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CAPITAL MARKETS (EQUITY URL)

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Equity Capital Markets in the UK (England and Wales): Regulatory Overview

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MAIN EQUITY MARKETS/EXCHANGES AND MARKET ACTIVITY

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

Main Equity Markets/Exchanges

There are two principal markets in the UK, each of which is operated by the *London Stock Exchange* (LSE).

Main Market. The Main Market is the LSE's principal market for companies from the UK and overseas. It is a UK regulated market for the purposes of the UK version of the Markets in Financial Instruments Regulation (600/2014) (UK MiFIR), which together with the MiFID II Directive (*2014/65/EU*), as implemented in the UK, comprises many of the rules which govern the buying, selling and organised trading of shares in the UK. This framework derives from current EU law, which was transposed into UK law after the end of the Brexit transition period on 31 December 2020. Given that the MifiD II framework is not calibrated solely for UK markets, the UK Government is currently consulting on proposals to amend it (*see Question 31*).

References in this article to the UK version of an EU Regulation or Delegated Regulation means the retained EU law version of that Regulation or Delegated Regulation that has applied in the UK from the end of the Brexit transition period and as subsequently amended.

As at 31 December 2021, there were 1,127 equity issuers admitted to trading on the Main Market with an aggregate market value of GBP3,840 billion.

There are four segments within the Main Market for equity shares, each fulfilling different issuer requirements. They are the:

Premium Segment. The Premium Segment is open only to equity shares issued by trading companies and investment entities. Issuers admitted to the Premium Segment are subject to the UK's "super-equivalent rules" for listing which were designed originally to impose higher regulatory standards than the minimum EU standards that applied when the UK was an EU member state. Companies with premium listed equity shares are eligible for inclusion in the FTSE UK Index Series (*see Question 3*).

Standard Segment. The Standard Segment is open to equity shares, Global Depositary Receipts (GDRs), debt securities and securitised derivatives. Issuers admitted to the Standard Segment are subject to listing rules which were aligned originally to the minimum EU standards that applied when the UK was an EU member state.

High Growth Segment. The High Growth Segment is open to equity shares issued by trading companies incorporated in the UK and the EEA. It is designed principally for high growth, trading businesses that intend in due course to seek admission to listing on the Official List but that may not yet meet the applicable eligibility criteria. To date, it has attracted a limited number of companies.

Specialist Fund Segment. The Specialist Fund Segment is for specialised UK and non-UK investment entities that target institutional, professional, professionally advised and knowledgeable investors.

AIM. AIM is the LSE's market for small and medium size growth companies. It is suitable for issuers that might not meet the full criteria for a listing on the Main Market or for whom a more flexible regulatory environment is more appropriate. As at 31 December 2021, there were 852 equity issuers admitted to trading on AIM with an aggregate market value of GBP 149.5 billion.

AIM is operated and regulated by the LSE separately from the Main Market and is a UK multilateral trading facility (UK MTF) rather than a UK regulated market. As a result, issuers with securities admitted to AIM are, in general, subject to less onerous regulation at the time of admission and on an ongoing basis (certainly when compared to premium listed companies). Liquidity on AIM has been encouraged in the recent past by a stamp tax exemption for shares traded on AIM.

Market Activity and Deals

In 2021, there were 41 IPOs on the Main Market and 49 on AIM, which together raised GBP16.8 billion. This represented an 82.6% increase in the value of IPOs, compared to 2020.

Secondary issues raised about GBP14.8 billion on the Main Market in 2021 compared to about GBP18.5 billion in 2020 (when there was a flurry of secondary issues during the first few months of the COVID-19 pandemic). On AIM, secondary issues raised about GBP4.3 billion in 2021 compared to approximately GBP4 billion in 2020.

The largest UK IPO in 2021 in terms of capital raised was that of Deliveroo plc (GBP1.5 billion raised). 2021 also saw an increase in cross-border IPO activity; in total, there were 25 inbound cross-border IPOs in 2021 compared to 16 in 2020.

A number of companies having announced an intention to conduct an IPO in 2021 subsequently decided to postpone or cancel their plans, often citing difficult market conditions, potentially caused by a combination of COVID-19 and IPO fatigue.

The London Stock Exchange ranked sixth out of all stock exchanges worldwide for IPO proceeds raised in 2021.

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

Regulatory Bodies

The UK's securities regulator is the Financial Conduct Authority (FCA). Its key responsibilities include:

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- Monitoring market disclosures by issuers and other market participants and enforcing compliance.
- Reviewing and approving prospectuses and circulars published by issuers and other offerors.
- Operating the UK listing regime, which requires listed issuers to comply with the Listing Rules.

In its capacity as markets regulator under the Financial Services and Markets Act 2000 (FSMA), the FCA regulates the London Stock Exchange.

Legislative Framework

The primary legislation which governs equity offerings in the UK is the FSMA and the statutory instruments implemented under it. As noted in *Question 1*, many of these rules derive from the MiFID II framework which applies throughout the EU, and which has been transposed into UK law without material alteration (with the majority of changes only being made to reflect the UK's new position outside the EU).

The FCA has responsibility for three sets of rules relevant to the listing of securities and which are made under Part VI of the FSMA. These rules are the:

- **Listing Rules**: these contain, among other things, provisions relating to the eligibility criteria for listing, the listing application process and the continuing obligations of a listed company. The Listing Rules apply only to companies with shares trading on, or subject to an application to trade on, a UK regulated market (such as the Main Market but not AIM).
- **Prospectus Regulation Rules**: these rules (which replicate much of the UK version of the Prospectus Regulation (*(EU) 2017/1129*) (UK Prospectus Regulation)) apply to companies seeking to offer transferable securities to the public in the UK and/or seeking to admit transferable securities to trading on a UK regulated market.
- **Disclosure Guidance and Transparency Rules (DTRs)**: these consist of disclosure guidance, transparency rules and corporate governance rules. The majority of the rules apply only to companies with shares trading on a UK regulated market.

The UK version of the Market Abuse Regulation ((EU) 596/2014) (UK MAR) and relevant retained EU law versions of delegated legislation have applied since the end of the Brexit transition period in relation to, among other things, financial instruments admitted to trading on UK regulated markets and UK MTFs. See *Question 26*.

Relevant EU delegated legislation made under the Prospectus Regulation has applied in the UK since the end of the Brexit transition period.

The LSE's Admission and Disclosure Standards (LSE Standards) apply to companies seeking admission to, and which are, trading on the Main Market, while the AIM Rules set out the rules and responsibilities in relation to companies with a class of shares admitted to AIM.

JOINING A MARKET/EXCHANGE

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

Main Requirements

An issuer of shares seeking admission of its securities to the Main Market typically elects a premium or standard listing under the FCA's Official List (although other options are available, *see Question 1*). A company applying for its shares to be admitted to the premium or standard segments of the Main Market must follow a two-stage admission process:

- Apply to the FCA for its shares to be admitted to the FCA's Official List.
- Apply to the LSE for its shares to be admitted to trading on the Main Market.

To obtain admission to the Official List, a company must satisfy the eligibility requirements set out in the Listing Rules (which are more stringent if the application is for premium listing). To obtain admission to trading on the Main Market, a company must comply with the eligibility requirements set out in the LSE Standards. Following admission, an issuer must comply with relevant continuing obligations set out in the Listing Rules, the DTRs, UK MAR and the LSE Standards, among others.

The eligibility criteria for admission to the Official List provide, among other things, that the:

- Relevant shares must be freely transferable and free from any liens or restrictions on the right of transfer.
- Applicant must apply to list the whole class of the shares for which admission is sought.

