



October 2015

## Quoted Company Update

This Update looks at the key changes since our June 2015 Update and future developments relevant to Official List and AIM companies.

### Looking Back...

#### LISTING RULES AND AIM RULES

#### FCA fine – Asia Mineral Resources plc

In **June 2015**, the FCA [issued](#) one of its largest fines for breaches of the Listing Rules – Asia Resource Minerals plc (formerly Bumi plc) was fined £4.65million. The breaches included having inadequate systems and controls to comply with the company's obligations as a listed company and failing to identify related party transactions valued at over £8million that had been entered into by an overseas subsidiary.

#### FCA notice of public censure – the Co-operative Bank plc

In **August 2015**, the FCA published a [final notice](#) publicly censuring The Co-operative Bank plc. The FCA found that the Bank had breached the Listing Rules by failing to take reasonable care to ensure that information notified to an RIS, or made available through the FCA (in this case, its financial statements), was not misleading, false or deceptive.

#### Minor changes to the Listing Rules and DTR

On **23 October 2015**, the FCA brought in minor [changes](#) to the Listing Rules and the Disclosure Rules and Transparency Rules resulting from proposals in its 9th quarterly consultation published in June 2015. The changes modify the requirements on statements which need to be made in a company's annual accounts in relation to going concern to reflect those in the UK Corporate Governance Code. The changes also seek to remove inconsistencies in the application of the concessionary rule on the route to premium listing for scientific research based companies.

#### AIM notice on electronic settlement of US securities

In **August 2015**, the LSE published an [AIM notice](#) setting out changes to the availability of derogations from Rule 36 of the AIM Rules for Companies, which provides that securities admitted to AIM must be eligible for electronic settlement. In the past, the LSE had provided derogations to enable the admission to AIM of certain

US securities that have not historically been eligible for electronic settlement. Following the introduction of new EU regulations requiring all transactions in transferable securities which take place on AIM to be settled electronically, the LSE has changed its approach. The LSE has also issued corresponding guidance in its newsletter "[Inside AIM](#)". For further details, please see our [client briefing](#) on this topic.

## AIM disciplinary notice – nominated adviser censured and fined

In **September 2015**, the London Stock Exchange [announced](#) that a nominated adviser had been privately censured and fined £75,000. As a result of its review of the nominated adviser, AIM Regulation had provided guidance and made a number of recommendations in respect of the nomad's procedures. The nomad had agreed that it would implement changes to address these issues but failed to do so.

## AIM guidance on equity financing products

In **September 2015**, AIM Regulation published an [update](#) to its newsletter "Inside AIM" to provide guidance on disclosures regarding equity financing products involving AIM securities in which an AIM company or its directors are interested. Such products include equity financing facilities which provide the company with a line of funding in return for equity; equity swap facilities; and certain crowd funding products targeted at non-institutional investors. The guidance follows the announcements made last year by Quindell PLC regarding such products in which its directors were interested. For further details, please see our [client briefing](#).

## TAKEOVERS

### Stamp duty on transfer schemes of arrangement – HMRC Guidance

In **June 2015**, HMRC published [guidance](#) on transfer schemes of arrangement and clarified the documents to be sent to the Stamp Office (namely, the Court Order, a copy of the scheme document and the stock transfer form). HMRC states that it will aim to stamp documents within five working days.

### New Practice Statements

Earlier in **October 2015**, the Takeover Panel published two new Practice Statements. [Practice Statement no. 29](#) provides guidance on the Takeover Panel Executive's interpretation and application of Rule 21.2 of the Takeover Code (inducement fees and other offer-related arrangements) and [Practice statement no. 30](#) sets out the Panel's view on how the requirements of Rule 20.2 (equality of information to competing bidders) may be complied with where it is necessary to provide a limited amount of commercially sensitive information to certain anti-trust lawyers or economists advising a bidder on an "outside counsel only" basis for the purpose of enabling them to consider the need for the consent of a competition authority or regulatory body (so-called "Clean Team arrangements"). For further details, please see our [client briefing](#) on this topic.

## COMPANY LAW

### Directors' date of birth information and other changes to the Companies Act 2006

In addition to the major changes to be brought about by the Small Business, Employment and Enterprise Act 2015, there are also a number of smaller changes to the Companies Act 2006 made by way of [regulations](#), some of which came into force on **10 October 2015**. These include:

- omitting the day of the date of birth of company directors from the public register (so that only the month and year are visible on the register);
- imposing new obligations on Companies House to notify new directors after their appointment has been registered and to provide them with information about directors' duties; and
- shortening the timescales under which Companies House may strike off a company from the register, so that the overall timetable for the registrar to strike off a company has been shortened from around 26 weeks to around 16 weeks.

