



December 2017

Listed Company Update

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

Looking back ...

LISTING RULES, PROSPECTUS RULES AND AIM RULES

LEI REQUIREMENT FOR OFFICIAL LIST AND AIM COMPANIES

Since **1 October 2017**, all Official List companies have been required to have a legal entity identifier or "LEI": a unique 20 digit alpha-numeric code which identifies companies participating in financial transactions. The DTRs require Official List companies to submit their LEI to the FCA whenever they make an announcement of regulated information. As a result of MiFID II (which comes into force in January 2018), all AIM companies now also need to have an LEI and should have obtained one by **30 November 2017**, in accordance with the LSE's [notice](#). For further details, please see our client notes on these new requirements – [Regulated information: new rules for announcements](#) and [LEI requirement for AIM companies](#).

FINE FOR BREACHES OF DTR

In **October 2017**, FTSE 100 company Rio Tinto Plc was [fined](#) over £27 million for breaches of the DTRs, which related to a failure to account correctly for high-value mining assets when publishing its interim results. The company had failed to conduct an impairment test and recognise an impairment to the carrying value of an Australian listed mining company which it had acquired. The failures resulted in breaches of DTR 4 (periodic financial reporting) and in misleading information being released to the market. The FCA stated that a failure by large listed companies to account properly for impairments clearly creates a significant risk that harm could be caused through investment decisions being made on the basis of incorrect information.

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LOOKING FORWARD

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PUBLIC CENSURE AND FINE FOR AIM COMPANY

In **October 2017**, the LSE issued a public [censure](#) and fine of £125,000 (discounted to £85,000 for early settlement) in relation to AIM company, Management Resource Solutions PLC, for breaches of three of the AIM Rules. The breaches included failure to keep the nominated adviser informed of the company's difficulties in the draw down of the funding for its acquisition and failure to caveat the information in its announcement with details of the risk to completion created by the uncertainty in respect of the financing. This latest censure highlights the importance of keeping nominated advisers fully informed of developments and of seeking advice.

MAR

GC 100 MEMBERS' POLL

In **July 2017**, the GC 100 conducted a "one year on" members' poll to seek views on various practical issues in relation to MAR including inside information (including the use of brokers in determining inside information); insider lists (including whether companies keep permanent insider lists); PDMR dealings and closed periods. The results of the poll are summarised in an [article](#) by the GC100 and Practical Law Company.

CLLS UPDATED Q&A

At the end of **October 2017**, the CLLS and the Law Society published a revised [Q&A](#) on MAR, which covers the position where a company (A) has invested in a listed company (B), and they have a common PDMR.

CORPORATE GOVERNANCE

ICSA AND IA GUIDANCE ON BOARD ENGAGEMENT WITH STAKEHOLDERS

At the end of **September 2017**, ICSA and the Investment Association jointly published [guidance](#) entitled "The Stakeholder Voice in Board Decision Making: Strengthening the business, promoting long-term success" in response to the Government's response paper to the Green Paper on corporate governance reform (please see "Looking forward – Corporate Governance" below). The guidance is designed to develop the principle of strengthening stakeholder engagement and to help boards think about how to understand and weigh up the interests of key stakeholders when taking strategic decisions and contains some practical examples.

NEW PUBLIC REGISTER OF SHAREHOLDER VOTES

As a result of the proposals in the Government's response to the Green Paper on corporate governance reform, the Investment Association is creating a new [Public Register](#) of shareholder votes. The Public Register will comprise FTSE All-Share companies who received votes of 20% or more against any resolution or who withdrew any resolution in 2017 and, going forward, will be updated on an ongoing basis. At the end of **October 2017**, the IA wrote to companies who will be included on the register to give them the opportunity, before the Public Register goes live later this month, to provide an explanation of how they have addressed shareholder concerns since the shareholder vote. A link to any company's response will be included alongside its voting data in the Public Register.

DIVERSITY IN LISTED COMPANY BOARDS AND MANAGEMENT

There have been a couple of recent publications relating to diversity in listed company boards. Firstly, in **October 2017**, the Parker Review Committee published its final [report](#) on the ethnic diversity of UK boards. The report makes a number of recommendations, including that listed companies should:

- increase the ethnic diversity of their boards by having at least one director of colour on each FTSE 100 board by 2021 and on each FTSE 250 board by 2024;
- plan for succession, by developing mechanisms to identify, develop and promote people of colour; and

- enhance transparency and disclosure, with a description of the board's policy on diversity and efforts to increase ethnic diversity at board level in the annual report.

Initially listed companies are encouraged to adopt the recommendations on a voluntary basis but if there is insufficient progress then some of the recommendations may become mandatory.

