Other regulatory requirements

1. Introduction

1.1. Chapter overview

This chapter moves away from the financial institutions and looks more generally at company law and regulations. The chapter begins with the link between the two, and the process of floating on the London Stock Exchange. It also introduces you to the United Kingdom Listing Authority, the regulator for listed companies. The chapter then moves on to company law and the need for shareholders to disclose holdings in a company, before moving into the statutory and regulatory regime of takeovers and mergers.

1.2. Learning outcomes

On completion of this module you will:

Flotation

- 1.5.2 - Identify the listing rules in FSMA 2000, and relevant EU directives

Listing on the LSE and other venues

- 1.5.1 - Explain the role of the FCA as the UK listing authority
- 1.5.4 - Explain the purpose of the requirement for prospectus or listing particulars
- 1.5.5 - Identify the main exemptions from listing particulars
- 1.5.3 - Explain the main conditions for listing on the Official list, AIM and ISDX
- 1.6.4 - Explain the London Stock Exchange (LSE) requirements for listed companies to disclose corporate governance compliance

Continuing obligations for LSE traded companies

- 1.6.5 - Explain the continuing obligations of LSE listed companies regarding information disclosure and dissemination
- 1.6.2 - Explain the purpose of corporate governance regulation and the role of the FRC in promoting good corporate governance
- 1.6.3 - Explain, in outline, the scope and content of corporate governance standards in the UK

Company meetings

- 1.6.6 - Explain, in outline, the UK company law requirements regarding the calling of general meetings
- 1.6.7 - Distinguish between annual general meetings and other types of company meetings
- 1.6.8 - Distinguish between the types of resolution that can be considered at company general meetings
- 1.6.9 - Distinguish between the voting methods used at company meetings
- 1.6.10 - Explain the role and powers of a proxy

Notifiable interests

- 1.6.1 - Explain the disclosures required under the disclosure and transparency rules relating to directors' interests and major shareholdings

Statutory control of takeovers and mergers

- 3.2.6 - Explain the function of the following bodies / persons: the Panel for Takeovers and Mergers, the Department for Business Innovation and Skills, and the Competition and Markets Authority

The Takeover Panel (POTAM)

- 3.2.7 - Explain the make up of the Panel on Takeovers and Mergers (the Takeover Panel) and how it is financed
- 3.2.8 - Explain the regulatory status of the City Code on Takeovers and Mergers
- 3.2.9 - Explain the main provisions of the City Code including the bid timetable

2. Flotation

2.1. Introduction

The London Stock Exchange (LSE) manages a main market called the **Official List** and a second tier market called the **Alternative Investment Market (AIM)**. As an alternative to the two LSE markets there is another exchange called ISDX .

Not all public companies are quoted on a public market. Some companies are set up as public companies even if there is no intention to actively trade their shares.

A flotation can go hand in hand with an issue of new shares, i.e. as part of a marketing operation.

Alternatively, a company can achieve a flotation by way of an **introduction**, where shares already issued but trading privately, are made available for trading on an exchange.

Applications to be admitted to the Official List are not, however, made to the London Stock Exchange. Applications for **admission** are made to the UK Listing Authority (UKLA), which is the FCA, and applicants will need to meet the UKLA's **Listing Rules**.

The **Prospectus Rules** affect all publicly traded companies whether they trade on the main market or AIM, whereas the Listing Rules do not apply to AIM or other similar securities. Both sets of rules are discussed in detail below.

The **Disclosure and Transparency Rules** apply to shares traded on a regulated market in the UK and help prevent insider dealing and market abuse.

The FCA/UKLA is granted the power to created the rules for listing, prospectuses and disclosure and transparency under the Financial Services and Markets Act 2000 (FSMA2000).

Once a company's shares are on the LSE, the company will find itself bound by many sets of regulation including:

- The Companies Act
- Financial Conduct Authority (FCA) and UKLA rules
- The LSE's own rules for members

Many of the rules governing the public companies whose shares trade on exchange have been amended to implement various European directives.

In addition to this, all firms providing services relating to advice, dealing, arranging deals, etc., in these companies' shares will need to be authorised to do so under FSMA 2000. Remember, the LSE itself (as a recognised investment exchange) is exempt from authorisation.

Advantages and disadvantages

Advantages of flotation

Acquisitions and mergers

The ability to issue paper securities with a market price as an acquisition currency can increase the potential of corporate growth by way of acquisition.

Public profile and prestige

Exposure on a public market will usually bring about an increase in press coverage, resulting in a heightening of public awareness about the company and its products and services.

Disadvantages of flotation

Regulation and cost

A publicly quoted company is more accountable to regulators. It therefore entails a much higher level of disclosure and reporting than is required by non-quoted companies. This, in turn, will lead to additional costs.

Market conditions

A company's share price is susceptible to volatile market conditions. This may result in a lack of liquidity in the company's shares that is beyond the control of the company's directors.

