



# JOINING THE MAIN MARKET

A field guide for applicants to the Main Market  
of the London Stock Exchange



**London**  
Stock Exchange

# INTRODUCTION

The Main Market of the London Stock Exchange is one of the world's longest established and most liquid markets trading the securities of nearly 1,300 companies from over 60 countries, including many of the world's largest, most successful and most dynamic companies. A listing on the Main Market is an aspiration for many companies.

The purpose of this guide is to answer some of the questions frequently asked by companies contemplating joining the Main Market and to provide an overview of the IPO process.

DLA Piper has a wealth of experience in advising Main Market issuers – we have worked with many companies to help them achieve their ambition of a Main Market listing and their plans for growth following an IPO.

The Main Market attracts interest from businesses operating in many parts of the world. With offices in over 30 countries, DLA Piper combines local and international expertise across a wide range of industry sectors and is well-positioned as an ideal partner for your business. We would be delighted to talk with you about how we can help you plan and achieve an IPO on London's Main Market.

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## I WHAT ARE THE BENEFITS OF JOINING THE MAIN MARKET?

- **Access to capital** – Joining the Main Market will provide the company with access to a wide institutional and retail shareholder base and a deep pool of capital, giving the company an opportunity to fund its plans for growth through equity fundraisings both on IPO and in the future. This may prove attractive to a company which has reached a stage in its development where it is considering alternatives to bank or venture capital finance.
- **Liquidity of shares** – The company's shares will become more marketable by being traded on a regulated and liquid market at an externally agreed price. The company's market capitalisation and share price performance provides a visible means of comparing the company with its competitors.
- **Employee commitment** – Being listed on the Main Market will provide the company's employees with an opportunity to participate in the ownership of the company. Share incentive schemes are commonly used to help listed companies attract and retain key employees.
- **Profile** – A listing on the Main Market is a real opportunity to raise the company's profile, in particular, through required

regulatory announcements and access to more extensive media coverage. This will help to sustain demand for and liquidity in the company's securities.

- **Comfort for suppliers and customers** – Given the in-depth processes that a company has to undertake to obtain a listing on the Main Market and the ongoing regulatory requirements to which it is subject, customers and suppliers gain a significant degree of comfort as to the organisation, transparency and financial standing of the company.
- **Greater efficiency** – The listing process and ongoing corporate governance requirements help encourage better systems and controls within the company. This, in turn, enhances investors' confidence in the company.
- **Ability to take advantage of acquisition opportunities** – The company will be able to offer its securities as consideration for an acquisition where unlisted securities would be less attractive to a vendor.
- **Exit opportunity** – Listing can allow existing shareholders (for example, private equity investors and/or family founders) to realise some or all of their investment at the same time as increasing the company's shareholder base.

## 2 WHAT LISTING OPTIONS ARE AVAILABLE ON THE MAIN MARKET?

When joining the Main Market, companies may opt for a premium listing, a standard listing or admission to the High Growth Segment.

- **Premium listing** – Companies with a premium listing are expected to meet the UK's highest standards of regulation and corporate governance. These standards are super-equivalent to EU minimum requirements. Premium listed shares are also eligible for inclusion in the FTSE UK Index Series, further enhancing the company's profile and the liquidity of its shares. A premium listing is only available to companies seeking to list equity securities.
- **Standard listing** – A standard listing allows companies to access the Main Market by meeting EU minimum requirements only. In general therefore, standard listed companies are not subject to the same stringent requirements as premium listed companies. Consequently, such companies may not enjoy the same high profile as premium listed companies nor have access to the same wide investor base. In particular, standard listed securities are not eligible for inclusion in the FTSE UK Index Series.

### KEY FEATURES OF THE MAIN MARKET:

- Home to some of the world's largest and most high profile companies.
- Offers access to a wide range of investors and a deep pool of capital.

- **High Growth Segment –** Designed to attract UK and European medium and large sized high growth businesses, the High Growth Segment (“HGS”) provides an alternative means of accessing the Main Market. In particular, it will attract companies who may not yet meet premium listing eligibility requirements but who have longer term aspirations to join that segment. Like standard listed companies, HGS companies are subject to EU minimum requirements, together with certain additional requirements set out in the London Stock Exchange’s HGS rulebook. Although HGS shares are not eligible for inclusion in the FTSE UK Index Series, admission to the HGS will enable companies to access the deep capital pool of the Main Market and increase visibility with the analyst and investor community.
- The Main Market is an attractive market for companies from outside the UK and offers access to a wide investor base and increased international profile. Companies from outside the UK may need to introduce a new holding company in order to meet the super-equivalent standards applicable to companies seeking a premium listing. Alternatively, a route chosen by some companies, particularly those from emerging markets, is to seek a listing of securities known as global depositary receipts (GDRs)