In addition, all listed shares must be compatible with electronic settlement.

An applicant for a premium listing must also:

- Be able to show that it carries on an independent business as its main activity.
- Demonstrate that it exercises operational control over its main business.
- Appoint a "sponsor" (being an investment bank or similar institution that has been approved by the FCA). The role of the sponsor is to:
  - act as a conduit between the applicant and the FCA;
  - guide the applicant through the listing process and its compliance with its continuing obligations as a listed company; and
  - provide certain assurances to the FCA in relation to the applicant's eligibility for listing.
- Ensure that the total of all issued warrants or options to subscribe for its equity shares (save for rights under employees' share schemes) does not exceed 20% of its issued equity share capital at the time of issue of the warrants or options.
- (If it has a controlling shareholder (being a person who, together with any of its concert parties, controls at least 30% of the applicant's voting rights)), have in place a relationship agreement containing specified provisions and ensure that its constitution provides for a dual voting structure for the election or re-election of independent directors (requiring approval by a majority of both:
  - all the company's shareholders; and
  - its independent shareholders only (that is, not including the controlling shareholder or any person with whom it is acting in concert).

In addition, an applicant for a premium listing must have a constitution in place allowing it to comply with the Listing Rules, which among other things, require that any vote on matters relevant to an issuer's premium listing is restricted to the holders of such shares only. Further to a recommendation made in the UK Listing Review (*see Question 31*), a specific exception to this rule was introduced in December 2021 designed to accommodate dual class share structures (DCSS) within the premium listing segment.

This exception applies to a specified kind of DCSS with holders of unlisted shares with weighted voting rights, where the following conditions are met:

- The shares with weighted voting rights have a maximum weighted voting right ratio of 20:1.
- The shares can only be held by company directors (or beneficiaries of such a director's estate).
- The weighted voting rights:
  - are only available on a vote on the removal of the holder as director; or following a change of control, in relation to a vote on any matter (to operate as a strong deterrent to a takeover);
  - can only be held by directors of the company; and
  - apply for five years from the date on which the relevant issuer first had a class of shares admitted to premium listing.

Since 2018, there has been a separate category of premium listing available for "sovereign controlled commercial companies", being companies with a shareholder that is a Head of State, government or government department controlling 30% or more of the company's voting rights. Such companies are not required to have a relationship agreement in place with their controlling shareholder and are subject to a more relaxed regime relating to related party transactions.

Prospectus

Any company offering shares to the public in the UK or seeking the admission of its shares to trading on a UK regulated market must publish an FCA approved prospectus unless a relevant exemption applies (*see Question 12 and Question 13*).

The prospectus regime in the UK is governed by the Prospectus Regulation Rules, the UK Prospectus Regulation and certain delegated legislation.

Minimum Size Requirements

The expected aggregate value of a trading company's shares (excluding treasury shares) to be listed as part of a premium or standard listing must be at least GBP30 million (save where certain transitional exceptions apply). Before 3 December 2021, this amount was GBP700,000. The FCA has the discretion to permit a lower threshold if satisfied that there will be an adequate market for the relevant shares.

Financial Track Record and Accounts

An applicant for a premium listing must have published or filed historical financial information that:

- Covers at least three years.
- Represents at least 75% of the applicant's business for this three year period.
- Has a latest balance sheet that is not more than:
  - six months before the date of the prospectus for the relevant shares; and
  - nine months before the date the shares are admitted to listing;
- Includes the consolidated accounts for the applicant and all its subsidiary undertakings.
- Must have been audited or reported on in accordance with specified accounting standards and not be subject to a modified report (subject to limited exceptions).

The historical financial information must demonstrate that the applicant has a revenue earning track record and put prospective investors in a position to make an informed assessment of the applicant's business. The track record requirement is modified for mineral companies, scientific research based companies and property companies. More generally, the track record requirement is under review as part of a general consultation on the listing regime by the UK Government.

An applicant for a premium listing must also satisfy the FCA that it and its subsidiary undertakings have sufficient working capital available for the group's requirements for at least the next 12 months from the date the applicant's prospectus is published.

Minimum Shares in Public Hands (Free Float)

A company applying for a premium or standard listing must have 10% of its shares in public hands by no later than the time of admission. This rule also applies as a continuing obligation. Shares are not considered to be held in public hands if they are subject to a lock-up period of more than 180 days or held directly or indirectly by:

- A director of the company or any of its subsidiary undertakings.
- A person connected with any such director.
- The trustees of the group's share plans or pension funds.
- Any person who has board appointment rights.
- Any person who has an interest in 5% of more of the relevant shares.
- Holdings of investment managers in the same group are disregarded where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the group to which the investment manager belongs.

Before 3 December 2021, the free float requirement was 25% but the FCA had the discretion to permit a lower percentage in certain circumstances.

The FCA will not admit shares of a company incorporated outside the UK to the Official List 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.

With effect from March 2022, the free float requirement for inclusion in the FTSE UK Index Series has been reduced to 10% (from 25%) for UK incorporated issuers and 25% (from 50%) for non-UK incorporated issuers (FTSE Russell (the trading name of FTSE International Limited), who set the eligibility criteria for inclusion in the FTSE UK Index Series, use a slightly different free float definition to that which applies under the Listing Rules, so issuers need to take both into account if index inclusion is an important consideration).

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

Main Requirements

The main requirements, market capitalisation requirements and financial track record and accounts requirements for a secondary listing are the same as for a primary listing. Typically, a company with its primary listing on an exchange in another jurisdiction that is seeking a secondary listing on the Main Market will obtain a standard listing.

Market Capitalisation Requirements

See Question 3

Financial Track Record and Accounts

See Question 3

Minimum Shares in Public Hands (Free Float)

See Question 3.

5. 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?

The main steps in relation to a Main Market IPO are:

- Appointment of advisory team and (if premium listing) sponsor.
- Determination of valuation, offer structure, size and listing.
- Pre-IPO reorganisation (if applicable).
- Due diligence (including legal due diligence, business and financial due diligence and the preparation of accountants' reports).
- Submission of eligibility letter to the FCA.
- Drafting of the prospectus (including the registration document) and review process with the FCA.
- Preparing and negotiating underwriting agreement (including comfort letters and legal opinions) and, if relevant, stock lending agreement, relationship agreement and any other selling shareholder arrangements.
- Preparing and delivering analyst and investor 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 over-allotment option/stabilisation.

Procedure for a Foreign Company

The main steps for a foreign company seeking admission of its shares to the Official List and to trading on the Main Market are the same as those set out above.

As an alternative to a listing of shares, certain foreign companies whose shares, for legal or regulatory reasons, are not capable of being listed or owned outside of their jurisdiction of incorporation, can seek a listing of depositary receipts (negotiable certificates that represent ownership of a company's shares).

Subject to certain conditions, depositary receipts are eligible for admission to the standard listing segment of the Main Market. As set out in *Question 3*, the less onerous eligibility requirements and continuing obligations which apply to a standard listing can make this an attractive option. In addition, a prospectus for an issuer of GDRs does not require the inclusion of a 12-month working capital statement, although such a statement can be included for marketing and comfort purposes in any case.

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

Procedure for a Secondary Listing

The requirements for a secondary listing, whether on the premium or standard listing segment, are the same as apply for a primary listing. A company applying for a secondary listing of its shares on the standard segment will not be required to appoint a sponsor and will face less onerous eligibility requirements and continuing obligations (as compared to the premium segment).

