



UK REIT Horizon Scanner Q4 2018

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 June 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

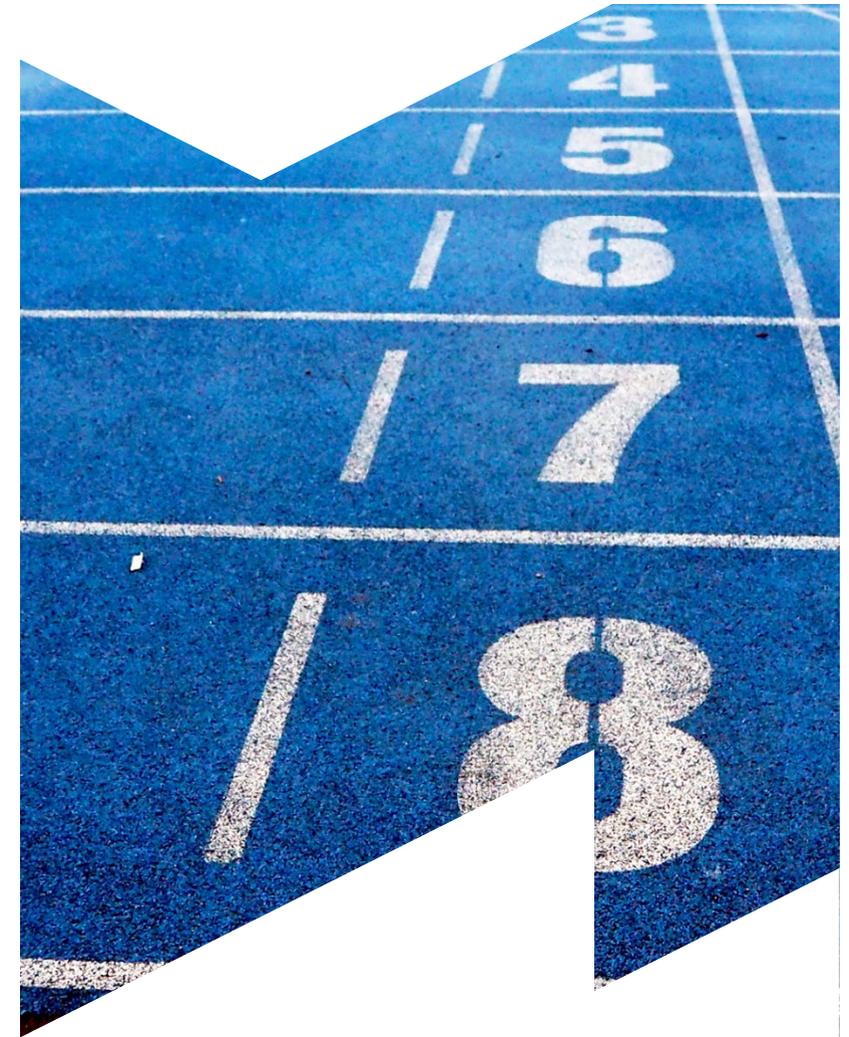
Published as at: 30 September 2018

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 Q3 2018

- ▶ The FCA confirmed details of a Brexit related temporary permissions regime, for financial services firms from the EEA that currently 'passport' into the UK
- ▶ 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, including solo-regulated firms from 9 December 2019

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 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 until the end of 2020, by which time they will be required to apply for full UK authorisation.</p> <p>The FCA will begin accepting applications for the temporary permissions regime from January 2019. Applicants will then receive a 'landing slot' (no earlier than October 2019) whereupon they will be asked to apply for full UK authorisation.</p> <p>EEA passporting firms are advised to assess their Brexit/UK exposure as soon as possible to determine the best course of action to continue business in the event that Britain exits the EU without a trade deal.</p> <p>For more information please visit the FCA's web page on Temporary Permissions.</p>	From January 2019	Red