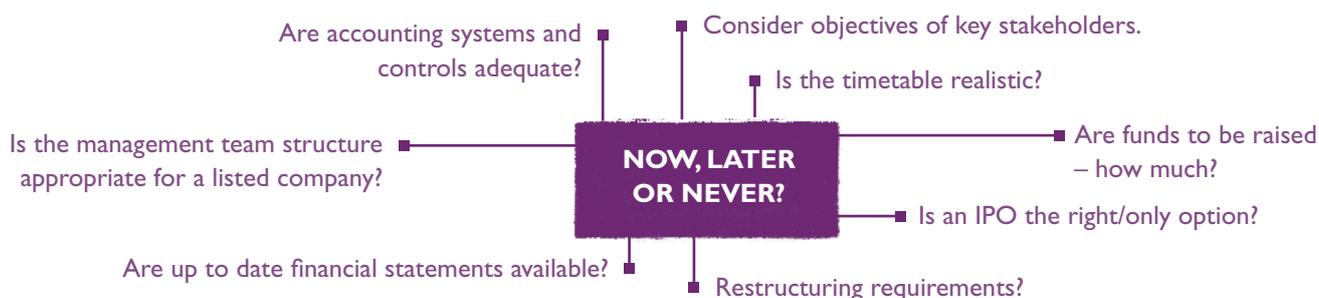
which represent shares in the company. GDRs are only eligible for a standard listing.

### 3 IS A LISTING ON THE MAIN MARKET RIGHT FOR OUR COMPANY?

In particular, you should consider the following:

- **Eligibility criteria –** The company will need to satisfy a number of basic conditions in order to be eligible for a premium or standard listing on the Main Market:<sup>1</sup>
- it must be duly incorporated under relevant laws. In the case of a UK company this usually means being a public limited company;
- the securities for which listing is sought must be issued in accordance with relevant laws and the company’s constitution;
- the securities must be freely transferable;

- the expected market capitalisation of the company must be at least £700,000 and would typically be expected to be much higher than this;
- once the company is listed, at least 25 per cent of each class of securities being listed must be in public hands in one or more EEA Member States; and
- the application for listing must relate to all securities of the same class issued or proposed to be issued and the securities must be capable of electronic settlement.
- In addition, a company seeking a premium listing must comply with the following super-equivalent eligibility criteria:
  - it must have published or filed audited accounts covering a three year period and ending no more than six months before the planned IPO;<sup>2</sup>



<sup>1</sup> These eligibility criteria are set out in Chapter 2 of the Listing Rules.

<sup>2</sup> The UKLA has the discretion to accept accounts for a shorter period where it is satisfied that investors have the necessary information to make an informed judgment as to investment.



- at least 75 per cent of its business must be supported by a three year historic revenue earning record;
  - it must demonstrate that it will be carrying on an independent business as its main activity;
  - where the company has a controlling shareholder (broadly, a shareholder with 30 per cent or more of the company’s shares) it must have a relationship agreement in place with that shareholder containing mandatory independence provisions; and
  - it must be able to show that it has enough working capital for its current needs and for at least the 12 months following its IPO.
- To join the High Growth Segment, a company must<sup>3</sup>:
    - be incorporated in the EEA;
    - be a revenue generating, trading business;
    - demonstrate revenue growth of at least 20 per cent over the three year period prior to admission;
    - have at least 10 per cent of shares admitted in public hands with a value of at least £30 million (the majority of which must be raised at admission); and
    - set out an intention to join the listed segment of the Main Market over time.

- **Business plan** – In order to be an attractive proposition for investors, the company must not only have a solid trading record, it must also have robust and realistic plans for future growth.
- **Management and employees** – Investors like to see that a potential Main Market company has a strong, experienced and stable management team. The company should therefore review the strengths and weaknesses of its current management team and consider whether additional members need to be recruited to bring additional expertise to the team. A key consideration here is the recruitment of able and experienced non executive directors to the board and the corporate governance standards to which the company will be subject.

#### 4 HOW SHOULD THE COMPANY PREPARE FOR A LISTING ON THE MAIN MARKET?

Before the IPO process gets underway in earnest, the company should be reviewing every aspect of its business to ensure that it is ready for listing.

This review may involve any or all of the following:

**Pre-IPO review of assets and liabilities** – It is important, particularly when seeking a premium listing, that the company owns or controls all of the assets needed for the successful operation of its business. A review of the company’s key assets

will therefore be required as part of the preparations for its IPO. Liabilities (including, for example, tax liabilities) of the group should also be reviewed to ensure that following its IPO the company will only be responsible for liabilities that are associated with its own business.

- **Shareholder arrangements**
  - In general, special rights and obligations of shareholders, and arrangements with shareholders which are not on an arms length basis, tend to be unwound on an IPO. Existing shareholders may be required to enter into lock-up arrangements restricting their ability to sell shares for a certain period following the IPO.
- **Constitutional documents**
  - These will need to be reviewed to ensure that they are suitable for a listed company. Usually, the company to be listed will adopt completely new constitutional documents.
- **Corporate governance** – In order to prepare for listing and the ongoing corporate governance standards to which the company will be subject,<sup>4</sup> the company should review its corporate governance and internal control systems and make any necessary changes to these systems in advance of its IPO, to ensure minimum disruption to the operation of the business.

