EQBoardroom Bulletin

Welcome to our monthly bulletin of what's happening within the financial services industry that will impact our EQ Boardroom clients.

Continuing our 2018 AGM season theme from our February bulletin, this month we take a closer look at the proxy voting agencies and investor relation bodies voting guidelines and what that means in practice for UK PLCs.

Having previously looked at the recommendations made by the Institutional Shareholder Services (ISS), in our March edition we take a look at some of the recommendations made by The Pensions and Lifetime Savings Association (PLSA) and Glass Lewis.

This month we cover…

- The **PLSA and Glass Lewis** voting guidelines
- The **PLSA** annual review of voting at AGMs
- The **Financial Reporting Council** decision to open an investigation into the audit of Carillion's financial statements
- The **Government review** into companies buy back schemes and whether they may have been used to inflate executive pay
- The **GC100 poll** gauging appetite for virtual-only and/or hybrid general meetings
- Dormant Assets and the Government response to the **Commission on Dormant Assets**' Report
- The **Government response** to the Taylor Review
- **General Data Protection Regulation** with a review of the EQ Boardroom discussion forum
- **MiFID II** and our final article in our series of updates
- **SAYE (Sharesave)** missed contributions change update

THE PENSIONS AND LIFETIME SAVINGS ASSOCIATION (PLSA AND GLASS LEWIS) PUBLISH THEIR 2018 VOTING GUIDELINES

The PLSA has targeted company audits, particularly in relation to the length of time an audit firm has been involved with a company, as they believe that auditors should be rotated to ensure that they remain at arms-length and truly independent. As such they recommend that consideration must be given to a vote against the re-appointment of the auditors if they have been in place for more than 20 years.

Share buy-backs also feature as the PLSA recommends to only support a vote in favour of the resolution if the purchase is deemed to be a prudent use of the company's cash resources, cash-flows of the underlying business allows, and the process will not introduce excessive and unsustainable leverage.

In addition, re-appointment of the chair of the sustainability committee will be opposed if investor demand for detailed risk assessments and responses to the effect of climate change on the business has not been satisfactorily disclosed.

THE PLSA HAS ALSO PUBLISHED ITS ANNUAL REVIEW OF VOTING AT AGMS, INCLUDING THE CAUSES OF SHAREHOLDER DISSENT FOR FTSE 350 COMPANIES DURING 2017

The review shows relatively steady levels of shareholder dissent for the past two years, with roughly one fifth of the FTSE 350 experiencing significant dissent (at least 20% of votes against) over at least one resolution.

Executive remuneration continues to be the most controversial item.

The PLSA Policy and Voting Guidelines are available **here**.

The PLSA annual voting review is available **here**.

THE GLASS LEWIS GUIDELINES TAKE INTO ACCOUNT THE UK CORPORATE GOVERNANCE CODE, THE COMPANIES ACT 2006, REQUIREMENTS UNDER THE UKLA AND WHAT THEY CONSIDER TO BE GLOBAL CORPORATE GOVERNANCE BEST PRACTICES

Highlights of the changes made to their 2017 guidelines include board skills, diversity and pay ratios. Glass Lewis are of the opinion that companies should disclose sufficient information to allow a meaningful assessment of a board's skills and competencies and recommends a vote against the chair of the nomination committee if concerns regarding the mix of skills and experience on the committee have failed to have been addressed.

Director elections at FTSE 100 companies will now be under further scrutiny to include board skills matrices to assess board's competencies and identify any perceived potential skill gaps.

In addition, the guidelines now reflect the recommendation of the Parker Review Committee that each FTSE 100 and FTSE 250 board should strive to have at least one director of colour by 2021 and 2024, respectively.

In addition:

- The disclosure of pay ratios between the CEO and median or average of UK-based employees is encouraged.
- Restricted share plan assessments in line with the Investment Association guidance will be conducted on a case-by-case basis.
- Performance metrics should have a clear and direct link to a company's strategy, including explicit references, where appropriate, to KPIs described in relevant business cycles. Vote against may be recommended on pay proposals where performance triggers have been lowered unless there is a compelling rationale to do so.
- Company shareholder structures will be taken into account when determining "significant" dissent at shareholder meetings, particularly relating to executive pay or a director election.

