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GOING PUBLIC IN THE UK

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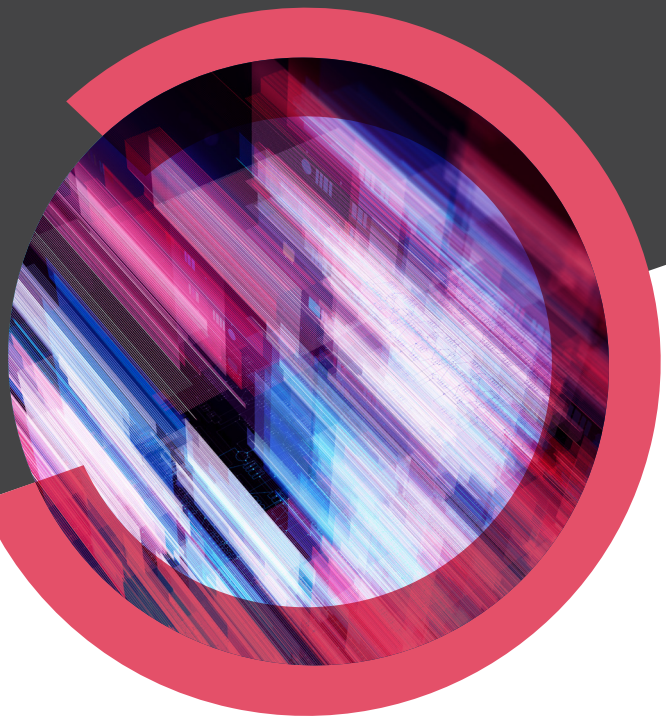

WHY CHOOSE THE UK?

The UK is one of the world's leading financial centres, allowing access to diverse pools of investment from all over the globe. A London listing is perceived as an international mark of quality, providing open and liquid markets, and a regulatory framework for issues which is globally respected and not excessively onerous, for both UK and non-UK companies seeking a gateway to a worldwide investor community.

This chapter provides an overview of the initial public offering ("**IPO**") process in the UK and explores some of the key issues to be addressed in advance of an IPO, options for listing on the London Stock Exchange ("**LSE**"), the listing process, the legal and regulatory framework and continuing obligations. This is not intended to be a comprehensive analysis of the UK listing regime, but rather a summary of the key aspects of listing in the UK.

RECENT MARKET UPDATES AND OUTLOOK

Brexit

In the lead up to Brexit and the end of the transitional period on 31 December 2020, the UK government legislated to ensure that the UK would have a functioning financial services regime at the end of the implementation period. In essence, the amendments preserved the existing listing and prospectus regime and market abuse regime and only made certain policy changes necessary to reflect the UK's position as an independent country outside the EU and to treat the EU member states in the same way as other third countries. Accordingly, the EU Prospectus Regulation, Prospectus Regulation Rules and EU Market Abuse Regulation, were onshored into UK law on IP completion day[1] under the provisions of the EUWA[2] (subject to certain amendments[3]).

Proposed reforms to the UK listing regime

The recommendations of the UK Listings Review led by Lord Hill were published on 3 March 2021 (the "**Review**"). The Review examined how companies raise equity capital on UK public markets and made a series of recommendations to improve, modernise and streamline the process, whilst maintaining the high standards of corporate governance, shareholder rights and transparency for which the UK is known. The key recommendations are as follows:

- improving the environment for companies to go public in London by allowing companies with dual class share structures to list on the premium listing segment, but maintain high corporate governance standards by applying certain conditions, including: (i) a maximum duration of five years for the dual structure; (ii) a maximum weighted voting ratio of 20:1; and (iii) a requirement that holders of B shares be directors of the company so that they can, amongst other actions, be empowered to block takeovers. At the end of the five-year period, companies would either become subject to all of the rules of the premium listing segment, or transfer to a

different segment or market. Permitting listings with dual class share structures is, in particular, likely to appeal to technology companies;

- providing more clarity and choice for companies about how much free float they must have at IPO. This would be achieved by lowering the absolute requirement for free float from 25% to 15% and allowing more choice for companies of different sizes to use measures of liquidity other than an absolute free float percentage. The review found that existing rules on free float are one of the strongest deterrents for companies and in particular high growth and private equity backed companies, seeking a listing;
- revising the Listing Rules requiring trading to be suspended in shares of Special Purpose Acquisition Companies ("**SPACs**") on announcement of potential acquisitions and providing additional protections for shareholders at the time of acquisition; and
- conducting a fundamental review of the prospectus regime, considering in particular: (i) changing the prospectus requirement so that admission to a regulated market and offers to the public are treated separately; (ii) altering how the prospectus exemptions thresholds function; and (iii) using alternative listing documentation where appropriate (e.g. a further issuance by an existing listed issuer).

