



UK REIT Horizon Scanner Q2 2019

TaylorWessing

Key Issues

Key issues coming up for UK Main Market REITs in corporate, financial regulatory, planning, real estate, securities law and regulation and tax¹ in England (including EU law).

Issue/status/timing: New developments since our December 2018 edition are shown in **blue text**.

Impact: urgency/impact rating for REITs admitted to London Stock Exchange Main Market (including the Specialist Fund Segment²)

Red – likely to have material impact

Amber – limited impact or await developments

Green – minor or no direct impact

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¹ We have set out below the proposed tax changes that are likely to directly and materially impact REITs. We have not sought to cover changes of more general application, which may also impact REITs.

² Although the Listing Rules do not apply to the SFS, it is common for SFS companies voluntarily to comply with certain key Listing Rules and to state an intention to comply with the UK Corporate Governance Code.

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1

Financial regulatory

Financial regulatory

Key developments in Q1 2019

- ▶ The FCA has amended the submission deadline for its Brexit related temporary permissions regime, for financial services firms from the EEA that currently 'passport' into the UK
- ▶ The FCA has published feedback on its PRIIPs call for input
- ▶ The new custody rules for UCITS/AIF Depositaries were published in the EU's Official Journal on 30 October 2018 - depositaries have 18 months to comply

Issues	Status	Key Timing	Impact
BREXIT – FCA's Temporary Permissions Regime Affects: All REITS and REIT managers authorised in the EEA that undertake business in the UK	<p>As part of the UK government's overall Brexit approach, the Financial Conduct Authority (empowered by statutory instrument) is rolling out a Temporary Permissions Regime (TPR) for financial services firms from the EEA that currently 'passport' into the UK. Firms that apply for temporary permission will be able to continue their business in the UK as normal for a period of up to three years following 'exit day', by which time they will be required to apply for full UK authorisation.</p> <p>The FCA began accepting 'notifications' (via the Connect system) for the TPR on 7 January 2019. The notification window is open until the end of 30 May 2019. It is worth noting however that this date is being kept under review and may be subject to change. Firms are advised to check the FCA's web page (link below). EEA firms and fund managers that do not submit a notification by the closing date will not be able to participate in the TPR, and in the event of a 'no deal' Brexit, will lose the ability to market and operate in the UK.</p> <p>Firms that submit notifications will then receive a 'landing slot' (no earlier than October 2019) whereupon they will be asked to apply for full UK authorisation.</p> <p>For UK REITS/firms that previously marketed or sold into Europe, currently in the event of a 'no deal' Brexit, they will need to become authorised in an EU member state to continue operating/marketing in the EU. To date, there has been no reciprocal TPR offering from the EU in respect of UK authorised firms, funds or fund managers.</p> <p>For more information please visit the FCA's web page on Temporary Permissions. The FCA has also produced dedicated TPR pages for fund managers of UCITS and AIFs.</p>	From 7 January 2019 to end of 30 May 2019	Red

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
AIFMD/UCITS – Amending regulations	<p>The European Commission has issued two draft amending regulations in respect of AIFs and UCITS funds – effectively looking to amend AIFMD and the UCITS Directive. These were adopted by the European Commission on 12 July 2018.</p>	30 October 2018 to 1 April 2020	Red
Affects: AIFs, AIFMs, UCITS (CUSTODY)	<p>The regulations set out detailed requirements where custody is delegated to a third party. They build on an opinion issued by ESMA in July 2017.</p> <p>The opinion set out suggestions for possible clarifications of the legislative provisions under AIFMD and the UCITS Directive relating to the asset segregation requirements in case of delegation of safe-keeping duties by the depositary of a fund (UCITS or AIF) and the application of depositary delegation rules to central securities depositories.</p> <p>The regulations aim to ensure a consistent approach across the EU and address concerns arising because securities and insolvency laws are not harmonised throughout the EU. The ESMA opinion followed ESMA work on these topics which began with a consultation paper published in December 2014 and was followed by a Call for Evidence published in July 2016.</p> <p>The Delegated Regulation was published in the Official Journal on 30 October 2018 and came into effect on 19 November 2018. Depositories have 18 months to comply with the Delegated Regulation – meaning the final deadline for compliance will be 1 April 2020.</p> <p>See: Regulation amending Delegated Regulation EU 231/2013</p>		

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
AIFMD Affects: AIFs, AIFMs (NPPR Notifications)	<p>To the extent that a REIT qualifies as an Alternative Investment Fund under the Alternative Investment Fund Managers Directive (AIFMD), a requirement exists to make a notification to the FCA under the National Private Placement Regime (NPPR), in circumstances where it otherwise cannot be marketed under the AIFMD domestic marketing or passporting regimes. This would be particularly applicable to 'third country' alternative investment funds.</p> <p>During April 2019, the FCA is making changes to the way that firms market funds under the AIFMD submit their NPPR Marketing and Material Change notifications. It is likely that this will result in new forms for fund managers to complete, which will be available on the FCA's NPPR web page. Firms should continue to use the existing forms that are available on this web page, but are advised to check for updates and new forms.</p>	April 2019	Red

