Equity capital markets in UK (England and Wales): regulatory overview

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A Q&A guide to equity capital markets law in UK (England and Wales).

The Q&A gives an overview of main equity markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, marketing, bookbuilding, underwriting, timetables, stabilisation, tax, continuing obligations and de-listing.

To compare answers across multiple jurisdictions, visit the equity capital markets *Country Q&A tool*.

This Q&A is part of the global guide to equity capital markets law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/equitycapitalmarkets-guide*.

Main equity markets/exchanges

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges
There are four principal markets in the UK, each of which is operated by the London Stock Exchange (LSE).

Main Market. The main market for listed securities (Main Market) is the LSE's flagship market for larger, more established companies. It is a European Economic Area (EEA) regulated market and falls within the ambit of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (EU Prospectus Directive), being repealed and replaced by the Prospectus Regulation with effect from 21 July 2019 (with the exception of certain provisions for which there is an earlier implemented date) (*see Question 2*). It is also subject to other EU Directives, such as Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive).

The Main Market has three main segments:

- The Premium segment that forms part of the Financial Conduct Authority's Official List (Official List). This segment is home to some of the world's largest companies that are subject to the highest standards of regulation and governance. The Premium segment is only open to equity shares issued by trading companies and closed and open-ended investment entities.
- The Standard segment that is subject to EU minimum standards (less rigorous than those of the Premium segment) and is part of the Official List. The Standard segment is open to issuance of equity shares, Global Depository Receipts (GDRs), debt securities, and securitised derivatives.
- The High Growth segment that is designed for equity securities of high growth, revenue generating businesses that are, over time, seeking to become premium listed companies.

AIM. AIM is a market for:

- Growing companies that might not meet the full criteria for admission to the Main Market.

- Growing companies for whom a more flexible regulatory environment is more appropriate.

AIM operates, and is regulated, separately from the Main Market and is seen as the world's most successful growth market. AIM is not a regulated market for the purposes of the EU Prospectus Directive or the incoming Prospectus Regulation, although it is a multilateral trading facility (MTF).

On 3 January 2018, AIM was registered as an SME Growth Market under the Markets in Financial Instruments Directive II (2014/65/EU) (MiFID II). SME Growth Market designation has been developed by the European Commission as part of its capital markets union plan, to create a bespoke regulatory framework for European growth markets (*see Question 26*). This designation under MiFID II is expected to raise the profile and visibility of SME Growth Markets across the EU and distinguish them from MTFs, which generally operate as trading facilities that do not have a primary market function.

Professional Securities Market (PSM). The Professional Securities Market is an exchange-regulated market for listed depositary receipts and debt targeted at professional investors. It is a listed market and PSM securities are admitted to the Official List. However, it is not a regulated market for the purposes of the EU Prospectus Directive or the incoming Prospectus Regulation, although it is a MTF.

International Securities Market (ISM). The International Securities Market was launched in May 2017 as a specialist market, tailored to the issuers of non-equity securities for purchase and trading by professional investors. It is an exchange regulated market, operated by the LSE as a MTF. ISM securities are not admitted to the Official List and issuers seeking admission to ISM only need to comply with the ISM Rulebook and deal with the London Stock Exchange.

Market activity and deals

There were 57 IPOs on the Main Market in 2017 and 49 on AIM, which together raised GBP15 billion. This represented a 63% increase in number of IPOs, and a 164% increase in value of IPOs, compared to 2016.

Secondary issues raised approximately GBP9.5 billion on the Main Market compared to approximately GBP7.5 billion in 2016. On AIM, secondary issues raised GBP4.8 billion compared to GBP3.7 billion in 2016.

> 2. What are the main regulators and legislation that applies to the equity markets/ exchanges in your jurisdiction?

Regulatory bodies

The Financial Conduct Authority (FCA) acting in its capacity as the UK's competent authority for the purposes of Part VI of the UK Financial Services and Markets Act 2000 (FSMA) sets and administers the criteria governing admission to the Official List. The UK Listing Authority (UKLA) is the name given to the FCA when acting in its capacity as the competent authority. The UKLA maintains the Financial

Conduct Authority's Official List. The UKLA forms part of the Markets Division of the Conduct Business Unit of the FCA.

Legislative framework

The primary legislation pursuant to which equity offerings are made is the FSMA and the statutory instruments implemented under this. The relevant FCA rules are the:

- Listing Rules.
- Prospectus Rules.
- Disclosure Guidance and Transparency Rules.

Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) (MAR), adopted on 3 July 2016, applies to financial instruments admitted to trading on an EU regulated market (including AIM) or for which a request for admission to trading has been made. MAR provides a common EU regulatory framework on the prohibition of market abuse, as well as measures to prevent market abuse with the aim of ensuring integrity of EU financial markets and enhancing investor protection and confidence in those markets.

Currently the prospectus regime in the UK is governed by the Prospectus Directive, but this is in the process of being repealed and replaced by a new Prospectus Regulation. The Prospects Regulation is a key reform initiative as part of the European Commission's Capital Markets Union (CMU), which aims to promote investment and growth by unifying capital markets across Europe (*see Question 26*). The Prospectus Regulation came into force on 20 July 2017, but the majority of its provisions are not due to apply until 21 July 2019. Certain provisions were implemented on 20 July 2017 and further terms apply from 21 July 2018. Application of the Prospectus Regulation is therefore a key consideration for UK equity markets as part of Brexit *(see Question 26*).

The LSE's admission and disclosure standards also apply to companies seeking admission to trading on the Main Market. For UK incorporated companies, the Companies Act 2006 also applies.

Equity offerings

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements

Issuers that want their securities admitted to the Main Market must follow a two-stage process:

- An application must be made to the UK Listing Authority (UKLA) for the company's securities can be admitted to the FCA's Official List.

- An application must be made to the LSE for such securities to be admitted to trading on its market for listed securities.

Only when both of these processes have been completed can the securities be traded on the Main Market. As a result, there are two sets of fees payable and two sets of continuing obligations applicable. Trading is a requirement for listing and vice versa, so that a suspension from trading leads to a suspension of listing by the UKLA. In practice, admission to trading and admission to listing is simultaneous.

The Main Market is divided into a number of segments. The main ones addressed in this chapter are:

- Premium listing (equity shares of a commercial company or investment entity).
- Standard listing (shares and GDRs).
- High Growth Segment (equity shares of high growth companies).

Only two companies have listed on the high growth segment since it was launched. Its main advantage is the 10% free float requirement compared to a 25% requirement for premium or standard listing, but it is only available to European Economic Area (EEA) incorporated companies. There is also a specialist fund segment aimed at specialised investment entities that wish to target institutional, highly knowledgeable investors or professionally advised investors. It is not open to trading companies.

An issuer of equity shares usually (depending on whether it satisfies the premium listing eligibility requirements) elects for a premium listing or a standard listing. A standard listing is the EU minimum for the Main Market, whereas a premium listing has more onerous eligibility requirements and continuing obligations. Issuers with a premium listing are eligible for inclusion in the FTSE indices, provided that certain requirements relating to free float and corporate governance are met.

Prospectus

When securities are offered to the public or admitted to trading on a regulated market, a prospectus must be drawn up, approved by the UKLA, filed and published unless an exemption applies (*see Question 10 and Question 11*).

The current prospectus regime in the UK is governed by the Prospectus Directive, where prospectuses are required to meet the requirements of the applicable Annexes of Regulation (EC) 809/20040), as implemented by the directive. As noted above, the Prospectus Directive is in the process of being repealed and replaced by a new regime under the Prospectus Regulation which came into force on 20 July 2017. The majority of the provisions of the Prospectus Regulation will not, however, apply until 21 July 2019. Certain provisions concerning exemptions to, and thresholds for, the obligation to issue a prospectus are being implemented prior to this date:

- **Admission to trading exemption.** From 20 July 2017 the threshold for the exemption from the requirement to produce a prospectus in relation to the admission of new securities of the same class as those already admitted to trading on a regulated market has been raised from 10% to 20%.
- **Total consideration exemption.** From 21 July 2018, no prospectus will be required for an offer of securities to the public with a total consideration in the EEA of less than EUR1 million over a 12-month period (previously EUR100,000).

