

# REGISTRY ROUND-UP

July 2018



Welcome to your July round-up. We are bringing you highlights from the registry world, key dates for you to be aware of, all current and relevant industry updates and a market update provided by Georgeson.

## This month we will cover:

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## Registry Review 2018

### The last 12 months in Registry

Our team takes you through our latest services and developments, as well as an overview of key industry and legislative topics

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## Industry update

### Corporate Governance Reporting

Draft regulations have been laid before parliament which create a range of new reporting requirements for UK companies, all of which form part of the Government's corporate governance reform agenda.

These new requirements, if approved by parliament, will come into force for financial years beginning on or after 1 January 2019 and will require enhancements to existing company publications.

The requirements include:

- **Section 172 – Directors' duties**  
'Large' companies must publish a statement explaining how their directors have performed their duties under s. 172 and it should be included within the strategic report. This applies to quoted and non-quoted companies
- **Employee engagement**  
'Large' or 'medium' sized companies and those with more than 250 employees must explain how their directors have engaged with employees and how the directors have had regard for employee interests and how that has impacted on decision making. The disclosure should be included in either the director's report or the strategic report
- **Supplier and customer engagement**  
'Large' companies will have to explain how directors have had regard to their business relationships with suppliers, customers and others, and how such regard has impacted on principal decisions taken. The disclosure should be included in either the directors' report or strategic report
- **Corporate governance statement**  
'Very large' companies will be required to disclose on a 'comply or explain' basis their corporate governance arrangements in their annual report and on their website
- **CEO pay ratio**  
Quoted companies with more than 250 UK employees have to include within the directors' remuneration report a disclosure on the pay ratio of the total remuneration of the CEO compared against UK employees, and also explain how it is consistent with the company's UK pay policies
- **Directors' remuneration disclosures**  
Quoted companies have to summarise any discretion which the remuneration committee has exercised, and how much directors' pay is attributable to share price growth while also illustrating the maximum remuneration assuming share price growth of 50%.

Herbert Smith Freehills has produced a briefing explaining the new requirements in detail (found [here](#)) and also a one-page summary (found [here](#)).

### Private Company Corporate Governance

James Wates, the individual appointed to lead on drafting a 'corporate governance code' for private companies has, in association with the Financial Reporting Council released a consultation on the corporate governance principles for large private companies (found [here](#)).

These principles follow several months of industry engagement and reviews of similar codes in operation throughout the world. Large private companies will be encouraged to follow the six principles on an 'apply and explain' basis.

The six principles are:

### 1. Purpose

Promote the purpose of the company; ensure that its values, strategy and culture align to the purpose

### 2. Composition

A board's composition requires an effective chair, balance of skills, backgrounds, experience and knowledge

### 3. Responsibilities

A board should have clear understanding of its accountability and terms of reference

### 4. Opportunity and risk

Boards should promote long-term success

### 5. Remuneration

Remuneration structures should be aligned to sustainable long-term success while taking into account pay and conditions elsewhere in the company

### 6. Stakeholders

Meaningful engagement with material stakeholders, consider such discussions when taking decisions and ensure relationships are based on company's purpose.

The consultation is open until 7 September, with the final version of the principles being published in December 2018.

## Premium Listing

The Financial Conduct Authority (FCA) has published a policy statement (found [here](#)) which confirms that they are proceeding with their plans to create a new premium listing category for sovereign controlled commercial companies.

For sovereign controlled commercial companies in future, two of the previous listing rules are relaxed, enabling the company to list. The revised Listing Rules came into effect on 1 July 2018 and the changes are detailed in Chapter 21.

Under the new rules, companies within this category will be required to have an annual vote by their independent shareholders on the re-election of independent directors and companies will have to announce any related party transactions with the sovereign controller.

## Market Abuse Regulation – Updated CLLS/Law Society Q&As

The City of London Law Society (CLLS), and Law Society Company Law Committees' Joint Working Parties on Market Abuse, Share Plans and Takeovers Code updated their Q&A on the Market Abuse Regulation (MAR) on the 22 May 2018. One new Q&A was added, Q21A.