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
FCA consultation on publishing costs and charges to workplace pension scheme members	<p>On 28 February 2019 the FCA opened consultation CP19/10 which set out proposed rules requiring pension scheme governance bodies to disclose costs and charges information on an on going basis to scheme members. This is in order to satisfy the duty articulated in the Pensions Act 2014.</p> <p>Since 3 January 2018, FCA rules have required asset managers to report transaction costs and other charges to the operator, trustee or manager of workplace pension schemes.</p> <p>This consultation applies to asset and REIT managers who may find themselves subject to greater costs disclosures where units in their funds are held by pension schemes.</p> <p>The consultation is open until 28 May 2019. For more information please visit the FCA's dedicated webpage.</p>	May 2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>MIFID II – FCA to investigate MIFID II Inducements</p> <p>Affects: Asset managers, fund managers, investment banks, brokers</p>	<p>At its annual Asset Management Conference in June 2018, the FCA announced that it would begin a review of the application of MIFID II in regards to how it requires asset managers to pay for the research utilised in respect of the investment decisions they make.</p> <p>MIFID II presently requires asset managers to separate out the costs of research from transaction charges and commission in a process known as unbundling. The move was intended on improving investor protection by preventing asset managers from making decisions influenced by the provision of free research.</p> <p>However, the move has led to a dramatic fall in the price of research offered by some large banks in particular, prompting the regulator to consider whether the ‘spirit’ of MIFID II is in fact being complied with.</p> <p>On 28 February 2019, the FCA published its findings of the supervisory work it conducted relating to the effectiveness of disclosure by asset managers and intermediaries (such as wealth managers), to their retail customers. This has been published alongside the Feedback from the call for input regarding PRIIPs.</p> <p>The main findings are:</p> <ul style="list-style-type: none"> - Disclosure of costs by asset managers: the FCA found that there was broadly a good level of compliance in this area but that generally, asset managers should review their cost disclosures to ensure that they are clear, fair and not misleading. - Disclosure of costs by retail intermediaries: the FCA saw good examples of compliance with the relevant rules. However there was some inconsistent application of rules amongst firms in the sample, indicating that firms involved in the design, manufacture and distribution of products need to work together to ensure that all costs and charges are disclosed properly to customers. - PRIIPS feedback statement: Please see the next page of this report for more information. <p>Please also visit the FCA's dedicated webpage for more details.</p>	2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>FCA Statement on communications in relation to PRIIPs</p> <p>Affects: manufacturers of Packaged Retail and Insurance-based Investment Products (PRIIP)</p>	<p>The PRIIPs Regulation has applied from 1 January 2018. Since then, PRIIP manufacturers have been required to prepare and publish a stand-alone document, a Key Information Document (KID), for each of their PRIIPs. The KID is a standardised document with a maximum length of 3-pages that follows the template and information disclosures prescribed by EU rules.</p> <p>Currently, PRIIPs requires asset managers to provide a KID that contains predictions of future performance in addition to broad estimates of transaction costs. The performance predictions can often result in misleading data and the rubric used to calculate transaction costs has sometimes resulted in KIDs with negative cost estimations.</p> <p>The FCA issued a call for input on 26 July 2018 asking for feedback on compliance with the new requirements. This call for input closed on 28 September 2018. On 28 February 2019 the FCA published its Feedback statement on this call for input. This document is accessible here, and the principal findings were:</p> <ul style="list-style-type: none"> ▶ The FCA is seeking swift and effective action from the EU institutions to address the uncertainty and unintended consequences associated with compliance with the PRIIPs requirements ▶ Industry expressed concern about the possible application of PRIIPs requirements to corporate bonds, potentially reducing choice and liquidity in the market. The FCA supports EU level clarifications on this issue ▶ Concerns were raised with Summary Risk Indicators and the potential for them to be misleading ▶ Concerns were raised that performance scenarios were also potentially misleading, and ▶ Concerns were raised on transaction costs and the prospect of them being unlikely to truly represent the actual costs of a product. <p>The FCA will continue to work closely with European Supervisory Authorities (ESAs) on this issue. It is worth noting that on 8 February 2019 the ESAs published final recommendations regarding delegated legislation to amend the KID/PRIIPs rules:</p> <ul style="list-style-type: none"> ▶ To not propose targeted amendments at this stage, and ▶ To initiate a more comprehensive revision of the PRIIPs Delegated Regulation to be undertaken in the course of 2019, including to launch a consultation on the draft Regulatory Technical Standards. 	Q1 2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
Extension of Senior Managers and Certification Regime (SM&CR) to solo-regulated firms Affects: all FCA regulated firms	<p>On 4 July 2018 the FCA published PS18/14 which contained near final rules on the extension of the Senior Managers and Certification Regime to all FSMA authorised firms.</p> <p>In PS18/14, the FCA confirmed that the extension of the SM&CR regime would apply to solo-regulated firms on 9 December 2019. Affected firms are required to be compliant by this date.</p> <p>It is also worth noting that from 10 December 2018 the SM&CR regime was extended to insurers, in addition to Banks and Building Societies.</p> <p>See: FCA PS18/14 and also see the FCA's SMCR webpage.</p>	9 December 2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>Alternative Investment Fund Managers Directive (AIFMD) review (CROSS BORDER)</p> <p>Affects: AIFs and AIFMs</p>	<p>The European Commission (Commission) was required to start a review of the AIFMD by 22 July 2017 (Article 69, AIFMD), which may result in a proposal to amend AIFMD. As part of the Commission's wider review of the functioning of the AIFMD, it has instructed KPMG to launch a survey for stakeholders on the AIFMD's requirements, the industry's experience in applying them and the market impact of AIFMD. In due course, this may result in proposals to amend the AIFMD. The KPMG survey closed to responses on 30 March 2018.</p> <p>Also, on 12 March 2018 the Commission published legislative proposals for a Regulation and a Directive intended to better facilitate the cross-border distribution of collective investment funds. The proposed Directive contains amendments to the AIFMD relating to pre-marketing, discontinuation of marketing and consistent treatment of retail investors. The amendments are with a view to better cross-border harmonisation and form part of the EU's wider Capital Markets Union initiative. The Commission intends for these proposals to be adopted before the European Parliament elections in May 2019.</p> <p>On 21 September 2018, the European Parliament's Economic and Monetary Affairs Committee (ECON) published two reports: the first contained a proposal for a directive on cross-border distribution of collective investment funds and the second, a draft report on a proposal for a regulation on facilitating cross-border distribution of collective investment funds.</p> <p>The two reports supported the Commission's earlier proposals to facilitate cross-border marketing. However the rapporteur also identified other areas of potential change: procedures for meeting marketing requirements by national authorities, transparency on fees set by national authorities, and the possibility of cross-border 'pre-marketing' of alternative investment funds. It is worth noting that broadly, the proposals would affect UCITS funds (whilst unlikely to be REITs).</p> <p>On 22 February 2019, the Council of the EU published the final compromise texts for the Proposed Directive and also for the Proposed Regulation in respect of facilitating the cross-border distribution of collective investment funds.</p> <p>The Council and Parliament reached political agreement on the above proposals on 5 February 2019, and the Parliament has indicated that it plans to consider them at its plenary session between 15 and 19 April 2019.</p>	<p>Various</p>	<p>Amber</p>

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>Consultation on integrating sustainability risk factors into UCITS and AIFM directives</p> <p>Affects: AIFs and AIFMs</p>	<p>Following the adoption of the Paris agreement on climate change in 2016, sustainability has been a key component of European policy making. The core aim has been to:</p> <ul style="list-style-type: none"> ▶ Reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth ▶ Assess and manage relevant financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and ▶ Foster transparency and long-termism in financial and economic activity. <p>To this end, the Commission published a consultation paper on 19 December 2018 with a view to integrating sustainability risk factors into the internal processes and procedures of UCITS management companies and alternative investment fund managers.</p> <p>The consultation closed on 19 February 2019 and the responses have been published on ESMA's webpage.</p> <p>ESMA will consider the responses to the Consultation Paper and will finalise the draft technical advice for submission to the Commission by the end of April 2019.</p>	<p>April 2019</p>	<p>Amber</p>



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Real estate, planning and construction



Real estate, planning and construction

Key developments in Q1 2019

- ▶ New consultation on Code for Leasing Business Premises opened
- ▶ Consultations on the new regulatory regime for high rise residential buildings still awaited

Issues	Status	Key Timing	Impact
<p>Grenfell Review</p> <p>Dame Judith Hackitt's proposals to be implemented in full</p> <p>Affects: Investors in, owners and developers of high rise residential buildings (HRRB) and potentially extended to others</p>	<p>The Government confirmed on 18 December 2018 that the recommendations of Dame Judith Hackitt's final report will be implemented in full. Further details will emerge in the spring when the Government will consult on how to take forward the regulatory changes. The new regulatory framework will apply to new and existing residential buildings of at least 10 storeys (30 metres); and potentially, other new buildings and major refurbishments where multiple people sleep.</p> <p>The Government has accepted that there should be a duty-holder approach similar to the regime under the CDM Regulations 2015 and the need for duty holders to create, update, transfer and maintain a 'golden thread' of information.</p> <p>A Joint Regulatory Group (HSE, Fire and Rescue authorities and local building control and 'early adopters' (developers and industry organisations) will trial various approaches.</p> <p>The Government will create a new governance structure for oversight of building regulations and will establish a Standards Committee to advise on new and existing construction products and system standards.</p> <p>A full technical review of fire safety guidance (Approved Document B) has also been launched. A review of Approved Document L (Conservation of Fuel and Power), Approved Document F (Ventilation) and Approved Document M (Access to and use of buildings) is also proposed.</p> <p>See: Building a Safer Future: An Implementation Plan</p>	<p>Implementation plan issued 18 December 2018; consultations expected to open spring 2019; no further news</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Construction: Value Added Tax – reverse charge to combat VAT fraud in the construction industry</p> <p>Affects: Suppliers and customers of construction services</p>	<p>Draft legislation has now been published which is set to come into effect on 1 October 2019. The legislation seeks to introduce a reverse charge for certain supplies of construction services in order to combat VAT fraud in the construction industry. Construction services have been targeted by criminals because labour-only suppliers do not incur any significant VAT on their costs but can charge VAT to their customers, which they then fail to pay to HMRC. The reverse charge mechanism will move the liability to account to HMRC for VAT from the supplier to the customer. This will be subject to certain exceptions, including in relation to supplies to final consumers.</p> <p>Construction services are defined consistently with the activities covered within the Construction Industry Scheme. Businesses will need to adapt their systems.</p> <p>See: Draft statutory instrument</p>	1 October 2019	Green
<p>RICS consultation on revised Code for leasing business premises includes heads of terms</p> <p>Affects: Property owners, managers and investors</p>	<p>The Royal Institution of Chartered Surveyors (RICS) has launched a second consultation on a revised new 'Code for leasing business premises', which will have the status of a professional statement (i.e. this is mandatory for members). This document will replace the voluntary Code for Leasing Business Premises in England and Wales 2007 and contains a new draft heads of terms template.</p> <p>See: RICS draft professional statement – Code for leasing business premises</p>	Consultation closes on 5 May 2019	Amber
<p>Changes to the way leasing arrangements are reported in financial statements</p> <p>Affects: IFRS/FRS 101 reporting lessees</p>	<p>The International Financial Reporting Standard 16 (IFRS 16) was introduced in January 2016 and came into effect on 1 January 2019, at which point lessees will see significant changes to the way their leasing arrangements are reported in their financial statements.</p> <p>IFRS 16 will be compulsory for IFRS/FRS 101 reporting companies, so including the consolidated accounts of UK and other affected companies listed on the Main Market and AIM. It eliminates the distinction between operating leases and finance leases for accounting purposes, creating a unitary model where all tenancies see their present value capitalised as an asset and future rental payments recorded as a liability.</p> <p>The government is consulting on the tax impact of these changes.</p> <p>See: IFRS 16 Leases</p>	1 January 2019, although early take up is possible	Amber

