Georgeson

Monthly Roundup - December 2018

Global

- The Asian Corporate Governance Association has published its **CG Watch Report 2018**: https://www.acga-asia.org/cgwatch.php. "The Asian Corporate Governance Association and CLSA Limited today release their ninth joint edition of CG Watch, a regional report on corporate governance in Asia-Pacific published every two years. Titled 'Hard Decisions', the report examines the difficult strategic choices that Asian market participants face in selecting the best way forward for CG reform, such as between dual-class shares and 'one share, one vote', between greater powers for regulators and stronger rights for minority shareholders, and how to encourage more meaningful corporate disclosure on issues of governance and sustainability. With competition for initial public offerings ('IPOs') as intense as ever, governments and regulators are under pressure to lower standards, at the cost of long-term risks for investors and markets." Based on this, the Financial Times reports about **Lies, damned lies and ESG rating methodologies**: https://ftalphaville.ft.com/2018/12/06/1544076001000/Lies--damned-lies-and-ESG-rating-methodologies/.

- The Financial Times argues that **ESG groupthink has captured the fund industry**: https://www.ft.com/content/2ce4fe85-97cb-3c65-8ec4-da1a462e844a. "One elite's virtue is another's injustice: no group has a monopoly."

Shareholder Activism

- The Financial Times reports that **Hedge fund Elliott builds €1bn stake in Pernod Ricard**: https://www.ft.com/content/8bd97c72-fda0-11e8-ac00-57a2a826423e. "Activist investor seeks higher margins and better governance at French spirits group."

- Reuters reports that **Vivendi calls for the replacement of five of Telecom Italia's board members**: https://www.reuters.com/article/vivendi-telecom-italia/update-2-vivendi-calls-for-the-replacement-of-five-of-telecom-italias-board-members-idUSL8N1YJ5PL. "French media giant Vivendi called on Friday for the replacement of five of Telecom Italia's board members put forward by U.S. activist fund Elliott, citing a 'substantial lack of independence'. The move is the latest twist in a months-long battle between Vivendi, which holds a stake of around 24 percent in Telecom Italia, and Elliott over how to revive Italy's biggest phone group, an underperforming business saddled with 25 billion euros of debt. The U.S. hedge fund wrested board control from Vivendi in May by appointing 10 candidates – or two-thirds of the total – to its board after accusing the French investor of serving only its own interests. All candidates on Elliott's list were independent."

- The Wall Street Journal reports about **Campbell Soup and Nestlé: One Activist, Two Strategies**: https://www.wsj.com/articles/campbell-soup-and-nestle-one-activist-two-strategies-1543573522. "Daniel Loeb has a much bigger investment in Nestlé, but his approach with Campbell Soup has been notably more aggressive." The Financial Times reports that **Old-school activism still produces results for Dan Loeb**: https://www.ft.com/content/88735ca8-f448-11e8-ae55-df4bf40f9d0d. "US hedge fund enjoys fruitful activist battles at United Technologies and Campbell Soup."

- The New York Times reports that **Tech Workers Got Paid in Company Stock. They Used It to Agitate for Change.**: https://www.nytimes.com/2018/12/16/technology/tech-workers-company-stock-shareholder-activism.html. "Silicon Valley technology firms are known for giving stock to their workers, a form of compensation that often helps employees feel invested in their companies. But tech workers are now starting to use those shares to turn the tables on their employers. As many tech employees take a more activist approach to how their innovations are being deployed and increasingly speak out on a range of issues, some are using the stock as a way to demand changes at their companies."

- Nikkei Asian Review reports that **Activists take up the fight to reform South Korea's chaebol**: https://asia.nikkei.com/Business/Companies/Activists-take-up-the-fight-to-reform-South-Korea-s-chaebol. "Conglomerates under pressure to improve corporate governance."