<sup>3</sup> These eligibility criteria are set out in section A1 of the HGS rulebook.

<sup>4</sup> Namely, for premium listed companies, the UK Corporate Governance Code published by the Financial Reporting Council, and for standard listed companies and High Growth Segment companies, the requirements of chapter 7 of the Disclosure and Transparency Rules. See question 10 below for further information.

- **Share capital** – It is usually necessary to undertake some form of reorganisation of the share capital of the company (for example a share split/consolidation and/or a bonus issue) in order to ensure that sufficient new shares are available for any issue of shares as part of the IPO and to assist with setting the right issue price. In addition, a share capital reorganisation may be required to deal with any exit arrangements that may be in place for existing investors in the company.
- **Banking facilities** – These will need to be reviewed to ensure that they are sufficient for the company’s capital requirements going forward.
- **Contracts** – Important contracts should be examined to ensure that there are no change of control provisions which would be triggered by an IPO and which could have an adverse effect on the company’s business.
- **Intellectual property** – Intellectual property rights should be reviewed to verify ownership and to ensure that they are properly protected.
- **Share schemes** – If the company has a share scheme, this should be reviewed. If not, the company may consider establishing one or more such schemes to attract and incentivise management and employees. The availability of such schemes may be an important factor in valuing the company’s shares and in its future success.
- **Pension schemes** – These should be reviewed to ensure adequacy of funding levels, a particular concern where the company has a final salary scheme.
- **Insurance** – All the company’s insurance policies (including directors and officers insurance) should be reviewed to ensure they provide adequate cover. The directors may also consider obtaining insurance against their liabilities under the prospectus (see question 9 below). Where this is the case, it is essential that insurers are involved in the IPO process at an early stage. They will often wish to be involved in the verification process, for example, so that they are able to make a fully informed risk assessment.

## 5 WHAT OTHER ADVISERS WILL I NEED TO APPOINT AND HOW MUCH WILL THE TRANSACTION COST?

The roles of each of the key advisers are summarised below:

- **Sponsor/financial adviser (who may also combine the roles of bookrunner, global coordinator and lead adviser)** – The sponsor/financial adviser plays a key role in bringing the company to the Main Market – it co-ordinates and organises the whole IPO process. A company seeking a premium listing must appoint a sponsor. Under the Listing Rules, a sponsor has an important regulatory role – the UKLA relies on the sponsor to confirm to it that the company is suitable for a premium listing, that all eligibility criteria have been met and that all other requirements of the Prospectus Rules and the Listing Rules have been fully complied with.<sup>5</sup> In particular, the sponsor will liaise with the UKLA and the London Stock Exchange to ensure that the admission and prospectus vetting processes run smoothly.



<sup>5</sup> The sponsor’s key obligations are set out in paragraphs 8.4.2R and 8.4.3R of the Listing Rules.





The sponsor must also be satisfied that the directors are fit to be directors of a listed company and will advise on the structure and make up of the board

A company seeking admission to the High Growth Segment must appoint a “key adviser” for the purposes of admission. A key adviser’s role on IPO is similar that of a sponsor – it must confirm the suitability of the company for admission to the HGS to the Exchange and generally guide the company through the IPO process.

Whilst neither a sponsor nor a key adviser is required when seeking a standard listing (including a listing of GDRs), a lead financial adviser would normally be appointed to co-ordinate the IPO and will take on most of the functions of a sponsor.

In conjunction with the brokers, the sponsor/financial adviser will also advise on the pricing and underwriting of the company’s shares on IPO.

- **Broker** – The broker is usually another team at the same financial institution as the sponsor team and

acts as the main interface between the company and the investor community. In broad terms the broker’s key roles are to prepare the market, to market the issue (together with representatives of the company) and to assist in pricing the issue after building a book of interested investors. Following the IPO, the broker will manage the relationship between the company and its institutional investors and will also market the company’s shares in order to sustain their liquidity.

- **Reporting Accountants** – The reporting accountant is distinct from the company’s own auditor and its principal function is to review the company’s financial record and internal systems for the benefit of potential investors. It will produce both a “long form” report (a detailed analysis of the company’s business and financial history which is prepared to analyse the business and support the drafting of the prospectus) and a “short form” report (the

company’s three year financial record that must be included in the prospectus). The reporting accountant will also typically prepare a report on the company’s working capital projections for the 12 to 18 months following the IPO.

- **Company’s lawyers** – The company’s lawyers advise the company in relation to the legal aspects of the IPO process. This includes carrying out legal due diligence on the company, dealing with any reorganisation of the company’s structure and amendments to its constitutional documentation prior to the IPO. The company’s lawyers will also deal with the engagement and underwriting arrangements with the sponsor and brokers, advise the directors in relation to their responsibilities and prepare verification notes in relation to the prospectus. The company’s lawyers also prepare the directors’ service contracts, share incentive schemes and assist in the drafting of the prospectus itself.

