

UK Corporate Update.

AGM Alert 2015 client guide published

We have published our AGM Alert 2015 guide to changes in law and practice over the last year which affect the AGMs of UK premium-listed companies.

In 2014, companies were kept busy working through new requirements which re-organised annual reporting and brought in new remuneration approvals. This year, most companies should be able to concentrate on consolidating their approach to recent reforms and changes to AGM business, procedures and reporting will be limited. One exception is premium-listed companies with a controlling shareholder which need to take account of the May 2014 Listing Rule changes which affect their AGM voting and information.

Some key points for all premium-listed companies

AGM business and procedures

- > Quoted UK companies must include an advisory vote on the annual report on pay in this year's AGM business but most should not need to obtain approval for the remuneration policy.
- > Updated investor guidance on share capital management has largely endorsed standard AGM practice for share capital authorities.
- > Companies may wish to update their articles, but are not required to do so.
- > When announcing vote results, companies are encouraged under the revised UK Corporate Governance Code to respond to significant votes against any resolution. Market practice on what level of dissatisfaction counts as "significant" is not yet settled.

Company reporting

- > For most companies, annual reporting requirements are unchanged from 2014, unless they choose to pre-comply with the 2014 changes to the UK Corporate Governance Code.
- > From January 2015, companies must put their audit contracts out to tender every ten years and tell shareholders when they intend to do so.
- > Financial institutions will face additional country-by-country reporting obligations in 2015.

Directors' remuneration

- > Companies must consider how much detail about the agreed remuneration policy should be included in this year's remuneration report, given differing investor expectations.
- > Reporting on policy implementation should have regard to updated investor guidelines, particularly in relation to maximum pay, disclosure of performance targets and any discretions.

In this issue

AGM Alert 2015 client guide published	1
UKLA confirms reduction in number of circulars requiring prior approval.....	2
ESMA reports on new rules on managers' securities dealings	3
Why identifying a company by its registered number matters.....	4
Companies to include full list of subsidiaries in their accounts	5

Key points for controlled companies

The following points also apply to premium-listed companies which are 30 per cent controlled by one shareholder or group of shareholders.

- > Under the new FCA rules, controlled companies must have their independent directors elected or re-elected by a majority vote of the non-controlling shareholders, as well as being approved by the shareholders as a whole. Controlled companies, therefore, must decide how to obtain these approvals and whether they also need to amend their articles, although this is unlikely to be the case.
- > Separately, the AGM circular must contain information about any relationship between a proposed director and the company or its directors or controlling shareholder, why he or she is considered effective and independent and how he or she was selected.
- > The annual report must also contain certain disclosures about the mandatory relationship agreement with the company's controlling shareholder.

To access our AGM Alert 2015 client guide, please register on the [Knowledge Portal](#) a one stop shop for value-added know-how reserved for our clients. Key advantages include: ability to personalise email alerts; powerful search functionality of thousands of articles; full programme and recording of our seminars around the world; accessibility of multimedia content that can be downloaded for viewing on mobile devices; and access to RSS feeds.

UKLA confirms reduction in number of circulars requiring prior approval

The Financial Conduct Authority has made various miscellaneous amendments to the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. Most of these took effect on 1 February 2015, with amendments relating to approval of circulars and investment policies taking effect on 1 April 2015. The changes were previously consulted on in quarterly consultation paper No 6 (CP14/18) and the FCA has published Handbook Notice No. 18 in which it sets out the feedback received on that consultation and its response.

UKLA approval of circulars

LR 13.2 is amended with effect from 1 April 2015 so that many circulars which previously required advance UKLA approval will no longer do so after 1 April, including schemes of arrangement, share buybacks of less than 25%, share capital or articles changes that contain unusual features and shareholder-requisitioned general meetings. This will shorten the time it takes companies to issue such circulars. They will nevertheless still need to comply with the contents requirements of LR 13 and the UKLA may take action against companies and directors if deficient circulars are issued.

