

Brexit changes for listed companies

08 January 2021

The Brexit transition period (the "TP") ended at 11:00pm on 31 December 2020 ("IP completion day") and at the end of the TP, the European Union (Withdrawal) Act 2018 (the "EUW Act") converted existing EU legislation which had direct effect in the UK into UK law and preserved existing UK laws which implemented EU obligations. This has made changes to the prospectus rules, the listing regime, the market abuse regime, the Disclosure Guidance and Transparency Rules (the "DTRs") and the AIM Rules.

Read on for a summary of what has changed and what stays the same.

1. Prospectuses

Key rules

- **EU Prospectus Regulation:** The EU Prospectus Regulation (and related delegated regulations) will be 'onshored' by virtue of the EUW Act and statutory instruments will make amendments to key pieces of legislation and regulation underpinning the regime to address deficiencies resulting from the UK's exit from the EU. The effect of this is that the existing prospectus regime as it applies to issuers in the UK is largely preserved and the new UK Prospectus Regime will take effect from IP completion day.
- **Level 3 Material:** The FCA has confirmed that EU non legislative materials (also known as Level 3 material, such as Q&As, recommendations and risk factor guidance) will remain relevant to the FCA and market participants but should be interpreted sensibly and purposefully, taking into account the UK's exit and related legislation regarding its exit. Please [see here](#) to read the FCA's approach to EU non legislative materials.
- **ESMA Q&A:** The FCA has stated that it will consider whether it is appropriate to set out its expectations about issues contained within any ESMA Q&A that is published from the end of the TP and consult where it is appropriate to do so.
- **ESMA prospectus guidelines:** The FCA has confirmed that for UK approved prospectuses, issuers and advisors should continue to have regard to the [ESMA updated CESR recommendations](#) (and not the 'Final Report – ESMA Guidelines on disclosure requirements under the Prospectus Regulation – which take effect after 31 December 2020 – and so will not be applicable to UK prospectuses).

Other points to note

- **Passported prospectuses:** Prospectuses will no longer be able to be passported into or out of the UK under the Prospectus Regulation. However, the FCA has confirmed that prospectuses passported into the UK before the end of the TP will remain valid in the UK until their expiry (that is, one year from the date of the original approval of the prospectus). There are no reciprocal grandfathering provisions where UK prospectuses are passported into an EU27 / EEA EFTA state before the end of the TP and consequently, it will not be possible to supplement these after the end of the TP.
- **Exempt offers to the public:** Technical amendments have been made to the current exemption to provide for the UK's exit. FSMA will be amended to, among other things, provide that the exemption from the requirement for a prospectus for offers, where the total consideration for the transferable securities being offered in *the UK* (rather than across the EEA states) cannot exceed €8m. Additionally, the UK PR will provide that the PR does not apply to an offer to the public with a total consideration in the UK (rather than the EU) of less than €1m calculated over a period of 12 months. The prospectus exemption in Article 1(4)(b) has been amended to apply to offers addressed to fewer than 150 persons in the UK (rather than per member state) other than qualified investors.

2. Listing Rules

- There are minor changes to reflect the UK's exit from the EU as set out below:
 - Free float for premium, standard listing of equity shares and depositary receipts requires that 25 % be held by the public in any jurisdiction (rather than in one or more EEA States);
 - to be admitted to the Official List, shares must be admitted to trading on a UK regulated market (rather than on an EU regulated market operated by an RIE); and
 - the FCA will not admit to listing the shares of applicants incorporated in a third country (rather than applicants incorporated in non-EEA states only) that are not listed either in its country of incorporation or in the country in which a majority of its shares are held, unless the FCA is satisfied that the absence of the listing is not due to the need to protect investors.

3. Market abuse regime

Key rules

- **Market Abuse Regulation:** The Market Abuse Regulation (and related regulations) will be 'onshored' by virtue of the EUW Act and a statutory instrument has made amendments to the EU retained regime to address deficiencies resulting from the UK's exit from the EU. Listed companies may wish to consider updating their existing internal policies to be in line with UK MAR.

- **Scope of the regime:** The FCA confirms that the regime remains broadly unchanged. In particular:
 - the same scope of financial instruments admitted to trading or traded on UK and EU trading venues are subject to UK MAR as EU MAR and there are no changes relating to the requirements for market soundings and insider lists or to the prohibitions on unlawful disclosure of inside information, insider dealing and market manipulation,
 - UK MAR retains the same exemptions for issuers undertaking buybacks and stabilisations on UK and EU trading venues as EU MAR. To benefit from the exemptions for shares and securities on EU trading venues, issuers should continue to report to the EU competent authority of the EU trading venue in accordance with EU MAR. To benefit from the exemptions under UK MAR for shares and securities on UK trading venues, issuers should continue to report to the FCA, and
 - the content and format of PDMR transaction notifications (currently) remain the same.