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Review of the implementation of the Housing Grants, Construction and Regeneration Act 1996 (the 'Construction Act')</p> <p>Review of the use of retentions in the construction industry</p> <p>Affects: all parties to construction contracts and their funders</p>	<p>The Department for Business, Energy and Industrial Strategy is still considering responses to its consultation on a review of the implementation of the Construction Act, specifically the use of adjudication for construction disputes and the payment provisions.</p> <p>See: 2011 Changes to Part 2 of the Housing Grants, Construction and Regeneration Act 1996</p> <p>Separately, the Department for Business, Energy and Industrial Strategy is also considering responses to a consultation to review the use of retentions in the construction industry. The review includes alternatives to cash retentions being held by employers and contractors, such as project bank accounts, escrow accounts and bonds. The intention is reduce cashflow issues for construction supply chains and prevent large amounts of money being tied up.</p> <p>See: Retention payments in the construction industry</p>	<p>Consultations closed; government response not yet finalised</p>	<p>Amber</p>
<p>Private Members Bill: Construction (Retention Deposit Schemes) bill</p>	<p>The Construction (Retention Deposit Schemes) Bill ((introduced by Peter Aldous) seeks to amend the Construction Act by including provisions that require retention deposit schemes to be set up to safeguard cash retentions; and amends s111 of the Construction Act by providing that provisions in construction contracts that enable a payer to withhold cash retentions will not be effective unless the monies are deposited into a retention deposit scheme.</p> <p>The provisions will apply to construction contracts but also to 'any contract created to have similar effect as a construction contract'.</p> <p>The second reading of this Bill has been postponed again and is now expected to be held on 23 April 2019.</p> <p>See: Construction (Retention Deposit Schemes) Bill</p>	<p>23 April 2019</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>RICS professional statement countering bribery and corruption, money laundering and terrorist financing</p> <p>Affects: Property owners, managers and investors</p>	<p>RICS has published a professional statement which is intended to help those working in the property sphere to minimize their exposure to the risks presented by bribery and corruption, money laundering and terrorist financing. As a professional statement this is mandatory for members. It applies globally to all RICS members and RICS-regulated firms involved in work where the potential for such activity exists.</p> <p>See: RICS professional statement Countering bribery and corruption, money laundering and terrorist financing</p>	<p>Effective from 1 September 2019</p>	<p>Green</p>
<p>Minimum energy efficiency level for rented property in England and Wales</p> <p>Affects: landlords of privately rented commercial or domestic property in England or Wales</p>	<p>Since April 2018, landlords of privately rented commercial or domestic property in England or Wales have not been able to grant a new tenancy unless their properties reach at least an Energy Performance Certificate (EPC) rating of E.</p> <p>The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, introduced a phased approach to compliance, but by 1 April 2023 every commercial property will need to meet the minimal level in order to continue to be let.</p> <p>See: The Private Rented Property minimum standard – landlord guidance documents</p> <p>There is an exemptions framework to cover certain circumstances, which requires the landlord to note the property on a National PRS Exemptions Register.</p> <p>From 1 April 2019, the 'no cost to landlord' principle does not apply to energy efficiency works at domestic properties. Landlords are now required to fund works required under the regulations up to a cost of £3,500.</p>	<p>Phased introduction from 1 April 2018</p>	<p>Red</p>



Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Service Charges in Commercial Property, 1st edition – RICS Professional Statement</p> <p>Affects: Property owners, managers and investors</p>	<p>Following a consultation in autumn 2017, RICS has published its professional statement on service charges in commercial property (the Service Charge Code).</p> <p>This is the first time that the RICS service charge guidance has been issued as a professional statement (meaning that it is mandatory for RICS members). It sets out mandatory requirements, core principles and best practice recommendations that should be followed in relation to service charges. It cannot override a lease, but it can aid in the interpretation of relevant lease provisions. It will also influence the drafting of service charge provisions in new leases.</p> <p>See: Service charges in commercial property, 1st edition</p>	<p>Effective for all service charge periods commencing from 1 April 2019</p>	<p>Amber</p>
<p>Parking (Code of Practice) Act 2019</p> <p>Affects: Property owners, managers and investors</p>	<p>The Parking (Code of Practice) Bill has received Royal Assent and is now law. It is likely to affect anyone who owns and operates private parking for use by the public. It will introduce a code of practice containing guidance about the operation and management of private car parks, which would be applicable to every parking operator. The government will now consult with those who provide, operate or manage private car parking, users and anyone who may use private parking facilities and any other groups the Secretary of State considers appropriate, to create and publish the draft code.</p> <p>See: British Parking Association</p>	<p>Received Royal Assent on 15 March 2019</p>	<p>Green</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>EPC Consultation</p> <p>Affects: Property owners, managers and investors</p>	<p>BEIS has consulted on the use of Energy Performance Certificates. The consultation aims to gain evidence on the effectiveness of EPCs, assess the suitability of the current system for the use of EPCs, and obtain suggestions for improvement.</p> <p>See: Energy Performance Certificates in buildings: call for evidence</p>	<p>Consultation closed on 19 October 2018.</p> <p>BEIS response awaited.</p>	Green
<p>CRC Energy Efficiency Scheme</p> <p>Affects: Property owners, managers and investors</p>	<p>The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018, made on 11 July 2018, closes the CRC Energy Efficiency Scheme at the end of the 2018-19 compliance year.</p> <p>Rather than replace the Scheme:</p> <ul style="list-style-type: none"> ▶ The climate change levy has been increased from 1 April 2019. ▶ A new streamlined energy and carbon reporting regime will be introduced. (For more on reporting see General Corporate below.) 	<p>The Order came into force on 1 October 2018.</p>	Amber
<p>A new deal for social housing – Government green paper</p> <p>Affects: Property investors, local authorities, occupiers of social housing</p>	<p>The government has published a green paper which proposes reforms to the regulatory framework governing the social housing sector. It suggests that these reforms cover the governance and financial viability of housing associations, and also the way in which residents are treated and the level of service that they should expect. The green paper is accompanied by a call for evidence on the operation of the current regulatory framework, and a consultation on options to change the rules governing the money raised from Right to Buy sales.</p> <p>The government also announced on 4 October 2018 that the cap on local authority borrowing against housing stock is to be removed, with the intention that this will stimulate the construction of new housing developments.</p> <p>See: A new deal for social housing</p>	<p>Green paper published on 14 August 2018</p> <p>Consultation closed on 6 November 2018.</p> <p>MHCLG response awaited.</p>	Amber

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Unfair Practices in the Leasehold Market – MHCLG Review</p> <p>Affects: Residential and mixed-use property owners, managers and investors</p>	<p>On 20 March 2019, the Housing, Communities and Local Government Select Committee issued its report on leasehold reform. It has made a number of recommendations to the Government, including that commonhold (see section below) should become the primary model of ownership of flats in England and Wales.</p> <p>See: Report on Leasehold Reform</p> <p>On 28 March 2019, the Government announced a new "Public pledge for leaseholders" in which certain property developers and freeholders have publicly committed to certain principles, including:</p> <ul style="list-style-type: none"> ▶ Amending ground rent clauses where the rent doubles more frequently than every 20 years, offering to amend it to one linked to RPI (which we note is not an official statistic and tends to run higher than CPIH, the official consumer prices index including owner-occupiers' housing costs), and ▶ Not inserting into any future lease a clause whereby ground rent doubles more frequently than every 20 years. <p>See: Public Pledge for Leaseholders</p>		<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Law Commission Residential Leasehold and Commonhold Project</p> <p>Affects: Residential and mixed-use property owners, managers and investors</p>	<p>The Law Commission's Residential Leasehold and Commonhold Project considers how to deal with existing leasehold houses subject to ground rents, as well as potential future models. The terms of reference that have been agreed with the government require the Law Commission:</p> <ul style="list-style-type: none"> ▶ To provide a better deal for leaseholders as consumers ▶ To simplify the enfranchisement regime ▶ To promote transparency and fairness, and ▶ To set out the options for reducing premiums payable for enfranchisement, while ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests. <p>On 20 September 2018, the Law Commission issued its consultation paper on leasehold home ownership.</p> <p>See: Leasehold Home Ownership: Buying your freehold or extending your lease</p> <p>On 11 December 2018, the Law Commission also published its consultation paper on reinvigorating the commonhold model of property ownership, as an alternative to leasehold ownership.</p> <p>See: Reinvigorating commonhold: the alternative to leasehold ownership</p> <p>In January 2019, the Law Commission published its consultation paper on reform of the Right to Manage leasehold property.</p> <p>See: Leasehold home ownership: exercising the right to manage</p>	<p>Leasehold consultation period closed on 7 January 2019. Response awaited.</p> <p>Commonhold consultation period closed on 10 March 2019. Response awaited.</p> <p>Right to Manage consultation period closes on 30 April 2019.</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Looking back

