EU related party transaction rules: the latest position

Controversial proposals to introduce rules on related party transactions at an EU-level have reached a significant stage in the European legislative process. The proposals have been revised and, if introduced in their current form, are likely to have little impact on UK-listed companies.

Last year, proposals were introduced for a new EU Directive to amend the Shareholder Rights Directive. The amendments included the introduction of a new regime on transactions entered into between listed companies and their related parties. The proposals caused a number of concerns and were generally considered onerous on listed companies and lacked a number of exemptions needed to make the rules workable in practice.

The European Parliament’s Legal Affairs Committee (JURI) has now voted to adopt the proposal for the Directive to amend the Shareholder Rights Directive. This does not mean that the rules are final, but is a significant stage in the process.

The proposal as adopted at this stage is significantly less restrictive on related party transactions than the initial proposals which caused such concern. There are now exemptions for intra-group transactions and ordinary course transactions. There is also a great deal of flexibility for Member States to set the parameters for when related party transactions have to be approved or announced and whether they have to be approved by the shareholders or just the board.

Now both co-legislators (European Parliament and Council) have finalised their negotiation positions, the trilogues (informal negotiations between the European Parliament and the Council, during which the European Commission has a mediation and facilitation role) will start. The aim of the trilogues is to find a political agreement on a final text. Once the political agreement is reached, the European Parliament and then the Council will adopt their first reading positions and conclude the legislative process for the file.
AGMs 2015 – mid season update

The 2015 AGM season so far shows investors largely happy to support their companies, although votes in favour of remuneration reports cannot be taken for granted. At the same time, companies must get to grips with certain new investor and best practice expectations, especially when seeking to disapply statutory pre-emption rights in line with recent guidance, obtain permission to hold general meetings on 14 day’s notice and monitor and report on significant investor dissent. Other issues arising before and at AGMs relate to auditor re-elections, proxy advisory services and shareholder questions. About two-thirds of the FTSE 100 companies and over half of the FTSE 250 have now published their 2015 notices of meeting.

Pre-emption disapplication resolutions

A number of companies, in reliance on the updated March 2015 Pre-Emption Group guidelines, have adjusted the limits in the standard pre-emption disapplication resolution to be put to shareholders at AGMs held in 2015.

Most, but not all, voting advisory services are supporting such resolutions. For affected companies, this means that there may be a higher than expected vote against the pre-emption disapplication resolution at their AGM.

14-day notice resolutions

As in previous years, the majority of the FTSE 100 companies have in 2015 again put an annual resolution to shareholders seeking approval for general meetings to be held on 14 days’ notice. Despite opposition from certain investors, this indicates that the September 2014 UK Corporate Governance Code recommendation for notices of EGM to be sent to shareholders at least 14 working days in advance have not discouraged companies or investors from continuing to seek and grant approval for 14-day notice resolutions.

Significant votes against

The 2014 revisions to the UK Corporate Governance Code provide that where, in the board’s opinion, a significant proportion of votes have been cast against a resolution at any general meeting, the company should explain when announcing the results of the vote what actions it intends to take to understand the reasons behind the result. In 2015 so far, at least three listed companies found that more than 30% of investors voted against a resolution and another three had between 20% and 30% of investors voting against a resolution.

The full mid season update is available on the Linklaters Knowledge Portal. If you have not yet signed up to the Linklaters Knowledge Portal you can do so here.
Full list of subsidiaries to be included in accounts approved on or after 1 July 2015

From 1 July 2015, UK companies will no longer have the option to include reduced disclosures in relation to their related undertakings in the notes to their annual accounts.

Current position

Section 409 Companies Act 2006 requires companies to include information on their related undertakings (including subsidiaries, joint ventures, associated undertakings and undertakings in which they have a significant influence) in the notes to their account as required by Schedule 4 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008. If, in the opinion of the directors, this would result in information of excessive length, Section 410 Companies Act 2006 permits companies to limit the disclosures in the notes to the accounts to (broadly) principal subsidiaries. If this option is adopted, the full information must be annexed to the next annual return filed with the Registrar of Companies.

What is changing?

Section 410 is being repealed, meaning that companies will have to include details of all their related undertakings in the notes to their accounts. It will not be possible to include the information in the annual return.

The repeal is effected by the Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015 (SI 2015/980) which came into force on 6 April 2015.

When does the requirement to list all related undertakings take effect?

The repeal applies to annual accounts approved by the directors on or after 1 July 2015. Such accounts must contain details of all related undertakings whereas annual accounts approved before that date can still benefit from Section 410 and only need to include details of principal subsidiaries. See paragraph 2(5) of the Regulations.

What action do I need to take?

Companies with a 31 March year end are likely to be the first to be affected and may wish to consider the timetable for approving the 2015 accounts and whether the disclosures in the notes to the accounts will be sufficient.

The Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015 can be found here.

FCA launches a market study on investment and corporate banking

The Financial Conduct Authority has published terms of reference in relation to its market study into competition in investment banking and corporate banking services. This is being conducted in response to concerns raised in
the FCA’s wholesale sector competition review which completed in February 2015.

The study will consider primary market activities such as debt and equity capital markets, mergers and acquisitions and acquisition financing, together with corporate broking and lending and other ancillary services. The FCA will be focussing on the following key issues:

> transparency, particularly the transparency of the allocation process in debt and equity issues and the impact of established market practice and regulations on transparency in the IPO process;

> client choice and behaviour and the impact of syndication;

> assessing whether and how bundling and cross-subsidisation affects competition; and

> the potential benefits of reducing regulatory barriers to firms entering or expanding into primary markets.

The FCA welcomes comments on its terms of reference by 22 June 2015. It plans to publish interim findings and proposed remedies (if required) around the turn of the year and the final report in spring 2016.

Click here for the terms of reference and details on the FCA’s wholesale sector competition review.

PRA publishes consultation on of board responsibilities

The Prudential Regulation Authority has published a consultation on board responsibilities (CP18/15). The consultation seeks views on a draft supervisory statement to identify some key aspects of good board governance for boards to consider and to which the PRA attaches particular importance in the conduct of its supervision. It is not intended to be a comprehensive guide to good corporate governance.

The draft statement complements the individual accountabilities which the PRA is introducing through the Senior Managers and Senior Insurance Managers Regimes. It also provides guidance on the PRA’s expectations relating to:

> setting strategy;

> culture;

> risk appetite and risk management;

> board composition;

> the respective roles of executive and non-executive directors;

> knowledge and experience of non-executive directors;
> board time and resources
> management information and transparency;
> succession planning;
> remuneration;
> subsidiary boards; and
> board committees.

The consultation closes on 14 September 2015.

Click here for consultation CP18/15.