- **Mandatory prospectus.** From 21 July 2018, the securities threshold beyond which a prospectus will be mandatory will increase to a maximum of EUR8 million (previously EUR5 million). The UK, as an EEA state, has adopted the EUR8 million threshold with effect from 21 July 2018.

Any company issuing a prospectus in the UK between now and 21 July 2019 will therefore need to ensure that they consult and comply with the relevant provisions of the Prospectus Directive as amended by the Prospectus Regulation.

Minimum size requirements

The expected aggregate value of the shares (excluding treasury shares) – or "minimum market capitalisation" - for which a listing is to be sought must be at least GBP700,000 (unless securities of the same class are already listed). This threshold applies to both premium and standard listing. The UKLA has the discretion to permit a lower threshold if satisfied there will be a market for the shares. For a listing of debt securities the threshold is GBP200,000.

Trading record and accounts

A new applicant for the admission of equity shares to the premium listing segment must have published or filed historical financial information that:

- Covers at least three years.
- Has a latest balance sheet that is 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.
- Includes consolidated accounts for the applicant and all its subsidiary undertakings.
- Has been audited or reported on in accordance with the standards acceptable under item 20.1 of Annex I of the Prospectus Regulation.
- Is not subject to a modified report, except for certain exceptions.

The historic financial information must both:

- Represent at least 75% of the new applicant's business for the full three-year period.
- Put prospective investors in a position to make an informed assessment of the business for which admission is sought.

The new applicant must demonstrate that it will be carrying on an independent business as it main activity.

The requirement for a three-year financial track record can be modified for mineral companies and scientific research based companies, or where the FCA is satisfied that it is desirable in the interests of investors and that investors have the necessary information available to arrive at an informed judgment about the applicant and the securities.

An applicant for premium listing must show that it has sufficient working capital for the group's requirements for at least the next 12 months from the date of the prospectus, although the FCA can dispense with this requirement if certain conditions are met (for example, if the applicant's business is that of banking or insurance or providing similar financial services).

Minimum shares in public hands

At the time of admission to listing, at least 25% of each class of shares being listed must be in the hands of the public in one or more EEA states. Shares are not regarded as being held in public hands where they are locked up for more than 180 days or held directly or indirectly by, for example:

- The directors of the company or any of its subsidiaries.
- By a person connected with such a director.
- By a person holding 5% or more of the shares.

The FCA may approve a percentage that is lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public.

In order to be eligible for listing, a premium listed company which has a controlling shareholder must have a relationship agreement in place with the controlling shareholder at the time of listing, and on an ongoing basis. A controlling shareholder is a person who controls, together with any concert parties, 30% or more of the voting rights attached to the company's shares. The agreement must contain certain minimum independence provisions as prescribed by the Listing Rules.

Where there are a number of controlling shareholders, separate agreements with each are not required if the company reasonably believes or considers that one controlling shareholder can procure compliance by any non-signing controlling shareholder.

Universal registration document

Under the Prospectus Regulation an issuer that already has securities admitted to trading on a regulated market or a MTF will be able to produce a "universal registration document" (URD) describing the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure which would ordinarily be set out in a prospectus. A URD will need to be submitted by the issuer annually for approval by the UKLA, as the competent approval authority. Once an issuer's URD has been approved for two consecutive financial years, the issuer will not need approval for subsequent URDs (subject to certain exceptions) and will be able to utilise a fast track procedure for approval of any prospectus by the UKLA. The aim of the fast-track process is to halve the prospectus approval time for frequent issuers.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements

A secondary listing is known as a standard listing. All commercial companies applying for a listing of shares (whether premium or standard) are required to comply with the requirements in Chapters 2 and 3 of the Listing Rules. An applicant for admission of shares to a standard listing must comply with the requirements in Chapter 14 of the Listing Rules. The FCA will not admit shares of a company incorporated in a non-EEA state that are not listed either in its country of incorporation or in the country in which a majority of its shares are held unless the FCA is satisfied that the absence of the listing is not due to the need to protect investors.

The requirements for a standard listing meet the basic requirements set by EU legislation.

Minimum size requirements
See *Question 3*.

Trading record and accounts
While there are no specific Listing Rule eligibility requirements in this regard for a standard listing of shares and GDRs, the company must have audited historical financial information under the International Financial Reporting Standards (IFRS) or certain other Generally Accepted Accounting Principles (GAAPs) deemed "equivalent" to IFRS covering the latest three financial years (or such shorter period that the issuer has been in operation). It must also contain a statement that in the issuer's opinion the working capital is sufficient for the issuer's present requirements (or, if not, how it proposes to provide the additional working capital needed) for a listing of shares (but not GDRs).

A three-year revenue earning accounting record is not required for a standard listing. In addition, a company seeking a standard listing is not required to appoint a sponsor or a nominated advisor (Nomad), but appointment of a Nomad is required for admission to AIM.

Minimum shares in public hands
See *Question 3*.

5. What are the main ways of structuring an IPO?

The following are the methods by which a company can structure an IPO on the Main Market.

An offer for subscription or sale
An offer for:

- Subscription is an invitation to subscribe for new shares in the company and raises money for the company itself to fund the activities set out in the prospectus.

- Sale is an invitation to purchase existing shares in the company and raises money for existing shareholders rather than the company itself.

An IPO can consist of both an offer for subscription and an offer for sale. These methods are commonly seen on large retail IPOs, such as the Royal Mail. An IPO is usually the most expensive route to market.

Most large IPOs are "underwritten" by one or more investment banks. This means that any shares not bought are purchased by such banks for a fee. This provides the selling shareholders or the issuer with certainty as to the funds that will be raised.

Placing

A placing involves the offer of shares (that can be new shares offered by the company or existing shares offered by selling shareholder(s)) to a specifically chosen set of institutional investors. This is often a cheaper method of raising capital than an offer for subscription or sale, and can give the company more discretion in choosing its investors. However, a placing can result in a narrower shareholder base than a public offer, and therefore potential lower liquidity in the company's shares.

Introduction

An introduction is where a company joins the market without raising capital. Generally, a company can use this method if over 25% of its shares are in public hands and there is already a good, diversified shareholder base. For example, if the company is:

- Already listed in another jurisdiction.
- The subject of a demerger from an existing listed business.

6. What are the main ways of structuring a subsequent equity offering?

Subsequent equity offerings are commonly referred to as "secondary" offerings. In broad terms, there are two types:

- Pre-emptive.
- Non pre-emptive.

A pre-emptive offering is an offering made to existing shareholders pro rata to their existing holdings, usually (but not always) requiring a prospectus.

Non pre-emptive offerings are offers of shares to either existing or potential new shareholders that do not relate to the number of shares already held, often made without a prospectus.

Pre-emptive offerings consist of:

- Rights issues which are an offering of shares to existing shareholders where the right to acquire the new shares is tradeable in itself. Shareholders that choose not to take up their entitlement under a rights issue are compensated to the extent that if the shares not taken up can be sold in the market at a premium to the offer price, they get the benefit of the premium.
- Open offers that are similar to rights issues, except that the right to participate in an open offer is not tradeable and there is no sale of rights. Open offers are often combined with a non pre-emptive placing.

A placing (as a secondary offering) is a non-pre-emptive offer, in which new shares are offered otherwise than to existing shareholders pro-rata to their existing holdings. Both existing and new investors may participate in a placing. Placings can be combined with both rights issues and open offers.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Rights issues and open offers are public offers for which there is typically no exemption from the requirement to produce a compliant prospectus. This requirement makes deals more public and also materially lengthens the deal timetable, as it can take several months to draft a prospectus and receive approval from the FCA. The process for obtaining prospectus approval takes the form of a series of private filings with the FCA, as well as reviewing and dealing with the FCA's comments before approval is granted.