Issues	Status	Key Timing	Impact
Combustible materials ban in Building (Amendment) Regulations 2018	<p>The use of combustible materials in the external walls of residential buildings was confirmed in the Building (Amendment) Regulations 2018 which took effect on 21 December 2018. These apply to residential flats, hospitals, residential care homes, dormitories in boarding schools and student accommodation which are at least 18 metres in height.</p>	<p>Combustible cladding ban in force: 21 December 2018</p>	<p>Amber</p>
The Business Contract Terms (Assignment of Receivables) Regulations 2018	<p>The Business Contract Terms (Assignment of Receivables) Regulations 2018 are now in force and make ineffective contractual terms in relevant contracts entered into after 31 December 2018 which prohibit or restrict the assignment of receivables.</p> <p>The Regulations apply to business contracts for the supply of goods, services or intangible assets but exclude from their scope contracts where the party to whom the receivable is owed is a large enterprise, or special purpose vehicle holding assets/financing commercial transactions incurring a liability of £10 million or more (Regulation 3). A large enterprise is an enterprise which is not a sole trader, partnership or unincorporated association, or a company or LLP which qualifies as small or medium-sized under the relevant legislation.</p> <p>There are also exemptions for certain contracts listed in Regulation 4, such as financial services contracts, contracts which concern any interest in land, contracts which concern national security interests, certain contracts in the energy sector, and contracts entered into by the project company of a PPP project, utility project or financed project.</p>	<p>31 December 2018</p>	<p>Amber</p>



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Tax



Tax

Key developments in Q1 2019

- ▶ Legislation to implement the introduction of capital gains tax for non-residents investing in UK commercial property has now been enacted
- ▶ Legislation to extend UK corporation tax to non-UK resident companies with UK property income has now been enacted
- ▶ Draft legislation to implement a new capital allowance for new commercial structures and buildings has been published

Issues	Status	Key Timing	Impact
<p>Introduction of capital gains tax for non-residents investing in commercial property</p> <p>Affects: (among others) non-UK residents investing in REITs and non-UK resident entities forming part of a UK REIT group</p>	<p>The government published a consultation alongside Autumn Budget 2017 on proposals to apply capital gains tax to all forms of property investment by non-residents. This means that commercial property gains will, for the first time, in principle become subject to tax for non-resident investors from April 2019.</p> <p>In addition, previously applied exclusions from tax on gains on residential property investments, including for widely-held vehicles, will be removed. These changes will affect non-residents investing in REITs and non-resident entities forming part of a UK REIT group.</p> <p>The consultation closed on 16 February 2018. Draft legislation was published on 6 July 2018. The draft legislation included some welcome changes from the original proposals, but there were also still some substantial outstanding issues, particularly in relation to how the legislation will apply to collective investment schemes. An amended version of the legislation was included in the Finance Bill that was published on 7 November 2018. REITs are already exempt from UK tax on property gains. However, the Finance Bill also amends the REIT legislation to exempt disposals of property rich entities made by REITs. As expected, the 25% substantial interest test will not apply to REIT investors, making it more likely that minority investors in REITs will be caught by the new rules. The legislation has now been enacted in clause 13 of, and schedule 1 to, the Finance Act 2019. The changes take effect from 6 April 2019.</p> <p>See: Taylor Wessing briefing in relation to the 6 July 2018 draft legislation</p>	April 2019	Red
<p>Extension of UK corporation tax to non-UK resident companies with UK property income</p> <p>Affects: (among others) non-resident companies receiving PIDs</p>	<p>In March 2017, the UK government consulted on bringing Offshore Propcos within the charge to UK corporation tax (rather than income tax) on their UK property income, with the policy objective of equal tax treatment between UK and non-UK companies holding UK property. Following the consultation, draft legislation was published on 6 July 2018. An amended version of the legislation was incorporated into the Finance Bill that was published on 7 November 2018. The legislation has now been enacted in clause 17 of, and schedule 5 to, the Finance Act 2019. The changes take effect from 6 April 2020.</p> <p>See: Taylor Wessing briefing</p>	April 2020	Red

Tax (continued)

Issues	Status	Key Timing	Impact
<p>Introduction of a new capital allowance for non-residential structures and buildings</p> <p>Affects: investors in REITs developing and constructing new commercial structures and buildings</p>	<p>At Budget 2018, the government announced that it would introduce a Structures and Buildings Allowance for new commercial structures and buildings. Once in force, relief will be given for eligible construction costs incurred on or after 29 October 2018, at an annual rate of 2% over a 50 year period.</p> <p>Draft legislation was published for consultation on 13 March 2019 as part of the Spring Statement, with a response document expected in May 2019.</p> <p>Although income from a REIT's property rental business is not within the charge to UK tax, notional allowances will be taken into account in calculating its distributable profits, reducing the amount that the REITs are required to distribute to investors.</p>	<p>Response to technical consultation in May 2019, following which legislation is expected to be finalised.</p>	<p>Red</p>





4

General corporate



General corporate

Key developments in Q1 2019

- ▶ There have been a number of documents published at UK and EU level in relation to narrative reporting but none really amounts to a key development

Issues	Status	Key Timing	Impact
Corporate governance – new legislation	The Companies (Miscellaneous Reporting) Regulations 2018 were made on 17 July 2018. New reporting obligations take effect for financial years beginning on or after 1 January 2019. Non-compliance with any of the regulations constitutes an offence. In November 2018 BEIS published Q&A on these Regulations.	Financial years beginning on or after 1 January 2019	
Affects: Main Market companies (and others)	UK-incorporated quoted companies (with average of more than 250 UK employees) to report annually in the directors' remuneration report on the ratio of CEO pay to average pay of UK workforce, with an explanation of changes to that ratio from year to year. They must also provide a clearer explanation in the remuneration policy of the range of potential outcomes from complex, share-based incentive schemes.		Amber
Affects: 'Large companies' for accounting purposes (which includes all PLCs)	Large companies to report annually in their strategic report on how their directors have had regard to the factors listed in section 172(1)(a)-(f) Companies Act 2006 when performing their duty under section 172 to promote the success of the company. Unquoted companies (including those on the Specialist Funds Segment) must publish this on their website.		Amber
Affects: Companies with more than 250 employees	Companies with an average of over 250 employees to include in their directors' report a statement of the company's engagement with employees and a summary of its effect on the company's principal decisions.		Amber
Affects: Companies satisfying two or more of: (i) annual turnover +£36 million, (ii) balance sheet total +£18 million, (iii) +250 employees	Companies to report annually in the directors' report on how the directors have had regard to the need to foster business relationships, with suppliers, customers and others and its effect, including the effect on the business decisions taken in that financial year. Companies are not required to include information if its disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.		Amber
Affects: Companies with +2000 employees; or companies with both turnover of +£200 million and balance sheet of +£2 billion	Companies over the size threshold to issue an annual corporate governance statement, on which code (if any) the company has applied in the financial year, how the company has applied the code and reasons for any non-compliance. There is an exemption for premium listed companies or those required by the DTRs to issue a corporate governance statement. (Main Market REITs are exempt from this particular requirement as they are already required to issue a corporate governance statement.)		Green