- **Sponsor's/financial adviser's lawyers** – The role of the sponsor's/financial adviser's lawyers is to advise the sponsor/financial adviser on any agreements between it and the company, in particular any underwriting or placing agreement and to assist in the preparation of the prospectus. They will also review the work done by the company's lawyers.
- **Financial PR consultants** – Financial PR consultants are employed to generate positive press interest in order to gain maximum coverage of the company and the fundraising at the time of the IPO. They may also be engaged to monitor the wording and format of any public statements or press releases made during the IPO process.

The usual cost for engaging the above advisers on an IPO is, as a rough guide, around 10 per cent of any money raised in fees.

The cost for appointing a sponsor/financial adviser and broker to advise on admission to the Main Market is usually calculated as a percentage of any new money raised, depending partly on whether the sponsor/financial adviser is underwriting the issue or not. Additionally, a corporate finance fee is generally charged.

The company will also be required to pay an admission fee to the London Stock Exchange, the amount of which will depend on the company's

initial market capitalisation. The UKLA will also charge fees to vet the company's prospectus and, in the case of companies seeking a premium or standard listing, to admit the securities to the official list.

## 6 HOW LONG WILL A MAIN MARKET IPO TAKE AND WHAT DOES THE IPO PROCESS INVOLVE?

It can often take up to two years to prepare a company thoroughly for an IPO, and most advisers suggest at least a year from decision to execution. This ensures that appropriate internal financial and management controls are in place and that any necessary restructuring can be carried out. The timetable for the IPO process itself is shorter, typically around three to six months from the appointment of advisers.

The precise timetable will depend on the company's circumstances and the nature of the fundraising. For example, whether any new or existing securities are to be offered in connection with the IPO (they need not be) and, if so, the offering structure (e.g. retail, institutional, employee or priority allocation offer, or a combination); whether the issue is to be underwritten; whether any offer is to be extended to international investors and the extent of any pre-IPO reorganisation that is required. A further key factor in timing may also be how much work the reporting accountants are required to carry

out in order to prepare their long form and short form reports, and to complete the working capital review.

Once advisers have been engaged and the due diligence processes are underway, the countdown to the IPO starts in earnest. The period leading up to admission to the Main Market is one of intense activity, typically involving the following:

- **Preparation of the prospectus and verification** – A prospectus is required when seeking a premium or standard listing on the Main Market or admission to the High Growth Segment. The prospectus is the principal marketing document. It must contain all information necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the company, and of the rights attaching to its securities.<sup>6</sup> It must also contain a number of specific disclosures, as required by the UKLA Prospectus Rules.<sup>7</sup> The UKLA must also vet and approve the prospectus prior to its publication to ensure that these disclosure requirements have been complied with.<sup>8</sup> This vetting process can take several weeks to complete, as the prospectus is continually refined and the UKLA's comments and queries are dealt with. Preparation of the prospectus is led by the sponsor/financial

<sup>6</sup> This general and overarching disclosure obligation is set out in section 87A(2) of the Financial Services and Markets Act 2000.

<sup>7</sup> The contents requirements of the prospectus are set out in Appendix 3 (Annexes I, II and III) of the Prospectus Rules.

<sup>8</sup> Paragraph 3.1 of the Prospectus Rules. The draft prospectus and other supporting documents must be submitted to the UKLA at least 20 working days before the intended approval date for the prospectus.



adviser or the company's lawyers and will require significant time commitment and input from the company's management team.

A verification exercise is carried out to help ensure that the prospectus is true, accurate and not misleading. Further, the verification process should assist in ensuring that all material facts have been disclosed in the prospectus. Verification can be a long process, but it is vital. The company's lawyers will be heavily involved in this process and will assist in the production of verification notes and in guiding the board on the issues that it should be considering.

#### **Application for admission to trading on the Main Market –**

This process runs in tandem with the UKLA's prospectus approval process. The company must also apply to the London Stock Exchange to have its securities

traded on the Main Market and ensure that the Exchange's Admission and Disclosure Standards are complied with.

The company and its advisers will liaise with the Exchange from a relatively early stage to ensure the admission to trading process runs as smoothly as possible.

- **Marketing** – The success or otherwise of an IPO will depend to a large extent on the marketing of the IPO to potential investors. The scale and nature of the pre-impact marketing will depend largely on the form the IPO is taking, and in particular whether it involves an offer to retail investors as well as to institutional investors. The lead role in pre-impact marketing is generally taken by the brokers, since they are in constant direct contact with the market itself and have the clearest feedback on the market's response to the IPO. Typically, the company's

directors (in conjunction with the company's sponsor, broker and financial PR advisers) will prepare a presentation together with an advanced "pathfinder" draft of the prospectus and carry out a series of roadshows to potential investors in the weeks leading up to the IPO.