The government will examine the Review's recommendations and set out next steps. Many of the recommendations, including changes to the listings regime, will require consultations by the Financial Conduct Authority (the "**FCA**"), the conduct regulator for financial markets in the UK.

Cannabis sector business

In September 2020, the FCA published a statement on the listing of cannabis-related businesses. The FCA will not admit the securities of recreational cannabis companies to the Official List, but may admit (i) UK-based medicinal cannabis companies, if they have the appropriate Home Office licences for their activities and (ii) overseas-licensed medicinal cannabis companies and cannabis oil companies, if the FCA is satisfied that the Proceeds of Crime Act 2002 does not apply.

Market outlook

UK IPO activity was significantly impacted by the speed and escalation of the Covid-19 pandemic, subsequent lockdowns and ongoing uncertainties in relation to Brexit. Despite turbulent market conditions in 2020, according to PwC's IPO Watch Europe 2020,[4] the LSE retained its position as Europe's most active market by value, with proceeds accounting for a third of the total proceeds raised in Europe in 2020. There were 30 IPOs in London in 2020, raising £6.0bn in total, in line with the £5.9bn raised in 2019 from 27 IPOs. The fourth quarter of 2020 was particularly active with 20 IPOs which raised £3.4bn, representing 57% of total UK IPO proceeds in that year. There were 13 AIM IPOs in the second half of 2020 alone compared with 10 in total in 2019; AIM ended 2020 up 21 per cent on the previous year. In March 2021, Tinybuild, a US-based video game maker, became the largest ever US-based company to list on AIM, with a market capitalisation of £340m.

After a subdued IPO market in Europe in 2020, new listings in the UK are strong in 2021 as investors continue to search for ways to deploy capital with technology, e-commerce, healthcare and renewables being the predominant sectors. The strong finish to 2020, the global rollout of the COVID-19 vaccine, completion of the US presidential election and clarity around the UK-EU trading agreement provide grounds for cautious optimism in 2021.

KEY ISSUES AHEAD OF AN IPO

The decision to undertake an IPO is a significant one that should not be taken lightly given the cost and increased regulatory burden that comes with being a listed company. Before deciding to launch an IPO, a company should have regard to: (i) the different advisers involved; (ii) whether it is suitable for a listing and the relevant regulatory requirements for an IPO on the chosen market; (iii) whether any structural changes may be required before embarking on an IPO, for example, to the company's constitution, share structure or management team and (iv) choice of market.

WHICH MARKET?

There are several London markets to choose from, depending on the company's equity profile, aspirations and capital structure. The LSE markets are the most common choice of listing venue. In recent years companies have also listed on Aquis Exchange or on Euronext London. The focus of this section is the LSE markets.

Main Market and AIM

The LSE's Main Market is divided into three segments: (i) Premium; (ii) Standard; and (iii) High Growth ("**HGS**"). The Main Market is a "regulated market" for the purposes of MiFID II.[5] It is a requirement under the UK Listing Rules that all equity shares that are listed must be admitted to trading on a regulated market. There is a two-stage procedure for admission of securities to the Main Market: the securities need to be admitted to the FCA's Official List and then admitted to trading by the LSE. For companies that want to be open to investment by institutional investors, this is a key consideration, as those investors will be subject to compliance with investment policies restricting them to investing in listed securities and potentially only to securities with a premium listing.

AIM, which operates as a multilateral trading facility as opposed to a regulated market, is the LSE's market for young and fast-growing companies, giving them access to the market at an earlier stage of their development. A company whose shares are traded on AIM enjoys many of the benefits of a Main Market listed company, but with less onerous disclosure and regulatory requirements. One of the key differences between AIM and the Main Market, making AIM particularly attractive to early stage growth companies, is that there is no formal free float requirement on AIM, whereas a minimum of 25% of shares must be in public hands on the Main Market. The minimum free float requirement on AIM is part of the Nominated Adviser ("**Nomad**") (see below) assessment of appropriateness and is unlikely to be below 10-15%.