Investor power

Where shares are held by large institutional investors there is a risk that the founders could lose control of what they perceive to be their business.

Other useful information

Dual listing

A dual-listed company (DLC) is a corporate structure in which two corporations function as a single operating business through a legal equalisation agreement, but retain separate legal identities and stock exchange listings. Virtually all dual-listed companies are cross-border, and have tax advantages for the corporations and their shareholders. The equalisation agreements are legal contracts that specify how ownership of the corporation is shared, and are set up to ensure equal treatment of both companies' shareholders in voting and cash flow rights. The contracts cover issues related to dividends, liquidation and corporate governance. Usually the two companies will share a single board of directors and have an integrated management structure.

Cross listing

Dual-listing is not to be confused with cross-listing. Cross-listing of shares is when a firm lists its shares on one or more foreign stock exchange in addition to its domestic exchange. There are a number of possible explanations for firms seeking to crosslist. These include the traditional that the firm expects to benefit from a lower cost of capital because their shares become more accessible to global investors. Another possible motivation is that cross-listings on deeper and more liquid equity markets could lead to an increase in the liquidity of the stock and a decrease in the cost of capital.

3. Listing on the LSE

3.1. The United Kingdom Listing Authority (UKLA)

The FCA is empowered in its role as listing authority by the Financial Services and Market Act 2000 (FSMA 2000) S72.

In this role the UKLA has the duty to set standards for companies wishing to float on an exchange and continuing obligations for those whose shares are traded as well as those who trade the shares.

Where an application is in relation to a company acquiring listed status, the UKLA has the power to assess whether the appropriate standards have been met and, based on this, accept or refuse the application for listed status. If the application has been accepted and listed status granted, the UKLA has the power to discontinue or suspend this status.

It is worth noting that although applications for companies to be admitted on to the LSE Official List go to the UKLA, applications for firms to **trade** on the LSE are made to the London Stock Exchange.

3.2. The UKLA Prospectus Rules

Introduction

The Listing, Prospectus and Disclosure Rules can be found in the FCA Handbook and comprise of three separate sourcebooks. They set out the rules governing any issuer of securities wishing to list on the LSE official list and anyone trading in these securities. They also apply to the appointment of a firm as a sponsor for these issuers and the behaviours of these firms when performing the role of sponsor.

We will look at the requirement for a prospectus first.

The requirement of a prospectus

In the Listing Rules the UKLA generally requires either a prospectus or listing particulars to be completed by a company seeking a listing. The Prospectus Rules set out the detailed rules about these documents.

A prospectus is a publication containing all the relevant information required for a potential investor to make an informed decision about buying a company's shares. Once it has been completed it must be approved by the UKLA, published and advertised in at least one national newspaper.

These financial promotions relating to the issuance of a company's shares must also follow strict rules. In essence they state that the financial promotion must:

- Be identified as a financial promotion and not the prospectus itself
- State where the prospectus can be obtained
- Be consistent with the details stated in the prospectus

Prospectus directive

The UKLA's Prospectus Rules have been brought into line with the Prospectus Directive. The Prospectus Directive sets out the rules which apply to prospectuses for public offers of securities and admission of securities to trading on a regulated market.

Where prospectuses may not be required

Prospectuses are not required in certain circumstances including the following:

- Where the offer is made to qualified investors. The definition of qualified investor is similar to that of the quantitative test for elective professional clients
- Where the offer is made to fewer than 150 natural or legal persons, other than qualified investors, per EEA state
- Where the offer is made to investors who acquire the securities for a total consideration of at least €100,000 per investor or the denomination per unit is at least €100,000
- Where the total consideration of the offer is less than €5m calculated over a period of 12 months
- Where the shares being admitted to market represent less than 10% of the same class of shares already admitted to the same market (applies to admission for trading not public offers)

Any subsequent resale of securities to which these exemptions apply is however regarded as a separate offer and may require a prospectus unless an exemption applies.

Where a prospectus is not required, an issuer would need to produce listing particulars instead. Listing particulars contain the minimum basic information from the prospectus.

3.3. The official list: conditions for entry

The UKLA Listing Rules

There are two listing categories on the official list:

Premium listing – a company meets listing requirements above those required by EU directives, for example requirements on corporate governance. The ability to exceed EU requirements is referred to as 'super equivalency'. These companies are eligible for inclusion in the FSTE indices – adding significant liquidity to the shares.

Standard listing – a company meets the EU listing requirements.

High growth segment (HGS) – for companies that cannot yet meet the premium status, but intend to. They are typically larger than AIM companies and have separate eligibility criteria.

Conditions for listing

The most important UKLA requirements for a **premium listing** are:

Status

The company must be a public company.

Trading record*

The company must normally have a trading history of three years with financial statements, which have been independently audited and published.