- **Placing/underwriting agreement** – A placing/underwriting agreement will be entered into between the sponsor/financial adviser, the company, the company's directors and any selling shareholders, under which the sponsor/financial adviser agrees to place the new and existing shares being issued or sold with institutional investors. If the sponsor/financial adviser and/or broker (or more than one broker) is underwriting the issue, it will also agree to subscribe for or purchase any shares not taken up by such investors.



- **Pre-impact day board meeting** – Impact day is the day on which a public announcement is made of the terms and the pricing of the issue and the day on which the prospectus is published. The day before impact day, a board meeting will be held (not surprisingly, referred to as the pre-impact day board meeting) to approve the prospectus and related documents and, crucially, to price the issue.
- **Impact day** – The IPO is announced and the prospectus is approved and published.
- **Admission** – This is the date on which the company’s securities are admitted to listing and trading on the Main Market, and on which dealings in the company’s securities commence. This normally takes place a few days after impact day.

## 7 DO COMPANIES SEEKING TO JOIN THE MAIN MARKET HAVE TO BE A CERTAIN TYPE OF COMPANY INCORPORATED IN A SPECIFIC JURISDICTION?

Both UK companies and overseas companies may obtain either a premium or standard listing on the Main Market. Only EEA incorporated companies may be admitted to the High Growth Segment.

- If the company seeking a premium or standard listing or admission to the High Growth Segment is a UK company, it must be a public limited company in order to be able to offer its securities to the public.

- An overseas company must be equivalent in its country of incorporation to a UK public company so that it can offer its securities to the public. There may be local legal and regulatory requirements which overseas companies will need to satisfy before their securities can be listed on the Main Market. In certain jurisdictions these requirements can be onerous, therefore local advice should be taken at an early stage in order to identify their implications for the IPO timetable.

An overseas company can seek a premium listing if it can meet the applicable super-equivalent standards. If it cannot meet these standards, but still wishes to seek a premium listing, the company may need to implement a corporate reorganisation and insert a new holding company. This is done to ensure that the equity shares of the new holding company are able to meet the super-equivalent standards relating to voting rights, free transferability and pre-emption rights.

Where the overseas company does not wish to undergo a corporate reorganisation or a premium listing is not essential for the IPO, the company can instead opt to seek a listing of securities known as global depositary receipts (GDRs). GDRs are securities representing a certain number of shares in the company. GDRs can only have a standard listing and will not qualify for inclusion in the FTSE indices. The company will be subject to a less onerous regulatory regime

if it has a standard listing. GDRs are attractive to international investors as they are often quoted, and pay dividends in, dollars or sterling. The GDRs are issued on behalf of the relevant company by a depositary bank which specialises in providing this service. The depositary bank holds the equity securities in the company on behalf of the holders of the GDRs, passes on to the holders of the GDRs all associated dividends in respect of the underlying shares and exercises the voting rights attaching to the shares in accordance with instructions from the holders of the GDRs.

GDRs are tradeable instruments and can be bought and sold like other listed securities. GDRs tend to be purchased by sophisticated or professional investors in the Main Market and are traded in London on the London Stock Exchange’s International Order Book (IOB), a dedicated trading service for GDRs. In contrast to the equity shares of companies with a premium listing which are denominated in sterling and settled in CREST, the UK’s electronic settlement system, GDRs are typically denominated in US dollars and are settled on Euroclear Bank, Depository Trust Company (DTC) or Clearstream Banking. Generally, smaller non-institutional investors are unlikely to gain access to these securities upon IPO, although it is possible for them to do so in the secondary market.

The documentation in relation to the GDRs to be agreed between the company and the depositary bank and its lawyers will include:

- a deposit agreement setting out the obligations of the depositary bank and the issuing company (there may be more than one deposit agreement if there is an issue of GDRs to holders in the US);
- terms and conditions of the GDRs setting out dividend entitlement and voting procedures etc;
- a custody agreement setting out the terms on which the depositary bank will hold the underlying shares; and
- a deed poll entered into by the issuing company giving holders of GDRs direct rights against that company.

## 8 ARE THERE LIKELY TO BE ANY RESTRICTIONS PLACED ON THE ABILITY OF KEY MANAGEMENT TO DEAL IN THEIR SHARES?

Although not a regulatory requirement, the sponsor or financial adviser will usually wish to impose restrictions on the transfer of securities in the company by directors and major shareholders for a period of time after admission in order to avoid the possibility of a large number of securities being made available for sale soon after admission which could distort the market in the company's securities.

- A sponsor/financial adviser will particularly want such restrictions if it is underwriting the issue of securities and has to take up securities in the issue which it will then want to sell in small

numbers into the market as and when it can. Such undertakings, (which can take the form of an absolute dealing restriction or simply a requirement to deal through the company's brokers) are typically given for a period of between 12 and 24 months after the IPO.