Premium and standard listing

The premium listing and standard listing segments of the Official List are available to both UK and non-UK incorporated companies. However, to obtain a premium listing, a company must comply with "super equivalent" standards which are more onerous than the minimum standards originally set by the EU on which the standard listing regime was based. The premium segment is subdivided into four categories:

- equity shares of commercial companies;
- closed-ended investment funds;
- open-ended investment companies; and
- sovereign controlled commercial companies ("**SCCs**") (which alone may list shares or certificates representing shares[6]).

A commercial company has choice as to whether its equity shares are premium or standard listed, whereas an investment entity may only have a standard listed class of equity shares if it has another class of equity shares which are premium listed.

Access to the FTSE UK indices is one of the key benefits of achieving a premium listing since so many investment mandates, particularly in respect of the vast amount of capital represented by tracker funds, are driven by FTSE indexation. In addition to a premium listing, another prerequisite for a company seeking inclusion in the FTSE UK indices is UK nationality allocation by FTSE. The nationality test is substantially easier to satisfy if the company is UK incorporated. Overseas incorporated companies are required to have the majority of their liquidity in the UK and be classified by FTSE as either "developed" or an "approved internationally recognised low tax country". Overseas FTSE companies must also publicly acknowledge adherence to the UK Corporate Governance Code principles (the "UKCG Code"), pre-emption rights on allotments of shares and the UK Takeover Code as far as practicable and have a minimum of 50% of their shares in public hands.

SCCs, being companies with a sovereign shareholder controlling 30% or more of their voting rights, can benefit from a premium listing without having to fully comply with "controlling shareholder" and "related party transaction" requirements of the Listing Rules. In particular, there is no requirement for SCCs to enter into a relationship agreement (discussed below) with the controlling sovereign shareholder, nor is shareholder approval required for a related party transaction (also discussed below) between the SCC and its controlling sovereign shareholder. A premium listing is available for global depository receipts ("**GDRs**") issued by SCCs in addition to their equity shares, but GDRs are not currently eligible for FTSE inclusion.

There are five categories of standard listing:

- shares;
- GDRs;
- debt and debt-like securities;
- securitised derivatives; and
- miscellaneous securities.

The ability to list GDRs on the standard listing segment makes it an attractive option for overseas companies seeking to access London markets versus the premium listing segment which, subject to the SCCs exemption described above, is exclusively for equity shares issued by trading companies or closed- or open-ended investment funds. GDRs are transferable securities issued by depositary banks, representing ownership of a given number of a foreign company's shares that can be listed and traded independently from the underlying shares. GDRs have risen to prominence in recent years as the favoured instrument by which companies from emerging markets such as Russia, India and China choose to raise capital on western stock exchanges. The GDR structure mitigates some of the challenges faced by emerging market companies with regard to marketing shares to international investors in their own jurisdictions and associated exchange rate risk[7].

High Growth Segment

The HGS is not part of the FCA's Official List. It is designed for entrepreneurial companies with high growth potential that require funding to achieve the expansion they desire and are also ready for a public listing. The HGS is seen as a stepping stone to the Premium Segment and has a 10% minimum free float requirement with a minimum value of £30m.

ADVISERS

A company embarking on an IPO should appoint, as early as possible, a team of experienced advisers to assist with identifying key issues, and determine whether the eligibility criteria of the company's chosen market have been satisfied. The core team of advisers normally comprises the following:

Investment bank/sponsor: The investment bank will have primary responsibility for managing the IPO process and co-ordinating the company's other advisers. A company seeking a premium listing must appoint an FCA authorised sponsor (the "**sponsor**"). The sponsor plays a pivotal role, advising the company on a broad range of issues, in particular:

- suitability of the company for listing;
- structure and composition of the board and management team;
- route to market;
- IPO timetable; and
- application of the Listing Rules and Prospectus Regulation Rules ("**PRRs**").

The Nomad: For an IPO on AIM, the Nomad plays a broadly analogous role to that of the sponsor, but also has a regulatory function. A key difference between the roles is that the Nomad is the company's key adviser during the admission process and throughout the company's life on AIM as opposed to the sponsor's more ad hoc role. The Nomad's key responsibilities include:

- undertaking due diligence on the company;
- confirming to the LSE that the company is suitable for AIM; and
- following the IPO, acting as the company's primary regulator and ensuring that it continues to understand and meet its ongoing obligations and compliance with the AIM rules.