- The Financial Times reports about **How Elliott's activists conquered Europe**: https://www.ft.com/content/b144fb0a-fefc-11e8-ac00-57a2a826423e. "From Pernod Ricard to AC Milan, the hedge fund has breached traditional defences."

Europe

Pan-European developments

- European Women on Boards and Ethics & Boards announce the publication of their first **European Gender Diversity Index**: https://europeanwomenonboards.eu/first-ewob-and-ethics-boards-index-maps-the-current-status-of-gender-diversity-in-200-european-listed-companies/. "The comparative ranking highlights the best practices of European companies in terms of gender diversity and has been set up with the purpose to measure the evolution of gender diversity at the top of the European corporate world. It analyses the situation in the 200 largest companies of the Stoxx Europe 600 registered in nine European countries on 31 July 2018." Based on this data, the Financial Times reports that **French companies lead the way**

on gender diversity: https://www.ft.com/content/d2d6ce0e-f274-11e8-ae55-df4bf40f9d0d. "Luxury brand Kering and hospitality group Sodexo have majority of women board members."

- Patrizia Grieco, the chairman of the Italian Corporate Governance Committee and of Enel, has announced that a number of **European corporate governance committees have agreed to defining common principles**: http://icgconference.org/the-italy-corporate-governance-conference-2018-opens-today-in-milan/. "The Self-regulation Codes of the most important European countries are moving in the same direction. We have recently made a commitment with the Presidents of the Corporate Governance Committees of France, Germany, Holland, the UK and Sweden to coordinate our activities on these subjects with the objective of defining a collection of common principles that affirm the central role of sustainability in the establishment of strategies, risk management and remuneration policies of listed companies."

- Eurosif has published its **European SRI Study 2018**: http://www.eurosif.org/eurosif-2018-sri-study-launch-event/. "Our biennial Study reveals sustained growth for most sustainable and responsible investment (SRI) strategies. The past two years show clear signs of SRI becoming integral to European fund management with managers better articulating their investment strategies. ESG integration remains by far the preferred strategy, growing by 60%."

- The Financial Times reports that **Investors push power companies to end coal use by 2030**: https://www.ft.com/content/1c65952e-03a4-11e9-99df-6183d3002ee1. "European utilities urged to set timelines for eliminating coal-fired power generation."

UK

- The Daily Telegraph reports that **Auditors face sweeping crackdown as review calls for accounting watchdog to be replaced**: https://www.telegraph.co.uk/business/2018/12/18/auditors-face-sweeping-crackdown-review-calls-accounting-watchdog/. "Auditors face a battle on several fronts after regulators set out a wave of proposals aimed at boosting competition, tackling conflicts of interest and tightening oversight of the sector in the wake of a number of high-profile failures. The Competition & Markets Authority (CMA) stopped short of calling for a full-scale break-up of the accounting giants' auditing and consulting arms, but said they should be split into separate operating businesses with distinct management, accounts and remuneration. It also called for members of the FTSE 350 to have their books looked at by more than one auditor, one of which would have to be from outside the 'Big Four' of Deloitte, EY, KPMG and PwC. A separate Government-commissioned review, by Legal & General's chairman Sir John Kingman, called for an end to self-regulation and for the Financial Reporting Council to be folded into a new watchdog with a wider remit that would answer to Parliament." See here for the **Kingman review of the FRC**: https://www.gov.uk/government/publications/financial-reporting-council-review-2018. See here for the **CMA Statutory audit market study paper**: https://www.gov.uk/cma-cases/statutory-audit-market-study. See here for the announced **Brydon review into audit standards**: https://www.gov.uk/government/news/government-takes-next-step-in-improving-standards-of-uk-audit-market-with-new-independent-review-into-audit-standards.

