**Verification**

This element outlines the process for verifying the accuracy and completeness of the content of a prospectus (and associated documents).

**Introduction**

In view of the range of potential liabilities which all parties can be exposed to in a primary or secondary issue of shares, the accuracy of statements in the prospectus and other documents connected with the issue must be checked thoroughly. This is achieved by a process known as '**verification**’.

Another aim of the verification exercise is to ensure that nothing has been omitted which is required to be disclosed under the general disclosure obligations, or that is required to be disclosed to ensure it does not affect the import of other information already disclosed. The verification process is likely to draw out any additional information which ought to be disclosed.

Solicitors owe a duty of care to their clients (whether this is the issuer and its directors, or the underwriters). They should aim to help these parties protect themselves against potential liability by using the verification process.

Note that verification does not obviate liability and it does not guarantee that a claim will not be brought in respect of information in the prospectus or associated documents. Persons responsible should always ensure they have read the documents in full and are confident that they are accurate, complete and not misleading.

**Methods**

**Questions and answers**

Traditionally, verification notes took the form of a document prepared by the solicitors which contained a question about every statement in the prospectus. The questions were then put to the directors of the company who were asked to produce evidence to support all answers.

**Grid format**

More recently, verification notes have moved away from the Q&A format towards a grid which sets out the statement to be verified, the person responsible for the verification and an explanation of the way in which the statement is verified, including a cross reference to supporting documents.

Generally speaking, supporting documentation should be from independent or third-party sources wherever possible, and formal documentation is preferred over informal.

In addition to the verification notes, the company’s solicitors draft a verification memorandum which draws the directors’ attention to any statements of directors’ belief or for which no independent verification source can be found which are included in the prospectus.

**The questions**

The questions need to test:

• the factual accuracy of statements;

• whether any important information has been omitted;

• whether any inferences drawn from statements are correct; and

• whether any assumptions underlying belief statements are made on reasonable grounds.

However, above all, the verification process **should concentrate on the points in the prospectus that investors are most likely to rely on**, and in relation to which the company and the directors are most at risk of being sued if they are wrong. This is known as “key statement” verification.

The verification process generally involves calls, emails and meetings between members of the company's senior management and the legal team to discuss verification issues. The drafting of the prospectus and its verification are a ‘two-way street’ and it is usual for amendments to be made to the draft prospectus as a result of the verification exercise.

**Statements of fact or opinion**

Where a statement of fact is made in a prospectus, the verification exercise should establish that this fact is true by drawing on third party sources (for example, industry reports or expert’s reports). If it is not possible to do this, the drafting team must consider whether the statement itself will need to be amended.

It may be reasonable to rely on material produced by the company itself but only if that material has itself been independently verified.

Where a statement of opinion or belief is set out in the prospectus, the key aim of the verification exercise is to establish the reasonable basis for the opinion or belief. This type of verification may draw on documents produced by the company (e.g. projections) provided that they clearly align with the statement being verified and all of the directors are satisfied that they are correct.

**Directors’ personal knowledge**

In practice, it is likely that very few directors would be able personally to verify every statement in a prospectus. This is because they will each have their own areas of responsibility and will not be involved in the detail of all parts of the business.

As such, it is reasonable for directors to delegate parts of the verification process to other directors, appropriate members of their team and/or to advisers. It is essential that the verification work is appropriately resourced and undertaken in a reasonable timescale to ensure that the work can be undertaken properly.

It is essential for the director to understand that, however the verification process has been undertaken, the director remains responsible for the accuracy of the prospectus and associated documents and may be subject to liability if they are inaccurate or misleading.

**Procedure**

Verification notes are produced by the company's solicitors and reviewed by the sponsor's solicitors. The notes are a private document and are not disclosed to the FCA or potential investors. They are usually retained by the company's solicitors to provide the basis for a defence to any claims made against the company or its directors which may arise. The completed verification notes are presented to the board of the issuer for it to consider as part of the process of approving the draft prospectus.

· Produced by the company’s solicitors

· Reviewed by the sponsor’s solicitors

o Presented to the board of issuer for consideration

o Kept by company’s solicitors to assist in defence of any future claim

**The supporting documents**

When the board signs off the verification notes, it is also signing off the “bundle” of supporting documents to which the notes refer.

It is common for the company and the advisers to create an online repository for these documents so that each document can be separately identified and the verification notes can make cross references to specific parts of them, as appropriate.

Software solutions are becoming available which help partially to automate this process: for example, applying electronic “tags” to specific paragraphs of the supporting documents which connect to particular statements in the prospectus.

**Other public statements**

All other public statements made in connection with the issue will be subject to the same kind of verification process, including any adverts or publicity material and the contents of roadshow slide presentations. Any scripts for telephone call centres providing “help lines” for potential investors will also need to be verified.

**Re-verification**

As the prospectus is amended during the process leading up to its final approval by the FCA, the document should be re-verified on each occasion. A key trainee task is to ensure that the verification notes accurately reflect the most up to date content of the prospectus as it is amended.

**Client care considerations**

Both share issue and verification processes tend to be undertaken within tight timescales.

As a solicitor you will need to recognise that clients can become very anxious or stressed, especially during the verification process, so you will need to develop good client care procedures and mechanisms.

A key way to achieve this is to have good and efficient processes for managing the verification. Electronic tools may help with this.

**Verification summary**

• ‘Verification’ is checking the accuracy of a prospectus (and associated documents) and that nothing has been omitted.

• Verification traditionally followed a process of solicitors asking written questions about every statement in the prospectus and directors producing evidence in reply. More recently, parties tend to use a grid format with statements to be verified, the person responsible for the verification and an explanation of the way in which the statement is verified, including a cross reference to supporting documents.

• The verification process should concentrate on the points in the prospectus that investors are most likely to rely on.

• All other public statements made in connection with the issue will also be subject to the same kind of verification process.

• Verification processes tend to be undertaken within tight timescales.