The length and complexity of the prospectus approval process has triggered a number of reform initiatives, most notably the Prospectus Regulation, with the aim of simplifying the disclosure process and changing the period in which information is made available to investors for consideration prior to closing of an IPO.

Under the Prospectus Regulation, a simplified prospectus regime reducing the information required for secondary issues will be available from July 2019, which will benefit:

- Issuers whose securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue more securities of the same class.
- Issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue non-equity securities.
- Offerors of a class of securities admitted to trading on a regulated market or an SME growth market for at least 18 months.

In addition, the introduction of a universal registration document will provide a shelf-registration mechanism for issuers whose securities are already admitted to trading on a regulated market or MTF, allowing them to benefit from a five-day fast track approval process for future prospectuses (*see Question 10*).

Both rights issues and open offers may require shareholder consents and therefore require a general meeting to be convened and held, which will lengthen the transaction timetable by at least 17 days. However, as rights issues give existing shareholders the rights to participate in a new issue of shares on a pro rata basis, and to obtain the benefit of any premium if they decide not to take up their rights, they are particularly favoured by investor bodies. A further point worth noting is that the open offer period of ten business days prescribed by the Listing Rules can run concurrently with the notice period for the general meeting. This is in contrast to the rights issue period of ten business days prescribed by the Listing Rules, which starts after shareholder approval is obtained at the general meeting (as nil paid rights are admitted to listing and cannot therefore have any conditionality attached to them).

Placings can be done much more quickly and are quite often done in just one day (via an accelerated bookbuild transaction), though they cannot be used for bigger capital raisings of listed shares admitted to trading on a regulated market where the size of the issue is more than 10% of the existing share capital as currently this would also require a prospectus (*see Question 10 and Question 26*). Shareholder approval is usually not required, as it is common practice at annual general meetings of shareholders to seek authority to issue shares up to specified limits during the year.

8.What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing
The principal steps for a company applying for a premium listing are as follows:

- Selection of a sponsor and appointment of other professional advisers.
- Pre-IPO reorganisation.
- Due diligence.
- Prospectus drafting.
- Preparation of reporting accountant and specialist reports.
- Negotiating legal documentation such as the underwriting agreement and agreeing comfort packages.
- Drafting marketing presentations, marketing and bookbuilding.
- Pricing and allocation of shares.
- Admission to the Official List and to trading on the Main Market.
- Settlement.
- Exercise of any overallotment option/stabilisation.

Under the Prospectus Regulation, from 21 July 2019 "fast track" approval of a prospectus may be available where an issuer has obtained approval from the UKLA of a "universal registration document" in two consecutive years (*see Question 10*).

Procedure for a foreign company

The procedure is the same for a non-UK incorporated company. The eligibility requirements for a standard listing (whether for equity or GDRs) are less onerous than for a premium listing, but only companies with a premium listing are eligible for inclusion in the FTSE indices. If the non-UK company is incorporated in a jurisdiction where settlement in the UK is not easy (for example, because its securities are not admissible to the UK's electronic settlement system, known as CREST), then they are likely to seek a listing for depositary receipts.

Advisers: equity offering

> 9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The main advisers in an IPO are as follows.

Investment bank

The investment bank is primarily responsible for managing the IPO process and for co-ordinating the company's other advisers. The investment bank typically has several roles:

- **Sponsor.** A company seeking a premium listing for its shares must appoint a sponsor. The sponsor must be an "authorised person" by the FCA under FSMA and be registered on the UK Listing Authority's (UKLA) register of sponsors. The sponsor assesses the suitability of the company for listing. It advises on the:
    - structure and composition of the board and management team to ensure that the directors are fit to be appointed to the board of a premium listed company;
    - the best method of bringing the company to the market;
    - the requirements and obligations under the Listing Rules, Prospectus Rules, Disclosure and Transparency Rules and the Admission Standards; and
    - the IPO timetable.

  The sponsor will act as the conduit for communications between the company and the UKLA, the FCA and the London Stock Exchange. The sponsor also undertakes certain responsibilities to the UKLA in respect of the company that are set out in detail in the Listing Rules.

The company may elect to appoint joint or multiple sponsors, although one sponsor must take primary responsibility for contact with the FCA in accordance with the Listing Rules.

- **Underwriter.** To the extent that shares are being sold by an existing shareholder or new shares are being issued by the company, the offer of such shares may be underwritten by the investment bank (that is, the underwriter will undertake to subscribe for all or some of the shares being issued by the company and/or purchase all or some of the shares being sold by a selling shareholder). If the IPO is large, there will be a syndicate of underwriters, with one or more acting as the "lead" (often known as the global co-ordinator), or potentially sub-underwriters on smaller transactions.
- **Financial adviser.** The investment bank provides advice on issues such as:
  - timing and structuring of the IPO;
  - corporate governance;
  - arrangements with any major shareholders; and
  - valuation.

  There is no requirement for a company seeking a premium listing on the Official List to appoint a financial adviser, however, it may choose to appoint one alongside its sponsor.
- **Research analyst.** Research to provide potential investors with an independent and objective view on the company and its business is often published through the bank's research function.

IPO investment research has been subject to recent scrutiny by the FCA, who have been concerned that research by a bank may be subject to bias (particularly where the bank is underwriting the IPO) and that the customary IPO timetable does not give sufficient time for independent research to be prepared by unconnected analysts for the market prior to closing of the IPO.

As outlined in Policy Statement 17/23 the FCA has therefore introduced a new Conduct of Business Rule 11A with effect from 1 July 2018, the objective of which is to ensure that before any connected research is released, a prospectus or registration document is published and unconnected analysts have access to the issuer's management. However, these rules will not apply to AIM IPOs (as, amongst other reasons, the FCA recognises that it may be unlikely that the rules will result in the emergence of unconnected research for multilateral trading facility (MTF) IPOs). However, the FCA will consider whether to extend the new rules to MTF IPO transactions once it has assessed the impact of the new rules on market practice.

Lawyers

For an IPO, legal advisers must advise the company, selling shareholders (if any) and the underwriters. The investment bank will generally select its own legal counsel and may have selective input in appointing the company's legal counsel.

The role of the company's legal advisers is to:

- Advise on the legal aspects of preparing the company for listing, including any pre-IPO reorganisation.
- Carry out the legal due diligence on the company.

- Assist the company in the preparation of a compliant prospectus (including verifying the accuracy of every statement of fact in the prospectus).
- Advise on, draft and negotiate the various agreements that the company will need to enter into with the underwriters, accountants, registrars and others.

The role of the sponsor's legal advisers is to:

- Advise on any legal agreements to which the sponsor is a party.
- Assist the sponsor in the preparation of the prospectus.
- Advise the sponsor in relation to its responsibilities and obligations.
- Review work carried out by the company's legal advisers.

Accountants
The reporting accountant is distinct from the company's own auditors (though the role can be fulfilled by a separate team in the same firm). The reporting accountant's main function is to review the company's financial record to give an objective and independent view for the benefit of potential investors and address the company's readiness for an IPO. The accountants prepare an opinion on the company's three-year financial record prior to admission (often referred to as the "short form report") as well as a long form due diligence report.

The long form report provides a detailed financial and management history of the business and much of this information is used in the preparation of the prospectus even though the report itself is not published. The opinion is published in the prospectus and confirms that the historical financial information, as presented in the prospectus, gives a true and fair view.

The reporting accountant also prepares a report for the sponsor and the company on the company's projected working capital position over the 12 to 24 months following the IPO and the company's financial reporting procedures (FRPs). The accountants must also provide various comfort letters to the sponsor and the company to accompany the prospectus.