See *Question 4.*

Procedure for a Foreign Company

See *Question 5*.

EQUITY OFFERINGS: PUBLIC

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

There are several methods by which a company can structure an IPO. These include: the following as set out below.

Placing

A placing involves the marketing of shares (whether new shares issued by the company or existing shares sold by selling shareholders) to a select group of institutional investors.

It is standard practice for a placing to be preceded by a book-building process involving the banks co-ordinating the offer (known as the bookrunners) marketing the shares to institutional investors before the offer price or size has been determined. Investors then submit non-binding bids for the relevant shares. These bids give the bookrunners and the company a view of investor demand and help them to determine the final offer size and price.

Retail Offer

Under a retail offer, the company invites members of the public to buy its shares. It is typically structured as one of the following:

- An offer for subscription.;
- An offer for sale.
- A combination of both.

An offer for subscription involves the company inviting the public to subscribe for new shares while an offer for sale involves the company inviting the public to purchase shares from selling shareholders. Unlike a placing, a retail offer allows private investors to participate in the IPO. A retail offer combined with an institutional placing is a popular way for a company undergoing a privatisation or with a consumer-facing business to raise capital at the time of IPO.

Intermediaries Offers

An intermediaries offer is another way for a company to access retail investors indirectly at the time of IPO. The distinction is that under an intermediaries offer, the shares are generally offered to independent brokers and investment platforms. The intermediaries then sell the shares they are allocated to their own, usually private, clients in exchange for a commission. An intermediaries offer allows a company to obtain a more diverse shareholder base than using a placing only.

Introduction

Where a company's shares already satisfy the free float requirements for listing eligibility (at least 10% of the shares being in public hands), those shares can be "introduced" to the market without an offer of new or existing shares.

As an introduction raises no funds, there are no underwriting costs. It is arguably the most simple and cost-effective method of obtaining a listing, assuming the company does not wish to raise any capital.

Introductions, or direct listings, are commonly used in respect of:

- Foreign companies already listed in another jurisdiction.
- A company listed on AIM which wishes to transfer to the Main Market.
- Companies demerging from their parent companies.

For the above reasons, they are also an increasingly attractive method for large private companies with a broad and diverse shareholder base to achieve a listing.

In each of the above cases, a prospectus is required to be published in connection with admission to trading on the Main Market, as a UK regulated market, even if an exemption from the requirement to publish a prospectus is available for the offering.

8. What are the main ways of structuring a follow on equity offering?

Follow on offerings by traded companies, which are often referred to as secondary issues, fall into two main categories: pre-emptive and non-pre-emptive.

Pre-Emptive Offerings

Pre-emptive offerings are made to a company's shareholders in proportion to their existing shareholdings. Given they are directed at all shareholders, they are likely to constitute an offer to the public requiring the publication of a prospectus.

The two types of pre-emptive offerings are:

- **Rights issues.** In a rights issue, shareholders are granted an entitlement to subscribe for new shares, known as a "nil-paid right" (typically at a significant discount to the market price). Shareholders can then decide to subscribe for the shares to which they are entitled or sell their rights to other investors.
- **Open offers**. By contrast, in an open offer, shareholders are granted an entitlement to subscribe for new shares (also at a discount but typically lower than a customary rights issue discount) which is not tradeable.

Non Pre-Emptive Offerings

Non pre-emptive offerings are made to current shareholders and/or new investors without respecting the pre-emption rights of existing shareholders. The most common non pre-emptive offering is a placing to a select group of institutional investors. Placings are typically structured to avoid the need to produce a prospectus as they are directed only at institutional investors and less than 20% of the company's share capital is offered (*see Question 13*). A placing can also be carried out in conjunction with an open offer or, less commonly, a rights issue. In a placing and open offer, new shares are placed with institutional investors subject to a clawback by existing shareholders who are offered shares by way of an open offer.

In the UK, Investment Protection Committee guidelines play an important role in constraining the ability of premium listed companies to carry out non pre-emptive offerings. These guidelines, such as the Pre-Emption Group's Statement of Principles do not have force of law but are generally complied with by premium listed companies due to the influence they carry with institutional investors.

The Statement of Principles recommends, among other things, that non pre-emptive issues by a premium listed company should be limited to:

- 5% of its share capital in any one year (which can be used for any purpose).
- An additional 5% of its share capital in any one year (which can be used only for an acquisition or specified capital investment).
- No more than 7.5% of its share capital on a rolling three-year basis (excluding any shares issued pursuant to:
  - a specific disapplication of pre-emption rights; or
  - a general disapplication of pre-emption rights in connection with an acquisition or specified capital investment as described above.

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

Rights Issues

The main advantages are:

- The offer price can be set substantially below the market price for the company's shares.
- They are popular with investors as the structure can benefit a shareholder that neither takes up nor sells its entitlement (known as a "lazy shareholder"). Any such shareholder will receive any amount above the offer price (less associated costs) if the shares it could have subscribed for are sold in the market by the underwriters at a premium to the offer price.
- Investor Protection Committees are generally supportive of rights issues on the basis that they typically respect pre-emption rights for the vast majority of shareholders.

The main disadvantages are:

- Typically a prospectus will be required given the size of the issue and that the offer will be made to all (or nearly all) existing shareholders.
- The offer period must remain open for at least ten business days under the Listing Rules. Where a company requires a general meeting to obtain shareholder authorities for the rights issue, this will add at least a two and a half week notice period to the timetable before the offer period can begin, as the general meeting notice period and the offer period cannot run concurrently (unlike in an open offer).

Open Offers

The main advantages are:

- As with a rights issue, the offer period can run concurrently with any general meeting notice period, meaning that it can be completed within a shorter period.
- Combining the open offer with a placing can be an effective means of introducing a strategic shareholder to the company's share register.

The main disadvantages are:

- As with a rights issue, a prospectus is usually required.
- The restriction on the discount which a premium-listed company is able to apply to an open offer without shareholder approval means that rights issues are typically used instead where a larger discount is required to attract investors.
- Unlike in a rights issue, "lazy shareholders" do not benefit from entitlements in respect of shares which they do not take up; accordingly, rights issues are generally more popular with investors and with Investor Protection Committees (especially if the offering represents more than 15-18% of the company's share capital).

Placings

The main advantage of a placing is the cost and speed of execution.

The main disadvantages of a placing are:

- Placings are ordinarily only contemplated when existing shareholder authorities are in place to allot the shares on a non-pre-emptive basis. This means that they are typically structured so that no more than 5% of the company's share capital is

offered (or 10% if in connection with an acquisition of specified capital investment).

- The Pre-Emption Group's Statement of Principles stipulates that the discount applied to a placing should not be more than 5% (while for premium listed companies, the discount cannot be more than 10% without shareholder approval).

ADVISERS AND DOCUMENTS: PUBLIC EQUITY OFFERING

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

A company's team of advisers on an IPO is large, with each adviser having a specific role in preparing the company for listing. The company will have a similar range of principal advisers on a large secondary issue.

Investment Banks

The company will appoint one or more investment banks to help prepare and finalise its business plan, develop its "equity story," and advise on market conditions and investor expectations.

They advise on the structure and size of the offer and, once investor demand has been sourced, assist with setting the offer price and allocation of shares.

In a traditional IPO structure, the banks act as underwriters by agreeing to acquire any shares that are not taken up by investors in the IPO. In the context of a premium listing, at least one of the banks must also be appointed as the company's "sponsor" and act as a conduit between the company and the FCA and guide the company through the listing process.