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Brexit related legislation</p> <p>Affects: General</p>	<p>The UK is set to leave the European Union on or before 31 October 2019. The European Union (Withdrawal) Act was passed in June 2018 and other related legislation is currently making its way through Parliament. The Act will repeal the European Communities Act 1972, incorporate all relevant EU law into the UK statute books, and gives ministers the power to adapt and remove laws that are no longer relevant.</p> <p>A transition/ implementation period, during which the UK would remain substantially in the same position as regards EU law as if it were a member state, but would not participate as a member state in EU institutions, remains a possibility. However, the withdrawal agreement (and accompanying political declaration on a future relationship) have not yet been approved by the UK Parliament. It remains unclear whether Brexit will take place on 31 October 2019 or what the arrangements for a transition period (if any) will be.</p> <p>A number of government notices to business have been published since summer 2018.</p> <p>In the absence of precise information at this stage, the potential implications of Brexit are currently beyond the scope of this horizon scanner, except for the temporary permissions regime for financial services firms (and potential lack of reciprocity from the EU on a 'no deal' Brexit) referred to in Financial regulatory above and reference to conforming rule changes and the potential cessation of prospectus passporting referred to in Capital markets below.</p>	<p>April 2019</p>	<p>Amber</p>

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Energy and carbon reporting framework to replace CRC Scheme</p> <p>Affects: Quoted companies and large UK unlisted companies</p>	<p>On 9 November 2018, the draft Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 were published. These Regulations take effect on 6 April 2019, in respect of financial years beginning on or after 1 April 2019, and implement the new regime for streamlining energy and carbon reporting regime (SECR), requiring additional reporting on emissions, energy consumption and energy efficiency action by quoted companies, large unquoted companies and large LLPs.</p> <p>The CRC Energy Efficiency Scheme is being abolished at the end of the 2018-2019 compliance year. As a result, businesses will be required to surrender allowances for the final time during October 2019.</p> <p>Alongside the existing requirement for quoted companies to report their greenhouse gas emissions, reporting will be carried out in directors' reports, as part of companies' annual reports.</p> <p>UK subsidiaries that qualify for SECR in their own right will not be required to report where they are covered by a parent's group report. They will still be able to report individually on a voluntary basis.</p> <p>Non-UK incorporated companies will not be required to report as they are not required to file annual reports at Companies House. Where a parent company is not registered in the UK, any subsidiaries that are registered in the UK and that qualify for SECR in their own right will need to report.</p> <p>On 1 February 2019 BEIS published updated Environmental Reporting Guidelines which includes a chapter of guidance to help companies and LLPs comply with the SECR regime. The guidelines set out the key SECR obligations, including which organisations are caught by the regime and the information they will need to report and disclose annually. The guidelines also set out best practice.</p> <p>See: The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 and Streamlined Energy and Carbon Reporting: government response</p>	<p>April 2019</p>	<p>Amber</p>

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Shareholder Rights Directive amendment</p> <p>Affects: Main Market companies</p>	<p>The amending directive came into force on 9 June 2017 and EU member states will need to implement it by 10 June 2019. The implementing regulation (EU 2018/2012) on minimum requirements with regard to shareholder identification, the transmission of information and facilitation of the exercise of shareholder rights under the amended Shareholder Rights Directive ("SRD II") came into force on 24 September 2018, but will apply from 3 September 2020. Provisions in the directive include:</p> <ol style="list-style-type: none"> 1. Measures to encourage long-term shareholder engagement: <ul style="list-style-type: none"> ▶ Identification. To ensure that companies are able to identify their shareholders and obtain information on shareholder identity from any intermediary which holds that information. ▶ Shareholder rights. Intermediaries to facilitate exercise of shareholders' rights, including right to participate and vote in general meetings, e.g. shareholders voting in general meetings should have the possibility of checking after a meeting that a vote was validly recorded and counted by company. Intermediaries obliged to deliver to shareholders all information from a company that will enable shareholders to exercise their rights. ▶ Transparency. Institutional investors and asset managers to develop and publicly disclose shareholder engagement policy or explain why not. 2. Shareholder vote on director pay and pay policy. 3. Regulation of related party transactions. <i>Although less onerous than those in LR 11 for premium-listed companies the scope of the new rules may in some respects be wider because the SRD II adopts the definition of 'related party' used in International Accounting Standard 24 which is wider than the definition set out in the Listing Rules. The related party transaction changes will particularly affect REITs traded on the Specialist Fund Segment because the SRD II requires the rules to apply to all companies with a UK registered office with shares admitted to trading on a regulated market in the UK or elsewhere in the EU. This includes UK-incorporated issuers of non-listed shares admitted to a regulated market such as the SFS.</i> <p>Whether the UK is bound to bring this into force will depend on the final terms of withdrawal from European Union, but in any event many of the areas addressed by the directive are already covered by UK law, so most of the proposed measures would have limited impact on UK listed companies.</p> <p>See: Implementing Regulation on Shareholder Rights and Shareholder Rights Directive II.</p> <p>Continued on next page</p>	<p>June 2019</p>	<p>Amber</p>

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Shareholder Rights Directive amendment (continued)</p> <p>Affects: Main Market companies</p>	<p>On 30 January 2019, the FCA published a consultation (CP19/7) on proposals to improve shareholder engagement, seeking views on proposed changes to its Handbook in line with the SRD II which must be transposed into national law by 10 June 2019. The changes require companies with shares admitted to trading on a regulated market to have safeguards with regard to material transactions with related parties. LR11 will be amended so that the provisions relating to related parties apply to companies with a standard listing of equity securities.</p> <p>The FCA proposes that material transactions with related parties should require board approval (but not shareholder approval) and that the public announcement of the transaction should be made no later than when the terms are agreed. In some cases disclosure required under MAR must be made earlier. The disclosure need not be accompanied by an independent report about the transaction's fairness and reasonableness. Certain exemptions from the disclosure and approval requirement for certain types of transaction are proposed.</p> <p>The consultation period closed on 27 March 2019. If adopted, the new rules will apply from the start of an issuer's first financial year beginning on or after 10 June 2019.</p> <p>On 4 March 2019, the European Commission published a consultation on non-binding guidelines on standardised presentation of the remuneration report under the SRD II. This covers the structure and order of material, the need for the report to be clear, concise, meaningful and understandable and the need for transparency and consistency. The consultation closed on 21 March 2019.</p>	June 2019	Amber
<p>5th Money Laundering Directive</p> <p>Affects: trustees, beneficiaries of trusts, providers of e-money products (e.g. prepaid cards), organisations constituting 'passive non-financial entities'</p>	<p>The EU Fifth Anti-Money Laundering Directive came into force on 9 July 2018. Member states (including the UK) must transpose the new rules into their national legislation by 10 January 2020. It includes these corporate aspects:</p> <ul style="list-style-type: none"> ▶ compulsory disclosure of certain information on beneficial owners of companies and business- related trusts ▶ improved access to beneficial ownership information (including public access, subject to legitimate interest, in relation to trusts) ▶ commission power to (if appropriate) assess any need to lower the percentage for identification of beneficial ownership of legal entities (currently 25%) (in previous drafts this had been a requirement to identify beneficial owners who hold 10% ownership in companies in sectors which present a specific risk of being used for money laundering and tax evasion) ▶ direct interconnection of national beneficial ownership registries. <p>See: Fifth Anti-Money Laundering Directive</p>	January 2020	Amber

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Register of the beneficial owners of overseas entities that own UK property</p> <p>Affects: Non-UK companies (and their investors)</p>	<p>The proposal is to create a new register of beneficial owners of overseas entities that own UK property (following a similar test as that used for PSC register).</p> <p>The government has published draft legislation, known as the draft Registration of Overseas Entities Bill, with comments requested on certain aspects. The government anticipates that, following royal assent and the making of secondary legislation, the register will be operational in 2021.</p> <p>An overseas entity falling within the scope of the legislation will be required to provide information about itself and its beneficial owners. Once registered, an overseas entity will be required to update the information annually until such time as it successfully applies to be removed from the register.</p> <p>In addition to criminal penalties for non-compliance, a failure to register (or failure to comply with the updating requirements) will result in:</p> <ul style="list-style-type: none"> ▶ an overseas entity being unable to register as a proprietor of land in the UK (necessary for obtaining full legal title) via the three land registries of England and Wales, Scotland, and Northern Ireland, and ▶ certain dispositions made by a registered proprietor that is an overseas entity being incapable of registration at the land registry. <p>The register will, for the most part, be accessible to the public. Some information will be suppressed from the register due to the potential risk to individuals, such as date of birth and usual residential address.</p> <p>The register will not apply to overseas companies that engage in UK government procurement, as previously proposed. This form of transparency will be addressed through the tender process.</p> <p>(This could affect non-UK subsidiaries in REIT groups.)</p> <p>See Draft Registration of Overseas Entities Bill</p>	<p>Early 2021</p>	<p>Amber</p>

