the COVID-19 pandemic, and asked investors to submit their questions online. Danhof said his questions on topics such as companies' dealings with China or restrictions on financing gun makers were answered in only 13 of the 27 virtual shareholder meetings he and his representatives attended. "Companies used the crisis to set up question-and-answer sessions that are a joke," Danhof said. His success rate was much higher when he could sit near a microphone or in a CEO's line of sight during in-person gatherings, he added. Danhof is not alone. Investors faced obstacles, such as not being able to ask questions or not having their inquiries addressed, about 55% of the time in a sample of 88 virtual shareholder meetings held this year and reviewed in a Hebrew University of Jerusalem study published this month. The researchers did not provide such figures for in-person shareholder gatherings in previous years but estimated that this year's virtual meetings had significantly increased the number of dodged questions."

Virtual AGMs not a replacement

ESG Clarity reports on Asset Managers: Virtual AGMs are no replacement for in-person meetings.

"Asset managers have said companies must return to in-person meetings once the pandemic is over, with the possibility to hold hybrid meetings to increase shareholder participation."

'On Watch' Over Climate Failures

The Financial Times reports that Ethical CSR focus triggers hostile investor activism, study finds.

"Companies that rank highly on corporate social responsibility measures are more likely to be the target of hedge fund activism, academic research has found. This is because some activist investors view CSR as a sign that a company is wasting money rather than focusing on shareholder returns, according to research […]."