

Securities Law and Regulation



A Taylor Wessing guide
Updated edition

Contents

About the Securities Group at Taylor Wessing	1
Expertise of the Securities Group	2
Initial Public Offers ("IPOs")	3
IPOs - The legal and regulatory regime	5
Post-IPO share issues	7
Transactions	8
Continuing obligations, compliance, etc	12
Takeovers	15
Financial services	17
Employee share incentive arrangements	18
Dividends	19

About the Securities Group at Taylor Wessing

Taylor Wessing has a stand-alone International Securities Group which boasts one of the largest securities practices of any European law firm. The variety and number of securities offerings upon which the Group has advised means that you can rely upon the team to provide commercial and practical advice as you consider your transaction, whether its focus is domestic or international.

This specialist group comprises lawyers with many years' experience of working in the field of securities offerings, including debt and equities securities, takeovers and the regulations applicable to companies whose securities are publicly quoted. The Group represents issuers, investment banks and stockbrokers across all types of European and global securities offerings as well as those involved in takeovers of public companies.

The Group is ranked in *The Lawyer's* Top 10 Law Firms by market capitalisation of AIM clients and highly ranked for its renewable energy sector IPOs. With a strong focus on IPOs in the technology sector, this reflects the firm's status as UK Technology Law Firm of the Year as voted by *Growth Investor*.



Expertise of the Securities Group

Within the UK, the Securities Group acts on initial public offerings both large and small. This includes new issues on AIM, a market operated by the London Stock Exchange for smaller, growing companies ("AIM"), as well as issues on the Official List maintained by the UK Listing Authority (the "Official List"). The Securities Group also advises on takeovers, mergers and reconstructions involving UK public companies.

The international focus of Taylor Wessing naturally means the Securities Group advises overseas companies wishing to gain access to UK and European securities markets. The role of the Securities Group includes advising the market generally, including recently in respect of the changes introduced by the EU Prospectus Directive, EU Market Abuse Directive and EU Transparency Directive.

Apart from structural and transactional advice, securities lawyers at Taylor Wessing are available to advise on compliance issues, especially in the context of new securities offerings. This includes advising upon the timing for and issue of research notes, "quiet periods", conducting of meetings with research and other analysts, the format and verification of marketing presentations and briefings and the timing and content of regulatory announcements.

If you would like to know more please contact:

Tom Cartwright	t.cartwright@taylorwessing.com	+44 (0)20 7300 4969
Tim Eyles	t.eyles@taylorwessing.com	+44 (0)20 7300 4697
Robert Fenner	r.fenner@taylorwessing.com	+44 (0)20 7300 4986
Peter Kempe	p.kempe@taylorwessing.com	+44 (0)20 7300 4695
David Mardle	d.mardle@taylorwessing.com	+44 (0)1223 446 425
Tim Oldridge	t.oldridge@taylorwessing.com	+44 (0)20 7300 4196
Daniel Rosenberg	d.rosenberg@taylorwessing.com	+44 (0)20 7300 4935
Jayne Schnider	j.schnider@taylorwessing.com	+44 (0)20 7300 4711
Tim Stocks	t.stocks@taylorwessing.com	+44 (0)20 7300 4737 (Head of the Securities Group)
Simon Walker	s.walker@taylorwessing.com	+44 (0)1223 446 428
Paul Webb	p.webb@taylorwessing.com	+44 (0)20 7300 4727



Initial Public Offers ("IPOs")

This is the process by which a company raises new capital through the issue of shares (or other securities) and/or arranges for the sale of its securities in conjunction with the establishment of a trading facility. This is also known as a "listing" or "flotation" and where entries are technically unlisted, for example, on AIM or the PLUS-quoted market, the process is known as a "quotation".

There are many reasons why a company might wish to undertake an IPO. The main benefits of a listing include:

- **Access to capital** - A listing on an investment exchange brings with it the opportunity for the company to raise equity finance, both at the time of the initial listing and in the future.
- **Providing a market for the company's shares** - Listing should make the company's shares more marketable because there is a regulated and liquid market on which the company's shares are traded.
- **Employee commitment** - The public market in the shares may encourage employee participation in the ownership of the company through employee share ownership schemes, giving the shares a visible value and employees a liquid market on which to trade their shares. This should in turn help tie in key staff.
- **Ability to take advantage of acquisition opportunities** - Not only will the listed company have greater access to capital, but it will also be able to offer listed shares rather than cash as consideration for an acquisition (unlisted shares usually being unacceptable to the seller). This has enabled greater competition within the private equity market in enabling bidders to purchase businesses by way of the "accelerated IPO".

There are several ways in which new securities can be admitted to trading on an investment exchange, for example, by way of an offer for sale, offer for subscription and placing. Before new securities can be admitted to trading, key matters will need to be reviewed and considered:

- **Pre-offering reorganisation** - A preliminary due diligence exercise will be required to ensure that the company owns all relevant assets and that these are not held, for example, by shareholders.
- **Shareholder arrangements** - In broad terms, special rights and obligations of shareholders tend to be unwound upon the company being floated. Shareholders may also be asked to enter into lock-up arrangements restricting their ability to sell additional shares for a certain period following the IPO.
- **Constitutional documents** - The company, in conjunction with its legal advisers, will need to examine its memorandum and articles of association to see if they are suitable for life as a quoted company.
- **Share capital** - It is usually also necessary to undertake some reorganisation of the share capital of the company in order to ensure that sufficient new shares are available for any issue of shares as part of the IPO. This will include ensuring that the company has appropriate allotment authorities and disapplications of pre-emption rights to enable new shares to be issued.
- **Banking facilities** - The banking facilities of the group will need to be reviewed to ensure they are adequate for the group's capital requirements if the company is publicly quoted (taking into account the proceeds of any new issue of shares).
- **Contracts** - Important group contracts will need to be reviewed to ensure that there are no provisions, such as change of control provisions, which would be triggered by the IPO and which could have an adverse effect upon the business of the company.
- **Intellectual property** - Key intellectual property rights will need to be examined to verify ownership and the scope of protection available to the company.
- **Share schemes** - The company may consider setting up an employee share scheme, including a save-as-you-earn scheme, the purpose being to incentivise employees at a time when their commitment is vital.
- **Pension schemes** - Existing pension schemes need to be reviewed together with the adequacy of funding levels.
- **Insurance** - Insurance arrangements will need to be reviewed to ensure adequacy of cover.
- **Corporate governance** - The company will need to establish certain board committees and review its corporate governance procedures.