Circulars relating to the following transactions will still need to be approved by the UKLA before they are sent to shareholders:

- > class 1 transactions (including reverse takeovers);
- > related party transactions;
- > share buybacks of 25% or more of the company's share capital;
- > reconstruction and refinancing transactions (other than those relating to a closed-ended investment fund); and

- > cancellation of premium listing, transfer into or out of premium listing by an investment company or transfer from premium listing to standard listing by a commercial company.

Insignificant subsidiary exemption

The requirements of LR 11 on related party transactions do not apply if the party to the transaction is only a related party because it was related to a subsidiary undertaking of the listed company that represents less than 10% of the profits or assets of the listed company for the relevant period. One of the conditions for this exemption to apply is that the subsidiary undertaking must have been in the listed company's group for one year or more. This rule has been amended to clarify that the one year means one full financial year and that the subsidiary undertaking must have actually been consolidated in the listed company's group for the whole year.

Other changes

Other changes include to:

- > update the requirements in LR 9.8.10 for auditors to review certain parts of the annual report to tie in with the 2012 version of the UK Corporate Governance Code and introduce transitional provisions for companies reporting in respect of accounting periods covered by the 2010 version of the UK Corporate Governance Code;
- > require standalone UKLA approval for any material changes to a closed-ended investment fund's investment policy (from 1 April 2015);
- > close a loophole relating to requirements for mineral expert's reports on class transactions for certain mineral companies;
- > clarify the accounting policies that are permitted to be used when presenting a profit forecast in a circular for a class 1 transaction;
- > correct an anomaly in the rules relating to requirements to disclose historical financial information on an application for a premium listing; and
- > update various definitions.

The changes are effected by the Listing, Prospectus and Disclosure and Transparency Rules (Miscellaneous Amendments No 3) Instrument 2015, which is available [here](#). Handbook Notice No. 18 is available [here](#).

ESMA reports on new rules on managers' securities dealings

The European Securities and Markets Authority has published its final report on technical advice on possible delegated acts under the Market Abuse Regulation. This covers selected areas where the Regulation requires detailed provision to be made under further rules to be made by the Commission.

Managers' transactions

MAR includes restrictions on dealings by persons discharging managerial responsibilities in closed periods (similar to the current rules in the Model Code under the UK Listing Rules) and notification obligations in relation to PDMR dealings (similar to DTR 3). ESMA was mandated to provide technical advice on the types of transactions triggering the notification and disclosure duties and the circumstances under which trading by a PDMR during a closed period may be permitted. Key points arising from its advice for UK-listed companies are:

- > that preliminary announcements will not end a closed period (unless the Listing Rules are amended to require issuers to make preliminary announcements: currently they are voluntary); and
- > that a number of transaction types that are currently excluded from the scope of the Model Code will be caught by the new restrictions and the obligation to announce, such as taking up entitlements under a rights issue or receiving a gift or inheritance of shares.

Other areas covered

The report also contains ESMA's advice to the Commission in relation to four other aspects of MAR:

- > determination of the competent authority for notification of delays in public disclosure of inside information;
- > specification of indicators of market manipulation;
- > minimum thresholds in respect of emission allowance participants exemptions; and
- > competent authorities' procedures for receiving reports of infringements.

Next steps

The delegated acts need to be adopted by the European Commission so as to take effect when MAR takes effect, in July 2016.

ESMA will report separately on the regulatory technical standards it is producing in relation to other aspects of MAR, including insider lists and wall-crossing. We expect that report to be published in July 2015.

ESMA's final report is available [here](#).

Why identifying a company by its registered number matters

In a case widely reported in the press, it was established that Companies House owed a duty to take reasonable care when making entries on the register after it marked the wrong company as being in liquidation, with catastrophic results. This decision serves as a reminder that we should always use a company's registration number, which is unique and never changes, to identify it, along with its name.

Facts

- > A company, Taylor and Son Limited, had gone into liquidation. The relevant forms submitted to Companies House did not bear the company's number.
- > Companies House incorrectly marked a different company, Taylor and Sons Limited, as being in liquidation on the register.
- > By the time this error had been rectified, catastrophic damage had been done to Taylor and Sons, with banks and suppliers withdrawing credit and its key customer terminating its contract.
- > Taylor and Sons was forced into administration and its managing director sued Companies House.