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Corporate governance and companies approaching insolvency</p> <p>Affects: UK companies in or approaching insolvency (but some aspects may affect all companies)</p>	<p>On 26 August 2018, BEIS published the response to its March 2018 consultation on the governance of companies in or approaching insolvency. Specific actions and areas of further consultation include:</p> <ul style="list-style-type: none"> ▶ Strengthening transparency requirements around group structures (possibly with industry guidance or a requirement for large groups to provide corporate structure organograms and reporting on corporate governance through the group). ▶ Strengthening shareholder stewardship (incorporating stewardship in asset managers' mandates and channels for investors to escalate concerns about company management). ▶ Strengthening the framework on dividend payments (which may include giving shareholders an annual vote on dividends if the practice of avoiding shareholder votes by using interim dividends is found to be widespread and pressure is sufficient). ▶ Greater accountability of directors in group companies when selling subsidiaries in distress. ▶ Enhancing powers of insolvency practitioners relating to value extraction schemes designed to remove value from a firm at the expense of creditors when a company is in financial distress. <p>More details on these measures are awaited.</p>	Ongoing	Green

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Narrative reporting</p> <p>Affects: all companies other than 'small companies'</p>	<p>On 31 July 2018, the FRC published revised guidance on the strategic report.</p> <p>The revised guidance places a far greater focus on the directors' duty to promote the success of the company under section 172 Companies Act 2006. It addresses some of the practical issues associated with section 172 reporting, including assessing the long-term consequences of board decisions, identifying key stakeholder relationships and disclosing principal board decisions. The intention is to improve the effectiveness of section 172 and to stimulate board discussions on how companies are considering various factors to ensure their business is sustainable over the long-term, including the impacts on the company's key stakeholders.</p> <p>The Association of Investment Companies has said that it considers that most investment companies will follow the content elements set out in the guidance in Section 7A (for entities that are not Public Interest Entities i.e. do not have over 500 employees) and Section 8 (for 'large companies' in relation to section 172 reporting).</p> <p>On 20 February 2019 the European Commission published a consultation seeking views on the proposed revision of its non-binding guidelines on non-financial reporting with regard to climate-related information. Although the update is expected (when adopted) to be a supplement to the existing guidelines, companies should expect to integrate their climate-related information with other information in their reports and not treat climate reporting any differently. The reporting need only be considered for companies for which climate change is a material issue but the commission considers that most companies within the scope of the Non-Financial Reporting Directive 2014/95/EU are likely to conclude that climate change is a material issue for them. An update to the guidelines is expected in June 2019.</p> <p>To assist the European Commission in its commitment to greater climate-related disclosure, the Technical Expert Group on Sustainable Finance (a group set up by the European Commission to assist with certain aspects of the 'fitness check' on public reporting) published a report on climate-related disclosures which is intended to help companies develop climate-related disclosures which comply with the Non-Financial Reporting Directive. The guidelines are planned to be adopted by June 2019.</p> <p>Continued on next page</p>	<p>Some aspects June 2019 Other elements are ongoing</p>	<p>Green</p>

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Narrative reporting (continued)</p> <p>Affects: all companies other than 'small companies'</p>	<p>On 26 March 2019, BEIS published a report on executive remuneration. The report fully supports the case for a more empowered, aggressive and proactive regulator that has the ability to take decisive action, where necessary, on executive pay and its reporting. The report looks forward to the replacement of the FRC with the new Audit, Reporting and Governance Authority (ARGA) as soon as possible and many of the proposals in the report are directed at strengthening its powers.</p> <p>The government has published its response to some of the recommendations put forward by BEIS in August 2018 to effect change in tackling the gender pay gap. In particular it is proposed that the FRC will consider how it can support and challenge investors to improve diversity and succession planning within UK listed companies as part of the review of the Stewardship Code.</p> <p>On 21 January 2019 the FRC published Artificial Intelligence and Corporate Reporting, in which it considered a number of possible uses for AI in corporate reporting e.g. by the automatic processing of transactions and transforming of data into accounting and management information and feeding it into annual reports.</p>	Ongoing	Green
<p>Execution – electronic signatures</p> <p>Affects: all companies</p>	<p>On 21 August 2018, the Law Commission published a consultation paper on the electronic execution of documents.</p> <p>The Law Commission's provisional view is that under current law, an electronic signature is capable of meeting a statutory requirement for signature provided an authenticating intention is demonstrated, and that a legislative statement to confirm this position is unnecessary. The Law Commission does, however, raise the possibility of stakeholders gaining additional certainty by bringing a claim using a test case procedure.</p> <p>It also invites views on various provisional proposals for reform aimed at clarifying the law around the use of electronic signatures and facilitating the electronic execution of deeds.</p> <p>The consultation closed on 23 November 2018. Registered dispositions under the Land Registration Act 2002 are expressly excluded from its scope.</p> <p>See Law Commission consultation on electronic signatures</p>	Ongoing	Green

General corporate (continued)

Issues	Status	Key Timing	Impact
<p>Corporate governance – share buybacks</p> <p>Affects: Listed companies</p>	<p>On 28 January 2018, the government announced that it has asked PwC and the London Business School to investigate whether some companies repurchase their own shares to artificially inflate executive pay, how companies use share buybacks and whether action is needed to prevent buybacks from being misused.</p> <p>Publication of the findings is awaited.</p> <p>On 26 March 2019, BEIS published a report on executive remuneration (see also under 'Narrative reporting' on previous page) which included a number of recommendations including recommending that remuneration reports include analysis of the impact on executive remuneration of any share buybacks during the reporting period.</p>	Not yet finalised	Green
<p>Companies House reform</p> <p>Affects: UK companies</p>	BEIS plans to consult on a broader package of reforms to Companies House during 2019, to ensure it is fit for the future and continues to contribute to the UK's business environment.	2019	Green
<p>European Commission consultation – fitness check on public reporting by limited companies</p> <p>Affects: UK and European limited companies</p>	<p>On 8 March 2018, the European Commission announced a 'fitness check' on public reporting by companies (covering the Accounting Directive, Transparency Directive, Non-Financial Reporting Directive, Bank Accounts Directive, Insurance Accounts Directive and IAS Regulation).</p> <p>It will also look at synergies and interaction with company law (including corporate governance, capital maintenance, the Shareholder Rights Directive and mergers), digitalisation and corporate tax reforms.</p> <p>A European Commission evaluation roadmap notes that company reporting faces important longer-term challenges which may affect the current setting, such as emerging calls for more reporting on sustainability and digitalisation.</p> <p>An open public consultation was launched on 21 March 2018 and closed on 21 July 2018. A 'Staff Working Document' is expected to be published in Q2 2019.</p> <p>See: Evaluation and fitness check roadmap, Consultation, and ESMA Q&A on the Transparency Directive.</p>	Ongoing	Amber





5

Capital markets



Capital markets

Key developments in Q1 2019

- ▶ Companies have continued to adapt to the introduction of the new UK Corporate Governance Code, supplemented by the new Guidance on Board Effectiveness. This applies to accounting periods beginning on or after 1 January 2019. Mirroring this the AIC has published the 2019 AIC Code of Corporate Governance