There are several markets that a potential applicant can choose to list on, including:

- **The Official List** - The London Stock Exchange's Main Market is the largest market operated in the UK. Companies must be admitted to the Official List in order to be able to be admitted to trading on the Main Market of the London Stock Exchange ("LSE"). The Official List is subject to UK statutory control. Companies admitted to the Official List must comply with the Prospectus Rules, the Listing Rules and the Disclosure and Transparency Rules, all made by the Financial Services Authority ("FSA") acting as the United Kingdom Listing Authority ("UKLA").
- **AIM** - The AIM market operated by the London Stock Exchange opened in June 1995. It is less strictly regulated than the Official List, the intention being to minimise costs for companies wishing to have their stocks traded on an identifiable

market. Companies quoted on AIM must comply with the AIM Rules for Companies published by the LSE. AIM is an exchange-regulated market.

- **NASDAQ** - The NASDAQ Stock Market was founded in 1971 by the National Association of Securities Dealers, as the world's first electronic system for collecting and disseminating quotations from competing dealers trading unlisted equities over-the-counter. It is now owned and operated by the NASDAQ Stock Market, Inc and offers two tiers for quotation, the NASDAQ National Market and the NASDAQ SmallCap Market.
- **PLUS market** – The PLUS market (formerly known as Ofex) is an equity stock exchange operating both primary and secondary markets in the UK. It is operated by PLUS Markets plc. It is a specialist smaller companies market. PLUS operates two primary markets: (a) the PLUS-quoted market, an exchange-regulated market, and (b) the PLUS-listed market, a new regulated market. PLUS also operates a secondary market, a trading platform for shares listed on other markets.
- **Euronext** - Euronext was created by the merger of the Paris, Amsterdam and Brussels exchanges in September 2000. It has since been joined by the Portuguese exchange and London International Financial Futures Exchange (LIFFE). Companies can gain access to Eurolist by Euronext (a single list encompassing all its regulated markets) from Paris, Brussels, Amsterdam or Lisbon. Euronext has also created "Alternext", aimed at small and mid-sized companies across Europe seeking a less regulated market, bringing Alternext into competition with AIM.
- **virt-x** - A pan-European blue chip exchange owned by the SWX Group. virt-x was founded in 2001 as the first cross-border trading platform for the pan-European blue chip market. It is the home market for trading in the constituents of the Swiss Market Index, listed by the SWX Swiss Exchange in Switzerland.

The US Securities and Exchange Commission has issued a no action letter with regard to trading non-Swiss European blue chip stocks on virt-x and, therefore, US members can trade directly in such stocks. It is possible to trade all shares included in Europe's leading stock indices on this exchange and those shares continue to be listed in their respective country of origin. virt-x is based in London and regulated by the FSA as a recognised investment exchange. Although trading on virt-x is subject to supervision by the FSA, listings and matters relating to disclosure and takeovers remain the responsibility of the issuer's home state authorities.



IPOs - The legal and regulatory regime

In addition to all of the usual rules applicable to UK companies, the regulations applicable to a company seeking an IPO in the UK varies depending upon (i) whether a prospectus is required, and (ii) for which market a listing or trading facility is sought.

When is a prospectus required?

A prospectus will be required in two situations:

1. if an offer of securities is made to the public (this covers any "communication to any person 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. ... The communication may be made in any form and by any means"), and
2. if securities are being admitted to trading on a regulated market (which includes the Main Market of the London Stock Exchange (and therefore admitted to listing on the Official List) and the new PLUS-listed market, but not AIM or the PLUS-quoted market). This encompasses securities traded on domestic "second" markets and on trading facilities, such as virt-x.

If a prospectus is required, it is unlawful and a criminal offence for transferable securities to be offered to the public or for an application to trading on a regulated market to be made, unless an approved prospectus is made available to the public before the offer or application is made.

Exemptions from the requirement to publish a prospectus

There are a number of exemptions available, which, if applicable to an offer to the public, mean that a prospectus is not required. For example, a prospectus will not be required if:

- the offer is addressed to fewer than 100 people, other than "qualified investors", per EEA state
- the offer is made to purely "qualified investors" (who can be self-certified on a qualified investors' register kept by the FSA)
- the total consideration of the offer is less than €2.5 million (or an equivalent amount), when aggregated with offers open during the previous 12 months
- the minimum consideration which may be paid by any person for securities pursuant to the offer is at least €50,000, or
- the securities offered are denominated in amounts of €50,000 (or an equivalent amount).

Likewise, there are exemptions from the need for a prospectus on admission to trading on a regulated market. For example, a prospectus will not be required if:

- the number of shares being admitted is less than 10 per cent of the shares of the same class already admitted to trading, or
- the shares arise upon the exercise of conversion rights of options or warrants.

Prospectus requirements

If a prospectus is required, it must be approved by the FSA (also referred to as the UKLA), as the competent authority in the UK under Part VI of the Financial Services and Markets Act 2000 ("FSMA"), prior to the publication of the prospectus. This applies to all companies, regardless of whether they are listed or unlisted and regardless of which market their shares are traded on.