- The GC100 and Investor Group have published their **Directors' Remuneration Reporting Guidance 2018**: https://uk.practicallaw.thomsonreuters.com/Browse/Home/About/GC100andInvestorGroup. "This year, in response to amendments to the directors' remuneration reporting regulations, the Group conducted a thorough review of the guidance. New material has been added to address the amendments to the regulations, and existing material has been revised where appropriate. The changes benefitted from a consultation exercise similar to those conducted in prior years. The primary areas that were amended or are new include the exercise of discretion, considerations surrounding share price appreciation and reporting of pay ratios. While the Group is confident that these revised guidelines will continue to be a useful aid for both companies and investors, we intend to review the document on a regular basis to ensure it remains relevant and useful." See here for the full document: https://uk.practicallaw.thomsonreuters.com/Link/Document/Blob/I099a18eaf97a11e8a5b3e3d9e23d7429.pdf.

- Reuters reports that **Shell to set sector-leading emissions targets after investor pressure**: https://www.reuters.com/article/us-shell-carbon/shell-to-set-sector-leading-emissions-targets-after-investor-pressure-idUSKBN1O20NK. "Royal Dutch Shell caved in to growing investor pressure over climate change on Monday, setting out plans to introduce industry-leading carbon emissions targets linked to executive pay. Rivals BP and Total have already set short-term targets on reducing carbon dioxide emissions, but these are limited to their own operations. Shell's targets, which will be introduced in 2020, will be more extensive with inclusion of the so-called Scope 3 emissions from the burning of fuels sold to millions of customers around the world, the company said."

- The Investment Association **writes to FTSE 'repeat offenders' warning of investor revolts**: https://www.theinvestmentassociation.org/media-centre/press-releases/2018/ia-writes-to-ftse-%E2%80%98repeat-offenders%E2%80%99-warning-of-investor-revolts.html. "The Investment Association has today written to 32 companies in the FTSE All-Share who have appeared on the Public Register for the last 2 years. The letter expresses concern that these companies are on the Public Register for the exact same resolution in 2017 and 2018, suggesting that they did not respond sufficiently to investor views and in doing so are risking more shareholder dissent in the future. The Public Register tracks significant shareholder dissent (of more than 20%) at AGMs or GMs and seeks for companies to respond to that dissent. The IA today also launched a new repeat offenders list as part of the Public Register, highlighting in one place those companies who experience year-on-year revolts for the exact same resolution. The Public Register has revealed that an increasing number of companies are facing shareholder opposition, with rebellions up by just under a quarter in 2018. 287 individual resolutions have been added to the Public Register so far in 2018, a jump of 22% from 2017."

Germany

- Reuters reports that **Thyssenkrupp to propose Merz as chairwoman as year of turmoil ends**: https://uk.reuters.com/article/uk-thyssenkrupp-chairman/thyssenkrupp-to-propose-merz-as-chairwoman-as-year-of-turmoil-ends-idUKKBN1OI1TE. "Thyssenkrupp will propose as chairwoman Martina Merz, whose background includes roles at Volvo, Bosch and Lufthansa, the German company said, as it prepares to spin off its capital goods units. Appointed to its supervisory board last month, Merz, 55, is expected to be confirmed as a member at a shareholder meeting on Feb. 1, Thyssenkrupp said. Once confirmed, she will be proposed as the board's chairwoman. The move caps a landmark year for the group, which included a deal to merge its steel unit with a rival, the resignation of both its chief executive and chairman, and a plan to split the steel-to-elevators company in two."

- Bloomberg reports that **Germany Intensifies Plans to Fix Deutsche Bank With Merger**: https://www.bloomberg.com/news/articles/2018-12-12/germany-said-to-intensify-plans-to-fix-deutsche-bank-with-merger. "The German government is intensifying efforts to help fix Deutsche Bank AG, with officials studying ways to make it easier to merge with Commerzbank AG, people familiar with the matter said. The high-level discussions – which have included Finance Minister Olaf Scholz and Deutsche Bank Chief Executive Officer Christian Sewing – are looking at concrete ways the government can assist in a potential combination of the country's two largest lenders, said the people, asking not to be identified discussing the private deliberations. The talks include potentially changing existing laws to make the steps necessary for a merger less costly, they said."