Decision

- > The High Court found that Companies House had a duty to take reasonable care when making entries on the register. It had breached this duty on this occasion and the claimant was awarded damages.

Comment

This case demonstrates what can happen when different companies with similar names get mixed up. Every company registered in the UK has a unique registration number which, unlike a company name, can never change. Company numbers should always be used to identify companies, particularly in correspondence with Companies House but also in other significant legal correspondence and contracts.

See *Philip Davison Sebry V (1) Companies House (2) Registrar of Companies* [2015] EWHC 115 (QB).

Companies to include full list of subsidiaries in their accounts

The Government has published a response to its September 2014 consultation on Chapters 1 to 9 of the Accounting Directive (Directive 2013/34/EU) together with draft legislation to implement the Directive in the UK.

The Directive does not make significant changes to the fundamentals of UK company reporting and most of the new measures now being implemented by the Government will affect small- or medium-sized companies. However, the Government is removing the option whereby a company need only disclose its principal subsidiaries in the accounts if it includes a full list of subsidiary and other related undertakings in the annual return. The annual return disclosure is often overlooked so companies will have to include the full list in the notes to the accounts.

The Companies and Groups (Accounts and Reports) Regulations come into force on 6 April 2015 and will apply to financial years commencing on or after 1 January 2016. However, the directors can decide to adopt the changes made by the Regulations early for financial years commencing on or after 1 January 2015.

General changes

The Government intends to:

- > remove the option whereby a company need only disclose its principal subsidiaries in the accounts if it includes a full list of subsidiary and other related undertakings in the annual return;
- > provide companies with the opportunity to use alternative layouts when preparing their profit and loss account and the balance sheet provided that the information given is at least equivalent to the information otherwise required by the standard formats. This is intended to reduce the burden of consolidation for those in a group using international accounting standards;
- > require that, in exceptional circumstances, where the useful life of goodwill cannot be reliably estimated, it shall be written off over no more than 10 years; and
- > permit the use of the "equity method" in individual company financial statements.

Statutory audit

In relation to statutory audit, the Government intends to:

- > continue to exclude public companies from the small companies' audit exemption;

- > exclude all public interest entities (broadly listed companies, insurers and credit institutions) from the audit exemption for subsidiaries with parent company guarantees and from the dormant companies' audit exemption;
- > implement the requirements of the Audit Directive (Directive 2014/56/EU) as part of the implementation of the Accounting Directive;
- > address the responses to the Accounting Directive consultation on non-audit services as part of the responses to the Government's separate discussion document on implementation of the EU's audit reforms.

Changes affecting small companies

In the response statement the Government states that it intends to:

- > adopt the maximum thresholds available to determine the size of small companies. Mandatory increases in the thresholds for medium-sized and large companies will also be applied;
- > reduce the number of mandatory notes required of small companies to 13 notes, where these are appropriate;
- > permit small companies to prepare an abbreviated balance sheet and abbreviated profit and loss account if approved by all of the company's shareholders;
- > give companies in the same group as a public company which is not a listed company access to the small or medium-sized companies regimes; and
- > remove the requirement for micro-entities to prepare a directors' report.

The Government's response statement can be found [here](#). The Companies and Groups (Accounts and Reports) Regulations 2015 can be found [here](#).

Author: Lucy Reeve

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2015.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications. We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms. If any of your details are incorrect, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.

Linklaters LLP (www.linklaters.com) is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm regulated by the Solicitors Regulation Authority (www.sra.org.uk). The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications.

A list of Linklaters LLP members together with a list of those non-members who are designated as partners and their professional qualifications, may be inspected at our registered office, One Silk Street, London EC2Y 8HQ and such persons are either solicitors, registered foreign lawyers or European lawyers.

Contacts

For further information please contact:

Lucy Fergusson
Partner

(+44) 20 7456 3386

lucy.fergusson@linklaters.com

Lucy Reeve
Senior Associate

(+44) 20 7456 3459

lucy.reeve@linklaters.com

One Silk Street
London EC2Y 8HQ

Telephone (+44) 20 7456 2000
Facsimile (+44) 20 7456 2222

Linklaters.com