Secondly, in **November 2017**, the Hampton-Alexander Review published a supplementary report on gender balance in FTSE leadership, following on from its initial report published a year ago. The report comments on the progress on targets set, namely FTSE 350 companies to have a minimum of 33% women's representation on their boards and FTSE 100 companies to have a minimum of 33% women's representation on their leadership teams, each by 2020. The supplementary report now extends the latter target to all FTSE 350 companies.

INVESTMENT ASSOCIATION PRINCIPLES OF REMUNERATION 2018

In **November 2017**, the Investment Association published its revised [Principles of Remuneration](#). There are various changes to the previous version, most of which are unlikely to be significant in practice. However, in relation to dilution, the Principles no longer contain the statement that commitments to issue new shares or re-issue treasury shares under executive schemes may exceed 5% in a rolling ten year period where vesting is dependent on the achievement of significantly more stretching performance criteria. In relation to long term incentives and bonuses paid as shares, many companies already impose a combined vesting/holding period of 5 years as a matter of practice but this latest guidance indicates that it will now be expected. The accompanying [letter](#) to remuneration committee chairs highlights certain items of focus for the 2018 AGM season, including: levels of remuneration; remuneration structures; shareholder consultation; pay for performance; and the accountability of remuneration committee chairs.

ACCOUNTS, AUDIT AND REPORTING

UPDATED BEIS GUIDANCE ON PAYMENT PRACTICES

In **October 2017**, BEIS published [updated guidance](#) on the requirement to report on payment practices and performance, which applies to all large companies (public and private) and LLPs, for financial years starting on or after 6 April 2017. The changes include updated guidance on whether a contract has a "significant connection" with the UK and guidance on reporting where supply chain finance is used. If you require further advice on the new requirements, please let us know.

COMMERCIAL/COMPLIANCE

EXCLUSIVITY PROVISIONS IN COMMERCIAL CONTRACTS

A number of recent cases have highlighted the need for care when drafting exclusivity provisions in commercial agreements – please see our [client briefing](#) which outlines how to avoid the most common pitfalls and ensure that your exclusivity provisions achieve your commercial objectives.

CORPORATE TRANSPARENCY: CONTINUING FOCUS ON SUPPLY CHAINS

Organisations should track current developments relating to corporate transparency and benchmarking initiatives, in order to progress their approaches to, and governance of, human rights. For example, the UK Government's [updated guidance](#) on the Modern Slavery Act 2015, published in **October 2017**, as well as increased NGO surveillance of supply chain issues, have moved expectations forward from last year's round of reporting. We will be sending out a client note with further details shortly.

Looking forward...

LISTING RULES, PROSPECTUS RULES AND AIM RULES

FCA CHANGES TO LISTING RULES

In **October 2017**, the FCA announced a package of rule changes which may affect IPOs scheduled for 2018. In **January 2018**, a revised set of premium listing eligibility requirements (including, a new concessionary route for property companies) will come into force, and there will be some changes in relation to the class tests and reverse takeovers. From **June 2018** new rules will come into force on research in the context of IPOs. These new rules will require an approved prospectus or registration document to be published, and for unconnected analysts to have access to management, before connected research is published. For further details, please see our [client briefing](#) on this topic.

CONSULTATION ON CHANGES TO AIM RULES

In the summer, the LSE announced a review of the AIM Rules, including changes to the AIM Rules for Companies and the AIM Rules for Nominated Advisers. The [discussion paper](#) proposed changes relating to a wide variety of matters including admission criteria and eligibility (including whether to impose a free float requirement); the role of the nominated adviser; and breaches of the Rules. The consultation closed in **September 2017** and we await the outcome.

CORPORATE GOVERNANCE

CORPORATE GOVERNANCE REFORM – LATEST PROPOSALS

At the end of **August 2017**, the Government published a [response](#) to the Green Paper on corporate governance reform, which dealt with: (i) executive pay; (ii) strengthening the stakeholder voice; and (iii) corporate governance for large privately held businesses. The key action points include the following:

- inviting the FRC to consult on changes to the Corporate Governance Code (please see the article below);
- introducing secondary legislation to require quoted companies to (i) report annually the ratio of CEO pay to the average pay of their UK workforce – please see our [client note](#) on this topic; and (ii) provide a clearer explanation in remuneration policies of the range of potential outcomes from complex, share-based incentive schemes;
- introducing secondary legislation to require companies to explain how their directors comply with the requirements of section 172 of the Companies Act 2006 (duty to promote the success of the company); and
- developing a voluntary set of corporate governance principles for "large" private companies.