Working capital*

The company must demonstrate that it has sufficient working capital to cover at least the next twelve months of business.

Market value of securities

There is a minimum market value requirement for all securities.

- In the case of bringing **equities** to market, the minimum value is £700,000
- In the case of **debt** securities, the minimum value is £200,000

Therefore, should a company bring both debt and equity to the market, the total value must be at least £900,000.

Management

The directors and senior management must have appropriate expertise and experience. They must also comply with the Model Code for Directors' Dealings.

Sponsor*

The company bringing its shares to market must appoint a sponsor. This is typically an authorised firm expert in administering the listing and/or issuing process.

Share ownership

At least 25% of the shares must be distributed to the public. In this instance, the 'public' refers to any person, individual or institution, who is not a director of the company. This is known as the **free float**. A minimum level of free float is desirable as companies with low free floats tend to experience high share price volatility.

NOTE: those conditions marked with ***** are not required for a standard listing.

Conditions for high growth segment (HGS)

The eligibility criteria for an HGS company include:

- Incorporation in the EEA
- Commercial company issuing equity only
- Free float of 10%
- Compound average growth rate (CAGR) of 20% over three years

3.4. Alternative Investment Market (AIM): conditions for entry

Introduction

AIM is a separate market to the Official List which was set up by the LSE (in 1995) specifically to provide a market for small, young and growing companies. It is not considered an EU regulated market, but is a multilateral trading facility (MTF).

The criteria for acceptance are less onerous than those for the Official List. A company does **not** apply to the UKLA (the FCA) to join AIM. Instead, it is the LSE itself which has the final say on who joins this junior market.

Companies floated on AIM are known as **quoted** companies.

Key roles

Nominated advisor (NOMAD)

The nominated advisor (or NOMAD) plays a key role in advising the company to comply with AIM rules. Companies seeking a flotation are required to appoint a NOMAD whose job it is to satisfy itself that the company is appropriate for AIM and to confirm this in writing to the Exchange.

Any firm wishing to act as a NOMAD must have been accepted on to the register of nominated advisors held by the Exchange.

Nominated broker

AIM companies must appoint an LSE member firm to act as the company's **broker**. The broker's role is to match buyers with sellers in the company's shares, or to act as market maker when such orders cannot be matched.

The broker is also responsible for providing important information about the company which can be accessed via the SETS system (i.e. the stock exchange electronic trading service).

The NOMAD and broker may in practice be the same firm.

Conditions for entry

Status

The company must be a public limited company.

Admission document

The company must produce an admission document disclosing the information required by the Prospectus Directive. This information includes details on the directors, the activities and the accounts. The NOMAD vets this document.

A quoted applicant is not required to produce an admission document unless required under the Prospectus Rules. If a prospectus is required then this shall serve as the admission document. Once a prospectus has been approved by the FCA it must be submitted to the LSE with the admission application and fee before the expected date of admission to AIM.

Accounts

The company must publish accounts in accordance with international accounting standards.

Transferability

Shares must be freely transferable.

AIM vs. Official List: main differences in entry requirements

Note that for AIM applicants there is **no** requirement for:

- Minimum free float
- Minimum trading record
- Shareholder approval
- Minimum market capitalisation

3.5. ICAP Securities and Derivatives Exchange (ISDX)

Introduction

ISDX markets is not part of the London Stock Exchange (LSE), but is another recognised investment exchange for securities in the UK. As another market on which buyers and sellers can gather to trade securities, and on which companies can seek flotation to raise capital, ISDX is in direct competition with the LSE.

Conditions for entry

ISDX markets is closer in nature to the Alternative Investment Market (AIM) of the LSE than it is to the Official List. The conditions for entry reflect this. The conditions for entry include:

- The appointment and retention of a corporate advisor. This role is the equivalent of the NOMAD on AIM
- Demonstrate appropriate levels of corporate governance, with at least one independent director
- Provide a set of published audited financial reports
- Have adequate working capital
- Have no restriction on the transferability of shares
- Have its shares available for electronic settlement

4. The Continuing Obligations of LSE Companies

4.1. Continuing obligations: overview

Once a listing has been obtained, certain **ongoing** obligations have to be met in order to maintain it.

For example, a company listed on the LSE must also follow the rules set out under the UKLA's Model Code and the UK Code of Corporate Governance.

A listed company also has an obligation to fulfil the UKLA's Disclosure and Transparency Rules regarding:

- Disclosure and control of inside information
- Periodic financial reporting
- Vote holder and issuer notifications
- Access to information
- Corporate governance

4.2. Disclosure and transparency rules (DTR)

Introduction

The disclosure and transparency rules (DTR) cover the requirements for a listed company to keep the market informed of all price sensitive information and to fulfil the requirements under corporate governance. They attempt to limit the incidence of inside information being disseminated unequally or illegally, and in order to comply with the Market Abuse Directive and Transparency Directive.

