Monthly Roundup

Georgeson

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Dear All,

Please find below a rundown of recent corporate governance news and developments that have taken place around the world:

Shareholder Activism

- The Financial Times reports that **Activist hedge funds hunt for Brexit bargains**: http://www.ft.com/cms/s/0/cd242ac8-4f34-11e6-88c5-db83e98a590a.html#axzz4Fi4LJeyL "Several household-name British companies have been targeted by activists since last month's vote. While these moves are not directly related to the referendum result, the Brexit fallout will make UK companies more vulnerable to activist attacks in the coming years. Activist hedge funds – which focused not only on investing in companies where they expect significant change, but also on being the agent of that disruption – will be on the lookout for ways to profit from the disquiet the UK is set to endure as its relationship with the rest of Europe and the world is redefined. British companies dealing with these seismic changes would do well to prepare for an activist on their shareholder register."

- Reuters reports that **John Menzies bows to investor demands for new chairman**: http://uk.reuters.com/article/uk-john-menzies-people-chairman-idUKKCN0ZZ0JM. "UK airport services and logistics group John Menzies has appointed Irish paper and packaging industry tycoon Dermot Smurfit as its new chairman, answering a key demand from new activist investor Shareholder Value Management (SVM). SVM, which holds more than 7 percent of the firm, called for more independence on the company's board earlier this month when it also joined calls from other institutional investors to separate its aviation services and printed media distribution businesses. The German activist investor complained that current interim chairman Dermot Jenkinson had connections through his wife to the Menzies family, which control about 19 percent of the company through various holdings."

- The Telegraph reports that **Toscafund seeks to oust Speedy Hire chairman**: http://www.telegraph.co.uk/business/2016/07/25/toscafund-seeks-to-oust-speedy-hire-chairman/. "The biggest shareholder in Speedy Hire has called for executive chairman Jan Åstrand to be replaced as the company has been hammered by losses. Asset manager Toscafund, a 19.44pc shareholder, said turnaround specialist David Shearer should be appointed to the board of directors at the Merseyside-based building tools rental company."

- The Financial Times reports that **Western shareholder activism arrives in China**: http://www.ft.com/cms/s/0/400719f4-41f4-11e6-9b66-0712b3873ae1.html#axzz4DjXPxoxh. "Activist hedge funds have experienced mixed results when they have pressed Japanese companies to improve returns to shareholders. Now one western fund has decided to try its luck with shareholder activism in China. Indus Capital Partners, a New York-based Asia focused hedge fund, has entered into a dialogue with China Mobile – a Hong Kong and New York-listed state owned enterprise and the largest mobile company in the world with 826m customers – to see if global investors can get a mainland company to focus more on raising the payout to those who hold its stock. […] Even when the SOEs are listed and have all the trappings of a public company, including a board of directors and pay out dividends, they remain in the control of a party committee and exist as much to maintain employment and subsidise management as they do to pay dividends to shareholders. Today they remain in an uneasy state of transition, caught between the conflicting demands of the government and their outside shareholders."

- Reuters reports that **Elliott sues Bank of East Asia over share sales, escalating dispute**: http://www.reuters.com/article/us-bank-east-asia-elliott-idUSKCN0ZY1AV. "Activist investor Elliott Management Corp has begun new legal proceedings against Bank of East Asia (BEA) over a share placement, escalating a long-running dispute between the New York-based hedge fund and the tycoon-owned Hong Kong bank. Elliott, which has a 7 percent stake in BEA, said on Monday it has filed a lawsuit in the Hong Kong court against the bank, the majority of the bank's directors, its CEO and chairman."

- The Financial Times argues that **Reports of a US activist invasion are overblown**: http://www.ft.com/cms/s/0/62cf26c8-3d28-11e6-8716-a4a71e8140b0.html#axzz4DjXPxoxh. "Much of the commentary on the global spread of activist investing has focused on the likelihood of US hedge funds pitching up on Europe's shores and bullying their way into the continent's staid boardrooms. Yet data prepared for the Financial Times reveal Europe's directors should be more wary of homegrown activists than their foreign counterparts. […] The differing fortunes have been even more apparent this year: domestic activists have come away from 77 per cent of their campaigns with something to show for it, compared with just 25 per cent for foreign investors. It is a similar story in mainland Europe. Homegrown activists were at least partially successful at 72 per cent of the companies they targeted since 2010, compared with 57 per cent for foreign activists."