## ACCOUNTS AND AUDIT

### Accounts to include full list of subsidiaries

Companies that were previously able to choose between either showing a full list of subsidiaries in their annual accounts, or only showing their principal subsidiaries and attaching a full list to their next annual return, will no longer have this choice. [The Companies, Partnerships and Groups \(Accounts and Reports\) Regulations 2015](#) provides that accounts approved on or after **1 July 2015** must include a full list of subsidiaries.

### Changes to provisions on auditors

On **1 October 2015**, parts of the [Deregulation Act 2015](#) were brought into force, which amend the Companies Act 2006. These include changes to the rules regarding the procedures for auditors on ceasing to hold office, which apply in relation to financial years beginning on or after **1 October 2015**. The changes seek to reduce the notification requirements when auditors resign or are removed from office and amend the requirements where there is a failure to re-appoint an auditor.

## OPERATIONAL REGULATORY MATTERS

### Modern Slavery Act 2015

The [Modern Slavery Act 2015](#) ("MSA"), which received Royal Assent on 26 March 2015, updates and consolidates a number of criminal offences which concern compulsory labour, human trafficking and other forms of exploitation. It also places a new obligation on commercial organisations carrying on business in the UK to consider and publicly report on their approach to preventing slavery and human trafficking in their various supply chains. This obligation, which came into force on **29 October 2015**, applies to any commercial organisation which carries on a business in the UK which supplies goods/services and has a net turnover of over £36m per annum. The obligation applies in relation to financial years beginning on or after **31 March 2016**. For further details please see our [client briefing](#) on this topic.

### Energy Savings Opportunity Scheme

The [Energy Savings Opportunity Scheme \("ESOS"\) Regulations 2014](#), which came into force in July 2014, implement certain requirements of the EU Energy Efficiency Directive into UK law. ESOS is a new scheme that requires large UK undertakings and their corporate groups to carry out mandatory energy assessments and report compliance to the Environment Agency every four years, starting from **5 December 2015**. A "large" undertaking is one that either employs at least 250 people or has an annual turnover in excess of €50 million and annual balance sheet in excess of €43 million. A corporate group will also be caught where at least one member of the UK group meets this definition. For further details, please see our [client briefing](#).

### Looking forward...

## FCA AND LISTING RULES

### CityUK report – review of the European listings regime

In **July 2015**, the CityUK, an independent membership body promoting the UK financial services industry and the professional services industry in the UK, published a [report](#) setting out the findings of its review of the European Listings regime which was carried out in response to a Government initiative announced in the March 2015 budget. The recommendations include making information available to investors in the IPO process through a core registration statement followed by research (removing the need for a "blackout period") and reducing the prospectus disclosure requirements for secondary issues.

## Changes to Listing Rules, Prospectus Rules and DTR

In September 2015, the FCA published its 10th [quarterly consultation paper](#), which proposes minor amendments to the Listing Rules, Prospectus Rules and the Disclosure Rules and Transparency Rules, including deleting the 80% control provision in relation to the cancellation of listing on takeover offers, thereby requiring a controlling shareholder to obtain acceptance of its offer from independent shareholders in order to seek a cancellation. The proposals also include changes to DTR 7 on audit committees to reflect the requirements of the EU Directive amending the Statutory Audit Directive. The consultation closes on **5 November 2015**.

## Transparency Regulations 2015

Earlier in **October 2015**, HM Treasury published the [Transparency Regulations 2015](#) which will amend the Financial Services and Markets Act 2000 to implement the EU Directive amending the Transparency Directive. Changes include:

- a central storage system for all information required to be disclosed under the Directive;
- a new power for the FCA to apply to the court for an order suspending the shares of a person who has contravened the requirements of the Directive to notify changes in major shareholdings; and
- a power for the FCA to delay publication of any sanctions for infringing the Directive or to make any publication of such sanctions anonymous in certain circumstances.

Certain provisions will take effect on **1 November 2015** and others on **26 November 2015**.

## AIM RULES

### Proposed changes to AIM Rules for investing companies / cash shells

Earlier in October 2015, the LSE published an AIM [notice](#) setting out [proposed changes](#) to the AIM Rules for Companies relating to investing companies and companies that undertake a fundamental change of business. In a move to reduce the number of small cash shells on the market, the LSE proposes doubling the fundraising requirement for investing companies to £6 million and changing the way in which an AIM company that becomes a cash shell following a fundamental disposal is treated. Changes are also proposed to the [AIM Note for Investing Companies](#). The consultation closes on **12 November 2015**.