It highlights:

- What type of information should be disclosed
- How and when the information should be disclosed
- Procedures for delaying disclosure

DTR also emphasises that a firm must have effective arrangements in place to deny access to inside information to any person who should not have access to the information.

Disclosure of information

Regulatory Information Service (RIS)

One of the main principles of the Listing Rules is that unpublished price-sensitive information must be disclosed to the market as a whole without delay. A listed company must notify the market of all relevant information which is not public knowledge concerning:

- A change in the company's financial condition
- The performance of its business
- In its expectations as to its performance

Price-sensitive information may not normally be disclosed to anyone else before it has been notified to an RIS (Regulatory Information Service) or PIPS (Primary Information Provider Service).

A key principle of the Listing Rules is to maintain a balance between ensuring the existence of a level playing field amongst investors on the one hand and ensuring efficient and orderly markets on the other. A number of RISs are currently approved by the FCA, including the Regulatory News Service (RNS) of the London Stock Exchange, Business Wire and PR Newswire Disclose. The longest standing PIP is the LSE's Regulatory News Service (RNS).

Secondary Information Providers (SIPS)

The Primary Information Providers are responsible for distributing listed company announcements to the newswire services or Secondary Information Providers. These include Bloomberg and Thomson Reuters. These SIPS disseminate the information provided by the PIPS to the general public.

Analyst research

The UK Listing Rules and Guidance Manual offer listed companies guidance on the way in which their relationships with analysts should be conducted. Analysts need to be aware of and operate within this framework if the relationship is to work smoothly. Analysts should refrain from putting a company into the position where it is likely to commit a breach of the Listing Rules; in particular, by selectively disseminating unpublished price-sensitive information.

Analysts should be particularly aware that, while they are not subjected to the Listing Rules, eliciting the selective dissemination of price-sensitive information may leave them open to an FCA investigation of their conduct under separate FCA powers; for example, under the Market Abuse Regime.

Equality of treatment

Overall the main thrust of all UKLA rules is that a company must ensure that all holders of the same class of listed share be treated equally and fairly.

Periodic financial reporting

The UKLA imposes requirements for companies on the London Stock Exchange to publish financial reports. The following summarises the requirements:

- Fully audited annual financial reports available at the latest four months after the end of the financial year
- Half-yearly financial reports available at the latest two months after the mid-point of the financial year
- Management reports attached to each

Both sets of financial reports must contain a balance sheet (statement of financial position) and profit and loss account (income statement).

The management report gives an account of major factors that have affected the company over the period covered and the principal risks and uncertainties for the near future.

Access to information

We have already seen that, as a publicly traded company, the issuer must give shareholders access to certain price-sensitive information through a regulatory information service (RIS). In addition to the information above, there is a host of other information that exchanges should give shareholders access to. These include:

- Any amendment to the company's constitution, i.e. changes to the articles or memorandums of association
- Any opportunities for holders of securities to exercise rights, such as vote at meetings, collect dividends, take part in rights issues, etc
- Any information about changes to the rights given to the holders of equity
- Any capital restructuring, such as the repayment of debt or company share buybacks

Corporate governance

A premium listed company must comply with the UK Code of Corporate Governance and show how its corporate governance functions in the published directors' report.

The UK Code of Corporate Governance stresses the importance of companies to apportion responsibilities with the company among the directors and to make sure that these responsibilities are being fulfilled.

The directors' report must cover:

- A description of the issuer's control and risk management systems
- A description of the issuer's administrative, management and supervisory bodies and their committees

In addition to this, persons discharging managerial responsibilities must also be bound by the Model Code, restricting their dealing in own-company shares to avoid suspicions that they are abusing their position and the knowledge that comes with it.

The Code on Corporate Governance is covered in more detail below.

4.3. Corporate governance

The UK Code of Corporate Governance

The current Code on Corporate Governance is incorporated into the Listing Rules and became effective in 2010. It replaces the Combined Code written by the Financial Reporting Council (FRC) in 2003. The FRC updated the Combined Code in 2008/9 following those years' financial turbulence, and published the new Code on Corporate Governance in order to implement further recommendations and guidance by the Smith and Higgs committees. The following are a list of the relevant committees and reports on corporate governance:

- Cadbury Report (1992) – set up by the Financial Reporting Council, the London Stock Exchange and the accountancy profession to address financial aspects of corporate governance
- Greenbury Report (1995) – sets out guidance as to the disclosure of directors' remuneration
- Hampel Report (1998) – the original Combined Code, which incorporated the Cadbury and Greenbury reports
- Turnbull Guidance on Internal Controls (1999) – sets out best practice on internal controls and risk management for listed UK companies
- Higgs Report (2003) – role and effectiveness of non-executive directors
- Smith Report (2003) – guidance for audit committees

The main principles of the UK Code on Corporate Governance

Leadership

- Every company should be headed by an effective board that is collectively responsible for the long-term success of the company.
- There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company's business. No individual should have unfettered powers of decision.
- The chairman is responsible for leadership of the board and ensuring its effectiveness on all aspects of its role.
- As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

Effectiveness

- The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.
- There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.
- All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.
- All directors should receive induction on joining the board and should regularly update and refresh their skills and knowledge.
- The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.
- The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.
- All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.