Europe…

- The Five Chairmen Group has published a **common statement emphasizing the crucial role of Corporate Governance Codes**: http://www.commissiecorporategovernance.nl/download/?id=3042. "The group of five Chairmen of the governing bodies of the Corporate Governance Codes in France, Germany, Italy, the Netherlands and the UK met on Friday 24th of June 2016 in Venice to establish a forum for dialogue about the role of Corporate Governance Codes. The five Chairmen agreed to meet on a regular basis to exchange their views and experiences with respect to (i) emerging issues in the areas of Corporate Governance covered by the Codes and (ii) the evolution of market and legislative frameworks. The five Chairmen agreed on the general principle that it is necessary to maintain a balance between regulation and Corporate Governance Codes."

- European Women on Boards has published a report entitled **Gender Diversity on European Boards: Realising Europe's Potential: Experiences and Best Practices**: http://european.ewob-network.eu/ewob-launches-new-study-at-annual-event-in-berlin/. "European Women on Boards (EWoB) has today published a major new report which completes its wide-ranging two-part investigation into the gender diversity of European boardrooms. In the 42-page report published today, undertaken in association with ISS, titled Gender Diversity on European Boards: Realising Europe's Potential: Experiences and Best Practices, 20 of Europe's most important business and governance leaders provide wide-ranging qualitative perspectives and practical examples of successful gender diversity practices at board and senior executive level to foster awareness and inspire further innovation. […] The presence of women on the boards of the largest 600 European listed companies has increased from an average of 13.9% to 25% in five years, which shows promising progress has been made." The full document is available here: http://european.ewob-network.eu/wp-content/uploads/2016/07/EWoB-qualitative-study.pdf.

- hkp/// group, a German remuneration consultant, has published a report entitled **Executive and Non-Executive Director Compensation in Europe 2015**: http://www.hkp.com/en/press/20160706-presseinformation-stoxx-deutschland.html. "Following a modest rise in 2014, the compensation paid to the Chief Executive Officers of Europe's top companies grew by around 10 percent in 2015. Compensation levels are driven mainly by consumer goods and pharmacy industries – the recovery in compensation levels in the financial industry appears to have stopped. No change for the Chairmen of supervisory boards: Once again, Swiss firms top the European rankings."

...and beyond

- The Financial Times reports that **Investors alert to surge in chief executive pay**: http://www.ft.com/cms/s/0/ab42dbe2-4201-11e6-b22f-79eb4891c97d.html#axzz4Fi4LJeyL. "Growing calls to curb corporate excess come after a bumper year for chief executive pay. Overall earnings for the 20 best-paid chief executives at western banks rose an average of 7.6 per cent last year – almost twice as fast as a 4.2 per cent rise in the net income of their companies, according to analysis by the FT and Equilar, the remuneration data firm. This 2015 increase marks a rapid escalation on the modest 0.5 per cent rise banks paid their chiefs in 2014 – and has caused concern among investors worrying about whether the money is being well spent given evidence that shareholder returns lag the growth in remuneration. […] Some shareholders are already making their disapproval known more publicly, particularly in the US where the $20.7m paid on average to bank CEOs is almost twice the $10.4m average package in Europe."

UK

- City A.M. reports that **Firms back Theresa May's attack on runaway executive pay**: http://www.cityam.com/245627/firms-back-theresa-mays-attack-runaway-executive-pay. "Business leaders have given a resounding endorsement of Theresa May's proposals to shake up corporate governance and put pressure on runaway levels of executive pay. In a new poll by FTI Consulting, seen exclusively by City A.M., 81 per cent of senior figures from small, medium and large companies backed a tougher government stance on how the UK's largest companies are run." The **Institute of Directors welcomes Theresa May's focus on Corporate Governance**: https://www.iod.com/news-campaigns/press-office/details/iod-welcomes-theresa-mays-focus-on-corporate-governance. "Theresa May has suggested some bold solutions, and the details will need to considered carefully, but the IoD agrees it is time to give shareholders more control over executive pay. There have been some positive signs that boards are moderating pay, but it is still possible for directors to ignore even substantial shareholder rebellions." In a letter to the Financial Times, Guy Jubb (former head of governance at Standard Life) argues that **Governance reforms must address root causes of corporate failures**: http://www.ft.com/cms/s/0/a6848278-5290-11e6-9664-e0bdc13c3bef.html#axzz4FPw2ztNV.