Public relations consultants
PR consultants can generate press interest and publicity for the company prior to the IPO, as well as directing the company's communications strategy and helping to prepare and monitor public statements and press releases during the IPO process. After the IPO, ongoing press interest in the company can help sustain awareness of the company and liquidity in its shares.

Registrars
The registrars deal with applications for shares and setting up and maintaining the share register of the company. They also deal with arrangements relating to CREST (the UK's electronic share settlement system).

Receiving bank
A receiving bank is usually required if there is a retail offering in order to receive funds from retail investors.

Specialist advisers
Depending on the nature of the company, tax specialists (if this function is not being undertaken by the accountancy firm), actuaries, patent and trade mark experts, technical experts, or other experts may need to be involved to provide necessary reports for the IPO process. For example, a "competent person's report" may be required for an oil and gas or mineral company.

Main documents
The main documents involved in an equity offering are as follows:

- Announcement by the company if its intention to float.
- Marketing presentations.
- Legal and financial due diligence reports.
- Prospectus (unless there is an exemption, see *Question 11*), potentially a pathfinder prospectus, and verification notes on each.
- Reporting accountants' documents such as long form report, opinions and comfort letters.
- Audited accounts.
- Ancillary issuer documents such as board minutes, responsibility statements, powers of attorney, service agreements and board memoranda.
- Placing/underwriting agreement and placing letters.
- Sponsor agreement.
- Shareholder relationship agreement.
- Lock-up and orderly market agreements.
- Corporate governance documents, such as committee terms of reference and appointment letters.
- Bank comfort package, consisting of consent and comfort letters and confirmations from the issuer and reporting accountants plus opinions from the issuer's and bank's lawyers.

Equity prospectus/main offering document

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Unless there is an applicable exemption (*see Question 11*), a prospectus (as approved by the FCA) is required for the issue of equity securities in the UK where:

- There is an offer of securities to the public.
- There is an application for admission of securities to trading on a regulated market (that is, the Main Market).

The FCA in its capacity, as the competent authority for the purposes of Part VI of FSMA, (UKLA), must approve the prospectus of any UK company, or the prospectus of any company that wishes to list its securities on the Main Market or to offer them to the UK public.

The issuer must file the approved prospectus with the FCA, through the National Storage Mechanism portal, via the Morningstar website (*www.morningstar.co.uk/uk/NSM*) and make it available to the public by:

- Publication in a newspaper.
- Making it available in printed form at the offices of the issuer and any financial intermediaries (such as the paying agents or the fiscal agent).
- Publication on the issuer's website.
- Publication on the LSE website, through the publication of an announcement on the LSE's Regulatory News Service.

If the issuer publishes the prospectus in a newspaper or makes it available at its offices, it must also publish the prospectus on its website. If one of the electronic publication methods is chosen, the issuer must also make hard copies available on request, without charge.

Certain key changes are due to come into force on the implementation of the Prospectus Regulation.

Universal Registration Document (URD). A new "fast track" regime will be implemented which will allow frequent issuers listed on a regulated market or Multilateral Trading Facility (MTF) to produce a URD on an annual basis, setting out relevant information on the issuer and its business, for approval by the UKLA. An issuer can elect to produce a URD even when it does not intend to immediately offer or list securities. Where an issuer has received UKLA approval for its URD in two consecutive years, it can then benefit from a five day "fast track" approval process for any prospectus required as and when it wishes to raise capital, so long as it maintains its URD on an annual basis.

EU Growth Prospectus. A new type of EU growth prospectus will be available to smaller companies seeking capital on non-regulated markets which will require lower disclosure obligations than a standard prospectus. "Smaller companies" includes small and medium-sized enterprises, and issuers with no more than 499 employees.

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

Each element of the prospectus publication requirement has separate exemptions. Where an offer is an offer to the public and an admission to trading on a regulated market, only a single prospectus will be required, but there must be an appropriate exemption for each element if the prospectus obligation is to be avoided.

Offer to the public

An offer to the public is exempt from the requirement to produce a prospectus provided that:

- It is an offer to qualified investors only (generally being substantial corporations or professional investors).
- It is made to less than 150 persons (other than qualified investors) per European Economic Area (EEA) state.
- The minimum consideration that may be paid by each applicant is at least EUR100,000 (or its equivalent).
- The securities are denominated in amounts of at least EUR100,000 (or its equivalent).
- The total consideration offered in any EEA state, including any offer in the last 12 months, does not exceed EUR100,000 (or its equivalent).

Separately, as currently set out in the Prospectus Directive, the exemption also applies to offers where the total consideration for securities offered in the EEA (calculated over 12 months) is less than EUR5 million. From 21 July 2018, this threshold will be reduced under the Prospectus Regulation to EUR1 million. However, EU member states will have the discretion to exempt from the requirement to publish a prospectus offers of securities with a total consideration of between EUR1 million and EUR8 million. In the UK, the EUR8 million threshold has been adopted with effect from 21 July 2018.

There are also exemptions for certain types of offer to the public, such as shares:

- Issued in connection with a takeover offer where a prospectus equivalent document is made available.
- Allotted to existing or former employees or directors (if certain conditions are met).

Admission to trading

There are exemptions for certain exempt securities, which have recently changed following the initial implementation of the Prospectus Regulation. The main categories are as follows:

- Securities representing less than 20% of the number of shares of the same class already admitted to trading over a period of 12 months (this was previously 10% under the Prospectus Directive). The 20% cap does not apply in certain situations, such as if the securities were issued prior to 20 July 2017.
- Securities issued in connection with a takeover offer if a prospectus equivalent document is made available.

- Securities offered to existing shareholders free of charge, or through a dividend, or to employees, or on conversion of other securities, or where shares are already admitted to trading on another regulated market.

The available exemptions are wider than those for an offer to the public.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

It must contain information necessary to enable investors to make an informed assessment of assets and liabilities, financial position, profits and losses, and prospects of the issuer and the rights attaching to the securities being offered (necessary information). Necessary information must be presented in a form which is comprehensive and easy to analyse, and must be prepared having regard to the particular nature of the securities and the issuer. The Prospectus Rules and the Prospectus Regulation specify the minimum disclosure requirements for the prospectus, the information that must be included in each of the registration document and the securities note, and the order in which they must appear.

The company and its directors (including proposed directors) have primary legal responsibility for the prospectus, and are obliged to confirm that the information in the prospectus is true to the best of their knowledge having taken reasonable care to make sure this is the case. Any person that has authorised any part of the contents of the prospectus will incur liability for that part of the prospectus (this includes the reporting accountants for their reports included in the prospectus).

The prospectus can be drawn up either as a single document or three separate documents known as the:

- Registration document, which must contain information relating to the company.
- Securities note, which contains information concerning the securities for which admission is being sought.
- Summary, which must be in non-technical language and convey the essential characteristics and risks associated with the company and the securities being offered. Currently a summary should not exceed the longer of 7% of the length of the prospectus, or 15 pages.

Under the incoming Prospectus Regulation, summaries will be shortened to a maximum of seven pages (including an introduction with relevant warnings regarding the offer) and will be required to set out the 15 most material risk factors specific to the issuer (and any guarantor if the securities are guaranteed). Issuers of non-equity securities on a regulated market, or non-equity securities with a minimum denomination of EUR100,000, will also be exempt from the requirement to produce a summary.

In summary, the registration document must include details of:

- The persons responsible for the document.
- The auditors and other experts.
- The issuer, its capital and investments both currently proposed and those made in the last three years.
- The group's operations and interests.
- The operating and financial review (which is 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).
- Recent developments and prospects.
- Risk factors specific to the issuer and its industry.
- The assets, liabilities, financial position and profits and losses (the prospectus must contain audited historical financial information on the group covering three financial years and the respective audit reports). For EU issuers this must be prepared in accordance with IFRS. For non-EU issuers the accounts must be prepared in accordance with IFRS or with that country's national accounting standards, provided these have been accepted as equivalent to IFRS.
- Management.
- Employees.