Accountability

- The board should present a balanced and understandable assessment of the company's position and prospects.
- The board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.
- The board should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the company's auditor.

Remuneration

- Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

- There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Shareholder relations

- There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.
- The board should use the AGM to communicate with investors and to encourage their participation.

The Stewardship Code

In addition to the Code on Corporate Governance, the Financial Reporting Council has also created the Stewardship Code. Released in 2010, this Code is a set of principles aimed at institutional investors holding voting rights in UK companies. The idea is to encourage such institutional shareholders to take an active interest in the corporate governance of the companies into which their clients' money is invested.

The Stewardship Code takes a 'comply or explain' approach, meaning that compliance with the Code is not mandatory, but if the institutional investor chooses not to comply with the Code it must explain why they have not done so on their website. They must also send this information to the FRC, which then links to the information provided to it.

The Stewardship Code has seven principles. Institutional investors should:

1. Publicly disclose their policy on how they will discharge their stewardship responsibilities
2. Have a robust policy on managing conflicts of interest in relation to stewardship and this policy should be publicly disclosed
3. Monitor their investee companies
4. Establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value
5. Be willing to act collectively with other investors where appropriate
6. Have a clear policy on voting and disclosure of voting activity
7. Report periodically on their stewardship and voting activities

5. Company meetings

5.1. The requirement for company meetings

General meetings give an opportunity to the shareholders of the company to vote on important matters, thereby exercising their ultimate powers of control over the company.

Companies normally hold an Annual General Meeting (AGM) every year. This must be within six months of the publishing of the company accounts, and the interval between AGMs must not exceed 15 months. Matters discussed will typically include normal recurring business such as directors' and auditor's appointments. Listed companies also have to present a remuneration report explaining the various aspects of directors' remuneration.

A company may also hold other general meetings, at which unusual or particularly pressing events are debated as they arise.

Rights to call meetings

Normally meetings will be called by the board.

However, a general meeting can be requisitioned by shareholders who, between them, own 5% or more of the company's voting shares, assuming 12 months have passed since the last meeting. If the directors fail to call a meeting once it has been requisitioned, the shareholders may hold a meeting at the company's expense.

Notice of meetings

AGMs require 21 calendar days' notice to be given to shareholders.

Other general meetings normally require 14 calendar days' notice.

The notice periods can be shortened in the event of consent of 100% of shareholders in respect of an AGM, and 95% of shareholders in respect of an other general meeting.

Notice is deemed to be served from 48 hours of the correct posting of the notice. In the case of electronic notices, these are deemed to be received 48 hours after sending.

5.2. Resolutions at company meetings

At general meetings decisions are made by the passing of resolutions.

There are two types of resolution: **ordinary** and **special**. The Companies Act prescribes which matters require which type of resolution.

Ordinary resolutions

Ordinary resolutions require a simple majority of the votes to be passed i.e. **more than** 50%.

Examples of issues approved by ordinary resolution include:

- Approval of the annual financial statements
- Appointment and removal of auditors
- Appointment and removal of directors

- Approval of a dividend - where dividends are rejected, the directors will propose an alternative dividend

Most of the business of an AGM is conducted by way of ordinary resolution.

Special resolutions

Special resolutions require a majority of 75% or more of the votes in order to be passed.

Examples of issues approved by special resolution include:

- Changing the company's name
- Waiving pre-emption rights
- Change to the Memorandum or Articles of Association
- Share buy-backs

Notice of resolutions

Individual resolutions also require notice to be given to shareholders.

Ordinary resolutions require 14 calendar days' notice.

Special resolutions require 21 calendar days' notice.

5.3. Voting on resolutions

Voting

The passing of resolutions is often carried out by a **show of hands**. Each shareholder present is usually entitled to one vote each per resolution regardless of the number of shares they hold.

Resolutions may also be voted by way of a full **ballot** (or **poll**). This is a written voting process where each shareholder receives voting rights determined by the number and class of their shares. A poll vote may be demanded by shareholders representing 10% or more of the voting rights in the company.

Proxies

If shareholders are unable to attend a meeting, they may appoint a proxy to attend and vote on their behalf. Proxies have no right to speak at meetings but can vote on issues decided by a written ballot or show of hands.

There are two types of proxy:

- A special (or 'two-way' proxy): a person is appointed and directed to vote for or against a particular resolution
- A general proxy: a person is appointed to vote based on what is said at a meeting

Proxies are appointed using proxy forms. A proxy form that does not indicate how the proxy is to vote is deemed to be a general proxy. The status of proxy will remain valid for the duration of the meeting and any adjournment of that meeting.