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
AIFMD/UCITS – Amending regulations Affects: AIFs, AIFMs, UCITS (CUSTODY)	<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> <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>Affected firms will have until 12 February to comply with the regulations.</p> <p>See: Regulation amending Delegated Regulation EU 231/2013</p>	Q3 and Q4 2018	Red

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>The FCA review is expected to take six months, throughout Q3 and Q4 of 2018.</p> <p>See: FCA page on MiFID II</p>	Q3 and Q4 2018	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.</p> <p>The FCA intends publishing a feedback statement during Q1 2019.</p> <p>For access to the Call for Input document along with the FCA's latest position on PRIIPS regulation, please visit their dedicated web page.</p> <p>In the interim, the European Banking Authority has published further guidance on the current requirements to produce KIDs for PRIIPs. This includes additional Q&As, alongside updates to the flow diagrams for risk and reward calculations. The EBA's dedicated page is accessible here.</p>	Q1 2019	Amber

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>Extension of Senior Managers and Certification Regime (SM&CR) to solo-regulated firms</p> <p>Affects: all FCA regulated firms</p>	<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 the SM&CR regime will apply to insurers on 10 December 2018. The regime currently applies 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 support 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>The draft report on the proposed regulation is accessible here.</p>	<p>Various</p>	<p>Amber</p>

Financial regulatory (continued)

Issues	Status	Key Timing	Impact
<p>Insurance Distribution Directive (IDD)</p> <p>Affects: insurance/reinsurance brokers, insurers/reinsurers, managing general agents, professional firms, appointed representatives, ancillary insurance intermediaries</p>	<p>The IDD introduces new rules on insurance distribution. In summary, it seeks to:</p> <ul style="list-style-type: none"> ▶ improve regulation in the retail insurance market and create more opportunities for cross-border business ▶ establish the conditions necessary for fair competition between distributors of insurance products ▶ strengthen consumer protection, with particular regard to the distribution of insurance-based investment products. <p>The IDD has been implemented in the UK from 1 October 2018.</p> <p>To the extent a REIT Manager is FCA regulated to conduct insurance mediation activity (for example, organising insurance for tenants), it will need to ensure it is compliant with changes resulting from the implementation of IDD.</p> <p>See: FCA summary page on IDD</p>	<p>1 October 2018</p>	<p>Amber</p>



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Real estate, planning and construction





Real estate, planning and construction

Key developments in Q3 2018

- ▶ The government is expected to set out an implementation plan in the autumn with details of how the government is responding to the Hackitt report. This will include a ban on the use of combustible cladding for all new high rise residential buildings, schools, hospitals, care homes and student accommodation in England above 18m (60ft) as announced on 1 October 2018
- ▶ The government has published a green paper which proposes reforms to the regulatory framework governing the social housing sector and announced that the cap on local authority borrowing against housing stock is to be removed
- ▶ RICS has published its professional statement on service charges in commercial property (the Service Charge Code) effective for all service charge periods commencing from 1 April 2019