## 9 WHAT POTENTIAL LIABILITIES WILL THE DIRECTORS BE EXPOSED TO IN CONNECTION WITH THE PROPOSED LISTING ON THE MAIN MARKET?

The publication of documents that are inaccurate or misleading in connection with an IPO can expose the directors to liabilities to compensate investors and even to criminal liabilities. The risk of incurring these liabilities can be minimised by proper and thorough due diligence and verification exercises

**Liability to investors** – The purpose of a prospectus is essentially to give potential investors the information they need in order to buy the company's securities. Therefore, if this information is inaccurate or misleading or if important information has been omitted, those responsible for the prospectus (including the company's directors) may be liable to pay compensation to investors who have suffered loss as a result.<sup>9</sup>

- **Criminal liability** – The directors may also incur criminal liability if false or misleading

statements are deliberately or recklessly made during the IPO process in order to induce any person to buy the company's securities.<sup>10</sup>

- **Liability to the sponsor/financial adviser** – The company and its directors may also be exposed to liability under the placing or underwriting agreement entered into with the company's sponsor/financial adviser. By agreeing to find investors for the company's securities or by taking up those securities itself, the sponsor/financial adviser exposes itself to legal, reputational and financial risks. It will therefore seek warranty and indemnity protection from the company and the directors to protect itself from these risks, as well as comfort letters providing assurances of regulatory compliance from the company and the directors, the reporting accountants and the company's lawyers.

- **Minimising risk** – The rigorous due diligence and verification exercises that are an integral part of the IPO process are designed to help minimise the risk of these liabilities being incurred by the company and its directors. A key driver behind the verification process, for example, is the desire to ensure that the prospectus is accurate, does not mislead and contains all the necessary information about the company and its securities.

<sup>9</sup> Section 90 of the Financial Services and Markets Act 2000 states that an investor has a right to seek compensation from a person responsible for a prospectus (this will include the company's directors) where he has acquired the securities which are the subject of the prospectus; and suffered loss in respect of those securities as a result of any untrue or misleading statement, or as a result of the omission of any matter required by to be included in the prospectus. Persons responsible for the prospectus may also face liability for misrepresentation and/or negligent misstatement as a result of untrue or misleading statements in a prospectus.

<sup>10</sup> Criminal liability may arise under sections 89 and 90 of the Financial Services Act 2012.

## 10 CAN YOU OUTLINE SOME OF THE KEY PROVISIONS OF THE UK CORPORATE GOVERNANCE CODE?

Although compliance with the UK Corporate Governance Code<sup>11</sup> is not mandatory, the market takes an increasingly judgemental view of companies which do not comply, so management should take careful note of its recommendations.

This should help to make the company more attractive to investors, but in any case, a robust and good quality corporate governance structure will undoubtedly help to protect the company and its directors from regulatory risks. A premium listed company must state in its annual report the extent to which it complies with the UK Corporate Governance Code and justify the areas in which it falls short. Although neither a



standard listed company nor a High Growth Segment Company is required to do this, it is subject to a number of corporate governance related requirements<sup>12</sup> and may also choose to apply the UK Corporate Governance Code on a voluntary basis in order further to enhance investor confidence.

These are some of the UK Corporate Governance Code's key provisions:

### Composition of the board

- the roles of chairman and chief executive should be separated.
- at least half the members of the board, excluding the chairman, should be independent non-executive directors.<sup>13</sup>

### Board committees

- a nomination committee should be established to lead the process for board appointments and should consist of a majority of independent non-executive directors.<sup>14</sup>
- a remuneration committee should be appointed to set the level and structure of remuneration for all executive directors and the chairman, including pension rights and compensation payments.
- the board should establish an audit committee of at least three non-executive directors (or two in the case of smaller companies). At least one member should have recent relevant financial experience. The audit committee should monitor and review the effectiveness of

the internal and external audit processes.

### Directors' remuneration

- executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, stretching and rigorously applied.
- directors' service contracts should be terminable on no longer than 12 months' notice. Directors should not be given an excessive payoff if they leave due to failure to deliver.
- a directors' remuneration policy and report must be included in the company's annual report and laid before shareholders. Shareholders can veto the forward-looking remuneration policy but not the historic remuneration report containing details of the directors benefits and salary. Substantial votes against either, however, will inevitably create negative publicity.
- a company should have prior discussions with its institutional shareholders before any significant changes to directors' remuneration are made.

### Internal control

- the board should maintain and monitor sound risk management and internal control systems and should review the effectiveness of these systems on at least an annual basis.<sup>15</sup>

<sup>11</sup> The UK Corporate Governance Code is published by the Financial Reporting Council and is available at <http://www.frc.org.uk/corporate/ukcgcode.cfm>

<sup>12</sup> Namely, the requirement to appoint an audit committee and include a corporate governance statement (which must describe the main features of the company's internal control and risk management systems) in its annual report and accounts (chapter 7 of the Disclosure and Transparency Rules). In addition, for High Growth Segment companies, the requirements of Section B8 of the High Growth Segment Rulebook.