Prior to 1 July 2005, prospectuses of companies not admitted to the Official List did not need prior formal regulatory approval, they simply had to be filed with the Registrar of Companies for information purposes. Prospectuses now no longer need to be filed with the Registrar of Companies, but once approved they must be filed with the UKLA and made available to the public, for example, by being made available for inspection at the company's offices and Nomad's offices or by publication on the company's website.

The detailed rules as to the content of a prospectus are set out in the Prospectus Rules made by the FSA. The various schedules of required information, depending on the nature of the securities, are referred to as "building blocks". Issues of shares require the inclusion of the information set out in Annexes I and III and, if there is a significant gross change (a variation of more than 25 per cent in relation to one or more indicators of the size of the issuer's business (such as total assets, revenue or profits) to a particular transaction), the information set out in Annex II also.

Listing requirements

Where a company's shares are to be traded on the Main Market of the London Stock Exchange, they must also be listed on the Official List. The detailed regulations as to listing (which need to be considered in addition to the prospectus requirements set out in the Prospectus Rules) are set out in the Listing Rules made by the FSA. The company will also need to comply with the LSE's admission and disclosure standards. The Listing Rules set out in detail the procedures for obtaining a listing and the methods of bringing securities to listing.

The Listing Rules, together with the Disclosure and Transparency Rules published by the FSA, also set out the regulatory regime with which fully listed companies need to comply following their IPO. The primary offering document issued by a company seeking a first listing of shares on the Official List is a prospectus. Subsequent listings will also require a prospectus unless an exemption applies.

Companies seeking admission of their securities to AIM are, as mentioned above, also bound by the Prospectus Rules if a prospectus is required. If a prospectus is not required, those companies are required to comply with a different regulatory regime, primarily the AIM Rules for Companies published by the LSE (the "AIM Rules"), and to produce an admission document. Unlike the Listing Rules, the AIM Rules do not have a statutory basis. The requirements set out in the AIM Rules are not as stringent as those in the Listing Rules.

Companies seeking admission to the PLUS-quoted market must comply with the PLUS Rules for Issuers and, if required to publish a prospectus, the Prospectus Rules also. The PLUS Rules for Issuers are less stringent than the Listing Rules and the AIM Rules. Companies seeking admission to the new PLUS-listed market must do so in accordance with the PLUS admission and disclosure standards, in conjunction with an application to the FSA for admission to the Official List (which requires compliance with the Prospectus Rules and Listing Rules).

There are, in addition, statutory provisions with which companies seeking admission to the Official List or AIM or other markets must comply, principally the anti-market abuse provisions of FSMA.

For a more detailed guide to the legal and regulatory regime governing initial public offers in the UK, please see the Taylor Wessing guide entitled "Initial Public Offers".



Post-IPO share issues

Rights issues

A rights issue involves the offer by a company to the holders of existing securities for them to subscribe for or purchase further securities in the same proportion as their existing holdings. The offer is made by means of an issue of a provisional allotment letter (or PAL) or other negotiable document which may be traded (as "nil paid" rights) for a period before payment for the securities is due.

Advantages of a rights issue include:

- raising additional finance for the company, and
- improving a company's gearing ratio without the company having to repay any of its borrowings.

Disadvantages include:

- if the issue is underwritten, the underwriting expenses can be high, and
- commonly, the market value of a company's shares will drop immediately after a rights issue. The effect of issuing shares at a discount to current market price is to reduce the value of each of the company's shares.

Where shares in a company admitted to the Official List are to be offered at more than a 10 per cent discount to the mid-market price at the time the terms of the offer are announced (or at the time of agreeing a placing, if applicable), then the shares must be offered by way of a rights issue. This is a requirement of the Listing Rules. The AIM Rules are less prescriptive.

The Association of British Insurers ("ABI") recommends that the maximum issue price discount on a share issue without full pre-emption should not exceed 5 per cent.

Placings

A placing involves an offer of the securities not to the public or to existing holders of securities generally but, instead, to specified persons or clients of the sponsor or any securities house assisting in the placing. A placing is appropriate where the company wants to target specific investors. Placings do not usually require a prospectus due to the number of investors involved.

Open offers

An open offer is an invitation to the existing holders of securities to subscribe for or purchase further securities in proportion to their holdings but, unlike a rights issue, an open offer is not made on a negotiable instrument and there is no period of nil paid dealings. If faced with a choice between an open offer and a rights issue, there is a tendency on the issuer's part to opt for an open offer - this is mainly because an open offer is quicker and the issuer receives its required cash faster.

Consideration shares

A company acquiring the shares of a target may wish to pay for them by issuing shares in itself to the seller (a "share for share exchange"). The seller may be attracted by the tax treatment of a share for share exchange: if certain conditions are fulfilled, the seller is able to roll over any capital gain made on the disposal of shares in the target, deferring the capital gains tax until he disposes of the shares in the acquiring company received in exchange.

Where shares are issued as consideration, the agreement should specify how the new shares rank with the other shares of the issuing company and what rights the seller will have to any dividend declared in relation to a period in which completion falls.

In addition to the legal and regulatory requirements relating to these post-IPO share issues, companies also need to bear in mind the relevant provisions of the guidelines published by the ABI.

Transactions

Class transactions - Official List

Chapter 10 of the Listing Rules contains rules relating to transactions between the company and certain related parties. The Listing Rules require that the company which is buying or selling must follow certain procedural steps, the nature of which in any particular case is determined by the type of transaction.

There are five classes of transaction:

- Class 3 (where all the class test percentage ratios are less than 5 per cent)
- Class 2 (where any class test percentage ratio is 5 per cent or more but each is less than 25 per cent)
- Class 1 (where any class test percentage ratio is 25 per cent or more)
- Reverse takeover, and
- Transaction with a related party.