The new Q&A clarifies that Article 19 applies to Persons Discharging Managerial Responsibilities (PDMRs) of debt issuers (and their persons closely associated (PCAs)), if the debt instruments are admitted to trading on an EU venue. However, article 19 does not apply to dealings by PDMRs and their PCAs in shares or other debt instruments of the debt issuer unless those shares or other debt instruments are themselves traded on an EU venue or are 'linked' financial instruments in relation to the traded debt for the purposes of Article 2(1) of MAR.

The updated Q&A can be found [here](#).

## FCA Consultation on Proposed Guidance on Periodic Financial Information and Inside Information

The Financial Conduct Authority (FCA) has published a Primary Market Bulletin (PMB) which covers their consultation on a proposed update to the existing technical note on periodic financial information and inside information, involving the delay in the disclosure of inside information under Article 17(4) of the Market Abuse Regulation (MAR).

This consultation follows the publication of the European Securities and Markets Authority's guidelines on Article 17(4) of MAR. The guidelines give examples of legitimate interests of issuers that are likely to be prejudiced by immediate disclosure of inside information, and of situations in which delay of disclosure is likely to mislead the public.

The main points made by the FCA in their PMB are:

- It is not appropriate for issuers to take a blanket approach to the assessment of the status of the information they hold. Issuers should assess on an ongoing and case-by-case basis whether the information they hold fulfils the criteria defining inside information as set out in Article 7 of MAR. In undertaking this assessment,

issuers should begin from the assumption that information relating to financial results could constitute inside information

- Issuers should record and be able to submit evidence of the assessment process to the FCA upon request 'For the purposes of point (a) of Article 17(4) of MAR, the FCA considers that the cases where immediate disclosure of inside information is likely to prejudice the legitimate interests of an issuer include circumstances where 'the issuer is in the process of preparing a periodic financial report and immediate public disclosure of information would impact on the orderly production and release of the report, and could result in the incorrect assessment of the information by the public.'
- There is no possibility to delay disclosure of inside information under Article 17(4) of MAR in situations where to do so would mislead the public.

The PMB can be found [here](#), and the technical note can be found [here](#). The consultation closes on 23 July 2018.

### **Government Call for Evidence on FRC Review**

On 6 June 2018 a call for evidence was launched as part of the independent review of the Financial Reporting Council (FRC). The review has been set up by the Department for Business, Energy & Industrial Strategy (BEIS), and is led by Sir John Kingman. They have stated that they are keen to hear from stakeholders on a range of themes, including the role and purpose of the FRC, its effectiveness and powers, and its legal status and relationship with the Government. The aim of the review is to look at whether the FRC, and the current regulatory structure, are both as effective as they need to be.

The call for evidence can be found [here](#), and the consultation period closes on 6 August 2018.

### **Hampton-Alexander Review**

June saw the Hampton-Alexander Review publish updated figures which show that 29% of FTSE 100 board positions are held by women, which is up from 12.5% just seven years ago.

This new figure would suggest that FTSE 100 boards are on track to meet the Government-backed target of 33% of board positions going to women by 2020, however the figures also show that the wider FTSE 350 is likely to fall short.

The latest figures show that there still remain 10 all-male boards within the FTSE 350. This means that in order for the FTSE 350 to meet their target, 40% of all appointments must go to a woman over the next two years.

On 27 June 2018, the online portal (found [here](#)) for FTSE 350 companies to submit their 2018 gender leadership data opened and progress on women in executive and leadership roles will be revealed later in the year. Companies should submit their data for the period of 27 June to 31 July 2018 and should include the number of men and women on the executive committee and the direct reports to the executive committee.

### **Persons of Significant Control**

Companies House have conducted some analysis on Persons of Significant Control (PSC) submissions and found that there are areas for improvement due to some misunderstandings especially where recording ineligible overseas companies as a relevant legal entity (RLE).

