



November 2016

Quoted Company Update

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

Looking back...

GENERAL

ICSA guidance note on board minutes

The guidance, which was published in **September 2016**, deals with issues such as the purpose of board minutes; responsibility for board minutes; access to board minutes and retention of board minutes. The guidance is available to subscribers on the [ICSA website](#).

Company law changes

Several changes took place to the Companies Act 2006 on **30 June 2016**, including the following:

- the requirement to file an annual return has been replaced with a confirmation statement. Companies House has published [guidance](#) on the new requirement;
- statement of capital – the requirement to include the amount paid up and unpaid on each share has been replaced by a requirement to specify the aggregate amount (if any) unpaid on the total number of shares;
- directors' date of birth information – only the month and year of a directors' date of birth are now available on the public register, although the full date of birth must still be included in the company register; and
- private companies can elect, by unanimous resolution, to keep their registers at Companies House rather than maintaining their own set of company books at their registered office.

LISTING RULES AND AIM RULES

Changes to the Listing Rules and DTRs

Substantial changes took place to the Listing Rules and DTRs on **3 July 2016**, to reflect the EU Market Abuse Regulation ("MAR") taking effect. In particular:

- the Model Code has been deleted although companies will still in practice maintain a share dealing code (see below);
- much of DTRs 1 to 3, relating to scope, inside information and transactions by PDMRs, have been deleted and replaced with signposts to MAR;
- the DTRs have been renamed "Disclosure Guidance and Transparency Rules" (still abbreviated to "DTRs").

Further changes took place to the Listing Rules on **29 July 2016**, namely:

- amending the definition of "reverse takeover" to prevent issuers artificially breaking up a transaction to avoid it being classified as such; and
- prescribing in DTR4 the reporting format on reports on payments to governments.

MAR

MAR Update

Please see our [article](#) on the EU Market Abuse Regulation, which took effect across Europe on **3 July 2016** and replaced the previous market abuse regime in the UK. Subsequent developments include the following:

- The European Securities and Markets Authority ("ESMA") finalised its guidelines, which are available on the [ESMA](#) website.
- ESMA also published an updated set of [Q&A](#) on the Market Abuse Regulation.
- The FCA [confirmed](#) that the position in relation to closed periods and preliminary results will be as set out in ESMA's MAR Q&A (see above), i.e. where a company publishes preliminary results, the announcement of the preliminary results will generally end the closed period under MAR, provided that the preliminary financial results contain all the key information relating to the financial figures expected to be included in the year-end report.
- AIM Regulation published an update for AIM companies. The AIM Rules were changed with effect from 3 July 2016 and there is a set of [MAR FAQs for AIM companies](#). These deal with the interaction between the FCA and the AIM team and give guidance on the requirement for, and contents of, an AIM company's share dealing policy.
- ICSA, the GC100 and the QCA published a specimen share dealing code and manual which are available to subscribers on the ICSA, GC100 and QCA websites.
- The CLLS and Law Society published a set of Q&A available [here](#).

Please see also the changes in the "Listing Rules" section above.

If you require any further information or documentation in relation to the MAR requirements, please let us know.

TAKEOVERS

Changes to the Takeover Code

Changes took place to the Takeover Code on **12 September 2016**. The changes, which related to the communication and distribution of information during an offer period, resulted from the Takeover Panel's consultation in February and were set out in the Takeover Panel's [response statement](#). The key changes include:

- changes to the rules on announcements;
- changes to the "chaperoning" requirements (where in certain circumstances meetings with shareholders no longer need to be attended by a financial adviser);
- new rules on video and social media; and
- renumbering of certain rules (e.g. the old Rule 20.2 on equality of information has become new Rule 21.3).

The changes also resulted in amendments to some of the Panel's Practice Statements – please see the Takeover Panel's [website](#) for details.

For further details, please see our [client briefing](#) on this topic, which includes a table summarising the new chaperoning requirements.

CORPORATE GOVERNANCE

Revised Investment Association share capital management guidelines

In **July 2016**, the Investment Association (formerly, the Investment Management Association and ABI) published revised guidelines on share capital management. The [guidelines](#) state that companies seeking a disapplication of pre-emption rights of over 10% of issued share capital should follow the model resolutions (namely two separate resolutions) published by the Pre-emption Group. IVIS will issue an "amber top" and from 1 January 2017, a "red top" (this is its warning showing strongest concern) to any company which does not follow these resolutions.