Netherlands

- Het Financieele Dagblad reports that **Minister Hoekstra verplicht bankiers aandelen vijf jaar vast te houden ("Minister Hoekstra obliges bankers to hold shares for five years")**: https://fd.nl/economie-politiek/1282563/minister-hoekstra-verplicht-bankiers-aandelen-vijf-jaar-vast-te-houden (in Dutch). "Bankers who receive a share of their fixed salary in shares must hold them for at least five years. This is reflected in new proposals for remuneration in the financial sector, which Minister Wopke Hoekstra of Finance sent to the House of Representatives on Tuesday."

- Reuters reports that the **Dutch government proposes law to delay hostile takeovers**: https://uk.reuters.com/article/uk-netherlands-m-a-protection/dutch-government-proposes-law-to-delay-hostile-takeovers-idUKKBN1O61T0. "The Dutch cabinet said on Friday it has finished drafting a law granting listed companies the right to call a 250-day grace period to consider a hostile takeover offer. The government first proposed such a law in 2017 in the wake of failed foreign takeover bids for paintmaker Akzo Nobel and Anglo-Dutch consumer products maker Unilever. The draft law will now be circulated for public comment before being revised and submitted to parliament for approval." See here for the public consultation on the **Reflection period for listed companies** (Dutch only): https://www.internetconsultatie.nl/wetsvoorstelbedenktijd. **The consultation closes on 7 February 2019.**

Switzerland

- Ethos has published its **2019 Proxy Voting Guidelines and Corporate Governance Principles**: https://www.ethosfund.ch/fr/news/lignes-directrices-de-vote-d-ethos-2019-attentes-en-matiere-de-rapport-de-durabilite (announcement in French and German only). "To reflect the international good practice of publishing a sustainability report and the growing interest of investors in extra-financial information, Ethos expects companies to publish in or in parallel with their annual report relevant extra-financial information. The expected level of transparency depends on the size of the company and the challenges it faces, as well as the standards applied in the country of activity. Ethos could consider, if necessary, to recommend against the approval of the annual report. With regard to the approval of executive compensation (binding votes), Ethos has noted that certain compensation packages requested for the Board of Directors or the Executive Board could in practice be exceeded. This is particularly the case in prospective pay votes. A minority of companies calculate the value of the equity component of compensation at a discount or do not take into account the potential future leverage effects of certain long-term compensation plans. The guidelines now provide that in such cases, Ethos may recommend that the remuneration package be rejected, particularly when the differences between potential remuneration and the remuneration requested are high." See here for the **full document in English**: https://www.ethosfund.ch/sites/default/files/2018-12/LDPCG_Ethos_2019_EN_FINAL.pdf.

Norway

- Bloomberg reports about **What's So Funny About $1 Trillion? The Norwegians Who Manage It**: https://www.bloomberg.com/news/articles/2018-12-16/what-s-so-funny-about-1-trillion-the-norwegians-who-manage-it. "It's like 'The Office,' but with a $1 trillion problem. That's how director Harald Zwart describes his new sitcom that takes place at Norway's wealth fund. 'The Oil Fund' revels in the clash between the opulence of high finance and the Nordic country's culture of moderation and strict bureaucracy, but also brings in the debate of how to responsibly invest wealth amassed from decades of oil and gas production. […] Set up in the 1990s, the fund invests oil income abroad to avoid stoking inflation at home. Now at $1 trillion, it owns about 1.4 percent of global stocks, large holdings of bonds and properties across the globe."

Italy

- The Italian Corporate Governance Committee has published its **sixth report on the application of the Corporate**

Governance Code: https://www.borsaitaliana.it/comitato-corporate-governance/news/20181210.pdf (in Italian). "The Report highlights that the quantity and quality of information provided by companies on their governance structures are on average high and constantly increasing. While recognizing the significant results achieved so far, the Committee believes it is necessary to promote further improvements to ensure a continuous adjustment of the governance of Italian listed companies to the evolution of investors' expectations and, more generally, of the social context in which they are they operate." See here for the full document: https://www.borsaitaliana.it/comitato-corporate-governance/documenti/comitato/relazionecomitato2018.pdf.