Key changes for non-UK issuers

- The FCA has confirmed that issuers that are based in an EU member state who have financial instruments admitted to trading or traded on a UK trading venue, will now be required to:
 - Send notifications of delayed disclosure of inside information to the FCA under Article 17(4) of UK MAR. The content and format of the notifications is unchanged.
 - Obtain consent from the FCA when delaying disclosure of inside information under Article 17(5) and (6) of UK MAR.
 - Their PDMRs must send PDMR transaction notifications to the FCA under Article 19 of UK MAR. This is in addition to any obligation to report to an EU competent authority under EU MAR.
- These obligations are in addition to any existing obligations under EU MAR to notify, or seek consent from, an EU competent authority due to, for example, the issuer being registered in an EU member state and/or having instruments admitted to trading on an EU trading venue.

4. Disclosure Guidance and Transparency Rules

- The regime is largely preserved save for a few amendments which include:
 - **Amendments to DTR 1B.1.3R (Application: Audit committees):** DTR 1B.1.3R will be amended such that an issuer will only be exempt from DTR 7.1 (Audit committees) where the parent undertaking is subject to DTR 7.1 (as opposed to where the parent undertaking is subject to DTR 7.1 or to requirements implementing article 39 of the [Audit Directive](#) in any other EEA state).
 - **Removal of home/host state distinction:** DTR 4 (Periodic Financial Reporting), DTR 5 (Vote Holder and Issuer Notification Rules) and DTR 6 (Continuing obligations and access to information) will be amended to remove the home/host state distinction and provide that, from IP completion day, the

Transparency Rules will only apply to issuers with securities admitted to trading on a UK, as opposed to an EU, regulated market.

- **Requirement for issuers to use UK-adopted IFRS:** DTR 4.1.6R (Audited financial statements) will be amended so that issuers will be required to use UK-adopted IFRS. This is subject to transitional provisions (new paragraph 36 of DTR TP 1) under which the current provisions will effectively remain in force for financial years beginning before IP completion day. (Note that HMT has issued an [equivalence direction](#) determining that EU-adopted IFRS can continue to be used to prepare financial statements for the purposes of the Transparency Rules and for prospectuses).
- **Amendments to DTR 4.1.7R (Auditing of financial statements):** DTR 4.1.7R will be amended to reflect that an issuer which is a UK-traded third country company must ensure that the person who provides the audit report is eligible for appointment as a statutory auditor under section 1212 of the Companies Act 2006. This is subject to transitional provisions under which the current provisions will effectively remain in force for financial years beginning before IP completion day (*DTR TP 1*).
- **Amendments to DTR 5.2.4R (Acquisition or disposal of major proportions of voting rights):** DTR 5.2.4R will be amended to provide that the exemption from the notification requirements in DTR 5.1.2R and DTR 5.2.1R(c) applies only to the Bank of England and not to any member of the European System of Central Banks.
- **Requirement for issuers to use a Primary Information Provider:** DTR 6 will be amended to provide that, from IP completion day, issuers will only be able to use a Primary Information Provider to disseminate regulated information.
- **Amendments to DTR 7.3 (Related party transactions):** Issuers will need to use the definition of "related party" in UK-adopted IFRS (*DTR 7.3.2R*). Additionally, non-UK incorporated issuers (so, now including EEA incorporated issuers that are subject to corresponding requirements in an EEA state) with a premium listing of shares (except OEICs) or GDRs (ie sovereign controlled companies issuing GDRs subject to Chapter 21) and with standard listing of equity shares will need to comply with modified requirements for "rest of world" companies.

5. AIM

- Minor changes to reflect the end of the TP have been made to the [AIM Rules for Companies](#) which apply from 1 January 2021. Most notably, Rule 19 has been amended to provide that UK incorporated AIM companies must use UK-adopted IAS for FY beginning on or after 1 January 2021. AIM companies incorporated in the UK with FY that begin before 1 January 2021 can continue to use EU adopted IAS as it stands at the end of the TP.
- New [AIM Rules for Nominated Advisers](#) apply from 1 January 2021 but these are in substantially the same form as the version published in October 2019.

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