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Grenfell Review</p> <p>Dame Judith Hackitt's final report recommends new regulatory regime</p> <p>Affects: Investors in, owners and developers of high rise residential buildings (HRRB) and potentially extended to others</p>	<p>There have been a number of government consultations and reports since the publication of Dame Judith Hackitt's final report Building a Safer Future: Independent Review of Building Regulations and Fire Safety on 17 May 2018. The government is now expected to publish an implementation plan this autumn with details on how the government intends to respond to the Hackitt report. One key response, announced on 1 October 2018, is a change in the Building Regulations to ban combustible cladding for all new high rise residential buildings, schools, hospitals, care homes and student accommodation in England above 18m.</p> <p>This follows the September publication of the government Response to the recommendations of the Housing, Communities and Local Government Select Committee Report on the Independent Review of Building Regulations and Fire Safety: Next steps.</p> <p>The Hackitt report proposed a new regulatory regime for multi-occupancy high-rise residential buildings that are 10 storeys or more in height - to apply to new and existing buildings and also to refurbishments. The report suggested that the proposed regulatory regime may be extended to apply to other buildings in due course such as hospitals, care homes, prisons, hotels, student accommodation and boarding schools.</p> <p>A new enforcement regime by a newly-formed Joint Competent Authority, comprising of local authority building control, fire and rescue authorities and the Health and Safety Executive was also proposed.</p> <p>The proposed new regime will be similar to the Construction (Design and Management) Regulations in as much as it will impose a range of duties on duty holders. These duties will extend beyond completion of a building into occupation and maintenance.</p> <p>The Hackitt report also sets out new gateway approvals which high-rise residential buildings will need to achieve, and new requirements to keep in digital form updated plans and records, such as a Fire and Emergency File, which should be handed over when building ownership changes.</p> <p>New enforcement powers and obligations including a requirement for the owners of high-rise residential buildings to submit periodic safety case reviews were also proposed.</p> <p>See: Independent Review of Building Regulations and Fire Safety: Final report</p>	<p>Implementation plan expected to be published in the autumn</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 consultation on a 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 closed; RICS response awaited	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 comes 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 is due on 26 October 2018.</p> <p>See: Construction (Retention Deposit Schemes) Bill</p>	<p>26 October 2018</p>	<p>Amber</p>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>The Business Contract Terms (Assignment of Receivables) Regulations 2018</p>	<p>These Regulations, if they come into force, will make ineffective contractual terms in relevant contracts (including potentially some construction contracts) which prohibit or restrict the assignment of receivables.</p> <p>The Regulations have had a chequered history after criticism from many industry bodies amid concerns that the draft Regulations went much further than the stated intention. The Regulations were withdrawn in December 2017, but have been amended and re-published in July 2018.</p> <p>The proposed Regulations apply to business to business contracts 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. 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>See: Draft statutory instrument</p>	31 December 2018	Amber
<p>RICS Consultation on draft professional statement countering bribery and corruption, money laundering and terrorist financing</p> <p>Affects: Property owners, managers and investors</p>	<p>RICS is consulting on a draft standard 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. It will have the status of a professional statement (ie this is mandatory for members).</p> <p>See: RICS professional statement Countering bribery and corruption, money laundering and terrorist financing, 1st edition Consultation draft</p>	Consultation closed on 31 July 2018; RICS response awaited	Green

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<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: Non domestic landlord guidance</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>Phased introduction from 1 April 2018</p>	<p>Red</p>
<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>

Real estate, planning and construction (continued)

Issues	Status	Key Timing	Impact
<p>Parking (Code of Practice) Bill</p> <p>Affects: Property owners, managers and investors</p>	<p>This bill is currently proceeding through Parliament. If it becomes law, it is likely to affect anyone who owns and operates private parking for use by the public. If passed, 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. If passed, the government will 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>The bill's remaining stages, report and third reading are due to take place on 23 November 2018</p>	<p>Green</p>
<p>EPC Consultation</p> <p>Affects: Property owners, managers and investors</p>	<p>BEIS is consulting 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 closes on 19 October 2018</p>	<p>Green</p>
<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 will be increased from April 2019. ▶ A new streamlined energy and carbon reporting regime will be introduced. (For more on reporting see General Corporate below.) 	<p>The Order comes into force on 1 October 2018</p>	<p>Amber</p>
<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 closes on 6 November 2018</p>	<p>Amber</p>



3

Tax



Tax

Key developments in Q3 2018

- ▶ Draft legislation was published to implement the introduction of capital gains tax for non-residents investing in UK commercial property
- ▶ Draft legislation was published to extend UK corporation tax to non-UK resident companies with UK property income

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.</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 includes some welcome changes from the original proposals, but there are also still some substantial outstanding issues, particularly in relation to how the legislation will apply to collective investment schemes. In particular, it is understood that the 25% substantial interest test may not apply to REIT investors, making it more likely that minority investors in REITs will be caught by the new rules.</p> <p>See: Taylor Wessing briefing</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.</p> <p>See: Taylor Wessing briefing</p>	April 2020	Red