6. Notifiable interests

6.1. Background

Every company has a register of shareholders maintained by its company secretary. However, the register contains no information about the beneficiaries of shares held on trust, or about the collective holdings of closely connected persons.

In view of concerns that a group of persons may covertly buy up a substantial proportion of the company's shares, possibly in preparation for a surprise takeover bid, the UK Listing Authority's Listing Rules require prompt disclosure of substantial shareholdings, including beneficial holdings.

6.2. EU Transparency Directive

The aim of this Directive is to enhance transparency on EU capital markets by establishing rules for the disclosure of periodic financial reports and of major shareholdings for companies whose securities are admitted to trading on a regulated market in the EU. It has been implemented in the UK through the Disclosure and Transparency Rules (DTR).

EU disclosure of material interests

The Transparency Directive outlines disclosure thresholds as follows: 5%, 10%, 15%, 20%, 25%, 30% 50% and 75%.

Investors have to inform the issuer within **four business days** when reaching, exceeding or moving below the thresholds and the issuer in turn informs the market.

6.3. UK disclosure and transparency rules (DTR)

Disclosure of directors' interests in shares

Directors and other **persons discharging material responsibilities** (PDMR) must notify a listed company of any aquistion or disposal of an interest in that company.

- Notification within **four business days**
- Notification to the listed company
- Listed company will publish through a regulatory information service as soon as possible
- No later than the end of the next business day
- Applies to PDMRs and any connected party

UK disclosure of material interests

When implementing the Directive, EU member states are free to exceed the disclosure requirements in their regulations if they go beyond the requirements of the directive ('super-equivalence'). The law in the UK (Companies Act 2006), makes these rules the responsibility of the FCA in its guise as the Listing Authority (UKLA) and outlined in their Listing Rules. Disclosure of purchases in a UK issuer must be made to the company **within two business days** if a person's notifiable interest in the company's voting shares:

Reaches 3%

Having reached 3%, changes (up or down) to the **next** whole percentage point or more. For example, an increase from 3.9% to 4.1% is notifiable, whereas an increase from 3.1% to 3.9% is not. Further disclosure is required if the shareholding falls below 3%.

Fund managers of authorised, recognised and UCITS schemes are not exempt but their notifiable threshold is 5% and then 10% instead of 3%.

Market makers have imposed upon them a restriction of no greater than or equal to 10%.

Note: if the issuer of the shares is non-UK, then the FCA disclosure rules do not apply. Instead an investor would use the rules under the Transparency Directive.

Connected parties

To determine whether a notifiable 3% shareholding is held, a person must include shares held by the following parties (referred to as connected parties):

- The person’s spouse
- The person’s minor children (<18)
- Companies where the person controls more than a third of the votes
- Fellow members of any **concert party**. A concert party will exist where there is an agreement between persons to acquire and act collectively in the use of a plc's shares (e.g. on voting)

If two parties acting in concert, each holding 2%, a joint holding of 4% is required to be reported **by both**.

7. Statutory control of takeovers and mergers

7.1. Meaning of takeover and merger

Shareholders of the company own the company and appoint the Directors to manage it.

Any shareholder who acquires >50% of the shares in a company is deemed the **legal owner**, because they are able to appoint directors to run the company according to their wishes.

A takeover bid occurs whenever anyone attempts to acquire >50% of the shares in a company. The person trying to take over the other company could be an individual or a company. The terms takeover and merger are used interchangeably for the purposes of regulation, although merger is more commonly used if two similarly sized companies are to be joined together.

7.2. The Department for Business, Innovation and Skills (BIS)

The Department for Business, Innovation and Skills (BIS) was created in 2009 as an amalgamation of the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills. It is an attempt to bring all of the levers of the economy together in one place. Their policy areas – from skills and higher education to innovation and science to business and trade – are focused on helping to drive growth.

BIS has various objectives, for example:

- Raise the productivity of the UK economy
- Improve the skills of the population, on the way to ensuring a world-class skills base by 2020
- Promote world class science and innovation in the UK
- Deliver the conditions for business success in the UK
- Improve the economic performance of all English regions and reduce the gap in economic growth rates between regions

7.3. Relevant takeover legislation

The Competition Act 1998 and the Enterprise Act 2002 aim to ensure that mergers and acquisitions in the UK do not result in uncompetitive practices or a substantial lessening of competition.

Under the Enterprise and Regulatory Reform Act 2013, the Competition and Markets Authority (CMA) is empowered to look at 'qualifying mergers' and decide whether they are allowed to proceed. In certain sectors, such as utility companies in the UK, referrals may be made to the CMA by relevant government ministers.

Where there are more national issues, for example issues of national security, BIS will intervene and take decisions instead.