With this in mind, the Institute of Chartered Secretaries and Administrators (ICSA) has published an article reviewing the definition of an RLE and analysed the associated rules (found [here](#)).

### **Interests held by companies:**

The article explains that while a company cannot technically be a PSC, it should be included on the register if it is an RLE under s. 790C(6) of the Companies Act. This section of the act states that a company would be an RLE if it would fall within the definition of a PSC if it had been an individual, and is subject to its own disclosure requirements.

Where there is a chain of RLEs owning a company, only the first should be entered onto the register, and similarly, where there are shareholders of an RLE these individuals will usually not need to be reported on the register.

## Indirect holdings:

Such holdings held through a company or other legal entity can only be attributed to an individual if they have 'control' which is determined using the concept of 'majority stake'. The article provides a thorough explanation of several different ways this concept can be understood.

## Register of Significant Votes Against

The Investment Association (IA) have issued an update (found [here](#)) reporting on the 2018 AGM season so far, in which they review the data collected in relation to significant votes against resolutions.

The key findings covering AGMs up until 8 June include:

- 140 resolutions with more than a 20% vote against
- 54 individual director-related resolutions received significant votes against
- There was a similar level of significant votes against individual pay related resolutions.

The IA has confirmed that more companies are making public statements about their actions as a result of a significant vote against a resolution and that they would expect companies to follow-up their initial statement with one, within six months of their AGM.

## Global News

### Board Oversight and Disclosure Guidance

The Canadian Coalition for Good Governance (CCGG) has published their Environmental and Social (E&S) Guidebook (found [here](#)).

The guidance aims to facilitate board oversight and company disclosures of E&S matters, and only focuses on those factors that are or may become material to a company's long-term value.

The guidance covers eight areas including corporate culture and strategy, board structure and performance evaluation.

### Institutional Investors on Sustainability Risk (Society 07/06)

A recent report (found [here](#)) sheds light on the views of institutional investors in relation to the sustainability risks of public companies. This report is based on in-depth interviews with proxy voters at North American and European institutions during the first quarter of 2018.

Some of the key takeaways include:

- Sustainability issues rank among the top five factors when evaluating a company's business practices
- The most important factors when assessing the risks are a company's disclosure/transparency on sustainability issues, followed by demonstrating effective management of such things as corruption and bribery, and disruptive technologies
- Sustainability engagement is more common in Europe than North America.

### Annual Corporate Governance and Director Pay Reports

The Spanish National Securities Market Commission (CNMV) has approved a circular (found [here](#)) which will allow companies to apply the format that they consider appropriate to their corporate governance and remuneration reports. There are also new requirements to include content on the experience, training, age and diversity of directors.



## Georgeson market update

### UK Activism

#### **Worst Explanations**

The UK Department for Business, Energy & Industrial Strategy reports about [The worst explanations for not appointing women to FTSE company boards](#)

"Despite a major drop in the number of top companies with all-male boards, many are still refusing to move with the times - and some of the worst explanations firms have made for not having women among their top employees have been revealed today (Thursday 31 May). Outrageous explanations for not appointing more women include suggestions they are not able to understand the 'extremely complex' issues FTSE boards deal with and the idea women do not want the 'hassle or pressure' of sitting on a top board. The explanations, which come from a range of FTSE 350 Chairs and CEOs, were heard by the team behind the government-backed Hampton-Alexander Review, which has challenged all FTSE 350 companies to make sure at least a third of their board members and leadership are women by 2020."

