

**C L I F F O R D**  
**C H A N C E**



**INITIAL PUBLIC OFFERS:**  
**A GUIDE TO THE UK LISTING REGIME**

# INTRODUCTION

The primary intention of this guide is to provide a valuable point of reference for the directors, executives and shareholders of a company seeking admission of its shares to the Official List and to trading on the London Stock Exchange's Main Market. The guide identifies legal and practical issues that commonly arise on IPOs, including where, as part of the offer, it is intended to access the US capital markets.

Section 1 contains a discussion of some of the advantages and possible disadvantages of a listing. Section 2 provides an introduction to the concept of listing and explains the role of the FCA and the Exchange in the listing process.

Sections 3-12 are most relevant to UK and overseas companies contemplating a Premium listing of shares. Section 3 contains practical guidance on the procedure for obtaining a Premium listing. We address the basic eligibility conditions which a company must satisfy before it is able to apply for a Premium listing of its shares (section 4), the methods by which a company may choose to come to the market (section 5) and the offer documentation itself (section 6). This guide also considers the underwriting process and the issues surrounding the publicity and marketing which will accompany any IPO (sections 7 and 8 respectively). The potential liabilities which may arise on listing are discussed in section 9. Section 10 addresses issues relating to employee incentives and remuneration.

The continuing obligations to which a company with a Premium listing will be subject are discussed in section 11 of the guide. This section also considers the disclosure of dealings in shares of a company by directors and other persons and the statutory market abuse regime.

The guide is relevant to both UK and non-UK companies seeking admission of their shares to the Official List. The particular issues which arise for non-UK companies seeking a listing of their shares in London are discussed in section 12. Standard listings are also discussed in this section.

There are specific provisions which apply to specialist companies seeking a Premium listing of their shares. Both the listing and continuing obligations requirements which apply to investment entities are considered in section 13 and those which apply to other types of specialist issuers, such as mining companies, are set out in section 14.

Whilst the key focus of this guide is on a company seeking a Premium listing of its shares on the Official List, there are also separate sections on the admission of GDRs to the Official List (section 15) and the admission of securities to AIM, the Exchange's junior market (section 16).

In Appendix 1 of this guide you will find a "quick reference guide" which compares and contrasts the key eligibility and continuing obligations requirements for Premium, Standard, GDR and AIM issuers.

Definitions of words and expressions used in this guide are contained in the Glossary at the back of this guide.

This guide does not purport to be comprehensive or to render legal advice. The position is stated as at September 2018.

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# IMPACT OF BREXIT ON THE UK LISTING AND PROSPECTUS REGIME

At the time of writing this guide, the impact of the Brexit on the UK listing and prospectus regime is unclear.

The UK Prospectus Rules, which set out the circumstances in which a company is required to prepare and publish a prospectus and the contents requirements of any such prospectus are derived from the EU Prospectus Directive and its supporting Prospectus Directive Regulation. As this is the case for all EEA member states, the prospectus rules of each EEA member state are much aligned with one another.

Whilst it is unlikely that the UK Prospectus Rules will change in any material way once the UK leaves the EU, the situation is further complicated by the fact that the Prospectus Directive and the Prospectus Directive Regulation are to be repealed and replaced by a new Prospectus Regulation which will apply in the EU from 21 July 2019. As this date falls after 29 March 2019, the date on which the UK will leave the EU, it is not yet clear whether the UK will implement its provisions in full or not. If the UK does not implement the provisions of the Prospectus Regulation in full then the UK and EU prospectus rules may begin to diverge.

One of the key benefits of the EU prospectus regime is the ability for companies seeking to raise equity capital in the EU to prepare a single prospectus which is approved by a single regulator which can then be “passport” across other member states, without the need for further regulatory approvals. It is uncertain whether, post Brexit, the UK will maintain the ability for companies to passport a prospectus approved by the UK regulator into the EU without having to seek additional regulatory approvals, or indeed for companies with a prospectus approved by an EU regulator to passport that prospectus into the UK. It is also unclear whether the ability to passport a prospectus will continue to be possible during any transition period that may be agreed between the UK and the EU. Whilst passporting is not commonly used in the context of an IPO, in cases which would benefit from it, where the ability to do so no longer exists, there are likely to be additional costs and timing implications for issuers.

At the point at which we leave the EU in March 2019, the UK and EU prospectus regimes will be aligned, meaning that it may be possible for the UK, as part of its Brexit negotiations, to seek an equivalence ruling from the European Commission in order that the EU will continue to recognise a prospectus approved by the UK regulator, whilst at the same time the UK would continue to recognise a prospectus prepared and approved under the EU prospectus regime. However, if the UK and EU prospectus regimes begin to diverge over time as the UK exercises its freedoms to make its own rules, maintaining equivalence may become more problematic.

The answers to these issues will not be known until a political agreement has been reached on the terms of the UK's withdrawal from the EU and we begin to see the new legislation and rules that will underpin the UK listing and prospectus regime.



# CONTENTS

1. Why list?	7
2. The listing process	11
3. Preparing for listing	17
4. Basic conditions for listing and trading	29
5. Methods of listing	37
6. The Prospectus	45
7. Underwriting	57
8. Marketing and publicity issues	63
9. Possible liabilities arising on a listing	71
10. Employee incentives and remuneration	79
11. Continuing obligations for listed companies	85
12. Standard listings and listings of equity shares by non-UK companies	101
13. Listing an Investment Entity	107
14. Specialist Issuers	113
15. Listing Global Depositary Receipts	123
16. Admission to AIM	129
Appendix 1: Quick reference guide to key eligibility requirements and continuing obligations requirements for Premium, Standard, GDR and AIM issuers	141
Glossary	145

# WHY LIST?

- 1.1 Advantages
- 1.2 Disadvantages



# 1. WHY LIST?

A company contemplating an IPO needs to consider the advantages of obtaining a UK listing and compare them to both the possible disadvantages of maintaining a listing and the benefits of any alternative transactions that may be available to it. This section identifies some of the key advantages and disadvantages.

## 1.1 Advantages

### 1.1.1 Access to additional equity and debt capital

Private companies are restricted in the offers of securities they can make to the public. Raising equity funds from the public by way of an IPO can be used to expand operations, increase working capital or reduce borrowings. In addition, the establishment of a market for the company's securities, and the broader shareholder base following a public issue, will enhance the company's prospects of raising additional capital in the future.

### 1.1.2 Corporate image enhanced

The UK is internationally recognised for its high standards of regulation and supervision. Providers of finance will generally look more favourably on providing capital or lending to UK listed companies due to the extent of the reporting requirements and the controls placed on listed companies by the FCA and the Exchange.

### 1.1.3 Increased liquidity of capital investment

Listing facilitates the realisation of investment and enables shareholders to reduce their level of investment in the company at the time of, and following, listing. The liquidity of the secondary market is also important in order to enable the company to raise additional capital in the future on favourable terms.

### 1.1.4 Growth not limited by cash resources

Once listed, a company's securities will be more attractive to other parties as consideration for mergers and acquisitions. A company's capacity to grow and diversify is likely to increase, as it will be less constrained by its cash resources.

### 1.1.5 Attraction and retention of key personnel

A listed company may be in a better position to attract and retain key personnel by being able to offer marketable shares in the company, or options over such shares, as part of remuneration packages. See section 10 for details of the types of employee incentive packages commonly put in place.

### 1.1.6 Improved corporate governance

UK listed companies are subject to stringent corporate governance requirements laid down in the UK Corporate Governance Code. Improved corporate governance practices generally mean better decision making which is valued by the investor community. Listed companies must also be mindful of the views of the Investor Protection Committees ("IPCs"). This is an umbrella-term for organisations such as The Investment Association and the Pensions and Lifetime Savings Association. These organisations represent the interests of their members who are large institutional shareholders. Whilst the various guidelines issued by the IPCs do not have the force of law, listed companies generally tend to follow them rather than risk being criticised for not following best practice.

### **1.1.7 Inclusion in FTSE UK indices**

A company must have a Premium listing of its shares to be eligible for inclusion in the FTSE UK series of indices. Additional eligibility requirements are contained in the “*Ground Rules for the FTSE UK Index Series*” which, in brief, require the company’s shares to have a sterling denominated price on the Stock Exchange Electronic Trading Service (SETS), the company to be deemed to have UK nationality by the FTSE Nationality Committee and certain liquidity requirements to be met.

To qualify for inclusion in the FTSE UK Index Series, a UK incorporated company is required to have a minimum free float of 25 per cent. In contrast, in order for a company which is not incorporated in the UK to be considered eligible for UK nationality assignment, is required to have a free float greater than 50 per cent. and to publicly acknowledge adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code, as far as practicable. The FTSE Nationality Committee will then take into account certain organisational and other factors in determining a company’s qualification for index inclusion.

If a company is eligible for inclusion, its market capitalisation will determine which index it will feature in. Inclusion in these high-profile indices raises a company’s own profile and attracts investments from tracker and benchmark funds tied to the FTSE indices.

### **1.1.8 Visibility and awareness**

The financial press tend to focus more on the products, positioning and transactions of listed companies. In addition, a listed company’s annual report and half-yearly results and press releases are likely to generate greater interest.

Awareness of the listed company is also raised within the securities industry itself, with market analysts, industry research analysts and the company’s own corporate broker paying particular attention to the company’s strategy and performance.

## **1.2 Disadvantages**

### **1.2.1 Dilution of control of existing owners**

An IPO may result in the dilution and possible loss of control for the existing owners. Depending on the extent of the dilution, the risk of takeover may be increased.

### **1.2.2 Additional responsibilities of directors**

Directors of a company publishing a Prospectus as part of an IPO are personally liable for the completeness and accuracy of information contained in the Prospectus. They also assume additional ongoing responsibilities as directors of a listed public company. Furthermore, to the extent that the IPO is intended to access US or other international capital markets, the company and its directors will be exposed to potential liability under the laws of those jurisdictions.

### **1.2.3 Greater disclosure of information**

An important consequence of listing is the greater requirement for disclosure of information and its wider distribution. This includes both inside information and general commercial information.

### **1.2.4 Costs**

The initial costs of conversion to a public listed company (which frequently entails a corporate reorganisation), underwriting fees and brokerage, corporate advisory, accounting and legal fees, listing fees and share registry costs can be substantial. There will also be increased continuing expenses as a result of the listing and enhanced disclosure and corporate governance requirements.

### **1.2.5 Management time**

Preparing a company for an IPO is likely to take, as a minimum, three months from the first meeting with advisers. The work involved in preparing a company to come to market is very time consuming and key executives will find much of their time taken up with the IPO process. These individuals will need to try and balance the management of the IPO process whilst continuing to run the company.

# THE LISTING PROCESS

- 2.1 What is "listing"?
- 2.2 The role of the FCA
- 2.3 Listing segments
- 2.4 The role of the London Stock Exchange



## 2. THE LISTING PROCESS

This section looks at the listing process and the roles of the FCA and the London Stock Exchange.

### 2.1 What is “listing”?

“Listing” describes a two-part process which requires both an application to the FCA for admission of a company’s securities to the Official List and an application to a recognised investment exchange (“**RIE**”), such as the Main Market of the London Stock Exchange, for admission of such securities to trading.

For the purposes of this guide, unless otherwise specified, references to a company applying for a “listing” or to a “listed” company are references to a company which is applying for admission of its shares, or whose shares are already admitted, to the Official List and to trading on the Exchange’s Main Market for listed securities.

### 2.2 The role of the FCA

The FCA sets and administers the criteria governing admission to the Official List. The Listing Rules published by the FCA govern the admission of securities to listing and the FCA is responsible for vetting and approving applications for admission to the Official List.

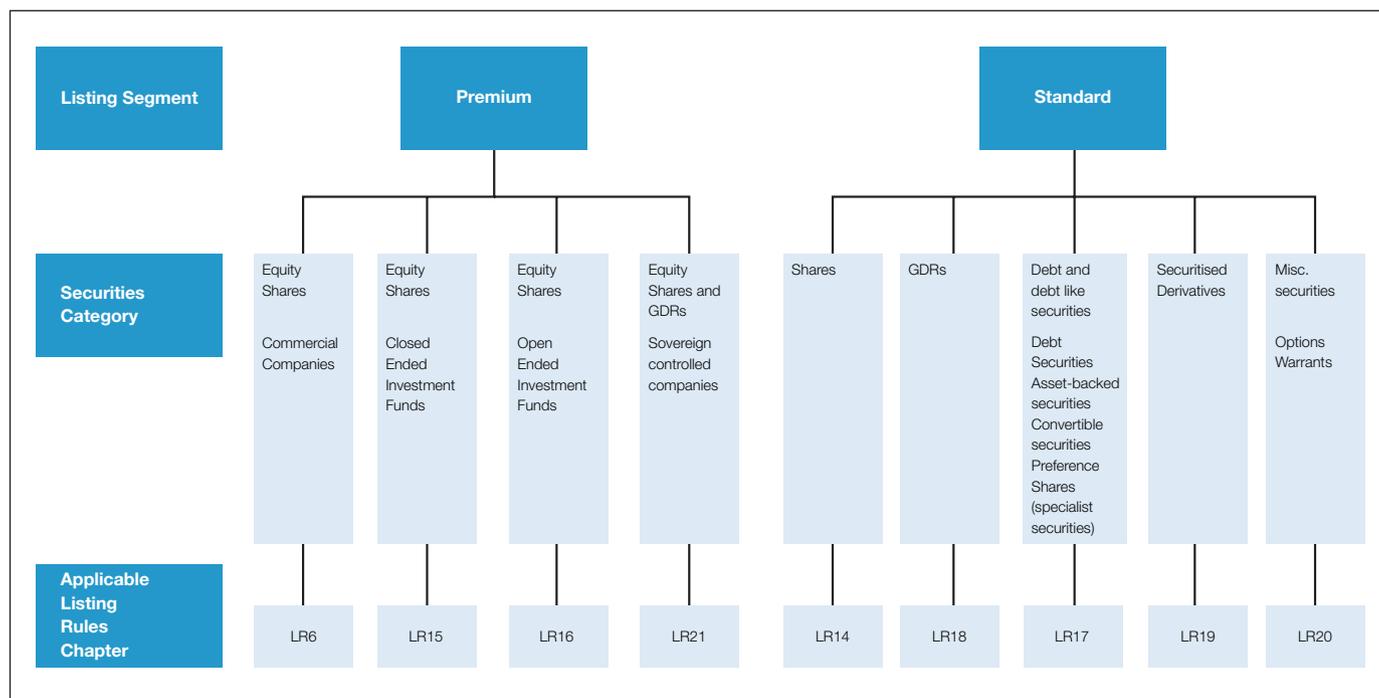
The FCA also publishes the Prospectus Rules. Together with the Financial Services and Markets Act 2000 (“**FSMA**”), these rules set out the circumstances in which a company is required to prepare and publish a prospectus and the contents requirements of any such prospectus.

A prospectus will always be required where a company is seeking admission of its equity securities to listing as, subject to some limited exceptions, the Prospectus Rules require a prospectus to be prepared in any case where a company is making an application for admission to trading of its securities on a Regulated Market in the UK. A prospectus must be in the form prescribed by the Prospectus Rules and must be approved by the FCA prior to its publication.

### 2.3 Listing segments

A company seeking admission of securities to the Official List must decide the segment of the Official List to which it will seek admission. This will depend in part on the type of securities which the company is seeking to have admitted.

There are two segments, Premium and Standard within which a company can choose to list. The listing categories are as set out in the diagram below.



### 2.3.1 Premium Listing

A Premium listing is, as the name implies, the “premium brand” of the Official List. To obtain a Premium listing, a company must comply with not only the minimum requirements for listing that apply to a Standard Listing and which are set out in Chapter 2 of the FCA’s Listing Rules but also with the additional more onerous admission standards set out in

Chapter 6 of the Listing Rules (these are considered in more detail in section 4.1 of this guide).

The Premium listing segment comprises of equity shares (and in the case of sovereign controlled companies, GDRs) issued by commercial companies, together with other equity shares issued by closed and open ended investment entities.

A Premium listing is available to both UK and overseas companies seeking a listing of equity shares (and, in the case of sovereign controlled companies, GDRs). This guide concentrates on a commercial company wishing to secure a Premium listing of equity shares on the Official List. The Listing Rules as they apply to issuers of equity shares are modified for investment entities and the considerations for an investment entity seeking a Premium listing of its equity shares are set out in section 13 of this guide. In addition, modified eligibility requirements apply to certain specialist issuers, such as mineral companies, scientific research based companies and sovereign controlled companies. The modifications which apply to these types of companies are set out in section 14 of this guide.

### 2.3.2 Standard Listing

The Standard listed segment comprises of five securities categories: (i) shares (both equity and non-equity); (ii) GDRs; (iii) debt and debt-like securities; (iv) securitised derivatives; and (v) a further miscellaneous category for other securities which do not fall within the previous categories. These categories are described in further detail below.

The Listing Rules prohibit a company that does not have a Premium listing from describing itself or holding itself out as having a Premium listing.

#### (a) *Shares (equity and non-equity)*

Both non-UK and UK incorporated companies may seek a Standard listing of shares. The requirements for a company seeking a Standard listing of shares are set out in Chapter 14 of the Listing Rules. Standard listings are considered in section 12 of this guide.

#### (b) *Global Depositary Receipts*

Non-UK companies may have their GDRs admitted to the Standard segment of the Official List. GDR issuers must comply with the requirements of Chapter 18 of the Listing Rules. Section 15 of this guide looks at the issues to be considered by a company considering a listing of GDRs.

#### (c) *Debt and debt like securities*

Issuers of debt securities must comply with the requirements of Chapter 17 of the Listing Rules. Both UK and overseas companies may seek admission of debt securities to the Official List.

#### (d) *Securitised Derivatives*

Issuers of securitised derivatives must comply with the requirements of Chapter 19 of the Listing Rules. Both UK and overseas companies may seek admission of securitised derivatives to the Official List.

#### (e) *Miscellaneous Securities*

This listing category exists for Standard listed securities that cannot be classified within one of the other Standard categories. This category mainly consists of listed options and warrants. Such securities must comply with Chapter 20 of the Listing Rules.

### 2.3.3 Migration between listing categories

The Listing Rules include an express administrative mechanism for issuers wishing to transfer their category of equity shares listing from a Standard listing of shares to a Premium listing (and vice versa) or between the different categories of Premium listings. This mechanism enables issuers to transfer between certain categories without having to cancel their listing and

re-apply for a new listing. The migration mechanism only applies to companies with a listing of equity shares. Prior shareholder approval will be required both for an investment company wishing to migrate in and out of the Premium segment and for a company (regardless of which category its shares fall within) migrating from the Premium to Standard segment.

## 2.4 The role of the London Stock Exchange

Before the FCA will grant admission to the Official List, the securities must be admitted to trading by a recognised investment exchange (“**RIE**”), such as the Exchange. The Exchange sets its own criteria for admission to trading to its markets and makes its own securities trading rules.

The Main Market is the Exchange’s flagship platform. It is a Regulated Market which is an important categorisation as many of the obligations imposed by EU Directives such as the Transparency Directive and the Prospectus Directive, only apply to issuers with securities admitted to trading on a Regulated Market. Accordingly, such issuers are subject to higher standards of regulation than those with securities admitted to an Exchange-regulated market, such as the Alternative Investment Market (“**AIM**”).

The Exchange operates four separate segments:

### 2.4.1 Premium

These securities are admitted to the Official List and subject to the highest standards of regulation.

### 2.4.2 Standard

This segment is open to both equity and debt securities and companies with securities listed on this segment are subject to EU minimum standards and are admitted to the Official List.

### 2.4.3 The Specialist Fund Segment (“SFS”)

The SFS is a dedicated segment of the Main Market for highly specialised investment funds. For further information about the SFS, see section 13.4.3 of this guide.

### 2.4.4 High Growth Segment (“HGS”)

The HGS is aimed primarily at high growth, trading companies that intend in due course to seek admission to the Official List, but that do not currently meet the applicable eligibility criteria. Companies seeking admission to the HGS must be EEA incorporated and the regime only applies to the equity shares of such companies. Whilst the HGS is a Regulated Market, securities admitted to trading on it are not eligible for admission to the Official List. In keeping with the intention that the HSG act as a stepping stone for companies on route to admission to the Official List, its rulebook borrows heavily from the FCA’s Listing Rules.

Launched in 1995, AIM is the junior market of the Exchange. It is an Exchange-regulated market as opposed to a Regulated Market. Broadly speaking, this means that companies admitted to AIM are exempt from many of the requirements of the Transparency Directive and the Prospectus Directive. Securities admitted to trading on AIM are not eligible for admission to the Official List. Section 16 of this guide looks in detail at the

admission requirements for AIM and the continuing obligations to which an AIM issuer will be subject.

The Professional Securities Market (“**PSM**”) is a highly specialised Exchange-regulated market for companies wishing to raise debt capital. GDRs may also be listed on the PSM. Securities admitted to trading on the PSM must also be admitted to the Official List. A detailed consideration of the PSM is outside the scope of this guide.

### Quick Reference Guide

Set out in Appendix 1 to this guide is a quick reference guide which compares the key eligibility requirements and continuing obligations requirements which apply to a company with a Premium listing, a company with a Standard listing of shares, a GDR issuer and a company with securities admitted to AIM.

# PREPARING FOR LISTING

- 3.1 Professional advisers
- 3.2 Preliminary steps
- 3.3 Preparation
- 3.4 Legal review, due diligence and verification
- 3.5 Timetable
- 3.6 Approval, filing and publication of the Prospectus
- 3.7 Admission becoming effective
- 3.8 Costs



## 3. PREPARING FOR LISTING

The time taken to complete the listing of shares in a company will vary from case to case. There are a number of steps in the process and documents to be prepared.

### 3.1 Professional advisers

The first step will be the instruction of professional advisers. The appointment of a high-quality team of professional advisers is a key requirement for a successful listing. The team will guide the company to a successful listing, avoiding pitfalls along the way.

Factors to be considered in making these appointments include experience in similar transactions, the size of the fees and the likelihood of a lasting working relationship being established between the company and the adviser. This last point is of particular importance as a newly listed company will generally need on-going assistance from professional advisers and so relationships are generally extended beyond the initial listing.

Each adviser has specific responsibilities.

#### 3.1.1 Legal advisers to the company

The legal advisers to the company advise the company on compliance with applicable legal requirements of the IPO and with respect to the contents of the Prospectus. Particular issues addressed by the legal advisers to the company will be the implementation of any corporate reorganisation that is necessary prior to the IPO, the legal review, due diligence and verification process (see section 3.4), amendment or drafting of appropriate constitutional documents, advice on employee incentives (see section 10) and advice on the form and terms of the underwriting arrangements. Usually they will also have principal responsibility for drafting the Prospectus.

If the offer includes an offer or placing of securities into the US (a “**US Offer**”) or other non-UK jurisdiction, legal advisers to the company with the ability to offer the full range of legal advice required (such as Clifford Chance) will enable the company to ensure that UK, US and other relevant legal requirements are complied with. Where the offer includes a US Offer, the company’s Sponsor (see section 3.1.2) will typically require the legal advisers to the company to issue a “**10b-5 disclosure letter**” to the Sponsor to the effect that nothing has come to the attention of the legal advisers that would cause them to believe that the Prospectus contains an untrue statement of a material fact or omits to state a material fact necessary in order to ensure that the statements in the Prospectus are not misleading. Sponsors often require their own legal advisers to issue a 10b-5 disclosure letter as well as the legal advisers to the company. In order to be able to issue this disclosure letter, significant due diligence, including meetings with management and a documentation review, will need to be conducted by the legal advisers to the company (see section 3.4) and various disclosures must be included in the Prospectus to comply with the UK listing requirements and to meet the extensive disclosure requirements generally expected of issuers offering securities in the US.

#### 3.1.2 Sponsor

A Sponsor is typically an investment bank with a significant presence in the UK. The role of the Sponsor is determined by the requirements of the Listing Rules and is explained in section 4.1.5. The company may appoint more than one

Sponsor although the Listing Rules require that where joint Sponsors are appointed, one Sponsor must take primary responsibility for contact with the FCA. However, the FCA will hold both Sponsors jointly responsible for compliance with the Listing Rules. In general, the Sponsor's main roles are to assist the company in preparing for listing (and in so doing will co-ordinate the efforts of the other professional advisers and the production of the Prospectus), to liaise with the FCA and, usually, to underwrite and market the issue.

### 3.1.3 Global Co-ordinator/Underwriters/Stabilising Manager

IPOs commonly take the form of simultaneous offers in different capital markets which are underwritten by a group of investment banks (the "**Underwriters**") that use "**bookbuilding**" techniques to effect an underwriting of the offer.

While the titles used for marketing purposes by the Sponsor(s) and participating Underwriters can vary, the "**Global Co-ordinator**" is usually the Sponsor and it will oversee the bookbuilding process whereby the Underwriters go into the market and assess potential demand from investors prior to pricing. The Underwriters ask potential institutional investors to indicate the number of shares they would be prepared to take up and at what price on the basis of the information set out in a "**Price-Range**" Prospectus. This is the process by which the book of demand is built. A Price-Range Prospectus sets out a price range within which the offer price is expected to be set and all numbers in the Prospectus derived from the offer price are calculated by reference to the mid-point of the offer price range.

Following an active marketing campaign focused on investors (known as the '**roadshow**'), the book is closed and the Global Co-ordinator and company (and, if relevant, any major selling

shareholders) agree the issue price and the size of the offer on the basis of the book. Once the issue price and size of the offer are determined, the company will need to publish these details, usually by means of a pricing statement, which is usually a simple one-page document. However, if the actual offer price set is outside of the price range specified in the Price-Range Prospectus then a Supplementary Prospectus will need to be prepared. Unlike a pricing statement, a Supplementary Prospectus will need to be approved by the FCA prior to publication and, once approved, will need to be filed with the FCA and published in the same manner as the approved Prospectus (see section 3.6).

For a short while after the commencement of trading in the shares, it may be desirable to effect stabilisation transactions in the company's shares so as to maintain the price at a level which would not otherwise prevail. In order to avoid breaching the market abuse regime, this stabilisation activity must be conducted in accordance with the Market Abuse Regulation (see section 7.3). The Prospectus will need to disclose that stabilisation activity may occur and identify who is to act as the "**Stabilising Manager**", i.e. the person who is to act as a central point of enquiry for the FCA in respect of all the stabilisation activity undertaken in connection with the offer. This will typically be the lead Underwriter.

Underwriting, bookbuilding and stabilisation are explained in more detail in section 7.

### 3.1.4 Legal advisers to the Sponsor

The legal advisers to the Sponsor will advise it in its capacity as the underwriter and will generally prepare and advise the Sponsor on the underwriting agreement. They will also advise

the Sponsor in respect of the steps that need to be taken to ensure that the Sponsor discharges its obligations to the FCA and protects itself from liability so far as possible.

If the offer includes a US Offer, the Sponsor will usually also seek a 10b-5 disclosure letter from its legal advisers in addition to the 10b-5 disclosure letter issued by the legal advisers to the company. In these circumstances, the legal advisers to the Sponsor will also need to engage in substantial due diligence mirroring and reviewing the work done by the company's own legal advisers.

### 3.1.5 Reporting Accountants

The Reporting Accountants will provide a **"long form report"**. This is a private report, made available only to the transaction team, reviewing the company's history, business and management, which can also form a basis for the preparation of the Prospectus. The Prospectus Rules require a Prospectus to include financial information about the company and its group for the last three years up to the end of the company's latest audited accounts (see section 6.5.1(g)). This financial information must be independently audited or reported on by the Reporting Accountants as to whether or not, for the purposes of the Prospectus, it gives a true and fair view in accordance with applicable auditing standards.

The Reporting Accountants will also review and report (in significant detail) on the company's working capital requirements, accounting policies, the basis of, and any calculations used in, any profit forecast or profit estimate and the adequacy of the company's financial reporting procedures.

The Reporting Accountants will, for the purpose of the due diligence process, provide comfort letters relating to certain financial information contained in the Prospectus. In order to satisfy its regulatory obligations under the Listing Rules, the Sponsor will seek confirmation from the Reporting Accountants that specified financial information contained in the Prospectus has been properly extracted from the Reporting Accountants' reports and, if applicable, has been correctly calculated. The Reporting Accountants will also report on any significant change in the financial or trading position of the company and its group.

If the offer includes a US Offer, the Reporting Accountants will need to issue additional comfort letters (known as **"SAS 72 letters"**) to satisfy customary requirements of Underwriters in connection with offers extended into the US. Generally, in order to issue these SAS 72 letters with the appropriate level of assurance on specified financial statement line items, the most recent financial statements included in the Prospectus must be as of a date and for a period ended not more than 135 calendar days prior to the date of issue of the SAS 72 letters<sup>1</sup>. This requirement may affect the timing of the offer and/or the financial statements included in the Prospectus.

### 3.1.6 Brokers

The broking role will inevitably be undertaken by the broking arm of one of the Underwriters. The broker's responsibilities will include giving advice on market conditions and potential demand for the company's shares, advising on the strategy to market the IPO including the timing, pricing, method and terms, and advising on FCA or Exchange requirements both before and after listing.

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<sup>1</sup> The SAS 72 letters are issued at various stages of the transaction. They are usually issued on the date of the Prospectus, the date of listing and, if relevant, on closing of any over-allotment option.

### 3.1.7 Other advisers

IPOs generally require the appointment of some or all of the following: public relations advisers, registrars to maintain the company's share register, depository banks (in the case of offerings of global depository receipts ("GDRs")), bankers to receive applications for shares, valuers and printers.

## 3.2 Preliminary steps

Before admission to the Official List, legal review procedures must be completed to ensure that the company and its professional advisers are satisfied that the company is suitable for listing and that the Prospectus contains all necessary information and disclosures.

If a company is incorporated in the UK, it will not be able to offer its securities to the public unless it is a public company and a UK incorporated company which is a private company will need to re-register as a public limited company prior to the IPO. The re-registration procedure involves the company passing a special resolution that it be re-registered, and altering its articles of association so that they comply with the requirements applicable to public companies. The nominal value of the company's allotted share capital must not be less than the £50,000 authorised minimum (although only a quarter need actually be paid up). A balance sheet must be submitted, which must not have been prepared more than seven months prior to the date of submission, along with an auditor's unqualified report on the balance sheet and an auditor's statement confirming that at the balance sheet date, the company's net assets were not less than the aggregate of its called-up share capital and undistributable reserves.

Between the balance sheet date and the date on which the application for re-registration is submitted to the Registrar of Companies, there must have been no change in the company's financial position which has resulted in the company's net assets becoming less than the aggregate of its called-up share capital and undistributable reserves.

If, therefore, the company has sustained losses, it may not be possible to re-register the company. If that is the case, it may be necessary to create a new holding company and to list the new holding company instead. This will first involve a share-for-share exchange with the shareholdings in the original company being replicated in the new holding company in order to avoid stamp duty and capital gains tax being payable on the transfer of shares. Tax clearances will be applied for to ensure that the share exchange is not subject to tax.

A new holding company structure may also be used so that the listed entity is resident in a different jurisdiction which may have tax and administrative advantages.

## 3.3 Preparation

The requirements of the Listing Rules must be met before admission to the Official List will be granted (see section 4 for details). The FCA must be satisfied that the company complies with the basic conditions for admission and the procedural requirements of the Listing Rules and also that it is generally suitable for a listing. The conclusion reached by the FCA will be based on an eligibility letter which is submitted to the FCA by the sponsor, along with a draft of the Prospectus, ahead of any marketing of the issuer's securities. The eligibility letter sets out how the issuer satisfies the admission criteria, and introduces

the applicant, explaining at a high level what the applicant does and who its key people are. The eligibility letter is an opportunity to draw the FCA's attention to the key issues likely to arise as it assesses the transaction, with the aim of speeding up the overall process.

The preparation and verification of the Prospectus is usually the most time-consuming part of the listing process. The contents requirements of the Prospectus Rules for a Prospectus are discussed in more detail in section 6. Successive drafts must be submitted to the FCA for comments on compliance with the Prospectus Rules. Any uncertain points may be clarified by written submission to the FCA and possible amendment to the Prospectus.

## 3.4 Legal review, due diligence and verification

### 3.4.1 Legal review and due diligence

The purpose of the legal review and due diligence procedures is to:

- (a) identify any legal issues concerning the company, its business or its industry or concerning the directors, proposed directors or senior management which may need to be reflected in the Prospectus. Identification and disclosure of such issues will minimise the risk of those persons responsible for the Prospectus incurring civil or criminal liability;
- (b) assist in the drafting of the Prospectus, helping the company to ensure that all material information is included and that the Prospectus is accurate, complete and not misleading; and

- (c) collect information on the company and its business in preparation for the formal verification exercise.

