**Placings**

This element explains the rules and regulations relating to placings.

A placing is an offer of new shares to institutional investors (‘placees’) who are often clients or contacts of the listed company’s financial adviser.

A placing can be used both in a primary and a secondary issue of shares.

This method may not be popular with a listed company’s existing shareholders because, as it is a non-pre-emptive offer made to selected institutional investors, it has the effect of **diluting** (1) the value of their existing shareholdings and also (2) their control of the company.

**PEG Statement of Principles**

The **PEG Statement of Principles** recommends that institutional investors prevent listed companies from making large non-pre-emptive offers for cash by restricting the company’s ability to disapply pre-emption rights in relation to its shares under **s.570 CA 2006**.

The PEG Statement of Principles recommends that a listed company should only seek at its AGM disapplication no more than 10% of issued share capital for general purposes and a further 10% of issued share capital in respect of an acquisition or specified capital investment.  For each 10% tranche of authority, companies may seek an additional 2% disapplication to be used only to make a follow-on offer (so a maximum 24% disapplication).

Most listed companies adhere to the PEG Statement of Principles at their AGM.

As a result of these restrictions, listed companies can only raise ‘relatively small’ amounts of equity finance each year by a placing of shares for cash without obtaining additional shareholder authority. Institutional shareholders are generally prepared to accept small placings as a cost-effective way of raising a relatively small amount of money.

If a company proposes a placing in excess of the levels prescribed by PEG, it would be well advised to consult with its institutional shareholders and gain their support because it will need to seek shareholder support for the issue of the additional shares at a GM.

PEG encourages institutional shareholders to be flexible regarding non-routine requests for disapplication if the non-pre-emptive issue proposed would be in the interests of the company and its owners.

**Regardless of other factors, a listed company should also ensure that any placing it undertakes, when combined with any other placings it has undertaken in the previous 12 months, represents less than 20% of its issued share capital so that it is not required to produce a prospectus.**

If a listed company needs to raise larger amounts of equity finance, it will usually raise the funds it requires through a pre-emptive offer (or a combination of a pre-emptive offer and a placing).

**Price of placed shares**

**Part 2B paragraph 6** of the **PEG Statement of Principles** recommends that, if a listed company makes an issue of new shares on a non-pre-emptive basis, the discount at which those shares are offered should be limited to a maximum of 5%.

The price limit in the PEG Statement of Principles is more restrictive than the that contained in **UKLR 9.4.13**, which requires the discount to be no more than 10% below the shares’ middle market price, as derived from the daily official list of the London Stock Exchange, at the time the placing is agreed. In any event, the requirement in **UKLR 9.4.13** **will not apply** where there is a pre-existing disapplication of pre-emption rights (see **UKLR 9.4.13(4)(b**)).

Again, while this 5% limit is generally adhered to fairly strictly, the fact that it is a guideline rather than a statutory limit means that it has an inherent flexibility where circumstances require and placings are very occasionally undertaken at a discount greater than 5%.

**Placing: Is there a requirement for a prospectus?**

As a reminder, there are **two basic tests** to apply when working out whether a prospectus is needed for a placing (see both **PRR 1.2.1UK/Arts. 3(1)** and **(3) UK Prospectus Regulation** and, also, the version of the tests contained in **s. 85 FSMA**).

These two tests will be explained and explored on the following pages.

**Placing: Is a prospectus needed? Test 1**

An approved prospectus must be published in advance of an offer of shares to the public in the UK. An offer of transferable securities to the public’ for the purposes of Test 1 is a very broad definition that includes any communication which presents sufficient information on:

(a) the transferable securities to be offered; and

(b) the terms on which they are offered

to enable an investor to decide to buy or subscribe for the securities in question.

A placing will therefore constitute an ‘offer of transferable securities to the public’ under **PRR 1.2.1/Art. 3(1) UK Prospectus Regulation** and **s. 85(1) FSMA**. However, as the placees will normally constitute “qualified investors”, or there will be fewer than 150 non-qualified investors, a placing will also usually fall within the definition of an exempt offer contained in in **PRR 1.2.3/Art. 1(4)(a) UK Prospectus Regulation** (as referred to in **s. 86(1)(aa) FSMA**) and therefore fall within an exemption for Test 1.

**Placing: Is a prospectus needed? Test 2**

An approved prospectus must be published in advance of the admission of transferable securities to trading on a regulated market (in fact, it will be needed prior to making an application for admission on such a market).

As the listed company will be applying for the new shares arising from the placing to be traded on the Main Market of the LSE, a prospectus will be required under **PRR 1.2.1/Art. 3(3) UK Prospectus Regulation** and **s. 85(2) FSMA** unless an exemption applies.

A listed company making a placing as a secondary issue will usually ensure that it falls within the exemption to Test 2 in **PRR 1.2.4/Art. 1(5)(a) UK Prospectus Regulation**. This provides that a prospectus will not be required if the shares being issued are fungible with shares already admitted to trading on the same regulated market (in other words, they are of the same class as shares that are already listed), provided that they represent ‘over a period of 12 months, less than 20% of the number of securities already admitted to trading on the same regulated market’.

In order to avoid the requirement for a prospectus, in most cases a listed company will restrict the size of any placing to less than 20% of the company’s issued share capital (taking into account any other shares already issued in the previous 12 months).

**Placing: Timetable**

Unlike rights issues and open offers, there is **no minimum offer period** for new shares being offered in a placing.

The timetable is, therefore, **flexible** and will depend on the terms of the placing agreement and the demand for the new shares from institutional investors.

Given the above, it is possible for a placing to be launched and completed in a single day, with settlement and admission occurring a couple of days later.

**Placing: best practice**

Under Part 2B paragraph 1 of the PEG Statement of Principles, a company which issues equity securities non-pre-emptively for cash pursuant to a general disapplication of pre-emption rights (which will generally be the case in a placing) should undertake steps including:

* Consulting with its major shareholders prior to the announcement of the issue;
* Providing an explanation for the background to and reasons for the offer and the proposed use of proceeds, including details of any acquisition or specified capital investment;
* As far as practicable, making the issue on a soft pre-emptive basis (i.e. by offering shares first to existing shareholders);
* Involving company management in the allocation of the shares; and
* After completion of the issue, making a post-transaction report within one week which includes details of the transaction, the use and quantum of the proceeds, share allocations (including to retail investors) and consultations with shareholders.

**Summary**

* A placing is an offer of new shares to selected institutional investors who are typically clients of the listed company’s financial adviser.
* A placings may not be popular amongst a listed company’s existing shareholders because, as it is a non pre-emptive offer, it effectively dilutes their existing shareholdings and therefore their control of the company and their share of any dividend.
* Although the tests in both s.85(1) & (2) are relevant, usually no prospectus is required.
* There is no minimum offer period for an offer made by way of placing.  This makes a placing timetable flexible.  The timetable will depend on the terms of the placing agreement and the demand for the shares from institutional investors.