There is no requirement for a company seeking a standard listing to appoint a sponsor, but usually a financial adviser will be appointed to assist with structuring the offering, board composition and corporate governance, valuation and pricing issues.

Bookrunner/underwriter: A bookrunner builds an order book for the shares being offered in the IPO. The investment bank may use its reasonable endeavours to find purchasers or subscribers (as applicable) or the IPO may be fully or partially underwritten by the investment bank and one or more other underwriters. If the offering is large, it is usual to appoint other bookrunners or underwriters to form part of a syndicate in addition to the lead bookrunner or underwriter. These other banks are usually appointed by the company in consultation with the lead investment bank once the IPO process is under way.

Lawyers: The role of the company's lawyers is to advise on the legal aspects of preparing the company for listing and the IPO including advising on:

- any pre-IPO reorganisation;
- legal aspects of due diligence;
- preparation of the principal transaction documents including the prospectus (or admission document for an AIM IPO);
- implementation of appropriate corporate governance arrangements;
- the Listing Rules, PRRs and other laws and regulations relevant to the IPO; and
- the various agreements that the company will need to enter into with the underwriters, accountants, registrars and others.

Accountants: The primary role of the company's reporting accountants is to review the company's financial record for the benefit of potential investors. The accountants will assist with ensuring that the company's financial information meets the requirements of the Listing Rules and PRRs (for a Main Market IPO) and the AIM Rules for Companies (for an AIM IPO). The reporting accountant will also review the report on the company's projected working capital position over the 12 to 24 months following the IPO and confirms to the directors and the sponsor/Nomad that it has been made after due and careful enquiry In addition, the accountants will be required to provide various comfort letters to the sponsor (or Nomad on an AIM IPO) and, in certain cases, to the underwriters and will also carry out financial due diligence (see below).

INITIAL STEPS

Once the advisory team has been assembled, the broker will carry out test marketing to ensure that there is likely to be an appetite for the fund raising before proceeding. If this is positive, the company and its advisers can focus on other key IPO work streams such as structuring, preparing initial documentation and due diligence. The company should also consider other key factors such as board composition and corporate governance early on in the process.

Restrictions on publicity and marketing

All information disseminated internally and externally by a company and other parties to the IPO throughout the IPO process must be strictly controlled to comply with UK and other legal and regulatory requirements. Publicity guidelines are usually put in place at an early stage to ensure adherence to the relevant restrictions on pre-prospectus publicity and marketing. The guidelines also set out the protocol that must be followed before information can be released by or on behalf of the company (including the vetting of certain communications by the company's legal and financial advisers). The company and all members of the underwriting syndicate will also need to adopt guidelines on the publication of analysts' research and information relating to the company more generally. These guidelines set out the main requirements of the contents of any research reports from "connected" and "unconnected" analysts (discussed further in the following paragraph) and also set out certain regulatory restrictions with regard to the dissemination of such reports.

Research

Research plays an important role in the IPO process. Following changes introduced by the FCA on 1 July 2018 to the Conduct of Business Sourcebook, if "connected" research (undertaken by the investment bank/sponsor's analysts) is intended to be published and "connected" analysts intend to have access to the company's management team, the investment bank must ensure that a range of "unconnected" analysts can engage with the issuer on the same terms as those granted to connected analysts. A prospectus must be published prior to the release of any connected research and timing must be factored into the chosen approach. These rules apply to regulated markets and not to

AIM IPOs, although the FCA encourages larger companies pursuing an IPO on AIM to consider adhering to the new regime.

Due diligence

The due diligence process, a comprehensive investigation of the company's business, financial position, prospects and the major risks associated with its business, is central to the IPO preparation phase and may impact pre-IPO restructuring within the company's group. It is ultimately also an exercise in gathering all the information that will be needed to prepare the prospectus and to highlight any relevant issues to be brought to the attention of investors or rectified pre-IPO. The due diligence exercise is intended to protect against the risk that the prospectus may prove to be inaccurate or incomplete, with the potential for civil liability being incurred to investors who have relied on it and have suffered loss, or criminal sanctions being imposed. Due diligence is also necessary to protect the people who are responsible for the prospectus. The company and its directors have primary responsibility for ensuring that the prospectus is true, accurate and not misleading and for avoiding the omission of any material information. The company's lawyers and the underwriter's lawyers are usually involved in the process of checking all material statements of fact in a prospectus, as well as other key disclosure documents produced throughout the IPO process, including investor and analyst presentations and key public announcements in connection with the IPO to ensure that such statements are true, accurate and not misleading and that there are no material omissions - this process is known as verification.