Although the legal review may take different forms depending on the circumstances (and, in particular, whether there is to be a US Offer), some or all of the following procedures may be involved:

- (a) the Reporting Accountants will be commissioned to conduct an investigation and produce a long form report on the company for the benefit of the directors of the company and the Sponsor. Additional work may be needed to support the company's statements in the Prospectus on working capital and any profit forecasts; and
- (b) the legal advisers to the company together, if appropriate, with other specialists, will conduct, among other things, a review of important corporate records and organisational documents, including minutes of meetings of shareholders, the board of directors or key committees of the board of directors; significant contracts with lenders, customers or other persons; material leases; and important pending litigation or threatened legal disputes with others, including government agencies. Where the company operates in a heavily regulated industry, the legal review is also likely to encompass a review of the regulatory environment.

A "due diligence" investigation of the company and its business will normally be conducted by the Sponsor and other syndicate members, the legal advisers to the company and the legal advisers to the Sponsor who will conduct interviews with the company's management and undertake documentary due diligence. Where the offer includes a US Offer (see section 5.6),

this exercise is the basis on which both the legal advisers to the company and the legal advisers to the Sponsor will provide their 10b-5 disclosure letters. There is no prescribed routine or checklist for such an investigation; rather, its elements usually are discussed and agreed on in advance in light of the nature of the particular offer. However, areas to be given attention will vary as additional information about the company comes to light. The company generally will be expected to set up a physical or virtual data room to facilitate documentary due diligence.

It is also customary to furnish questionnaires to officers and directors of the company to confirm certain statements included in the Prospectus concerning, among other things, their educational and professional background, their remuneration, their holdings of the company's shares and their interests in transactions with the company.

### 3.4.2 Verification

The legal advisers to the company generally will also organise a verification exercise to check the accuracy and completeness of the information, other than financial information, contained in the Prospectus.

The legal review, due diligence and verification have an important purpose, in particular:

- (a) they provide a means of checking the accuracy and completeness of information and the basis for expressions of opinion and expectation proposed to be contained in the Prospectus; and
- (b) the written responses, supporting evidence and source materials are retained to provide a record of these matters. A record may be important in establishing a defence of

“reasonable belief” in the event of any claim by an investor under English law against the company and its directors and/or the Sponsor for loss arising from a false or misleading statement in the Prospectus. For US law purposes, the holding of due diligence meetings with senior management of the company and the legal review of documentation may be important to the Sponsor and the Underwriters in establishing a defence of “due diligence” in the event of any claim by an investor under US law for any loss suffered as a result of a material misstatement in, or omission from, the Prospectus.

## 3.5 Timetable

The timetable should be produced by the Sponsor at an early stage in the process and should be kept under constant review.

The Prospectus Rules impose a specific timetable for the formal approval of the Prospectus. In particular, on an IPO, the draft Prospectus and other draft documentation must be provided to the FCA at least 20 clear business days in advance of the planned approval date of the Prospectus. In practice, the draft Prospectus will be submitted to the FCA much earlier than the 20 business days' deadline (although the FCA does require the draft Prospectus to be in substantially complete form).

The timetable for the application for admission to listing to be approved is set out in the Listing Rules and requires certain documents, known as the “**48 hour documents**” which include the approved Prospectus and any Supplementary Prospectus, along with a completed application for admission of the securities to listing, to be provided to the FCA at least two business days prior to the date on which the FCA is to consider the admission application.

Other features of the IPO or the company's circumstances may have an impact on the timetable, for example the date of the company's latest audited accounts. These must generally be as of a date and for a period ended less than 135 calendar days prior to the date of the SAS 72 letter if the offer involves a US Offer where a SAS 72 letter is to be given and not less than six months prior to the date of the Prospectus if the shares are to be admitted to the Official List.

In the case of a straightforward IPO, a minimum of three months from the time of the first meeting of all the advisers should be allowed to complete the IPO. An indicative IPO timetable which shows the key workstreams involved in the preparation for an IPO is set out on pages 26-27. Common factors which can extend or delay the timetable include corporate reorganisations, issues arising out of the due diligence process, changing market conditions and the complexities involved in preparing a three-year track record for the business.

### **3.6 Approval, filing and publication of the Prospectus**

Once the draft Prospectus has reached a form which satisfies the requirements of the FCA, the FCA will give an informal indication of its approval signalling that a final form may be submitted for formal approval. A Prospectus may not be published until it has been approved by the FCA.

Following approval of the Prospectus, it must be filed by the company with the FCA and made available to the public as soon as practicable. Where there is an offer to the public, the Prospectus must be made available to the public at least six business days before the end of the offer.

A company may make the Prospectus available to the public in a number of ways. In particular, it may be published by any of the following means:

- (a) insertion in a national newspaper;
- (b) making hard copies of the Prospectus available to the public at the company's or the Sponsor's offices, free of charge;
- (c) publication in an electronic form on the company's or its Sponsor's website; or
- (d) publication on the website of a Regulated Market (such as the Exchange).

Where the company chooses to publish the prospectus by either of the means referred to in paragraphs (a) or (b), it must also publish it electronically.

When the Prospectus is published in electronic form, it must be easily accessible when entering the website on which it is hosted, be in a searchable electronic format that cannot be modified, not contain hyperlinks (with the exception of links to an electronic address where information incorporated by reference is available) and be downloadable and printable. Access must not be subject to completion of a registration process, acceptance of a disclaimer limiting legal liability (this does not preclude the inclusion of a warning about the jurisdictions into which the offer is made, requiring investors to disclose their country of residence or indicate that they are not resident in a particular jurisdiction) or payment of a fee.

Typically, hard copies of the Prospectus are made available for distribution. If the company chooses to publish the Prospectus solely by the means referred to in either paragraph (c) or (d)

above then it must on request, and free of charge, deliver a hard copy of the Prospectus to an investor.

The FCA publishes on its website a list of all Prospectuses approved by it over the previous 12 months specifying where each such Prospectus may be obtained, including where applicable, a hyperlink to the Prospectus on the company's website.

For a discussion of restrictions and guidelines relating to website publication of offer documents, in particular with respect to US securities law restrictions, see section 8.4.

### **3.7 Admission becoming effective**

Forty eight hours before the hearing of the listing application, final copies of all 48 hour documents must be submitted to the FCA. Additional documents will also be required to be submitted on the morning the application is to be considered by the FCA. Assuming the application is in order, admission will be granted following the hearing.

Admission to the Official List becomes effective on the publication of the announcement to that effect by the FCA, after which trading in the shares of the company on the Exchange will be permitted.

### **3.8 Costs**

Initial listing and annual listing charges are levied by the Exchange based on market capitalisation. In the case of the initial charge, market capitalisation is calculated by reference to the issue price of the shares listed. In the case of the annual charge, market capitalisation is calculated as at close of trading on the last business day of November in the preceding year.

Other fees associated with the listing will include those of the FCA, professional advisers, marketing and printing costs and any underwriting or placing commissions. Such fees will be dependent on the size and complexity of the transaction and, in the case of commissions, pricing negotiations with the Global Co-ordinator and Underwriters and the level of risk perceived to be assumed by the Underwriters.



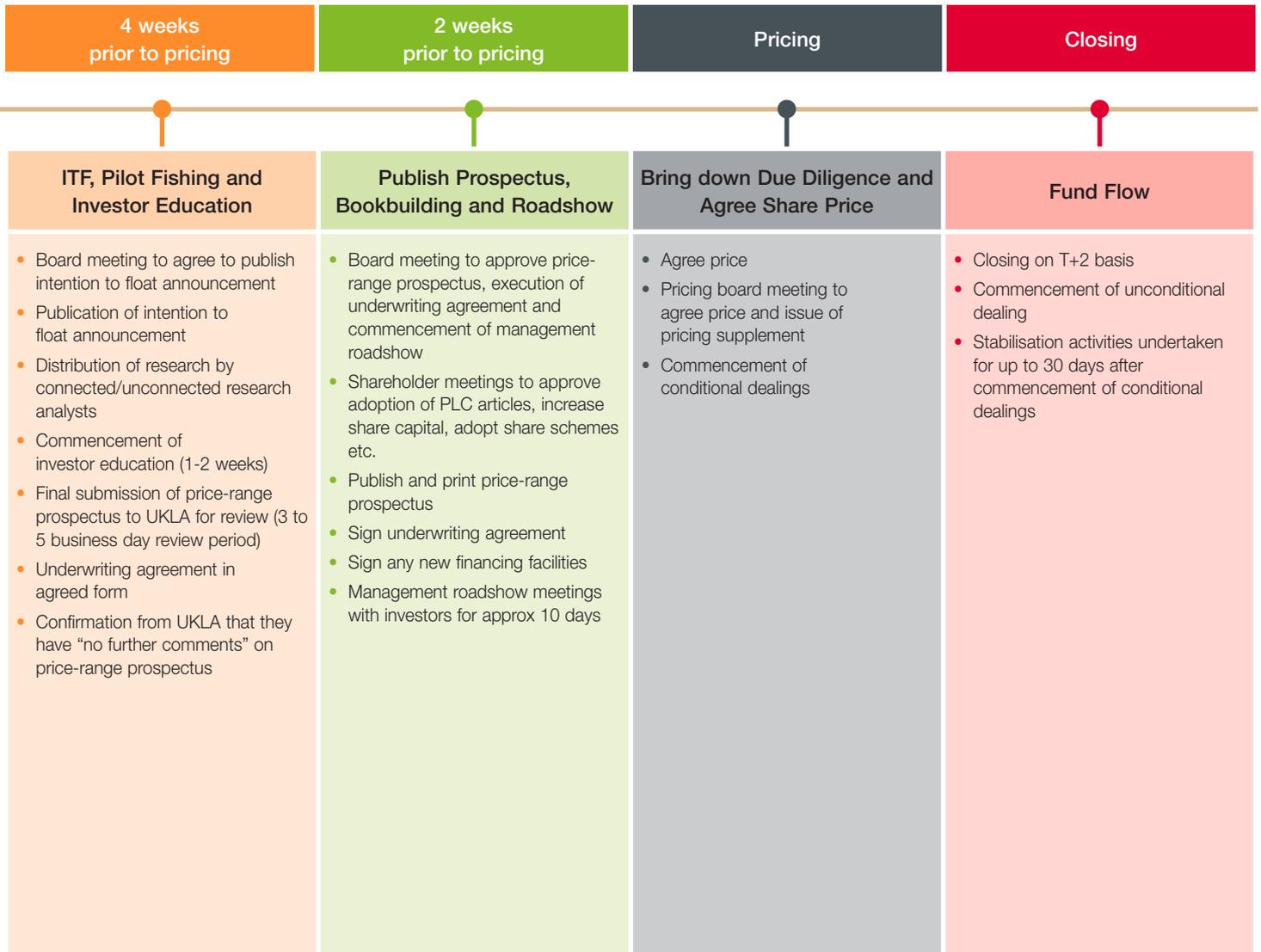
# INDICATIVE IPO TIMETABLE

## PRIVATE PHASE

4-6 months prior to pricing	3 months prior to pricing	2 months prior to pricing	5 weeks prior to pricing
Coordination	Develop Equity Story	Analyst Presentation	Publication of registration document
<ul style="list-style-type: none"> <li>• Pre-IPO corporate reorganisation to have been completed (to extent required)</li> <li>• Kick-off meeting</li> <li>• Appoint executive search specialist to approach target non-executive directors</li> <li>• Prepare data room and start review of documents in data room</li> <li>• Confirm offer structure i.e. Rule 144A</li> <li>• Agree timing of availability of financial information</li> <li>• Initial prospectus drafting meetings with focus on business description and risk factors (any industry section to be separately handled by third party expert or underwriters)</li> <li>• Consider what lock-up periods will be acceptable</li> <li>• Reporting accountants commence work on long form report</li> <li>• Recruit any additional resource needed for IPO process (e.g. financial/ legal/investor relations)</li> <li>• Agree publicity restrictions</li> <li>• “Early look” investor presentations</li> </ul>	<ul style="list-style-type: none"> <li>• Submit eligibility letter to UKLA and 1st submission of prospectus* to UKLA for review (20 business day review period)</li> <li>• Review of documents in data room</li> <li>• Site visits to key operations</li> <li>• Management due diligence meetings</li> <li>• Continue prospectus drafting with focus on (1) addressing UKLA comments and (2) completing outstanding information</li> <li>• Draft underwriting agreement circulated</li> <li>• Reporting accountants commence work on working capital model and FRP report</li> <li>• Start negotiations for any new financing facilities required</li> <li>• Complete Director and Officer due diligence</li> <li>• Basic review of website content for problematic material</li> <li>• 2nd submission of prospectus to UKLA for review (5 business day review period)</li> </ul>	<ul style="list-style-type: none"> <li>• Continue prospectus drafting with focus on (1) addressing UKLA comments and (2) completing outstanding information</li> <li>• Verification of key statements in prospectus</li> <li>• Complete data room review</li> <li>• All material UKLA comments cleared</li> <li>• Review of underwriting agreement</li> <li>• All material issues in underwriting agreement resolved</li> <li>• Agree who is providing stock loan for stabilisation activities</li> <li>• Discuss D&amp;O prospectus cover with insurance brokers</li> <li>• Appoint new non-executive directors</li> <li>• Finalise executive and senior manager compensation/share plans</li> <li>• Appoint financial printers</li> <li>• Appoint PR advisers</li> </ul>	<ul style="list-style-type: none"> <li>• Confirmation from UKLA that they have ‘no further comments’ on registration document</li> <li>• Price-range prospectus in largely final form</li> <li>• Board meeting to approve registration document</li> <li>• Publication of registration document</li> </ul>

\*The registration document and price-range prospectus

## PUBLIC PHASE



# BASIC CONDITIONS FOR LISTING AND TRADING

- 4.1 Admission to the Official List
- 4.2 Admission to trading
- 4.3 Settlement
- 4.4 Grey market trading



## 4. BASIC CONDITIONS FOR LISTING AND TRADING

As outlined in section 2, a company seeking to have its shares listed must apply to both the FCA for admission to the Official List and the Exchange for admission to trading. This section examines the eligibility conditions that an issuer must satisfy.

### 4.1 Admission to the Official List

The Listing Rules published by the FCA set out certain basic conditions which must be satisfied for a company's securities to be eligible for admission to the Official List. The Listing Rules also impose additional specific requirements to be satisfied where the company is seeking a Premium listing of equity securities. The main conditions which must be fulfilled are:

- (a) the securities must be issued by a body corporate;
- (b) the company must be in compliance with applicable legal and regulatory requirements;
- (c) the company must have published a Prospectus which has been approved by the FCA;
- (d) there must be an appropriate public distribution of the company's shares;
- (e) the company must appoint a Sponsor;
- (f) the financial information must satisfy certain standards; and
- (g) the company must have an appropriate trading history.

The last three conditions referred to above only apply to a company seeking a Premium Listing.

It should be noted that the FCA may make listing subject to any special conditions which it considers necessary to protect investors.

#### 4.1.1 Securities of a body corporate

Most types of securities are eligible for listing, provided that they are issued by a body corporate which is operating in accordance with its constitutional documents.

#### 4.1.2 Legal and regulatory compliance

A company seeking admission to the Official List must be in compliance with its governing legislation and its constitutional documents.

The provisions of a company's constitutional documents must also comply with certain requirements set out in the Listing Rules, in particular, that the shares to be listed must be freely transferable.

#### 4.1.3 Preparation of a Prospectus

In order to be listed a company must prepare a Prospectus which must be approved by the FCA prior to publication; this is required because of the application to admit the shares to trading on the Exchange and will apply irrespective of whether the offer includes an offer of shares to the public. The Prospectus must be published in accordance with the requirements of the Prospectus Rules (see section 3.6).

The contents requirements for a Prospectus are summarised in section 6.5.

#### 4.1.4 Public distribution of shares

From the time listing becomes effective, at least 25 per cent. of the class of shares to be listed must be (and remain) in the hands of the public in one or more EEA states, and if the shares are also listed in a non-EEA state, the public in that other state.

In calculating the number of shares held by the public, shares held by the following persons are generally excluded:

- (a) directors of the company or its subsidiaries;
- (b) persons connected to these directors (including spouses and civil partners and children under 18);
- (c) trustees of the group's pension funds or employee share schemes;
- (d) a person who has a right under any agreement to nominate a person to the board of the company; and
- (e) persons in the same group as the company who are interested in five per cent. or more of the shares of the relevant class.

In addition, shares subject to a lock-up period of more than 180 days will be excluded from the free float calculation.

A percentage lower than 25 per cent. may be permitted by the FCA if it considers that the market will still operate properly in view of the large number of shares of the class in existence and their broad distribution.

In determining whether to accept a free float of lower than 25 per cent., the FCA will consider whether shares of the same class (even though they are not listed) are held in non-EEA

states, the number and nature of the public shareholders and, in relation to a Premium listing (commercial companies), whether the expected market value of the shares in public hands at admission exceeds £100 million.

#### 4.1.5 Appointment of Sponsor

A company seeking a listing must appoint a Sponsor. Sponsors are typically investment banks and stockbrokers, but can be financial advisers, accountants or legal advisers who have been approved by the FCA. A Sponsor will initially review the company's capital requirements and assess its suitability for listing, including on which market to list the company's shares.

The Sponsor has a key role in advising on and co-ordinating the listing of the company's shares, in addition to liaising with the FCA and the Exchange. At the start of the IPO process the Sponsor will submit an "eligibility letter" to the FCA setting out how the company satisfies all the substantive eligibility requirements and identifying any potential eligibility issues upfront in order that they can be addressed at an early stage of the process.

In particular, under the Listing Rules the Sponsor must not submit to the FCA any application for listing on behalf of a company unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

- (a) the company has satisfied all the requirements of the Listing Rules relevant to an application for listing. The Sponsor will take a pro-active role here and will undertake detailed due diligence to satisfy itself in this regard;
- (b) the company has satisfied all applicable requirements of the Prospectus Rules;

- (c) the directors of the company have established procedures to enable the company to comply with the Listing Rules, the Disclosure Requirements and the Transparency Rules on an ongoing basis;
- (d) the directors of the company have established procedures which provide a reasonable basis for them to make proper judgements on an ongoing basis as to the financial position and prospects of the company and its group; and
- (e) the directors of the company have a reasonable basis on which to make the working capital statement.

The Sponsor must also take reasonable steps to satisfy itself that the directors of the company understand their responsibilities and obligations under the Listing Rules, the Disclosure Requirements and the Transparency Rules. In addition, the Sponsor must ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the FCA in considering both the application for listing and whether the admission of the company's shares would be detrimental to investors' interests have been disclosed with sufficient prominence in the Prospectus or otherwise in writing to the FCA.

The Sponsor will also assist the company with the marketing of the IPO.

#### **4.1.6 Standard of financial information**

The company must have published three years' consolidated accounts that represent at least 75 per cent. of the company's business for that three year period. In determining what amounts to 75 per cent. of the company's business, the FCA

will consider the size, in aggregate, of all the acquisitions made by the company in the preceding three year period, relative to the size of the company as enlarged by the acquisition.

The accounts must have been independently audited or reported on in accordance with auditing standards applicable in an EEA state or equivalent. The accounts must be in respect of a period ended not more than six months before the date of the Prospectus and not more than nine months before the date the shares are admitted to listing.

Generally speaking, the audit opinion in relation to the company's accounts for the three preceding financial years must be without "modification" (i.e. it must be unqualified).

Additional accounting requirements may need to be satisfied if there is a US Offer, such as the requirement that the accountants audit or review financial statements as of a date and for a period ended not more than 135 days prior to the date of the SAS 72 letter (in order to enable them to provide a SAS 72 letter).

#### **4.1.7 Revenue earning track record requirement**

The company's three year historical financial information must demonstrate that the company has a revenue earning track record and put prospective investors in a position to make an informed assessment of the business.

However, even where the company's business has been in existence for the requisite three-year period, if a significant part or all of the company's business has one or more of the following characteristics then it may fail to satisfy this eligibility condition:

- (a) a business strategy places significant emphasis on the development or marketing of products or services which have not formed a significant part of the company's historic financial information;
- (b) the value of the business on admission will be determined, to a significant degree, by reference to future developments rather than past performance;
- (c) the relationship between the value of the business and its revenue or profit-earning record is significantly different from those of similar companies in the same sector;
- (d) there is no record of consistent revenue, cash flow or profit growth throughout the historic revenue earning period;
- (e) where the business has undergone a significant change in its scale of operations during the period of the historic financial information or is due to do so before or after admission; or
- (f) there are significant levels of research and development expenditure or significant levels of capital expenditure.

#### 4.1.8 Independent business

The company must also be able to demonstrate that it will be carrying on an independent business as its main activity (the “**independence test**”).

Factors that may indicate that the company does not satisfy the independence test include situations where:

- (a) the majority of revenue generated by the company is attributable to business conducted directly or indirectly with one person or group;

- (b) where the company does not have strategic control over the commercialisation of its products and/or its ability to earn revenue and/or freedom to implement its business strategy; or
- (c) where the company cannot demonstrate that it has access to financing other than from one person or group.

As part of the company's ability to demonstrate that it satisfies the independence test, the FCA also requires that an applicant for admission of shares to a Premium listing that has a “**controlling shareholder**” (broadly, any party who exercises or controls on their own or with any persons with whom they are acting in concert, 30 per cent. or more of the shares in the company) enter into a binding agreement with that shareholder. Note that where the controlling shareholder is a sovereign state different rules apply – see section 14.7.

The agreement must contain undertakings (the “**independence provisions**”) that:

- (a) transactions and arrangements between the controlling shareholder (and/or any of its associates) and the company will be conducted at arm's length and on normal commercial terms;
- (b) neither the controlling shareholder nor any of its associates will take any action that would have the effect of preventing the company from complying with its obligations under the Listing Rules; and
- (c) neither the controlling shareholder nor any of its associates will propose or procure the proposal of a shareholder resolution which is intended (or appears to be intended) to circumvent the proper application of the Listing Rules.

The company must also demonstrate that it exercises operational control over the business it carries on as its main activity. Factors that may indicate that an applicant does not satisfy this requirement include where the business consists principally of holding shares in entities that it does not control, including entities where the applicant (i) owns a minority holding of shares; or (ii) is only able to exercise negative control; or (iii) exercises control subject to contractual arrangements which could be altered without the applicant's agreement or could result in a temporary or permanent loss of control.

#### **4.1.9 Working capital statement**

The directors must be satisfied that the company and its subsidiaries have sufficient working capital for their present requirements (i.e. for at least 12 months from the date of publication of the Prospectus). The Prospectus Rules require the inclusion in the Prospectus of a statement by the company that, in its opinion, it has sufficient working capital for its present requirements (a "clean" working capital statement) or, if it cannot make a clean statement, how it proposes to obtain the additional working capital. However, in order to satisfy the working capital eligibility condition for admission to the Official List set out in the Listing Rules, the Prospectus must contain a clean working capital statement.

#### **4.1.10 Other conditions**

The expected aggregate market value of all securities to be listed must exceed £700,000, except where securities of the same class are already listed. It is highly unlikely, however, that a listing would be viable for such a small company, at least on the Exchange's Main Market for listed securities.

The company's shares must be admitted to trading on the Exchange and must generally be freely transferable, free from all liens and any restriction on the right of transfer (although this does not prohibit contractual restrictions accepted by individual shareholders e.g. lock-up arrangements). If shares of a particular class are to be listed, then all shares in that class must be listed.

The eligibility conditions considered in this section 4.1 are varied for mineral companies and scientific research based companies. Further information can be found about this in section 14. The Listing Rules also contain separate eligibility conditions for investment funds, venture capital trusts and issuers of debt securities, depositary receipts and securitised derivatives. For further information on listing an investment entity, see section 13.

The company will need to provide the FCA with contact details of a director or senior employee nominated by it to act as the first point of contact with the FCA in relation to the company's compliance with the Listing Rules, the Disclosure Requirements and the Transparency Rules.

## **4.2 Admission to trading**

In addition to applying to the FCA for admission to the Official List in accordance with the Listing Rules, a company will also have to obtain admission to trading for the shares it wishes to list. The Exchange has its own criteria which must be satisfied prior to the Exchange granting admission to trading. Once admitted to trading, the Exchange also imposes its own disclosure and other requirements on companies and these are outlined in sections 11.12 and 11.13.

To obtain admission to trading, a meeting with the Exchange must be held and an admission timetable agreed. This must occur no later than 10 business days before the company wishes the Exchange to consider its application for admission. The application for trading must relate to all securities in the class issued or proposed to be issued. All future issues in the same class must also become the subject of an application for trading.

The Exchange may impose special conditions on admission and these must be complied with, along with the requirements of other securities regulators which regulate the company or any other stock exchange on which the company's securities are (or are to be) traded.

The Exchange requires a company to nominate a director or senior employee to act as the Exchange's point of contact, before and after admission. This is so that rapid communication can be made to discuss admission, trading, disclosure or regulatory matters which may arise. The Exchange also encourages a company to appoint a nominated representative, e.g. its broker or financial adviser, in addition to the company contact to help with day-to-day enquiries.

Admission to trading on the Exchange will only become effective once announced through the Exchange's website. On admission, the Exchange will invoice the company for the admission fee.

### 4.3 Settlement

The shares must be capable of being settled in dematerialised form and, for this purpose, an application will have to be made to Euroclear UK & Ireland in advance of the IPO. Only shares created under the laws of England and Wales (and certain other limited jurisdictions) can be held or transferred in CREST directly. This means that most non-UK incorporated issuers seeking a Premium listing of their shares must appoint a depository to hold the issuer's shares on trust and issue the shareholders with depository interests ("**DIs**"). The DIs represent an interest in the company's underlying shares but, as the DIs are themselves securities created under English law, they can be held and transferred through CREST, thereby satisfying the relevant eligibility condition in the Listing Rules. DIs are distinct from global depository receipts or "**GDRs**". GDRs are discussed in section 15.

### 4.4 Grey market trading

Notwithstanding the fact that a company cannot have its shares admitted to trading on the Exchange until it has first had its shares admitted to the Official List, the rules of the Exchange permit "**grey market trading**" to take place in the shares of a company seeking to have its shares admitted to trading on the Exchange before such shares have been admitted to trading, provided certain conditions are met. Grey market trading, also known as "**when issued dealing**", describes trading in shares

prior to those shares being admitted to the Official List and before official trading on the Exchange commences. While the shares may be traded on the Exchange, the trades are subject to admission to the Official List and, if the shares are not ultimately admitted to the Official List, all grey market trades are void and must be unwound.

It is usual in an IPO for a period of grey market trading to occur. Grey market trading will not commence until after the offer price and full allocation details have been publicly announced by the

company. Grey market trading allows the Underwriters who are committed to take up a tranche of shares under the IPO to sell some or all of those shares prior to unconditional trading commencing. The risk of the shares not being admitted to listing and the trades being declared void is, in practice, limited. The period of grey market trading also provides a useful indicator of market appetite for the offer.

# METHODS OF LISTING

- 5.1 Introductions
- 5.2 Placings
- 5.3 Intermediaries offers
- 5.4 Offers for sale and/or subscription
- 5.5 International offers
- 5.6 US Offers



## 5. METHODS OF LISTING

This section discusses some of the methods by which a company's shares may be brought to the market for the first time. The section also describes methods of accessing the important US capital markets. Whichever method is chosen, a Prospectus will be required.

### 5.1 Introductions

Where a company's shares are already widely held with at least 25 per cent. of the shares being in public hands, those shares may be "introduced" to the market without the issue of new shares or any marketing of existing shares.

As an introduction raises no funds, there are no underwriting costs. It is the most simple and cost-effective method of listing, assuming the company does not wish to raise any capital. Introductions are commonly used in respect of companies demerged from their parent companies and by companies seeking a Standard listing of their shares in circumstances where their shares are already listed in another jurisdiction.

### 5.2 Placings

The most common means by which a company's shares may be brought to the market for the first time is by way of a placing. A placing is a marketing of shares to a selected and limited group of, usually institutional, investors.

It is standard practice for any institutional placing to involve bookbuilding. This involves the Global Co-ordinator, assisted by the Underwriters, marketing the shares before the price at which they are to be offered or the size of the offer has been determined. In a bookbuilt offer, an approved Price-Range Prospectus would be made available to institutional investors.

Responses from potential institutional investors are collated during the marketing period, which will assist the company and the Underwriters to determine the final size of the offer and the offer price. Once this information is known, the company will be required to publish these details by means of a short pricing supplement.

### 5.3 Intermediaries offers

An intermediaries offer is similar to, and often combined with, a placing. It consists of a marketing of new or existing securities by means of an offer by, or on behalf of, the company to intermediaries for them to allocate to their own, usually private, clients. In practice, intermediaries only apply for shares they have already placed. An intermediaries offer allows a company to distribute the shares to a wider shareholder base than is generally the case with a placing.

### 5.4 Offers for sale and/or subscription

An offer for sale and/or subscription is made by a company's Sponsor to the public (commonly known as a "retail offer") and to institutional investors. The shares being offered may be existing shares held by current shareholders (in the case of an offer for sale) and/or new shares (in the case of an offer for subscription). Offers for sale and/or subscription are normally underwritten.

## 5.5 International offers

Companies will offer shares to investors who are located both inside and outside their domestic markets. Several trends have contributed to the attraction of selling shares in a number of markets simultaneously. Sometimes a company's capital requirements cannot be met by the domestic stock markets alone and therefore it needs to offer shares into other foreign markets. In addition, some markets may value the company's shares more highly than the domestic market, perhaps because of the industry or sector the company operates in. Moreover, the age of global trading has led companies to seek a global shareholder base.

More generally, offering securities on international capital markets leads to an enhanced corporate profile and publicity for the company and its products and facilitates access to other international sources of finance. Further, in recent years, investing institutions and banks have promoted offers in a number of international markets simultaneously, which has facilitated the diversification of companies across national borders.

International offers of this type could be structured using any of the methods outlined in sections 5.2 to 5.4. Often, the offer will be bookbuilt by a group of investment banks and placed, largely with institutional investors in the major capital markets. This may be combined with a public offer in the company's home market. Alternatively, but less commonly, the offer could involve contemporaneous public offers to investors in two or more jurisdictions. International offers will involve the laws of several jurisdictions and these must be observed and reconciled. Section 5.6 discusses some of the common issues arising where a UK IPO involves a US Offer.

## 5.6 US Offers

The US market is the largest source of capital in the world and it is common for issuers to undertake offerings in the US.

In order for securities to be offered in the US or to US persons, either (i) a registration statement needs to be filed with the SEC (the regulator of securities markets in the US) or (ii) an exemption from the registration requirement must apply. If registration is required, the securities may not be sold until the SEC has declared the registration statement "effective". Once effective, securities can be sold freely in the US (i.e. through a US public offer). In addition, an effective SEC registration is a prerequisite to listing equity securities (in the case of a non-US company, often in the form of American Depositary Receipts, or ADRs) on a US securities exchange.

Companies that conduct US public offerings of securities or list their securities on a US national securities exchange are required to file periodic reports with the SEC pursuant to the Exchange Act after their effective registration and become subject to the obligations and restrictions in relation to corporate governance set out in the US Sarbanes-Oxley Act of 2002 and related rules and regulations ("**Sarbanes-Oxley**"). Accordingly, many US offers by non-US companies are structured to take advantage of an exemption from the US securities registration requirements.

The most commonly relied upon exemption, in the case of IPOs, of shares to be listed in the UK is the so-called private placement exemption. The two US federal securities exemptions that are most often relied on to offer and sell securities to US investors in such private placements (that is, not requiring registration of the securities with the SEC) are Rule 144A and section 4(a)(2) of the Securities Act, which are discussed below. Rule 144A permits resales of unregistered securities to an unlimited number of qualified institutional buyers. Section 4(a)(2)

requires that offers and sales be made in such a manner that they are not considered a public offer.

The relevant restrictions on publicity to be observed when relying on any of the exemptions are also discussed below.

Sarbanes-Oxley does not apply to companies that have only offered and sold securities to US investors in reliance on Rule 144A or section 4(a)(2).

If a large enough number of US investors become record holders of the equity securities of a non-US company, however, the company may become subject to SEC registration requirements. Specifically, non-US companies may be required to register a class of equity securities with the SEC under the Exchange Act based upon the size of the company and the nature of its share ownership, both globally and within the United States. A non-US company is generally required to register a class of equity securities if: (1) it has over \$10 million in assets as of the end of its fiscal year; (2) the number of its record holders is either 2,000 or greater worldwide, or 500 persons who are not accredited investors or greater worldwide; and (3) the number of its US resident holders is 300 or more. Rule 12g3-2(b) under the Exchange Act provides an automatically available exemption from this registration requirement if the company meets the following conditions:

- it is not required to file periodic reports as a result of a public offering of securities in the US, a listing on a national securities exchange or any other voluntary registration under the Exchange Act;
  - it maintains a listing of the relevant equity securities on one or two exchanges in a non-U.S. jurisdiction(s) that comprise more than 55 per cent. of its worldwide trading volume (its **“Primary Trading Market”**); and
- it publishes in English on its website (or through an electronic information delivery system generally available to the public in its Primary Trading Market) material items of information that it has (a) made public or been required to make public pursuant to the laws of its home country, (b) filed with the exchange in its Primary Trading Market on which its securities are traded and which has been made public by that exchange, or (c) distributed or been required to distribute to its security holders.