Spain

- El País reports that **Georgeson cumple 15 años en España poniendo en contacto a las empresas cotizadas con los grandes inversores ("Georgeson celebrates 15 years in Spain connecting listed companies with large investors")**: https://elpais.com/economia/2018/12/05/actualidad/1544011264_120985.html (in Spanish). "Within this last group, one of the leading firms in the world is Georgeson. Founded in New York in 1935, it now celebrates 15 years in Spain. 'In this period we have helped to identify risks in terms of corporate governance so that they do not materialize at AGMs. We have also contributed to the fact that when there has been a takeover, it achieved the highest degree of participation possible,' says Carlos Sáez, Head of Business Development for Spain and Latin America."

North America

United States

- The Wall Street Journal has published an opinion piece by John C. Bogle entitled **Bogle Sounds a Warning on Index Funds**: https://www.wsj.com/articles/bogle-sounds-a-warning-on-index-funds-1543504551. "The father of the index fund says it's probably only a matter of time before they own half of all U.S. stocks; 'I do not believe that such concentration would serve the national interest'." The full article is available here: http://www.shareholderforum.com/access/Library/20181129_WSJ.htm.

- Bloomberg reports that **Proxy Firms Remain on Congress' Radar as SEC Weighs Action**: https://news.bloomberglaw.com/corporate-law/proxy-firms-remain-on-congress-radar-as-sec-weighs-action. "Legislative efforts to rein in proxy advisory firms' influence over executive pay and other corporate ballot items will continue into next Congress as regulators consider their own action."

- Reuters reports that **CBS fires CEO Leslie Moonves and denies $120 million severance**: https://www.reuters.com/article/us-cbs-moonves/cbs-fires-ceo-leslie-moonves-and-denies-120-million-severance-idUSKBN1OG2F4. "CBS Corp said on Monday it has fired Leslie Moonves for cause and has denied a $120 million severance package as it girds for a potential legal battle with its former chief executive who has been accused of sexual harassment and assault that allegedly took place before and after he joined the company."

- Bloomberg reports that **Prudential Among First Companies to Embrace Governance Guidelines**: https://news.bloomberglaw.com/corporate-law/prudential-among-first-companies-to-embrace-governance-guidelines "A group of institutional investors with more than $31 trillion invested in the U.S. stock market is starting to get corporate buy-in for its governance guidelines. Prudential Financial Inc. is one of the first companies to embrace the Investor Stewardship Group's principles on corporate governance by voluntarily reporting on how the company follows them. The group, whose members include BlackRock Inc., the Vanguard Group and 58 others, had called on companies to provide such disclosures starting in 2018."

Asia

Japan

- Bloomberg reports about **How Ghosn May Have Hidden $70 Million – From the Company That Paid Him**: https://www.bloomberg.com/news/articles/2018-12-04/how-ghosn-may-have-hidden-70-million-from-those-who-paid-him. "How could one of the world's most visible employees go about hiding $70 million worth of salary and benefits paid to him by one of the world's biggest companies, without the company knowing it? Two weeks after Tokyo prosecutors arrested Carlos Ghosn for allegedly under-reporting his compensation, that question is still unanswered. What is certain is that Nissan Motor Co.'s own corporate governance rules gave unusual powers to its former chairman, a business celebrity who was given extraordinary deference for having once rescued the automaker from financial ruin. Those powers included near-total say over how much – and how – he was paid, according to Nissan's own internal rules." Additionally, Nikkei Asian Review reports that **Ghosn's case highlights Japan's sensitivities on executive pay**: https://asia.nikkei.com/Business/Nissan-s-Ghosn-crisis/Ghosn-s-case-highlights-Japan-s-sensitivities-on-executive-pay. "Japanese managers earn 10% as much as American peers."

