



July 2017

Quoted Company Update

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

Looking back...

GENERAL

Changes to PSC regime

Important changes to the PSC regime resulting from the UK's implementation of the Fourth Anti-Money Laundering Directive came into force on **26 June 2017**, via [The Information about People with Significant Control \(Amendment\) Regulations 2017](#). Please see our updated [client note](#) outlining the requirements of the new regime. The changes relate to:

- scope of the exemption for DTR 5 issuers – while Main Market companies are still exempt from PSC requirements by virtue of being DTR 5 issuers, AIM companies and NEX Exchange Growth Market companies are now subject to the PSC regime, as the exemption which applied to such companies has been removed. From 26 June 2017, such companies have had to take reasonable steps to ascertain who their PSCs are, and as of **24 July 2017**, compile and maintain a PSC Register. If there are no PSCs, or the company has not yet completed its investigations, it should note this on the register;
- other entities within scope – certain other entities now fall within the regime, including Scottish limited partnerships; and
- filing requirements – there is a new requirement to update the company's PSC register within 14 days of any change to the register, and to file changes at Companies House within a further 14 days of any entry or change. This is a significant move away from the current annual filing requirement and will clearly result in an additional burden.

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LOOKING FORWARD

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BEIS has updated both its [non-statutory guidance](#) on the regime and its [statutory guidance](#) on the meaning of "significant influence or control".

TAKEOVERS

New edition of Takeover Code and new Practice Statement on strategic reviews and formal sale processes

In **April 2017**, the Takeover Panel published some minor amendments to the Takeover Code and some clarificatory changes to its [Practice Statement no. 20](#) on secrecy, possible offer announcements and pre-announcement responsibilities.

In **July 2017**, the Takeover Panel published a new [Practice Statement no. 31](#) on "Strategic reviews, formal sale processes and other circumstances in which a company is seeking seeks potential offerors". The Practice Statement provides guidance on its interpretation and application of certain aspects of Rule 2 (secrecy and the timing and content of announcements); Rule 21.2 (inducement fees and other offer-related arrangements) and Rule 21.3 (equality of information to competing bidders) in these circumstances. The Statement:

- sets out what should be included in the announcement commencing the formal sale process or the strategic review which incorporates a formal sale process;
- states that an offeree is required to provide update announcements on the progress of the formal sale process (including an update if the formal sale process is not going ahead);
- confirms that an offeree may require a potential offeror to enter into certain arrangements, (such as a "standstill" provision) as a condition to the offeree agreeing that the potential offeror may participate in the formal sale process; and that the offeree may enter into different arrangements with different potential offerors; and
- sets out the process to be followed where a company has been in private discussions with one or more potential offerors and decides to announce a formal sale process, including the factors that are relevant in deciding whether to grant a dispensation in relation to publicly identifying an offeror.

The Panel has amended some of its previous Practice Statements where the content has been incorporated into the new Statement – please see the [Takeover Panel website](#) for details.

MAR

MAR – CLLS position on pre-announcement placing commitments

In **June 2017**, the CLLS published an [updated Q&A](#) on MAR, which supports the continuation of the pre-MAR practice of entering into binding placing commitments prior to, and conditional upon, announcement of a fundraising. The CLLS view is helpful as neither the FCA nor EMSA has published express guidance on this issue. For further details, please see our [client note](#) on this topic.

MAR – ESMA Q&A

In **July 2017**, ESMA added a question to its [MAR Q&A](#) on whether, in the case of cross-directorships, a company will be a person closely associated ("PCA") with a PDMR of an issuer by virtue of the fact that one of its directors is on both boards. ESMA states that a company ("A") will not be a PCA of a PDMR of an issuer ("B") in the event that the PDMR sits on A's board "without however taking part nor influencing the decisions of that legal entity to carry out transactions in financial instruments of the issuer" (unless, for example, company A is set up for the benefit of that PDMR). This approach is different to that currently taken by the Company Law Committee of the City of London Law Society ("CLLS") in its Q&A. The CLLS is now reviewing its [Q&A](#) as a result.