### 5.6.1 Offers not requiring an SEC Registration Statement

#### *Rule 144A Private Placements*

The primary avenue used to add a US Offer to a UK listing is through use of Rule 144A. Rule 144A of the Securities Act permits sales of securities to US institutional investors to be made without being subjected to the registration requirements of the Securities Act, if the US institutional investors who are being sold the securities are **“qualified institutional buyers”** or **“QIBs”** as such term is defined in Rule 144A.

#### **Who is a QIB?**

The definition of “qualified institutional buyer” includes:

- (a) institutions such as pension funds, investment companies, financial institutions (other than banks), partnerships and industrial companies that own or have investment discretion over US\$100 million of qualifying securities;
- (b) banks and savings and loan associations that own or have investment discretion over US\$100 million in qualifying securities and have a net worth of at least US\$25 million; or
- (c) registered broker-dealers that own or have investment discretion over at least US\$10 million in qualifying securities.

It is important for the Underwriters and the company to establish that a US investor clearly falls within the scope of the QIB definition before they make any sale to such investor, otherwise the exemption from the SEC registration requirements may not apply. Typically, the Underwriters retain a list of their investor clients that have confirmed their QIB status previously.

If the securities are proposed to be sold into the US to QIBs in reliance on Rule 144A, the company generally must agree to provide at any time certain information to any QIB, or prospective purchasers of the securities from a QIB, on the request of the current holder of the securities (the “**144A Information Requirement**”). This information includes statements about the company’s business, products and services and the company’s financial statements for the two preceding financial years. This requirement should be easily met, as compliance with the UK listing requirements will provide the company with the information necessary to meet the 144A Information Requirement.

An advantage of offering securities in reliance on Rule 144A as compared to a private placement under section 4(a)(2) is that Rule 144A allows relatively unrestricted resales of the securities among QIBs without registering the securities with the SEC<sup>2</sup>, which permits the creation of an active institutional secondary market for the securities in the US (although a US listing is not permitted) and significantly enhances the attractiveness of these securities as investment opportunities. A large number of non-US companies have taken advantage of Rule 144A and successfully placed shares in this market since the introduction of Rule 144A in 1990.

### Advantages of a Rule 144A offer

Compared to SEC-registered offers in the United States, Rule 144A offers have the advantages of avoiding:

- (a) the time-consuming process and costs associated with SEC registration;
- (b) the ongoing US periodic reporting requirement;
- (c) potential US GAAP reconciliation requirements (which would not apply to companies that prepare financial statements in accordance with IFRS as issued by the IASB); and
- (d) the applicability of Sarbanes-Oxley.

### Section 4(a)(2) Private Placements

A less often used alternative to a Rule 144A offer is a direct private placement by the company to investors under section 4(a)(2). A section 4(a)(2) private placement involves a placement to a limited number of sophisticated investors in the US. While the precise standards and procedures involved in a US private placement vary, in many cases, a private placement involves potential sales to a larger universe of investors referred to as “**accredited investors**”. The standard for being considered an accredited investor is easier to achieve than the test of whether an investor is a QIB. In order to ensure that section 4(a)(2) may be relied on, however, the investor is required to provide an “**investor letter**” to the company to confirm the investor’s status. Such a letter is typically not required of investors in Rule 144A offers.

<sup>2</sup> “Restricted securities” acquired in private transactions from the issuer or an affiliate of the issuer are subject to one year minimum holding period. If the issuer is a public reporting company in the US, the minimum holding period is six months.

Section 4(a)(2) “placements” are most often used where the Sponsor or the company are aware of a few US investors who are not QIBs (rendering Rule 144A unavailable for sales to them) but who would like to purchase shares in the IPO. Section 4(a)(2) placements are often viewed as a less advantageous method than Rule 144A because of:

- (a) the need to collect investor letters from each US investor;
- (b) the need to limit the number of investors for legal and risk management reasons; and
- (c) tight restrictions on resale other than those made outside the United States, for example over the Exchange.

#### *Restrictions on publicity*

If the company is relying on the section 4(a)(2) exemption, there can be no “**general solicitation**” or “**general advertising**” in the US by the company or any person acting on its behalf.

In the past, the US federal securities laws also prohibited any form of general solicitation or general advertising in the US in connection with an offering of securities conducted pursuant to Rule 144A. Prior to 23 September 2013, the existence of any general solicitation or general advertising in the US would have prevented the company and other transaction participants from making a valid private offering to QIBs in the US.

However, since 23 September 2013, general solicitation or general advertising in the US is now permitted by US federal securities law for resales of securities made in reliance on Rule 144A because of the amendments to Rule 144A made pursuant to the Jumpstart Our Business Startups Act of 2012 (the “**JOBS Act**”).

US market practice, however, continues to avoid general solicitation and general advertising in Rule 144A offerings because persons participating in the US Offer remain subject to potential liability under Rule 10b-5 of the Exchange Act for any material misstatements or omissions in a general solicitation or general advertising communication and may also be subject to liability under equivalent US state security law. In light of the foregoing, the company should refrain from engaging in any such activity absent further discussion with its US legal advisers.

Activities conducted outside the United States would generally not be considered general solicitation or general advertising as long as they are conducted in a manner reasonably designed to avoid the dissemination of information in the United States and are not undertaken for the purpose of conditioning the market in the US. Other than potential “roadshow” meetings with permissible offerees in the US that have been pre-screened in advance and invited to such meetings, activities in the United States that could be construed as marketing of the securities should be avoided. These restrictions are meant to ensure that only a targeted group of sophisticated US investors is sold the securities.

#### **5.6.2 Regulation S**

In order to prevent securities nominally offered outside the US from immediately being sold into the US without complying with disclosure requirements that would otherwise apply, the US securities laws include requirements designed to limit the immediate flow of securities into the US following a nominal non-US offer. In effect, the regulatory regime provides that regardless of the jurisdiction where a securities offer occurs or of the citizenship of the purchasers of the securities, offers must

either be registered with the SEC or exempt from the registration requirements of the Securities Act (as discussed in section 5.6.1).

Regulation S provides guidance as to the characteristics of an “offshore” offer that will be considered by the SEC to be exempt or excluded from SEC registration because it occurs outside the United States. The requirements of Regulation S differ depending on the nature of the offer and the company; however for the vast majority of non-US companies which do not have a “**substantial US market interest**” in their securities, the only requirements for an offer to be conducted in accordance with Regulation S are:

#### What is a “substantial US market interest”?

“Substantial U.S. market interest” with respect to a class of an issuer’s equity securities means:

- (i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer’s prior fiscal year or the period since the issuer’s incorporation; or
- (ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer’s prior fiscal year or the period since the issuer’s incorporation.

- (a) the absence of any “**directed selling efforts**”, referring to any activity intended to condition, or which could reasonably be expected to have the effect of conditioning, the market for the securities being offered in the US; and
- (b) that offers and sales must be made in “**offshore transactions**”, meaning that no offer may be made to a person in the US and either:
  - (i) the buyer must be outside the US at the time the buy order is originated; or
  - (ii) the transaction must be executed on the physical trading floor of a non-US securities exchange.

A properly structured Rule 144A offer of securities or a section 4(a)(2) private placement can be made in the US at the same time as an offer of the same securities outside of the US in reliance on Regulation S without violating the requirement of Regulation S that no “**directed selling efforts**” take place with respect to the securities in the US.

#### 5.6.3 Investment Company Act issues

For a non-US company that may be treated as an “investment company” under US rules, it is critical to establish the availability of an exemption from the investment company registration requirements under the US Investment Company Act of 1940, if it wishes to offer securities in the US.

The US Investment Company Act regulates entities commonly understood to be investment companies (such as unit investment trusts, collective investment schemes, mutual funds and the like) but may also apply to so-called “inadvertent”

investment companies that have a large percentage of their assets in securities holdings, including minority interests in other companies, joint venture interests and treasury instruments.

US legal advisers to the issuer should seek to establish the availability of an exemption from the US Investment Company Act requirements at an early stage in the process, as in

particular cases resolution of the issues may be complex and time-consuming. The presence of Investment Company Act issues also may indicate that US tax issues under the “passive foreign investment company” or “PFIC” rules need to be addressed.

# THE PROSPECTUS

- 6.1 FSMA, the Prospectus Rules and the requirement for a Prospectus
- 6.2 General obligation of disclosure in the Prospectus
- 6.3 Format of the Prospectus
- 6.4 Responsibility for the Prospectus
- 6.5 Information required to be disclosed in the Prospectus
- 6.6 Equivalent information
- 6.7 Omission of information from the Prospectus
- 6.8 Display documents
- 6.9 Supplementary Prospectus
- 6.10 Advertising
- 6.11 Right of withdrawal
- 6.12 US requirements
- 6.13 "Passporting" the Prospectus
- 6.14 Prospectus drawn up in accordance with third country laws



## 6. THE PROSPECTUS

The preparation and completion of the Prospectus is key to the success of the IPO. The principal requirements of FSMA and the Prospectus Rules regarding form, content and means of publication of the Prospectus are outlined in this section.

### *On the horizon*

It is unlikely that the UK Prospectus Rules will change in any material way once the UK leaves the EU. However, the situation is not clear cut as the Prospectus Directive and the Prospectus Directive Regulation (from which the UK Prospectus Rules derive) are to be repealed and replaced by a new Prospectus Regulation which will apply in the EU from 21 July 2019. As this date falls after 29 March 2019, the date on which the UK will leave the EU, it is unclear whether the UK will implement its provisions in full or not. If the UK does not implement the provisions of the Prospectus Regulation in full then the UK and EU prospectus rules may begin to diverge.

### 6.1 FSMA, the Prospectus Rules and the requirement for a Prospectus

The Prospectus Rules, together with FSMA, set out the circumstances in which a company must prepare a Prospectus.

Subject to limited exemptions, FSMA and the Prospectus Rules require a company which is either:

- (a) making an offer of securities to the public in the UK; or
- (b) making an application for the admission to trading of securities on a Regulated Market in the UK, such as the Exchange,

to prepare a Prospectus in the required form.

A company seeking admission of its shares to the Official List for the first time will need to publish a Prospectus on the basis that the application for admission will be accompanied by an application for admission of such shares to trading on a Regulated Market in the UK and, in the case of an IPO, no exemptions will be available.

The Prospectus Directive requires that the Prospectus be approved by the “**competent authority**” of the company’s “**home state**” before publication. For a UK-incorporated company issuing equity securities or applying for the admission of its equity securities to trading on a Regulated Market, its home state will be the UK. The UK competent authority responsible for the approval of Prospectuses is the FCA and, accordingly, it is the FCA which reviews and approves the company’s Prospectus. For non-EEA issuers of equity securities, determination of the home state can be more problematic. This is considered in further detail in section 12.3.

When the UK leaves the EU, it is expected that the FCA will continue to operate as the approving authority for any Prospectus prepared in relation to an application for admission of securities to trading on a Regulated Market in the UK.

### 6.2 General obligation of disclosure in the Prospectus

The Prospectus Rules set out the content requirements for a Prospectus. FSMA also requires other material information, whether or not falling under the headings specified in the

Prospectus Rules, to be disclosed. Most importantly, FSMA requires that the Prospectus contains the following:

*“the information necessary to enable investors to make an informed assessment of (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities; and (b) the rights attaching to those securities” (the “informed assessment test”).*

This information must be presented in a form which is comprehensible and easy to analyse, and must be prepared having regard to the particular nature of the shares and the company.

### 6.3 Format of the Prospectus

The Prospectus Rules permit a company to draw up the Prospectus either as a single document or three separate documents known as the “**Registration Document**”, the “**Securities Note**” and the “**Prospectus Summary**” (a “**tripartite Prospectus**”).

The contents requirements for the Prospectus will be the same in either case, save that the company must divide certain required information between the Registration Document and the Securities Note where a tripartite Prospectus is prepared. The three documents together constitute a valid Prospectus.

The Registration Document must contain information relating to the company. The Securities Note will contain information concerning the shares for which the company is seeking admission. See section 6.5 for a description of the detailed information required to be included in the Prospectus.

The Prospectus Summary must be in non-technical language and convey concisely certain “**key information**” relevant to the securities that, when read with the rest of the Prospectus, must be an aid to investors in considering whether to invest in the securities. In particular the key information must include the essential characteristics of, and risks associated with, both the company and the shares. The Prospectus Summary must follow a prescribed format and must not exceed 7 per cent. of the length of the Prospectus or 15 pages, whichever is the longer. It must contain a warning which includes language to the effect that it should be read as an introduction to the Prospectus and that any decision to invest should be based on consideration of the Prospectus as a whole.

Companies issuing equity securities in an IPO generally prepare a single Prospectus. A separate Registration Document is usually published not less than seven days before publication of the ITF Announcement and the analysts’ research (see section 8.1 for more information on the key marketing phases of an IPO and publication of analyst research). The approved Prospectus is then published 2-3 weeks after the Registration Document, before the bookbuilding process begins in order that it can be made available to potential investors during that period.

If, during the period between publication of the Registration Document and the Prospectus, there is any material change or recent development which might affect an investor’s assessment since the date of approval of the Registration Document, relevant information would need to be included in the Prospectus in order to update the information in the Registration Document. In the context of an equity IPO, the gap between publication of the Registration Document and the Prospectus is short (usually no more than three weeks), limiting the likelihood of any such updating being required.

The Prospectus is valid for 12 months from its date of publication, subject to updating by way of a Supplementary Prospectus on further non-exempt issues of shares being made within the 12 month period.

## 6.4 Responsibility for the Prospectus

Under the Prospectus Rules, the company and its directors (including proposed directors) have primary legal responsibility for the Prospectus. In addition, any person who has authorised any part of the contents of the Prospectus will incur liability for that part of the Prospectus. This will include the Reporting Accountants in respect of their reports on the historical and any pro forma financial information in the Prospectus.

The Prospectus Rules lay down the minimum disclosure requirements for the Registration Document and Securities Note. In both the Registration Document and the Securities Note, a declaration is required by those responsible for the relevant document in the following terms:

*“that, having taken all reasonable care to ensure that such is the case, the information contained in [the Registration Document – in the case of the Registration Document where a separate Prospectus is prepared] [the prospectus – in the case of the Securities Note or where a single prospectus is prepared] is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import”.*

The Prospectus will include a responsibility statement in the above form from the company, its directors and any proposed directors of the company taking responsibility for the entirety of the Prospectus. In addition, the Reporting Accountants will be

required to make a responsibility statement in the Prospectus in respect of those parts of the Prospectus for which they will take responsibility.

In the Prospectus Summary (see section 6.3 above), the warning is required to contain a statement that civil liability attaches to those persons who are responsible for the summary but only if the summary, when read together with the other parts of the Prospectus, is misleading, inaccurate or inconsistent or does not provide the key information required in order to aid investors when considering whether to invest in the company’s securities.

A list of all those persons responsible for the Prospectus and the nature of potential liabilities arising on listing are set out in section 9.

## 6.5 Information required to be disclosed in the Prospectus

The Prospectus Rules specify the minimum disclosure requirements for a Prospectus and set out the information which must be included in each of the Registration Document and the Securities Note. The content requirements set out in the Prospectus Rules are also supplemented by the European Securities and Markets Association (“**ESMA**”) Recommendations. These provide additional guidance on the nature and extent of the financial information to be included in the Prospectus and contain additional information requirements for specialist issuers. In addition, ESMA has published both Q&A which it periodically updates to assist issuers preparing a prospectus and guidance on the inclusion and presentation of alternative performance mechanisms in prospectuses.

Set out below is a summary of the broad range of information which is required to be disclosed in the Registration Document and the Securities Note.

### 6.5.1 Registration document

#### (a) Persons responsible, auditors and other experts

The names and addresses of the directors and any expert to whom a statement or report included in the Prospectus has been attributed, must be disclosed. The names, addresses and qualifications of the auditors who have audited the company's accounts for the last three financial years must also be disclosed.

#### (b) The company and its capital

Details of the place of incorporation, registered and head office of the company and its principal objects must be recorded, together with a summary of the company's constitution. The group structure, details of significant subsidiaries and information on the capital structure of the company and its group over the preceding three years must be disclosed.

The names of persons who control the company and the proportion of voting capital held must be detailed, along with details of any person holding a notifiable interest in the company's capital (generally three per cent. or more). The company must also disclose details of any controlling shareholder and describe the measures in place to ensure that any such control cannot be abused.

Details of any transactions with related parties<sup>3</sup> entered into in the period covered by the historical financial information up to the date of the Prospectus must also be disclosed.

Details of each material contract, other than contracts entered into in the ordinary course of business, entered into in the two years preceding the date of the Prospectus must be provided. Information must also be included about any other agreement (not being a contract entered into in the ordinary course of business) entered into at any time where any member of the group is subject to any obligation or entitlement which is material to the group as at the date of the Prospectus.

#### (c) The group's operations and interests

The Prospectus must give a description of the group's operations and principal activities with information on the products or services sold or performed together with a breakdown of total revenues over the last three financial years by category of activity and geographical market.

Details of the group's interests in property, plant and equipment and, where material, research and development and patents and licences must be provided along with information on the group's capital resources.

#### (d) Operating and Financial Review ("**OFR**")

The OFR must provide a description of the company's financial position, changes in financial condition and results of operations for each financial year and interim period reported on in the Prospectus. It should also include

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<sup>3</sup> "Related party" transactions are defined in IAS 24 (Related Party disclosures) and cover, among other things, any transaction with a party that controls or is controlled by any member of a company's group, an associate of any group company or any joint venture in which any group company is a venturer. It also includes transactions with key management personnel of any group company (which would include any director or other person having authority and responsibility for planning, directing and controlling the activities of a group company) and spouses and children of any such person.

information on the causes of material changes from period to period in the financial information to the extent necessary for an understanding of the company's business as a whole.

(e) Recent developments and prospects

Information on the trend of the group's business since the last annual accounts (including significant trends in production, sales and stocks and the state of the order book) and recent trends in costs and selling prices must be included in the Prospectus.

Information on the group's prospects for at least the current financial year, relating to the financial and trading prospects (including all special trading factors or risks not mentioned elsewhere) must also be given.

Where a profit forecast is given, the principal assumptions must be stated and the forecast or estimate must be examined and reported on by the Reporting Accountants or auditors. When a company has made a statement other than in a previous Prospectus that would constitute a profit forecast or estimate if made in the Prospectus, and that statement is still outstanding at the time of publication of the Prospectus, the company must state in the Prospectus whether such forecast or estimate is still correct or explain why it is no longer valid if that is the case.

(f) Risk factors

Prominent disclosure of risk factors specific to the company or its industry must be disclosed in a section headed "Risk Factors". In the context of a UK listing that also features a US Offer, the risk factors are subject to various rules of practice, including that the discussions should not be overly generalised and should not contain mitigating language.

(g) Assets, liabilities, financial position and profits and losses

The Prospectus must contain audited historical financial information on the company and its group covering the latest three financial years and the audit report in respect of each year. The financial information contained in the Prospectus must be prepared in accordance with EU IFRS. For non-EU issuers, the financial information must be prepared in accordance with (i) EU IFRS, (ii) IFRS provided that the notes to the audited financial statements that form part of the historical financial information contain an explicit and unreserved statement that these financial statements comply with IFRS in accordance with IAS 1 Presentation of Financial Statements or (iii) in accordance with any of Japanese, Canadian, South Korean, Chinese or US GAAP.

**On the horizon**

The European Union (Withdrawal) Act 2018 is intended to onshore and freeze existing EU IFRS on the date of the UK's exit from the EU. As a consequence, the consolidated accounts of listed UK companies will continue to apply "frozen" EU IFRS after Brexit until the UK adopts new IFRS via legislation. There are three options under consideration in this regard – the adoption of either (i) IFRS as published by the IASB, (ii) IFRS as adopted in the EU (EU IFRS), or (iii) IFRS as endorsed by a new UK process (UK IFRS). It is unclear at this stage whether, if UK IFRS is adopted, it would be treated as equivalent for EU prospectus purposes. If not, this may mean UK companies having to restate their financials in any prospectus prepared for use in the EU after Brexit (in reality, unless there is any material divergence between EU IFRS and UK IFRS, this seems unlikely to be a significant issue).

The Reporting Accountants will be required to report on the historical financial information in the Prospectus and to state whether or not such information gives a true and fair view, in accordance with applicable accounting standards. This report is commonly known as the “**short form report**”.

The accounts for the last two years must be presented and prepared in a form consistent with the standards to be adopted in the company’s next published annual financial statements. For an EU issuer, this will be EU IFRS as, once listed, it will be required to report in IFRS, as adopted by the EU.

In addition, in circumstances where a company is seeking a Premium listing and its Prospectus will be dated more than nine months after the end of its last audited financial year, the company will be required to include in its Prospectus interim financial information covering at least the first six months of the financial year. This is necessary in order to satisfy both the eligibility requirement in the Listing Rules that the last published audited financial information must not be more than six months old and the content requirement in the Prospectus Rules that where the Prospectus is dated more than nine months after the end of the last audited financial year, it must contain interim financial information covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year.

If the audited financial information is prepared in accordance with national accounting standards, it must include at least the following:

- (i) balance sheet;
- (ii) income statement;

- (iii) cash flow statement;
- (iv) a statement showing changes in equity; and
- (v) accounting policies and explanatory notes.

Details of dividends per share over the last three years and significant changes in the financial or trading position of the group since the end of the last financial period for which audited or interim financial information was published must also be stated.

#### (h) Management and employees

The names and functions of the directors and senior managers must be given together with their management expertise and experience. Details must be provided of any insolvency proceedings in respect of companies or partnerships of which any director or senior manager is at the date of the Prospectus, or was within the preceding five years, a member of the administrative, management or supervisory body or a partner.

Information on directors’ and senior managers’ remuneration and benefits must be set out together with details of any potential conflicts of interest between such persons’ private interests and those of the company.

Details of board practices and directors’ service contracts where these provide for benefits on termination must be provided, along with a statement as to whether or not the company complies with its country of incorporation’s corporate governance regime. For a UK-incorporated company, a statement of compliance with the UK Corporate Governance Code will be required (see section 11.8). If the company does not comply with any such regime then it must include an explanation in the Prospectus.

Details of the number of employees must be disclosed along with, where possible and if material, a breakdown of persons employed by category of activity and geographic location.

(i) Specialist issuers

Certain types of issuer will be required to include additional information in the Prospectus. In particular, property companies and shipping companies will be required to include an expert valuation of their respective property or shipping assets. Mineral companies are required to include details of reserves in any Prospectus, along with an independent expert's report. Specific content requirements also apply to Prospectuses prepared by start-up companies and scientific research based companies. See section 14 for further information on specialist issuers.

## 6.5.2 Securities note

(a) Risk factors

There must be prominent disclosure of the risk factors material to the shares offered in order to assess the market risk associated with the shares in a section headed "Risk Factors".

(b) Working capital and indebtedness

The Prospectus must contain a statement by the company that, in its opinion, it has sufficient working capital for its present requirements or, if not, how it proposes to obtain the additional working capital needed. If the company is unable to give a "clean" working capital statement (i.e. that it has sufficient working capital) then it will not satisfy the eligibility conditions for admission to the Official List (see section 4.1.9).

A statement of capitalisation and indebtedness must be prepared as of a date no earlier than 90 days prior to the date of the document. This information must be presented in a tabular format setting out current and non-current debt (distinguishing between guaranteed and unguaranteed and secured and unsecured indebtedness) and shareholders' equity.

(c) The shares and the offer

A description of the type and class of shares must be included together with a summary of other rights (including voting rights) attaching to the shares.

Details of the conditions to which the offer is subject, the timetable and the categories of investors to whom the shares are being offered must each be disclosed and, if known, whether major shareholders or management of the company intend to subscribe in the offer. The document must also describe any pre-determined preferential treatment to be granted to certain classes of investors (including friends and family).

Information must be given on pricing, or where pricing is yet to be established, the method for determining price and the process for disclosure of the price. Details must also be included about any selling shareholder as well as information about the underwriting, stabilisation and dealing arrangements.

## 6.6 Equivalent information

Where certain information required to be included in the Prospectus is inappropriate to the company's activities, legal form or to its shares, the Prospectus must contain information equivalent to that required.

## 6.7 Omission of information from the Prospectus

FSMA allows the FCA to authorise the omission of information from a Prospectus in the following limited circumstances:

- (a) where disclosure would be contrary to public policy;
- (b) where disclosure would be seriously detrimental to the company, provided the omission would be unlikely to mislead the public with regard to any facts or circumstances which are essential for them to make an “informed assessment” (see section 6.2); or
- (c) where the information is only of minor importance to the offer or application for admission to trading and would be unlikely to influence any “informed assessment”.

## 6.8 Display documents

The Prospectus Rules require certain information regarding the company to be made available for public inspection, including:

- (a) the company’s memorandum and articles of association;
- (b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the company’s request any part of which is included or referred to in the Prospectus; and
- (c) the last two years’ consolidated audited accounts.

The Registration Document must state where these documents can be inspected, either in physical or electronic form.

## 6.9 Supplementary Prospectus

A Supplementary Prospectus must be prepared if, during the period between when the Prospectus has been formally approved by the FCA and before the offer closes or trading in

the new securities commences, the company becomes aware of a significant new factor, material mistake or inaccuracy relating to the information included in the Prospectus.

For these purposes, “**significant**” means significant in the context of the informed assessment test set out in section 6.2. The Supplementary Prospectus must contain details of the new factor, mistake or inaccuracy and must be submitted to the FCA for approval prior to publication.

## 6.10 Advertising

The Prospectus Rules require that any advertisement relating to an offer of securities to the public or to an application for admission to trading must not be issued unless it states that a Prospectus has been or will be published and indicates where investors will be able to obtain a copy of it and it is clearly recognisable as an advertisement. The information in the advertisement must not be inaccurate or misleading and must be consistent with information contained in the Prospectus.

Any written advertisement must also contain a bold and prominent statement to the effect that it is not a Prospectus but an advertisement and that investors should not subscribe for any shares referred to in the advertisement except on the basis of information in the Prospectus.

## 6.11 Right of withdrawal

FSMA sets out certain circumstances in which an investor who has agreed to buy or subscribe for shares on the basis of a Prospectus may withdraw his acceptance.

Where a company issues an approved Price-Range Prospectus that does not include the final offer price and amount of the securities that are to be offered to the public then it must either:

- (a) include in the Prospectus the criteria and/or conditions in accordance with which the final offer price and amount of securities will be determined or, in the case of price, the maximum price; or
- (b) it must permit an investor who has agreed to take up securities in such circumstances to withdraw his acceptance at any time before the end of the two business days after the date on which the FCA is informed in writing of such information.

In addition, an investor will have a right of withdrawal where a Supplementary Prospectus has been published and, prior to its publication, that investor has agreed to buy or subscribe for shares. In that instance, the investor has two business days<sup>4</sup> from the date of publication of the Supplementary Prospectus to withdraw that acceptance.

An issue may arise if a company announces the offer price and/or number of securities by means of a Supplementary Prospectus, thereby triggering a right of withdrawal. Whilst this may not be of concern in an institutional offer where subscriptions may be capable of being confirmed after pricing and publication of a Supplementary Prospectus, it may be of concern where the offer involves a retail offer to the public. Where an approved Price-Range Prospectus has been issued, retail investors are likely to have been asked to confirm their subscriptions prior to the date of publication of the Supplementary Prospectus and confirmation of the final offer price. A retail investor may decide to withdraw his acceptance for any reason. For example, if the final issue price is set above the maximum price stated in the Price-Range Prospectus, this could trigger such a decision. However, in that example, on the

assumption that the offer would only be priced above the maximum price range if the offer was over-subscribed, it is unlikely that there would be any problem placing any such “rejected” shares elsewhere.

As discussed in section 6.9, the requirement to publish a Supplementary Prospectus can be triggered at any time prior to trading in the securities commencing in the event that a significant new factor, material mistake or inaccuracy relating to the information included in the Prospectus is discovered. It is likely that if a Supplementary Prospectus is required to be published within two business days prior to admission, admission would need to be delayed until the right of withdrawal period had expired.

## 6.12 US requirements

If a US Offer is made to US investors in reliance on section 4(a)(2) or Rule 144A of the Securities Act (see section 5.6), the offer document to be used in the United States will generally need to include certain information in order to conform to US disclosure standards. This is usually achieved either by including the required disclosures in the Prospectus or by wrapping additional pages, which include the additional disclosures, around the Prospectus for use in connection with the US Offer (known as the “**US Wrap**”).

The offer document to be used in the United States will need to include a detailed explanation and analysis of the company’s historical financial results, usually in a year-to-year comparative format, which traditionally was referred to as a “**Management’s Discussion and Analysis**” (or “**MD&A**”) in which significant trends in the results of operations (including revenues, expenses

<sup>4</sup> Issuers may extend the withdrawal period beyond two business days. However, it is unlikely that any issuer would want to extend the withdrawal period given the potential disruption to the offer caused by an investor’s right of withdrawal.

and profits or losses) of the company and its consolidated subsidiaries for the past three financial years and the latest year-to-date interim period are highlighted. The period to period comparisons either include or are accompanied by a discussion of the key factors that drive the company's financial performance. The MD&A also includes information on the company's liquidity and capital needs and the methods by which the company has met and will meet such needs and an analysis of the company's off-balance sheet transactions (if noteworthy).

With the increased harmonisation of US MD&A disclosure requirements with Prospectus Directive operating and financial review requirements (see section 6.5.1(d)), this section is now generally written in order to satisfy both US and EU/UK requirements and is referred to as the OFR.

If the issuer is a bank, the US offering document would also contain so called "Guide 3" information, which includes average balance sheet and other statistical data, while the offering document for other specialised or regulated issuers such as insurance companies, oil and gas companies and property companies would also typically contain specific additional disclosures.

The offer document will also contain disclosure that is specifically relevant to US investors, such as information relating to US taxation, restrictions on transferability, differences in accounting principles and certain legends required by US federal and state securities laws.

## 6.13 "Passporting" the Prospectus

The Prospectus Directive allows a company which has a Prospectus approved by the competent authority of its home state (provided it is within the EEA) to use that same Prospectus to offer its shares to the public, or seek admission to trading of its securities, in any other member state of the EEA (a "**host state**"), subject only to the host state being provided with copies of the following:

- (a) the Prospectus; and
- (b) a certificate of approval issued by the regulatory authority of the company's home state stating that the Prospectus has been drawn up in accordance with the Prospectus Directive.

The host state may also require the Prospectus Summary (but not the Registration Document or Securities Note) to be translated into its official language.

To illustrate this, consider the situation of a French company that has prepared a Prospectus in relation to a listing of its shares on NYSE Euronext Paris and which now wishes to undertake a Premium listing of its shares on the Official List. Under the Prospectus Directive, it could use the Prospectus prepared in connection with its listing on NYSE Euronext Paris and which was approved by the French competent authority, the AMF, in order to satisfy the eligibility condition in the Listing Rules that a company must prepare a Prospectus to achieve admission to the Official List. It would of course still need to satisfy the other eligibility conditions set out in the Listing Rules (see section 4) but in respect of the Prospectus, the Prospectus Rules prevent the FCA from taking any steps to approve the Prospectus so long as it is provided with a copy of the

Prospectus, a certificate of approval from the AMF and an English translation of the Prospectus summary. The same considerations would apply to a UK company seeking to use an FCA-approved Prospectus to “passport” its securities into another member state.

#### ***On the horizon***

It is uncertain whether, post Brexit, the UK will maintain the ability for companies to passport a Prospectus approved by the FCA into the EU without having to seek additional regulatory approvals or whether a Prospectus approved by a competent authority in the EU will be able to be passported into the UK. It is also unclear whether the ability to passport a Prospectus will continue to be possible during any transition period that may be agreed between the UK and the EU. If this is not the case, there are likely to be additional costs and time implications for both UK issuers seeking to access European capital and EU issuers seeking to access the London markets.

## **6.14 Prospectus drawn up in accordance with third country laws**

Where a company registered in a non-EEA state has drawn up a prospectus in accordance with the legislation of that country, the FCA may approve the prospectus for the purposes of the Prospectus Rules if it is satisfied that the prospectus has been

drawn up in accordance with international disclosure standards and that the information requirements, including the financial information, are equivalent to the requirements under FSMA, the Prospectus Directive Regulation and the Prospectus Rules.

This provision is particularly useful for companies with a listing in non-EEA jurisdictions that are seeking admission to the Official List as, subject to FCA approval, they may be able to use their existing prospectus rather than prepare a new Prospectus pursuant to the Prospectus Rules. The FCA has stated that it will apply this discretion on a case-by-case basis.

In 2011 ESMA issued an opinion<sup>5</sup> (updated in June 2015) that a prospectus drawn up in accordance with the laws and regulations of Israel, can be considered equivalent to the requirements for a Prospectus under the Prospectus Directive, where it is accompanied by a wrapper containing the specified information set out in the annexes to that opinion.

This was followed, in February 2016, by a further opinion<sup>6</sup> from ESMA that it considers that a prospectus drawn up according to Turkish laws and regulations can constitute a valid Prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State. There is no requirement for a wrapper with additional information.