KEY IPO DOCUMENTS

Preparation of the key IPO transaction documents commences relatively early in the process. Unless there is an applicable exemption, an FCA approved prospectus is required for the issue of equity securities in the UK where there is an application for admission of securities to trading on the Main Market or an offer of securities to the public in an AIM IPO. If there is no offer to the public on an AIM IPO then an admission document is required, but no prospectus. The prospectus is the principal marketing document for the IPO and forms the basis upon which investors will decide whether or not to participate in the offering. The main content and disclosure requirements for a prospectus (and AIM admission document) are considered further below. The process for obtaining prospectus approval takes the form of a series of private filings with the FCA, as well as reviewing and dealing with the FCA's comments before approval is granted. PRR 1.1.5G sets out various other documents considered to be relevant to the UK prospectus regime. An AIM admission document is not approved by the FCA and it is incumbent on the advisers to ensure compliance with the relevant rules.

Underwriting: equity offering

In most cases, a UK IPO will not be underwritten but will be on a "reasonable endeavours" basis, meaning the banks will use reasonable endeavours to procure placees for the shares being offered, but will have no obligation to take the shares themselves if they are unable to procure placees. The majority of UK IPOs are conducted via a "book-build" process, where investor appetite is tested in advance of the pricing being confirmed. The banks undertake the "book-build" prior to signing the underwriting/placing agreement so they (and the company) have clarity on how many shares are being taken up.

The underwriting/placing agreement is entered into by the company, the directors, the selling shareholders (if any) and the underwriters. The agreement will contain the following key terms:

- conditions precedent/termination rights (for the underwriter);
- mechanics for placing and settling shares with investors;
- an indemnity from the company to the bank(s);
- warranties from the company (and directors on an IPO);
- lock-ups (discussed further below); and
- post-admission undertakings from the company.

Lock-up provisions in respect of the company, its directors and any selling and significant shareholders will normally be in a separate document. In relation to a company undertaking an AIM IPO, lock-ups are required under Rule 7 of the AIM Rules for Companies, for a period of 12 months from the date of admission, from any 10% shareholder

or director (and their respective associates), if that company's main activity is a business which has not been independent and revenue-earning for at least 2 years. If Rule 7 does not apply the Nomad is likely to require them.

Relationship agreement/ancillary documentation

A company seeking a premium listing (other than an SCC), is required to enter into a relationship agreement with any "controlling shareholders"[8]; this is not a requirement for a standard listed company. The relationship agreement governs dealings between the company and its controlling shareholder(s) to ensure that the company is able operate its business independently and that all transactions with the controlling shareholder are on an arm's length basis.

There is no specific legal or regulatory requirement for a company seeking admission to AIM to enter into a relationship agreement; however, in practice such agreements are common and often expected by the company's Nomad and investors, particularly in cases where there is a 30% (or larger) shareholder. Putting a relationship agreement in place also demonstrates that the company has good corporate governance and will be run for the benefit of shareholders as a whole following admission and is therefore appropriate for AIM admission.[9]

There are several other key documents that will need to be prepared including:

- sponsor agreement (Main Market premium listing);
- Nomad and broker agreement (AIM listing);
- director and officer questionnaires;
- intention to float announcement; and
- marketing presentation to be used on the company's roadshow.

Listing application procedures

In the case of a Main Market IPO, the formal admission requirements are set out in the LSE's Admission and Disclosure Standards (the "**ADSs**") and Chapter 3 of the Listing Rules. For an AIM IPO, the relevant admission requirements are set out in Rules 2 to 6 of the AIM Rules for Companies.