Transactions are classified by comparing the size of the transaction with the size of the listed company entering into it - the comparisons used relate to gross assets, profits, consideration and gross capital. The different classes of transaction, based upon certain percentage ratios, determine what formalities are required in relation to the transaction in question.

"Transactions" for these purposes includes all agreements entered into by the listed company or its subsidiary undertakings, but excludes transactions of a revenue nature in the ordinary course of business and intra-group transactions with wholly owned subsidiary undertakings.

Class 3 transactions - These are the least onerous of the categories. All that may be required is an announcement to a Regulatory Information Service ("RIS"). This is only an absolute requirement where the transaction is an acquisition and the consideration includes the issue of securities for which listing is to be sought. In other cases, it is only necessary to notify an RIS if the company releases any details of the transaction to the public.

Class 2 transactions - An announcement must be made to an RIS as soon as possible after terms have been agreed. The announcement must include:

- details of the transaction, including the name of the other party
- a description of the business carried on by, or using, the assets being purchased or sold
- the value of the consideration and how it is being satisfied
- the value of the gross assets being purchased or sold
- the profits attributable to the net assets being purchased or sold
- the effect on the company of the transaction, including any benefits which are expected to accrue to the company as a result
- details of any service contracts of proposed directors of the company
- details of key individuals to the business or company being purchased or sold
- in the case of a disposal, the application of the sale proceeds, and
- in the case of a disposal, if securities are to form part of the consideration, a statement whether such securities are to be sold or retained.

Class 1 transactions - The company must comply with the Class 2 requirements and, in addition, it must send an explanatory circular to its shareholders and hold a meeting to obtain their prior approval of the transaction in question. Any agreement giving effect to the transaction must be conditional on that shareholder approval being obtained.

A Class 1 circular must contain a considerable amount of information, including:

- the general information required to be contained in all circulars, for example, a clear and adequate explanation of the subject matter, giving due prominence to its essential characteristics, benefits and risks
- the information given in the announcement
- a directors' responsibility statement
- financial information on the target group, usually including an accountant's opinion
- a statement of the effect of the acquisition or disposal on the earnings or assets and liabilities of the group, and
- the information identified in the appendix to Chapter 13 of the Listing Rules, which includes risk factors, details of material contracts, litigation, and trend information for the company and the undertaking which is the subject of the transaction. However, if a prospectus is in any event required for the transaction, the information in the appendix to Chapter 13 will be included in the prospectus and need not be repeated in the circular.

A Class 1 circular is not a circular of a routine nature and, therefore, its terms must be approved in advance by the UKLA.

If after the circular has been produced (but before completion of the transaction) there is a material change to the terms of the transaction (such as an increase of 10 per cent or more in the consideration payable), a new announcement and circular to shareholders will be required.

Transactions - AIM

The AIM Rules apply similar class tests to those under the Listing Rules, but with an additional comparison of turnover. The AIM Rules have less stringent requirements in relation to transactions. An announcement must be made in the case of "substantial transactions" (namely, transactions which exceed 10 per cent in any of the percentage ratio tests) as soon as the terms of any substantial transaction are agreed, but no prior shareholder approval is required for the transaction.

A disposal by an AIM company which exceeds 75 per cent in any of the class tests is deemed to be a "disposal resulting in a fundamental change of business". This disposal must, therefore, be conditional upon the consent of the company's shareholders being given in general meeting. A circular must be sent to the company's shareholders convening the general meeting for them to approve the transaction.

If the effect of such a disposal is to divest the company of all, or substantially all, of its trading business activities, then the AIM company will be treated as an "investing company" upon the disposal. The circular to shareholders must state the company's investing strategy going forward. The company must also make an acquisition within 12 months which constitutes a reverse takeover.



Transactions – PLUS-quoted market

The PLUS Rules for Issuers do not impose any class tests on PLUS-quoted companies. Companies must simply announce as soon as possible the agreed terms of an acquisition or disposal (by itself or a subsidiary) which, if made public, would be likely to have a significant effect on the price of its securities.

Reverse takeovers

Generally defined as occurring where a listed company is acquiring a business or unlisted company which is bigger than itself (such that any class test percentage ratio is 100 per cent or more) or the transaction is sufficiently significant for it to result in a fundamental change to the business or a change in board or voting control of the listed company.

If the company is admitted to the Official List, it must make an announcement of the reverse takeover, send a Class 1 circular to its shareholders and obtain prior shareholder consent to the transaction. Before a listed company announces a reverse takeover which has been agreed or is in contemplation or where details have been leaked, it must consider whether suspension of its listing is appropriate. Generally, when a reverse takeover is announced, suspension will be necessary, as there will be insufficient information in the market about the transaction. Even if suspension is not necessary at that stage, when a listed company completes a reverse takeover, the listing of the company is suspended and, as such, the company must re-apply for the admission of its shares to listing. The listing will be restored on publication of the prospectus.

Where a company's shares are quoted on AIM, the company must announce the reverse takeover, issue a new admission document in respect of the proposed enlarged entity and obtain consent from a majority of shareholders to the proposed transaction. The agreement effecting the transaction must be conditional upon the consent of the company's shareholders being given in general meeting. Where shareholder approval is given for the reverse takeover, trading in the company's shares on AIM will be cancelled. The enlarged entity will need to re-apply for admission. Under the AIM Rules, if an investing company departs substantially from its published investing strategy, this can also constitute a reverse takeover.

Where the company's shares are quoted on the PLUS-quoted market, similar rules apply under the PLUS Rules for Issuers. The company must announce as soon as possible the agreed terms of the transaction, send an explanatory circular to shareholders and obtain shareholder approval for the transaction. Under the PLUS Rules for Issuers, the transaction can constitute a reverse takeover if (a) the acquisition will result in a fundamental change to the business, board or voting control of the issuer, (b) (unless PLUS Markets plc otherwise agrees) the acquisition is made by an investment vehicle, or (c) the acquisition is made by a cash shell.