Qualifying mergers

For a merger to qualify for further investigation, any of the following tests may be satisfied:

- As a result of the merger, the combined enterprise accounts for at least 25% of the supply or acquisition of particular goods or services, either in the UK as a whole or in a substantial part of it (**Share of Supply Test**)

- The turnover of the entity being acquired exceeds £70m (**Turnover Test**)
- Any other substantial lessening of competition

The CMA has up to 40 days to complete its initial study (phase one). If it believes there is a substantial lessening of competitions, it will move to phase two.

In phase two, the CMA has the power to prevent a takeover or merger proceeding, or impose restrictions on the takeover or merger.

8. The Takeover Panel

8.1. EU Takeover Directive

The EU Takeover Directive was implemented in the UK in 2006, by means of a combination of interim statutory provisions and amendments to the existing City Code. It aims to create a level playing field across the European Union to ensure equal treatment for shareholders during takeovers.

Some countries will continue to use their existing rules though. In the UK, the Takeover Panel (also known as the Panel on Takeovers and Mergers, or POTAM) remains the regulator of takeover and merger activity (see next section for details of the Takeover Panel).

The Directive applies to all EU companies that trade on any EU regulated market. The Directive states that it is necessary to protect the interests of holders of the securities of companies governed by the law of a member state when those companies are subject to takeover bids or to changes of control.

8.2. The Takeover Panel

The Takeover Panel (Panel on Takeovers and Mergers POTAM, or **the panel**) administers the Takeover Code (also commonly known as the City Code).

The Panel is concerned with ensuring that all shareholders in a takeover are treated fairly and equally. It is not concerned with issues such as competition policy, which is the responsibility of the Competition Commission.

The Panel is funded by the receipt of levies on large transactions in UK equities. There is currently a flat levy of £1 on all transactions in UK equities with consideration in excess of £10,000. The levy is paid by the purchaser and the seller.

The Panel is an independent, statutory body.

The Chair of the Panel is appointed by the Governor of the Bank of England. Many of the Panel members are seconded from industry, e.g. insurers, bankers, accountants, corporate finance professionals, etc.

Certain professional bodies, such as the British Bankers' Association, the Association of Investment Companies and The National Association of Pension Funds are also nominated members of the Panel.

The Takeover Code (City Code) is based on certain articles in the Takeover Directive and the power to create these rules is given to the panel by the Companies Act Part 28. These powers are as follows:

The Takeover Panel has the power to impose sanctions set out in the City Code, such as:

- To issue a private reprimand
- To issue a public censure
- To report the offender to another regulatory authority, such as the BIS, the LSE or the FCA. This is the most effective power since offenders may find themselves being denied market facilities (e.g. suspension of a company's shares) or authorisation
- To order a person to pay compensation
- To seek approval from the court to ensure compliance with the rules or to seek an injunction

8.3. The status of the Takeover Code (City Code)

General concepts

Application

The Takeover Code (also commonly known as the City Code, or the Code) applies in respect of the takeover of listed and unlisted public companies which are resident in the UK, Isle of Man or Channel Islands.

The responsibilities imposed by the Code apply equally to company directors of both the bidding and target companies and to all the professional advisors involved (e.g. accountants, corporate finance houses, etc).

Six general principles

The Code consists of six General Principles (broadly worded statements setting out acceptable standards of commercial behaviour), key definitions and a series of rules which apply the Principles to specific practical situations.

- All shareholders of the same class of the target company must be given equivalent treatment by the predator and if a person acquires control of the company the other shareholders must be protected
- Shareholders must be given sufficient time and information to reach a decision on the bid. When the target company board advises shareholders it must give its view on the impact of the bid on employment, conditions of employment and the location of the place of business
- The board of the target company must act in the interests of the company as a whole and must not deny the shareholders the opportunity to decide on the merits of the bid
- False markets must not be created in the shares of the predator, target or any other company affected by the bid in a way that the rise or fall of prices becomes artificial and the normal functioning of markets is distorted
- The predator must announce a bid only after ensuring that it can fulfil in full any cash consideration, if offered or required, and after taking reasonable steps to secure implementation of other types of consideration
- The target company must not be hindered in the conduct of its affairs for longer than is reasonable by the bid

Key definitions

Control

Legal control is determined by influence over more than 50% of the voting shares. The panel, however, uses a benchmark of 30% as **effective** control; many of the rules start to apply at this level.

Offer period

Offer period means the period from the time when an announcement is made until the date when the offer becomes unconditional or lapses.