- The Investment Association announced that the **Executive Remuneration Working Group issues ten recommendations to rebuild trust in pay**: http://www.theinvestmentassociation.org/media-centre/press-releases/2016/executive-remuneration-working-group-issues-ten-recommendations-to-rebuild-trust-in-pay.html. "The Executive Remuneration Working Group has today issued a Final Report proposing ten recommendations to rebuild trust in executive pay structures in the UK, following consultation with over 360 investors, asset owners and company employees. The Report represents a far-reaching plan to simplify pay structures for company bosses while improving the alignment of their interests with those of the shareholders who own their businesses. Developed by five leading representatives of listed companies, investment management and asset owners, the report calls for companies to be given the flexibility to select the right pay structure that works for them and their shareholders, rather than focusing solely on the currently dominant 'one-size-fits-all' Long-Term Incentive Plan (LTIP) pay structure." The full document is available here: http://www.theinvestmentassociation.org/assets/files/press/2016/ERWG%20Final%20Report%20July%202016.pdf.

- The Financial Times reports that **Kazakh privatisation under fire from international investors**: http://www.ft.com/cms/s/0/6bcd3e26-4751-11e6-8d68-72e9211e86ab.html#axzz4Fi4LJeyL. "International investors warned they would shun Kazakhstan's ambitious privatisation programme unless the government changes its attitude towards minority shareholders in the state oil company. Their comments follow a battle for control of the UK-listed subsidiary of National Company KazMunaiGas, the oil company that is 100 per cent owned by the Kazakh state. Last month NC KMG launched an attempt to tighten control over its UK subsidiary, KazMunaiGas Exploration Production, by offering to buy out minority shareholders at a price equivalent to the cash on its balance sheet."

- PricewaterhouseCoopers have published a report entitled **Time to listen – Responding to public concern**

about executive pay: http://www.pwc.co.uk/services/human-resource-services/insights/time-to-listen.html. "Two-thirds of the population think top pay is generally too high, over half think it is a big problem today, and nearly three quarters say executive pay can make them very discontent. Most people think a CEO should earn no more than 20x average earnings compared with typical pay ratios in the FTSE-100 of over 150x. 87% of the public believes something must be done. […] In this report we'll discuss the current state of public attitudes to executive pay and inequality. We'll also discuss the pitfalls of the various regulatory interventions being discussed. Our research demonstrates that policy will need to focus on pay and opportunity for ordinary workers as much as on pay at the top if we're to achieve an enduring settlement on this issue." The full document is available here: http://pdf.pwc.co.uk/time-to-listen.pdf.

France

› Bloomberg reports that **Alstom Investors Reject 6.6-Million Euro Pay Deal for Former CEO**: http://www.bloomberg.com/news/articles/2016-07-05/alstom-investors-reject-6-6-million-euro-pay-deal-for-former-ceo. "France's government led Alstom SA shareholders who voted against the 6.6 million-euro ($7.3 million) pay deal awarded to former Chief Executive Officer Patrick Kron, part of a state crackdown on top salaries at some of the country's biggest companies. About 62 percent of investors opposed Kron's cash-and-shares package at Alstom's annual general meeting on Tuesday. Shareholders approved the pay of CEO Henri Poupart-Lafarge, who replaced Kron as head of the rail operator at the start of February. Kron's deal doesn't 'conform to the doctrine of the state,' a representative for the body that manages the French government's shareholdings said in e-mailed comments. Authorities are pushing for a moderation in executive pay across all companies, according to the statement. The government is Alstom's biggest shareholder with a 20 percent stake."