Under the ADSs, the company must also apply to the LSE for admission to trading. The company must submit to the LSE, by no later than 12 noon at least 10 business days prior to admission, Form 1 (formal application for admission) and a draft copy of the prospectus. The application is provisional at this stage and will only be deemed to be made when a final prospectus has been approved. The finalised Form 1 and electronic copy of the prospectus must be submitted by no later than 12 noon at least two business days prior to consideration of the application for admission to listing. Written confirmation of the number of securities to be allotted must be received by the LSE no later than 4pm on the day before admission.[10] The company's sponsor (on a Main Market IPO) is also required to make a declaration (in prescribed form) to the FCA (the "**Sponsor Declaration**").[11] The Sponsor Declaration includes certain confirmations from the sponsor in relation to the company's compliance with the FCA's Listing Rules, Disclosure Guidance and Transparency Rules and UK MAR (together the "**LTDRs**") and the PRRs, and confirmation that the directors have a reasonable basis upon which to make the working capital statement. This declaration is supported by various comfort letters from the reporting accountants and legal advisers (addressed to the company) in respect of the matters covered by the Sponsor Declaration.

On an AIM IPO, the company must provide the LSE with certain information 10 business days prior to the expected admission date. Such information is broadly similar to that required by Form 1 on a Main Market IPO, but includes additional information such as a brief description of the business, names and functions of directors and details of any significant shareholders.[12] A completed application for admission (LSE prescribed form), and an electronic copy of the admission document must be submitted. Similar to the Sponsor Declaration on a Main Market IPO, the company's Nomad must, with the final documents, submit a declaration confirming various matters, including: (i) the company's appropriateness for admission in compliance with the AIM Rules for Companies and the AIM Rules for Nominated Advisers; and (ii) confirmation that the content of the admission document is in accordance with Schedule Two of the AIM Rules for Companies. The Nomad declaration is also supported by comfort letters from the reporting accountants and legal advisers.

Admission to trading becomes effective (in relation to both a Main Market and AIM IPO) when the LSE's decision to admit the securities to trading has been announced by the LSE.

REGULATORY FRAMEWORK OVERVIEW

The principal legislation governing securities offerings in the UK is the Financial Services and Markets Act 2000, as amended ("**FSMA**"), pursuant to which power is given to the FCA to make rules relating to the admission of securities to the Official List, certain continuing obligations for listed issuers, the enforcement of such obligations and the suspension and cancellation of listing. The regulatory framework around FSMA includes the LTDRs, PRRs and ADSs. The eligibility criteria for applicants and their continuing obligations are set out in the Listing Rules.

Premium versus Standard listing

The key differences between the eligibility criteria for a premium and standard listing are as follows:

- a premium listing requires the company to have published or filed historical financial information that covers at least three years and represents at least 75% of its business for that period;[13]
- the last balance sheet date for a premium listed company cannot be more than six months before the date of the prospectus and nine months before the date the shares are admitted to listing, whereas for a standard listing it is 18 months before the prospectus if audited interims are included, or 15 months if unaudited interims are included;[14]
- a premium listing applicant must demonstrate that it will be carrying on an independent business as its main activity;
- the constitutional documents of an overseas company seeking a premium listing must include pre-emption rights if the laws of its country of incorporation do not provide such rights;
- a premium listed company must have a relationship agreement in place with any controlling shareholders (except for a SCC as set out above); and
- a premium listed company must appoint a sponsor.

AIM

The Listing Rules and ADSs do not apply in relation to an AIM IPO. Instead, AIM applicants are required to comply with the LSE's AIM Rules for Companies and its Nomad has to comply with the AIM Rules for Nomads. As AIM transactions are generally structured to avoid being an "offer to the public" under FSMA, the PRRs do not usually apply to an AIM IPO. The "offer" on an AIM IPO is usually targeted to "qualified investors" only and therefore is exempt from the obligation to publish a prospectus under the PRRs. The eligibility requirements for an AIM admission are broadly similar to those for a standard listing, one difference being there is no formal minimum free float requirement on an AIM IPO as opposed to the 25% requirement for a Main Market listing (premium and standard). Additional rules also apply specifically to investing companies listing on AIM.[15]

Disclosure requirements: prospectus/admission document

The disclosure obligations for a company seeking to list on the Main Market and AIM are contained in the PRRs and AIM Rules for Companies respectively. As mentioned above, in the case of a Main Market listing, the key disclosure document is the prospectus. The main disclosure document for an AIM IPO is the admission document (on the assumption there is no "offer to the public", as described above).