Legal Counsel

The company's counsel help get it "IPO-ready" by assisting with any corporate restructuring and refinancing, addressing issues that arise from due diligence (such as change-of-control provisions in material contracts or lender consents), and establishing corporate governance procedures appropriate for a listed company.

They also draft the key offer documentation, including the prospectus, and assist with the process of verifying the material statements made by the company to confirm that they are accurate and not misleading.

The underwriters appoint counsel to shadow the work of the company's lawyers and also to draft the underwriting agreement. The same counsel also advises the sponsor on its regulatory obligations.

Reporting Accountants

The reporting accountants prepare a report on the audited historical financial information of the company (normally in respect of the last three financial years) to be included in the prospectus, as well as any required pro forma financial information (for example, illustrating the impact of an associated refinancing or acquisition).

They also provide a suite of private comfort letters and reports for the company and its underwriters, which can include a financial due diligence report (the long form report) and reports on the company's working capital projections and the procedures it has in place to assess its financial position and prospects.

Experts

Depending on the nature of the company's business, it is often considered helpful for investors, as well as in meeting prospectus disclosure requirements, to include a market overview report by a third-party expert or otherwise commission such a report to support the statements that the company wishes to make to describe the principal markets for its products or services.

Companies operating in certain sectors are also required to include expert reports (*see Question 14*).

Independent Financial Adviser

In recent years, many companies have appointed an independent financial adviser to oversee the IPO process and to provide an independent opinion on advice supplied to the company by the underwriters, especially around the marketing, valuation and structure of the IPO. On larger transactions, an independent financial adviser will also play a key role in managing the syndicate of banks.

Other Advisers

In addition to the core team, a company must appoint a registrar to manage the share register from listing and a financial printer to typeset and print the prospectus and other offering materials.

A company can also seek specialist services in relation to, among other things, arrangements relating to depositary services (where relevant), financial public relations, recruitment of new board members, remuneration and incentivisation policies for senior management, and tax analysis in connection with any pre-IPO reorganisation.

EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

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

Prospectus (or Other Main Offering Document) Required

Subject to any relevant exemptions applying (*see Question 13*), an FCA approved prospectus is required where a company intends to do either of the following:

- Make an offer of transferable securities to the public in the UK.
- Apply for admission of transferable securities to trading on a regulated market in the UK.

Main Publication, Regulatory Filing or Delivery Requirements

The FCA must approve any prospectus before it can be published. Under the Prospectus Regulation Rules, the first draft of the prospectus must be submitted to the FCA at least ten business days before its intended approval date (20 business days in the case of an IPO). However, in practice, it usually takes between six and eight weeks for a prospectus to clear the FCA review process. The FCA will only approve the prospectus when it is satisfied that it meets the necessary standards of completeness, comprehensibility and consistency.

Approved prospectuses, along with certain other announcements and documents, are uploaded by the FCA to the National Storage Mechanism, which is the FCA's repository of information that it requires to be filed and made available for public inspection.

Following approval, the prospectus must be made available to the public, which typically involves the prospectus being published on the issuer's website, though potential investors are entitled to receive a paper copy of the prospectus should they request it.

Where a prospectus for an IPO is required to make an offer to the public (for example, in the case of a retail offer), it must be made available to the public for six or more working days before the closing of the offer.

12. Are there any circumstances in which reduced disclosure obligations apply in respect of the prospectus (or other main offering document)?

Existing listed companies that have had securities admitted to trading on a UK regulated market or SME growth market for at least 18 months and wish to issue securities fungible with those existing listed securities have the option of preparing a simplified prospectus with reduced disclosure requirements that are proportionate to, and focused on, what is relevant for secondary issues.

Small and medium-sized enterprises and smaller companies can also use a UK Growth prospectus for offers of shares in connection with admission to trading on a UK non-regulated market provided they do not already have shares admitted to trading on a UK regulated market. The prospectus follows a standardised format, has reduced disclosure requirements and is intended to be easy for issuers to complete.

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

Certain exemptions are available for both prospectus publication triggers while others only apply to one of the triggers. The most commonly used exemptions are those set out below.

Exemptions to Both Triggers

These include:

- Share swaps, if the issue does not involve any increase in the company's share capital.
- Offers in connection with takeovers (by way of share-for-share exchange) or mergers, provided a document is published describing the transaction and its impact on the company (known as an exempted document).
- Bonus issues and scrip dividends of a class of shares already listed, provided that a document is published containing mandatory information.
- Offers to existing or former employees and/or directors by their employer or an affiliated undertaking, provided that a document is published containing mandatory information.

Exemptions to the Public Offer Trigger Only

These include offers:

- To qualified investors only (includes institutional investors and certain wealthy individuals).
- Addressed to fewer than 150 natural or legal persons in the UK (other than qualified investors).
- Where the price per share is at least EUR100,000 (or the equivalent).
- Involving a minimum investment of EUR100,000 (or the equivalent) by each investor.
- Where the total consideration for the shares being offered is no more than EUR8 million (or the equivalent), calculated over a 12-month period.

Exemptions to the Admission to Trading Trigger Only

The admission of shares representing, over a period of 12 months, less than 20% of the shares of the same class already admitted to trading on the same market in the previous 12 months (the 20% limit includes only shares not covered by any other exemption).

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

A prospectus comprises three distinct parts:

- The registration document, containing information about the issuer's business and financial results.
- The securities note, containing information about the share offer.
- A summary of the information contained in the other two parts.

Under English law, a prospectus must contain the necessary information which is material to an investor for making an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the company; the rights attaching to the shares and the reasons for the issuance and its impact on the issuer.

The specific content requirements for the registration document include:

- Description of the business of the company and its subsidiaries.
- Three years (or such shorter period as the issuer has been in operation) of audited, consolidated accounts (the last two of which must be prepared on a consistent basis and be comparable with the issuer's next published accounts), with an operating and financial review.
- Description of material contracts.
- Details of material litigation.
- Statement that there has been no significant change in the financial performance or position of the issuer since the end of the last financial period for which either audited financial information or interim financial information has been published.
- Details of the directors and management.
- Risk factors setting out the particular material risks that affect the issuer, its business and the relevant shares.

The securities note must include the following information:

- Identities of the directors and the other persons responsible.
- Description of material risks that are specific to the shares being offered.
- Reasons for the offer and use of proceeds, a working capital statement, and details of the issuer's capitalisation and indebtedness.
- Description of the shares being offered and information regarding the rights attached to them (for example, dividend rights, voting rights, pre-emption rights).
- Terms and conditions of the offer, including pricing and underwriting.

In addition, companies operating in certain sectors are required to include expert reports. For example, property companies must appoint a valuer to prepare a property valuation report of their assets; mineral companies must include a competent person's report, which includes (amongst other things) details of resources and reserves; and shipping companies must include a valuation report of their vessels.

Historical annual financial information must be independently audited. The Prospectus Regulation Rules specify the accounting standards to be used in presenting historical financial information.

These differ for issuers depending on whether they are established in the UK or overseas.

15. How is the prospectus (or other main offering document) prepared for a public offering? Who is responsible and/or may be liable for its contents, and what are the main sources of liability in respect of the prospectus (or other main offering document)?

The issuer and the issuer's legal counsel typically take the lead on drafting the prospectus (with input from other advisers). The issuer's legal counsel assists the issuer with the process of verifying the material statements made by the company in the prospectus to confirm that they are accurate and not misleading.