› Novethic, a responsible investment subsidiary of Caisse des Dépôts, reports (in French) that **Sapin Law II: The Senate retreats on public reporting and executive remuneration**: http://www.novethic.fr/breves/details/loi-sapin-2-les-senateurs-reculent-sur-le-reporting-public-et-la-remuneration-des-dirigeants.html. "The Senate has reintroduced an advisory – and no longer binding – annual shareholder vote on executive remuneration. The amendment that was approved also provides for a binding vote 'at least once every four years' on a special report of the board of directors on the remuneration policy, that is to say, 'the principles and criteria used to determine, allocate and award all remuneration and benefit elements' but not the amounts awarded."

› The Wall Street Journal reports that **Renault Board Cuts CEO's 2016 Pay After Spat With Shareholders**: http://www.wsj.com/articles/renault-board-cuts-ceos-2016-pay-after-spat-with-shareholders-1469656763. "Renault SA's board on Wednesday said it would reduce the next pay package for its chief executive after the car maker's dismissal of a shareholder vote against his 2015 compensation triggered another salvo of outrage against executive pay in France. The board approved a recommendation by the company's remuneration committee to cut the variable share of CEO Carlos Ghosn's salary by 20% and cap it to 180% of the fixed salary, Renault said in a statement. The company also changed the way the variable part will be calculated. […] The outrage that followed the board's decision to override the shareholder vote led a group of French legislators to start discussing a new bill limiting executive pay. The issue was made more sensitive by the fact that the French state is Renault's largest shareholders after it increased its stake to around 19% from 15% last year." The company's announcement is available here: http://media.renault.com/global/en-gb/renaultgroup/Media/PressRelease.aspx?mediaid=81124.

Germany

› Investment & Pensions Europe reports that **Initiative develops shareholder-engagement guidelines for Germany**: http://www.ipe.com/countries/germany/initiative-develops-shareholder-engagement-guidelines-for-germany/10014405.fullarticle. "A taskforce has developed guidelines for dialogue between investors and the supervisory boards of listed companies in a move designed to modernise shareholder engagement in Germany. The guidelines are the work of a Developing Shareholder Communication initiative, spearheaded by Hermes EOS and Ernst & Young. They are significant because of the specificity of Germany's corporate governance model, company law in the country, and what has been the dominant practice in this regard, despite some changes in recent years. […] Under German company law, the supervisory board (comprising non-executive directors) has a right to a dialogue with investors but only pertaining to topics that fall within its remit, with responsibility for communication with investors remaining with the management board for all other matters." The full document, entitled **Leitsätze für den Dialog zwischen Investor und Aufsichtsrat**, is available here (in German): https://www.bvi.de/regulierung/branchenstandards/dialog-zwischen-investor-und-aufsichtsrat/.

- A Financial Times editorial argues that **Theresa May should beware of imitating the German model**: http://www.ft.com/cms/s/0/56f1513c-4813-11e6-8d68-72e9211e86ab.html#axzz4Fi4LJeyL. "While [co-determination] has contributed to industrial peace within companies, it has also hindered innovation and reduced profits. Moreover, only 641 companies are at present covered by the law, 126 fewer than in 2002. […] Young employees, too, are less than enthusiastic about worker representation. They prefer taking stock options in start-ups to works councils and representation on the board. Since many no longer want to spend more than a few years with one company, they are reluctant to invest too much time in stakeholder matters. […] Part-time and self-employed workers complain that trade unions and employers collude in protecting the interests of predominantly male full-time workers. *Mitbestimmung*, they argue, has entrenched existing privileges."

Netherlands

- Eumedion have published their **Evaluation 2016 proxy season: further increase in voting turnout at Dutch shareholder meetings**: http://www.eumedion.nl/en/news/further-increase-in-voting-turnout-at-dutch-agms. "Executive remuneration policy, the authority to issue new shares, anti-takeover devices, risk management and audit reports, taxation and climate risks were the main discussion items before and during the 2016 shareholder meetings (AGMs) of Dutch listed companies." The full report is available here: http://www.eumedion.nl/en/public/knowledgenetwork/publications/2016-proxy-season-evaluation.pdf.