The securities note must include:

- Key reasons for the offer and the proposed use of the proceeds.
- Risk factors affecting the relevant securities.
- Details of working capital and indebtedness.
- Information, terms and conditions concerning the securities and the offer.

Both the registration document and the securities note must include a responsibility statement by those responsible for that document.

Under the incoming Prospectus Regulation, issuers will be required to quantify and categorise risk factors according to their materiality - both in terms of likelihood of occurrence and expected magnitude of the negative impact of such risks - rather than just set out any material risk factors.

A supplementary prospectus is required if a significant new factor arises during the period between the later of either:

- Approval of the prospectus by the FCA.
- Closure of the offer or the date on which admission to trading starts.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The prospectus is prepared by the issuer and its advisers, such as lawyers and specialist experts, with other advisers such as the banks' lawyers inputting into the process. A formal verification exercise is undertaken by the company's lawyers to test the accuracy of key statements in the prospectus.

The following persons are responsible for a prospectus and therefore may have statutory liability:

- The issuer.
- The directors of the issuer plus those who have agreed to act as directors and are named as such in the prospectus.
- In the case of an issuer with an external management company, each person who is a senior executive of that company.
- Each person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus.
- The offeror (where it is not the issuer, for example, a selling shareholder) and each director of the offeror if it is a company.
- Each person (not being one of the above) who has authorised the contents of the prospectus, such as the reporting accountant.

An issuer can also be liable to investors in contract or tort, and criminal liability may arise. Sponsors and other banks involved in an equity offering may also, in certain circumstances, be liable, including under FSMA. In relation to the statutory regime, any person who has acquired securities to which the prospectus relates can claim compensation from those responsible for the prospectus if they have suffered loss as a result of the prospectus either:

- Containing any untrue or misleading information.
- Failing to disclose a matter required under section 87A of the FSMA or a matter requiring a supplementary prospectus.

There are a number of statutory defences (for example, due diligence) (*Schedule 10, FSMA*). A claim can also be brought by those that have acquired shares in the market.

Marketing equity offerings

14. How are offered equity securities marketed?

IPOs are typically marketed by the following methods:

- **Pre-marketing.** This is done at an early stage and is done by a series of meetings with potential investors that the lead banks have identified (sometimes referred to as "pilot fishing"). The rationale for the meetings is to introduce management and the company, build relationships with key investors and to identify any possible issues at an early stage.
- **Roadshows.** These are more formal presentations by management to potential investors once the intention to float announcement (and the prospectus) has been published.
- **"One on ones".** Specified targeted meetings with individual investors.
- **Advertising/other publicity.** Advertising is only relevant for retail offers and can be an effective means of generating additional demand.

In most IPOs the research analysts will write detailed research notes in order to educate investors before the company's management markets the transaction. Such research is quite often connected research meaning its objectivity and value may be brought into question. For this reason, black-out periods during which such research may not be published have often been used. Typically, a black-out period will run from the period of two weeks prior to the publication of a prospectus until sometime after the commencement of declaring the listed securities. In policy Statement PS 17/23 the FCA set out new rules relating to the publication of connected investment research. As from 1 July 2018, such research should not be produced before an approved prospectus has been published and unconnected analysts have had access to the issuer's management.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Participating brokers/dealers may be liable to investors in the following ways.

Legislation
Applicable legislation:

- Sections 89 and 90 of the Financial Services Act 2012 (misleading statements and impressions).
- Articles 14 and 15 of Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) (market abuse and insider dealing) (*see Question 24*).
- Section 52, Criminal Justice Act 1993 (insider dealing) (*see Question 24*).

Contract law

If there is a contract between the investor and the broker, the investor may be able to claim for contractual damages against the broker, using normal contractual principles.

Tort

The investor may be able to claim tortious damages against the broker if he can prove that the broker owed him a duty of care, that the duty was breached and that he suffered a loss as a result.

Financial Conduct Authority (FCA) Rulebook

The research produced by participating brokers/dealers will be non-independent research. All non-independent research must be correctly labelled as such and brokers/dealers must:

- Take reasonable steps to identify and manage conflicts of interest which may arise in producing the research.
- Must fairly present their non-independent research (including the identity of the author of the research).
- Must disclose any relevant conflicts of interest and other information (see Chapters 12.3 and 12.4, FCA Conduct of Business Sourcebook for further information).

Breaches of the above may result in disciplinary proceedings by the FCA and in certain cases, civil claims.

Brokers can minimise their liability in the following ways:

- **Disclaimers.** Disclaimers should be used that, for example, state that any investment should only be made on the basis of the information contained in the prospectus.
- **Verification.** It is common for issuers to check the draft research for factual accuracy.
- **Research blackout.** Traditionally black-outs have been used to help distance connected investment research from the prospectus. New rules set out in Policy Statement PS 17/23 are in force from 1 July 2018, and pose a restriction on the publication of any such research until after the publication of an approved prospectus.
- **Management of conflicts of interest.** Issuers should not be promised favourable coverage by analysts, analysts should not participate in roadshows and their reporting and remuneration arrangements should be structured to avoid conflicts (see Chapter 12 of the FCA Conduct of Business Sourcebook and Chapter 10 of the Systems and Controls Sourcebook for further information).
- **Forecasts and projections.** These should be avoided.
- **Independence.** The analyst writing the report should be independent of others in the same organisation selling the securities.
- **Distribution.** Distribution should be limited to investment professionals.
- **Prospectus.** The recipients of the research report should be sent the prospectus.

Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

Bookbuilding is used on many securities offerings, whether an IPO or a secondary offering. The book is built after publication of the prospectus when the banks running the book receive indications of size of demand and at what price. In an institutional offer, the prospectus is sometimes in draft form (being a pathfinder) and the final prospectus confirming the price for the shares and the number to be offered is only published once the bookbuild has taken place. Alternatively, a "price range" prospectus is produced (*see below*).

In a retail offer, the prospectus is likely to be a "price range" and, therefore, retail investors can be asked to indicate a total amount that they would be willing to invest or a maximum price per share or both. A price range is used to generate a competitive auction for shares to ensure pricing is maximised. If the price is fixed outside the range set out in the prospectus, this is considered a "material new matter" and a supplementary prospectus is required.

Underwriting: equity offering

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

An IPO or secondary offering, which is a rights issue or open offer, is likely to be fully underwritten: that is, the underwriters will agree in the underwriting agreement to procure subscribers for the new or sale shares and if any shares are not taken up, to subscribe for those shares themselves in agreed proportions, subject to certain conditions. It is less common for a placing to be underwritten and the banks may only agree to use "reasonable endeavours to procure subscribers". The underwriting agreement will contain the following key terms:

- Conditions precedent/termination rights.
- Indemnity from the issuer to the bank(s).

- Warranties from the issuer (and the directors on an IPO).
- Lock up.
- Over allotment (on an IPO).
- Post-admission undertakings from the issuer.
- Commission provisions, which are usually expressed to be between 2% and 5% of the total amount raised. Sometimes a discretionary separate success fee or additional discretionary commission is payable.