#### **Big Four Audit Quality Review**

The Financial Reporting Council reports that [Big Four Audit Quality Review results decline](#)

"The Big Four audit practices must act swiftly to reverse the decline in this year's audit inspection results if they are to achieve the targets for audit quality set by the Financial Reporting Council (FRC). Overall results from the most recent inspections of eight firms by the FRC show that in 2017/18 72% of audits required no more than limited improvements compared with 78% in 2016/17. Among FTSE 350 company audits, 73% required no more than limited improvements against 81% in the prior year. Across the Big 4, the fall in quality is due to a number of factors, including a failure to challenge management and show appropriate scepticism across their audits, poorer results for audits of banks. There has been an unacceptable deterioration in quality at one firm, KPMG. 50% of KPMG's FTSE 350 audits required more than just limited improvements, compared to 35% in the previous year. As a result, KPMG will be subject to increased scrutiny by the FRC."

#### **Powers of Persuasion**

The Financial Times reports that [Bond investors discover powers of persuasion on governance](#)

"Fixed income managers are joining forces with equity investors to achieve shared aims."

#### **Display of Confidence in Decarbonisation**

Investment & Pensions Europe reports that [Investors back Shell in climate change vote but register concerns](#)

"Investors delivered 'a clear and strong display of confidence' in Royal Dutch Shell's approach to decarbonisation in voting down a shareholder resolution about emission reduction targets, according to the company. The resolution, which was put forward by Dutch pressure group Follow This, was defeated by 94.5% of votes cast at Shell's annual general meeting (AGM) yesterday. Around 5.5% of votes cast supported the resolution, although one-and-a-half times as many votes were withheld."

## Board Readies for Wind Up

Peer2Peer Finance News reports that [Refreshed Ranger Direct Lending board readies for wind up](#)

"Three directors nominated by rebel Ranger Direct Lending (RDL) shareholders have been voted onto the investment trust's board. RDL has been in an ongoing dispute with two of its main shareholders, Oaktree Capital Management and LIM Advisers, amid concerns about the fund's performance and direction. The wrangles culminated in the withdrawal of the investment trust's proposed new manager Ares and a decision to wind up the investment trust. The trust's chairman Christopher Waldron had said he would resign ahead of the annual general meeting this week and previous board members Matthew Mulford and K Scott Canon also stood down. Oaktree and LIM Advisers had put forward their own nominees for the board to help wind down the fund. Oaktree had nominated Dominik Dolenc and Greg Share, while LIM Advisers had called for the appointment of Brendan Hawthorne and Eric Long. Investors backed all the new members except Hawthorne, while another director, Jonathan Schneider, was voted back onto the board."

## Board Remains Defiant

BBC News reports [Stobart Group defiant after ex-boss sacked from board](#)

"Stobart Group, the owner of Southend and Carlisle airports, has written to shareholders defending its decision to sack former boss Andrew Tinkler. It accused Mr Tinkler of threatening to destabilise the firm by his efforts to remove current chairman Iain Ferguson. For his part, Mr Tinkler has complained of being the target of "public mud-slinging" by other directors. The war of words comes in the run-up to Stobart's AGM on 6 July, at which shareholders will vote on the issue."

## International Activism

### Sustainable Finance

Investment & Pensions Europe reports that the [European Commission unveils sustainable finance legislative proposals](#)

"Asset managers and other institutional investors who claim to have sustainability goals will need to show how their investments are aligned with these objectives under new rules proposed by the European Commission today. The information they would have to disclose would include the sustainability or climate impact of their products and portfolios. The requirements are part of a package of legislative proposals the Commission had promised when presenting its sustainable finance action plan earlier this year, aimed at harnessing the capital markets to help implement the international agreement on climate change that was reached in Paris in 2015."

### Rein in Persistent Investor Activism

Bloomberg BNA reports that [House Panel Approves Bill to Rein in Persistent Investor Activism](#)

"Shareholder activists would have a harder time getting proposals that don't pass placed back on a company's ballot under a Republican-led bill approved June 7 by the House Financial Services Committee. [...] His bill would require that at least 6 percent of a company's shareholders voted in favor of a proposal the prior year for it to be resubmitted once, up from the 3 percent currently required by the Securities and Exchange Commission. The bar for the next resubmission would rise to at least 15 percent support, instead of 6 percent, and after that it would climb from 10 percent to 30 percent."

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