Switzerland

- The Financial Times reports about **Chairmen under pressure at big Swiss groups - The titular role carries more responsibility than in other countries**: http://www.ft.com/cms/s/0/e7a1923c-41c9-11e6-b22f-79eb4891c97d.html#axzz4DcrAIH3D. "As Mr Reitzle discovered, Swiss chairmen have much larger workloads and shoulder more responsibility than in other European countries or the US. They take charge of strategy, risk management, executive compensation, budgets and emergency plans – as well as relations with shareholders. In fact, 'chairman' is a mistranslation if it suggests a neutral or control function. When speaking German or French, the Swiss use 'president', which better reflects the leadership role. There are rewards: Swiss chairmen are paid a lot more than counterparts in other countries – including the US, the country with the highest-paid chief executives. The median salary of large Swiss company chairmen was €1.2m last year. In the US it was just €448,000, according to HCM International, a corporate governance and compensation consultancy."

- The Financial Times reports that the **Swiss National Bank operates a 'softly, softly' share strategy**: http://www.ft.com/cms/s/0/f36bb9a4-4349-11e6-b22f-79eb4891c97d.html#axzz4DjXPxoxh. "When it comes to exercising shareholder rights, 'the general concept we have is that we take our role as a large investor seriously', says Ms Maechler. 'We exercise our shareholder rights as long as they don't draw us into political debates.' The SNB started exercising its votes at eurozone shareholder meetings last year. A next step will be to vote at other European companies' meetings – and perhaps later in other regions. It has drawn up its own guidelines based on established corporate best practice. Although not published, the guidelines include the principles of linking executive pay to performance and that at least half of company board members are independent."

Greece

- Reuters reports that **Piraeus chairman resigns as Greek banks overhaul boards**: http://www.reuters.com/article/us-piraeusbank-chairman-idUSKCN1001KQ. "The chairman of Greece's Piraeus Bank resigned on Wednesday, the first of an expected procession of board-member departures at Greek banks after the country's international lenders demanded they improve corporate governance. Michael Sallas, who led Piraeus to become Greece's largest bank by assets through a series of acquisitions in recent years, said he was stepping down after 25 years at the helm and despite a 'positive assessment' from Greece's HFSF bank bailout fund. […] Greek lenders have traditionally had businessmen, union leaders and in some cases politicians on their boards. But under its third international bailout, Athens agreed to try to 'de-politicise' links between government and banks, and boost board-level expertise. Bankers with knowledge of the matter have said a third of Greek bank board members could go by September."

United States

- The Wall Street Journal reports that **Corporate Heavyweights Back Governance Practices**: http://www.wsj.com/articles/corporate-heavyweights-back-governance-practices-1469073661. "A powerful coalition of chief executives and big asset managers endorsed a raft of corporate-governance practices such as avoiding dual-class shares and replacing ineffective directors, seeking to affect how U.S. public companies are run." For the full text of the **Commonsense Corporate Governance Principles** and supporting documents see here: http://www.governanceprinciples.org/.

- Orrick's Ed Batts, Global Co-Head of the firm's M&A and Private Equity Group, has published an article entitled **Yet Another Congressional Proposed Corporate Reform: Proxy Advisory Firms in the Crosshairs**: https://www.orrick.com/Insights/2016/07/Ed-Batts-Authors-Article-on-Proxy-Advisory-Firm-Oversight. "The article discusses the introduction of three bills aimed at regulating various areas affecting U.S. public company corporate governance. Specifically, Ed's article focuses on the Proxy Advisory Reform Act of 2016 and its plan to implement several changes that will address public companies complaints about proxy advisory firms." See here for full article: https://corpgov.law.harvard.edu/2016/07/20/yet-another-congressional-proposed-corporate-reform-proxy-advisory-firms-in-the-crosshairs/. "On a practical level, it is a complete unknown as to what reasonable standard the proxy advisory firms will be held in having discussions with thousands of issuers on recommendations – and what level of 'financial and management' resources would be required under SEC registration. Proxy advising is not a particularly high margin field – and both of the dominant players remain modest in financial scope. In addition, mandating public disclosure of the twenty largest clients by revenue would force revelation of what even the firms' most antagonistic of opponents would admit seems to be highly confidential and proprietary information about the firms' respective businesses." For a UK perspective, see **A partial defence of proxy advisers**: http://blog.icsa.org.uk/a-partial-defence-of-proxy-advisors/.