India

- The Economic Times reports that **Sebi plans to revamp regulations for proxy advisory firms**: https://economictimes.indiatimes.com/markets/stocks/news/sebi-plans-to-revamp-regulations-for-proxy-advisory-firms/articleshow/66997428.cms. “Market regulator Securities and Exchange Board of India (Sebi) is planning to revamp the regulations for proxy advisory firms. The expert panel appointed by Sebi to look into the matter met last week to identify the aspects where the regulations need to be tweaked. Protecting proxy firms from frivolous litigation and increasing the accountability of the foreign based proxy advisors will be the key focus for the expert panel, said two people privy to the development. The committee headed by Sandeep Parekh, founder, Finsec Law Advisors, will submit its final report by January-end. The development assumes significance as proxy advisory firms do not have separate regulations despite their growing prominence. All the proxy firms currently come under Sebi’s research analyst regulations.”

- Bloomberg reports about **Board Failures: Saving Promoters From Themselves**: https://www.bloombergquint.com/opinion/board-failures-saving-promoters-from-themselves#gs.xG1DQ=c. “Being an independent director on a board is a challenge. Doubly so in India. From names on the masthead aimed at attracting capital, to counselors to families and managements, the role of independent directors has changed, as the law has steadily burdened them with more responsibilities. Just as independent directors narrowed down their role to being arbitrators between the controlling shareholder and public shareholders, legislation has now tasked them with providing oversight and exercising control. For example, the audit committee needs to approve related party transactions. I expect the role to continue to evolve, as the duty of the director itself has changed. For the longest time, this was to promote the interest of the company, and by extension, its shareholders. Directors are now expected to promote the interest of all stakeholders – employees, suppliers, the community and the environment.”

- Reuters reports that **Indian court refuses to lift deadline for Kotak Mahindra stake dilution**: https://www.reuters.com/article/kotak-mah-bk-rbi-court/update-1-indian-court-refuses-to-lift-deadline-for-kotak-mahindra-stake-dilution-tv-idUSL3N1YM2EC. “An Indian court refused to stay the central bank order forcing Kotak Mahindra Bank Chief Executive Uday Kotak to dilute his stake in the company he founded, news channel CNBC TV18 reported on Monday, sending shares of the lender sliding nearly 4 percent.”

Australia

- Reuters reports that **Investors revolt against executive pay plans at tarnished Australian banks**: https://www.reuters.com/article/us-australia-banks-salary/investors-revolt-against-executive-pay-plans-at-tarnished-australian-banks-idUSKBN1OI059. “Shareholders voted against the executive remuneration plans of two of Australia’s biggest banks on Wednesday following misconduct revelations that have swept through the country’s financial sector. National Australia Bank shareholders delivered an unprecedented protest vote against the lender’s pay plans, with a record 88.1 percent opposing the executive bonuses presented to the annual general meeting in Melbourne. Australia and New Zealand Banking Group shareholders also voted down ANZ’s executive bonus plans at a later meeting in Perth, with around 34 percent against, well above the 25 percent required to defeat the motion. Under Australian corporate rules, if more than a quarter of shareholders vote against a pay proposal for two years running, they can call for the board to be removed. NAB and ANZ now join Westpac Banking Corp with one strike apiece. Australian banks have seen about A$67 billion ($48.2 billion) wiped from their market value since February when a quasi-judicial inquiry started public hearings into financial-sector wrongdoing.”

Contact

Daniele Vitale
Georgeson
Corporate Governance Manager > Corporate Advisory
daniele.vitale@georgeson.com
T +44 (0)20 7019 7034 **M** +44 (0)7747 697 136 **F** +44 (0)870 702 0158
Moor House, 120 London Wall, London EC2Y 5ET, United Kingdom
www.georgeson.com