## TAKEOVERS

### Changes to the Takeover Code – dividends, voting rights and acting in concert

Earlier in October 2015, the Takeover Panel published response statements in relation to its proposals on the following issues. The amendments will all take place on **23 November 2015**.

- Treatment of [dividends](#) paid by a target company ([consultation](#) in May 2015) – the changes clarify:
  - that, should the target company subsequently pay a dividend, a bidder will only be able to reduce the bid consideration if it has reserved the right to do so in its possible offer announcement, any subsequent offer announcements and the offer document;
  - that a bidder which has made a “no increase” statement that it will not increase the value of its bid must reduce the value of its bid by the amount of any dividend subsequently paid by the target, unless the bidder specifically stated in its no increase statement that target shareholders would be entitled to receive the dividend in addition to the bid consideration; and
  - the Panel’s approach in relation to the treatment of dividends, in calculating the minimum offer price established by target company shares purchased by a bidder or its concert parties.

The new provisions will also apply to other distributions made by the target. The Panel has decided not to publish a separate Practice Statement on this topic as originally proposed. Please see our [client briefing](#) on the original proposals.

- [Voting rights \(consultation\)](#) in July 2015) – the Panel is codifying existing practice to clarify that shares which are subject to a restriction on the exercise of the voting rights (whether imposed by an or arising by law or regulation) or a suspension of voting rights (whether implemented by the company's articles of association or otherwise) should nevertheless be regarded as having "voting rights" for the purposes of the Code definition.
- [Acting in concert \(consultation\)](#) in July 2015) – the Panel is introducing three new presumptions to the definition of "acting in concert" to codify existing practice and a new definition of "close relatives". The new presumptions relate to a person's close relatives and related trusts, and to shareholders in a private company who become shareholders in a company to which the Takeover Code applies.

## COMPANY LAW

### Small Business, Enterprise and Employment Act 2015 – revised timetable

In August 2015, a further revised [timetable](#) was published for the implementation of the Small Business, Enterprise and Employment Act 2015, which received Royal Assent in March 2015. The obligation to keep a register of "persons exercising significant control" or "PSC register", which was originally proposed for January 2016, has now been postponed until **April 2016**. The prohibition on corporate directors has been postponed to **October 2016**. Please see our [client briefing](#) on this topic.

## EU DEVELOPMENTS

### Capital Markets Union – Commission Action Plan

In September 2015, the European Commission published an [Action Plan](#) on Building a Capital Markets Union to set out its priorities following the Green Paper published earlier this year. The key next steps include a consultation on a review of the Prospectus Directive by the end of the year. This will look at when a prospectus is required; streamlining the disclosure requirements; setting out a more proportionate regime for small and medium enterprises; and initiatives to remove national barriers and increase legal certainty for cross-border investments. Please see our [client briefing](#) on this topic.

### Market abuse – ESMA Technical Standards on MAR

In September 2015, the European Securities and Markets Authority ("ESMA") published its [final technical standards](#) on the Market Abuse Regulation, which have now been sent to the EU Commission for endorsement. The advice covers areas including the conditions for buyback programmes; stabilisation measures; market soundings; the disclosure of inside information (including delaying disclosure); insider lists (the format of which will be changing) and transactions by persons discharging managerial responsibility. The Market Abuse Regulation will take direct effect on **3 July 2016**.

## ACCOUNTS AND AUDIT

### Statutory audit: Ministerial Statement and BIS consultation

In July 2015, the government issued a [written statement](#) on audit and auditor regulation, confirming that all public interest entities (which include listed companies) will be required to put their audit out to tender at least every ten years and change their auditor at least every 20 years. In October 2015, BIS published a [consultation paper](#) setting out the government's proposals on the transposition into national law of the EU Directive amending the Statutory Audit Directive. The consultation closes on **9 December 2015** and the Directive must be transposed into UK law by **17 June 2016**.

## **FRC consultation on changes to audit**

In September 2015, the Financial Reporting Council (the "FRC") published a [consultation paper](#) entitled "Enhancing Confidence in Audit" which involves proposed changes to the Ethical Standard for auditors, the UK Corporate Governance Code and the FRC's Guidance for Audit Committees. The consultation closes on **11 December 2015**.

## **FRC consultation on going concern basis of accounting and reporting on risks**

Earlier in October 2015, the FRC published for consultation [draft guidance](#) on the going concern basis of accounting and reporting on solvency and liquidity risks for companies that do not apply the UK Corporate Governance Code. The consultation closes in **January 2016**.

## **FOR FURTHER INFORMATION, PLEASE CONTACT**

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