Transactions with related parties - Official List

If a listed company proposes to enter a transaction with a related party (or with another person that may benefit a related party), it must:

- make an announcement required by Chapter 11 of the Listing Rules (containing the information required for a Class 2 announcement, plus the name of the related party and details of the nature and extent of the related party's interest)
- send an explanatory circular to its shareholders
- obtain the approval of its shareholders, and
- where applicable, ensure that the related party abstains, and takes all reasonable steps to ensure that its associates abstain, from voting on the relevant resolution.

A transaction with a related party is defined as:

- a transaction, other than of a revenue nature in the ordinary course of business, between a company (or any of its subsidiaries) and a related party
- any arrangement in which a company (or any of its subsidiaries) and a related party each invest in, or provide finance to, another undertaking or asset, or
- a transaction, other than of a revenue nature in the ordinary course of business, between a company (or any of its subsidiaries) and any other person the purpose and effect of which is to benefit a related party.

A related party means:

- a "*substantial shareholder*" - a person (excluding a bare trustee) who can exercise or control the exercise of 10 per cent or more of the voting rights in the listed company (or in a group company) on all or substantially all matters at general

meetings. The definition also extends to a person who no longer has such voting rights but who did have them at any time within the 12 months preceding the date of the transaction or arrangement

- a "*director*" - any person who is, or was within the 12 months preceding the date of the transaction or arrangement, a director or shadow director of the company or of any group company
- a person exercising significant influence over the listed company
- associates of any of the above - in the case of directors and substantial shareholders who are individuals, it includes their family (i.e. spouse or civil partner and children), the trustees of a trust in which they or their family are beneficiaries or discretionary objects and any company in which they or their family control 30 per cent or more of the voting rights. In the case of substantial shareholders who are companies, "associate" includes a variety of associated companies, for example, any subsidiary, holding company or fellow subsidiary of the holding company.

Exceptions to the related party rules include:

- the issue of new securities or treasury shares for cash pursuant to an opportunity which (so far as is practicable) is made available to all shareholders on the same terms
- the issue of new securities pursuant to the exercise of conversion or subscription rights attached to listed securities
- where the terms and circumstances of a joint investment arrangement (where the amount invested by the related party is not more than 25% of the amount invested by the listed company) are, in the opinion of an independent adviser, no less favourable for the company than for the related party, and
- the related party is only such by virtue of being a substantial director of a subsidiary of the company which has contributed less than 10 per cent of the turnover and profits of, and which has represented less than 10 per cent of the gross assets of, the listed company in each of the three previous financial years for which accounts have been published (provided, amongst other things, that the "insignificant subsidiary" is not party to the transaction, in which case further requirements must be satisfied).

Transactions with related parties - AIM

The requirements under the AIM Rules in respect of related party transactions are less stringent than those set out in the Listing Rules.

The definition of a related party is similar to that set out in the Listing Rules and, pursuant to the AIM Rules, means:

- a "*director*" - any person who is a director of the company or of any subsidiary, sister or parent undertaking of the company
- a "*substantial shareholder*" - any person controlling 10 per cent or more of any class of AIM security (excluding treasury shares) or 10 per cent more of the voting rights (excluding treasury shares) of an AIM company
- any associate of the above two categories - essentially the same definition as set out in the Listing Rules, and
- (for the purposes of rule 13 relating to related party transactions) any person who was a director of the company or of any subsidiary, sister or parent undertaking of the company within the 12 months preceding the transaction.

Rule 13 of the AIM Rules applies to any transaction with a related party which exceeds 5 per cent in any of the class tests.

If an AIM company proposes to enter into a transaction with a related party, it must make an announcement as soon as the terms of the related party transaction are agreed. The announcement must include a statement that (with the exception of any director who is involved in the transaction as a related party) the directors consider, having consulted with the company's nominated adviser, that the terms of the transaction are fair and reasonable insofar as the shareholders are concerned. Further, unless the related party transaction in question constitutes a reverse takeover (or disposal resulting in a fundamental change of business), there is no requirement under the AIM Rules for the company to obtain the approval of its shareholders to the transaction or for an explanatory circular to be sent to its shareholders.

Transactions with related parties – PLUS-quoted market

The requirements under the PLUS Rules for Issuers in respect of related party transactions are less stringent again. The company must simply announce as soon as possible the agreed terms of any material transaction outside the ordinary course of business between it (or a subsidiary) and a related party. The announcement must contain the name of the related party and the nature of his or her relationship with the issuer.

Continuing obligations, compliance, etc

Dealings by directors and employees

The integrity of the market requires that directors do not abuse their position, nor come under suspicion of doing so.

Directors of companies admitted to the Official List must comply with the provisions of the "Model Code" (a code of conduct, annexed to Chapter 9 of the Listing Rules, which seeks to regulate transactions by persons discharging managerial responsibilities ("PDMRs") (principally directors) and their connected persons in the listed securities of the particular company), as well as the provisions of UK law.

The Model Code sets out certain prohibitions on dealing:

- Restricted persons (namely, PDMRs, such as directors) are prohibited from dealing in the company's securities at any time without first obtaining clearance to deal from (in the case of directors) the chairman or a director designated by the board for this purpose, or (in the case of the chairman) from the chief executive, or (in the case of the chief executive) from the chairman. Other persons must obtain clearance from the company secretary.
- Restricted persons must not be given clearance to deal in any securities of the company during "prohibited periods", which are:
 - "close periods" (which are (i) the 60 day periods immediately before the preliminary announcement of the annual results and before publication of the annual report (or, if shorter, in each case, from the financial year-end to publication), (ii) the period from the half-year end to publication of the half-yearly results (if the company reports half-yearly), and (iii) the 30 day period preceding the announcement of the quarterly results (if the company reports quarterly)), and
 - any time when there exists any matter which constitutes "inside information" in relation to the company.
- Restricted persons must not be given clearance to deal in any securities of the company on considerations of a short-term nature.