8.4. Main provisions of the Takeover Code

Timing and revision rules

Before the bid

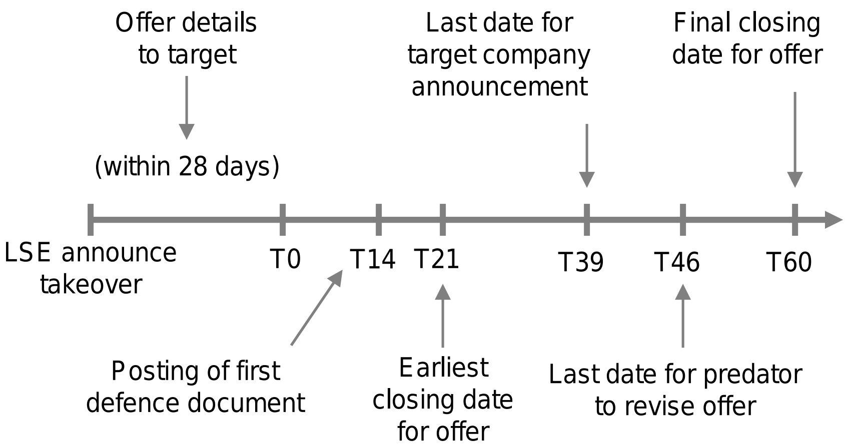
Before a public announcement is made, the predator company must first approach the target company's board or its advisors.

It possibly goes without saying that any information announced must be accurate and fairly presented. It is the responsibility of the directors of the offeror and offeree to take a duty of care to ensure this is so and also to ensure that omissions that could mislead the market are avoided.

Once the bid has been announced, the rules on timing (below) then apply.

Timing

The City Code sets out a framework within which events must take place during a takeover.



From the above diagram, the final closing date for the offer is T60. If the bid lapses on this date then the predator company will be unable to make another offer for 12 months.

Offer consideration and compulsory bids

Offer consideration

The offer consideration may consist of:

- Cash only
- Shares or loan stock (a paper offer)
- A choice offering a number of alternatives

Whichever form of consideration is specified, the **minimum price** to be offered is the highest price paid by the offeror in the last **three months**.

Compulsory bids

If a predator (and others acting in concert with it) acquires influence over 30% or more of the voting rights of a company, it must make an offer for all the remaining shares of the company (a **compulsory** or **mandatory** bid).

A predator already having influence over 30% or more of the voting rights of a company must, if it acquires any further influence, make an offer for all the remaining shares.

The City Code states that a mandatory offer will become unconditional once the predator gains influence over more than 50% of the target company. The predator is then obliged to purchase the shares of all those who have accepted the offer. The offer period remains open for another 14 days after becoming unconditional.

Offers must be in cash or accompanied by a cash alternative at not less than the highest price paid by the predator during the offer period and within the **12 months** prior to its commencement.

Squeeze out

The Companies Act contains provisions which enable a bidder to acquire compulsorily the shares held by shareholders of the target who do not accept the offer. Where the bidder has received acceptances in respect of 90 per cent or more of the shares to which the offer relates, it may, subject to any court order to the contrary, acquire the outstanding shares on the same terms set out in the offer. It can also, in these circumstances, be forced by the minority shareholders themselves to acquire their outstanding shares. This rule applies to both mandatory and voluntary bids.

9. Summary

9.1. Key concepts

Flotation

- 1.5.2 - The listing rules in FSMA 2000, and relevant EU directives

Listing on the LSE

- 1.5.1 - The role of the FCA as the UK listing authority
- 1.5.4 - The purpose of the requirement for prospectus or listing particulars
- 1.5.5 - The main exemptions from listing particulars
- 1.5.3 - The main conditions for listing on the Official list, AIM and ISDX
- 1.6.4 - The London Stock Exchange (LSE) requirements for listed companies to disclose corporate governance compliance

Continuing obligations for LSE traded companies

- 1.6.5 - The continuing obligations of LSE listed companies regarding information disclosure and dissemination
- 1.6.2 - The purpose of corporate governance regulation and the role of the FRC in promoting good corporate governance
- 1.6.3 - The scope and content of corporate governance standards in the UK

Company meetings

- 1.6.6 - The UK company law requirements regarding the calling of general meetings
- 1.6.7 - Annual general meetings and other types of company meetings
- 1.6.8 - The types of resolution that can be considered at company general meetings
- 1.6.9 - The voting methods used at company meetings
- 1.6.10 - The role and powers of a proxy

Notifiable interests

- 1.6.1 - The disclosures required under the disclosure and transparency rules relating to directors' interests and major shareholdings

Statutory control of takeovers and mergers

- 3.2.6 - The function of the following bodies / persons: the Panel for Takeovers and Mergers, the Department for Business Innovation and Skills, and the Competition and Markets Authority

The Takeover Panel (Panel on Takeovers and Mergers POTAM)

- 3.2.7 - The make up of the Panel on Takeovers and Mergers (the Takeover Panel) and how it is financed

- 3.2.8 - The regulatory status of the City Code on Takeovers and Mergers
- 3.2.9 - The main provisions of the City Code including the bid timetable

Now you have finished this chapter you should attempt the chapter questions.