5 [https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1015\\_-\\_opinion\\_on\\_israel\\_prospectus\\_framework.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-1015_-_opinion_on_israel_prospectus_framework.pdf)

6 [https://www.esma.europa.eu/sites/default/files/library/2016-268\\_opinion\\_on\\_equivalence\\_of\\_the\\_turkish\\_prospectus\\_regime.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-268_opinion_on_equivalence_of_the_turkish_prospectus_regime.pdf)

# UNDERWRITING

- 7.1 Underwriting Structures
- 7.2 The Underwriting Agreement
- 7.3 The over-allotment option



## 7. UNDERWRITING

The most common underwriting structure used in UK IPOs is the bookbuilt structure. This section examines the key features of the underwriting agreement.

### 7.1 Underwriting Structures

A bookbuilt structure involves the Global Co-ordinator and the Underwriters marketing the offer to investors using a Price-Range Prospectus before the exact offer price is known.

The Global Co-ordinator and Underwriters use the Price-Range Prospectus to obtain expressions of interest from institutions which indicate the likely level and price at which they would participate. At the end of the marketing period, the price and size of the offer are determined and published. Orders for the shares are then confirmed, the shares are allocated and trading begins. Since sales to investors are usually confirmed immediately after pricing, the risk to the Underwriters is limited to the period from pricing to cash settlement with investors.

On bookbuilt transactions, the Underwriters will make a several commitment (so that each Underwriter is responsible for its own commitment only) although they will often agree to be obliged to purchase *pro rata* to their commitments up to a certain amount (e.g. 10 per cent. of the underwritten shares) if one or more defaults. If a default occurs in respect of more than that amount, the Underwriters are not obliged to cover it and may terminate the underwriting agreement. This will leave the company with remedies against the defaulting Underwriter pursuant to the terms of the underwriting agreement.

### 7.2 The Underwriting Agreement

Usually, the underwriting agreement will be executed at the time of publication of the approved Price-Range Prospectus. Note however that the Underwriters' underwriting commitment will not commence until pricing is determined, after the roadshow.

The underwriting agreement has the following key provisions:

#### 7.2.1 Conditions

There will be a clause specifying the precise conditions which need to be satisfied before the agreement becomes unconditional. A key condition will be the admission of the securities to the Official List and admission to trading on the Exchange each occurring and becoming effective. Another key condition is the delivery of a certificate from a duly authorised officer of the company that, to the best of his knowledge and belief, there has been no material adverse change in the condition, financial or otherwise, of the company since the execution of the underwriting agreement. This certificate usually goes on to say that no event has occurred which would make any representations and warranties contained in the underwriting agreement incorrect in a material respect and that the Prospectus does not contain any material inaccuracies or omissions.

For the Underwriter, an important condition may be force majeure, which is covered in more detail in section 7.2.5.

Other conditions will include a number of fairly mechanical matters, such as a provision that the company and/or selling shareholder(s) must have delivered certified copies of all the principal documents relating to the offer to the Underwriters so that they can check that these are in order, along with legal opinions as to the compliance by the issuing entity with applicable laws.

#### 7.2.2 The commitment to take shares

The next key clause in the underwriting agreement is likely to be the one imposing the commitment on the Underwriters to subscribe for or to purchase the shares. Shares will be acquired at the offer price less any commissions, such as management, underwriting and selling commissions.

### 7.2.3 Warranties/Indemnities

In an offer of shares, the company and, sometimes, selling shareholders will be expected to provide comfort to the Underwriters relating to the state of the company and the accuracy of information contained in the Prospectus. Directors are also likely to be asked to provide representations and warranties.

Examples of the most common representations and warranties that the company will be expected to provide are in relation to:

- (a) the accuracy of the information contained in the Prospectus;
- (b) the accuracy and correct presentation of the financial statements which will form part of the Prospectus;
- (c) the fact that the company is duly incorporated and has the capacity to enter into all relevant agreements;
- (d) the fact that there is no material litigation outstanding against the company (other than as may be disclosed in the Prospectus); and
- (e) that there has been no material adverse change in the company's circumstances since the date of the last audited accounts.

In addition, the company will be expected to agree to indemnify the Underwriters for, amongst other things, any loss incurred by them as a result of any misstatement or omission in the Prospectus or as a result of a breach of any other representations and warranties given by it in the underwriting agreement.

These provisions generally provide the major source of discussion during the negotiation of the underwriting agreement. The Underwriters will view the warranties and indemnities not only as a risk allocation exercise but also as an important part of the due diligence process. These should obviously be reviewed by the company very carefully. There are often instances where discussions over the ambit of a particular warranty will lead to additional disclosures in the Prospectus.

### 7.2.4 Selling restrictions

It is usual for the Underwriters to undertake in the underwriting agreement to sell the shares only in accordance with the selling restrictions which will be set out in the agreement. These restrictions will set out the circumstances in which the shares may be sold in jurisdictions other than the UK. These provisions are also important for the company. It will not want the Underwriters to do anything which imposes liabilities or obligations on the company in other jurisdictions, for example, a registration obligation in the US. If there is a US Offer, the Underwriters will be required by the selling restriction provisions in the agreement to offer and sell the securities only to persons whom the Underwriters reasonably believe to be QIBs, accredited investors or persons permitted to purchase the securities in offshore transactions in reliance on Regulation S (see section 5.6 ).

### 7.2.5 Force Majeure/Termination

This area is concerned with what happens if disaster strikes during the underwriting period – for example, war breaks out or there is a stock market collapse. The Underwriters will argue that they are being paid a commission for taking a usual “market risk” but not for agreeing to take shares in all circumstances, regardless of a sudden disaster.

If the Underwriters require the right to terminate their underwriting obligations in such a case they need to include a force majeure clause in the underwriting agreement. Such a clause would be subject to negotiation but in broad terms would specify the force majeure events – for example, “such a change in the condition (financial or otherwise), prospects or earnings of the group or in national or international financial, political or economic conditions as would or might in the opinion of the Underwriters be likely materially to prejudice the offer” – and go on to provide that in such a case the Underwriters can terminate the agreement.

In periods of difficult market conditions, there will be much more focus on the circumstances in which the Underwriters may terminate their underwriting obligations and these provisions are likely to be the subject of extensive negotiation.

### 7.2.6 Lock-ups

Restrictions on new issues of shares are normally imposed on the company and, if relevant, on sales of existing capital by any other significant shareholders, to maintain a stable after-market.

The directors and senior management of the company are also likely to be subject to lock-up provisions in respect of any shares owned by them for a prescribed period after admission of the shares to the Official List.

## 7.3 The over-allotment option

One of the principal features and advantages of bookbuilding is that the offer price is fixed at a level which should reflect demand more accurately. This generally has the effect of reducing the likelihood of large movements in the company's share price immediately following the offer period.

However, the process can never be an exact science and there is a risk (in part due to the inherent uncertainty in the process because the ultimate size and pricing of the offer is not known until the end of the bookbuilding process) that the post-offer demand for the shares will exceed supply or vice versa leading to volatility in the price. Thus, a price stabilisation mechanism which may be incorporated into the offer has developed to counteract this volatility. There are also other ways of seeking to secure a stable after-market, such as under-allocating shares to encourage purchasers in the after-market to balance sales in that period by investors keen to make a quick profit, but the price stabilisation method is the most common.

This mechanism enables the lead manager to “**over-allot**” when allocating shares following the pricing of the offer; that is, allocate more shares to investors than are actually being offered. Alternatively, the Underwriters may effect transactions which stabilise or maintain the market price of the shares at a level which might not otherwise prevail.

If an Underwriter over-allots, it will find itself with a short position because it will be committed to delivering more shares than it has to sell. One way for an Underwriter to cover this short position is for it to borrow shares from an existing shareholder. The Underwriter will use these borrowed shares to settle the IPO at closing. The Underwriter will then need to return shares to the lender pursuant to the stock borrowing arrangements. One way in which an Underwriter could do this is for it to purchase shares in the market and give them to the lending shareholder. However, the attractiveness of doing this, or its ability to do it, will depend on the market price relative to the original offer price.

To protect itself against the risk of the market price being above the offer price, the manager can take an option from the company or, more commonly, a selling shareholder to call for the issue or sale of further shares in the company at the offer price. This is known in the market as a “**Greenshoe**” (so called because it is believed to have been first used in connection with an offer of shares in an American company known as the Greenshoe Company) or “**over-allotment option**”. Price stabilisation (accompanied by an over-allotment option) helps to avoid pronounced movements in the share price immediately following the offer. In addition, if there is a strong demand for the shares, the company can benefit from this by raising additional proceeds in the offer to the extent that the Greenshoe option is granted by the company (as the over-allotment option will be exercised).

Given the pricing techniques used in IPOs, the stabilisation of offers is very important. Some jurisdictions have complex rules affecting the ability to stabilise transactions, which will necessitate discussions with the regulators in advance to arrive at a workable method on an international basis.

The Market Abuse Regulation imposes penalties in cases of market abuse (see section 9.6) and, on the face of it, stabilisation activities by the Stabilising Manager and the Underwriters would be likely to constitute market abuse. However, the Market Abuse Regulation expressly provides that certain conduct does not amount to market abuse if it conforms with the relevant provisions of the Stabilisation Regulation. This is an EU regulation which details the procedures which must be followed by the Stabilising Manager and the Underwriters in order for any stabilisation activity carried out by them to benefit from a “**safe harbour**” from claims against them for market abuse. Stabilisation activities could also constitute the UK criminal offences of insider dealing and market manipulation set out in the Criminal Justice Act 1993 and the Financial Services Act 2012 respectively but, so long as such activities are conducted in compliance with the Stabilisation Regulation, the Stabilising Manager and the Underwriters will have a defence against charges of insider dealing or market manipulation in respect of such stabilisation activities.



# MARKETING AND PUBLICITY ISSUES

- 8.1 Key marketing phases of an IPO
- 8.2 Legal restrictions on marketing and publicity
- 8.3 The publication of brokers'/analysts' research
- 8.4 Electronic offers
- 8.5 Document clearance



## 8. MARKETING AND PUBLICITY ISSUES

There are a number of key marketing phases which form part of any IPO process. Set out in this section is an overview of the usual marketing activities undertaken by the issuer, along with the Global Co-ordinator and the Underwriters.

### 8.1 Key marketing phases of an IPO

Generally, it is the Global Co-ordinator that will take the lead in the preparation of the marketing presentation materials, with significant review and input from the issuer and its legal team. Refer to the indicative IPO timetable on pages 26-27 to see indicative timings for when the various marketing presentations discussed below take place.

From a risk perspective, it is imperative that none of the presentation materials contain any factual information that will not be included in the issuer's Prospectus nor must they contradict anything in the Prospectus. See section 8.5 below for procedures that will be put in place for the review of all marketing materials.

#### 8.1.1 Early look investor presentations

Early look presentations may form part of a pre-marketing exercise conducted prior to the IPO and undertaken before the release by the company of an ITF Announcement. The purpose of the early look presentation is to introduce the issuer to a handful of selected potential investors in order to assess the likely appetite of the market for any proposed IPO as well as to receive informal views from investors as to their likely valuation of the issuer's business. The issuer will present to investors limited information about its business, management and financial track record. As the presentation and meetings associated with it can build relations with potential key investors, often early look presentations are an important part of the IPO marketing process.

#### 8.1.2 Analyst presentation

Approximately one month before the company intends to announce its intention to float a meeting will be arranged between the company's management, along with the Global Co-ordinator, and the analysts of the underwriting banks ("**connected analysts**"). At this meeting, the company will present the company, its business, strategy and future prospects in order to enable the connected analysts to prepare their own research on the likely prospects and future of the company. The company may choose to invite unconnected analysts to this presentation, but more commonly the information provided to the connected analysts will be made available to the unconnected analysts at a later date, at the same time as publication of the Registration Document. Where a company chooses to brief both the connected and unconnected analysts at the same time, then all the analysts will be subject to a restriction on publication of any research until one day after the publication of the Registration Document. Where connected and unconnected analysts are briefed separately, no analysts' research may be published until seven days after publication of the Registration Document. The end of this seven day period will coincide with publication of the ITF Announcement. This restriction on publication allows time for the unconnected analysts to prepare and publish their own research. The publication of favourable analysts' research about a company seeking to IPO can be key in driving interest in the IPO itself. As such, it is important that the company's management are fully briefed and prepared in advance of the analyst presentation.

### 8.1.3 Pilot fishing and investor education

After publication of the ITF Announcement, a period of investor education will follow where company management and the Global Co-ordinator and the Underwriters will meet with selected individual institutional investors to gauge their views on the company and the IPO. Investors will be asked to estimate their likely order volumes and the price at which they may be prepared to buy. This period normally last for one – two weeks. The research published by the analysts will be informative in assisting investors decide whether they are likely to want to participate in the IPO. By the end of the investor education phase, the Global Co-ordinator and the Underwriters, in discussion with the company, will use the outcome of their discussions with these investors determine the price range (also known as the bookbuilding spread) at which they can reasonably expect to offer the shares.

### 8.1.4 Roadshow presentation

The roadshow presentation is a key part of the marketing process undertaken in connection with the IPO and follows the investor education phase. It will normally last for one – two weeks. Once a price range has been set, the roadshow will commence, whereby the senior management of the issuer will meet and present to a series of global investors that have been selected by the Global Co-ordinator and the Underwriters with the goal of presenting the issuer and its securities as a desirable investment opportunity. The presentations will provide a variety of information about the company, its business, key management, industry sector, financial history, strategic direction and, of course, information about the offer itself. Investors will also receive a copy of the Price-Range Prospectus as part of the roadshow.

The roadshow takes a number of forms including both large staged presentations in a series of major financial centres, and face to face meetings with targeted investors. The issuer is likely to hold other informal meetings with, or present to, smaller groups of key investors. Additionally, selected presentation materials may be available to investors electronically, subject to relevant security protections and disclaimers. The holding of virtual roadshows can enable the company to access a larger group of potential investors.

During the roadshow, the Underwriters will look to build a book of interest in the shares with information on the volume and price at which investors would be prepared to take up the shares. This information will be used by the Global Co-ordinator, the Underwriters and the company at the end of the roadshow and bookbuilding period to determine the offer price.

## 8.2 Legal restrictions on marketing and publicity

There are a number of important legal issues in relation to the marketing activities carried on before, during and after the IPO. In particular there are stringent and complex legal restrictions that govern the type of information that can be released, the timing of its release and the form in which it is released. The principal UK statutory restrictions are imposed by FSMA and the Financial Services Act 2012 (“**FS Act**”).

The restrictions and procedures apply to the company and its directors, other officers, employees and advisers (including PR advisers). It is extremely important that the restrictions are complied with, as failure to do so can lead to both civil and criminal liability being imposed on those responsible for the publication of the information or for the omission of material information.

### 8.2.1 Section 21 FSMA

Section 21 FSMA provides that (subject to certain exemptions) no person other than an authorised person may issue a “**financial promotion**” (essentially any communication inviting or inducing persons to engage in investment activity) unless its contents have been approved by an authorised person. A person who contravenes this section is liable to criminal sanctions and, in addition, agreements entered into following an unlawful communication, such as an invitation to subscribe for shares, are potentially unenforceable.

The Sponsor, as a person approved by the FCA, will be an authorised person and so may approve the issue of, or itself issue, any “financial promotion”. In doing so, it must comply with the FCA’s Conduct of Business Sourcebook which, among other things, requires the authorised person to be able to show that the communication is fair, clear and not misleading. Any publication proposed to be issued in connection with the company’s business or the proposed IPO must be carefully examined to ascertain whether it constitutes a “financial promotion” and is therefore subject to the relevant restrictions.

Issuers must also bear in mind the restrictions on advertising contained in the Prospectus Rules (see section 6.10).

### 8.2.2 The FS Act

Section 89 of the FS Act makes it a criminal offence to make a statement which is false or misleading in a material particular, or to dishonestly conceal material facts, with the purpose of inducing (or being reckless as to whether it may induce) another person to enter into or refrain from entering into a “**relevant agreement**” or to exercise or refrain from exercising a right conferred by a “**relevant investment**”. A “relevant investment”

includes shares and a “relevant agreement” includes an agreement to purchase or subscribe for shares.

Under section 90 of the FS Act, it is a criminal offence to do anything which may create a misleading impression as to the market in, or the price or value of, any relevant investments. An offence may be committed where an individual makes a misleading impression recklessly as well as in circumstances where it is made intentionally.

There are also restrictions imposed under the general law concerning liability for misrepresentation or misstatement (including under the Misrepresentation Act 1967, the Fraud Act 2006 and the tort of deceit) and under codes of practice relating to advertising.

### 8.2.3 Prospectus Rules

All “advertisements” relating to the offer, which includes all announcements and other marketing materials issued by the company about the IPO, must not be inaccurate or misleading and the information contained in any advertisement must be consistent with the information contained in the Prospectus (if already published, or with the information required to be in the Prospectus, if published later). Each advertisement must include a bold and prominent statement that it is not a Prospectus but an advertisement and that investors should not subscribe for any securities referred to in the advertisement except on the basis of information in the Prospectus.

All information (whether written or oral) relating to the IPO (regardless of whether it is for advertising purposes) must be consistent with that contained in the Prospectus and must present a materially balanced view of the information contained in the Prospectus, including by way of omission or presentation

of negative aspects of such information with less prominence than the positive aspects. Such information must not include alternative performance mechanisms, for example, financial measures of historical or future financial performance, financial position or cash flows, relating to the company unless they are also contained in the Prospectus.

#### 8.2.4 US marketing restrictions

In connection with any offer of securities outside the US (including a listing in the UK), parties must ensure that there are no “**directed selling efforts**” that could jeopardise the company’s ability to rely on Regulation S, regardless of whether there is a US Offer contemplated.

Furthermore, as discussed in section 5.6, if there is a US Offer, additional restrictions on publicity may be required. If the company is relying on the section 4(a)(2) exemption, there must be no “**general solicitation**” or “**general advertising**” by the company or any person acting on its behalf. If the company is relying on the Rule 144A exemption, US market practice likewise calls for the avoidance of any general solicitation or general advertising.

While SEC rules provide some guidance in defining and interpreting the terms “directed selling efforts”, “general solicitation” and “general advertising”, the broad nature of the guidance means that the company and parties involved in the US Offer must be vigilant and implement appropriate protections to ensure that no advertisements, articles, seminars or other communications are initiated with US investors during the offer.

Typically, the legal advisers to the company will provide US publicity guidelines to the company. These guidelines are

designed to help prevent the possibility of the parties engaging in activities that could constitute “general solicitation”, “general advertising” or “directed selling efforts”. Usually the guidelines apply from the day when the company first decides to access the US capital markets until 40 days after the actual initial sale of the securities to US investors (or the closing date).

### 8.3 The publication of brokers’/analysts’ research

An issue arising from the preparations for listing is the need to regulate the publication, content and distribution of research notes issued by those brokers that are connected with the company or the Underwriters (for example, by virtue of being part of the same group of companies as the Underwriter) and which are known as “**connected analysts**”.

So far as broking reports and circulars are concerned, these should be produced independently of the company so that the company has no control over them (even if they are prepared by connected analysts) and cannot normally be regarded as responsible for the information in them. However, the company should seek to reduce any risk that it might be responsible for them by:

- (a) ensuring that any information that is provided to the analyst is information that is already in the public domain;
- (b) following agreed document clearance procedures before providing any information to an analyst; and
- (c) not approving the research.

The position regarding connected analysts is more difficult than for independent analysts because of the potential for conflicts of

interest to exist for the connected analysts. In addition, the closer to the publication of the company's Prospectus that the research note is published by a connected analyst, the greater will be the risk that an investor may claim that the research note comprises part of the offering materials of the company and therefore that the investor relied on the research note in making its decision whether or not to invest. Although it is market practice for connected analysts to publish research on the company and for the connected analysts to accept liability for the research, the research may be perceived in the market as being informed and this increases the risk of reliance by investors on statements in the research.

If the company or its directors actively take part in the preparation of the research note, there is also a risk that they may be subject to criminal liability under the FS Act or under the Fraud Act 2006 for false or misleading statements in the research note which are not corrected in the Prospectus or which create a misleading impression as to the market in, or price or value of, the company's shares. The connected analysts are usually asked to submit a draft of their research notes to the company and the Sponsor to enable the company to check the accuracy and consistency of factual statements but no comment should be given by the company or its advisers on the opinions expressed in the research note (save where any factual information on which an opinion is based is incorrect).

In order to assist in distancing the company from any research published by the connected analysts, a blackout period is usually established, during which it is agreed that the connected analyst will not publish research notes on the company or the issue. Whilst there are no formal rules on the imposition of a mandatory blackout period, in practice, a blackout period is usually established. The connected analysts' research is

generally published at the same time as the ITF Announcement, following which the blackout period will commence and ends 40 days after admission.

Where the IPO includes a US Offer, the distribution of research into the United States ahead of the offer is generally prohibited. In the case of Rule 144A offers, distribution is technically permissible if made to QIBs who have a pre-existing relationship with the distributing investment bank (and the investment bank's internal policies permit the distribution to QIBs). However, distribution of research into the US in such circumstances creates a risk of potential liabilities under the US anti-fraud rules and is therefore allowed only in exceptional circumstances. The legal advisers to the Sponsor will typically provide a memorandum to the company, the Sponsor, the Underwriters and the connected analysts explaining the restrictions relating to the distribution of research reports to US investors during the offer period.

## 8.4 Electronic offers

While exactly the same matters discussed above need to be considered for offers and documents, including press releases, made available electronically, there are additional considerations to be taken into account when deciding whether and how to make offers and documents available electronically. These considerations apply no matter in which jurisdiction the material has been placed or stored electronically. What is of primary significance is who is able to access offer-related material. This is particularly important as the Prospectus Rules allow a company to make the Prospectus available to the public by means of publication on its, or its Sponsor's, website (see section 3.6). In addition, a company may choose to make other material relating to the offer, such as press releases, available electronically.

If the material can be accessed by UK investors, the financial promotion provisions of FSMA discussed in section 8.1 will apply and the company must ensure compliance with all the attendant regulations or face possible criminal and civil liability. However, an equally significant concern is ensuring that persons outside the UK are unable to access the materials electronically unless it is

### **Restricting access to offer-related materials**

A company should ensure that:

- (a) any document connected with the offer contains disclaimers setting out the jurisdictions in which the offer is made, legends indicating the restrictions applicable to the offer and disclosure that the offer is not directed at those resident in other jurisdictions;
- (b) documents made available electronically only include information relevant or targeted to investors in the jurisdictions in which the offer is made, and not in any language other than is relevant to those jurisdictions;
- (c) “click-through” mechanisms, IP filters, password protections or other security measures are adopted in order to restrict or prohibit access to persons from jurisdictions where the offer is not intended to be made;
- (d) so far as is possible, site entry is limited on search engines and hypertext links;
- (e) emailings are not made, or are not made to email addresses which have not been verified as relating to persons within the offer jurisdictions;
- (f) the server is maintained in a jurisdiction where the offer is intended to be made; and
- (g) checks are made on applications to ensure that applications have not originated from other jurisdictions.

intended to be offered in, and complies with, the laws of those other jurisdictions from which the material is accessible. In particular, from a US securities law perspective, materials made available electronically without restrictions on access can be viewed as the functional equivalent of a continuous press release into the US, which may raise significant concerns.

To guard against access by persons outside the jurisdictions in which the offer is intended to be made, a series of click-throughs and/or other precautions should be put in place.

While it may not be possible to prevent absolutely persons from accessing information by disguising or misrepresenting their country of residence or similar information, the adoption of procedures reasonably designed to prevent such access should provide a degree of protection to a company, and any such access premised on fraud or misrepresentation is unlikely to be viewed as the company having targeted investors outside the intended offer jurisdictions.

## **8.5 Document clearance**

In order to ensure compliance with the legal constraints on the release of information, a system for co-ordinating and vetting all company information before release should be established between the company, the Sponsor and the other advisers. This should extend to:

- (a) material to be issued to any source, for example employees or the public at large or material to be posted on the company’s website;
- (b) existing material that is to be used on an ongoing basis such as corporate fact sheets; and
- (c) new material such as advertising or presentations or any new material to be posted on the company’s website.

It is common practice for someone within the company to act as a “clearing house” for all such information. Furthermore, in relation to incoming queries which might impact on the IPO (for example from the press, employees or analysts) reference should be made to that person.

The persons responsible for the clearance procedures must:

- (a) ensure that no information is published which contradicts or is inconsistent with anything expected to be said in the Prospectus, presents a materially unbalanced view of the information contained in the Prospectus or contains alternative performance mechanisms that are not also contained in the Prospectus;
- (b) review and verify each document or other information to ensure that it is true and is not misleading, either in the selection or omission of certain matters; and
- (c) obtain legal advice in each case to ensure that the document does not constitute a “financial promotion” or “directed selling efforts”, if there is a US Offer, “general solicitation” or “general advertising” in the US (see section 8.2.4) or that, if it does constitute a financial promotion, and it is appropriate, the content of the document is approved by the company’s financial advisers for that purpose and carries the necessary rubric.

# POSSIBLE LIABILITIES ARISING ON A LISTING

- 9.1 Persons responsible for the Prospectus under English law
- 9.2 Civil liability
- 9.3 Sharing liability
- 9.4 Criminal liability
- 9.5 Minimising the risk of liability for the Prospectus
- 9.6 Grey-market trading
- 9.7 Companies selling into non-UK jurisdictions



## 9. POSSIBLE LIABILITIES ARISING ON A LISTING

Offers of shares are regulated in all significant jurisdictions by, among other things, imposing potential liability on those responsible for the offer. This section outlines some of the areas where liability may arise, principally under English law.

### 9.1 Persons responsible for the Prospectus under English law

Anyone responsible for the Prospectus may incur civil and/or criminal liability for any omission from, or misstatement in, the Prospectus.

The persons responsible for the Prospectus (or, as noted below, part of the Prospectus) are determined by the Prospectus Rules and are:

- (a) the company and any other person offering the securities;
- (b) the company's directors at the time the Prospectus is published;
- (c) those who have authorised themselves to be named in the Prospectus as directors or are named as having agreed to become directors either at or after admission;
- (d) those who have stated their acceptance in the Prospectus of responsibility for, or for any part of, the Prospectus; and
- (e) those who have authorised the contents of, or any part of, the Prospectus.

Selling shareholders will not be responsible for the Prospectus under English law so long as the company is required to take responsibility for the Prospectus under the Prospectus Rules, the Prospectus has been drawn up primarily by the company and the selling shareholders are making the offer in association with the company.

### 9.2 Civil liability

Under English law, civil liability for the Prospectus may arise under FSMA, the Market Abuse Regulation or general law.

#### 9.2.1 FSMA

##### (a) Section 90 FSMA

Section 90 FSMA provides that the persons responsible for the Prospectus are liable to pay compensation to a person who has acquired any of the company's shares and suffered loss in respect of them as a result of an untrue or misleading statement in, or an omission from, the Prospectus. Liability extends not only in respect of an original acquirer of shares but potentially to subsequent purchasers.

There are some exemptions from liability to pay compensation. A person responsible for the Prospectus will not incur liability under section 90 if the court can be satisfied that, at the time when the Prospectus was submitted to the FCA, the person reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading, or that the matter the omission of which caused the loss was properly omitted. The person also has to have continued in that belief until the shares were acquired (unless the shares were acquired before it was reasonably practicable to bring a correction to the notice of potential investors), or has to have made every reasonable effort to notify potential investors of the correction before the shares were acquired. Alternatively, the person has to have continued to believe that the

statement was true or had been properly omitted following admission to the Official List and the shares were acquired after such a lapse of time that, in the circumstances, the person ought reasonably to be excused.

No person can be required to pay compensation solely on the basis of the summary in the Prospectus unless, when read with the rest of the Prospectus, it is misleading, inaccurate or inconsistent or does not provide the key information required in order to aid investors when considering whether to invest in the company's securities (see section 6.3 above).

#### (b) Section 91 FSMA

The Prospectus Rules require that the company must take all reasonable care to ensure that any Prospectus submitted for approval, for which it is responsible, contains the necessary information as required by section 87A FSMA and the relevant information items set out in Appendix 3 of the Prospectus Rules. The company must also take all reasonable care to ensure that any Prospectus submitted for approval for which it is responsible is, to the best of its knowledge, in accordance with the facts and contains no omissions likely to affect its import.

Pursuant to section 91 FSMA a director may be liable for a breach of the Prospectus Rules by the company where such person was a director of the company at the material time and the FCA considers that such person was knowingly concerned in the contravention. In such a case, the FCA may impose a fine on the director of an amount that it considers appropriate or, alternatively, it may publish a statement censuring the director.

### 9.2.2 Market Abuse Regime

The prohibition on market abuse is contained in the Market Abuse Regulation ("**MAR**"). The market abuse regime supplements, rather than replaces, the insider dealing provisions in the Criminal Justice Act 1993. Whilst the Criminal Justice Act 1993 created a criminal regime for insider dealing, in the UK, market abuse is a civil offence.

Market abuse is behaviour which occurs in relation to shares or other financial instruments admitted to trading on a Regulated Market (such as the Exchange) or on a multilateral trading facility (for example, AIM) or in respect of which an application for admission to such markets has been submitted. The regime also applies to shares or other financial instruments traded on an organised trading facilities. The market abuse regime also extends to financial instruments, the price or value of which depends on or has an effect on the price or value of a financial instrument referred to above (this includes, by way of example, contracts for difference).

There are a number of types of behaviour which may constitute market abuse, examples of which are set out below:

- (a) dealing, or attempting to deal in shares or other financial instruments on the basis of inside information relating to the investment in question. The offence of insider dealing also encompasses a situation where an insider recommends or induces another person to engage in insider dealing;
- (b) disclosing inside information to another person other than in the normal exercise of a person's employment, profession or duties;

- (c) entering into transactions, placing an order to trade or any other behaviour which gives or is likely to give, false or misleading signals as to the supply of, demand for, or price of, shares or other financial instruments or which secures or is likely to secure the price of one of more financial instruments at an abnormal or artificial level;
- (d) entering into transactions or placing an order to trade or any other behaviour which affects or is likely to affect the price of one of more financial instruments which employs a fictitious device or any other form of deception or contrivance;
- (e) disseminating information through the media, including the internet, or by any other means which gives or is likely to give false or misleading signals as to the supply of, demand for, or price of, shares or other financial instruments or is likely to secure the price of one or more financial instrument at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew or ought to have known that the information was false or misleading; and
- (f) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew, or ought to have known, that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

Behaviour includes dealing in securities, disseminating information and managing investments, and it covers actions and omissions (such as failure by the directors of company to make a required disclosure to the market).

The provision of false or misleading information in the Prospectus or in other materials relating to the IPO could lead to liability under the market abuse regime if it gives, or is likely to give false or misleading signals as to the supply of, demand for, or price of a financial instrument.

**“Inside Information”** is information relating to an issuer which is of a precise nature, which has not been made public, which relates directly or indirectly to any member of the issuer’s group or any of their securities, and which if made public would be likely to have a significant effect on the price of the issuer’s securities or related derivative financial investments.

The information in question will need to satisfy each limb of the test described above to be classified as inside information. In determining whether the information in question would be likely to have a significant effect on the price of a company’s shares, it is necessary to assess whether the information is of a kind which a reasonable investor would be likely to use as part of the basis of his investment decision.

The FCA has power either to impose unlimited financial penalties or publicly censure a person if that person has engaged in market abuse or has taken any action to recommend or induce another person to do so. Both the company and its directors and employees can be liable for a breach of the market abuse regime.

### **On the horizon**

The UK market abuse regime derives from the EU Market Abuse Regulation. On Brexit, the European Union (Withdrawal) Act 2018 is intended to enshrine the provisions of MAR into UK law. The UK market abuse regime is not therefore expected to change in any substantive way.

### **9.2.3 General law**

In addition to the statutory remedy under FSMA, in the event that the Prospectus proves to be inaccurate or incomplete, the directors may also be liable for misstatement, misrepresentation, breach of the directors' duty to exercise the degree of skill and care that may reasonably be expected from persons in their position, or pursuant to breach of contract under, for example, a service agreement or an underwriting agreement.

## **9.3 Sharing liability**

Liability is shared among those persons listed in section 9.1. This means that an investor may sue, for example, any of the directors and if the investor's claim is successful that director may be liable for the full amount. The director however has a statutory right of contribution from others who are responsible for the Prospectus (e.g. co-directors and the company).

## **9.4 Criminal liability**

Criminal liability in connection with the Prospectus may arise under the FS Act, the Theft Act 1968 or the Fraud Act 2006.

### **9.4.1 FS Act**

Section 89 applies to a person who makes a statement which that person knows to be false or misleading in a material

particular and to a person who dishonestly conceals any material facts, or recklessly makes a statement, which is false or misleading.

A person to whom section 89 applies is guilty of an offence if the person makes the statement or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person to purchase shares.