- The Wall Street Journal reports that **SEC Drafting Rule Requiring Firms Reveal Board Diversity**: http://www.wsj.com/articles/sec-drafting-rule-requiring-firms-reveal-board-diversity-1467078153. "Investors should have more information about how many minorities and women serve on corporate boards, and regulators must intervene to require fuller disclosure, the country's top securities regulator said Monday. Securities and Exchange Commission Chairman Mary Jo White said her agency would propose a rule to elicit more information about the diversity of board members. Ms. White, speaking to a conference in San Francisco, said the SEC's current rules have failed to draw out meaningful information, while the share of minority directors for the largest public companies has 'stagnated' at 15% for the past several years. It is unclear, however, whether Ms. White can succeed in getting such a rule enacted before her she leaves her post, which she is widely expected to do before the next president takes office early next year. The agency has struggled to complete the long list of rules already on its agenda, including many required by Congress."

India

- The Hindu Business Line reports on **Lessons from Ricoh India episode**: http://www.thehindubusinessline.com/markets/stock-markets/lessons-from-ricoh-india-episode/article8887522.ece. "The recent developments at Ricoh India send a strong signal to India Inc – understand the responsibility of promoters and the might of shareholders. According to proxy advisory firm

Institutional Investor Advisory Services India, Ricoh India parent has 'owned up to sleeping at the wheel'. Minority shareholders have requisitioned an extraordinary general meeting on August 5, 2016, asking the audit committee to be sacked, sending a strong signal that Corporate India's governance failures will increasingly be met with a 'muscular response'. Though this is not the first meeting to be requisitioned by shareholders, it certainly marks a new milestone, IiAS added. 'Before this, shareholders in Sanghi Industries called for one in 2012. This was then postponed indefinitely. And last year shareholders of S Kumars Nationwide enacted what can best be described as a circus.'"

Hong Kong

› The Nikkei Asian Review reports that **Corporate governance has a distinctly different meaning in China**: http://asia.nikkei.com/magazine/20160721-CORPORATE-ASIA-NOWHERE-TO-HIDE/On-the-Cover/Corporate-governance-has-a-distinctly-different-meaning-in-China. "The idea of two competing, publicly listed companies swapping chairmen might seem strange to most people. But for China's state-owned enterprises, where top personnel changes are just part of the large Communist Party apparatus, it is not all that unusual. Around noon on Aug. 24, 2015, China Telecom and China Unicom (Hong Kong) each announced the resignation of its top leader. Wang Xiaochu of Telecom and Chang Xiaobing of Unicom were to step down as chairman and CEO of their respective companies, simultaneously, effective that day. Later, both companies confirmed that the two men would swap jobs. The switch happened because the Communist Party decreed it, without specifying its reasons."

Singapore

› The Financial Times reports that **Singapore exchange overhauls governance after trading outage**: http://www.ft.com/cms/s/0/8b5e5936-4cc5-11e6-8172-e39ecd3b86fc.html#axzz4Fi4LJeyL. "Singapore's stock exchange operator plans to strengthen its corporate governance as part of an effort to restore confidence following a malfunction last week that halted trading on its securities market. Southeast Asia's biggest bourse announced on Monday plans to clearly separate its market supervisory function from commercial activities. The exchange's regulatory functions will be placed in a separate subsidiary company and have its own board, with a majority of directors and chairman independent of SGX. It will be set up by the second half of 2017. Singapore does not have a separate securities regulator. The Monetary Authority of Singapore oversees the securities industry in the city-state, but SGX is responsible for day-to-day supervision."

If you have any comments or questions please do not hesitate to contact me.

Kind regards,

Daniele Vitale
Georgeson
Corporate Governance Manager > Corporate Advisory
daniele.vitale@georgeson.com
T +44 (0)20 7019 7034 **M** +44 (0)7747 697 136 **F** +44 (0)870 702 0158
Moor House, 120 London Wall, London EC2Y 5ET, United Kingdom
www.georgeson.com