REGISTRY ROUND-UP

June 2020

Welcome to your June 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:

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UK AGM Legislation

On 20 May, we finally saw the first reading of the long-awaited Corporate Insolvency and Governance Bill that was originally announced by the Secretary of State for Business, Energy and Industrial Strategy in late March.

The promise was that it would provide Issuers with some certainty around meeting some of their statutory obligations during the current national health crisis. The Bill has been drafted to allow Issuers to hold their shareholder meetings electronically or by other means regardless of the provisions contained currently within the Companies Act or their articles of association.

The Bill has addressed the existing perception that a 'place of meeting' may need to be a single physical location. It clearly states that participants do not need to be in the same location and has also made it clear that during this crisis shareholders will not have a right to attend in person.

The provisions found within the Bill will apply retrospectively from 26 March until 30 September, unless extended by the Government. This may be welcome news for any Issuer who is yet to hold their meeting or has adjourned or postponed their original AGM. There are also provisions that will allow the Secretary of State to enact secondary legislation in regard to a number of matters that may include, notices and other documents related to shareholder meetings.

On 3 June the Bill passed through all further stages of the house and is anticipated to be read by the House of Lords throughout the rest of June with last scheduled reading taking place on the 23rd June. It is anticipated that the legislation will receive Royal Asset shortly thereafter. You may also find it helpful to read our recent AGM in lockdown blog which discusses the Bill and other practical issues around holding an AGM during the crisis.

It should also be noted that the Financial Conduct Authority in their latest Primary Market Bulletin (see below) are encouraging Issuers to find ways to ensure shareholders can ask questions of management and exercise their voting rights when making alternatives to physical meetings.

Just prior to the legislation being debated in the House of Lords, the Financial Reporting Council in conjunction with the Department of Business, Energy and Industrial Strategy, released another updated question & answers document. This publication also contained a short form best practice guidance for AGMs. This guidance asks companies to consider:

- Issuing communications in a timely fashion to investors;
- Ensure clarity is provided on proxy voting;
- Explaining procedures for the meeting and any communications prior to it;
- Providing the opportunity for investors to ask questions and receive responses prior to voting where in real-time virtual meeting, or via proxy;
- Making answers to questions available both at the meeting and in full written form after the meeting; and
- Offering a physical meeting to all investors once restrictions are lifted.

They also make clear that later in the year they will be publishing a fully considered assessment of meeting best practice which will be reached by working with representatives of companies and shareholders.

SME Growth Market

The European Securities and Markets Authority (ESMA) has published a consultation which considers the small and medium-sized enterprises (SME) growth market regime that was originally established under the Markets in Financial Instruments Directive II.

In the UK, the Alternative Investment Market (AIM) is the designed SME growth market, while in Ireland it is the Euronext Growth market.

The consultation considers amendments to the existing regime, such as harmonising admission requirements and accounting standards for Issuers listed on such markets.

Furthermore, the consultation lays out the technical standards required under a forthcoming change to the Market Abuse Regulation that affects SME growth market-listed companies. From 1 January 2021, such Issuers will no longer retain the current exemption which allows for them to prepare an Insider List only upon request from their local regulator. Instead, Issuers will essentially need to have a permanent insider list, which contains information on *"only those persons who, due to the nature of their function or position within the Issuer, have regular access to insider information"*.

The consultation closes on 15 July 2020.

Half-Yearly Financial Reports

Both the UK and the pan-European financial regulators have released statements regarding half-yearly financial reports:

Financial Conduct Authority (FCA) - Primary Market Bulletin No.28
The regulator has announced a one-month extension to the period in which listed companies need to publish their half-yearly reports. Therefore, reports should be published within four months from the end of the half-year.

The regulator also acknowledges the challenges that companies may face in providing a 'going concern' assessment and note that auditors may need to include remarks within their audit opinion in relation to this matter. Regardless, the FCA sees that it is vital for investors to be properly informed of the impact of COVID-19 and therefore encourages statements to consider the current circumstances when drafting their responses to going concern disclosures.

European Securities and Markets Authority (ESMA)
The statement issued by ESMA considers issues such as the contents of an interim management report, risks and other uncertainties related to the current pandemic. It calls for Issuers to provide updated information to investors that adequately reflects the existing and expected impacts of COVID-19 on their organisation.

QCA Sentiment Index

Each quarter the Quoted Companies Alliance (QCA) in conjunction with YouGov publish their Small & Mid-cap Sentiment Index which aims to provide an insight to Issuers and their advisers of how quoted companies are handling market changes and planning for their future.

This time, the focus of the index has been on how smaller quoted companies are responding to the challenges of COVID-19 and what impacts this has had on their future plans.

Unsurprisingly, the current pandemic has caused a general downturn in the level of optimism in the economy and this is the lowest it has been in the ten years of the index. Some respondents saw key challenges arising from the pandemic to include revenue being frozen, projects not proceeding and impacts on the ability to export into other markets.

All respondents indicated that they expected a significant decrease in job growth. 43% of Issuers and 78% of advisers expressed this opinion whereas in Q4 2019 only 14% and 44% respectively felt this way.