It is also an offence under section 90 of the FS Act for any person to do anything which creates a false or misleading impression as to the market in, or the price or value of, the securities in question if that person intended to create that impression and, by doing so, intended to induce another person to deal in those investments or to refrain from doing so.

An offence may be committed under section 90 where a person is reckless as to whether they have created a false or misleading impression, as well as in circumstances where they did so intentionally.

The penalty for contravention of sections 89 and 90 may include imprisonment and/or a fine.

### **9.4.2 Theft Act 1968**

The Theft Act 1968 makes it an offence punishable by imprisonment for a person to falsify an account, or to make use of a falsified account in giving information.

If either of these offences is committed by a company with a director's consent or connivance, he or she and the company are guilty of the offence.

The Theft Act 1968 also makes it an offence (punishable with imprisonment) for a person to publish or concur in publishing a written statement which they know is or may be misleading, false or deceptive in a material particular if it is with the intent to deceive the company's members or creditors about its affairs.

### 9.4.3 Fraud Act 2006

To fall within the fraud offence established by the Fraud Act 2006, behaviour must:

- (a) be dishonest (dishonesty being measured according to the ordinary standards of reasonable and honest people; if behaviour would be regarded as dishonest by such people, the next test to be satisfied is that the person concerned must realise his or her actions were dishonest according to those standards); and
- (b) be intended to secure either a gain for the person concerned (or another) or to cause loss, or expose another to the risk of loss, of money or any other property.

No gain or loss need actually be suffered for a fraud offence to be committed. Two of the ways in which the offence can be committed are relevant in the context of liability for the Prospectus and should therefore be borne in mind by directors:

- (a) *Fraud by false representation (section 2 Fraud Act 2006)*: it is an offence to make a false representation by words or conduct as to any fact, law or state of mind of any person whether express or implied, either knowing that the representation is false or misleading, or being aware that it might be (note that the victim of the representation need not actually rely upon it); and

- (b) *Fraud by failure to disclose information where there is a legal duty to do so (section 3 Fraud Act 2006)*: legal duties can derive from statute (e.g. the provisions governing company prospectuses under FSMA), contract, custom of a trade or market or from a fiduciary relationship.

There is explicit recognition in the Fraud Act 2006 that a corporate body may commit the offence of fraud and it is further provided that any director, manager, secretary or other similar officer of the company (or any person purporting to act in such a capacity) will also commit the relevant offence if the company's offence is proved to have been committed with the consent or connivance of that individual (section 12 Fraud Act 2006). This is of importance to directors as it may lead to the risk of prosecution for those who merely acquiesce in, as opposed to positively promote, dishonest conduct by their company.

The penalty for breach of the Fraud Act 2006 is imprisonment and/or an unlimited fine.

## 9.5 Minimising the risk of liability for the Prospectus

### 9.5.1 Due diligence and verification

To minimise the risk of civil or criminal liability, a considerable amount of time will be spent on due diligence and in verifying the accuracy and reasonableness of all statements of fact and opinion in the Prospectus and all inferences which may be drawn from those statements. Section 3.4 contains a further discussion of these processes.

### **9.5.2 Insurance**

It is possible that some liability may be covered by an existing directors' and officers' policy and this should be checked. Alternatively, the company may wish to insure against the potential civil (but not criminal) liabilities for the Prospectus. This is a growing market; the cover provided may be limited and relatively expensive. Insurance is in any case no substitute for proper due diligence and verification.

### **9.6 Grey market trading**

The prohibition on market abuse set out in MAR (see section 9.2.2) applies both to dealings in shares admitted to trading on a Regulated Market and to dealing in shares which are the subject of an application for admission to listing. Accordingly, trading on the grey market through the Exchange is subject to the market abuse provisions and, therefore, persons trading shares in the grey market with, for example, inside information, or trading based on misleading information in the Prospectus, could expose those responsible to liability under the market abuse regime.

### **9.7 Companies selling into non-UK jurisdictions**

Whenever a company is making an offer available to persons in a non-UK jurisdiction, it is important to consider the restrictions imposed by the regulators of securities offerings in such jurisdictions and the potential liabilities associated with offers and sales in such jurisdictions. In the US, for example,

Section 10(b) of and Rule 10b-5 under the Exchange Act are the primary provisions of the US federal securities laws that impose potential liability on issuers, Underwriters, sellers and potentially other parties associated with an offer for the content of an offer document. Rule 10b-5 makes it an offence for any person to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of any security. The rule also makes it an offence for any person to engage in any practice or course which would operate as a fraud or deceit or to employ any device, scheme or artifice to defraud in connection with the purchase or sale of any security.

Any offer of securities to a US investor must be conducted without violating Rule 10b-5 or the other anti-fraud provisions of the US federal securities laws. In view of the US legal liability consequences resulting from a breach of Rule 10b-5, 10b-5 disclosure letters from both the legal advisers to the company and to the Sponsor and Underwriters are typically sought by the Sponsor and Underwriters participating in a Rule 144A offer. The disclosure letter confirms that nothing has come to the attention of the legal advisers that would cause them to believe that the Prospectus contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in the Prospectus not misleading, and constitutes an important piece of evidence of the Sponsor and the Underwriters having conducted due diligence with respect to the company.

In order to be able to issue this disclosure letter, extensive due diligence, including meetings with senior management and documentation review, needs to be conducted by the legal advisers to the company and the Sponsor and the Underwriters. The requirement for delivery of a 10b-5 disclosure letter will result in significant involvement of the legal advisers' US legal teams.

# EMPLOYEE INCENTIVES AND REMUNERATION

- 10.1 Structure of Directors' Remuneration
- 10.2 Employee share plans
- 10.3 Types of share plans



## 10. EMPLOYEE INCENTIVES AND REMUNERATION

Incentives and remuneration for senior executives and employees are important aspects of any IPO. This section considers the principal issues to consider regarding remuneration, the main types of employee share plans operated by UK listed companies and some of the key legal issues arising in their implementation and operation.

### 10.1 Structure of Directors' Remuneration

The remuneration of directors of listed companies is often a hot topic for investors and, if proposed remuneration does not fit with investor expectations or is poorly explained it can become a marketing issue.

The remuneration of directors of UK incorporated public companies is required to be disclosed in the annual directors' remuneration report. The report comprises two separate parts: a forward-looking section on proposed remuneration policy and a backward-looking section reporting on the implementation of the remuneration policy in the relevant financial year.

A company is not required to put its remuneration policy to shareholder vote on IPO. However it is market practice to include a summary of the expected remuneration policy in the Prospectus, to the extent the company has made these decisions prior to the IPO. Companies generally put the remuneration policy to shareholders at the first AGM following the IPO.

As the company will need to give investors an overview of its expected remuneration policy in the Prospectus, the remuneration committee will have to give consideration to remuneration arrangements in advance of the IPO. The company will also want to put in place new share plans which can be used once it is listed. This is likely to include all employee plans as well as plans for senior executives and executive directors.

The Prospectus usually contains a description of each of the elements comprised in the remuneration package (i.e. salary, benefits, pensions, bonus and long term incentive plans) and the individual limits on awards to executive directors under the bonus and long term incentive plans.

Each of the share plans to be operated by the company must also be described in detail in the Prospectus. Where awards will be granted on IPO, details of the number of shares to be granted to each executive director and the performance conditions that will apply to those awards will also need to be disclosed.

Equally important will be unwinding any existing incentive plans. These may have been designed to pay out to executives for achieving a successful IPO, in which case the company will want to consider putting share sale arrangements in place. In addition, investors are likely to expect that executive directors will retain some of their shares following IPO and so they may be subject to lock up arrangements.

The Prospectus will explain the treatment of existing share plans, although in less detail than future share plans. This disclosure will include information such as the number of shares directors are expected to acquire on IPO and whether directors and employees will be able to sell their shares on IPO.

### 10.1.1 Future disclosure: Directors' Remuneration Policy and implementation report

Once listed, companies are required to put their remuneration policy to a binding shareholder vote once every three years. Once the remuneration policy has been approved, only remuneration which is compliant with the policy can be paid to directors (both executive and non-executive). If a company wishes to change its remuneration policy (or to make a non-compliant payment) within that three-year period, it must seek re-approval for that revised policy/payment from shareholders. Directors authorising any payment in breach of these rules will be liable to indemnify the company for any loss resulting from it.

In addition to the remuneration policy, there is an annual advisory shareholder vote on the implementation of the remuneration policy. This is an advisory vote only but if it fails, then this triggers a binding vote on the remuneration policy in the following year (even if no change in remuneration policy is being proposed). The review of the financial year must include a number of statements, including (1) the total remuneration of each director shown as a single figure and (2) details of termination payments paid to directors.

## 10.2 Employee share plans

The structure of a company's share plans is influenced by institutional investor guidelines and regulatory requirements as well as company law and tax considerations.

### 10.2.1 Institutional investor guidelines

The primary institutional investor guidelines are those published by the Investor Association (the "IA Guidelines"). The IA Guidelines have no legal force but are highly influential on plan design. The main sanction for non-compliance with shareholder

guidelines is that institutional investors may vote against the directors' remuneration policy (or, in years where the policy is not put to shareholders, against the directors' remuneration report) or oppose the adoption of a proposed plan. In addition, there may be adverse publicity in the press.

The main IA principles are the following:

- (a) *Limits on new shares:* There are two limits on the number of new shares, including treasury shares, which can be used under an employee share plan. First, no more than 10% of the company's share capital may be put under option or issued under all the company's employee share plans within any 10 year period. Secondly, no more than 5% may normally be used for executive plans in any 10 year period.
- (b) *Performance conditions:* The vesting of LTIP awards must be subject to the satisfaction of challenging performance conditions. Performance measures and vesting conditions should be fully explained and clearly linked to the achievement of appropriately challenging financial performance that will enhance shareholder value. Remuneration Committees should be satisfied that even if performance conditions have been met, this does not produce outcomes which are not in line with the overall performance of the company, its future prospects or the experience of its shareholders over the performance period.
- (c) *Performance Periods and holding periods:* In normal circumstances, performance periods should be at least three years and should then be followed by a holding period of at least two years.
- (d) *Clawback/malus:* The IA Guidelines recommend that clawback and malus provisions should be included in remuneration structures and should be agreed and

documented before awards are made. In practice, many listed companies now include malus and clawback provisions in their LTIPs.

### 10.2.2 Listing Rules requirements

The key requirements of the Listing Rules relating to share plans are:

*Shareholder approval if the plan uses new shares:* If new shares can be issued (or treasury shares transferred) under an employee share plan established by a UK company, the plan must be approved in advance by the shareholders of the company in a general meeting. Where a plan is put in place on IPO, no separate shareholder approval is required following listing.

*Amendments to plans:* A plan requiring shareholder approval must provide that its main provisions cannot be altered to the advantage of participants without shareholders' prior approval in general meeting, except for certain minor amendments (e.g. to take account of a change in legislation).

*Directors' interests in shares:* The Listing Rules require disclosure of directors' interests in shares in the annual financial report.

### 10.2.3 Market Abuse Regulation

The Market Abuse Regulation adds a further level of control on dealings in shares by directors and persons discharging managerial responsibilities. Companies are required to maintain lists of persons working for them who have access to inside information relating to the company. They are also required to disclose dealings in shares by directors and persons discharging managerial responsibilities ("**PDMRs**").

The grant and vesting of share plan awards are dealings under MAR, both for the company and for directors and PDMRs. These dealings will need to be disclosed to the market. The

company will also need to ensure it has procedures in place preventing directors and PDMRs from dealing during a closed period (i.e. prior to the announcement of results) or when they are in possession of inside information.

## 10.3 Types of share plans

Share plans fall into two broad categories:

*Long term incentive plans:* Normally used for directors and senior employees, long term incentive plans ("**LTIPs**") usually allow participants to receive an award of free shares subject to continued employment and the satisfaction of performance conditions. UK shareholders expect that executive directors will receive part of their remuneration package under an LTIP.

*All-employee share plans:* The UK has two tax favoured all-employee plans. The sharesave plan is an option plan linked to a savings contract, and employees are entitled to tax relief on exercise of their options. The share incentive plan allows employees to receive free shares on tax favoured terms and to buy shares out of pre-tax salary.

### 10.3.1 Long term incentive plans

The most common types of long term incentive plans are performance share plans and deferred share bonus plans. However, LTIPs can take many forms and, unlike all employee plans, companies have discretion in designing their LTIPs.

#### *Performance share plans*

Performance share plans entitle employees to acquire shares free of charge (or for a nominal price). Awards vest usually after three years, to the extent a performance condition is met and provided the participant remains in employment. Increasingly awards are then subject to a two year holding period during which the shares are cannot be sold.

Historically the most common measures of performance for performance share plans have been total shareholder return (TSR) and earnings per share (EPS). However, companies are increasingly using performance measures that align more closely with their business plan (e.g. return on capital employed (ROCE)) or the sector in which they operate (e.g. health and safety targets for companies in mining or oil and gas sectors).

#### *Deferred share bonus plans*

Deferred share bonus plans usually involve the deferral of some or all of an annual cash bonus into shares. Deferred share bonus plans have been very common in the financial services sector for many years and are now increasingly being adopted by non-financial services companies.

In order to receive the shares the executive must normally remain in employment with the company for a number of years (normally three years). If the executive leaves during this period, the award will normally lapse.

The main features are of LTIPs are:

- (a) *Eligibility:* Participation is normally restricted to executive directors and other top executives. The board of directors (or a committee, normally the remuneration committee) has discretion to decide who may participate.
- (b) *Award:* A number of free shares are conditionally awarded to an executive. The award may take the form of a nil cost option or a contingent right to receive shares free of charge.
- (c) *Tax:* No income tax or national insurance contributions (“**NICs**”) arise on grant but income tax and NICs will be due on the value of the shares received at the time the executive acquires shares.

### **10.3.2 Share incentive plans**

The tax-favoured share incentive plan (“**SIP**”) is an all-employee share plan carrying significant tax benefits for employees. The SIP can be used to provide free shares to employees on tax-favoured terms or to enable employees on tax-favoured terms to buy shares using their pre-tax salary.

The SIP can be operated in several ways.

- (a) First, employees can be awarded up to £3,600 worth of free shares which must be held in the SIP for between three and five years. Some companies, notably Royal Mail, have used a SIP to make an award of free shares to employees on IPO.
- (b) Secondly, employees may use up to £1,800 of their pre-tax salary to buy shares (partnership shares). An employee can withdraw partnership shares from the SIP at any time but this may give rise to a tax charge.
- (c) The employer can award matching shares to employees who buy partnership shares (matching shares), up at a maximum ratio of two matching shares for each partnership share bought. Matching shares must normally be held in the SIP for between three and five years.
- (d) Finally, employees can reinvest dividends received on shares held under the SIP to buy additional shares (dividend shares).

Employees who keep their shares in the SIP for five years pay no income tax or NIC on those shares. The tax treatment of shares withdrawn from the SIP before then depends on how long they have been held in the SIP but income tax and NICs will be payable where shares are withdrawn early. In addition, specified good leavers can withdraw their shares from the SIP at any time on a tax-free and NIC-free basis. Tax relief may also be available on the early withdrawal of shares in the event of certain cash takeovers.

A company will need SIP rules and a trust deed to establish a SIP, both of which must meet the requirements of the tax legislation. A UK trustee must be appointed, which is normally an external, professional trustee, or a subsidiary of the company establishing the plan. In addition, the company may wish to appoint a professional administrator to help it with the launch and ongoing operation of the plan.

A SIP can also be extended to employees outside the UK, although it is likely that a company would normally establish a separate non-tax favoured international plan based on a SIP to give it greater flexibility than the UK tax legislation allows.

### 10.3.3 Sharesave plans

The sharesave plan is an all-employee option plan under which employees are granted options to acquire shares, at an exercise price per share at a discount of up to 20 per cent., of the market value at the time of grant. The employee must agree to make savings into a special savings account. This type of plan gives participants income tax and NIC benefits.

Sharesave plans are beneficial from an employee's point of view as the plan has no financial risk. The employee can either exercise the option or, if the share price is not favourable, can simply withdraw their savings at the end of the savings contract.

The main features of a sharesave plan are:

- (a) *Eligibility*: all UK employees and full-time directors of the company must be invited to participate, although the company can impose a qualifying period of service of up to five years.

- (b) *Savings contract*: Each employee must enter into an HMRC-approved savings contract with a bank or building society under which they make savings contributions of between £5 and £500 a month for three or five years.
- (c) *Number of shares under option*: The option is granted over the number of shares that the employee could buy at the exercise price with the proceeds of his savings contract at the end of the savings period.
- (d) *Leavers*: Early exercise is permitted for certain specified categories of leavers but only with savings made up to the date of exercise (i.e. exercise in part only), including any accrued interest on the savings (where applicable).
- (e) *Tax treatment*: No tax will usually be chargeable on the exercise of the option. Certain "good leavers" can exercise their options within three years of grant without triggering income tax. Tax relief may also be available on the early exercise of options in the event of certain cash takeovers. NIC is not payable in any circumstances.

Establishing and operating a sharesave plan is relatively straightforward and inexpensive. The bank or building society which provides the savings contracts may carry out the administration of the plan free of charge (or at a relatively low cost) and will assist companies in the launch and administration of the plan.

Sharesave plans can be extended on a global basis and many UK multinationals have offered the benefits of sharesave to employees outside the UK. In practice, a company would normally establish a separate non-tax favoured sharesave plan for employees outside the UK to give it greater flexibility.

# CONTINUING OBLIGATIONS FOR LISTED COMPANIES

- 11.1 Listing Principles
- 11.2 Disclosure of “inside information”
- 11.3 Obligation to maintain an insider list
- 11.4 Obligations in relation to disclosure of directors’ dealings
- 11.5 Financial Reporting
- 11.6 Liability for published information
- 11.7 Listing Rules; Key Continuing Obligations
- 11.8 Corporate governance
- 11.9 Sanctions for breach of the Listing Rules and the Transparency Rules
- 11.10 Sanctions for breach of MAR
- 11.11 Prospectus Rules
- 11.12 Continuing requirements of the Exchange
- 11.13 Compliance with the admission standards of the Exchange
- 11.14 FSMA



# 11. CONTINUING OBLIGATIONS FOR LISTED COMPANIES

Once a company is listed, it will be subject to the continuing obligations imposed on listed companies by, among others, the FCA, the Market Abuse Regulation and the Exchange. The principal requirements which apply to a company with a Premium listing of shares are outlined in this section.

## 11.1 Listing Principles

Chapter 7 of the Listing Rules sets out two Listing Principles (applicable to all listed companies) and six Premium Listed Principles, which the FCA believes reflect the fundamental obligations of Premium listed companies. These principles are

designed to ensure adherence to the spirit – as well as the letter – of the Listing Rules in the interests of promoting a fair and orderly market. The directors and the company must have regard to the Listing Principles and the Premium Listed Principles in their application of the Listing Rules and the Transparency Rules.

<b>Principle 1</b>	A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations
<b>Principle 2</b>	A listed company must deal with the FCA in an open and co-operative manner
<b>Premium Listing Principle 1</b>	A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors
<b>Premium Listing Principle 2</b>	A listed company must act with integrity towards holders and potential holders of its premium listed shares
<b>Premium Listing Principle 3</b>	All equity shares in a class that has been admitted to premium listing must carry an equal number of votes on any shareholder vote
<b>Premium Listing Principle 4</b>	Where a listed company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each class should be broadly proportionate to the relative interests of those classes in the equity of the listed company
<b>Premium Listing Principle 5</b>	A listed company must ensure that it treats all holders of the same class of its listed equity shares that are in the same position equally in respect of the rights attaching to those listed equity shares
<b>Premium Listing Principle 6</b>	A listed company must communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation or continuation of a false market in those listed equity shares

Listing Principle 1 is particularly important in the context of the company's general obligation of disclosure of inside information (see section 11.2). The company and its directors must ensure that systems are in place to enable them to identify whether any obligations arise under Listing Rule 10 (Significant Transactions) and Listing Rule 11 (Related Party Transactions) and to ensure the release of timely and accurate information to the market in accordance with their disclosure obligations. Premium Listing Principle 6 also reinforces the general obligation of disclosure of inside information to the market.

Premium Listing Principle 1 puts the onus on the company to ensure that its directors are properly educated about their continuing obligations as directors of a listed company.

## 11.2 Disclosure of “inside information”

A key continuing obligation, contained in MAR, is the requirement to notify the public as soon as possible of any “inside information” which directly concerns the company.

“**Inside information**” is information relating to an issuer which is of a precise nature, which has not been made public, which relates directly or indirectly to any member of the issuer's group or any of their securities, and which if made public would be likely to have a significant effect on the price of the issuer's securities or related derivative financial investments.

The information in question will need to satisfy each limb of the test described above to be classified as inside information requiring disclosure. In determining whether the information in question would be likely to have a significant effect on the price of the company's shares, it is necessary to assess whether the information is of a kind which a reasonable investor would be likely to use as part of the basis of his investment decision (the “**reasonable investor**” test).

Notifiable developments may relate to a change in the company's financial condition, performance of its business or performance expectations and major new developments in the business.

A company is permitted to delay disclosure of inside information to the market in limited circumstances, provided that (i) the company has legitimate interest in delaying the disclosure, (ii) the omission would not be likely to mislead the public, and (iii) the company is able to ensure the confidentiality of the information.

Where there is press speculation or market rumour about the company which is largely accurate, and the information underlying the rumour is inside information, then it is likely that the company will not be able to delay disclosure, as it will no longer be able to ensure the confidentiality of the information. On the other hand, knowledge that the press speculation or market rumour is false is not likely to amount to inside information and, even if it does, companies will, in most cases, be able to delay disclosure (often indefinitely).

Where a company has an internet site, it must ensure that all information announced via an RIS is posted on its internet site. Access to the Company's website where inside information is contained must be non-discriminatory and free of charge. The inside information must be easy to find and located in an easily identifiable section of the website. The disclosed information should clearly indicate the date and time of disclosure. Information must be maintained on a company's website for a period of five years following publication.

As referred to above, a company may delay announcing inside information so as not to prejudice its legitimate interests but is required, when the relevant information is announced, to notify the FCA in writing of its decision to delay that announcement. The notification to the FCA must include certain specified information, including the date and time of the decision to delay the disclosure of inside information and the identity of all persons with responsibilities for the decision to delay the public disclosure of such information. A company can also be required to provide a written explanation of its decision to delay the announcement of inside information on request by the FCA.

### **11.3 Obligation to maintain an insider list**

MAR also requires companies to compile and maintain lists of those persons (including officers, employees, and persons/ advisers acting on its behalf) working for them who have access to inside information (the "**insider list**"), whether this access is on a regular or occasional basis.

The insider list, which must be maintained for five years, must include details explaining why a person is on the list and it must be updated promptly whenever (a) there is a change in the explanation of why a person is on the list; or (b) any new person has access to inside information.

In addition, a list must be kept of all individuals at a company's advisers or other persons acting on behalf of a company who are aware of any inside information relating to the company. A company may choose to maintain this list itself with the assistance of its advisers/persons acting on its behalf, or, in line with previously accepted principles, a company may choose to maintain a list of principal contact(s) at the company's advisers or other persons acting on behalf of the company who are aware of any inside information relating to the company and make effective arrangements for such advisers/persons to compile their own list of insiders and deliver such list upon demand to the company and/or the FCA.

Employees having access to inside information are required to acknowledge in writing that they are aware of their legal and regulatory duties which follow from having access to inside information and are aware of the sanctions applicable to inside dealing and unlawful disclosure of such information.

A failure to compile and/or maintain an insider list would be treated as a breach of MAR or of the Listing Rules (namely Listing Principle 1), the sanctions for which are discussed in sections 11.9 and 11.10 respectively.

## 11.4 Obligations in relation to disclosure of directors' dealings

MAR requires “**persons discharging managerial responsibilities**” (“**PDMRs**”) within the company (and persons closely associated with them (“**PCAs**”)) to notify the company and the FCA of all transactions conducted on their own account in the shares or debt instruments of the company or in derivatives or any other financial instruments relating to those shares or debt instruments within three business days of the transaction occurring. The company has an obligation to notify this information to the market within the same three business day timeframe.

A PDMR is a person who is:

- (a) a director of the company; or
- (b) a senior executive of the company who has regular access to inside information relating, directly or indirectly, to the company and who has power to make managerial decisions affecting the future development and business prospects of the company.

Whilst MAR contains a de minimis threshold of 5,000 Euros below which no notification any of transaction is required by either a PDMR or their PCAs, due to the difficulties in tracking when a threshold has been reached, most companies choose to ignore the threshold and require PDMRs to notify all relevant transactions and to request that they notify their PCAs that all relevant transactions must be notified.

A PCA is a person who is:

- (a) a PDMR’s spouse, civil partner, dependent child;
- (b) any relative of a PDMR who has co-habited with the PDMR for at least 12 months; or
- (c) a legal person, trust or partnership:
  - (i) the managerial responsibilities of which are discharged by a PDMR or by a person referred to at (a) or (b) above;
  - (ii) which is directly or indirectly controlled by a PDMR or by a person referred to at (a) or (b) above;
  - (iii) which is set up for the benefit of a PDMR or a person referred to at (a) or (b) above; or
  - (iv) the economic interests of which are equivalent to a PDMR or a person referred to at (a) or (b) above.

In addition to these obligations, Chapter 5 of the DTRs and the Listing Rules specify a number of other matters requiring public disclosure, such as information regarding major interests in the company’s shares and changes in the composition of the board, including the appointment of any new directors.

Subject to certain limited exceptions, no information requiring public disclosure pursuant to a continuing obligation may be disclosed to any third party in advance of its public release.

## 11.5 Financial Reporting

Chapter 4 of the DTRs sets out the key financial reporting obligations which apply to a listed company whose home state is the UK.

### 11.5.1 Annual financial report and accounts

A listed company must publish its annual financial report and accounts (audited by independent accountants) no later than four months after the end of the relevant financial period. The annual financial report must include the company's audited financial statements, a management report and a responsibility statement made by those persons responsible for the report within the issuer.

The persons responsible for the report will be required to state that, to the best of their knowledge:

- (a) the financial statements give a true and fair view of the assets, liabilities, financial position and profits and losses of the company; and
- (b) the management report includes a fair view of the development and performance of the business of the company and a description of the principal risks and uncertainties it faces.

Notwithstanding this statement, statutory liability for the information included in the annual financial report lies with the issuer rather than the persons responsible (see section 11.6 below).

In addition to the requirements of DTR 4, the Listing Rules specify that the annual financial report must include certain matters such as details of significant contracts and details of long-term incentive schemes.

UK listed companies are also required to prepare a strategic report. The strategic report must contain a fair review of the business of the company and a description of the principal risks and uncertainties facing the company. The review must present a balanced and comprehensive analysis, consistent with the size and complexity of the business, of:

- (a) the development and performance of the business of the company and its subsidiaries during the financial year; and
- (b) the position of the company and its subsidiaries at the end of the financial year.

The strategic report must also include, to the extent necessary for an understanding of the development, performance or position of the business, information about:

- (a) factors likely to affect the future development, performance and position of the company's business; and
- (b) environmental matters, employees and social, community and human rights issues.

In addition, the report must contain:

- (a) information on the company's strategy and business model; and
- (b) details of the number of men and women on the board, in senior management and in the business as a whole.

The company must also include a statement<sup>7</sup> describing how the directors have had regard to the matters set out in s.172(1) Companies Act 2006 during the financial year (see the blue box on page 90).

<sup>7</sup> Applies to financial years starting on or after 1 January 2019.

### Section 172 Companies Act 2006 Duty to promote the success of the company

- 1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to —
  - a) the likely consequences of any decision in the long term,
  - b) the interests of the company's employees,
  - c) the need to foster the company's business relationships with suppliers, customers and others,
  - d) the impact of the company's operations on the community and the environment,
  - e) the desirability of the company maintaining a reputation for high standards of business conduct, and
  - f) the need to act fairly as between members of the company.

There is a “safe harbour” provision whereby a company need not disclose information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.

The strategic report must also include a non-financial information statement which must contain information, to the extent necessary for an understanding of the company's

development, performance and position and the impact of its activity, relating to, as a minimum:

- (a) environmental matters (including the impact of the company's business on the environment);
- (b) the company's employees;
- (c) social matters;
- (d) respect for human rights; and
- (e) anti-corruption and anti-bribery matters.

If the company does not pursue policies in relation to one or more of the matters mentioned above, the statement must provide a clear and reasoned explanation for the company's not doing so. The non-financial information statement must also include:

- (a) a brief description of the company's business model;
- (b) a description of the policies pursued by the company in relation to the matters mentioned above and any due diligence processes implemented by the company in pursuance of those policies;
- (c) a description of the outcome of those policies;
- (d) a description of the principal risks relating to the matters mentioned in above arising in connection with the company's operations and, where relevant and proportionate;
  - (i) a description of its business relationships, products and services which are likely to cause adverse impacts in those areas of risk, and
  - (ii) a description of how it manages the principal risks; and
- (e) a description of the non-financial key performance indicators relevant to the company's business.

There is significant overlap between the information required to be included in the strategic report and the information to be included in the non-financial information statement. The Companies Act 2006 acknowledges the overlap and sets out where compliance with the requirements for the non-financial information statement will be treated as compliance with certain of the reporting obligations for the strategic report.

The strategic report must be approved by the board of directors and signed on behalf of the board by a director of the company or the secretary. A copy of the strategic report must be delivered to the Register of Companies. Non-compliance with the requirement for a strategic report may render the directors liable to a fine.

In addition, if the IPO includes a US Offer pursuant to Rule 144A, the company will thereafter need to satisfy the 144A Information Requirement but need not become subject to US public company reporting requirements (see section 5.6).

### **11.5.2 Half-yearly reports**

Chapter 4 of the DTRs requires a half-yearly report to be published no later than three months after the end of the period to which it relates. The report must include a condensed set of financial statements, an interim management report and a responsibility statement (similar to that required for the annual financial report).

## **11.6 Liability for published information**

Section 90A FSMA provides that a company with securities admitted to trading on a UK market (e.g. the Main Market of the London Stock Exchange) or which has the UK as its home state will be required to compensate persons who:

- (a) have acquired, continue to hold or disposed of their securities in reliance on information published via a RIS, or published by other means where the availability of such information has been announced via a RIS; and
- (b) who have suffered loss in respect of such securities as a result of an untrue or misleading statement in such information, or as a result of the dishonest omission of any matter required to be included in such information.

Liability is based on civil fraud concepts; a PDMR in the company must know that a statement is untrue or misleading or be reckless as to whether that was the case or must know that the omission is a dishonest concealment of a material fact. For these purposes, PDMRs are the directors of the company (or persons occupying the position of directors, by whatever name they are called). Certain other persons could also be PDMRs, but, importantly, the term is defined differently from the definition used for the purposes of DTR 3 (see section 11.4) and does not expressly refer to senior executives with access to inside information and power to make managerial decisions.

A company may also be liable where an investor acquires, continues to hold or disposes of securities and suffers loss as a result of any dishonest delay in publishing information. The company will only be liable where a PDMR acted dishonestly in delaying the publication of the information. A PDMR's conduct will only be regarded as dishonest if it is regarded as such by a person who regularly trades on the market in question and the PDMR was aware (or must be taken to have been aware) that it was so regarded.

The regime protects the company from other forms of liability for published information or delay in publishing information save in a limited number of circumstances (for example civil liability for market abuse).

The statutory liability regime for companies ensures that an investor acquiring, holding or selling shares in the market can only sue the company (and not the directors or, for that matter, auditors directly). However, if the company has to pay compensation to such an investor, the company can seek to recover this amount from a director whose knowledge, recklessness or dishonest concealment gave rise to this loss. In addition, these provisions do not rule out the possibility that a director could be liable to an investor or a third party in circumstances where the director assumes a duty of care to such person and acts in breach of such duty.

## 11.7 Listing Rules: Key Continuing Obligations

### 11.7.1 Pre-emption

A listed company proposing to issue equity shares for cash must first offer those securities to its existing shareholders in proportion to their existing shareholding.

### 11.7.2 Meetings of shareholders

A listed company is required to inform all its shareholders of the holding of meetings which they are entitled to attend. The company must also ensure that shareholders are given the opportunity to vote in person or by proxy.

Any information or facilities necessary to enable shareholders to exercise any other rights, including those in respect of the payment of dividends and the issue, exchange or repayment of securities, must also be made available by the company.

### 11.7.3 Requirement to carry on an independent business

A listed company must carry on an independent business as its main activity at all times. As part of this requirement, where the company has a controlling shareholder, it must have in place at all times a legally binding agreement with that shareholder which contains a number of **independence provisions** designed to ensure that the company can operate independently of its controlling shareholder (a **“controlling shareholder agreement”**) (see section 4.1.8).

Where, after admission, a person acquires a controlling stake in a company, the company will have a period of not more than six months to put in place a controlling shareholder agreement.

A premium listed company is required to notify the FCA without delay if it no longer complies with the independence provisions set out in the controlling shareholder agreement, or if it becomes aware that the controlling shareholder is not complying with the independence provisions in that agreement.