"Inside information" is information of a precise nature, which is (i) not generally available, (ii) relates, directly or indirectly, to one or more issuers of securities or to securities, and (iii) would, if generally available, be likely to have a significant effect on the price of the securities or on the price of related investments.

The Disclosure and Transparency Rules also require a listed company to draw up, and to ensure that persons acting on its behalf also draw up, "insider lists" setting out all the persons working for them or having access to "inside information" relating directly or indirectly to the company whether on a regular or occasional basis.

In relation to AIM companies, the AIM Rules contain similar restrictions on dealings in shares by directors and certain employees. Rule 21 provides that the company must ensure that its directors and "applicable employees" (employees of the group who are in the possession of unpublished price sensitive information in relation to the company due to his/her employment) do not deal in any of the company's shares during a "close period" (defined similarly to the definition in the Model Code). The AIM company must also not purchase or redeem early its own shares or sell any shares held as treasury shares during a close period.

PLUS-quoted companies are required under the PLUS Rules for Issuers to adopt a code of dealing sufficient to ensure (unless PLUS Markets plc otherwise agrees) that its directors (and family and connected persons) and "relevant employees" (employees, who due to their employment, have regular or occasional access to inside information relating to the company) do not deal in its securities during a "close period" (defined similarly to the definition in the AIM Rules), or otherwise on considerations of a short term nature. The PLUS-quoted company must also not purchase or redeem early its own shares during a close period.

Directors and employees with inside information must also bear in mind the restrictions on their dealing in the company's securities imposed by the prohibition on insider dealing under the Criminal Justice Act 1993 and imposed by the anti-market abuse provisions in FSMA. The market abuse provisions prohibit behaviour constituting insider dealing, improper disclosure, manipulating transactions, manipulating devices or dissemination in relation to the securities traded on regulated markets in the EEA (such as the Official List and Euronext) or traded on UK prescribed markets (including the Official List, AIM, PLUS market and virt-x).

Listing principles

The Listing Rules contain six listing principles, which apply to every listed company with a primary listing of equity securities, in respect of all its obligations arising from the Listing Rules and the Disclosure and Transparency Rules made by the UKLA. The listing principles are:

- Principle 1 A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors
- Principle 2 A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations
- Principle 3 A listed company must act with integrity towards holders and potential holders of its listed equity securities
- Principle 4 A listed company must communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation or continuation of a false market in such listed equity securities
- Principle 5 A listed company must ensure that it treats all holders of the same class of its listed equity securities that are in the same position equally in respect of the rights attaching to such listed equity securities, and
- Principle 6 A listed company must deal with the FSA in an open and co-operative manner.

Disclosure to the market

An absolutely key obligation for companies admitted to the Official List is contained at paragraph 2.2.1 R of the Disclosure and Transparency Rules. This states that a company must notify an RIS as soon as possible of any inside information which directly affects the company, unless disclosure would prejudice its legitimate interests (provided that such omission would not be likely to mislead the public and that the company is able to ensure the confidentiality of that information and that any recipient of the information owes a duty of confidentiality to the company).

There is a similar general duty of disclosure for AIM companies of price-sensitive information under rule 11 of the AIM Rules, which provides that the company must issue notification without delay of any new developments which are not public knowledge concerning a change in:

- its financial condition
- its sphere of activity
- the performance of its business, or
- its expectation of its performance,

which, if made public, would be likely to lead to a substantial movement in the price of its securities.

Likewise, a PLUS-quoted company must announce as soon as possible any change in its sphere of activity, financial position, the performance of its business, or its expectation of its performance, which, if made public, would be likely to have a significant effect on the price of its securities.

Directors should also note that there are criminal and civil offences under FSMA where a director dishonestly or recklessly makes a statement, promise or forecast which he knows to be misleading, false or deceptive or dishonestly conceals a material fact. Such action may also give rise to other civil and criminal liability.

Nominated advisers

It is also worth noting that there is a key continuing obligation that applies to companies admitted to AIM to retain a nominated adviser (known as a "Nomad") at all times. If a company ceases to have a Nomad, trading in its shares on AIM will be suspended.

Likewise, a PLUS-quoted company must retain a PLUS corporate adviser at all times (unless PLUS Markets plc otherwise agrees).

Shareholding notifications

On a day-to-day basis, UK companies listed on the Official List or quoted on AIM or the PLUS-quoted market have similar disclosure obligations concerning interests in their shares under chapter 5 of the Disclosure and Transparency Rules.

Where a person acquires or accumulates a holding of voting rights (as shareholder or through direct or indirect holdings of financial instruments or through indirect holdings of shares) with a percentage of 3 per cent or more of the voting rights in a UK listed, AIM or PLUS-quoted company, that person has two trading days within which to notify the company in writing of this interest and file a copy with the UKLA. Future notifications must be made to the company every time thereafter the level of voting rights increases or decreases by a complete percentage point.

These notification requirements also apply to non-UK issuers admitted to the Official List, but with some modifications: the period of notification by the shareholder is increased to four trading days where the company is a non-UK issuer. In addition, notifications are only needed when the percentage of voting rights reaches or exceeds or falls below 5%, 10%, 15%, 20%, 25%, 50% and 75%. The AIM Rules, however, require all companies, whether UK or overseas, to announce major shareholdings over 3%. Non-UK AIM companies need, therefore, to include a disclosure mechanism in their constitutional documents in order to be able to comply with this disclosure requirement.