LISTING RULES, PROSPECTUS RULES AND AIM RULES

Prospectus Regulation – changes to Prospectus Rules

The Prospectus Regulation was published in the Official Journal on 30 June 2017 and came into force on **20 July 2017**. Most of its provisions will take effect 24 months after this date; however a couple of changes to key exemptions (including the current exemption allowing companies to issue a further 10% of their shares without a prospectus) have immediate effect. For further details, please see our [client note](#).

The FCA published [changes](#) to the Prospectus Rules which also took effect on 20 July 2017.

DTR 5 notifications: new TR-1

There is a new [TR-1 form](#) in relation to notifications of shareholder voting rights under DTR5 – this took effect on **30 June 2017** and is located on the FCA website in the same location as the old form.

CORPORATE GOVERNANCE

Pre-emption Group's Appendix of Best Practice

In **June 2017**, the Pre-emption Group published an [Appendix of Best Practice](#), which reiterates the points made in its Statement on disapplication of pre-emption rights. In particular, the Appendix:

- reinforces the importance of consultation with shareholders about a proposed issuance; and
- sets out what needs to be included in an announcement where a company uses the additional 5% authority for the disapplication of pre-emption rights.

ACCOUNTS AND AUDIT

New ICSA terms of reference for audit committees

At the end of **March 2017**, ICSA published a revised [guidance note and model terms for audit committees](#). These were last published in 2012. Changes include a new recommendation that, where possible, one member of the remuneration committee should sit on the audit committee; and an expansion of the duties of the audit committee.

IA guidance on long-term reporting

In **May 2017**, the Investment Association published its [guidance on long-term reporting](#), aimed at driving change in FTSE listed companies, which will help to boost investor confidence and address falling UK productivity levels. It sets out the expectations of the IA's members on certain aspects of long-term reporting and sets out recommendations in relation to business models; productivity; capital management; disclosure of material environmental and social risks and human capital and culture.

Looking forward...

GENERAL

FCA bans restrictive terms of engagement

The FCA has published new rules, which will come into effect from **3 January 2018**, banning provisions in authorised firms' engagement letters that restrict a client's choice of future providers of ECM, DCM and M&A services, where those services are unspecified and uncertain. Please see our [client note](#) on this topic for further information.

TAKEOVERS

Takeover Panel consultation on asset sales

In July 2017, the Takeover Panel published a [consultation paper](#) seeking views on proposed amendments to the Takeover Code in relation to asset sales in competition with an offer and "other matters". This follows a couple of recent cases in which the target board in receipt of a unilateral offer declared that better value could be delivered to shareholders through the company selling all of its assets to a third party, returning the proceeds to shareholders and winding up the company. The "other matters" include setting aside a Rule 2.8 statement; the rules on social media and the dispensation from the mandatory offer requirement. The Panel seeks comments by **22 September 2017**.

LISTING RULES AND AIM RULES

Regulated information – changes to announcements

From **10 October 2017**, all listed companies engaging in financial transactions will have to obtain a legal entity identifier ("LEI"): a unique 20 character reference code. Please see our [client note](#) on this topic for details of what this entails and the process which companies should follow.

Consultation on changes to AIM Rules

In July 2017, the London Stock Exchange [announced](#) a review of the AIM Rules, including proposed changes to both the AIM Rules for Companies and the AIM Rules for Nominated Advisers are proposed. The accompanying discussion paper seeks views on:

- the role of the nominated advisers (including the consistency of approach across the nominated adviser community in respect of appropriateness considerations);
- eligibility criteria, in particular whether to impose a free float requirement and a minimum fundraising threshold;
- the adequacy of existing corporate governance disclosures;
- standards of conduct; and
- breaches of the AIM rules.

The LSE seeks views by **8 September 2017**, after which it will consider whether to draft changes to the Rulebooks for consultation.

CORPORATE GOVERNANCE

BEIS committee report on corporate governance

In **April 2017**, the Business, Energy and Industrial Strategy Committee published a [report](#) on its inquiry on corporate governance, which includes matters raised in the government's Green Paper (published in December 2016 – please see our [March 2017 Quoted Company Update](#)) but also includes other matters such as diversity on boards and the regulatory framework under the Companies Act 2006. The report lists various conclusions and recommendations (including rejecting the idea of annual binding votes on executive pay) – these are not binding but are likely to be taken into account when the government issues its White Paper.