Issues	Status	Key Timing	Impact
<p>Brexit related legislation – Draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019 and FCA consultations</p> <p>Affects: all listed companies</p>	<p>A number of draft statutory instruments and policy notes have been published by the government, including the draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019 and a policy note on those regulations. The regulations are intended to replicate, so far as possible, the current effects of the prospectus regime, the transparency rules and the listing rules but also make a number of changes, including the following:</p> <ul style="list-style-type: none"> ▶ Prospectuses for use in the UK will need to be approved by the FCA even if they have been approved by a competent authority of an EEA member state. Prospectuses passported into the UK before exit day may be used in the UK until their validity expires. ▶ Existing equivalence decisions regarding the presentation of historical financial information in a prospectus will be domesticated into UK legislation. ▶ HM Treasury intends to issue an equivalence decision (which will be kept under review) in time for exit day determining that EU-adopted IFRS can continue to be used to prepare financial statements for transparency requirements and for the purposes of preparing a prospectus. <p>If there is a Brexit without a transition period, unless there is an equivalence decision (likely to be reciprocal between the UK and EU if it happened), prospectuses approved by the FCA could not be passported into the EU/ EEA, so that approval by a relevant competent authority would be required for offers into those countries if applicable exemptions were not available.</p> <p>See draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019 and Explanatory information to the Draft Official Listing of Securities, Prospectus and Transparency (Amendment) (EU Exit) Regulations 2019</p>	Exit Day	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Brexit related changes to the FCA Handbook and technical standards</p> <p>Affects: all listed companies</p>	<p>The FCA published two consultation papers on its proposed changes to the FCA Handbook and onshored EU-derived binding technical standards (BTS) on 10 October and 23 November 2018, if the UK leaves the EU without an implementation period.</p> <p>The FCA intends to limit amendments to the Handbook to those needed to ensure the Handbook remains functional after Brexit and reflect any legislative changes made by the government. The FCA does not intend to make any broader policy changes. For the most part the proposed amendments (which impact the Prospectus Rules, Listing Rules, Disclosure Guidance and Transparency Rules and MAR regime) are to update references to EU legislation, UK law which relates to or refers to the EU, EU institutions and concepts, and the EEA.</p> <p>On 28 February 2019, the FCA published Brexit Policy Statement and Transitional Directions (PS19/5) setting out its responses to the feedback received from the consultation papers and published near final versions of the changes to be made to its handbook and BTS if the UK leaves the EU without an implementation period. The FCA's overall approaches to fixing deficiencies in the regulatory framework, to EU non-legislative materials and non-Handbook guidance (as it relates to EU law or EU derived law) and general continuity provisions in the Handbook and the BTS (ie that they should be read in a manner that preserves continuity of regulatory requirements) were well received and (if necessary) will be implemented broadly in line with the original proposals. The amendments to the BTS under MAR, the Prospectus Directive and the Transparency Directive will be made as set out the consultation papers. Proposed changes to the DTR, LR and PR were also generally supported and will be adopted, if necessary (see also FCA Primary Bulletin No 22).</p> <p>On 7 March 2019 the LSE published its proposed changes to its Primary Markets Rulebooks (assuming no transitional or other agreement is reached before the UK's withdrawal from the EU) (N04/19). The changes are designed only to reflect the new legal and regulatory framework which will apply if the UK leaves the EU with no deal and largely relate to changes in glossary terms. The changes follow the changes proposed by the government under the European Union (Withdrawal) Act 2018 and relate to admission and disclosure standards and AIM Rules.</p> <p>See FCA first consultation on changes to the Handbook and Binding Technical Standards and FCA second consultation on changes to the Handbook and Binding Technical Standards</p>	Exit Day	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>New UK Corporate Governance Code</p> <p>Affects: Main Market companies</p>	<p>The FRC has published the new UK Corporate Governance Code, supplemented by new Guidance on Board Effectiveness. This applies to accounting periods beginning on or after 1 January 2019, although it will be appropriate for companies to report on any significant votes at shareholder meetings in 2019.</p> <p>The new Code is more streamlined than the current version with a renewed focus on the Principles. Some of the changes proposed in the FRC's consultation have been scaled back. Key changes in the new Code include:</p> <ul style="list-style-type: none"> ▶ Requirement for the board to understand the views of key stakeholders (other than shareholders) and describe in its annual report how their interests and the matters set out in section 172 Companies Act 2006 have been considered in board discussions ▶ For engagement with the workforce, one (or a combination) of the following methods should be used: a director appointed from the workforce, a formal workforce advisory panel or a designated non-executive director (or an explanation of alternative arrangements can be given, with an explanation why the board considers they are effective) ▶ The FRC's proposal that independence criteria apply to the chair throughout their tenure has been withdrawn: the new Code reverts to the current approach that the chair should be independent on appointment, but stresses that the chair must demonstrate objective judgment throughout their tenure ▶ The proposal of a nine year tenure period for the chair has been watered down: the chair should not be on the board for more than nine years (including where an iNED goes on to be chair), but this period can be extended to facilitate effective succession planning and the development of a diverse board ▶ Where 20% or more of votes are cast against a board recommended resolution, the company should explain what action it intends to take to understand the reasons and report back within six months and in the annual report on the views received and action taken, including the impact on board decisions ▶ Chair of the remuneration committee to have served on it for at least 12 months before appointment ▶ Widening of the remuneration committee's remit, including reviewing workforce remuneration and related policies (the board has overarching responsibility for oversight of workforce policies and practices though) ▶ Extension of the vesting and holding period for shares granted or other forms of long-term incentives, in normal periods, from at least three years to at least five years ▶ Broadening the reporting requirements relating to diversity and inclusion, with the Hampton-Alexander recommendations on gender balance reporting extended beyond the FTSE 350 ▶ Removal of the smaller company (i.e. below FTSE 350) exemption relating to overall board composition (the other smaller company exemptions remain). 	<p>Financial years beginning on or after 1 January 2019</p>	<p>Amber</p>

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Takeover Panel response statement: Rule 29</p> <p>Affects: all listed companies and certain unlisted public companies</p>	<p>On 17 October 2018 the Takeover Panel published a consultation paper proposing amendments to Rule 29 of the Takeover Code in relation to asset valuations. On 6 March 2019, the Takeover Panel published its response statement RS 2018/1 in which it confirmed that the original proposals will be implemented with effect from 1 April 2019 subject only to a few minor amendments. The new rules effectively codify existing practice. Specifically the new rules clarify the circumstances in which a valuation may be subject to the requirements of Rule 29 (Asset Valuations). This is when an asset valuation, which is considered to be material to offeree shareholders in making a properly informed decision, is published:</p> <ul style="list-style-type: none"> ▶ by an offeree company during the offer period, or ▶ in the 12 months prior to the start of the offer period, or ▶ (if attention has been drawn to the valuation by the offeree company in the context of the offer) more than 12 months prior to the start of the offer period. <p>Because property companies publish net asset value valuations regularly and the Takeover Panel considers that a valuation is necessary in order for shareholders to make a properly informed decision, an asset valuation is effectively now mandatory on a bid for a property company. The Panel rejected the proposal that the rule should not apply to valuations prepared in the ordinary course of business in the same way that a profit forecast might be. This is because an asset valuation is likely to be a fundamental reference point for offeree company shareholders in assessing an offer regardless of whether the valuation was given in the ordinary course of communicating with its shareholders and the market or not.</p>	1 April 2019	Green

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>2019 AIC Code of Corporate Governance</p> <p>Affects: Main Market and AIM companies</p>	<p>The Association of Investment Companies has published the 2019 AIC Code of Corporate Governance to reflect the revised principles and provisions in the new UK Corporate Governance Code. The AIC Code departs from the new UK Corporate Governance Code in two respects:</p> <ul style="list-style-type: none"> ▶ The AIC Code removes the nine year limit on the tenure of the chair although it does require that boards of investment companies should determine and disclose a policy on chair tenure, and ▶ The AIC Code allows the chair of the board to sit on the audit committee. <p>The new AIC Code has been endorsed by the FRC so AIC member companies can meet their obligations under the UK Corporate Governance Code by reporting against the AIC Code. It applies to accounting periods beginning on or after 1 January 2019. The AIC Corporate Governance Guide has been withdrawn.</p>	Financial years beginning on or after 1 January 2019	Amber
<p>PLSA Corporate Governance and Voting Guidelines 2019</p> <p>Affects: Main Market and AIM companies</p>	<p>On 29 January 2019 the PLSA published its Corporate Governance and Voting Guidelines 2019 replacing its guidelines published in January 2018. The new guidelines contain structural changes to both the Corporate Governance Principles and the Voting Guidelines. The principal substantive changes are the introduction of two new Principles which provide for:</p> <ul style="list-style-type: none"> ▶ Companies to balance the needs of the firm with the interests of broader shareholders when taking capital structure decisions, and ▶ Pension schemes to consider setting out explicitly their expectations of outsourced management and stewardship activities. <p>New voting guidelines suggest that shareholders should analyse the narrative in company statements more closely to assess the company's corporate purpose, culture and values and its approach to its workforce and other stakeholders. Specific new guidance includes setting out the preferred approach to board leadership, and the division of responsibilities within the board as well as issues relating to succession and the composition, evaluation and remuneration of the board.</p> <p>See PLSA Corporate Governance and Voting Guidelines 2019</p>	Financial years beginning on or after 1 January 2019	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Consultation on changes to the Stewardship Code</p> <p>Affects: premium listed companies and investors</p>	<p>On 30 January 2019 the FCA and FRC published a joint discussion paper on improvements to be made to stewardship in UK capital markets. On the same day it published a consultation paper seeking views on proposed changes to the Stewardship Code. The Code is being restructured to bring it into line with the 2018 UK Corporate Governance Code. Most of the existing principles and guidance in the 2012 Code have been retained but some new requirements are being proposed. The consultation closed on 29 March 2019. The final version is due to come into effect on 16 July 2019.</p> <p>The government has responded to some of the recommendations put forward by BEIS in August 2018 to effect change in tackling the gender pay gap. In particular it is proposed that the FRC will consider how it can support and challenge investors to improve diversity and succession planning within UK listed companies as part of the review of the Stewardship Code. See Gender Pay Gap Reporting: Government Response.</p>	16 July 2019	Green
<p>Investment Association statement on gender diversity and executive pensions</p> <p>Affects: Main Market and AIM companies</p>	<p>The Investment Association announced on 21 February 2019 that during the 2019 AGM season it intends to use its institutional voter information service ("IVIS") to highlight companies that are failing to meet certain targets on diversity or are paying pensions to executive directors at rates above those paid to the majority of the workforce. IVIS will 'red-top' companies that have no or only one woman on their board and will 'amber-top' those which are not on course to meet the Hampton-Alexander target of 33% of women on the board by 2020.</p> <p>The red-top system is designed to warn shareholders of companies where, in the opinion of IVIS, shareholders should have the most 'significant and serious concerns'. The red-top is the highest and amber is the second highest level of warning.</p> <p>This was followed in March with an announcement that a letter had been written to a number of FTSE 350 companies outlining concerns about lack of gender diversity and reminding companies that they must do more than take a token approach to women in the boardroom.</p>	2019 AGM season	Green