The company must also include a statement in its annual report from the board confirming that, where required, the company has entered into a controlling shareholder agreement. Where no such agreement has been entered into, the annual report will need to contain a statement that the FCA has been notified of the non-compliance, together with a brief description of the reasons for the company's failure to enter into such an agreement. Where an agreement is in place, the board will need to confirm that the independence provisions in the agreement have been complied with or, if this is not the case, include a description of the reasons for non-compliance and a statement that the FCA has been duly notified of it. Where any of the company's independent directors decline to support any of the relevant statements then this must be stated in the annual report.

Enhanced oversight measures will apply where a company or its controlling shareholder is not in compliance with independence provisions. In particular, where (i) the company is not in compliance with the independence provisions set out in the controlling shareholder agreement, (ii) the company becomes aware that the controlling shareholder is not complying with such provisions, or (iii) any independent director fails to support the statement in relation to such arrangements required to be included in the company's annual report, then all transactions with the controlling shareholder will become subject to prior independent shareholder approval, regardless of the size of the transaction. In other words, the concessions in Chapter 11 (related party transactions) regarding transactions in the ordinary course of business, small transactions and smaller related party transactions will be suspended (see section 11.7.5).

Where a company has a controlling shareholder, it will also need to ensure that the election and re-election of any independent director is approved by both the shareholders of the company and the independent shareholders of the company (i.e. excluding the controlling shareholder). If such approvals are not obtained then the company cannot propose a further resolution to elect or re-elect the proposed independent director until 90 days after the date of the original vote. Any such further resolution must be voted on within 30 days from the end of that 90 day period but may be passed by a single vote of the shareholders of the company (i.e. including the controlling shareholder).

Where a company has a sovereign controlling shareholder there is no requirement to put in place a controlling shareholder agreement.

#### 11.7.4 Significant transactions by listed companies

Chapter 10 of the Listing Rules governs the acquisition and disposal of shares and assets by listed companies. It classifies

these transactions according to the size of the transaction relative to the company itself, using a number of “**percentage ratio tests**”. Such tests are based on the gross assets, profits, consideration and gross capital of the company. Modified tests exist for transactions by certain types of listed companies such as property companies, mineral companies and scientific research based companies to reflect the specialist nature of their businesses. For further information on specialist issuers, see section 14.

Depending on the ratio, the company may have to send a circular to shareholders to convene a meeting to obtain shareholder approval or issue an announcement. Where an acquisition amounts to a reverse takeover of another company (i.e. the ratio amounts to 100 per cent. or more or the transaction otherwise results in a fundamental change in the company's business, board or voting control), trading in the company's securities will be cancelled and, following shareholder approval of the transaction, the company will need to re-apply for listing if the shares are to be re-listed.

#### 11.7.5 Related party transactions

Chapter 11 of the Listing Rules governs transactions with related parties. A related party is:

- (a) a person who controls or controlled within the last 12 months the exercise of 10 per cent. or more of the votes able to be cast on all or substantially all matters at general meetings of the company (“**substantial shareholder**”);
- (b) a director or shadow director (either current or within the last 12 months) of the company or its subsidiaries;
- (c) a person exercising significant influence over the company; or
- (d) an associate of (a) to (c).

In relation to a director, substantial shareholder or person exercising significant influence who (in each such case) is an individual, “associate” covers (i) family members; (ii) the trustees of any trust of which that individual or his family members are beneficiaries; and (iii) any company in which such individual or his family are able to exercise 30 per cent. or more of the voting rights at a general meeting or have the ability to appoint or remove directors holding a majority of voting rights at board meetings.

In relation to a substantial shareholder or person exercising significant influence which is a company, “associate” covers subsidiary and holding companies and any company whose directors are accustomed to act in accordance with the relevant entity’s directions.

A “**transaction with a related party**” for these purposes includes:

- (a) a transaction (other than a transaction in the ordinary course of business) between a company (or any member of its group) and a related party;
- (b) an arrangement (other than a transaction in the ordinary course of business) where the company (or any member of its group) and a related party each invests in, or provides finance to, another undertaking or asset; or
- (c) any other similar transaction or arrangement (other than a transaction in the ordinary course of business) between the company (or any member of its group) and another person the purpose and effect of which is to benefit a related party.

If a company (or any member of its group) proposes to enter into a transaction with a related party, the company must obtain

the approval of its shareholders prior to entering into the transaction (or if it is expressed to be conditional on such approval, prior to completion of the transaction) and ensure that the related party abstains from voting on the relevant transaction. Exemptions to the requirement to obtain the prior approval of shareholders in general meeting for a related party transaction apply where the transaction is classified as a small transaction or smaller related party transaction.

Modifications apply to the related party rules where a company has a sovereign controlling shareholder.

#### **11.7.6 Dealings by PDMRs**

MAR imposes express restrictions on PDMRs (see definition in section 11.4) dealing in securities of the company in the 30 days prior to the announcement by the company (or other securities whose price is determined by reference to the company’s shares) of each of its annual financial report and half yearly results.

Even though a company is no longer obliged under the Listing Rules to put a share dealing code in place, it remains market practice to do so and many companies’ share dealing codes impose restrictions on dealing in the securities of the company beyond those imposed by MAR.

The share dealing code’s purpose is to ensure that PDMRs do not abuse, and do not place themselves under suspicion of abusing, inside information that they may have or be thought to have, especially in periods leading up to an announcement of results (a “**close period**”) or of any other matter involving the company or any member of its group. See section 11.2 for a definition of “**inside information**”.

### 11.7.7 Cancellation of listing

A company that wishes the FCA to cancel its Premium listing must first issue a circular to shareholders and obtain the approval in general meeting of not less than 75 per cent. of the votes of those shareholders voting on the resolution.

Where a company has a controlling shareholder (see section 4.1.8), cancellation also requires the approval of a majority of the votes of the independent shareholders voting on the resolution.

## 11.8 Corporate governance

### 11.8.1 The UK Corporate Governance Code<sup>8</sup>

The UK Corporate Governance Code consists of principles of good corporate governance and a code of best practice.

The Listing Rules require that both UK-incorporated companies and overseas companies provide in their annual report and accounts a narrative on how they have applied these principles and a statement as to whether or not they have complied with the Code provisions. If the Code provisions (or any of them) have not been complied with throughout the whole of the accounting period a company must give an explanation of the reasons for non-compliance.

The main features of the Code include:

#### (a) Board leadership and company purpose

- Every company should be led by an effective and entrepreneurial board.

- The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned.
- The board should establish a framework of prudent and effective controls, which enable risk to be assessed and managed.
- Workforce policies and practices should be consistent with the company's values and support its long-term sustainable success.
- The board should understand the views of the company's key stakeholders and describe in the annual report how their interests and the matters set out in section 172 Companies Act 2006 (directors' duties) (see section 11.5.1) have been considered in board discussion and decision-making.
- In order for the board to meet its responsibilities to shareholder and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.
- For workforce engagement, one or more of a combination of the following methods should be used: a director appointed from the workforce; a formal workplace advisory panel; or a designated non-executive director. If the board adopts other methods of engagement it must explain what these are and how it considers them effective.
- The board should appoint one of the non-executive directors to act as the "**senior independent director**", to provide a sounding board for the chair and to act as an intermediary between the other directors and the shareholders.

<sup>8</sup> Refers to the 2018 version of the UK Corporate Governance Code which applies to financial years starting on or after 1 January 2019.

(b) **Division of responsibilities**

- The chair leads the board and at least half of the directors, excluding the chair, should be independent non-executive directors.
- Circumstances which would indicate a lack of independence include if the director: has been an employee of the group within the last five years; has had a material business relationship with the company in the last three years; receives additional remuneration from the company apart from a director's fee; participates in the company's share option scheme or is a member of the pension scheme; holds close family ties with any of the company's advisers, directors or senior employees; has cross directorships or significant links with other directors; represents a significant shareholder; or has served on the board for more than nine years.
- The chair should be independent on appointment and the role of chair and CEO should not be held by the same person.
- The chair should not remain in post for more than nine years from the date of first appointment, save where necessary for a limited period to facilitate effective succession planning and the development of a diverse board.
- When making new appointments, the board should take into account other demands on directors' time.
- Once appointed, no new additional external appointments should be undertaken without prior board approval.

(c) **Composition, succession and evaluation**

- Each board should establish a nomination committee to conduct the process for appointments and ensure plans are in place for orderly succession to the board and senior management positions.

- Both appointments and succession plans should be based on merit and objective criteria and, within this context, promote diversity of gender, social and ethnic backgrounds.
- The nomination committee should comprise a majority of independent non-executive directors.
- All directors should be subject to annual re-election.
- The annual report should describe the work of the nomination committee.

(d) **Audit, risk and internal control**

- The board should establish formal and transparent procedures and policies to ensure the independence and effectiveness of the internal and external audit functions and to satisfy itself on the integrity of the financial and narrative statements.
- The board should present a balanced and understandable assessment of the company's position and prospects.
- An audit committee should be established comprising of not less than three independent non-executive directors.
- One member of the audit committee should have recent and relevant financial experience and the committee as a whole should have competence relevant to the sector in which the company operates.
- The annual report should describe the work of the audit committee.

(e) **Remuneration**

- Executive remuneration should be aligned to the company's purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy.

- There should be a formal and transparent procedure for developing policy on executive remuneration and fixing directors' and senior management's remuneration.
- A remuneration committee of independent non-executive directors should be established.
- The chair of the committee must have served on a remuneration committee for at least 12 months before appointment.
- The annual report should describe the work of the remuneration committee.

### 11.8.2 DTR 7

DTR 7 contains some additional corporate governance requirements. DTR 7.1 requires a listed company to have an audit committee and sets out various requirements relating to the composition and function of the committee and the disclosures which it must make. The FCA has confirmed that compliance with specified provisions of the Code will satisfy the requirements of DTR 7.1.

DTR 7.2 requires a listed company to include a corporate governance statement in its directors' report and sets out the information which must be disclosed in that statement. Broadly speaking, compliance with the Code will satisfy the requirements of DTR 7.2. Alternatively, this statement can be set out in a separate report published together with the annual report or in a document published on the company's website.

## 11.9 Sanctions for breach of the Listing Rules and the Transparency Rules

The FCA has powers to issue a public censure or impose financial penalties of such amount as it considers appropriate for contraventions of the Listing Rules and the Transparency Rules

by any listed company or by any applicant for listing. In addition, if the FCA considers that any person who was at the material time a director of the company was "knowingly concerned" in the breach, he or she may also incur liability.

In certain circumstances, the FCA may decide that it is not appropriate to bring formal disciplinary proceedings against a relevant party, as appropriate. Where, for example, the breach of the Listing Rules by a listed company is minor or a director has taken immediate and full remedial action, the FCA may decide to issue a private warning to that person.

In addition, if the FCA considers that the company has contravened the Listing Rules or the Transparency Rules, it may, if the circumstances warrant it, cancel or suspend the company's listing. A suspension of listing will also result in the suspension of trading of the company's shares on the Exchange.

## 11.10 Sanctions for breach of MAR

The FCA has powers to issue a public censure or impose financial penalties for contraventions of MAR. These powers cover both issuers and PDMRs, along with directors and former directors who have been knowingly involved in a breach of MAR.

The FCA also has powers to suspend trading of a financial instrument where it considers it necessary for the purpose of the exercise by it of its functions under MAR. If the FCA suspends the listing of a company's shares, the Exchange will suspend trading of those shares.

## 11.11 Prospectus Rules

Where a company proposes to issue any further shares, it will need to consider whether a Prospectus will be required under FSMA and the Prospectus Rules. Where the share issue

constitutes an offer of shares to the public in the UK or involves an application for admission of the shares to trading on a Regulated Market in the UK, a Prospectus will be required unless a relevant exemption is available.

There are certain exemptions from the requirement to prepare a further Prospectus. For example, an offer to qualified investors only of shares representing, over a period of 12 months, less than 20 per cent. of the class of shares already listed would not require a Prospectus. An offer of shares to existing shareholders by way of a rights issue or open offer would, however, in the majority of cases, require the preparation of a Prospectus.

Where a Prospectus is required to be prepared in connection with a subsequent issue of shares and the company has published a Prospectus within the previous 12 months, the company may use that earlier Prospectus, subject to updating, for the new issue.

## 11.12 Continuing requirements of the Exchange

After admission, there are continuing requirements of the Exchange to be met. In particular, the Exchange requires that companies publish all price sensitive information on a timely basis and in accordance with the rules of their relevant competent authority. For UK listed companies, this means the continuing obligations contained in the Listing Rules and the DTRs published by the FCA.

The Exchange must be kept informed of any timetables for dividends, bonus issues, scrip dividends or other action affecting the rights of holders of existing securities. There are also specific rules for determining the “ex” date and posting of documents for open offers.

## 11.13 Compliance with the admission standards of the Exchange

The Exchange’s Admission and Disclosure Standards include compliance procedures. These procedures are aimed at ensuring the integrity and orderly operation of the market and a company must, on request, provide the Exchange with such information as it reasonably requires for such purpose or to verify whether the Admission and Disclosure Standards are being met. The Exchange can make additions to, dispense with or modify the application of the Admission and Disclosure Standards in appropriate circumstances.

In certain circumstances, the Exchange will suspend trading of a company’s securities, including:

- (a) when the listing of securities is suspended;
- (b) where the ability of the Exchange to ensure the orderly operation of its markets is or may be temporarily jeopardised;
- (c) on request by a company, approved by the Exchange.

If trading has been suspended, the Exchange may impose conditions prior to resumption of trading. In any event, the company must still comply with the Admission and Disclosure Standards during a suspension. The Exchange may also cancel the right of any company to have its securities traded.

Subject to the appropriate procedures being followed, where a company has contravened any Admission and Disclosure Standard, the Exchange may either censure the company privately or publicly, impose a fine, make an order that the issuer make restitution to any person (in circumstances where the issuer has profited from a breach of the Exchange’s rules at that person’s expense) or cancel the right of the company to have its

securities traded on the Exchange. These actions are subject to rights of appeal, which are set out in the Exchange's Admission and Disclosure Standards.

### **11.14 FSMA**

FSMA contains detailed provisions dealing with financial promotions. Breach of these provisions can trigger civil and criminal liability.

Further, while there are certain exemptions for listing applications, prospectuses and communications with shareholders, any

communication by a company (by whatever means) with the public should also be scrutinised to ensure that the communication is either not a financial promotion or, if it is, either (i) an exemption is available or (ii) the communication is approved by an authorised person, such as an investment bank. Breach of the financial promotion provisions can give rise to civil and criminal liability and could also lead to a transaction being unenforceable, so it is prudent to have any communications with the public, including shareholders, carefully checked by legal advisers to the company and, if necessary, approved by an authorised person.

# STANDARD LISTINGS AND LISTINGS OF EQUITY SHARES BY NON-UK COMPANIES

- 12.1 Standard listings of shares
- 12.2 Listings of equity shares by non-UK companies
- 12.3 Application of the Prospectus Directive and the Prospectus Rules to non-UK companies



## 12. STANDARD LISTINGS AND LISTINGS OF EQUITY SHARES BY NON-UK COMPANIES

Both UK-incorporated companies and overseas companies are eligible to apply for a Standard listing. This section looks at the conditions for admission and continuing obligations applicable to a Standard listed issuer and considers the exemptions and modifications that apply to a non-UK incorporated company listing equity shares.

### 12.1 Standard listings of shares

#### 12.1.1 Conditions for listing

Like a company seeking a Premium listing of shares, a company seeking a Standard listing must satisfy the basic eligibility conditions set out in Chapter 2 of the Listing Rules. In particular:

- (a) the securities must be issued by a body corporate;
- (b) the company must be in compliance with applicable legal and regulatory requirements; and
- (c) the company must have published a Prospectus which has been approved by the FCA.

In addition, upon listing becoming effective, at least 25 per cent. of the class of shares to be listed must be (and remain) in the hands of the public in one or more EEA states, and if the shares are also listed in a non-EEA state, the public in that other state.

However, a number of the admission conditions applicable to Premium issuers (see section 4.1) do not apply to Standard issuers. In particular, a company seeking a Standard listing of shares is not required to:

- (a) appoint a Sponsor (see section 4.1.5);
- (b) satisfy the admission conditions relating to the revenue earning track record and independent business (see sections 4.1.7 and 4.1.8); or

- (c) confirm to the FCA that the group has sufficient working capital for the company's present purposes (i.e. for at least the 12 months from the date of publication of the Prospectus) (although a working capital statement will still be required to be included in the Prospectus) (see section 4.1.9).

#### 12.1.2 Continuing obligations

In general, the continuing obligations for companies with a Standard listing in London are less onerous than those for a company with a Premium listing. If a company is in any doubt as to whether, or to what extent, a continuing obligation applies, the FCA must be consulted at an early stage.

The Listing Rules exempt a company with a Standard listing from compliance with a significant number of the continuing obligations which would otherwise apply to a company with shares admitted to the Official List. By way of example, a Standard listed issuer must comply with the two Listing Principles, applicable to all listed companies but not the six Premium Listed Principles, applicable only to companies with a Premium listing (see section 11.1). Under the Listing Principles, a company with a Standard listing must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations (Listing Principle 1) and to deal with the FCA in an open and co-operative manner (Listing Principle 2).

However, it is generally market practice for Standard listed issuers of shares to commit voluntarily to comply with a number of Listing Rule provisions that do not technically apply to them. In particular, a number of Standard listed issuers of shares have stated their intention in their Prospectus:

- in the event of a delisting, to seek the consent of not less than 75 per cent. of its shareholders voting in person or by proxy;
- to comply with the significant transaction and related party transaction requirements applicable to companies with a Premium listing or, in the case of those issuers having moved from AIM to a Standard listing, to continue to adhere to the AIM Rules relating to substantial transactions, related party transactions, reverse takeovers and fundamental change of business; and
- to comply (or explain any non-compliance) with the UK Corporate Governance Code.

These statements by Standard listed issuers can be viewed as a way of addressing criticisms levied at the Standard listing regime that investors have very little protection where, for example, a company undertakes a large transaction or related party transaction or seeks to delist its shares. However, it should be recognised that the comfort derived from such statements is limited. The FCA will not monitor or enforce a company's compliance and the board has the freedom to change its position on these matters, although any such change is likely to have negative ramifications for investor relations.

A company with a Standard listing must consider its obligations under MAR. In particular, it will be subject to the obligation to notify the public as soon as possible of any inside information which directly concerns it (see section 11.2).

### Quick Reference Guide

See the quick reference guide set out in Appendix 1 of this guide for more details on the key eligibility requirements and continuing obligations requirements which apply to a company seeking a Standard listing.

## 12.2 Listings of equity shares by non-UK companies

There are very few exemptions and modifications in the Listing Rules for non-UK incorporated companies (referred to in the Listing Rules as “overseas companies”) seeking to list equity shares, or with equity shares already listed on the Official List.

A non-UK company seeking a Premium listing on the Official List must satisfy the same basic conditions as a UK-incorporated company (see section 4). A non-UK company will be able to demonstrate compliance with the accounts condition in the Listing Rules (see section 4.1.6) where its previous three years' accounts have been prepared in accordance with auditing standards applicable in an EEA State or equivalent.

With very limited exceptions, a non-UK company with a Premium listing in London is required to comply with the same continuing obligations that a UK listed company is required to comply with under the Listing Rules and the DTRs, including compliance with the Listing Principles and the Premium Listing Principles. Any exemptions or modifications are set out next to the rules they apply to.

Only a number of small differences remain for overseas issuers. Notably, in DTR 5 (vote holder and issuer notification rules) there are different thresholds for UK-incorporated issuers and non-UK

incorporated issuers. In addition, the requirements of DTR 7.1 to have an audit committee (see section 11.8.2) only apply to UK-incorporated issuers.

As a general rule, where the Listing Rules refer to a requirement in legislation applicable to a UK-incorporated listed company, an overseas company must comply with that requirement so far as information available to it enables it to do so and compliance is not contrary to the law in its country of incorporation. The FCA may require written confirmation from an independent legal adviser as to whether compliance with a particular requirement is contrary to the law of the company's country of incorporation.

Finally, where the shares of a non-EEA company are not listed in its country of incorporation, or in the country in which the majority of its shares are held, the FCA will only approve the listing (whether Premium or Standard) if it is satisfied that the absence of such a listing is not due to the need to protect investors.

## **12.3 Application of the Prospectus Directive and the Prospectus Rules to non-UK companies**

It is important to consider the application of the Prospectus Directive and the Prospectus Rules to non-UK companies. The key considerations are set out below:

### **12.3.1 Determination of "home state"**

Where a company is making an offer of securities to the public or an application for admission to trading on a Regulated Market which will require the preparation of a Prospectus, it is important to identify that company's home state as it will be the competent authority of that home state which has the responsibility for approving any Prospectus prepared by the company (see section 6.1).

### ***On the horizon***

In September 2017, the European Commission published a proposal for an Omnibus Regulation which proposes to amend some key elements of Prospectus Regulation (which will replace the Prospectus Directive with effect from 21 July 2019). In particular, the Omnibus Regulation proposes that ESMA (and not national competent authorities) will be the approving authority for certain types of prospectuses from 2019. If these proposals are adopted, ESMA would become the approving authority for prospectuses drawn up by third country issuers meaning that the home state for third country issues would become, effectively, ESMA. The status of these proposals is currently unclear but, in light of the UK's exit from the EU on 30 March 2019 and subject to any transitional arrangements, it may be that these proposals never take effect in the UK.

Choice of home state can be important to a non-EEA issuer because a number of discretions exist under the Prospectus Directive which may be exercised differently by different competent authorities and different member states. For example, competent authorities of different member states will have differing rules regarding the language(s) in which the Prospectus must be drawn up.

This is a complicated area and any company with concerns about this should speak to its legal advisers.

### **12.3.2 Prospectus drawn up in accordance with third country legislation**

An issuer incorporated in a non-EEA state may be able to use a prospectus drawn up in accordance with its home country's legislation when seeking admission to the Official List if the FCA is satisfied that the prospectus has been drawn up in

accordance with international disclosure standards and that the information requirements, including the financial information, are equivalent to the requirements under FSMA, the Prospectus Directive Regulation and the Prospectus Rules. Where this is not the case, the company will be required to draw up a Prospectus in accordance with the Prospectus Rules.

This provision is particularly useful for companies with a listing in non-EEA jurisdictions that are seeking admission to the Official List as, subject to FCA approval, they may be able to use their existing prospectus rather than prepare a new Prospectus pursuant to the Prospectus Rules. The FCA has stated that it will apply this discretion on a case by case basis.

In 2011 ESMA issued an opinion (updated in June 2015) that a prospectus drawn up in accordance with the laws and regulations of Israel, can be considered equivalent to the requirements for a Prospectus under the Prospectus Directive, where it is accompanied by a wrapper containing the specified information set out in the annexes to that opinion.

This was followed, in February 2016, by a further opinion from ESMA that it considers that a prospectus drawn up according to Turkish laws and regulations can constitute a valid Prospectus under the Prospectus Directive for the purposes of its approval by the home competent authority of a Member State. There is no requirement for a wrapper with additional information.



# LISTING AN INVESTMENT ENTITY

- 13.1 What is an "Investment Entity?"
- 13.2 What is a Closed Ended Investment Fund?
- 13.3 Why list a CEIF?
- 13.4 Which market?



## 13. LISTING AN INVESTMENT ENTITY

This section sets out the specific requirements that apply to different types of investment entities seeking to list their shares.

### 13.1 What is an “Investment Entity?”

The FCA defines an “Investment Entity” as:

*“an entity whose primary object is investing and managing its assets with a view to spreading or otherwise managing investment risk.”*

An investment entity can take various forms in the UK, the most common being:

- (a) Closed-Ended Investment Fund (“**CEIF**”): a body corporate (such as a company or limited liability partnership), usually established offshore, which invites subscriptions from investors for its shares, partnership interests or other securities;
- (b) Investment Trust: a company rather than a trust approved for the purposes of acting as an investment trust by HM Revenue & Customs pursuant to the Corporation Tax Act 2010 (“**CTA 2010**”), which must be listed on the Main Market;
- (c) Open-Ended Investment Company (“**OEIC**”), known also in the UK as an “Investment Company with Variable Capital” or “**ICVC**”. OEICs are companies which are established and operated as OEICs under FSMA and associated regulations, and are authorised and regulated by the FCA; and
- (d) Traditional unit trust schemes authorised and regulated by the FCA.

In practice, the only investment entities that are regularly listed on the Exchange are Investment Trusts (which are required

under CTA 2010 to be listed) and CEIFs (which make up the majority of recent listings). This section therefore focuses on CEIFs, although the Listing Rules described below (as they apply to CEIFs) apply equally to Investment Trusts.

### 13.2 What is a Closed-Ended Investment Fund?

CEIFs most commonly take the form of a limited company, usually incorporated in an offshore jurisdiction, although they may also take other corporate forms which offer participants limited liability, such as a limited liability partnership. Consistent with the FCA definition of an “Investment Entity”, the essence of a CEIF is that it invests and manages its assets, being pooled funds contributed by subscribers for its securities, with a view to spreading investment risk. CEIFs are typically established at the initiative of investment management firms, who conceive the investment objective and strategy and then manage and invest the assets pursuant to an investment management agreement with the CEIF.

### 13.3 Why list a CEIF?

The advantages and disadvantages of a listing set out in section 1 of this guide apply largely also to a CEIF. An entity whose core business is the collection and investment of capital will clearly benefit from the influx of capital on an IPO, with the potential for further fundraising from public market participants. On the other hand, the more prescriptive corporate governance requirements and increased regulatory and public scrutiny may be a concern for institutional investors and the investment manager, who often place some value on unfettered control and discretion.

## 13.4 Which market?

The appetite of the manager and prospective investors for increasing market access and profile, whilst maintaining a measure of control, often determines the choice of market for a CEIF.

### 13.4.1 Main Market

The Main Market is widely regarded as one of the most prestigious venues for CEIF listings. A CEIF seeking admission of its shares to the Premium segment of the Official List and to trading on the Main Market must comply with the same basic conditions for admission to listing set out in Chapter 2 of the Listing Rules as any other entity (see section 4.1 of this guide in relation to the basic conditions). For example, a CEIF seeking a listing is likely to be required to publish a Prospectus that has been approved by the FCA (or equivalent EEA authority), its expected market capitalisation must be at least £700,000 and its shares must be freely transferable.

However, the Listing Rules as they apply to issuers of equity shares are modified in relation to CEIFs by Chapter 15 of the Listing Rules. Notably, the revenue earning track record requirement does not apply (perhaps unsurprisingly, given that many CEIFs seeking a listing are likely to be newly formed companies), although the requirements to demonstrate sufficient working capital, to ensure that at least 25 per cent. of the shares are in public hands and to appoint a Sponsor do apply. The continuing obligations referred to in section 11 (including those in relation to significant and related party transactions and statements relating to compliance with the Code) also apply, subject to certain modifications and additional requirements.

In addition, Chapter 15 requires that a CEIF must (amongst other things):

- (a) be able to act independently of its investment manager. Specifically, a majority of the board of the CEIF must not be directors, employees, partners, officers or professional advisers of (or to) the investment manager, its affiliates or any entity managed by it. Those members of the board that do fall within these categories must be subject to annual re-election by the shareholders. This is intended by the FCA to strengthen shareholder protection by making boards accountable to shareholders rather than the investment manager;
- (b) invest and manage its assets in a way which is consistent with its object of spreading investment risk;
- (c) not undertake any trading activity itself (or through a subsidiary) that is significant in the context of its group as a whole, although this does not prevent investee companies within the CEIF's investment portfolio from conducting trading activities and nor does it prevent the CEIF taking a controlling stake in investee companies. A CEIF that carries on a trading activity (either itself or through a subsidiary) that is significant in the context of its group as a whole is unlikely to be regarded as spreading risk appropriately;
- (d) not invest more than 10 per cent., in aggregate, of the value of its total assets at admission in other listed CEIFs unless they themselves have published investment policies to invest no more than 15 per cent. of their total assets in other CEIFs. It is generally accepted that the spreading of risk requires rules against concentration as a result of listed CEIFs investing in other listed CEIFs;
- (e) have a published investment policy setting out the CEIF's policies relating to asset allocation, risk diversification and gearing and including maximum exposures. This must be sufficiently precise and clear to enable assessment of the investment opportunity, identification of how risk-spreading

is to be achieved and assessment of the likely impact of any change to the investment policy. The CEIF must invest and manage its assets in accordance with its published investment policy and obtain shareholder approval before making any material changes to it; and

- (f) in the case that the CEIF seeking a listing is a “feeder” fund (i.e. it invests all of its assets in another fund; the “master” fund) the CEIF need not control or direct the master fund but must ensure that the master fund’s investment policies are consistent with the CEIF’s published investment policy and provide for spreading investment risk, and that the master fund in practice invests and manages its investments in a way that is consistent with the CEIF’s published investment policy and spreads investment risk.

In terms of regulation, the rules that apply to CEIFs that wish to list on the Main Market are more prescriptive relative to the rules of the other UK markets available to CEIFs. This means that those other markets may be more attractive to CEIFs that do not require the profile, liquidity or exposure afforded by a listing on the Main Market.

### 13.4.2 Alternative Investment Market

AIM is targeted at smaller companies that are seeking to grow, but has in recent years been popular with CEIFs as well. This is because the initial listing requirements and ongoing obligations under the AIM Rules are significantly less onerous than those under the Listing Rules. See section 16 of this guide for a detailed description of the requirements for admission to AIM. The key differences for CEIFs admitted to AIM as opposed to those listed on the Main Market are that:

- (a) there is no requirement that a majority of the members of the board (or equivalent body) is independent from the investment manager. However, in practice Nominated Advisers and investors may insist upon some form of strengthened corporate governance and, in practice, many AIM companies voluntarily submit to compliance with the Code;
- (b) there are no restrictions on holdings in other listed CEIFs or on conducting trading activities;
- (c) there is no requirement that the investment policies of any master fund coincide with the investment policies of any “feeder” CEIF admitted to AIM, nor that the CEIF police the activities of the master fund on an ongoing basis;
- (d) the rules on the content of the investment policy are less prescriptive than those applicable to the Main Market. The CEIF must state and follow an investment policy which must contain (amongst other things) details of target investments, investment strategy, investment spread, whether investments will be active or passive, the nature of target returns to shareholders and (if applicable) details of any policy on gearing, cross-holdings, maximum exposure limits and other investment restrictions. Amendments to the published investment policy require the prior approval of the shareholders; and
- (e) securities admitted to trading on AIM are not eligible for listing on the Official List and this precludes investment by institutions that are restricted to investing in “listed” securities. In addition, unlike the Main Market or the SFS (see section 13.4.3), AIM is not a Regulated Market, which means that certain financial institutions such as insurers and pension funds may be prohibited by their constitutive documents from investing in CEIFs admitted to AIM.

### 13.4.3 Specialist Funds Segment

The SFS of the Main Market is intended by the Exchange to be an alternative to markets which impose EU Directive minimum requirements, such as NYSE Euronext Amsterdam. The SFS regime imposes a lesser burden than the rules relevant to the Premium or Standard segments of the Main Market and AIM, both in terms of initial requirements for listing and ongoing obligations. As such, it is targeted at highly specialised CEIFs (for example hedge funds, private equity funds, infrastructure funds and funds with complex legal structures and security types) in which the investors are institutions, professionals or other highly knowledgeable investors. Particular points to note are:

- (a) there is no requirement for a Sponsor or a Nominated Adviser, reducing costs for the CEIF;
- (b) there is no requirement for adoption of a formal corporate governance regime or an explanation of deviations from the Code. In particular, there is no requirement that the board (or equivalent body) of the CEIF be independent of the manager;
- (c) there are no formal rules on the content of the investment policy and restrictions, although these are at the heart of a CEIF's operations and therefore the CEIF itself will invariably impose (and investors are likely to require) certain parameters that are intended to spread investment risk. Neither are there any restrictions or obligations in respect of cross-holdings in other CEIFs, trading activities or, if the CEIF is a feeder fund, ensuring the master fund's investments are consistent with the CEIF's investment policy. There is no requirement that amendments to the investment policy be approved by shareholders;
- (d) there are no rules in respect of notification of, or shareholder approval for, significant or related party transactions;
- (e) whilst the content requirements for a Prospectus are less onerous than those for listing on the Premium segment of the Main Market, it is still necessary for the Prospectus to comply with the minimum requirements of the Prospectus Directive and to have the Prospectus approved by the FCA;
- (f) as with AIM, securities admitted to trading on the SFS are not eligible for listing on the Official List, although (unlike AIM) the SFS is a Regulated Market and is therefore able to attract a wider range of institutional investors;
- (g) securities admitted to the SFS are not currently eligible for inclusion in the FTSE UK series of indices and are not therefore able to access the publicity benefits of those high-profile indices or attract investments from tracker and benchmark funds tied to the FTSE UK series; and
- (h) CEIFs admitted to the SFS must comply with the requirements of the Market Abuse Regulation and the FCA's DTRs.