FRC CONSULTATION ON CORPORATE GOVERNANCE CODE

In **December 2017**, the FRC published its [proposed revisions](#) to the Corporate Governance Code. The FRC is undertaking a "comprehensive review" to ensure that the Code remains fit for purpose, and the proposals address and reflect a variety of issues, including:

- the issues raised in the FRC's Culture Report, which looked at corporate culture and the role of boards;
- the recommendations of the Hampton-Alexander and Parker Reviews on diversity (please see "Looking Back – Corporate Governance" above); and
- the specific changes to the Code requested by the Government's response to the Green Paper on corporate governance reform, namely: for companies to have a method of consulting with their employees; extended recommended minimum vesting and post-vesting holding periods for executive share awards; specifying

that chairs of remuneration committees should have at least 12 months' previous experience; and specifying the steps companies should take when encountering significant shareholder opposition to executive pay.

The FRC is also updating its Guidance on Board Effectiveness. The consultation closes at the end of **February 2018** and the FRC aims to publish a final version of the Code by early summer 2018, to apply to accounting periods beginning on or after **1 January 2019**. We will be sending out a client note containing more details on this topic shortly.

ACCOUNTS, AUDIT AND REPORTING

CHANGES TO FRC'S STRATEGIC REPORT GUIDANCE

In **August 2017**, the FRC [consulted](#) on amending its guidance to help apply the Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 for financial years beginning on or after 1 January 2017, and enhancing the link between section 172 of the Companies Act 2006 (the duty to promote the success of the company) and the purpose of the strategic report. This ties in with the Government's response to the Green Paper on corporate governance reform (see above). The consultation closed at the end of **October 2017**.

COMMERCIAL/COMPLIANCE

GDPR UPDATE

It has been over a year now since the General Data Protection Regulation ("GDPR") was finally agreed and businesses are busy getting their house in order to ensure compliance by the deadline of **25 May 2018**. Meanwhile, the Data Protection Bill was published on 14 September 2017 and is currently at the committee stage in its passage through the House of Lords. Although the GDPR will have direct effect when it comes into force, the GDPR and the Data Protection Bill should be read side by side when enacted, as the bill effectively serves to "fill in the gaps" not covered by the GDPR, and makes certain provisions as to how the GDPR will be implemented in the UK. Crucially, article 23 of the GDPR permits Member States to introduce derogations to the GDPR in certain situations. When enacted, the Data Protection Bill will:

- replace the current Data Protection Act 1998;
- preserve the existing tailored exemptions which have worked well in the Data Protection Act, for example in relation to research, financial services and journalism;
- provide a framework for protection of personal data by official authorities; and
- introduce criminal offences for some breaches.

For further information about the steps you should consider for compliance, please see our [client note](#) sent earlier this year.

TAKEOVERS

PROPOSED CHANGES TO TAKEOVER CODE'S STATEMENTS OF INTENTION

In **September 2017**, the Takeover Panel published a [consultation paper](#) on statements of intention and related matters, including the following proposed changes:

- The bidder should state its intentions with regard to the business, its employees and pension schemes in the Rule 2.7 announcement.

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- The bidder should include specific statements about its intentions in relation to the target's research and development functions; the balance of skills and functions of the target's employees and management; and any repercussions of the bidder's strategic plans on the location and functions of the target's headquarters.
- The bidder should not post its offer document less than 14 days after the first offer announcement without the target's consent.
- Where a bidder or target has made a post-offer intention statement, it should be required, at the end of 12 months from the end of the offer period, to make and announce certain confirmations in relation to such a statement.

We are currently awaiting the outcome of this consultation, which closed at the end of **October 2017**.

PROPOSED CHANGES IN RELATION TO ASSET SALES

In **July 2017**, the Takeover Panel published a [consultation paper](#) on asset sales in competition with an offer: this arose in the context of two takeover offers last year in which the board of a target company in receipt of a unilateral offer decided 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 proposed amendments include changes to Rule 21.1 (Restrictions on frustrating action – when shareholders' consent is required) and also touch on other issues, including setting aside a Rule 2.8 statement. The consultation closed in **September 2017** and we are currently awaiting the outcome.

Listed Company Advisory Team

We have a dedicated Listed Company Advisory Team who would be pleased to assist you with any enquiries you have in relation to the above changes. This team, led by Laura Summerfield, sits within our Corporate Department and focuses on advising listed companies on day-to-day matters including, corporate law and governance. The team also draws on the expertise of the Travers Smith specialist practice areas, such as employment, tax and employee incentives, to provide clients with a co-ordinated and seamless service.

FOR FURTHER INFORMATION, PLEASE CONTACT

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