Under the Prospectus Regulation Rules, the following persons are responsible for the prospectus:

- The issuer.
- If the issuer is a company:
  - each director at the time when the prospectus is published;
  - each person named in the prospectus as a director or having agreed to become a director in the future (provided such person has authorised this);
  - each person who is a senior executive of any external management company of the issuer;
- Any person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus.
- Any person, other than the issuer, who is offering shares and, if such person is a company, its directors at the time the prospectus is published (subject to a carve-out for shareholders making an offer in association with a primary offer by an issuer, which typically captures selling shareholders on most IPOs).
- Any person, other than the issuer, requesting admission to trading of the shares, and, if such person is a company, its directors when the prospectus is published.
- Any other person who has authorised the contents of the prospectus or any part of it (for example, reporting accountants).

The prospectus must contain declarations by those responsible for it accepting responsibility.

Persons responsible for a prospectus can incur civil and/or criminal liability in relation to untrue or misleading statements in, or omissions from, the prospectus.

The most likely basis for liability is under section 90 of the FSMA. This provides that persons responsible for the prospectus are liable to pay compensation to any person who has acquired relevant shares and suffered loss in respect of them as a result of an untrue or misleading statement in, or the omission of a matter required to be included from, the prospectus.

There are several exemptions from liability, including a due diligence defence. The verification exercise which is carried out in relation to the prospectus is designed to mitigate such liability.

MARKETING: PUBLIC EQUITY OFFERINGS

16. How are offered equity securities marketed? What are the main legal/regulatory restrictions on marketing activities?

The marketing of a customary bookbuilt IPO typically includes the following components:

- **Pre-marketing.** In the months before a potential IPO, the company's management meets key potential investors to establish buy-side appetite and receive initial feedback in what are known as early-look meetings.
- **Research reports.** Once diligence has sufficiently progressed, the registration document is in advanced form and the key marketing messages are set, the company engages with research analysts who prepare detailed independent reports for circulation to investors, typically at the time of the intention to float announcement. Many research reports will be classified as investment research and therefore not be treated as marketing communications (unlike non-independent research) (*see Question 17*).
- **Roadshows**. Management typically commences a roadshow of meetings with potential investors who receive a draft "pathfinder" or "price-range" prospectus about two weeks after the publication of research reports. These roadshows allow the underwriters to build a book of demand and finalise the final offer size and price.
- **Advertising/other publicity.** Advertising campaigns are often used by companies where there is a retail offer as part of an IPO.

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

Participating brokers can become liable in respect of the distribution of research reports and any incorrect or misleading information contained in such reports.

Distribution of the Report.

It is a criminal offence for a person, in the course of business, to communicate an invitation or inducement to engage in investment activity (known as a financial promotion) unless one of the following applies:

- The person making the communication is an authorised person.
- The content of the relevant communication has been approved by an approved person.
- The communication is covered by an exemption.

A research report is regarded as a financial promotion and, accordingly, research reports are typically distributed so that they fall within an exemption applicable to distributions made to institutional investors and certain sophisticated private investors.

Liability for Contents

The relevant brokers will be concerned principally with any liability which could arise as a consequence of the inclusion of any incorrect or misleading information in the research report. Such liability may arise as follows:

- **Liability in tort.** An investor may be able to claim tortious damages against those responsible for the report if they can prove that such persons owed the investor a duty of care, that the duty was breached and that the investor suffered a loss as a result.
- **Misleading information**. It is a criminal offence for any person to make a statement which they know to be false or misleading in a material respect, to conceal dishonestly any material facts or recklessly make a statement which is misleading (*section 89, Financial Services Act 2012*). To have a defence against any claim brought under this provision, the authors of the report would need to prove that they reasonably believed that the relevant information would not create a false or misleading impression.

- **Contract law.** If there is a contract between the investor and the broker an investor may be able to claim for contractual damages against the broker using normal contractual principles.

Regulatory Considerations Regarding Research Reports

FCA's Conduct of Business rules. The FCA's Conduct of Business Sourcebook (COBS) regulates authorised persons carrying on designated investment business and forms part of the FCA Handbook.

Under COBS, a distinction is made between investment research, which is presented as objective and independent and non-independent research, which does not satisfy the standards prescribed for investment research and is treated as a marketing tool.

Investment firms which produce investment research (as opposed to non-independent research) must also ensure that they have mandatory measures in place designed to ensure the independence of those involved with preparing the investment research.

In the context of an IPO on a UK regulated market where research is being produced, COBS stipulates a minimum interval between the publication of the registration document and the publication of research reports (one day where unconnected analysts are given access to management at the same time as connected analysts, and seven days where such access is separate).

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

Methods to Minimise Liability

The following are the principal ways in which brokers attempt to minimise any potential liability in connection with research reports:

- **Restricted distribution**. Distribution of reports is limited to institutional investors and other market professionals in appropriate jurisdictions. Reports are typically distributed to investors in hard copy or via an electronic platform only using secure methods (not via email) and not discussed with the press.
- **Disclaimer.** Prominent disclaimer wording is included in the report. Among other things, the disclaimer typically highlights the confidential nature of the report, clarifies that the report has not been authorised or approved by the relevant company and emphasises that the report does not constitute or form part of any offer for sale or subscription.
- **Content restrictions.** No non-public information regarding the IPO should be included in the report.
- **Verification**. Issuers typically verify an advanced draft of the report for factual accuracy only.
- **Analyst independence**. Brokers producing independent research will have measures in place to ensure that the analysts involved with the preparation of investment research are regarded as independent under COBS.

BOOKBUILDING: PUBLIC EQUITY OFFERINGS

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

The bookbuilding process is used in the majority of IPOs in the UK and also on many secondary issues.

In an IPO, the bookbuilding exercise takes place in conjunction with the management roadshow, following the publication of a draft pathfinder or final price-range prospectus. The roadshow period usually lasts for up to two weeks. During this period, the bookrunner collects non-binding indications of interest at various prices from potential investors. Shortly after the completion of the management roadshow, the offer price is set by the company, taking into account the views, advice and input of the bookrunner. Following pricing, orders are confirmed, pricing is announced and the final prospectus is published (if not approved previously), with closing occurring three trading days later.

By contrast, in secondary issues bookbuilding tends to be conducted over a much shorter timetable (sometimes in as little as a few hours after a short period of pre-marketing in the case of a placing by accelerated bookbuild).

On an IPO, if there is a retail offer it will typically form one tranche of a broader offer structure conducted alongside a bookbuilt institutional offer. In the case of secondary issues by listed companies, retail offers have become a more common feature of non-pre-emptive placings in the last couple of years. This is principally a result of companies taking advantage of one of the previously lesser-used prospectus exemptions available (for offers with a total consideration over a 12 month period of less than EUR8 million (or the equivalent)).

UNDERWRITING: PUBLIC EQUITY OFFERINGS

19. 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?

The underwriting for an IPO or placing is typically structured on a **"**soft**"** basis, where the underwriters take settlement risk only. This provides the issuer or seller of shares with the comfort that, provided buyers are found for the shares, the underwriter will acquire them if the buyers fail to pay for them at the relevant time. On the other hand, the underwriting for a pre-emptive secondary issue such as a rights issue or open offer is typically structured on a **"**hard**"** basis, where the underwriters take market risk. This provides an issuer with certainty that, whether or not buyers can be found for the shares, the underwriter will acquire them and the issuer or seller will receive the proceeds.