# SPECIALIST ISSUERS

- 14.1 What is a specialist issuer?
- 14.2 Mineral companies
- 14.3 Scientific research based companies
- 14.4 Property companies
- 14.5 Start-up companies
- 14.6 Shipping companies
- 14.7 Sovereign controlled companies



## 14. SPECIALIST ISSUERS

This section looks at the regulatory modifications and exemptions that apply to specialist issuers, such as mineral companies, seeking to list their shares.

### 14.1 What is a specialist issuer?

The Listing Rules recognise that certain types of companies, as a result of the specific nature of their operations and/or the importance of the assets that they use or develop as part of their business, cannot readily satisfy the eligibility requirements which are applicable to other Premium listed companies. As such, the Listing Rules modify certain of the conditions for eligibility to listing that would otherwise apply to mineral companies and scientific research based companies. This section also addresses sovereign controlled companies seeking a Premium listing of either their equity securities or GDRs. Such companies are treated differently under the Listing Rules, not as a result of the nature of their operations, but as a result of the unique nature of the relationship between a company and its sovereign controlling shareholder, which is often seen a different to that with other types of controlling shareholder.

Certain specialist issuers are subject to additional disclosure requirements above and beyond those laid down in the Prospectus Rules. These additional disclosure requirements have been published by ESMA (the “**ESMA Recommendations**”) and apply to property companies, mineral companies, scientific research based companies, start-ups and shipping companies.

Investment companies are dealt with separately in section 13.

### 14.2 Mineral companies

For the purposes of the Listing Rules, a mineral company is a company or group, whose principal activity is, or is planned to be, the extraction of mineral resources (which may or may not include exploration for mineral resources). Mineral resources include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.

#### 14.2.1 Eligibility

The general eligibility requirements for listing, which are described in section 4, apply to mineral companies with a number of key modifications. Unlike other first time applicants, a mineral company that has been operating for a period of less than three years may still apply for admission to listing, provided that it has published or filed historical financial information since the inception of its business. However, mineral companies must still ensure that any historical financial information will put prospective investors in a position to make an informed assessment of the business for which a listing is sought. In addition, the requirement to demonstrate a revenue earning track record does not apply to a mineral company seeking a Premium listing of its shares.

If a mineral company does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, it must demonstrate that it has a reasonable spread of direct interests in mineral resources and has rights to actively participate in their extraction.

### **On the horizon**

In September 2017, the European Commission published a proposal for an Omnibus Regulation which proposes to amend some key elements of Prospectus Regulation. In particular, the Omnibus Regulation proposes that ESMA (and not national competent authorities) will be the approving authority for certain types of prospectuses from 2019. These proposals would include ESMA becoming the approving authority for prospectuses prepared by property companies, mineral companies, scientific research based companies and shipping companies. The status of these proposals is currently unclear but, in light of the UK's exit from the EU on 31 March 2019 and subject to any transitional arrangements, it may be that these proposals are never implemented in the UK.

The independent business test discussed in section 4.1.8 applies to mineral companies, as does the requirement to put in place a binding agreement with any controlling shareholder.

### **14.2.2 Disclosure**

In addition to the general disclosure requirements set out in the Prospectus Rules (see sections 6.4 and 6.5), mineral companies must also comply with the disclosure obligations set out in the ESMA Recommendations.

The ESMA Recommendations provide that a Prospectus issued by a mineral company should set out:

- (a) details of mineral resources and, where applicable, reserves and exploration results/prospects in accordance with the reporting standards of a specified list of acceptable codes and/or organisations (see below);

- (b) anticipated mine life and exploration potential or similar duration of commercial activity in extracting reserves;
- (c) an indication of the duration and main terms of any licences or concessions and legal, economic and environmental conditions for exploring and developing those licenses or concessions;
- (d) indications of the current and anticipated progress of mineral exploration and/or extraction and processing, including a discussion of the accessibility of the deposits; and
- (e) an explanation of any exceptional factors that have influenced the above information.

As mentioned above, the ESMA Recommendations provide that disclosure regarding reserves and resources should be in accordance with one of a number of internationally recognised mineral reserves and resources reporting codes, details of which are set out in Appendix 1 of the ESMA Recommendations.

The ESMA Recommendations also require that a competent person's report (also known as a mineral expert's report ("**MER**")) must be included in all prospectuses published by a mineral company in connection with a public offer or admission to trading of equity securities. The MER should be prepared by an individual who either possesses the required competency requirements as prescribed by the relevant codes/organisation or, if such requirements are not prescribed by the code/organisation, then the individual must:

- (a) be professionally qualified and a member in good standing of an appropriate recognised professional association, institution or body relevant to the activity being undertaken, and who is subject to enforceable rules of conduct;

- (b) have at least five years' relevant professional experience in the estimation, assessment and evaluation of the type of mineral or fluid deposit being or to be exploited by the company and to the activity which that person is undertaking; and
- (c) be independent of the company, its directors, senior management and its other advisers; have no economic or beneficial interest (present or contingent) in the company or in any of the mineral assets being evaluated and not be remunerated by way of a fee that is linked to the admission or value of the company.

The MER should report mineral resources and where applicable reserves and exploration results/prospects in accordance with one of the reporting standards that is acceptable under one of the prescribed codes and/or organisations.

In the absence of guidance set out in the relevant reporting code, ESMA recommends that the report contain the following:

- (a) a legal overview of the company's rights of exploration and extraction and the properties to which those rights attach;
- (b) a description of the geological characteristics of the properties;
- (c) a table providing data on the resources and reserves and a valuation of those reserves;
- (d) an assessment of (i) environmental closure liabilities and (ii) environmental permits and their status, along with commentary on facilities of material significance;
- (e) a selection of historic production statistics and operating expenditures; and
- (f) a discussion of the infrastructure.

The MER should be dated not more than six months before the date of the Prospectus and the Prospectus must contain a statement that no material changes have occurred since the date of the MER which would make the report misleading.

## 14.3 Scientific research based companies

### 14.3.1 Eligibility

Similar to mineral companies, the general eligibility requirements for listing, which are described in section 4, apply to scientific research based companies with a number of key modifications.

For the purposes of the Listing Rules, a scientific research based company is a company primarily involved in the laboratory research and development of chemical or biological products or processes or any other similar innovative science based company.

A scientific research based company that has been operating for a period of less than three years or one where the historical financial information does not put potential investors in a position to make an informed assessment of the business may still apply for admission to listing, provided that it has published or filed historical financial information since the inception of its business. However, the Listing Rules require that the company must:

- (a) demonstrate its ability to attract funds from sophisticated investors;
- (b) intend to raise at least £10 million at the time of listing;
- (c) have a capitalisation before listing of at least £20 million (based on a proposed issue price and excluding the value of any shares which have been issued in the six months before listing);

- (d) have as its primary reason for listing the raising of finance to bring identified products to a stage where they can generate significant revenues; and
- (e) demonstrate that it has a three year track record in laboratory research and development including:
  - (i) details of patents granted or progress as to their application; and
  - (ii) the successful completion of, or the successful progression of, significant testing of the effectiveness of its products.
- (b) details of the relevant collective expertise and experience of key technical staff;
- (c) information on whether the company has engaged in collaborative research and development agreements with organizations of high standing and repute within the industry, to the extent material to investors. In the absence of such agreements, an explanation on how such absence could affect the standing or quality of its research efforts; and
- (d) a comprehensive description of each product the development of which may have a material effect on the future prospects of the company.

Scientific research based companies must be able to demonstrate that they have the ability to carry on an independent business as their main activity and are required to put in place a binding agreement containing relevant independence provisions with any controlling shareholder (see section 4.1.8).

### 14.3.2 Disclosure

The ESMA Recommendations require that an issuer of shares whose principal activities are involvement in laboratory research and development of chemical or biological products or processes, including pharmaceutical companies and those involved in the areas of diagnostics and agriculture and which is a start-up company, is expected to disclose in its Prospectus:

- (a) details of its operations in laboratory research and development, to the extent material to investors, including details of patents granted and, in relation to its products, the successful completion of, or the successful progression of significant testing of the effectiveness of its products. If there are no relevant details, a negative statement should be provided. Where applicable, this information should be provided in the line item of research and development, patents and licenses;

A company covered by the ESMA Recommendations is also expected to include the information required for start-up companies (see section 14.5).

## 14.4 Property companies

### 14.4.1 Eligibility

The general eligibility requirements for listing described in section 4 apply to property companies, subject to some modifications.

For the purposes of the Listing Rules, a property company is a company which is primarily engaged in property activities, including (i) the holding of properties (directly or indirectly) for letting and retention as investments; (ii) the development of properties for letting and retention as investments; (iii) the purchase and development of properties for subsequent sale; or (iv) the purchase of land for development properties for retention as investments.

Where a company does not have a revenue earning track record, it must demonstrate that it has three years of development of its real estate assets represented by increases of the gross asset value of its real estate assets, evidenced by

the required historical financial information required and supported by a published property valuation report. Alternatively, the property company must demonstrate that 75 per cent., of the gross asset value of its real estate assets, as supported by a published property valuation report, are revenue generating at the point in time when the application for admission of the shares to a Premium listing is made. The property valuation report must be published in the company's Prospectus.

Where the company is relying on the modified Listing Rules referred to above but cannot comply with the requirement to have published or filed historical financial information that covers at least three years because it has been operating for a shorter period, the company must have published or filed historical financial information since the inception of its business.

#### 14.4.2 Disclosure

For the purposes of the ESMA Recommendations, a property company is a company whose principal activity is the purchase and/or holding of properties, both directly and indirectly, and the development of those properties for letting and retention as an investment. The definition of property covers freehold, heritable or leasehold property or any equivalent.

ESMA recommends that a Prospectus for a public offer or admission to trading of shares should contain a valuation report. The valuation report must:

- (a) be prepared by an independent expert;
- (b) give the date or dates of inspection of the property;
- (c) provide all the relevant details in respect of material properties necessary for the purposes of the valuation;
- (d) be dated and state the effective date of valuation for each property, which must not be more than one year prior to the

date of publication of the Prospectus provided that the company affirms in the Prospectus that no material changes have occurred since the date of valuation;

- (e) include a summary showing separately the number of freehold and leasehold properties, together with the aggregate of their valuations; and
- (f) include an explanation of the differences of the valuation figure and the equivalent figure included in the company's latest published individual annual accounts or consolidated accounts, as applicable.

### 14.5 Start-up companies

A start-up company is a company that has been operating in its current sphere of economic activity for less than three years. As such, start-up companies are not generally eligible for a Premium listing as they cannot satisfy the requirement to provide three year's historical financial information and therefore may be more suited to a Standard listing or admission to trading on AIM.

The term start-up company covers not only a company which has been in existence for less than three years but also a company which has completely changed its business less than three years ago. Companies formed for the purpose of acting as holding companies for existing businesses are not considered startup companies. Special purpose vehicles are not considered start-up companies as they are formed for the purpose of the issuance of securities, not to conduct a business.

A start-up company must include in its Prospectus a discussion of the company's business plan with a discussion of the company's strategic objectives, along with details of the key assumptions on which the plan is based, in particular with respect to the development of new sales and the introduction of

new products and/or services during the next two financial years and a sensitivity analysis of the business plan to variations in major assumptions. Companies are not obliged to include a business plan with figures.

The Prospectus must also refer to information such as:

- (a) the extent to which the company's business is dependent on any key individuals and identifying any such individuals, if material;
- (b) current and expected market conditions;
- (c) dependence on a limited number of customers or suppliers; and
- (d) the assets necessary for production not owned by the company.

The company may also choose to include a valuation report prepared by an independent expert on the services/products of the company, although this is not a mandatory requirement.

## 14.6 Shipping companies

For the purposes of the ESMA Recommendations, a shipping company is a company which, as its principal activity, operates in ocean-going shipping and which manages, leases or owns cargo and/or passenger vehicles either directly or indirectly.

ESMA recommends that a Prospectus prepared by a shipping company for a public offer or admission to trading of shares should contain the following:

- (a) the name of any ship management company or group (if other than the company) which manages the vessels, if any, together with an indication of the terms and duration of its

appointment, the basis of its remuneration and any arrangements relating to the termination of its appointment;

- (b) all relevant information regarding each material vessel which is managed, leased or owned either directly or indirectly by the company, including the type, place of the registration of the vessel, shipping owning company, financing terms, capacity and other relevant details; and
- (c) if the company has contracts to build new vessels or improve existing vessel(s), detailed information regarding each material vessel (detailed description of the cost and financing of the vessel (refund, guarantees, letters of commitment), charter type, dimension, capacity and other relevant details) shall be provided in the appropriate line item of the Prospectus, such as principal future investments or material contracts.

In the Prospectus a company is also expected to include a condensed valuation report which must:

- (a) be prepared by an experienced independent expert;
- (b) give the date or dates of inspection of the vessels and by whom it was prepared;
- (c) provide all the relevant details (valuation method) in respect of material vessels necessary for the purposes of the valuation;
- (d) detail separately any vessels whose acquisition is to be financed through the security issue;
- (e) be dated and state the effective date of valuation for each material vessel, which must not be more than one year prior to the date of publication of the Prospectus provided that the company affirms that no material change has occurred since the date of valuation; and

- (f) include an explanation of the differences of the valuation figure and the equivalent figure included in the company's latest published individual annual accounts or consolidated accounts, if applicable.

The condensed valuation report is not required if the company does not intend to finance one or more new vessels, where there has been no revaluation of any of the vessels for the purpose of the issue, and it is prominently stated that the valuations quoted are as at the date of the initial purchase or charter of the vessel(s).

## 14.7 Sovereign controlled companies

As of 1 July 2018, a new Premium listing category was created for companies controlled by a shareholder that is a sovereign country. The rationale for introducing a separate listing category for such companies is that whilst these companies are able to meet with the vast majority of the requirements imposed by the Premium listing regime, two particular Premium listing requirements – the requirement for a controlling shareholder agreement and advance approval of transactions with the sovereign – can present practical obstacles to some sovereign companies.

Rather than create a structural barrier that excludes such companies from obtaining a Premium listing, the FCA introduced a separate regime which recognises that the relationship between a company and a sovereign controlling shareholder is likely to be different from that with other types of controlling shareholder, with sovereigns often having different motivations and constraints from other shareholders and issuers having a different or wider range of interactions with a state, or parts of a state, than they would with other controlling shareholders.

### 14.7.1 Eligibility

In order to fall within the definition of a sovereign controlled company, a company will need to demonstrate that substantive control is being exercised by the state in question. In particular, the state will need to hold 30% or more of the voting rights of the company. The FCA has stated that a passive stake held by a sovereign wealth fund is unlikely to meet the requirement to demonstrate substantive control by the state. The state which is the sovereign controlling shareholder will need to be one which is recognised by the UK at the time of the application. There are to be no restrictions on eligibility based on the country of incorporation of the applicant company. However, companies that are not incorporated in the UK may not be eligible for index inclusion in the FTSE UK series.

Sovereign controlled companies will be required to comply with the higher regulatory standards applicable to Premium listings rather than the standards applicable to a Standard listing (such as appointing a sponsor and demonstrating that the company can operate as an independent business, having a three-year revenue earning track record, having sufficient working capital and having unqualified financial statements).

This listing category also extends to companies listing interests in their equity in the form of GDRs as an alternative to the listing of their equity shares directly. This is the only manner in which GDRs can be Premium listed (refer to section 15 for more on GDR listings).

### 14.7.2 Investor protections

All the existing investor protections applicable to existing Premium listings (commercial companies) will apply, subject to two specific modifications which the FCA considers appropriate for sovereign controlled companies:

- (a) the requirement for there to be a controlling shareholder agreement (i.e. a relationship agreement) between the sovereign and the company will not apply. However, the rules requiring a separate shareholder resolution of independent shareholders on the election and re-election of independent directors will still apply to sovereign controlled companies; and
- (b) whilst the sovereign controlling shareholder will be considered a related party, the requirement to obtain a fair and reasonable opinion from a sponsor for all but the smallest, and exempt, related party transactions, and the need to obtain independent shareholder approval for the largest related party transactions, will not apply to sovereign controlled companies. However, sovereign controlled companies will still be required to disclose details of any smaller and Class 2 related party transactions to the market at the time of the transaction on the same basis as conventional commercial companies. This is an express recognition of the fact that sovereign countries are very different entities from private-sector controlling shareholders with different motivations. Investors are left to make their own judgement of how the sovereign interacts with the company based on these market disclosures.

Chapter 21 of the Listing Rules contains eligibility requirements and continuing obligations designed to ensure that the rights (and in some cases obligations) attaching to the underlying class of equity share must “pass through” to the GDR holder. So, for example, whilst a vote required pursuant to Listing Rule 10 on a significant transaction would be carried out at the level of the underlying class of equity shares, the voting rights must pass through to the GDR holders to enable them to exercise their rights as if they were a holder of the underlying equity shares.

### **14.7.3 Depositary receipts**

Whilst GDRs historically have not been eligible for Premium listing, those issued in respect of the equity shares of sovereign controlled companies will be eligible for Premium listing. In determining whether the 30% threshold for control in the definition of “sovereign controlled company” has been met, it will be calculated on the basis of voting rights attaching to the underlying equity shares.



# LISTING GLOBAL DEPOSITARY RECEIPTS

- 15.1 What are Global Depositary Receipts (or “GDRs”)?
- 15.2 Which rights attach to GDRs?
- 15.3 How can GDRs be listed in the UK and which Listing Rules apply?
- 15.4 Advantages of a GDR listing
- 15.5 Disadvantages of a GDR listing
- 15.6 Key differences in listing requirements for GDRs and Premium listings of shares
- 15.7 Key differences in continuing obligations for GDRs and Premium listings of shares



## 15. LISTING GLOBAL DEPOSITARY RECEIPTS

GDRs are securities which typically represent the ownership of a company's shares, and are issued on behalf of a company by a depositary bank. This section addresses how GDRs may be listed and the advantages and disadvantages of a GDR listing.

### 15.1 What are Global Depositary Receipts (or “GDRs”)?

GDRs are typically issued in respect of an overseas company from an emerging market, and are most often purchased by sophisticated or professional investors. GDRs are usually admitted to the Official List and traded on the Exchange independently from the underlying securities (which may not themselves need to be listed securities).

When a company raises money through a GDR issue, each GDR represents a certain number of shares (for example, one GDR for every share or one GDR for every five shares) usually determined by a desire to keep the price per GDR within a liquid range. The shares to be represented by the GDRs are transferred to the depositary bank, which holds the shares on trust for the benefit of the GDR holders pursuant to the terms of the deposit agreement.

### 15.2 Which rights attach to GDRs?

The rights and obligations of the company, the depositary bank and GDR holders are set out in a deposit agreement and in the conditions of the GDRs. These terms are then summarised in the Prospectus. Subject to local law restrictions, the deposit agreement aims to give the GDR holder similar or the same rights as a direct shareholder would have in the company. Although there can be differences between transactions, the following key points are commonly included in deposit agreements for most GDR programmes.

#### 15.2.1 Corporate communications

The depositary bank is usually required to notify GDR holders of any corporate communications it receives from the company, for example notices of meeting, share buybacks, dividends or rights issues.

#### 15.2.2 Voting rights

Technically, the depositary bank has the voting rights attaching to the shares underlying the GDRs because the shares are legally registered in its name or the name of its local custodian. It will pass these rights through to GDR holders and is usually required to vote the shares in accordance with, and in proportion to, the instructions of the GDR holders.

#### 15.2.3 Dividends

The depositary bank receives dividends from the company and pays these to the GDR holders. Usually the depositary bank pays dividends to GDR holders in US dollars rather than in the currency of the country where the company is incorporated and the depositary will carry out the required currency conversion for GDR holders. The depositary may also be able to reduce or eliminate withholding tax on dividends by making use of double tax treaties.

#### 15.2.4 Deposit/withdrawal

Investors are usually permitted to deposit shares into the GDR facility and receive GDRs from the depositary bank in exchange (or to withdraw shares from the GDR facility in exchange for returning GDRs to the depositary bank). Investors typically bear the fees for any deposits or withdrawals they make.

### 15.2.5 Direct enforcement by GDR holders

The GDR holders are usually permitted to enforce their rights under the deposit agreement directly against the company. Unlike a trustee for an issue of debt securities, the depositary bank would not typically be required to take enforcement action against the company on behalf of the GDR holders.

## 15.3 How can GDRs be listed in the UK and which Listing Rules apply?

GDRs can be admitted to the Official List and to trading on the Main Market of the Exchange, which is a Regulated Market for the purposes of EU securities law. It is also possible to list GDRs on the Professional Securities Market of the Exchange (which is an Exchange-regulated market), although this is less common.

Chapter 18 of the Listing Rules deals with GDR listings. GDR issuers (other than sovereign controlled companies that may seek a Premium listing of GDRs – see section 14.7) are categorised as Standard listed issuers. Broadly speaking, the rules applicable to GDRs follow EU Directive minimum requirements. This is in contrast to the rules that apply to Premium listings of shares in the UK, which go beyond EU Directive minimum requirements.

This section focuses on the differences between the requirements for a Premium listing of shares as compared to a GDR listing. The listing requirements and ongoing obligations applicable to a GDR issuer are less onerous than for a Premium listing of shares (see sections 15.6 and 15.7).

### Quick Reference Guide

Please see the quick reference guide in Appendix 1 of this guide for a comparison of the key eligibility requirements and continuing obligations requirements which apply to Premium, Standard, GDR and AIM issuers.

## 15.4 Advantages of a GDR listing

### 15.4.1 Highly developed market

GDRs allow companies from emerging markets to achieve a listing of securities in a highly developed market such as London. This can mean greater liquidity, more extensive research coverage, and wider publicity than a listing in the company's home country. It may also be possible to raise larger amounts of money in London than in some local markets where there is less available capital.

As well as being developed, the GDRs themselves are a sophisticated and trusted security with relatively standardised terms and conditions. This permits a liquidity across the GDR market that is difficult to achieve across markets for local equity securities. For example, a Russian bank and a Middle-Eastern bank are both comparable and tradable within the same market and in the same currency if both have a GDR listing.

### 15.4.2 Access to investors

Many investors may choose not to invest in a company in a jurisdiction that poses difficult regulatory or legal issues. A GDR listing seeks to mitigate some of these obstacles by placing a US depositary bank in between the investor and the asset as an intermediary. The investor is able to rely on the local experience and due diligence of the depositary bank thereby reducing both its perceived and real exposure to local risks.

Some investors may be unable to invest in equities that are listed in emerging markets (or certain emerging markets), or may find such investments difficult in practice, for example, because of local regulations, foreign exchange restrictions or investment mandate limits which restrict or limit investments in certain countries or currencies or require minimum levels of liquidity. By listing GDRs in London, companies from emerging markets may be able to access a broad range of institutional investors who they may not have been able to reach in their home markets.

#### **15.4.3 Less onerous regulatory requirements**

In London, the eligibility and disclosure requirements for GDRs (which largely follow EU Directive minimum requirements) are less onerous than for a Premium listing of shares (which are subject to additional super-equivalent FCA rules and continuing obligations beyond EU Directive minimum requirements) (see sections 15.6 and 15.7). The Prospectus content requirements are also less onerous for GDRs than for a Premium listing of shares.

The IPO preparation process is also more straightforward and less time consuming. There is no practice or requirement to conduct a detailed forward-looking working capital analysis as there would be for a Premium listing nor is there a need to ask accountants to prepare a “long-form” financial due diligence report.

#### **15.4.4 Compatibility with home listing**

Since GDRs and shares are separate securities, a GDR listing can sit alongside a company’s share listing in its home jurisdiction and it may not be necessary to undertake any dual-listing arrangements or corporate restructuring (for example, interposing

a UK plc holding company) in order to achieve a GDR listing. This can also avoid local regulatory or political issues around re-locating the holding company from the home jurisdiction.

### **15.5 Disadvantages of a GDR listing**

#### **15.5.1 Less liquidity than Premium listing of shares**

As GDRs are specialist securities which are typically purchased by sophisticated or professional investors rather than retail investors, trading liquidity for GDRs can be lower than for Premium listings of shares.

#### **15.5.2 Investor perception of GDR listing**

It has been suggested that investors attach a premium to a Premium listing of shares compared to a GDR listing on the basis that the more stringent regulatory and corporate governance requirements applicable to share listings give comfort to investors as to the quality of the company’s management, business processes and market transparency. If this view is correct, it would imply a price premium and/or reputational benefit for companies who have a Premium listing of shares rather than a GDR listing. However opinions differ amongst market participants and some take the opposite view, that investors do not see much difference between the two categories of listing.

#### **15.5.3 FTSE eligibility**

To be eligible for inclusion in the FTSE UK indices a company must have a Premium listing of shares. GDR listings are not eligible for inclusion.

## 15.6 Key differences in listing requirements for GDRs and Premium listings of shares

Section 4 of this guide sets out the basic eligibility requirements which apply to a company seeking a Premium listing of its shares. A number of these eligibility requirements are equally applicable to GDR issuers, in particular the requirement to:

- (a) publish a Prospectus which has been approved by the FCA; and
- (b) have an appropriate public distribution of the company's securities.

However, there are a number of key differences between the eligibility requirements for a Premium listing of shares and for GDRs. In particular, a GDR issuer is not required to:

- (a) make a statement about the sufficiency of its working capital for the next 12 months;
- (b) carry on an independent business; or
- (c) appoint a Sponsor in connection with its listing application.

## 15.7 Key differences in continuing obligations for GDRs and Premium listings of shares

The key continuing obligations for Premium issuers of shares are set out in section 11 of this guide. Some of these continuing obligations are applicable to GDR issuers. In particular, GDR issuers must:

- (a) publish their annual financial report within four months of the end of the financial year, including audited financial statements, a management report and responsibility statement;

- (b) maintain a free float of 25 per cent. or more of the GDRs;
- (c) disclose any inside information to the market. The application of the Market Abuse Regulation is different for GDR issuers. In particular, it is the issuer of the underlying shares represented by the GDRs (and not the issuer of the GDRs) which must comply with the obligation to announce inside information to the market and maintain an insider list. The obligation on PDMRs and their persons closely associated to notify the issuer of any transactions in financial instruments of the issuer similarly applies to PDMRs of the issuer of the underlying shares, along with the restrictions on PDMM trading during certain prohibited periods; and
- (d) include a corporate governance statement in the directors' report. This statement must include specific information, including information about the corporate governance code to which the issuer is subject and any corporate governance code which the issuer may have voluntarily decided to apply. The statement must also contain a description of the main features of the issuer's internal control and risk management systems in relation to its financial reporting processes.

However, many of the continuing obligations applicable to Premium listed companies are not applicable to GDR issuers. By way of example, GDR issuers are not required to:

- (a) publish half-yearly financial reports, including condensed financial statements, a management report and responsibility statement; or
- (b) publish a detailed shareholder circular and obtain shareholder approval for certain significant transactions and/or related party transactions.



# ADMISSION TO AIM

- 16.1 Advantages of admission to AIM
- 16.2 Disadvantages of admission to AIM
- 16.3 Companies suitable for admission to AIM
- 16.4 Requirements for admission to AIM
- 16.5 Legal status of AIM and the requirement for a Prospectus
- 16.6 Typical admission process
- 16.7 AIM Designated Markets: a fast track route to AIM
- 16.8 Timescale
- 16.9 Liability of directors
- 16.10 Corporate governance
- 16.11 Ongoing obligations
- 16.12 Moving from AIM to the Main Market
- 16.13 Cancellation of listing



## 16. ADMISSION TO AIM

Since its launch in 1995, over 3,000 companies have joined the Alternative Investment Market (“**AIM**”), raising more than £100 billion from initial public offers and subsequent capital raisings. Its admission requirements and its ongoing regulation of member companies are set at a level which is intended to be stringent enough to maintain investor confidence but not so as to be prohibitive for young and/or growing companies. AIM is a multilateral trading facility operated by the Exchange and has been registered by the Exchange as a SME Growth Market.

### 16.1 Advantages of admission to AIM

While retaining the advantages of listing on the Main Market such as increased access to capital, increased liquidity for the company’s shares, the ability to make acquisitions using shares, obtaining an objective market value and an increase in the company’s public profile, admission to AIM also confers additional advantages:

#### 16.1.1 Lower eligibility requirements

The entry requirements for listing on the Main Market preclude many companies from joining. For instance, the requirement that 25 per cent, of shares be in public hands or that a company have a three year revenue earning track record can be particularly problematic, especially for newly established companies. By contrast, admission to AIM requires no trading record, there is no prescribed level of shares to be in public hands and there is no minimum market capitalisation requirement.

#### 16.1.2 Lower regulatory burden

A company admitted to AIM will not face the same level of continuous obligation requirements and restrictions as a company listed on the Main Market. The forty-five AIM Rules, in contrast to the Listing Rules for companies on the Main Market, cover just sixteen pages, do not use legal or technical jargon and are designed to be understood by all market participants.

The AIM Rules are available on the Exchange’s website with definitions and guidance notes to assist the understanding of individual rules.

#### 16.1.3 Lower cost

The cost of admission to AIM is likely to be cheaper than obtaining a Premium listing of shares on the Main Market. Furthermore, on the basis that a company admitted to AIM is subject to fewer continuing obligations than a company with a Premium listing of shares, the cost of maintaining admission to AIM will be cheaper than the cost of maintaining a Premium listing of shares.

#### 16.1.4 Policy on acquisitions

AIM companies are not generally required to produce further documents when effecting acquisitions and disposals. AIM is therefore ideal for companies looking to grow by acquisition.

#### 16.1.5 Taxation

Investors may be able to take advantage of several tax reliefs available when investing in a company admitted to AIM, increasing the attractiveness of investing in an AIM company. For companies, those with shares admitted to AIM are treated more favourably in the calculation of several taxes than companies with shares listed on the Main Market.

## 16.2 Disadvantages of admission to AIM

Admission to AIM carries with it similar disadvantages to those which would apply to a company seeking admission of its shares to listing on the Main Market, such as the dilution of control of existing owners, greater disclosure of information, stricter corporate governance and the cost of obtaining and maintaining admission (see section 1.2).

## 16.3 Companies suitable for admission to AIM

### 16.3.1 Size

Admission to AIM is ideally suited to mid-sized companies looking to raise capital without incurring the regulatory burden and restrictions imposed by a listing on the Main Market. There is no minimum market capitalisation requirement: ultimately the judgement as to whether a company is suitable for admission to AIM is made by the company's Nominated Adviser (see section 16.4.1).

### 16.3.2 Industry sector

Companies admitted to AIM are spread across the full range of industry sectors without a particular bias and include companies from the financial services, media and entertainment, mining, oil and gas, pharmaceuticals and biotechnology, real estate and technology sectors.

### 16.3.3 Foreign companies

A company does not need to be incorporated in the UK to be admitted to AIM. Foreign companies with existing listings on certain overseas stock exchanges can join AIM without having to issue an AIM Rules admission document through a fast track procedure. See section 16.7.

## 16.4 Requirements for admission to AIM

The main requirements for admission to AIM are outlined below:

### 16.4.1 Need for a Nominated Adviser (NOMAD)

Every company seeking admission to AIM must appoint a Nominated Adviser (also commonly known as a Nomad) – a corporate finance adviser approved by the Exchange to act in this capacity.

The Nominated Adviser plays a key role at admission, assessing the company's overall appropriateness and suitability for AIM and assisting it throughout the flotation process. The Nominated Adviser is responsible for warranting to the Exchange that, in its opinion, a company is appropriate for AIM. Therefore, although the Nominated Adviser is appointed by the company, its primary duty is to the Exchange. The Exchange has published AIM Rules for Nominated Advisers which set out the criteria for becoming a Nominated Adviser and the continuing obligations of a Nominated Adviser.

Once admitted, the company must retain a Nominated Adviser at all times to help it meet its continuing obligations and to deal with market issues as they arise.

### 16.4.2 Need for a Broker

Under the AIM Rules every AIM company must retain a broker at all times. The broker's role is to:

- (a) assess the level of investor interest in a company's AIM securities;

- (b) provide advice on market and trading related issues at admission and in the run-up to admission; and
- (c) advise on the pricing of shares and investment opportunities.

Often the Nominated Adviser will also have a broking team and a company may wish to appoint the same firm as Nominated Adviser and broker.

#### 16.4.3 Other advisers

Other advisers are also integral to supporting a company through the AIM admission process. Such advisers usually include a law firm, accountancy firm and often financial PR/ investor relations firms.

#### 16.4.4 AIM Rules Admission document

The AIM Rules require an applicant to produce an admission document (an “**AIM Rules admission document**”) in English and in an easily analysable and comprehensible form. This document must be made publicly available on the company’s website.

Schedule Two of the AIM Rules sets out what information is required to be disclosed in the AIM Rules admission document. It incorporates some, but not all, of the content requirements for an equity Prospectus required by the Prospectus Rules (for example, as would be required in the case of a company seeking a Premium listing of shares on the Main Market).