Timetable: equity offerings

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

Set out below is an indicative timetable for an institutional bookbuilt IPO ("T" is the date of pricing). Generally, this takes in the region of six months:

- **T minus 6 months to T minus 3 months.** Preparatory work, for example, advisers are appointed, any pre-IPO reorganisation is undertaken, eligibility for listing is discussed and due diligence is started. Banks submit eligibility letter to the Financial Conduct Authority (FCA) and prospectus drafting commences.
- **T minus 3 months.** Advisers liaise with the UKLA and the LSE, and first submission of the prospectus to the FCA.
- **T minus 2 months to T minus 1 month.** First draft reports circulated and announcement of intention to float.
- **T minus 1 month.** Connected brokers' research is published. Research blackout period starts.
- **T minus 14 days.** Pathfinder prospectus is published (or price range approved prospectus, if a retail offer). Underwriting agreement signed (if a retail offer). Roadshows and bookbuilding start.
- **T.** Offer is priced and shares are issued and allotted subject to admission. Approved prospectus is published (or pricing statement if a retail offer) and underwriting agreement is signed (if an institutional offer). Conditional dealings and stabilisation begin.
- **T plus 3 days.** Shares are admitted to trading and to listing. Unconditional dealings begin.
- **T plus 30 days.** End of stabilisation.

This timetable is likely to be shortened for equity offerings by companies implementing a universal registration document under the incoming Prospectus Regulation once the relevant provisions apply.

The timetable for a secondary offering by way of a rights issue or open offer will differ from the above, as it may be necessary to convene a shareholder meeting to obtain consents for the issue and allotment of the new shares. This is also likely to be shortened for companies utilising the simplified disclosure regime under the incoming Prospectus Regulation.

Stabilisation

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Stabilisation is the practice by which the lead manager or bookrunner supports the price on a new issue of shares for a limited period after admission of the shares to the market, with the aim of maintaining a stable price during this period. Price stabilisation is undertaken for certain large issues of securities, such as on an IPO, because it (amongst other matters) helps promote orderly operation of the market and counteract short selling.

In principle, the nature of price stabilisation potentially constitutes the offences of market abuse, creating a misleading impression and/or insider dealing, which is prohibited in the UK. Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) (MAR) and Commission Delegated Regulation (EU) 2016/1052 (Delegated Regulation) therefore sets out rules in relation to stabilisation.

MAR, amongst other things, prescribes that the prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation do not apply in the following circumstances:

- Stabilisation is carried out for a limited period.
- Prescribed information is disclosed and notified to the competent authority of the trading venue.
- Adequate limits with regard to price are complied with.
- Trading complies with the standards set out in the Delegated Regulation.

Tax: equity issues

20.What are the main tax issues when issuing and listing equity securities?

A number of tax issues can arise on an equity issue, requiring specialist tax advice. It is important to seek, and follow, expert tax advice at an early stage in the IPO process.

IPO preparation

Tax issues can arise in the context of an IPO as a result of:

- Existing shareholders disposing of shares.
- The company being floated leaving a capital gains group.
- The unwinding of employee share schemes.

Shareholders disposing of shares in the company realising a chargeable gain on the sale of their shares are liable to capital gains tax (individuals) or corporation tax (corporates). It may be possible to reduce this gain by pre-IPO planning to increase the base cost of the shares. The substantial shareholding exemption (SSE) (for companies) or entrepreneurs' relief (for individuals) may be available to mitigate these gains. Investors' relief may also be available in the future to reduce the tax chargeable on gains realised by individuals who have held their shares continuously from the date of issue and for at least three years from 6 April 2016.

Any pre-IPO restructuring involving UK intra-group transfers of assets into the company (or group) to be floated creates the potential for de-grouping tax charges. Provided certain conditions are met, any de-grouping tax charges are borne by the company (or companies) making the disposal of the company being floated. This may allow the company (or companies) making the disposal to shelter the charge within the SSE.

Secondary issues

On a rights issue of ordinary shares, it is generally accepted that the company does not make an income distribution on the issue of either:

- The provisional allotment letter (PAL) (if applicable).
- The shares that are eventually issued after the end of the issue period.

However, there are two main exceptions to this treatment:

- The issue of redeemable share capital or any security in respect of shares or other securities, except the amount of the issue that is equal in amount or value to the consideration received by the company for the issue.
- A bonus issue of shares following a previous repayment of share capital.

Unless certain secondary issues of shares are structured as a reorganisation of the share capital of the issuing company, existing UK shareholders can be treated as though they have made a part disposal of their existing holdings.

If the issuer is raising capital through a rights issue or open offer in a currency other than its accounting currency, any foreign exchange gains or losses on currency hedging instruments are disregarded for tax purposes provided that, in particular, a person unconnected with the issuing company bears the risk of exchange rate fluctuations.

VAT on fees

The issue of shares is a non-supply for VAT purposes. If the capital raised is used for the purposes of a fully taxable or partially exempt business (for the purposes of VAT), the VAT incurred by a UK issuer on supplies made to it in connection with the share issue should be recoverable, either in full or in part.

Stamp duty/stamp duty reserve tax

Transfers of shares in UK companies generally give rise to a charge to stamp duty reserve tax (SDRT) or stamp duty, subject to applicable exemptions. The intermediary exemption and stock lending exemption may be available for stamp duty and SDRT that would arise for stabilisation, stock lending and greenshoe option transfers.

The issue of shares (not being a transfer) to persons including places (or to brokers as agent for the places) should not generally give rise to stamp duty or SDRT. A 1.5% SDRT charge previously arose on the issue of shares to persons providing depositary receipt or clearance services. However, following litigation, that charge is no longer applied, provided that such arrangements form an integral part of an issue of share capital.

To ensure that PALs are exempt from stamp duty, rights under a PAL or fully paid letter of allotment are only renounceable within six months from issue. No SDRT is generally payable on the issue of PALs. No stamp duty is payable on the renunciation of a PAL or a fully paid letter of allotment. However, SDRT is generally payable at the rate of 0.5% of the consideration on any renunciation or other dealings.

Continuing obligations

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

A company with a premium listing must comply with continuing obligations set out in the Listing Rules. The main areas relate to the following:

- **Transactions.** Certain transactions, depending on size (based on class tests), require either prior shareholder approval or disclosure to the market.
- **Related party transactions.** Transactions with related parties may require prior independent shareholder approval and disclosure.

- **Corporate governance.** A UK incorporated issuer is expected to "comply or explain" in relation to the Corporate Governance Code and must explain the extent to which it does so in its report and accounts. With effect from 1 July 2018 when rules relating to a new premium listing category for sovereign controlled companies come into effect, the application of certain Listing Rules will also depend upon whether the issuer is a sovereign controlled commercial company with a premium listing of equity shares under the Listing Rules.

A company with a premium listing must also comply with the following:

- **Disclosure Guidance and Transparency Rules.** The main areas relate to the:
  - disclosure of inside information (but this is in the form of guidance only);
  - periodic financial reporting;
  - composition, functions and disclosures of audit committees; and
  - notification of major shareholdings and disclosure of others controlling voting rights.
- **LSE Admission and Disclosure Standards.** These impose some minor obligations in relation to certain corporate actions (for example, declaration of dividends).
- **Regulation (EU) 596/2014 on market abuse (Market Abuse Regulation) (MAR).** MAR has direct effect in the UK and covers the following areas:
  - disclosure of inside information: inside information must be disclosed as soon as possible;
  - insider lists: issuers must keep a list of insiders with access to inside information using a prescribed template (this must include details such as home addresses and telephone numbers, as well as the date and time at which the person obtained access to the inside information);
  - persons discharging managerial responsibilities (PDMR) notifications: PDMRs, and persons closely associated with them, must comply with the provisions of MAR relating to the notification of their dealings in the shares or debt instruments of the issuer, or any derivatives or financial instruments linked to them, and such dealings must be notified to the FCA as well as the issuer within a period of three business days following the transaction (once a threshold of EUR5,000 is reached), and the issuer must also notify the market within the same three business days;
  - PDMR dealings: neither PDMRs, nor persons closely associated with them, may conduct any transaction in relation to the shares or debt instruments of the issuer, or any derivative or financial instruments linked to them, during a closed period of 30 days prior to an announcement of results (in the UK, the announcement of results means the announcement of preliminary results, provided that the preliminary results contain all the key information relating to the financial figures expected to be included in the year-end report).