The guidelines are available **here**.

The Financial Reporting Council (FRC) has announced an investigation under the Audit Enforcement Procedure in relation to KPMG's audit of the financial statements of Carillion plc

The investigation will cover the years ended 31 December 2014, 2015 and 2016, and additional audit work carried out during 2017.

The investigation will be conducted by the FRC's Enforcement Division, and will consider whether the auditor has breached any relevant requirements, in particular the ethical and technical standards for auditors. Several areas of KPMG's work will be examined including the audit of the company's use and disclosure of the going concern basis of accounting, estimates and recognition of revenue on significant contracts, and accounting for pensions.

THE GOVERNMENT HAS ANNOUNCED A REVIEW INTO COMPANY SHARE BUY BACKS AND WHETHER THERE IS ANY CORRELATION TO INFLATED EXECUTIVE PAY

As well as the PLSA expecting due consideration to be given to company share buy-backs, the UK Government will also be conducting a review into whether the process may have been previously used to inflate executive pay. As many companies use earnings per share (EPS) as a performance measure for executive pay, concerns have been raised that through the reduction in the issued share capital, the buy-back process might artificially inflate the EPS measure, something that potentially may have justified increases to executives' pay.

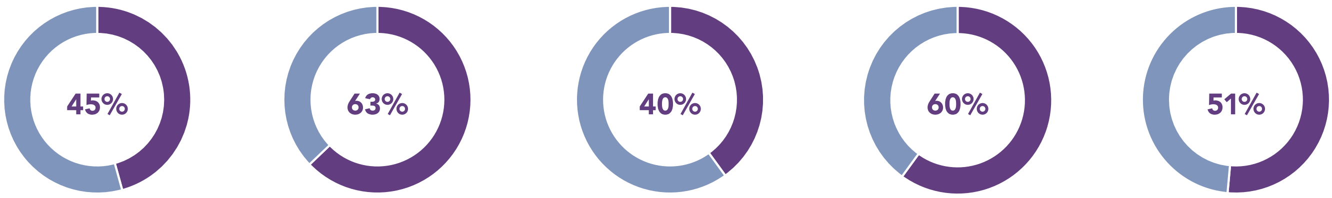
With institutional investors and their representative bodies having previously raised concerns about long term shareholder benefit, and the PLSA and Investment Association now insisting that companies provide robust justification as to why this method of returning capital to shareholders has been chosen, the review is intended to determine why companies use share buybacks and whether action is needed to prevent their misuse. The research will be carried out by PwC UK and is part of the Government's broader package of Corporate Governance reforms announced last year.

The Government's announcement is available here.

THE GC100 HAS PUBLISHED THE RESULTS OF A POLL TO GAUGE THE APPETITE FOR HOLDING VIRTUAL-ONLY AND/OR HYBRID GENERAL MEETINGS

Following the ISS recommendation of supporting hybrid meetings but voting against a virtual only meeting, 35 GC100 members participated in a poll to help identify the forming consensus of FTSE100 companies.

Some of the key statistics from the 35 companies polled included:



16 believe that the current AGM format is still valuable

22 are proposing to change their articles in relation to general meetings

14 will propose changes to enable both virtual-only and hybrid meetings

21 indicate that while at this point in time they have a preference for hybrid meetings, only eight will propose changes to enable hybrid meetings only

18 believe that virtual-only AGMs will prevail in the long term

The full poll results are available **here**.

DORMANT ASSETS

On February 16th 2018, the Government issued its response to the recommendations made by the Dormant Assets Commission to expand the Dormant Assets scheme.

The Government's response confirms their agreement with the commission that there is significant potential to expand the current scheme to a wider range of assets, including banking, insurance and pensions, investment and wealth management, and within the securities sector.

It also agrees that tracing and reunification should be the priority before any assets are transferred to the scheme, participation will remain voluntary, there will be a clear reclaim process and no customer should be disadvantaged by having an asset included in the scheme.

With regards to the schemes expansion, it is intended that the industry will lead this with the full support of the Government who will announce senior industry champions. These champions will lead further work focusing on an industry-wide approach, improvements to tracing and reunification processes and the potential to expand the scheme.