The company must make an announcement of such notification as soon as possible and in any event by close of business on the trading day following receipt. Non-UK companies must make this announcement as soon as possible and in any event by the third trading day following receipt. The AIM Rules impose an additional requirement: that this disclosure be made "without delay".

UK companies (and non-UK companies admitted to the Official List) must also, at the end of a calendar month in which an increase or decrease has occurred, disclose to the public the total number of voting rights and capital for each of its classes of share and the total number of voting rights attaching to shares held by the company in treasury.

Directors have an obligation to notify their shareholding interests (or any changes) in the listed, AIM or PLUS-quoted company, no matter what the percentage. The company must announce any dealings in shares by directors by the close of the next business day (or, in the case of AIM companies, "without delay" or, in the case of PLUS-quoted companies, "as soon as possible").

Takeovers

Takeovers of public companies in the UK are subject to regulation under the City Code on Takeovers and Mergers (the "Code").

The Code is issued by the Panel on Takeovers and Mergers (the "Panel"), an independent body whose main functions are to issue and administer the Code and to supervise and regulate takeovers and other matters to which the Code applies. The Panel has been designated as the supervising authority to carry out certain regulatory functions in relation to takeovers pursuant to the EU Takeover Directive. The Panel is a body consisting of a chairman, other members appointed by the Panel and additional members representing institutions and professional and self-regulatory associations involved in the securities industry (including, for example, the ABI, the National Association of Pension Funds and the British Bankers' Association). The Panel works on a day-to-day basis through its "executive" (professional staff), headed by the Director General.

The Code

The Code consists of six general principles and additional specific rules, accompanied by explanatory notes. The rules in the Code now have a statutory basis in relation to the UK. The Panel has also now been placed on a statutory footing and the Panel has statutory power to make its rules relating to takeovers in the UK.

The principal purposes of the Code are to ensure fair and equal treatment of all equity shareholders in an "offeree" (or



"target") company, to provide an orderly framework for the conduct of takeover offers and to enable shareholders to make an informed decision on the merits of an offer. The Code is designed to promote, in conjunction with other regulatory regimes, the integrity of the financial markets.

The introduction to the Code makes it clear that its rules are not framed in technical language and are to be interpreted so as to achieve their underlying purpose. Their spirit must be observed as well as their letter. The Panel encourages companies and their advisers to consult with them before and during an offer about how the Code should be applied in particular circumstances, rather than adopting a technical, legalistic approach to its interpretation.

Because publicly quoted companies typically have very many shareholders (often running into the thousands), the acquisition of the whole of the issued share capital of a quoted company is typically effected by means of an offer by the bidder to each shareholder in the target, rather than by a sale and purchase agreement. The offer will be subject to a number of conditions, most significantly that target shareholders holding a specified percentage of the target's shares accept the offer made to them.

The offer will be contained in a document circulated by the bidder to the target shareholders, setting out details of the offer, the consideration, the acceptance mechanics and a great deal of information acquired by the Code. The board of directors of the target is required by the Code to advise the target shareholders whether or not they recommend them to accept the offer. Usually, if the target board is in favour of the offer, a letter from the chairman of the target will be included in the offer document containing the recommendation and the directors of the target will be expected by the bidder to give irrevocable undertakings to accept the offer in respect of their own shares.

If the offer is not recommended, however, the target board will issue a separate document (usually called a "defence document") to the target shareholders recommending that they reject the offer and setting out the board's reasons for such a recommendation. In such circumstances, the offer is termed "hostile".

In certain circumstances, it may be advantageous for the bidder and the target to effect the takeover by means of a statutory, court-approved procedure pursuant to sections 895-899 of the Companies Act 2006 known as a "scheme of arrangement". Depending on the circumstances of a particular takeover, there can be significant advantages to be obtained by adopting the scheme of arrangement procedure. However, it is not appropriate where the target board is not prepared to recommend the takeover to the target shareholders.

The Panel's interpretation of the Code is subject to judicial review, but to date the courts have shown an unwillingness to interfere with or to overturn its decisions. It remains to be seen whether this may change now that the Panel has a statutory basis for its powers following the implementation of the EU Takeover Directive. Before the Code was placed on a statutory basis, it was still usually adhered to by market participants. Other regulatory authorities that approve of and endorse the importance of the Code were, and still are, able to sanction or discipline the bodies they regulate for any non-compliance with it. In this way, the Code was enforced and made binding. The Panel now also has statutory power to ensure compliance with its rulings.

To ensure that minority shareholders cannot frustrate an offer that has been accepted by the majority of the shareholders, the Companies Act 2006 includes "squeeze-out" provisions, whereby the bidder can compulsorily acquire the shares of the non-accepting minority shareholders. Such provisions apply where an offer has been made to acquire all the shares (or share of the same class) and the holders of 90 per cent or more of those shares have accepted the offer.

Financial services

Financial Services and Markets Act 2000

Implementation of FSMA completed the vesting of supervisory responsibilities in the regulator, the FSA, and rationalised and substantially replaced the banking, financial services and insurance companies legislation.

Financial Services Authority

The FSA is an independent non-governmental body given statutory powers by FSMA and is answerable to HM Treasury. It is the single regulator for the financial services industry, responsible for supervising banks, building societies, friendly societies, insurance companies and other financial institutions. (It has taken on the roles previously exercised by the Supervision and Surveillance Department of the Bank of England, the Investment Management Regulatory Organisation (IMRO), the Personal Investment Authority (PIA), the Securities and Futures Authority (SFA), the Insurance Directorate of the Department of Trade and Industry (subsequently transferred to HM Treasury), the Building Societies Commission, the Friendly Societies Commission and the Registry of Friendly Societies.)