The Listing Rules impose further requirements if a listed company has a controlling shareholder, namely that the company must have in place at all times:

- A written and legally binding agreement between the company and the controlling shareholder to ensure that the controlling shareholder complies with the Listing Rule independence provisions.
- A constitution that allows the election and re-election of independent directors to be conducted in accordance with the Listing Rule election provisions.

Companies with a controlling shareholder must demonstrate that, despite having a controlling shareholder, the company is still able to carry on an independent business as its main activity at all times (subject to certain exemptions).

A dual voting structure applies to the election or re-election of any independent directors of a premium listed company with a controlling shareholder. This means that such appointments need to be approved both by the shareholders as a whole and also by the independent shareholders (that is, any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company). If the election (or re-election) is not approved by both the shareholders and the independent shareholders and the company would still like to propose the director's appointment, it must propose a shareholder resolution to be tabled at a meeting to be held at least 90 but not more than 120 days after the original vote. To address concerns that there may be uncertainty regarding the status of the director during this period, guidance clarifies that a director that has been appointed can remain in office until the second vote.

The dual voting structure must be permitted by the company's constitution when it seeks a premium listing but transitional provisions mean that the dual voting requirement does not apply until the next annual general meeting for which notice has not already been given. A similar transitional period applies for the dual election process in the situation where a premium listed company gains a controlling shareholder.

The FCA will put in place an "enhanced oversight" regime in certain circumstances, including where the controlling shareholder has not complied with the relationship agreement, and where the company is unable to include a statement in its annual report and accounts concerning the existence of the relationship agreement and compliance with its independence provisions. During the time that these measures are in place, any transaction or arrangement between the company and the controlling shareholder will be treated as a related party transaction to which the normal exemptions do not apply. The enhanced oversight regime will continue until the company publishes an annual report containing the appropriate statement.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

A non-UK incorporated company is subject to the FCA Rules and MAR in the same way as a UK incorporated company except that:

- There are exemptions from certain Transparency Rules for issuers incorporated in certain countries and issuers incorporated elsewhere in the European Economic Area (EEA).
- An issuer of depositary receipts on the Professional Securities Market is subject only to Chapter 18 of the Listing Rules and not to the Transparency Rules.
- An issuer of a depositary receipt on the London Stock Exchange's Main Market is subject to Chapter 18 of the Listing Rules, but is not subject to the major shareholding notification regime or the requirement to produce half-yearly financial reports set out in the Transparency Rules.

23. What are the penalties for breaching the continuing obligations?

If an issuer or any of its directors (or both) breaches the continuing obligations set out in the FCA Rules or MAR, the FCA can (depending on the type of breach):

- Issue a private censure.
- Issue a public censure.
- Suspend or cancel the company's listing.
- Suspend trading in the company's securities.
- Impose a penalty on the company and the director (if he or she was knowingly concerned in the contravention).
- Impose a restitution order.

FCA guidance on how it applies these powers is found in the Decision Procedure and Penalties Manual and the Enforcement Guide.

Market abuse and insider dealing

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse/insider dealing
MAR regulates the civil offence of market abuse in the UK. The basic market abuse offences are set out in Articles 14 and 15 of MAR, which provide that a person must not:

- Engage, or attempt to engage, in insider dealing.
- Recommend that another person engages in insider dealing, or induce another person to engage in insider dealing.
- Unlawfully disclose inside information (*Article 14, MAR*).
- Engage, or attempt to engage, in market manipulation (*Article 15, MAR*).

Penalties for market abuse/insider dealing
The civil market abuse regime allows the FCA, amongst other sanctions, to impose unlimited fines and issue private and public censures.

There are also separate criminal offences in relation to misleading statements and market manipulation. The maximum penalties are seven years' imprisonment or an unlimited fine or both.

There is also a separate criminal regime for insider dealing where the penalties are the same as for the above criminal offences (*Part V, Criminal Justice Act 1993*).

De-listing

25. When can a company be de-listed?

De-listing
An issuer with a premium listing can only cancel its listing if it has obtained the consent of a majority of not less than 75% of shareholders. It must also send a circular, approved by the FCA, to shareholders that gives the anticipated date of cancellation, which must not be less than 20 business days following the passing of the resolution.

Shareholder approval is not required where the issuer notifies the market that:

- The financial position of the issuer is so precarious that, but for the de-listing, there is no reasonable prospect that the issuer will avoid formal insolvency proceedings.
- There is a proposal for a reconstruction that would ensure the survival of the issuer and the continued listing would jeopardise this.
- Cancellation is in the best interests of those to whom the issuer has responsibilities. The issuer must provide an explanation describing why shareholder approval is not being sought.

In any event, the issuer must give at least 20 business days' notice of the intended cancellation.

The FCA can cancel a listing if it is satisfied that there are special circumstances that preclude normal regular dealings in them (for example, the percentage of shares in public hands falls below 25%, or when the issuer completes a reverse takeover). Special rules apply in relation to takeover offers.

There were 64 de-listings from the Main Market in 2017, compared to 74 in 2016.

Suspensions
The FCA can suspend, from a time it may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors. The Listing Rules set out a non-exhaustive list of examples of when the FCA can suspend listings, for example:

- A failure to meet its continuing obligations.
- The failure to publish financial information in accordance with the Listing Rules.
- If the issuer is unable to assess accurately its financial position and inform the market accordingly.

An issuer that has the listing of any of its securities suspended must continue to comply with all the Listing Rules applicable to it. Further, if the FCA suspends the listing of any securities it can impose such conditions on the procedure for lifting the suspension as it considers appropriate.

An issuer can request a suspension and must give a clear explanation of the background and reasons for the request. The FCA will not suspend a listing if it is not satisfied that the circumstances justify the suspension.

Reform

> 26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

UK equity capital markets are in the midst of a unique period of review and potential change both at domestic and EU level. A key part of this is the UK's upcoming exit from the EU in March 2019 and the UK's future relationship with the EU, as UK market regulation is primarily governed by EU law, such as MAR and the Transparency Directive.

Domestic initiatives
UK Corporate Governance Code 2018. At domestic level a new UK Corporate Governance Code was published in August 2018 by the Financial Reporting Council. The new Code generally follows the earlier 2016 Code, but is provided in a shorter, more straightforward format centred around a set of high-

level "principles" with underlying detailed "provisions". Overall the 2018 Code sets greater reporting, accountability and transparency obligations for companies across a number of areas.

The new Code applies to all companies with a premium listing of equity shares (whether UK incorporated or not) and applies to accounting periods starting on or after 1 January 2019.

Key changes include:

- **Culture.** Companies need to ensure that their strategy, values and purpose are aligned with its culture. This needs to be periodically assessed and monitored by the board, with any corrective action set out in the company's annual report.
- **The Board.** There is an emphasis on orderly succession planning and ensuring that appointments promote diversity and inclusion, and protect against discrimination. The performance of the board should be subject to a thorough, formal annual review and include setting a maximum nine-year tenure for a company's chair. In addition, a company's nominations committee needs to annually report on its diversity and inclusion policies, and include commentary on the gender balance of senior management.
- **Stakeholders.** Companies need to successfully engage key stakeholders (such as its shareholders and workforce) and demonstrate how it has considered their interests. For shareholders, if 20% or more votes are cast against a resolution recommended by the board, a company needs to set out how it will consult shareholders to understand the reasons behind the dissent when accounting the voting results, and publish an update on this process within six months thereafter. In terms of workforce, it is recommended that a company should make certain advisory appointments, such as engaging a formal work advisory panel, appointing a director from its workforce, or appointing a designated workforce non-executive director in order to effectively engage with its workers.
- **Remuneration.** The scope of a company's remuneration committee should now also extend to workforce remuneration and ensure that director remuneration policies and incentives are aligned with the workforce and the company's culture. This includes the alignment of pension contribution rates between executive directors and the workforce. In particular, the remuneration committee should demonstrate that they have addressed risk when setting executive director remuneration policies, such as the reputational risks of excessive awards and behavioural risks from target-based incentives.