In accordance with the UK Prospectus Regulation requirements, the prospectus must consist of the 3 principal elements: (i) a summary of the key information required by investors to understand the nature and risks of the company (its content must be accurate, fair and clear and not misleading)[16]; (ii) a registration document containing certain information relating to the company[17] and (iii) a securities note containing information about the securities being offered.[18]

The PRRs require the following key information to be included in the prospectus:

- details of specific risk factors relevant to the company, the market in which it operates, and the securities being offered;
- audited financial information covering a minimum period of 3 years prior to the date of the prospectus, prepared in accordance with IFRS (or equivalent national accounting standards)[19] (this is not required for a company seeking a standard listing);

- details of any significant change in the financial or trading position of the company since the date of the latest published financial information included in the prospectus;
- a working capital statement covering the 12-month period from the date of the prospectus;
- an operating and financial review providing details of the company's financial condition;
- information in relation to significant shareholders of the company;
- details of any related party transactions entered into by the company during the period covered by the historical financial information and up to the date of the prospectus;
- summaries of certain material contracts entered into by the company's group in the two-year period prior to the date of the prospectus;
- information in connection with the company's board and corporate governance; and
- responsibility statements from the company, its directors and proposed directors (if any) confirming that they accept responsibility for the information in the prospectus, and that they have taken all reasonable care to ensure that such information is accurate.

A supplementary prospectus must be published if a significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus, which may affect the assessment of the securities, arises or is noted between the time when the prospectus is approved and the closing of the offer period, or the time when trading on a regulated market begins (whichever occurs later). The issuance of a supplementary prospectus gives rise to withdrawal rights for any investor who had previously agreed to buy shares based on the underlying prospectus. The investor must exercise such rights before the second working day following the date of publication of the supplementary prospectus. Under AIM Rule 3, if at any time between the date of submission of an admission document and the date of admission there arises or is noted any material new factor, mistake or inaccuracy relating to the information included in the admission document, a supplementary admission document must be submitted containing details of such new factor, mistake or inaccuracy.

Companies that operate in certain specialised industries, for example scientific research- based companies and minerals companies, are subject to additional disclosure obligations as "specialist issuers" under ESMA recommendations and guidance[20] and the Listing Rules.

The requirements for an AIM admission document are set out in Schedule Two of the AIM Rules for Companies and broadly reflect the requirements for a prospectus subject to certain variations. There is a general disclosure requirement under Schedule Two, requiring the company to include in the admission document any other information which it reasonably considers necessary to enable investors to form a full understanding of (i) the assets and liabilities, the financial position, profits and losses, and prospects of the company and its securities; (ii) the rights attaching to those securities; and (iii) any other matter contained in the admission documents.[21]

LIFE AFTER AN IPO: CONTINUING OBLIGATIONS

Listed companies are subject to the continuing obligations of the LTDRs, Corporate Governance rules and the ADSs.

Listing Rules

The continuing obligations set out in the Listing Rules mainly relate to ongoing eligibility requirements, financial reporting, significant transactions and related party transactions. Chapter 10 of the Listing Rules sets out the rules on significant transactions. A premium listed company must make a notification about and in some circumstances get shareholder approval for, certain significant transactions depending on the size of the transaction relative to the company. The size of the transaction is assessed using "class tests", based on the gross assets, profits, consideration and gross capital tests. Broadly, a transaction is classified as "class 1" if any of the class test ratios is 25% or more. Entry into a class 1 transaction requires an announcement, publication of a circular and prior shareholder approval of the transaction. Main market listed companies must also issue a prospectus if they conduct a public offering or issue shares in any 12-month period representing 20% or more of their issued share capital at the start of such period; this requirement only applies to AIM companies if they make a public offering. AIM Rules 12 and 15 set out specific disclosure obligations with regard to corporate transactions. A substantial transaction under AIM Rule 12 is one which exceeds 10% in any of the class tests. An AIM company must issue an announcement without delay upon agreement of terms of a substantial transaction. Any disposal by an AIM company which, when aggregated with any

other disposal(s) over the previous twelve-month period, exceeds 75% in any of the class tests, is deemed to be a disposal resulting in a fundamental change of business under AIM Rule 15, and must be conditional on shareholder approval, disclosed without delay via an announcement and be accompanied by the publication of a circular.