<sup>13</sup> Paragraph B.1.2 of the UK Corporate Governance Code. Some of the provisions of the UK Corporate Governance Code do not apply to smaller companies (i.e. those below the FTSE 350 throughout the year immediately prior to the reporting year). In particular, such smaller companies are required to have at least two independent non executive directors as opposed to at least half the board. Paragraph B.1.1 of the UK Corporate Governance Code sets out the criteria for determining a non executive director's independence.

<sup>14</sup> Paragraph B.2.1 of the UK Corporate Governance Code. The company's chairman may also chair the nomination committee.

<sup>15</sup> Paragraph C.2 of the UK Corporate Governance Code. The FRC's guidance on risk management, internal control and related financial and business reporting suggests means of applying this principle in practice.



## Relations with institutional shareholders

- there should be a dialogue with institutional shareholders based on the mutual understanding of objectives.
- the board should make constructive use of the company's AGM and encourage investor participation in this meeting.

## II WHAT ONGOING REPORTING REQUIREMENTS AND CONTINUING OBLIGATIONS WILL BE REQUIRED OF THE COMPANY AND ITS DIRECTORS?

There is a broad range of continuing obligations and disclosure requirements to which premium, standard and High Growth Segment companies are subject.<sup>16</sup> The two underlying principles behind all these continuing obligations are the timely disclosure of all relevant information and equal treatment of shareholders.

The key continuing obligations are therefore:

- **Disclosure of inside information** – a listed company must give information, in a timely manner to the market as a whole. The Market Abuse Regulation provides that premium, standard and High Growth Segment companies must notify the market as soon as possible of any “inside information” directly affecting the company.<sup>17</sup> Inside information is information which is precise, not public knowledge and which is likely to have a significant effect on the price of the company's securities. Such information could include major developments in the company's activities and changes in the company's financial condition and performance.
- **Financial reporting** – The Disclosure Guidance and Transparency Rules require premium, standard and High Growth Segment companies to produce and publish annual and half year financial reports in a timely manner and also prescribe the information that should be contained in such reports.<sup>18</sup> Such reports must generally be produced in accordance with IFRS or an equivalent accounting standard.
- **Transactions** – Prior shareholder approval is required before a premium listed company can undertake substantial acquisitions and disposals. Details of smaller transactions may need to be disclosed to the market even if shareholder approval is not required. These requirements do not apply to standard listed companies. High Growth Segment companies must disclose details of substantial transactions to the market, but shareholder approval is not generally required.
- **Directors' dealings in shares** – Persons discharging managerial responsibilities (PDMRs)<sup>19</sup> within premium, standard and High Growth segment companies are restricted from dealing in the securities of the company in the 30 day periods leading up to the announcement of annual and half yearly financial results.<sup>20</sup> Listed companies are no longer required to have a share dealing code in place, although this remains market practice in the UK across all listing segments. In addition, details of any dealings by PDMRs and their connected persons must be disclosed to the company and the UKLA promptly, and the company must then report the details of such dealings to the market.<sup>21</sup>

<sup>16</sup> These requirements are contained in the UKLA's Listing Rules, Prospectus Rules and the Disclosure Guidance and Transparency Rules. Additionally, for High Growth Segment companies, the High Growth Segment Rulebook of the London Stock Exchange (but not the Listing Rules).

<sup>17</sup> Article 17 of the Market Abuse Regulation. There are very limited exceptions to this requirement – though the company may delay the disclosure of inside information to protect its legitimate interests provided this would not be likely to mislead the public and the company is able to ensure the confidentiality of the information.

<sup>18</sup> Paragraphs 4.1 and 4.2 of the Disclosure Guidance and Transparency Rules. Annual financial reports must be produced within four months of the company's financial year end and half year financial reports within two months of the half year end.

<sup>19</sup> PDMRs are the directors and (in certain circumstances) key senior management of a company.

<sup>20</sup> Article 19(11) of the Market Abuse Regulation.

<sup>21</sup> Article 19(11) of the Market Abuse Regulation requires a PDMR within a UK premium, standard and High Growth Segment company to notify all dealings in the company's securities carried out by him or his connected persons within three business days of the dealing taking place. The company must also pass this information onto the market within three business days of the dealing.