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General Corporate



General Corporate

Key developments in Q3 2018

- ▶ The Companies (Miscellaneous Reporting) Regulations 2018 were made on 17 July 2018, introducing new requirements to report on corporate governance, employee and customer engagement and directors' compliance with their duty under section 172 Companies Act 2006
- ▶ Draft Registration of Overseas Entities Bill has been published in relation to the proposed register of overseas companies and other legal entities holding UK property

Issues	Status	Key Timing	Impact
Corporate governance – new legislation	The Companies (Miscellaneous Reporting) Regulations 2018 were made on 17 July 2018. New reporting obligations will take effect for financial years beginning on or after 1 January 2019.		
Affects: Main Market companies	Quoted companies to report annually in their remuneration report on the ratio of CEO pay to the average pay of UK workforce, along with an explanation of changes to that ratio from year to year and how the ratio relates to pay and conditions across the wider workforce.	Financial years beginning on or after 1 January 2019	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.	Financial years beginning on or after 1 January 2019	Amber
Affects: Companies satisfying two or more of the following: (i) annual turnover +£36 million, (ii) balance sheet total +£18 million and (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.	Financial years beginning on or after 1 January 2019	Amber
Affects: Companies with more than 2000 employees; or companies with both a turnover of over £200 million and balance sheet of over £2 billion	A new corporate governance reporting requirement is being introduced, requiring 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 would be exempt from this particular requirement as they are already required to issue a corporate governance statement.)	Financial years beginning on or after 1 January 2019	Green



General Corporate (continued)

Issues	Status	Key Timing	Impact
Brexit related legislation Affects: TBC	<p>The UK is set to leave the European Union on 29 March 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 give ministers the power to adapt and remove laws that are no longer relevant.</p> <p>A transition/ implementation period, lasting from 30 March 2019 to 31 December 2020, is contemplated in a draft withdrawal agreement, 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. Negotiation is set to take place, in the coming months, of outline terms for the future relationship between the UK and the EU after the end of any transition period.</p> <p>A number of draft statutory instruments and government notices to business have been published over the summer.</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 temporary permissions regime for financial services firms referred to in Financial regulatory above.</p>	March 2019	Amber

General Corporate (continued)

Issues	Status	Key Timing	Impact
<p>Energy and carbon reporting framework to replace CRC Scheme</p> <p>Affects: Quoted companies and possibly all large UK unlisted companies</p>	<p>On 18 July 2018 BEIS published the government response to its October 2018 consultation on streamlining energy and carbon reporting (SECR) for businesses, together with the draft Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018.</p> <p>As the CRC Energy Efficiency Scheme is to be abolished at the end of the 2018-19 compliance year, the new framework will be implemented in April 2019. The new SECR scheme will apply throughout the UK.</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>See: Streamlined Energy and Carbon Reporting: government response and Draft Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018</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.</p> <p>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 came into force on 24 September 2018, but will apply from 3 September 2020.</p> <p>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 (although less onerous than those in LR 11 for premium-listed companies the scope may in some respects be wider). <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>June 2019</p>	<p>Amber</p>

General Corporate (continued)

Issues	Status	Key Timing	Impact
<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>	<p>January 2020</p>	<p>Amber</p>

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 creation of 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>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 will be announced in the autumn.</p>	Ongoing	Green
<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>See FRC revised strategic report guidance.</p>	Ongoing	Green

General Corporate (continued)

Issues	Status	Key Timing	Impact
<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 closes 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
<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>The findings are expected to be published later in 2018.</p>	Not yet finalised	Green



General Corporate (continued)

Issues	Status	Key Timing	Impact
<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 closes on 21 July 2018. A ‘Staff Working Document’ is expected to be published in Q2 2019.</p> <p>See: Evaluation and fitness check roadmap and Consultation</p>	Ongoing	Amber