The following are the key terms of the underwriting agreement:

- **Appointments and roles of underwriting banks**.
- **Underwriting commitment**: specifying the basis of the underwriting (i.e. whether on a soft or hard basis).
- **Fee and commission structure**: this is usually expressed as a percentage of the aggregate proceeds of the offering and is sometimes split between a fixed commission element and a discretionary element. For a Main Market IPO, underwriting commission is typically between 2-3% for the fixed commission and between 1% and 1.5% for the discretionary commission. For a secondary issue on the Main Market, the overall underwriting commission is likely to be in the range of 2% to 3.5%, typically including a lower discretionary component than for an IPO.
- **Costs and expenses**: the level of underwriting commissions is set at a level which assumes that the company will also pay all the underwriters' expenses. Usually, the underwriters will also want the ability to deduct these expenses from the proceeds of the offering without having to wait for reimbursement.
- **Conditions:** the underwriters' obligations will, among other things, be expressed as being conditional on the shares which are the subject of the offering and, in the case of an IPO, the existing shares, being admitted to listing and trading by a certain time.
- **Warranties and representations**: these broadly fall into three categories:

- those which relate specifically to the content of the prospectus;
- those which relate to the company's business more generally; and
- technical legal warranties (for example, that the shares have been or will be validly issued).

- On an IPO, selling shareholders typically provide a more limited set of warranties than the company. It is customary for directors of the issuer to give warranties on an IPO but not on a secondary issue.
- **Indemnity:** an underwriter will expect to receive a "transactional indemnity", which requires the company to indemnify it against all losses arising out of the services performed by the underwriter in connection with the offering (subject to limited customary carve-outs).
- **Termination rights**: it is customary for the underwriters to be able to terminate their underwriting obligations in a number of circumstances, including if there is a breach of the warranties or an external force majeure type event. Under the Listing Rules, the underwriting agreement cannot be terminated after admission of the relevant shares.
- **Lock-ups:** for the issuer, a customary lock-up period is typically 180 days after an IPO and 90 days after a secondary issue. For the issuer's directors and any selling shareholders, the lock-up period is typically 365 days after an IPO. The lock-up undertakings are subject to customary carve-outs, such as, in the case of the issuer, issues under existing share option schemes and, in the case of directors and selling shareholders, transfers to connected persons or affiliates.
- **Other issuer undertakings**: these usually apply for 90 to 180 days after closing. The issuer (and, where relevant, selling shareholders) will typically undertake to consult with the underwriters before publishing announcements and in relation to any material new developments and any material change in financial performance.
- **Over-allotment** (on an IPO): where stabilisation is being used in connection with an IPO, the underwriting agreement sets out the mechanics and commercial terms relating to the operation of the overallotment facility.

TIMETABLE: PUBLIC EQUITY OFFERINGS

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

Below is an indicative timetable for an institutional bookbuilt IPO for a company seeking a premium listing and shares traded on the Main Market.

First steps (weeks 1-4):

- The advisory team is appointed. The company finalises its business plan and develops its "equity story" for marketing the IPO.
- The scope of due diligence is agreed on.
- Work commences on preparing the accountants' report on the historical financial information.
- Advisers prepare the initial plan for any pre-IPO reorganisation.
- Discussions begin on the terms of the underwriting agreement and other contractual arrangements.

"Early look" meetings and kicking off the FCA process (Weeks 4-8):

- Management meets key potential investors to establish buy-side appetite.
- The company considers potential non- executive directors to join the board, and it starts to prepare governance policies and procedures.
- Drafting of the registration document and other key sections of the prospectus begins and diligence continues, with advisers flagging their initial findings.
- The sponsor starts engagement with the FCA on the company's ability to meet the eligibility requirements.

Engaging with analysts (weeks 8-12)::

- The company engages with research analysts who prepare independent reports for investors in advance of the IPO.
- By this time, any pre-IPO reorganisation steps are settled. Shareholders are approached to confirm their agreement to the mechanics.
- Marketing continues with further meetings with investors.
- The full prospectus (including the summary and securities note) is moved forward, with further drafts sent to the FCA for review.

Publication of the registration document and connected research (weeks 12-16):

- Before publication of the registration document, the board of directors of the listed company is finalised.
- Due diligence is completed and the reporting accountants issue final (but undated) drafts of their reports.
- Any change-of-control or lender consents are obtained. Any new financing is also arranged, ready for listing.
- The underwriting agreement and other contractual arrangements are in agreed form.
- The company announces the publication of the registration document, which will start the "public phase" of the IPO.
- If unconnected analysts are not given access to management at the same time as connected analysts, there will be a presentation to them within seven days of the registration document being published.
- If the company engaged with unconnected analysts at the same time as connected analysts, connected research can be published from the day following publication of the registration document. Otherwise, there is a seven-day interval before connected research can be published.
- Once research has been published, analysts arrange meetings with prospective investors to discuss their findings. The company publishes an intention to float announcement providing the market with further details regarding the potential IPO.

Prospectus and management roadshow (weeks 16-20):

- About two weeks after the publication of connected research, the company publishes one of the following:
  - a pathfinder prospectus, that is the draft of the prospectus (including the registration document, securities note and summary) which is complete save for the final offer details; or
  - a price-range prospectus which has been approved by the FCA and which contains a range for the offer price and/or the number of shares to be issued or sold.
- Management commences a roadshow of meetings with potential investors.

- The underwriters build a book of demand from institutional investors, and any retail offer also commences.

Pricing and admission (week 20):

- After the road show the final offer size and price are set and announced by the company.
- If a pathfinder prospectus has been used, the final prospectus is approved by the FCA and published. If a price-range prospectus has been used, the company will publish a pricing statement setting out the final offer price (which does not require FCA approval).
- Shares are settled with investors on listing, three business days after the offer price is announced.
- Typically, the pre-IPO re-organisation and drawdown of any new financing occurs conditionally on listing to avoid any need to unwind should listing not take place.
- Certain stabilisation activities can be conducted for 30 days after pricing of the IPO to mitigate against any downward volatility of the share price.

STABILISATION: PUBLIC EQUITY OFFERINGS

21. Are there rules on price stabilisation and market manipulation in connection with a public equity offering?

Given its nature, stabilisation may involve conduct that would otherwise normally be prohibited under the rules governing market abuse and insider dealing and which could give rise to civil or even criminal penalties.

Despite this, the FCA and other European regulators have accepted that stabilisation promotes the orderly operation of the market and reduces the cost of capital, by reducing volatility and increasing market confidence that the price of a new issue of securities can be supported. For this reason, UK MAR provides a safe harbour to stabilisation activities where the stabilising activity or ancillary stabilisation is conducted in conformity with certain requirements. These requirements are set out in the UK version of Commission Delegated Regulation (EU) 2016/1052.

The three broad requirements for permitted stabilisation are:

- The activity must take place within a specified period (for an IPO, up to 30 days from beginning of trading or, where conditional dealing is permitted, from the date of adequate public disclosure of the final offer price).
- The stabilising manager must comply with certain disclosure and reporting requirements. On a typical IPO, market practice is normally to make the required disclosures in the intention to float announcement, the pricing announcement and the prospectus.
- No transaction can be executed above the offer price of the relevant shares.

TAX: EQUITY ISSUES

22. What are the main tax issues when issuing and listing publicly traded equity securities?

The material UK tax considerations for investors participating in a public equity offering will generally be addressed at a high level by disclosure in a tax section of the prospectus. This will focus on the consequences to investors of acquiring, holding and disposing of the equity securities from the perspective of UK tax on chargeable gains, income tax and stamp taxes.