■ **Interests of major shareholders –**

Generally, shareholders of UK premium, standard or High Growth Segment companies who acquire or become interested in

three per cent or more of the company’s voting share capital must disclose details of these interests to the company, which is then obliged to pass on such details to the market.<sup>22</sup>

The key differences between the ongoing obligations to which premium, standard and High Growth Segment companies are subject are summarised in the following table:

	Premium listing	Standard listing	High Growth Segment
Prompt disclosure of inside information	✓	✓	✓
Annual financial report (IFRS or equivalent)	✓	✓	✓
Half yearly report (IFRS or equivalent)	✓	✓	✓
Disclosure of significant interests in the company’s securities	✓	✓	✓
Disclosure of PDMRs’ dealings in the company’s securities	✓	✓	✓
Prospectus required for larger share issues and public offers	✓	✓	✓
Prior shareholder approval for significant transactions	✓	✗	✗
Sponsor to be appointed for significant transactions	✓	✗	✗ <sup>23</sup>
PDMR securities dealing restrictions	✓	✓	✓
“Comply or explain” against the UK Corporate Governance Code	✓	✗	✗

<sup>22</sup> Under Chapter 5 of the Disclosure Guidance and Transparency Rules, non-UK premium, standard or High Growth Segment issuers are subject to different notification thresholds (being the minimum required by the Transparency Directive) namely 5%, 10%, 15%, 20% 25%, 30%, 50% and 75%.

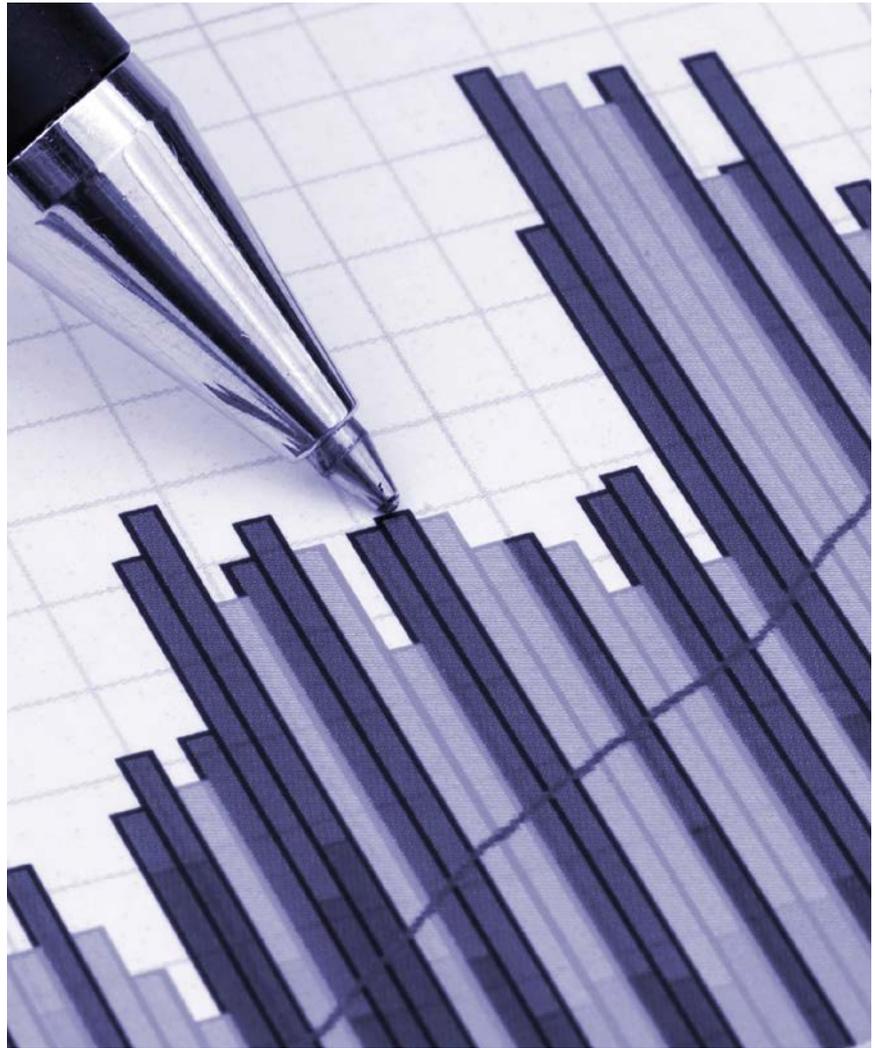
<sup>23</sup> Although the company must seek the advice of its key adviser.

## 12 IS IT POSSIBLE FOR A COMPANY TO SWITCH BETWEEN A PREMIUM AND STANDARD LISTING?

It is possible for a company to move from a premium to a standard listing and vice versa. In both cases, this can be done without cancelling the company's listing.

**Moving from premium to standard listing** – Prior shareholder approval (of 75 per cent of the company's shareholders) is required before a company can switch from a premium to a standard listing.<sup>24</sup> An explanatory circular to the company's shareholders must be prepared and approved by the UKLA before it is sent to shareholders.

**Moving from standard to premium listing** – A sponsor must be appointed and the company must satisfy the enhanced eligibility criteria required for a premium listing.<sup>25</sup> An announcement explaining the reasons for the transfer must be made and approved by the UKLA before release.



<sup>24</sup> Where the company has a controlling shareholder, a majority of independent shareholders must also vote in favour of the switch.

<sup>25</sup> See question 3 for further details.

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