#### Contents of an AIM Admission Document

The AIM Rules admission document must contain information on:

- (a) the persons responsible for the document, which includes the company and its directors;
- (b) risk factors that are specific to the issuer or its industry and to the shares being admitted to AIM;
- (c) the issuer and its capital;
- (d) the issuer’s business;
- (e) organisational structure;
- (f) significant trend information;
- (g) certain board practices;
- (h) directors and employees;
- (i) major shareholders;
- (j) related party transactions;
- (k) financial information concerning the issuer’s assets and liabilities, financial position and profits and losses for the latest three financial years (or such shorter period that the issuer has been in operation);
- (l) material contracts;
- (m) the securities to be offered or admitted to trading;
- (n) selling shareholders;
- (o) expenses of the offer; and
- (p) any other information reasonably considered necessary to enable investors to form a full understanding of (i) the assets and liabilities, financial position, profits and losses and prospects of the applicant and the securities for which admission is being sought; (ii) the rights attaching to those securities; and (iii) any other matter contained in the admission document.

The company must take reasonable care to ensure that the information contained in the AIM Rules admission document is, to the best of the knowledge of the company, in accordance with the facts and contains no omission likely to affect the import of such securities.

The preparation of the AIM Rules admission document will take a considerable amount of time and effort and will be a collaborative work product with input from the company, the Nominated Adviser, the reporting accountants and the company's lawyers.

The AIM Rules admission document does not need to be reviewed or approved by the Exchange (unlike in the case of a company's Prospectus prepared in connection with it obtaining a Premium listing of shares on the Main Market where the FCA must approve it) but the Nominated Adviser is in effect risking its own reputation on the suitability, content and reliability of the document and they will closely supervise the drafting of the document.

In certain circumstances, however, a company will be required to prepare a Prospectus complying with the Prospectus Rules which must be approved by the FCA, as opposed to an AIM Rules admission document. See section 16.5 for details.

#### **16.4.5 Other documents**

There are many other documents that are often prepared in order to produce the AIM Rules admission document, in particular:

- (a) the AIM Rules require a statement by the company's directors to be included in the AIM Rules admission document that confirms that the company has sufficient

working capital for a period of at least 12 months from the date of admission of the company to AIM. Therefore, a working capital report will usually be prepared by the company in conjunction with its auditors to provide comfort that such a working capital statement can be made; and

- (b) an accountant's financial due diligence report (also known as the long-form report) on the company prepared for the Nominated Adviser and the directors of the company, the purpose of which is to assist the Nominated Adviser in understanding the company and to assess whether the company is suitable for admission to AIM.

#### **16.4.6 Transferability of shares**

The company's shares must be freely transferable, not subject to any pre-emption rights and eligible for electronic settlement.

The AIM Rules do not impose any requirement to apply pre-emption rights on new issues of shares and, as such, pre-emption rights will only apply where the company law requirements of the issuer's country of incorporation require it.

#### **16.4.7 Lock-in rule**

If the company has not been earning revenues for at least two years, the directors of the company or any group company and the substantial shareholders (anyone holding a direct or indirect interest in 10 per cent. or more of the class of the security to be admitted or 10 per cent. or more of the voting rights relating to the company) must agree not to dispose of any interest in the company's shares for a period of one year following admission. This rule is designed to prevent admission to AIM being simply a means by which owners can immediately realise their investment in the company.

#### **16.4.8 Requirement for a company website**

Each AIM company must, from admission, maintain a website on which up-to-date management and financial information on the company must be available free of charge. This website must include (amongst other requirements) a description of the company's business, the names of directors and significant shareholders.

In addition, the AIM company must put on its website all notifications that it has made in the past 12 months. Any inside information that it is required to notify to the market under the Market Abuse Regulation must be kept on the website for at least five years. Any AIM Rules admission document together with any circulars or similar publications sent to shareholders within the last 12 months must be put on the website. Any Prospectus must be kept on the website for at least five years. The company must update the website on a regular basis.

#### **16.4.9 Admission fee**

An admission fee is payable by all companies seeking admission to AIM. The admission fee is based on the market capitalisation of the company on the day of admission. An annual fee is payable by all companies whose equity securities or certificates representing shares are admitted to trading on AIM.

#### **16.4.10 Settlement arrangements**

An AIM company must ensure that appropriate settlement arrangements for its securities are in place, and in particular, AIM securities must be eligible for electronic settlement. On the basis that only shares created under the laws of England and Wales (and certain other limited jurisdictions) can be held or transferred in CREST directly, any non-UK incorporated issuers seeking admission of their shares to AIM must apply for a listing of

depository interests rather than a direct listing of their shares (see section 4.3 for more information about depository interests).

### **16.5 Legal status of AIM and the requirement for a Prospectus**

AIM is an Exchange-regulated market rather than a Regulated Market which means that companies seeking admission to AIM do not have to produce a Prospectus complying with the Prospectus Rules unless an offer of shares is made to the public and an exemption does not apply. The most commonly relied upon exemptions are if the offer is made solely to:

- (a) qualified investors (i.e. organisations which are authorised or regulated to operate in the financial markets); or
- (b) to less than 150 persons per EEA state.

Since the vast majority of IPOs on AIM are structured as private placings to institutional and other qualified investors, it is likely that most companies seeking admission to AIM will be able to rely upon one of the exemptions and will not be required to produce a Prospectus and will instead be required to prepare an AIM Rules admission document.

It is possible to admit to AIM all types and classes of securities including ordinary shares and preference shares.

Companies listed on AIM are not subject to the Listing Rules.

### **16.6 Typical admission process**

The procedure for admission to AIM is quicker and more flexible than the procedure for admission to the Main Market, largely because the AIM Rules admission document does not require review or approval by the Exchange prior to its publication.

The Nominated Adviser is required to submit an early notification form to the Exchange setting out some key information about the applicant. The form requires the Nominated Adviser to fully and clearly disclose all matters known to it that may be relevant to the Exchange's consideration of the application for admission and whether admission of the securities may be detrimental to the orderly operation, reputation and/or integrity of AIM. The early submission of this form allows for time for discussion between the Exchange and the Nominated Adviser, with a view to ensuring that any issues are dealt with at an early stage in the transaction, thereby limiting the risk of the application being delayed.

To produce the AIM Rules admission document an extensive legal and financial due diligence exercise will be conducted on the company and various accounting reports prepared (see section 16.4.5) to be reviewed by the Nominated Adviser.

A series of drafting meetings will then take place involving the company's directors/senior managers, the company's legal advisers, the Nominated Adviser and the Nominated Adviser's legal advisers in order to draft the AIM Rules admission document. Running alongside the drafting process, a verification exercise will be undertaken by the company's legal advisers on behalf of the company to confirm the accuracy of statements made in the document.

The company will give presentations to targeted investors to seek their commitment to buy the shares at admission.

Once there is sufficient take-up of the shares by investors, a pre-admission announcement must be made to the Exchange at least 10 business days prior to the expected date of admission to AIM.

At least three business days before the expected date of admission, the company must submit to the Exchange a completed application form and an electronic version of its AIM Rules admission document, along with its Nominated Adviser's declaration as to the suitability of the company and the company must pay the AIM admission fee.

If a Prospectus is required, an application must be made to the FCA for its approval. This requires the submission of the draft Prospectus (and various other documents) to the FCA at least 20 working days before the intended approval date of the Prospectus.

Admission becomes effective when the Exchange issues a dealing notice.

## **16.7 AIM Designated Markets: a fast track route to AIM**

A company which has had its securities traded on an AIM Designated Market for not less than 18 months prior to its intended date of admission to AIM, may apply to be admitted to AIM without being required to prepare an AIM Rules admission document.

The current AIM Designated Markets are:

Australian Stock Exchange; Deutsche Börse Group; Johannesburg Stock Exchange; NASDAQ; NYSE; NYSE Euronext; NASDAQ OMX Stockholm; Swiss Exchange; TMX Group; and the Official List.

Instead of preparing an AIM Rules admission document, the company is required to make an announcement to the market 20 clear days prior to the date of its expected admission to AIM which must include certain prescribed information.

## 16.8 Timescale

Admission to AIM is likely to take at least 14 weeks from the first exploratory meetings to the first day of dealing and can take up to 24 weeks. Much will depend on the extent to which material issues arise out of the accounting and legal due diligence investigations into the company. Although the process is less onerous than for a Premium listing of shares, obtaining admission to AIM still requires considerable time commitment from directors and senior managers.

## 16.9 Liability of directors

As with a listing on the Main Market, the directors of a company seeking admission to AIM are personally liable for the contents of the AIM Rules admission document, hence the need for the detailed verification exercise to be conducted by the company's legal advisers to ensure the document is accurate, complete and not misleading, and for the directors to include a statement to this effect in the AIM Rules admission document. The liability of the directors for the AIM Rules admission document may involve both civil and criminal penalties.

## 16.10 Corporate governance

An AIM company must disclose on its website details of a recognised corporate governance code that the board has decided to apply, how the company complies with that code, and where the company departs from its chosen corporate

governance code, an explanation of the reasons for doing so<sup>9</sup>. A company must review this information annually and the website should include the date on which this information was last reviewed.

The AIM Rules do not prescribe which corporate governance code a company should follow. However, most AIM companies choose to comply with either the UK Corporate Governance Code or "The Corporate Governance Code for Small and Mid-Size Quoted Companies" ("**QCA Code**"). The QCA, an organisation that seeks to promote the interests of small and mid-cap quoted companies, has published the QCA Code which applies key elements of the UK Corporate Governance Code and other relevant guidance to the particular circumstances of smaller quoted companies, including AIM companies.

## 16.11 Ongoing obligations

### 16.11.1 Disclosure of price sensitive information

AIM Rule 11 requires that the company must announce, without delay, any new development which is not public knowledge relating to a change in its financial position, sphere of activity, performance of its business or its expectation of its performance, which, if made public, would be likely to lead to a significant movement in its share price.

In addition, as AIM is an MTF, AIM companies are subject to the key continuing obligation set out in MAR to notify the public as soon as possible of any "inside information" which directly concerns the company (refer to section 11.2 for more information about this obligation).

<sup>9</sup> This requirement takes effect from 28 September 2018. However, all new applicants from 30 March 2018 are required to state which corporate governance code they intend to follow but otherwise have until 28 September 2018 to comply.

As the FCA is the competent authority for MAR, it is the entity that would investigate and enforce any breaches of MAR. By maintaining an overlapping disclosure obligation in the AIM Rules, the Exchange retains its own right to investigate and discipline AIM companies for a breach of AIM Rule 11. However, if the Exchange suspects a breach of MAR, it will refer the matter to the FCA.

### 16.11.2 Financial reports

The company must prepare a half-yearly report, which must be announced by no later than three months after the end of the relevant financial half-year, and must publish annual accounts not later than six months after the financial period to which they relate. Both of these timescales allow the company more time to prepare the reports than equivalent provisions applicable to companies listed on the Main Market.

The published annual accounts and half-yearly and any quarterly or similar reports for the last three years (or since admission, if less) must be published on the company's website. All financial reports must be posted and maintained on the website for at least five years.

An AIM company incorporated in the EEA must present its accounts in accordance with International Accounting Standards. If the company is not a parent company, it may prepare its financial information in line with local accounting standards. Non-EEA incorporated companies on AIM may use either International Accounting Standards, US GAAP, Canadian GAAP, Australian IFRS or Japanese GAAP.

### 16.11.3 Obligation to maintain an insider list

Article 18 of MAR also requires AIM companies to compile and maintain lists of those persons (including officers, employees,

and persons/advisers acting on its behalf) working for them who have access to inside information (the "insider list"), whether this access is on a regular or occasional basis. See section 11.3 for further information on the information that must be included in the list.

On 3 January 2018, AIM was granted SME growth market status. MAR contains an exemption for companies admitted to trading on an SME growth market from drawing up an insider list where (i) the company takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions application to insider dealing and unlawful disclosure of inside information; and (ii) the company is able to provide its regulator, upon request, with an insider list.

Prior to being granted SME Growth market status, AIM companies were required to comply with the full MAR requirements in relation to maintenance of insider lists. It remains to be seen how market practice will develop but it may be that they continue to prepare insider lists given that they will already have processes in place to enable this and in light of the difficulties of creating an insider list retrospectively, given the detailed information that must be supplied.

### 16.11.4 Disclosure of corporate transactions

Any transaction by an AIM company or one of its subsidiaries which exceeds 10 per cent. of any of the AIM class tests (similar to the percentage ratio tests set out in the Listing Rules – see section 11.7.4) is classified as a "**substantial transaction**". Transactions of a revenue nature in the ordinary course of business and transactions intended to raise finance that do not involve a change in the fixed assets of the group are excluded. Details of any substantial transaction must be notified to the

market without delay as soon as the terms of the transaction are agreed. Notification must include particulars of the transaction, including the names of the other relevant parties, the effect on the AIM company and any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.

A market notification is also required where the company undertakes a transaction with a related party (which includes a director or substantial shareholder of the company) and the transaction exceeds 5 per cent. of any of the AIM class tests. Any such notification must also include a statement that the directors of the company (with the exception of any director involved in the transaction as a related party) consider, having consulted with the Nominated Adviser, that the terms of the transaction are fair and reasonable insofar as shareholders are concerned.

#### 16.11.5 Transactions requiring shareholder approval

Where a company undertakes a transaction, or a number of transactions over a 12 month period, which would exceed 100 per cent. in any of the AIM class tests or which would result in a fundamental change in the company's business, board or voting control, it is known as a "**reverse takeover**". Any such transaction must be conditional upon the consent of shareholders and be notified without delay to the market. In addition, an admission document will be required in respect of the proposed enlarged entity. Where shareholder approval is given for the reverse takeover, trading in the securities of the AIM company will be cancelled. If the enlarged entity intends to seek admission to AIM, it will be required to make an application in the same manner as any other first-time applicant.

Shareholder approval will also be required for any disposal by a company which, when aggregated with any other disposal(s) over the previous 12 months, exceeds 75 per cent. in any of the AIM class tests (a "**fundamental disposal**").

#### 16.11.6 Dealings by directors and others

AIM companies are subject to the provisions of Article 19 of MAR which requires "**persons discharging managerial responsibilities**" ("**PDMRs**") within the company (and persons closely associated with them ("**PCAs**")) to notify the company and the FCA of all transactions conducted on their own account in the shares or debt instruments of the company or in derivatives or any other financial instruments relating to those shares or debt instruments within three business days of the transaction occurring. The company has an obligation to notify this information to the market within the same three business day timeframe. Refer to section 11.4 for further information about these definitions and this obligation.

The AIM Rules require companies to put in place a dealing policy setting out the requirements and procedures for directors and applicable employees dealings in any of the company's securities. The AIM Rules require that the dealing policy must address, amongst other matters, the close periods during which dealings are prohibited, the procedures for obtaining clearance and procedures to ensure that the company will be in a position to notify to the market dealings by PDMRs and PCAs that are required to be made public under MAR.

Separately under the AIM Rules, the company must also disclose to the market the appointment, resignation or dismissal of any director.

### **16.11.7 Significant shareholder disclosures**

UK-incorporated AIM issuers must comply with both Chapter 5 of the DTRs and the significant shareholder disclosure obligations in Rule 17 of the AIM Rules. Compliance with Chapter 5 of the DTRs in respect of AIM securities will usually mean that a company is complying with the significant shareholder disclosure obligations in AIM Rule 17 subject to certain provisos (see the Guidance Notes to AIM Rule 17 in the AIM Rules). AIM issuers not subject to Chapter 5 of the DTRs must continue to comply with AIM Rule 17 which requires the disclosure by an AIM company without delay of any relevant changes to any significant shareholders.

## **16.12 Moving from AIM to the Main Market**

It is not unusual for companies with securities admitted to AIM to seek to move up to the Main Market in due course. However, there is no fast-track procedure available to companies admitted

to AIM to move to the Main Market. Any company wishing to do so will be treated like any other new applicant and will need to demonstrate that it satisfies the FCA's eligibility requirements for admission to the Official List set out in the Listing Rules and complies with the requirements for admission to trading on the Main Market set out in the Exchange's Admission and Disclosure Standards.

## **16.13 Cancellation of listing**

To cancel a listing on AIM a company is required to obtain a special resolution from its shareholders (i.e. the consent of not less than 75 per cent. of votes cast) and announce its intention to delist at least 20 clear business days prior to such date.

### **Quick Reference Guide**

See the quick reference guide set out in Appendix 1 of this guide for a comparison of the key eligibility requirements and continuing obligations requirements for Premium, Standard, GDR and AIM issuers.



# APPENDIX 1



# APPENDIX 1

## QUICK REFERENCE GUIDE TO KEY ELIGIBILITY REQUIREMENTS AND CONTINUING OBLIGATIONS REQUIREMENTS FOR PREMIUM, STANDARD, GDR AND AIM ISSUERS

	Criteria	Premium Listing of Shares on Main Market	Standard Listing of Shares on Main Market	Standard Listing of GDRs on Main Market	Admission of Shares on AIM
<b>Eligibility</b>	Minimum Market Capitalisation	✓	✓	✓	✗
	Free transferability of shares	✓	✓	✓	✓
	Three year revenue earning track record	✓	✗	✗	✗
	Independent business	✓	✗	✗	✗
	Unqualified working capital statement	✓	✗ <sup>1</sup>	✗	✓
	Securities in public hands in the EEA <sup>2</sup>	25%	25%	25%	✗
	Lock up	✗ <sup>3</sup>	✗	✗	✓
<b>Supervision</b>	Requirement to appoint sponsor/nomad on admission	Sponsor	✗	✗	Nomad
	Requirement to retain sponsor/nomad post admission	✗ <sup>4</sup>	✗	✗	Nomad
<b>Listing Principles</b>	Issuer to comply with Listing Principles	✓ <sup>5</sup>	✓	✓	✗

1 Note, a working capital statement is still required to be made but it does not need to be unqualified.

2 Note, that the FCA has the power to accept a lower percentage of shares in public hands in the EEA (by, for example, including non-EEA institutional investors in the 25% or requiring a lower percentage altogether by means of a derogation).

3 In practice however, sponsor will usually require company, selling shareholders, directors and, in some cases, senior management to enter into lock up agreements for a specified period after admission.

4 Chapter 8 of the Listing Rules does require a sponsor to be appointed in certain circumstances post admission e.g. if the issuer is required to prepare a class 1 circular.

5 A premium listed company must also comply with the Premium Listing Principles.

	Criteria	Premium Listing of Shares on Main Market	Standard Listing of Shares on Main Market	Standard Listing of GDRs on Main Market	Admission of Shares on AIM
<b>Continuing Obligations</b>	Adherence to UK Corporate Governance Code on 'comply or explain' basis	✓	✗	✗	✗ <sup>6</sup>
	Significant transaction rules apply	✓	✗	✗	✓ <sup>7</sup>
	Related Party transaction rules apply	✓ <sup>8</sup>	✗	✗	✓ <sup>9</sup>
	General obligation of disclosure of price sensitive information	✓	✓	✓	✓
	Obligation to maintain an insider list	✓	✓	✓	✓
	Obligation to put in place a dealing code	✗ <sup>10</sup>	✗ <sup>11</sup>	✗	✓
<b>Financial Reporting</b>	Annual report and accounts	✓	✓	✓	✓
	Half-yearly reports	✓	✓	✗	✓
	Interim management statements	✗	✗	✗	✗
<b>Prospectus Requirements</b>	FCA-approved prospectus required on admission	✓	✓	✓	✗ <sup>12</sup>

6 The AIM Rules require AIM companies to publish details of a recognised corporate governance code and to state its compliance with that code, or explain any departures from the provisions of the Code. Whilst the AIM Rules do not specify which corporate governance code AIM companies must apply, many choose to comply with Code requirements or the QCA Corporate Governance Guidelines.

7 For reverse takeovers and disposals resulting in a 'fundamental change of business' only.

8 Exemptions apply for sovereign controlled companies.

9 Notification obligation only but requires a statement from the directors that the transaction is fair and reasonable.

10 Not a regulatory requirement but it is market practice for premium and standard listed issuers put in place a dealing code.

11 See footnote 10 above.

12 Unless an "offer to the public" for the purposes of section 85 FSMA 2000 is made. Otherwise a Nomad-vetted AIM Rules admission document will need to be prepared.



# GLOSSARY



# GLOSSARY

**144A Information Requirement** – Where securities are to be offered and resold into the US to QIBs in reliance on Rule 144A, the information which an issuer generally must agree to provide at any time to any QIB, or prospective purchasers of the securities from a QIB, on the request of the current holder of the securities.

**AIM** – Alternative Investment Market. The junior market of the Exchange. An Exchange-regulated market. See section 16.

**AIM Rules/AIM Rules for Companies** – Published by the Exchange, these rules set out the admission criteria and the continuing obligations which apply to a company seeking admission of its securities to AIM. See section 16.

**AIM Rules for Nominated Advisers** – Published by the Exchange, these rules set out the eligibility criteria for approval as a Nominated Adviser and the continuing obligations of Nominated Advisers. See section 16.4.1.

**Bookbuilding** – A process where the Global Co-ordinator and Underwriters market the IPO to potential institutional investors using a Price-Range Prospectus before the offer price and/or number of shares is determined to obtain expressions of interest as to the likely level and price at which the investors would be prepared to participate in the IPO. At the end of the marketing period, the price and size of the IPO are determined. See sections 5.2 and 7.1.

**Brexit** – The UK's exit from the EU on 29 March 2019.

**CEIF** – Close ended investment fund. See section 13.2.

**Code** – The UK Corporate Governance Code. Principles of good corporate governance and best practice recommendations published by the Financial Reporting Council. See section 11.8.1.

**Competent authority** – The authority designated as such by its member state that is responsible for, inter alia, approving Prospectuses. The FCA is the UK competent authority and will continue to retain responsibility for approving Prospectuses after Brexit. See section 6.1.

**Controlling shareholder** – any person who exercises or controls on their own or together with any persons with whom they are acting with concert, 30 per cent. or more of the votes of the company. See sections 4.1.8 and 11.7.3.

**Corporate Governance Rules** – Rules published by the FCA and found in Chapters 1B and 7 of the DTRs.

**CREST** – CREST is an electronic, paperless settlement system for UK securities operated by an independent company, Euroclear UK & Ireland Limited. CREST provides for the transfer of securities without written instruments, and evidences title to securities without a certificate. Members of the CREST system can transfer the securities that they hold by electronic book entry. The CREST settlement system is only open to securities of companies incorporated in jurisdictions other than the UK if the legislation under which they are incorporated is recognised as being compatible with CREST.

**Disclosure Requirements** – The requirements set out in articles 17, 18 and 19 of the Market Abuse Regulation which set out disclosure obligations for listed companies whose securities have been admitted to trading on a Regulated Market or MTF in the UK or for which a request for admission to trading on a Regulated Market or MTF in the UK has been made and disclosure obligations for directors and certain other personnel of such companies.

**DTRs** – Collectively, the Disclosure Guidance, the Transparency Rules and the Corporate Governance Rules.

**EEA** – European Economic Area.

**ESMA** – European Securities and Market Authority.

**ESMA Recommendations** – ESMA update of the CESR Recommendations on The Consistent Implementation of Commission Regulation (EC) No. 809/2004 implementing the Prospectus Directive. See sections 6.5 and 14.1.

**EU Directive minimum requirements** – EU legislative minimum requirements for admission to the Official List.

**EU IFRS** – IFRS as adopted by the European Commission pursuant to EU Regulation (EC) No. 1060/2002.

**Exchange** – London Stock Exchange plc, the principal RIE for the trading of shares in the London market. The Exchange operates three separate markets: (i) the Main Market; (ii) AIM; and (iii) the PSM. The Exchange also operates a number of trading systems for debt and equity securities. See section 2.4.

**Exchange Act** – United States Securities Exchange Act of 1934, as amended.

**FCA** – Financial Conduct Authority. The FCA has a number of functions which include setting and administering the criteria governing when a Prospectus must be prepared, admission to the Official List and the continuing obligations for listed companies.

**FS Act** – Financial Services Act 2012.

**FSMA** – Financial Services and Markets Act 2000.

**Global Co-ordinator** – Appointed where an IPO involves an offer of shares in different capital markets. The Sponsor often fulfils this role (solely or jointly with another bank) and will oversee the bookbuilding process. See section 3.1.3.

**GDR** – Global Depositary Receipt. Negotiable securities which represent the ownership in a company's equity, usually in the form of shares, and are issued on behalf of a company by a depositary bank. See section 15.

**Grey market trading** – This is the term used to describe trading in shares prior to those shares being admitted to the Official List and before official trading on the Exchange commences. While the shares may be traded on the Exchange, they trade subject to admission to the Official List and if the shares are not ultimately admitted to the Official List, all grey market trades are void and must be unwound. See section 4.4.

**HGS** – High Growth Segment, a Regulated Market operated by the Exchange aimed at high growth trading companies. See section 2.4.4.

**Home state** – Determined by the provisions of the Prospectus Directive. Broadly, for EEA companies issuing shares, the member state where the company has its registered office. See section 6.1.

**Host state** – The state where an offer to the public is made or admission to trading on a Regulated Market is sought, when different from the home state. See section 6.13.

**IAS Regulation** – EU Regulation No 1606/2002 that makes it mandatory for listed companies that prepare consolidated accounts to prepare audited accounts in accordance with IFRS.

**IFRS** – International Financial Reporting Standards as published by the International Accounting Standards Board.

**Investment Entity** – An entity whose primary object is investing and managing its assets with a view to spreading or otherwise managing investment risk. See section 13.

**IPO** – An initial public offer of shares, also called a flotation.

**ITF Announcement** – A public announcement made by the issuer which marks the first point in an IPO process where the issuer formally makes public that it intends to carry out an IPO and listing.

**Key information** – Information to be included in a Prospectus summary and which is essential to enable investors to understand the shares to which the Prospectus relates and to decide whether to consider the offer further. See section 6.3.

**Listing** – A two stage process involving admission to the Official List maintained by the FCA and admission to trading on an RIE, such as the Main Market.

**Listing Rules** – Rules published by the FCA and which set out the regulations governing the admission of securities to the Official List and the continuing obligations of listed companies.

**LTIP** – Long term incentive plan, a type of share plan commonly used to incentivise directors and employees by the award of company shares. See section 10.3.

**Main Market** – A Regulated Market operated by the Exchange. Equity, debt, depositary receipts and other types of security may be admitted to trading on the Main Market.

**Market Abuse Regulation or MAR** – The Market Abuse Regulation (EU) No 596/2014.

**MTF** – Multilateral trading facility. AIM is an MTF.

**Nomad or Nominated Adviser** – A corporate finance advisor approved by the Exchange to act as a Nomad. Must be appointed by a company seeking admission of its securities to AIM. See section 16.4.1.

**OEIC** – Open-ended Investment Company. See section 13.1.

**Official List** – A list maintained by the FCA of securities which have been officially listed by the FCA. See section 4 for the basic conditions to be satisfied by a company to gain admission to the Official List.

**OFR** – Operating and Financial Review. An issuer must include an OFR in its Prospectus. See section 6.5.1(d).

**PDMM** – A person discharging managerial responsibilities. See section 11.4.

**Premium listing** – Available to both UK and overseas companies. To achieve a Premium listing of equity shares, applicants must satisfy both EU Directive minimum requirements and additional super-equivalent requirements imposed by the FCA. See section 2.3.1.

**Price-Range Prospectus** – A Prospectus which contains a price-range within which the final offer price may be set and which is used in the bookbuilding process. See section 5.2.

**Prospectus** – The document required to be published by FSMA and the Prospectus Rules where a company either (i) makes an offer of shares to the public in the UK or (ii) applies for the admission to trading of its shares on a Regulated Market in the UK. The Prospectus comprises of three key parts, namely the Registration Document, Securities Note and Prospectus Summary. See section 6.

**Prospectus Directive** – EU Directive 2003/71/EC (as amended). This is to be repealed and replaced by the Prospectus Regulation with effect from 21 July 2019.

**Prospectus Directive Regulation** – EU Regulation No 809/2004 (as amended) which has direct effect in Member States and which implements certain provisions of the Prospectus Directive regarding the format, incorporation by reference, publication of prospectuses and dissemination of advertisements. Many of the provisions of this Regulation have been incorporated directly into the Prospectus Rules.

**Prospectus Regulation** – EU Regulation No 2017/1129, which will repeal and replace the Prospectus Directive. The Prospectus Regulation entered into force on 20 July 2017 and, subject to limited exemptions, will apply from 21 July 2019.

**Prospectus Rules** – Rules published by the FCA which require a company which is either (i) making an offer of securities to the public in the UK; or (ii) making an application for admission of its securities to trading on a Regulated Market in the UK to prepare a Prospectus in a prescribed format for approval by the FCA prior to publication.

**Prospectus Summary** – Forms part of the Prospectus and must contain certain “key information” relevant to the securities. See section 6.

**PSM** – The Professional Securities Market operated by the Exchange. An Exchange-regulated market for debt issuers. Securities listed on the PSM are also admitted to the Official List.

**QIBs** – Qualified institutional buyers to whom a Rule 144A offer may be made. See section 5.6.1.

**Registration Document** – Forms part of the Prospectus and contains prescribed information relating to the issuer. See section 6.

**Regulated Market** – A market recognised as such by its home state pursuant to the provisions of EU Directive 93/22/EC.

**Regulation S** – This regulation provides an exemption from the registration requirements of the Securities Act for offers and sales of securities outside the US. See section 5.6.2.

**Reporting Accountants** – Appointed by the company to, amongst other things, prepare the long form report and to report on the historical financial information in the Prospectus. For information regarding their role see section 3.1.5.

**RIE** – An investment exchange recognised as such under FSMA.

**RIS** – A regulatory information service. A company will use an RIS provider to receive and disseminate information which must be disclosed by it in accordance with the Prospectus Rules, the Listing Rules, the DTRs and the Market abuse Regulation.

**Rule 144A offer** – An offer of securities pursuant to Rule 144A of the Securities Act made to US institutional investors which may be made without being subject to the registration requirements of the Securities Act provided, among other things, that all US investors who purchase the securities are QIBs. See section 5.6.

**Rules** – Collectively, the Prospectus Rules, the Listing Rules and the Transparency Rules.

**SAS 72 letters** – Comfort letters issued by the Reporting Accountants under US accounting standards AU-C-920 where an IPO includes a US Offer. (N.B. AU-C-920 is a clarification of the traditional SAS 72 standard for companies that are not public in the US; this clarified standard has not changed customary comfort letter practice). See section 3.1.5.

**SEC** – United States Securities and Exchange Commission, the US securities regulator.

**Securities** – Generic name for equity and debt instruments.

**Securities Act** – United States Securities Act of 1933, as amended.

**Securities Note** – Forms part of the Prospectus and contains information relating to the securities for which the issuer is seeking admission. See section 6.

**SFS** – The Specialist Funds Segment operated by the Exchange. A dedicated segment of the Regulated Market for specialist investment funds. See sections 2.4 and 13.4.3.

**Sponsor** – Typically an investment bank or stockbroker. An FCA-approved sponsor must be appointed by a company

seeking to have its shares admitted to the Official List. For details regarding the Sponsor's role see sections 3.1.2 and 4.1.5.

**Stabilisation Regulation** – EU Regulation No. 2016/1052 which sets out exemptions from the provisions of MAR for buyback programmes and stabilisation activity.

**Stabilising Manager** – Usually the lead Underwriter, the Stabilising Manager is the person identified in the Prospectus as the central point of enquiry for any request from the FCA relating to stabilisation activities undertaken in connection with the offer. See sections 3.1.3 and 7.3.

**Standard Listing** – The Standard segment of the listing regime is sub-divided into 5 categories which indicate the type of securities having a Standard listing: shares; GDRs; Debt and debt-like; securitised derivatives; and miscellaneous securities. See section 2.3.2.

**Supplementary Prospectus** – A document which must be prepared if, during the period between formal approval by the FCA of a company's Prospectus and before the offer to which the shares relate closes or trading in the company's shares commences, the company becomes aware of any significant new factor, material mistake or inaccuracy relating to information included in the Prospectus. See section 6.9.

**Transparency Directive** – EU Directive 2004/109 (as amended by EU Directive 2013/50/EU) on the harmonisation of transparency requirements in relation to information about companies with securities admitted to trading on a Regulated Market.

**Transparency Rules** – Rules published by the FCA and found in Chapters 1A, 4, 5 and 6 of the DTRs which set out certain continuing obligations of listed companies, in particular, relating to financial reporting.

**Underwriters** – A group of investment banks who underwrite the issue or sale of shares under the IPO.

**Underwriting** – Underwriters, for a commission, undertake to subscribe for or acquire any part of an issue not taken up by investors, thereby guaranteeing that the IPO will raise a given amount of cash. See section 7.1.

**US Offer** – An offer or placing of securities into the US as part of an IPO. See section 5.6.

**10b-5 disclosure letter** – A letter required to be delivered by the legal advisers to the company and, usually, from its own legal advisers, to the Sponsor and Underwriters, for risk management purposes where the offer involves a US Offer. See sections 3.1.1 and 9.8.



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