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>New EU Prospectus Regulation</p> <p>Affects – existing and prospective Main Market and AIM companies</p>	<p>(Repeals and replaces Prospectus Directive (2003/71/EC) and its implementing measures (including Prospectus Regulation (809/2004)) Prospectus Regulation 2017/1129 entered into force on 20 July 2017 and will apply from 21 July 2019 except that:</p> <ul style="list-style-type: none"> ▶ some changes took effect on 20 July 2017 (including change to allow 20% tap issuances without a prospectus) , and ▶ Articles 1(3) (exemption for offers with a total consideration in the EU of less than EUR 1 million calculated over a period of 12 months) and 3(2) (member state optional exemption to exempt offers up to EUR 8 million) took effect on 21 July 2018. The UK has adopted a EUR 8 million threshold. <p>Changes taking effect from 21 July 2019 include:</p> <ul style="list-style-type: none"> ▶ The introduction of a universal registration document, a shelf registration mechanism for frequent issuers (Article 9). Issuers who regularly maintain an updated universal registration document will benefit from a five working day fast-track prospectus approval. ▶ Introduction of two new reduced disclosure regimes to the replace the current proportionate disclosure regimes, one for secondary issues (regulated market and SME growth market) and a ‘EU Growth’ prospectus for companies not on a regulated market. <p>On 13 July 2018, ESMA published a consultation paper on its draft technical advice on delegated acts under the new Prospectus Regulation. The draft technical advice sets out the minimum information content requirements for a document that is made available to the public under the prospectus exemption relating to an offer or admission of securities connected with a takeover, merger or division. It is anticipated that this ESMA technical advice will be adopted by the European Commission in January 2019.</p> <p>On 28 January 2019, the FCA published a consultation paper seeking views on changes to align the FCA Handbook with the Prospectus Regulation. The principal proposal is to replace the existing PR sourcebook with the Prospectus Regulation Rules - a new sourcebook but in a similar format. The consultation paper includes the draft text of the Prospectus Regulations Rules Instrument which is due to come into effect on 21 July 2019.</p> <p>The consultation period closed on 28 March 2019 and the FCA aims to issue a policy statement by the end of May 2019. If the UK leaves the EU without an implementation period the FCA will not proceed with the current proposals.</p> <p>On 27 March 2019, ESMA published its first version of Q&As on the application of the new Prospectus Regulation. This includes information on the implementation of the Regulation and grandfathering provisions and the updating of information in a registration document and universal registration document before they are part of a prospectus. The Q&As are intended to be updated regularly.</p> <p>See: Prospectus Regulation 2017/1129 and Taylor Wessing briefing</p>	<p>Predominately July 2019</p>	<p>Amber</p>

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>FCA discussion paper on climate change reporting</p>	<p>On 15 October 2018, the FCA published a discussion paper, Climate Change and Green Finance (DP18/8), proposing changes to the way in which the disclosure of climate change risks by listed issuers is regulated.</p> <p>Listed issuers face a range of disclosure requirements, some imposed by the FCA and some industry-led initiatives, eg the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The FCA is concerned that there has not been a consistent approach to climate-related disclosures and asks whether the existing regime goes far enough in prescribing these disclosures.</p> <p>The FCA is considering requiring premium listed companies to provide a statement explaining whether or not they have followed the TCFD recommendations in preparing their disclosures. The consultation closed on 31 January 2019.</p> <p>See also slide 34 for the position relating to climate-change disclosure.</p> <p>See FCA discussion paper on climate change and green finance (DP 18/8)</p>	Awaiting updates	Amber
<p>FCA consultation on change to guidance on periodic financial information and inside information (FCA/TN/506.2)</p>	<p>The FCA published Primary Market Bulletin (No.19) on 11 June 2018, consulting on a proposed update to the guidance note UKLA/TN/506.1 on periodic financial reports and inside information. This follows the publication of ESMA guidelines on delay in the disclosure of inside information under Article 17(4) of the Market Abuse Regulation.</p> <p>The ESMA guidelines provide non-exhaustive examples of legitimate interests of issuers that are likely to be prejudiced by immediate disclosure of inside information, and situations where delay of disclosure is likely to mislead the public. In the proposed changes to the FCA guidance, the FCA sets out the example which may exist when an issuer is in the process of preparing a periodic financial report. The FCA does not think (and issuers should not assume) that this legitimate interest will always be present and notes it is limited to the situation when inside information emerges as part of the process of preparing a periodic report and is to be included in the report.</p> <p>The consultation closed on 23 July 2018.</p> <p>See FCA: Primary Market Bulletin (No.19) and FCA/TN/506.2 guidance consultation</p>	Awaiting update	Amber

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>Institutional investment: European Commission High Level Expert Group report on stewardship principles and institutional investors</p> <p>Affects: Asset managers and institutional investors</p>	<p>On 31 January 2018, the European Commission published the final report of its high-level expert group (HLEG) on sustainable finance which includes recommendations on extending stewardship principles for institutional investors and strengthening director duties. The HLEG's recommended priority actions include:</p> <ul style="list-style-type: none"> ▶ Clarifying investor duties to extend the time horizons of investment and bring greater focus on environmental, social and governance factors into investment decisions. ▶ Upgrading disclosures to make sustainability opportunities and risks apparent. ▶ Developing official European sustainability standards for some financial assets. <p>The recommendations are intended to provide a framework for further action. The Commission will now move to finalise its strategy on sustainable finance on the basis of these recommendations. See: Final Report</p>	Awaiting updates on Commission strategy and timing	Amber
<p>Institutional investment: European Commission consultation on duties regarding sustainability</p> <p>Affects: Asset managers and institutional investors</p>	<p>On 13 November 2017 the European Commission launched a public consultation on institutional investors and asset managers' duties regarding sustainability (environmental, social and governance issues). The consultation closed on 22 January 2018.</p> <p>The Commission states that the responses will be used to assess whether and how the duties of institutional investors and asset managers on sustainability should be clarified. If the impact assessment demonstrates that action at EU level would produce greater benefits over costs compared with action only at Member State level, the Commission will propose legislative or non-legislative measures.</p> <p>See: Consultation document: Institutional investors and asset managers' duties regarding sustainability</p>	Awaiting updates on Commission strategy and timing	Amber



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Key contacts



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Important note

This document is intended to give a general overview of the matters covered as they affect REITs listed on the Main Market of the London Stock Exchange and by its nature cannot be exhaustive. The information in this document is not intended to be, and should not be used as, a substitute for taking legal advice for any specific situation. Law and regulation are subject to change after the date this document is published. Links to publications and websites are included for convenience and no responsibility is accepted for the contents or accuracy of those documents or websites.

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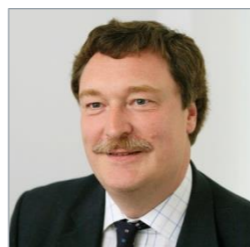
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