European initiatives

Capital Markets Union. At EU level, the 2014-19 European Commission introduced the Capital Markets Union (CMU) as a flagship initiative focused on strengthening EU capital markets. The CMU was launched following concerns that, compared to other jurisdictions, capital market-based financing in the EU is relatively underdeveloped and businesses in the EU remain heavily reliant on banks as a source of funding. The Commission's aim is to put in place the building blocks for a fully-functioning CMU by 2019.

The three main objectives of the CMU are to:

- Broaden the sources of financing in Europe towards non-bank financing by giving a stronger role to capital markets.
- Deepen the single market for financial services.

- Promote growth and financial stability. The CMU should support growth and the creation of jobs by improving companies' access to finance, in particular small and medium-sized enterprises (SMEs), and address possible risks stemming from the over-reliance on bank lending.

The Commission intends to deliver the CMU by a range of initiatives targeted at specific sectors and more general reforms of the EU supervisory structure. The purpose of each of initiative is to remove barriers between investors' money and investment opportunities, and to overcome the obstacles that prevent businesses from reaching investors. One of the CMU's key initiatives to date has been the introduction of the Prospectus Regulation to repeal and replace the Prospectus Directive.

In 2018 there has been a renewed sense of urgency in implementing the objectives of the CMU in light of Brexit, but it remains uncertain as to what extent the UK will adopt any future CMU proposals after it leaves the EU in 2019.

Brexit

The UK's upcoming exit from the EU in March 2019 will likely trigger a number of policy and regulatory changes for companies listed in the UK, both in terms of:

- The continued effect of EU-derived legislation and ongoing EU initiatives, such as the CMU and implementation of the Prospectus Regulation, in the UK post-Brexit.
- The wider framework of market regulation for companies listed on UK capital markets, and how such markets will interact with the EU, post-Brexit.

Brexit negotiations remain very much ongoing, therefore the full extent to which the existing capital markets regime will change in light of Brexit remains to be seen. Certain key steps have been made so far, such as implementation of the European Union (Withdrawal) Act 2018 (Withdrawal Act) and the July 2018 White Paper "The future relationship between the United Kingdom and the European Union" (White Paper), but these have shown a differing approach in how integrated (or not) the UK intends to remain with the EU post-Brexit.

Withdrawal Act and the Prospectus Regulation. The Withdrawal Act passed in June 2018 prescribes how EU law will apply in the UK post-Brexit. The Act sets out that (to the greatest practical extent) direct EU legislation in force as at the date immediately prior to Brexit will be assumed into UK domestic law on (and from) the date of Brexit. Where any EU legislation has been adopted but is stated to apply from a later time, it will be considered to be operative to the extent in force and applicable immediately before exit day.

In the main the Withdrawal Act demonstrated an approach of "maintain the status quo" and provided certainty around most elements of the current UK capital markets regime, underpinned by EU law, post-Brexit, such as MAR. However, the Withdrawal Act did not address how ongoing initiatives, such as implementation of the Prospectus Regulation to repeal the Prospectus Directive, would apply in the UK post-Brexit.

This was addressed in the Government's subsequent White Paper which confirmed (amongst other matters) an UK/EU agreed transitional period of 30 March 2019 to 31 December 2020 for extraction of the UK from the existing EU framework post-Brexit. As part of the transitional period it is intended that any direct EU legislation scheduled to come into force during this time will be implemented into UK law, as conducted pre-Brexit (in effect extending the Government's "status quo" approach).

In the context of the Prospectus Regulation, this will mean that the Prospectus Directive will continue be repealed and replaced in full by the Prospectus Regulation as enacted in 2017 once fully implemented in July 2019 post-Brexit. For any future proposals under the CMU post-Brexit, the position is not yet remedied as the full scope of its planned reforms are not yet known. It is therefore likely that UK's approach to adopting such proposals will be confirmed on a case-by-case basis as and when these are issued by the CMU.

Secondary legislation and EU/UK passporting. Following the Withdrawal Act, a number of statutory instruments and supporting guidance notes are being published to prepare the UK for Brexit, each to take effect as at the point of Brexit. Key to UK capital markets so far are the draft EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations published in July 2018 (Regulations), which address the current benefit of issuers listed in the UK to have a prospectus approved and published in the UK recognised and "passported" as a valid prospectus into other EEA member states, and EEA issuers to have reciprocal access to UK markets.

In preparation for a possible "no deal" Brexit (where reciprocal UK/EU market access would not continue as per the current basis), the Regulations seek to make necessary changes to UK legislation (such as FSMA) to extricate the existing EU passport regime for prospectuses and implement a temporary permissions regime to allow EEA issuers to continue to operate in the UK for a three-year period post-Brexit. Importantly, at this stage the Regulations do not currently assist UK issuers operating in other EEA member states under the existing passporting regime.

HM Treasury intends to lay a revised version of the Regulations before Parliament in autumn 2018. The Regulations may be expanded to include provisions on other relevant issues. Once implemented the FCA and the UK Prudential Regulation Authority are expected to update their rulebooks to reflect the Regulations.

HM Treasury also intends to make statutory instruments:

- Giving the regulators powers to phase in UK regulatory requirements to enable EEA firms entering the temporary permissions regime to transition to UK rules.
- Enabling EEA firms that are leaving the UK market to wind down their UK-regulated activities, including any outstanding contractual obligations, in an orderly manner.
- Introducing temporary regimes for EEA payment institutions, EEA electronic money institutions and EEA funds that are marketed into the UK. These regimes will last three years with a power to extend if necessary.

Additional changes to the UK capital markets regime are expected as Brexit negotiations develop but, as intimated in the White Paper, detailed legislative changes are unlikely to be forthcoming until after Brexit. Whereas it is likely that the Government's approach will not be fixed on a "hard" or "soft" departure from existing EU rules in all areas, the Government has assured that a "workable legal regime" will be in operation for UK capital markets post-Brexit.

Online resources

Financial Conduct Authority
W *www.fca.org.uk*

Description. Website of the Financial Conduct Authority.

London Stock Exchange
W *www.londonstockexchange.com*

Description. Website of the London Stock Exchange.

legislation.gov.uk
W *www.legislation.gov.uk*

Description. The official home of UK legislation, managed by The National Archives on behalf of HM Government (note that this website includes legislation that may have been amended by subsequent legislation).

Contributor profiles

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- Advising certain shareholders in connection with the GBP200 million IPO of Hastings Group Holdings plc and subsequent block trade of Hastings shares.
- Advising Flybe Group plc on its GBP22.5 million reduction of capital.
- Advising the financial adviser to Worldsec Limited in connection with its underwritten open offer to raise USD4.2 million.
- Advising AIM clients on various secondary placings of shares and convertible loan notes.

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Recent transactions.

- Advising a Cayman-based entity and its shareholders on the USD160 million disposal of its 50% joint venture interests in Cyprus, Dubai, Turkey and Africa to its German co-shareholder under English law.
- Supporting the UK arm of a US-headquartered client on the dual acquisition of two international groups for a combined consideration of USD120 million, to strengthen the acquirer's services portfolio.
- Advising a Main Market listed airline group on a GBP22.5 million reduction of capital by way of court approval.

- Assisting an AIM-listed target in connection with a public offer takeover by way of scheme of arrangement.
- Assisting a Main Market listed care and support services group on a GBP40 million group acquisition.
- Advising the acquirer on a GBP10.5 million AIM reverse takeover with a GBP7 million placing and open offer.
- Assisting in acting for the Nomad on a GBP26.5 million AIM float of a biopharmaceutical company.

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Venture capital investment in UK (England and Wales): market and regulatory overview • Law stated as at 01-Mar-2014
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