Transactions with "related parties" are dealt with under Chapter 11 of the Listing Rules. A related party is defined as a person who is, or was within the previous 12 months, a substantial shareholder (broadly, a shareholder holding at least 10% of the company's voting rights), a director of the company or other group company, a person exercising significant control or an associate of any of these. A premium listed company that enters into a transaction with a related party which exceeds any of the class test ratios by 5% or more, must issue a circular to shareholders and obtain prior shareholder approval of the transaction. AIM Rule 13 applies to related party transactions, being any transaction with a related party which exceeds 5% in any of the class tests. An AIM company must disclose without delay, the name of the related party concerned, the nature and extent of their interest in the transaction, a statement to the effect that the other directors consider the transaction is fair and reasonable having consulted with the Nomad and certain other information specified under Schedule Four of the AIM Rules for Companies.

UK MAR

Companies listed on the Main Market and AIM are subject to the UK MAR. AIM companies are subject to additional disclosure obligations in relation to "price sensitive information".[22] Key obligations on companies under UK MAR include:

- public disclosure of inside information as soon as possible;[23]
- drawing up and maintaining insider lists indicating persons working for or on behalf of the company who have access to inside information;
- notifying the market of transactions (at or above EUR5,000 per calendar year) conducted on their own account by persons discharging managerial responsibilities ("**PDMRs**") or their closely associated persons relating to the company's shares; and
- restrictions on PDMRs from dealing in the company's shares during a 'closed period' (such period being the period of 30 calendar days before the announcement of its annual or half-yearly report, subject to certain specified exceptions).

UK MAR also contains a safe harbour regime for the disclosure of inside information as part of a market sounding, which would otherwise be unlawful.

Corporate Governance

The UKCG Code sets out standards of good practice in relation to leadership and effectiveness of the board of directors, remuneration, accountability and relations with shareholders. Premium listed companies must comply with the UKCG Code. The UKCG Code does not apply to companies with a standard listing or AIM companies, but they are still required to make corporate governance compliance disclosures. AIM companies generally follow the Corporate Governance Guidelines for Small and Mid-size quoted Companies published by the Quoted Companies Alliance.

ENDNOTES

[1]11pm (GMT) on 31 December 2020, marking the end of the implementation period put in place to enable the UK to transition away from the EU's laws and institutions.

[2]European Union (Withdrawal) Act 2018.

[3]Other amendments to aspects of the prospectus regime were made by The Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019.

[4]Data from PwC's IPO Watch Europe 2020 report: https://www.pwc.co.uk/audit- assurance/assets/pdf/ipo-watch-europe-2020-annual-review.pdf.

[5]EU Directive on Markets in Financial Instruments (No. 2014/65/EC), on shored into UK law following Brexit, through the European Union (Withdrawal) Act 2018.

[6]LR 1.5.1G(3).

[7]Chapter 18 of the Listing Rules sets out the requirements that apply to the listing of GDRs which are substantively similar to those that apply to a standard listing of equity shares.

[8]Any person who exercises or controls, on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company.

[9]Rule 14, AIM Rules for Nominated Advisers.

[10]This deadline may be extended to 7am on the day of admission by prior agreement with the LSE.

[11]Listing Rule 8.4.3R.

[12]Anyone who owns 3% or more of the issued share capital of the company.

[13]These requirements are modified for minerals companies and scientific research companies under Listing Rules 6.10 and 6.11 respectively.

[14]Ibid.

[15]Rule 8 of the AIM Rules for Companies.

[16]Article 7(1) UK Prospectus Regulation.

[17]Article 2, UK Prospectus Delegated Regulation.

[18]Article 12, UK Prospectus Delegated Regulation.

[19]The 3-year minimum period can, subject to certain conditions, be relaxed by the FCA for certain mineral or life sciences companies with a short trading history.

[20](i) European Securities and Markets Authority's ("ESMA") update of the CESR recommendations: consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (20 March 2013), and (ii) ESMA's Q&A on the Prospectus Regulation (ESMA/2019/ESMA31-62-1258 - last updated on 28 January 2021).

[21]Schedule Two, paragraph (k) of the AIM Rules for Companies.

[22]Rule 11 of the AIM Rules for Companies.

[23]The FCA published its review on delayed disclosure of inside information ("DDII") in November 2020, proposing to increase its oversight with regard to issuer's compliance with DDII notification requirements.

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