QCA remuneration guidance

In **July 2016**, the Quoted Companies Alliance ("QCA") published revised guidance on remuneration committees for small and mid-size companies which is available from the [QCA website](#) upon payment of a fee. The guidance covers: composition of the committee; roles and responsibilities and factors to consider when setting remuneration policy. AIM companies should consider whether any changes are needed to their remuneration committee terms of reference as a result of this guidance.

GC 100 and Investor Group Revised remuneration reporting guidance

In **August 2016**, the GC 100 and Investor Group published a revised version of their [directors' remuneration reporting guidance](#), first published in 2013. Key changes from the 2013 version include:

- amendments to incorporate issues addressed in the 2014 Statement, which updated the 2013 Guidance;
- amendments to the guidance on "commercially sensitive" performance measures or targets;
- clarifications in relation to situations involving the remuneration committee's exercise of discretion in determining remuneration outcomes; and
- clarifications in relation to the guidance relating to the future policy table (which describes in tabular form each of the components of the remuneration package for the directors which are comprised in the directors' remuneration policy).

Revised Investment Association principles of remuneration

In **October 2016**, the Investment Association published an updated version of its [Principles of Remuneration](#), together with a [letter](#) to the chairmen of remuneration committees. The IA implements recommendations from the [final report](#) of the Executive Remuneration Working Group, published in July 2016. The Principles have been updated to ensure that they do not promote a single remuneration structure above others and urge

companies to choose what is most appropriate for the implementation of their business strategy. Companies are also encouraged to improve shareholder consultation on remuneration issues, and the Principles state that remuneration committees should be concerned if more than 20% of votes are cast against their proposals.

Looking forward...

GENERAL

Duty to report on payment policies and practices

The Government recently announced that the new duty on "large" companies to report on their payment policies and practices is likely to come into force in early 2017 and apply to financial years beginning on or after **6 April 2017**. The definition of "large" will be the same as under the Companies Act 2006 (i.e. satisfying two of the following criteria: (i) turnover of £36 million; (ii) balance sheet of more than £18 million ; and (iii) more than 250 employees). Companies will be required to publish and keep updated specified information regarding their payment of suppliers in relation to certain contracts.

LISTING RULES AND AIM RULES

Update on Prospectus Regulation

The European Parliament has resolved to adopt [amendments](#) to the EU Commission's proposal for a new Prospectus Regulation which will repeal and replace the current Prospectus Directive and implementing regulations. The Regulation is due to come into force a year after it has published in final form – at the moment, we do not have a clear idea of when this is likely to be. The amendments relate to various matters including the scope of the requirement to produce a prospectus; the exemptions; the contents; the summary and the new concept of a universal registration document. We will report on the amended Regulation once it has been published.

FCA report on investment and corporate banking market study

The FCA has published its [final report](#) on its investment and corporate banking market study. This confirms the findings in its interim report, including that allocations of shares in IPOs are sometimes skewed towards buy-side investors. The FCA will publish a separate paper on changes to the IPO process.

CORPORATE GOVERNANCE

FRC guidance on 2016 annual reports

The FRC has published [advice](#) on the key improvements that can be made to annual reports in the 2016 reporting season. This includes considering a broad range of factors when determining principal risks and uncertainties facing the business, including those relating to Brexit.

High Pay Centre report

In **September 2016**, the High Pay Centre published a [paper](#) by Conservative MP Chris Philip entitled "Restoring Responsible Ownership". The proposals include:

- listed companies having a shareholder committee (comprising the company's five largest shareholders, the chairman and an employee representative) that would have responsibility for approving executive pay deals. The shareholder committee would replace the nomination committee in recommending the appointment and removal of directors to the AGM. It would also approve the pay policy and pay packages proposed by the remuneration committee before being put to the shareholder vote at the AGM and pose questions to the board on corporate strategy and corporate performance;

- mandatory publication of pay ratios of total CEO remuneration to median employee total pay; and
- an annual binding shareholder vote on the remuneration report.

Commons Committee inquiry

In October 2016, the BIS House Of Commons Select Committee launched an [inquiry](#) on corporate governance, focussing on executive pay, directors' duties, and the composition of boardrooms, including worker representation and gender balance in executive positions. Submissions are requested by **26 October 2016** on matters, including:

- whether company law is sufficiently clear on the roles of directors and non-executive directors;
- additional duties for greater transparency;
- whether executive pay should take into account companies' long-term performance; and
- what more should be done to increase the number of women in executive positions on boards.

Approval of remuneration policy

A reminder that many listed companies will be putting their remuneration policy up for approval at their 2017 AGMs as it will be three years since they first did so. Please see our [client note](#) on this topic.