The FSA performs some key regulatory functions in relation to securities. Acting as the competent authority for listing, the FSA is referred to as the UK Listing Authority (or UKLA) and maintains the Official List. Companies cannot be admitted to trading on the Main Market of the London Stock Exchange without being admitted to the Official List. The FSA is also the competent authority for the approval of prospectuses, required when transferable securities are being offered to the public or when an application is made to admit transferable securities to trading on a regulated market. The FSA is responsible for the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules.

The FSA is also responsible for regulating mortgage lending and mortgage advice (since October 2004) and the sale of general insurance by insurance brokers (since January 2005). The FSA is also a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 and has power to challenge authorised firms' use of unfair terms in standard form consumer contracts (broadly, those relating to investments, pensions, life and general insurance, banking and mortgages).

The essence of the regime is that no person is permitted to carry on a "regulated activity" unless authorised to do so or unless exempt. A company or firm, having obtained authorisation, has to obtain permission for each specific type of regulated activity with which it is involved. The company or firm has to comply with rules made by the FSA. The FSA can take action against authorised companies and firms if they fail to meet the required standards.



Employee share incentive arrangements

Encouraging employees to become part owners of the company is thought to bring its rewards in terms of increased loyalty and productivity of the staff. Schemes fulfilling certain conditions bring taxation benefits both to the company and the employee. For the company, associated costs are a deductible expense for corporation tax purposes. The employing company may have a statutory corporation tax deduction when the employee exercises the option (whether or not the scheme is tax efficient). There will also be an accounting charge in relation to the grant of options. For the employee, if properly structured, the subsequent disposal of shares will fall to be taxed as capital gains as opposed to income. There are two categories of tax efficient schemes: all employee schemes (where all employees must be invited to join) and discretionary schemes (where the company can select particular employees).

All employee schemes

Approved savings-related share option scheme

Employees are granted options to purchase shares in the company, which may be granted at an option price of market value on the date of grant (or up to a discount of 20% to the market value). At the same time, employees start to make regular monthly contributions to a specified savings account. When the option is exercised, only savings from that account can be used for the exercise of the option. The maximum monthly savings are £250.

Approved share incentive plan

There are a number of possible features:

- the company may issue up to £3,000 worth of shares each year to an individual employee free,
- the company may permit an individual employee to purchase each year shares up to a value of the lower of £1,500 or 10 per cent of salary, or
- the company may issue up to two shares for each share purchased by an individual employee.

The shares are held on trust on behalf of the employees. Any dividends paid in respect of the plan shares may be used to buy further shares.

Discretionary schemes

Approved company share option plan

Relevant employees are granted options to purchase shares in the company. The option price must be the market value of the shares at the date of grant. The aggregate market value of shares at the date that the shares are granted must not exceed £30,000 per employee. There is no associated savings account. It follows that an employee must provide his own funds if the option is to be exercised. This may involve borrowing.

Enterprise management incentives (EMIs)

Relevant employees are granted options to purchase shares in the company. The option price does not have to be market value at grant (but there are tax advantages if it is). There is no associated savings account.

There are a number of significant conditions, for example, the scheme is only available to trading companies with gross assets not exceeding £30 million and the aggregate market value of shares at the date options are granted should not exceed £100,000 per employee, subject to an overall limit of £3 million in relation to options granted to all group employees.

Maximum level of options

The ABI guidelines state that, where entitlements under share incentive schemes are to be satisfied by the issue of new shares, the scheme must limit the commitment to issue new shares under that scheme, when aggregated with awards under all of the company's other schemes, to 10 per cent of the company's share capital in any rolling 10 year period. Furthermore, the limit in relation to discretionary schemes is 5 per cent of the company's share capital in any rolling 10 year period. This is not in addition to the 10 per cent limit but is within the 10 per cent limit.

In addition, for a company whose shares are traded on the Official List, the maximum amount of equity shares which can be (subject to exceptional circumstances) covered by warrants and options to subscribe for new shares, other than rights under employee share schemes, is 20 per cent of the issued share capital.



Dividends

The traditional method of returning cash to shareholders is by way of a dividend.

Distributions (including dividends) can only be made out of profits available for distribution and by reference to properly prepared accounts. Profits "available for distribution" are defined in company legislation as "accumulated, realised profits, so far as not previously used by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital".

In addition, a public company can only make a distribution where the amount of its net assets is not less than its called-up share capital plus undistributable reserves and would not become less as a result of the distribution.

Whether or not there are distributable profits must be determined by reference to relevant accounts (usually the last audited accounts of the distributing company) that must comply with specified requirements.

67,000	137,000	13,5
71,000	140,000	13,5
48,778	89,678	13,5
78,551	117,451	13,5
11,737	74,637	13,5
29,500	70,400	13,5
41,115	84,015	13,5
63,991	104,891	13,5

Notes

Notes

Notes

Notes

Notes

Berlin Brussels Cambridge Dubai Düsseldorf
Frankfurt Hamburg London Munich Paris
Representative offices: Alicante Beijing Shanghai
www.taylorwessing.com

London

5 New Street Square
London EC4A 3TW
United Kingdom
Tel +44 (0)20 7300 7000
Fax +44 (0)20 7300 7100
london@taylorwessing.com

Taylor Wessing LLP is an ISO14001 environmentally certified partnership.

This marketing communication is printed on sustainably produced paper.



Certificate No. EMS 532521

© Taylor Wessing LLP 2009

This publication is intended for general guidance only and no responsibility is accepted by Taylor Wessing LLP for any errors or omissions. The information in this publication should not be relied upon to replace professional advice on specific matters. Taylor Wessing LLP is a limited liability partnership registered in England and Wales, registered number OC322935, with its registered office at 5 New Street Square, London, EC4A 3TW.

Taylor Wessing LLP operates in combination with associated legal entities in other locations.