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News from the Region

Saudi Arabia: De-listing Rules

The Saudi Capital Market Authority issued new rules on November 21 stipulating that companies with losses exceeding 50% of their share capital have to immediately announce board recommendations on addressing this. Firms failing to take adequate measures as per article 150 of the revised Saudi Companies Law will be de-listed, according to the new Rules.

The revised Saudi Companies Law provides that the auditor must inform the Chairman and an extraordinary assembly must be convened when losses exceed 50% of capital. This is a major departure from the previous Law which held shareholders jointly liable for company debts if the company is not re-capitalised or liquidated. The new Rules also call for immediate disclosure of any losses exceeding 20% of share capital. In addition, the Saudi Stock Exchange (Tadawul) will add **a flag on its website warning investors of the risks of investing in these companies.**

So far, few companies in the region have been forced to de-list, considering the challenge exchanges in the region face in attracting issuers. One exception is Egypt, where the Egyptian Exchange delisted hundreds of companies: the number of firms listed on the EGX decreased from 795 in 2005 to 213 by 2010. **The economic situation will put regulators and exchanges to the test in the coming months as companies' performance is under pressure.**

Lebanon: Market Integrity Rules

The Lebanese Capital Market Authority issued Market Conduct Regulations **explicitly banning market manipulation and insider trading**. The regulations also provide that licensed institutions must refuse to execute client orders if they suspect the client may be engaging in market manipulation or insider trading. Licensed institutions or authorized persons are also prohibited from aggregating the orders of these clients with those of others or trading for its own book. In light of the important conflicts of interest revealed during the last financial crisis, including in large institutions such as Goldman Sachs, the regulation **forbids a licensed entity to trade or advertise securities contrary to its current research recommendations, unless this is disclosed to the client**. Official version of the rules is available from the CMA website which does not provide English translations. The rules will come into force January 2017.

Dubai: SME boost

The Ruler of Dubai has issued an update to the SME Law on 15 of November, with a view to boost their activity in the Dubai. SMEs in Dubai account for 95% of all local enterprises and employ 42% of the labour, according to Dubai SME established by virtue of the first SME Law issued in 2009. An important innovation included in the new law is the ability of GCC citizens to to launch start-ups out of Dubai and to become members of Dubai SME.

Dubai SME has also been promoting corporate governance in SMEs, having issued - with the support of the Hawkamah Institute a Corporate Governance Handbook for Dubai SMEs in 2015 to lay down general good governance practices for SMEs. Although the vast majority of companies in the region are SMEs, few SME promotion entities have addressed corporate governance. Morocco is the only other and the first jurisdiction in the region that has issued SME governance guidelines in 2008.

Global Briefing

UK: Asset Management Oversight

The UK **Financial Conduct Authority** wants new regulatory powers to oversee the asset management industry, the agency said in a market study published November 18 that concludes managers systematically overcharge pension funds and retail investors alike. The FCA criticizes investment consultants as "not effective at identifying outperforming fund managers" and warned of "conflicts of interest in the investment consulting business model which require further scrutiny."

The agency proposes sweeping reforms that would reshape the industry, similar to the US fiduciary duty rule due to take effect in April unless the Trump Administration repeals it. Proposals include stronger duties for manager to act in the best interest of investors and "an all-in fee so that investors in funds can easily see what is being taken from the fund."

Although the **Investment Association** (IA) cautiously endorsed the study, enhanced oversight could upend the industry—a "game-changer," said the **Transparency Task Force**. Indeed, IA CEO Daniel Godfrey resigned last year after most IA funds opposed principles that call on managers to put client interests first. Expect the FCA to face significant pushback. Witness Prime Minister Theresa May's retreat from her call to require employees on corporate boards, which she retracted November 20.

Australia: Say-on-Pay

With the AGM season far from over in Australia, nearly a dozen firms have suffered a first or second strike so far under the rule requiring a vote on whether to put the entire board up for election after two say-on-pay ballots with 25% or more 'no' votes. Nearly 51% of shareowners voted against the pay report of the **Commonwealth Bank of Australia**. The bank withdrew a resolution granting equity compensation to CEO Ian Narev after chair David Turner conceded the plan lacked "clear targets and metrics."

Mineral Resources chair Peter Wade was so incensed at his firm's 49% no vote that he suggested shareowners find other investments if they don't like it. Wade, who garnered a low 61% vote for his own re-election to the board, blamed proxy advisors for the mess—echoing an attack by Mortgage Choice chair Peter Ritchie after his bank suffered a 79.5% no vote last month.

Japan: Creative incentives

Japan's **Government Pension Investment Fund** (GPIF) has kicked off a **creative attempt to prompt its external asset managers to take corporate governance concerns** more seriously. On November 21 it posted on its Twitter account a list of companies with excellent corporate governance reports and a second list of those with excellent integrated reports. They were nominated by GPIF's managers, something GPIF asked them to do as part of its annual manager evaluation process. **The goal: to help managers to take a long-term point of view by getting them to read the reports before they visit companies for discussions.** The Twitter campaign also is intended to give companies recognition for good ESG reporting, something corporates everywhere often complain gets scant attention from most mainstream investors.

Pension Funds Spotlight

European pension funds should consider ESG factors in their investment policy and risk management, says a directive passed November 24 by the **European Parliament.** The law, which cites the **UN Principles for Responsible Investment** as a reference, constitutes a "landmark moment for responsible investment in Europe," said **ShareAction** CEO Catherine Howarth. EU member governments will have 2 years to transpose the directive into regulation after it is officially published in early 2017.

12 of 50 largest Australian pension funds won top scores for their responsible investment policies on inaugural rankings released November24 by the **Responsible Investment Association Australasia**. While 70% of the funds have at least a basic RI policy, only 34% incorporate responsibility into manager mandates and just 7 funds "can clearly define how RI outcomes are measured and recorded."

☑ Proxy Voting Developments

The Institutional Shareholder Services (ISS), one of the largest proxy advisors, will recommend against directors in US company IPOs with dual-class shares and no sunset clause, say final global voting policies for 2017 the advisor published November 20. It also will recommend against directors who sit on more than five public company boards and CEOs on boards of more than two issuers other than their own.

Glass Lewis adopted a similar US over-boarding rule in its 2017 voting policies published November 18, except the provision against CEOs holding more than two other board seats also applies to other executive officers. Its new policies also warn against IPOs with dual-class shares or other restrictive governance provisions, although it does not specifically commit to recommending against them in every instance.

Insights

"The tone within so much current sustainability reporting is 'don't worry, we've got this', which is not a tone consistent with current sentiment," warns *Is your social licence expiring?*, published November 1 by **EY Australia. "To avoid becoming the test case for society's growing appetite for economic intervention" … "requires a fundamental re-think of the issues against which business accepts accountability."**

French issuers increasingly put corporate social responsibility at the core of their strategies, policies that are "considered a real driver of long-term performance," concludes an analysis (in French only) of 60 companies published November 17 by market regulator **Autorité des marchés financiers** (AMF). It recommends issuers consider integrated reporting to assess value creation and overall company performance.