

CLIENT ALERT

Temporary Measures for U.K. Listed Companies: Financial Reporting, Disclosure Obligations, Company Meetings and Capital Raisings

Current as of April 8, 2020

As the COVID-19 pandemic causes unprecedented disruption to global businesses, certain temporary measures have been introduced in order to reduce the financial reporting and other regulatory obligations that apply to Main Market listed and AIM quoted companies. This note provides a brief summary of the measures relating to financial reporting, disclosure obligations, company meetings and capital raisings.

Financial Reporting

Audited Annual Financial Reports

- The Financial Conduct Authority (the FCA) has temporarily permitted Main Market listed companies to delay the publication of their audited annual financial reports from four to six months from the end of their financial year. All companies are encouraged by the FCA to take advantage of this additional two month period in order to make a full assessment of the impact that COVID-19 may have on their businesses.
- In addition, the London Stock Exchange (the LSE) has announced that AIM quoted companies may apply for a three-month extension to the reporting deadline for the publication of their annual audited accounts under Rule 19 of the AIM Rules. The extension is available to AIM companies with financial years ending between 30 September 2019 and 30 June 2020. Any request for an extension must be made to AIM Regulation by the company's nominated adviser prior to its current reporting deadline under the AIM Rules.
- This temporary relief does not currently extend to half-yearly financial reports, which should be published within three months of the half-year end in accordance with the Disclosure Guidance and Transparency Rules. The LSE will keep under review the operation of the AIM Rules and, in particular, the requirements for reporting of half-yearly reports under Rule 18 of the AIM Rules.

Account Filings

- Similarly, Companies House is allowing companies an additional three months to file their accounts. Companies have to apply for the three-month extension, which they have been able to do from 25 March 2020, and those citing COVID-19 issues for the delay will be automatically granted an extension. Applications can be made through a [fast-tracked online system](#) which should take 15 minutes to complete. However, companies that have already extended their filing deadline, or shortened their accounting reference period, may be ineligible for an extension.
- Given that the logistics of finalising and circulating the annual report and accounts may also be affected by COVID-19, companies may wish to rely on electronic communications with shareholders where this is an available option.

Specific Disclosures

- The Financial Reporting Council (the FRC) has asked companies to consider if additional specific risk disclosures should be included in their annual report and accounts depending on the nature of the company and the extent to which it has been affected by COVID-19. In this context, companies may wish to consider performing additional impairment tests on the current value of their assets and liabilities. Any mitigating steps should also be disclosed.
- Boards of listed companies reporting under the U.K. Corporate Governance Code should also consider and report on how they have addressed opportunities and risks to the future success of their businesses and the steps taken, or to be taken, to mitigate these risks.
- The relevant disclosures are likely to change as the spread of COVID-19 continues. Companies are advised to monitor developments and to ensure they provide accurate disclosures when preparing their annual report and accounts.

Auditors

- Auditors need to obtain sufficient and appropriate audit evidence in order to provide an audit opinion. However, the U.K.'s "social distancing" measures and prevailing economic uncertainty has created obstacles to carrying out audit procedures. Consequently, the FRC has provided a non-exhaustive list of factors that auditors should consider when carrying out audit engagements during the COVID-19 crisis, as well as accompanying guidance on how these factors might be addressed. The FRC will withdraw this guidance when circumstances allow.
- Companies are encouraged to consider delaying planned tenders for new auditors and audit partner rotations, even when mandatory rotation is due. Companies should liaise with their audit committees, auditors and the FRC to implement extensions to the existing mandates and to ensure their auditing and review processes are as robust as possible, particularly given the obstacles to the audit firm's access to information and to employees.

Disclosure Obligations

Inside Information

- The FCA and FRC have stressed the need for companies to comply with their obligations under the Market Abuse Regulations (596/2014) during COVID-19. The Disclosure Guidance and Transparency Rules require directors of listed companies to continuously monitor changes in the company's circumstances that give rise to inside information and therefore trigger an announcement obligation under the Market Abuse Regulation. This is particularly important in the current climate given that boards may unexpectedly become in possession of inside information following adverse changes in a company's performance or financial condition. There are very limited circumstances when disclosure of inside information may be delayed.
- The LSE has published an Inside AIM update on COVID-19 confirming that AIM companies should continue meeting their disclosure obligations. However, where an AIM company faces material new developments because of COVID-19 related challenges and requires more time to make a fully compliant notification, the company's nominated adviser should approach AIM Regulation to discuss whether a temporary suspension is required.

Company Meetings

Annual General Meetings (AGMs)

- The U.K. Government plans to introduce legislation to ensure that companies that are required by law to hold AGMs will be able to do so safely and in a way which is consistent with the "social distancing" measures that have been introduced because of COVID-19. In addition, companies will temporarily be extended greater flexibility, including the ability to hold AGMs online or postpone meetings. However, it is not clear when such legislation will become effective.
- ICSA, The Chartered Governance Institute has published guidance for listed companies on contingency planning for AGMs during the COVID-19 epidemic. Subject to a company's articles of association, the options available to a company at present are:
 - delaying, postponing or adjourning the AGM – This may ease some of the pressure in the current climate. Here, companies should have regard to the expiration dates of standing authorities and the timing of final dividend payments;
 - holding a hybrid AGM – Having some attendees present in person may be required for an AGM to be a valid meeting. A hybrid AGM would need to be permitted under a company's articles of association. According to ICSA's guidance, the physical attendees should be limited to the number required for a quorum; or
 - holding the AGM but restricting attendance to the minimum required to meet the quorum. While only the attendees will be at the AGM, the input of other shareholders / directors can be facilitated through remote participation. The shareholders can also vote by proxy. Companies should check which of their directors, employees and shareholders are able to attend the meeting and can fulfil the quorum requirement.

Board Meetings

- In addition, ICSA, jointly with Lorraine Young Board Advisory Services, published guidance on good practice in the conduct of virtual board and committee meetings. It offers brief commentary on the legal and practical issues to be considered and insight into how virtual meetings can be made as effective as possible during the COVID-19 "social distancing" measures. Key points for directors to consider include:
 - choosing the right technology and communication channel;
 - structuring virtual meetings and avoiding complexity;
 - the value of preparation;
 - establishing ground rules for the meeting;
 - having clear instructions on accessing the meeting; and
 - implementing good boardroom practices.
- Companies should consider authorising additional individuals to sign contracts on the company's behalf in case regular signatories are unable to sign. If signatories are working from home, they should be able to access, print and scan signature documents remotely.

Capital Raisings: Pre-Emption Rights

- The Pre-Emption Group (PEG) has recommended that investors consider supporting non pre-emptive issuances by companies of up to 20% of the company's issued share capital. This is a relaxation of the position regarding the general disapplication of pre-emption rights set out in the PEG Statement of Principles. They provide for non pre-emptive issuances of up to 5% for general corporate purposes, with an additional 5% for specified acquisitions or investments.

- This is intended to help companies raise the equity capital they might need during the COVID-19 uncertainty and will be in place until 30 September 2020. The PEG will then consider the impact of this flexibility on companies and investors.
- This is likely to encourage the use of cashbox placings since shareholder approval to disapply pre-emption rights would not be required, therefore saving on time and documentation, and such placings can be completed quickly through an accelerated bookbuild. Any company considering taking advantage of this flexibility with an issuance of close to 20% of its issued share capital will still need to consider whether a prospectus is required.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Simon Evers

Partner – London

Phone: +44.20.7413.1328

Email: severs@crowell.com

Amanda Kwagala

Associate – London

Phone: +44.20.7413.1359

Email: akwagala@crowell.com