Broadly speaking, the acquisition of shares pursuant to an IPO or other cash placing should be a tax-neutral event for investors. The position may be more complicated in certain secondary offerings such as rights issues and open offers (where the discount to the prevailing market price may in principle be taxable). However, it is generally possible in practice to structure rights issues and open offers on a capital gains tax (CGT)-neutral basis for investors.

Participants in rights issues and open offers may receive amounts of cash (for example, in respect of sales or lapses of nil-paid rights, placing of fractional entitlements, or compensation amounts under open offers). However, provided that those amounts are small (not more than 5% of the market value of the existing shares held or, if greater, GBP3,000), they will generally not give rise to a tax charge but will instead be deducted from the acquisition cost of the investor's shareholding for CGT purposes.

UK stamp taxes generally do not arise on the issue of shares (whether pursuant to an IPO, placing, rights issue or open offer). UK stamp duty at 0.5% generally applies to sales of UK shares. In the case of UK shares traded on UK public markets through the CREST settlement system, this is usually assessed and collected as stamp duty reserve tax (SDRT) at 0.5%. In the context of rights issues, this SDRT charge also applies to trading of nil-paid rights. Relief from these stamp taxes is available to certain market intermediaries and in respect of stock lending transactions. These reliefs are important to facilitating settlement and stabilisation of capital raisings in a stamp duty efficient manner and are generally addressed in detailed provisions in the underwriting or placing agreement. An exemption from stamp duty and SDRT also exists for securities admitted to trading on AIM.

While the issue of shares by a UK tax resident issuer is generally not itself a taxable transaction for the issuer, the issuer must work through the tax consequences of any pre-transaction reorganisation (for example the insertion of a new holding company, which is frequently adopted by companies preparing to IPO), including whether any tax clearances can be sought from HMRC, and whether any specific tax risks may need to be disclosed in the prospectus.

Consideration must also be given to the:

- Tax deductibility of costs incurred in connection with the transaction (which generally will not be possible to the extent such costs are of a capital nature).
- Ability of the issuer to recover input VAT on such costs.

CONTINUING OBLIGATIONS

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

The key continuing obligations which apply to companies with a standard or premium listing are as follows:

- **Financial reporting obligations.** Under the DTRs, an annual financial report and accounts must be published within four months of the company's year-end and an interim report within three months of the end of the first six months of its financial year.
- **Control and disclosure of inside information**. Under UK MAR, a company must inform the public as soon as possible of any inside information that directly concerns it. A company can delay disclosure in limited circumstances (for example where disclosure would prejudice the legitimate interests of the company in negotiating a transaction).
- **Share dealing.** Under the DTRs, persons discharging managerial responsibilities (PDMRs) and persons closely associated with them must notify the company and the FCA of

certain transactions in the company's securities carried out by them or on their behalf. The company is required to publicly announce that information. PDMRs cannot deal in the company's securities during a "closed period" (30 days before the publication of preliminary annual results and half-yearly results), except in exceptional circumstances. Dealing in the company's securities is also prohibited when PDMRs are in possession of inside information.

- **UK Corporate Governance Code.** Under the Listing Rules, a premium-listed company must disclose in its annual report how it has applied the principles of the UK Corporate Governance Code and explain any non-compliance.
- **Class transactions.** Under the Listing Rules, certain significant non-ordinary course transactions by premium-listed companies require prior shareholder approval and/or disclosure to the market depending on their size.
- **Related party transactions.** Under the Listing Rules, significant transactions between a premium-listed company and its related parties require shareholder approval, while smaller transactions require the company to make an announcement and obtain a sponsor confirmation that the transaction is fair and reasonable. In addition, under the DTRs, companies with a premium or standard listing are required to seek board approval for, and disclose certain information relating to, material related party transactions. Modified requirements apply for sovereign controlled companies (*see Question 3*).
- **Climate-related disclosures.** Under the Listing Rules, issuers of premium or standard listed shares or Global Depositary Receipts must include a statement in their annual financial reports setting out whether their disclosures meet the recommendations of the Taskforce on Climate-Related Financial Disclosures and explain why if they do not. This requirement applies to premium listed issuers in respect of accounting periods beginning on or after 1 January 2021, and in the case of standard listed issuers, in respect of accounting periods beginning on or after 1 January 2022.
- **Diversity and inclusion.** Under the Listing Rules, issuers of premium or standard listed shares (excluding open-ended investment companies and shell companies) must, as an ongoing listing obligation, include a statement in their annual report setting out whether they have met certain board diversity targets and if they have not met these targets, explain why.
- The targets are that:
  - 40% of the individuals on the issuer's board are women;
  - at least one of the issuer's senior board positions is held by a woman; and
  - at least one board member is from a minority ethnic background.
- Each in-scope issuer is also required to publish in its annual report numerical data on the ethnic background and gender identity or sex of the individuals on its board and in its executive management.
- These requirements apply in respect of accounting periods starting on or after 1 April 2022.

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

Listed Foreign Companies

Listed companies incorporated in jurisdictions other than the UK are subject to the same FCA Rules as UK companies, save that issuers incorporated in EEA countries and in certain other jurisdictions are exempt from some of the rules contained in the DTRs, mainly relating to the publication of financial information.

Depositary Receipts

Issuers of depositary receipts on the LSE's Main Market are subject to the continuing obligations under the DTRs in addition to the provisions of Chapter 18 of the Listing Rules.

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

Depending on the relevant breach, the FCA has the power to, among other things:

- Privately or publicly censure and/or impose an unlimited fine on the relevant company and/or any director or former director knowingly concerned in the breach.
- Suspend or cancel the company's listing.
- Suspend or prohibit trading of the company's shares.
- Temporarily ban an individual from buying or selling financial instruments (including shares).

MARKET ABUSE AND INSIDER DEALING

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

Restrictions on Market Abuse/Insider Dealing

The Criminal Justice Act 2003 (CJA) makes insider dealing in the UK or in relation to a UK regulated market a criminal offence.

There are three different offences:

- Dealing in any securities when in possession of inside information which affects their price.
- Encouraging someone else to deal when in possession of inside information.
- Disclosing inside information, except when done so in the proper performance of employment or office.

An offence can only be committed by an individual, and only then if they have obtained the relevant information in specific circumstances. There are number of defences available for this offence, including that the insider did not expect the dealing to result in a profit attributable to the inside information.

There is also a civil market abuse regime under UK MAR, which overlaps with the insider dealing legislation and other criminal offences relating to market manipulation. The scope of UK MAR is broad: it captures behaviour relating to financial instruments traded on the Main Market or AIM (among other markets) or in respect of which a request for admission to trading on such a market has been made and certain other related securities.

UK MAR prohibits:

- Insider dealing, recommending or inducing someone else to engage in insider dealing, or unlawfully disclosing inside information.
- Market manipulation.

The market abuse regime applies to all companies and individuals, whether or not they are authorised under the FSMA.

Penalties for Market Abuse/Insider Dealing

The maximum penalty for an individual convicted of insider dealing under the CJA is an unlimited fine and/or a term of imprisonment of up to ten years.

In respect of an offence under UK MAR, the FCA can impose an unlimited fine, make a public censure, apply to court for an injunction or restriction order and require compensation to be paid to victims of market abuse.

There is also a separate criminal regime under the Financial Services Act 2012 in relation to misleading statements and market manipulation. The maximum penalty is the same as that which applies to insider dealing under the CJA.