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Capital markets



Capital markets

Key developments in Q3 2018

- ▶ 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

Issues	Status	Key Timing	Impact
FCA consultation on change to guidance on periodic financial information and inside information (FCA/TN/506.2)	<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>	Summer 2018	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 demonstrative 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>The Association of Investment Companies (AIC) has said that it is revising the AIC Code and will consult with members early in the autumn. It is anticipated that the revised AIC Code will follow the principles and provisions of the UK Code but delete the references to executives and workforce and insert other provisions, currently contained in the AIC Code, in relation to oversight of the manager. The AIC anticipates publishing the revised AIC Code early in the winter, with an application date for accounting periods beginning on or after 1 January 2019, the same as the UK Code.</p> <p>See: FRC press release 16 July 2018 (with links to the new Code, Guidance on Board Effectiveness and feedback statement)</p>		
<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))</p> <p>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> <p>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.</p> <p>Introduction of two new reduced disclosure regimes to replace the current proportionate disclosure regimes, one for secondary issues (regulated market and SME growth market companies) and one for a 'EU Growth' prospectus for companies not on a regulated market.</p> <p>On 13 July 2018, ESMA published a consultation paper seeking views on its draft technical advice in accordance with the mandate laid down in 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.</p> <p>See: Prospectus Regulation 2017/1129</p> <p>See: Taylor Wessing briefing</p>	<p>Predominately July 2019 (threshold for public offer exemption changes on 21 July 2018)</p>	<p>Amber</p>

Capital markets (continued)

Issues	Status	Key Timing	Impact
<p>FCA discussion paper on the effectiveness of UK primary markets</p> <p>Affects: Main Market companies (and their sponsors)</p>	<p>On 26 October 2017 the FCA published a policy statement setting out its response to its discussion paper entitled “Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape” (DP17/2).</p> <p>The FCA will consult further on aspects including the current split between standard and premium listing, in particular the scope to raise minimum requirements in the standard list where the requirements do not come from parts of EU Directives that are maximum harmonising. However it does not intend to do further work on an international segment at this time.</p> <p>The FCA intends to further engage stakeholders on those topics and publish proposals for consultation where appropriate in due course.</p> <p>See: FCA DP 17/2</p>	Not yet finished	Amber
<p>Capital Markets Union – Commission proposals to reform European financial supervision regime</p> <p>Affects: Existing and prospective Main Market and AIM companies and their advisers</p>	<p>On 12 September 2018, the European Commission published a revised legislative proposal for its Omnibus Regulation to reform the EU's supervisory structure.</p> <p>This follows the proposals announced on 20 September 2017 to reform the EU's supervisory structure, including extending ESMA's role and powers in respect of prospectuses and market abuse as the first step towards the creation of a single European capital markets supervisor.</p> <p>Insofar as the proposal relates to ESMA's role and powers in respect of prospectuses and market abuse, it is substantially unchanged from the version published in September 2017.</p> <p>It is proposed that the Prospectus Regulation be amended to task ESMA, rather than national competent authorities, with approving, among other things, prospectuses that are drawn up by property companies.</p> <p>Also, ESMA would have greater role in coordinating market abuse investigations.</p> <p>See: Amended Commission proposal</p>	Not yet finished	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.</p> <p>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.</p> <p>See: Final Report</p>	<p>Awaiting updates on Commission strategy and timing</p>	<p>Amber</p>
<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>	<p>Awaiting updates on Commission strategy and timing</p>	<p>Amber</p>

Capital markets (continued)

Looking back

Issues	Status	Key Timing	Impact
Minor changes to Listing Rules and DGTRs Affects: Main Market companies	<p>Premium Listing Principle 6 was conformed to the wording of its direct predecessor, Listing Principle 4, to ensure that the principle relating to communication of information covers avoiding the continuation, as well as the creation, of a false market.</p> <p>It has been clarified that the information on a company's diversity policy (as required under DTR 7.2.8AR) must be included in the corporate governance statement in its directors' report and that the statement can be set out in a separate report published together with the annual report or, alternatively, in a document published on the company's website.</p> <p>Both changes took effect on 27 July 2018.</p> <p>See: Amending instrument FCA 2018/41</p>	July 2018	Green





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Key contacts



Key contacts

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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