The Government does recognise that cash assets are simpler to include than some non-cash assets so the scheme will be phased, enabling more complex non-cash assets to be included over time.

The report is available to read **here.**

THE GOVERNMENT HAS PUBLISHED ITS RESPONSE TO THE TAYLOR REVIEW WHICH WHEN PUBLISHED LAST YEAR ASSESSED THE IMPACT OF MODERN WORKING PRACTICES ON THE WORLD OF WORK

The Government's response, headlined 'Good Work Plan' sets out its proposals to take the recommendations of the Taylor Review forward.

The Government has accepted 52 of the 53 recommendations made by the Taylor Review and in some cases has gone further than the review's proposals including:

Enforcing vulnerable workers' holiday and sick pay for the first time

A list of day-one rights, including holiday and sick pay entitlements and a new right to a pay-slip for all workers, including casual and zero hour workers

A right for all workers to request a more stable contract

Other proposals include:

- Naming employers who fail to pay employment tribunal awards and quadrupling tribunal fines for employers showing malice, spite or gross oversight to £20,000
- Taking further action to ensure unpaid interns are not doing the job of a full time worker
- Asking the Low Pay Commission to consider the impact of higher minimum wage rates for workers on zero-hour contracts
- Defining 'working time' for flexible workers who find jobs through apps or online so they know when they should be being paid
- Launching a task force with business to promote awareness of the right to request flexible working

The Government has launched four consultations on different aspects of the proposals and said that it will consider the impacts of the reforms on business and other groups before implementing changes.

The Good Work Plan is available **here**.

General Data Protection Regulation (GDPR) is just round the corner

GDPR still remains at the top of everyone's agenda for this year, and rightly so, as the implementation date is now only a few months away. On 1st February we held a GDPR discussion forum which comprised of an overview of the key changes to the current Data Protection regime and then looked at its impact on share registers, nominees and employee share plans. The purpose of the session was to share information about the changes as well as provide an opportunity to discuss some of the practical implications.

For those that were unable to attend on the day, please contact your Relationship Manager if you would like a copy of the presentation.

MiFID II and our final article in our series of updates

In our first article, "Introduction to MiFID II", we highlighted how the new regulations were bringing enhancements to the existing MiFID I regime, which had come under scrutiny following the financial crisis of 2008. In this, our final article in our MIFID II series, we take a more detailed look at controls and governance, including internal governance and policies designed to protect investors.

You can read the first MiFID II article **here**.

You can read the latest article **here**.

SAYE (Sharesave) missed contributions change update

The 2017 Autumn Budget papers announced the Government's intention to allow employees on maternity and parental leave to take a pause of up to 12 months from saving into their Sharesave account, an increase from the current 6 months, with the change taking effect from 6 April 2018.

Whilst supporting the announcement, we asked for a review into whether the change could be extended to cover all participants as this would be more equitable, simplify processes and make communications easier. We also asked for the change to take effect from September 2018 to provide us and our clients sufficient time to prepare following publication of HMRC's Guidance.

On 27 February 2018, when asked about proposals to

- increase the contributions holiday for SAYE schemes from 6 to 12 months
- apply the change to all employees who miss their payment contributions; and
- postpone the implementation to allow a longer preparatory period

the Financial Secretary to the Treasury, Mel Stride's written response was, *'The government announced at Autumn Budget that it would extend the Save As You Earn (SAYE) contributions holiday from 6 to 12 months for those on maternity and parental leave from 6 April 2018. After receiving representations from the share plan industry, the government is delaying the implementation of this change until 1 September 2018 to allow for software changes and testing. The government will from the same date extend the SAYE contributions holiday to 12 months for all SAYE plans. This change will extend the benefit to all SAYE participants.'*

This is great news and we thank ProShare for facilitating discussions. We now await the confirmation of these changes through publication of HMRC's Guidance. An interesting point to note in the announcement is that the change will apply to all SAYE plans, meaning that although the variation cannot apply retrospectively, the change will be applied prospectively from 1 September 2018 to all pre-existing plans. Our working group looking at implementation will also consider how best to communicate these changes to employees.