DE-LISTING

27. When can a company be de-listed?

De-Listing by the FCA

The FCA can cancel the listing of securities if it is satisfied that there are special circumstances that preclude normal regular dealings in them. Examples of when this may occur include, among others, situations where it appears to the FCA that the:

- Securities are no longer admitted to trading as required by the Listing Rules.
- Issuer no longer satisfies its continuing obligations for listing.
- Securities' listing has been suspended for more than six months.

Separate sets of rules apply in relation to takeovers.

Voluntary De-Listing

An issuer that wishes the FCA to cancel the listing of its shares (other than premium listed shares) must make a public announcement, giving at least 20 business days' notice of the intended cancellation. There are no further requirements which apply in relation to the cancellation of standard listed shares.

An issuer that wishes to cancel the premium listing of any of its shares must obtain a shareholder resolution approved by not less than 75% of the votes attaching to the relevant shares (and, if the issuer has a controlling shareholder, a majority of the votes attaching to the shares of independent shareholders (excluding those held by a controlling shareholder)).

The above requirements:

- Do not apply to a target company seeking to de-list its shares after the completion of a successful takeover.
- Are modified in respect of companies in financial difficulty, which do not have to obtain shareholder approval to cancel a premium listing provided certain conditions are satisfied.

Around 5% of issuers listed on the Main Market de-listed in each of 2020 and 2021, with the main reasons for de-listing including the desire to reduce the costs and regulatory burden associated with maintaining listed status.

Suspensions

The *FCA* can suspend the *listing* of any *securities* if the smooth operation of the market is, or may be, temporarily jeopardised or it considers it necessary to protect investors (including where it appears to the FCA that the relevant issuer has failed to meet its continuing obligations).

If an *issuer* has the *listing* of any of its *securities* suspended, it must continue to comply with all *listing rules* applicable to it and the *FCA* can impose any conditions on the procedure for lifting the suspension it considers appropriate.

An issuer can also request the FCA to suspend the listing of its securities by providing a clear explanation of the background and reasons for the requested suspension. The FCA will not suspend the listing unless it is satisfied that the circumstances justify the suspension.

EQUITY OFFERINGS: PRIVATE

28. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document) for private offerings of equity (both listed and non-listed)?

See *Question 11* and *Question 29*.

29. What is the process (if any) for a company completing a private offering of equity securities?

Private offerings are typically carried out by way of a placing. The placing process is usually co-ordinated by one or more investment banks (with whom the company will enter into a placing agreement). Typically, the process is as follows:

- The bank(s) conduct an accelerated bookbuild seeking orders from investors during a period of several hours after the public announcement of the placing (often having first conducted wall-crossed market soundings with a select group of investors in accordance with the MAR safe harbour).
- Once the bookbuild is completed, orders for shares are then confirmed, the pricing of the offering is announced and the issue of and payment for those shares takes place two business days thereafter.

A placing is typically structured to avoid the need for a prospectus by ensuring that:

- The offer is directed at qualified investors only (or that any retail tranche is for less than EUR8 million (or the equivalent)).
- The number of shares being admitted to trading is less than 20% of the number already admitted to trading in the last 12 months
- See *Question 9*

30. Are there any private stock trading platforms where unlisted securities can be bought and sold?

There is no specific private share trading platform in the UK where unlisted securities can be bought and sold.

In recent years, online crowdfunding platforms have grown in popularity. Some of these platforms allow private companies (which are predominantly start-up or early-stage companies) to raise money by issuing their (unlisted) shares to investors. Although the FCA regulates some aspects of crowdfunding platforms (including by requiring that promotions are made only to retail customers who meet certain criteria), challenges remain for English private companies carrying out investment-based crowdfunding given the general prohibition under English company law against private companies offering their securities to the public.

REFORM

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

UK Listings Review

In 2021, a review of the UK listing regime was carried out with the aim of examining how the UK could enhance its position as an international destination for IPOs and improve the capital-raising

process for companies seeking to list in London, while maintaining high standards of corporate governance, shareholder rights and transparency. The review's key recommendations included, among other things:

- The rebranding and repositioning of the standard listing segment (*see below*).
- A fundamental review of the prospectus regime (*see below*).
- Consideration as to how technology can increase the involvement of retail investors and the efficiency of capital raising (*see below*).

Listing Regime Reform

In May 2022, the FCA published a discussion paper seeking further views as to how it can make the UK listing regime and the applicable listing rules more effective, easier to understand and flexible. The FCA welcome feedback on the topics discussed by the end of July 2022. The possible reforms set out in the discussion paper include:

- The creation of one listing segment for equity shares in commercial companies as compared to the current two-segment regime (premium and standard segments) (*see Question 1*). This new single segment would feature:
  - a single set of eligibility criteria (so there would be no "quality" differential between different issuers);
  - a robust, minimum set of "mandatory" continuing obligations, which would focus on transparency; protecting shareholders where management or a significant shareholder's interests may be different from that of ordinary shareholders; and areas such as dilution, where a lack of transparency and accountability could be detrimental to investors;
  - further "supplementary" additional obligations, the adoption of which would be optional for issuers. These would consist of those current premium listing requirements that provide for an enhanced role for shareholders in holding an issuer to account on an ongoing basis, including the significant transactions and controlling shareholder regimes; and
- A change to the eligibility criteria for an admission to listing. The criteria for the new single segment would be based on those which currently apply for the premium segment, save that the FCA is considering removing the financial eligibility requirements where there is an overlap with the current prospectus regime, being:
  - a three-year representative revenue earning track record;
  - three years of audited historical financial information that represents at least 75% of the issuer's business (*see Question 3*); and
  - a "clean" or unqualified working capital statement.

UK Prospectus Regime Review

In 2021, the UK Government published a consultation on fundamental reforms to the UK prospectus regime. Among the government's key proposals were:

- To remove the criminal offence which currently prohibits an issuer requesting admission to trading on regulated markets without first having published an approved prospectus.
- To grant the FCA discretion to determine whether or not a prospectus is required when securities are admitted to trading on a UK regulated market.
- To remove the requirement on the FCA to review and approve all prospectuses before publication.
- A revised, lower standard of liability for forward-looking information contained in a prospectus.
- The addition of a new exemption from the public offer rules for existing holders of securities which would have the effect of taking all rights issues (by all types of companies) outside the restrictions imposed by the public offering rules.

On 1 March 2022, HM Treasury published the policy approach that will be taken to reform the UK's prospectus regime following the consultation, confirming that, among others, the key proposals listed above will be adopted. The UK Government will legislate to make the necessary changes to the prospectus regime when parliamentary time allows. As part of the reforms, the UK Government will delegate a greater degree of responsibility to the FCA to set out the detail of the new regime through rules. As a result, the full suite of reforms will take full effect after the FCA has consulted on, and is ready to implement, new rules under its expanded responsibilities.

Secondary Capital Raising Review

In October 2021, HM Treasury launched an independent expert review that will make recommendations on improving the UK capital raising process for listed companies. The review was scheduled to provide a report and recommendations to the government in spring 2022 (it has been acknowledged there may be some interconnection between the recommendations of this review and the UK Prospectus Regime Review described above).

Among the key issues which the review was expected to focus on are:

- Whether, and how, the overall duration and cost of the existing UK rights issue process can and should be reduced.
- Whether, and how, new technology should be used in the capital raising process to ensure that shareholders receive relevant information in a timely fashion and are able to exercise their rights.
- Whether there are fund-raising models in other jurisdictions (such as Australia) that should be considered for use in the UK.
- Whether there are any refinements that should be made to the undocumented secondary capital raising process in light of recent experiences during the COVID-19 pandemic.

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