Other findings include:

- Half of small and mid-cap companies are planning to raise capital in the next 12 months, with 29% looking within the next three months.
- 79% of respondents would like AGMs to be allowed to be held remotely/virtually.
- 63% support the idea that a government fund is created that could take equity stakes in small and mid-sized companies.
- Some respondents would also welcome qualifying rules for Venture Capital Trusts (VCT) to be relaxed.
- 47% of respondents feel that the crisis has revealed aspects of their business that could be improved and feel that enforced changes such as remote working and reduced office occupancy will be here to stay.
- Some respondents have indicated that they have or are cutting director and senior management salaries and bonuses.

There was also a general feeling that guidance published by organisations on meetings was focused either on identifying problems but not providing solutions and seemed geared at main market listed companies.

Global News

Critiques of Virtual Shareholder Meetings

The Council of Institutional Investors has written to the Securities and Exchange Commission (SEC) ahead of an SEC meeting where shareholder meetings were being discussed. The letter highlights several issues that shareholders have allegedly faced during the AGM season in the US with virtual meetings.

Some of the problems identified include:

- The inability of beneficial shareholders to ask questions particularly using some platforms unless the recorded shareholder has transferred legal authority by proxy.
- Registration and login difficulties.
- Issuers failures to follow best practice.
- Issuers failing to entertain all shareholder questions and, in some cases, introducing a perceived screening of questions.

The letter is based on limited anecdotal information and does not include any Issuer views of such perceived problems.

Regardless, it is worth companies being aware of the information and the associated perceptions so that they can work to address shareholder engagement challenges.

Global Governance Voice

The latest edition of the quarterly Global Governance Voice, the magazine from the Corporate Secretaries International Association (CSIA) is now available. It contains the latest updates and articles from the member associations and covers topics such as:

- environmental harm in South Africa
- climate change risk disclosure
- COVID in the boardroom
- gender diversity
- widening the scope and relevance of governance

Computershare

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UK
Investors Defy Over AGMs

The Times reports that Investors defy Standard Life over AGMs.

"Shareholders in Standard Life Aberdeen have thrown out a proposal that could have allowed the fund management group to replace physical annual general meetings with electronic ones. A revolt by 37% of shareholders, a very large rebellion by FTSE 100 standards, saw the resolution calling for a change to the company's articles of association defeated. It required a 75% majority. Ironically, the shareholder protest about virtual meetings took place at an AGM which had to be held online because of lockdown rules that currently prevent public assemblies."

Titans Get Extra Time

Bloomberg reports that UK Corporate Titans Get Extra Time at Top in Virus Crisis.

"Some of London's most influential investors are giving UK companies extra time to find new board members because of the coronavirus crisis, potentially offering a group of long-standing chairmen an unexpected extension to their careers. Legal & General Investment Management will allow London-listed companies an additional 12 months to replace directors coming to the end of their recommended tenures, it said in response to Bloomberg queries. That could affect companies ranging from wireless giant Vodafone Group Plc to $5 billion packaging producer DS Smith Plc, whose chairmen are close to the maximum nine-year length of service laid out in the UK's guidebook for strong governance."

International
Passivism Won't Last for Long

Barrons reports that Shareholder Activists Are Ripping Up Their Traditional Playbook. But Passivism Won't Last Long.

"Passivism is the new shareholder activism. But the newfound humility of the most aggressive players of the investment industry may not last for long. Shareholder activists are ripping up their traditional playbook as they find it hard to follow their own, self-made rules to catalyse change at companies fighting for survival amid the economic shutdown triggered by the coronavirus pandemic. The tools that once boosted returns at target companies have become impossible to use in the current context of sinking valuations and the continuing massive government intervention in the world's largest economies. The traditional toolbox included cash returns in the form of higher dividends or share buybacks, pressure to acquire or be acquired by competitors, and often campaigns to oust reticent management. But the coronavirus-induced crisis has forced companies to cancel dividends and suspend stock buybacks as they turn to governments to help them stay afloat. Shareholder value is no longer the concern of the day."

ESG is Having a Good Crisis

Bloomberg argues that ESG Investing Is Having a Good Crisis. It's Also Killing Jobs.

"There is a positive narrative to support this. In times like this, the story goes, companies that treat their staff and their surrounding communities well will be far better positioned to survive and prosper after the crisis. Corporate misbehaviour is more unpopular than ever when so many people are hurting. And the clean air above locked-down cities will, some believe, give fresh impetus to attempts to reduce carbon emissions. There is, however, a more cynical or sceptical narrative. […] That thought can be taken further, in a subversive direction. It is possible that ESG is undermining itself — or at least that the E and the S are in conflict with each other. Vincent Deluard, of INTL

FCStone Inc., suggests that ESG funds are people unfriendly. […] The problem, Deluard suggests, is that ESG investing, intentionally or otherwise, rewards exactly the corporate behaviour that is creating alarm. Companies with few buildings, few formal employees and a light carbon footprint tend to show up well on ESG screens. But allocating capital to them leads to a deepening of inequality and intensifying the problem of under-unemployment."