Gateley Plc

Plc Update - Spring / Summer 2018

For listed companies in the UK

Corporate governance: changes to the AIM rules

New requirements under the AIM Rules for Companies mean that from 28 September 2018 all AIM companies must apply a recognised corporate governance code, confirm how that code is complied with and explain the reasons for any departures from it.

The information will have to be disclosed on the company's website and reviewed annually, with the date of the last review also being stated on the website. For details of this and other changes to both the AIM Rules for Companies and the AIM Rules for Nomads see *Talking Business: Revised AIM Rules confirmed.*

Corporate governance: which code should you follow?

The principal corporate governance framework in the UK is the FRC's UK Corporate Governance Code. This is mandatory (on a 'comply or explain' basis) for all companies with a premium listing of shares on the LSE's main market.

Although many of the provisions of that code are unsuitable for smaller listed companies, a significant number of companies on AIM have previously chosen to follow it as far as practicable given their relative size and stage of development.

As an alternative, around half the companies currently trading on AIM choose to follow the QCA's corporate governance code. To coincide with the new requirement under the AIM Rules, the QCA has released a revised and updated *QCA Corporate Governance Code* (replacing the QCA's Governance Code for Small and Mid-Size Quoted Companies released in 2013). The LSE has confirmed that it will give companies a degree of flexibility when deciding which code to adopt, recognising that there is no 'one size fits all' approach. The new QCA Code contains 'ten principles of corporate governance' which focus on delivering growth, maintaining a dynamic management framework and building trust amongst stakeholders and shareholders. The necessary disclosures are linked directly to those principles.

As the QCA Code is tailored to meet the needs of small and mid-size quoted companies like those listed on AIM, it may be a more appropriate code to adopt rather than the UK Corporate Governance Code.

Changes to prospectus exemptions

The thresholds for fund raisings requiring a prospectus will change next month when certain provisions of the EU Prospectus Regulation come into force early, ahead of full implementation in July 2019.

In particular, the threshold for small capital raisings will increase from the current limit of €100,000 to €1 million (in total over a 12 month period) meaning offers below that will not require a prospectus. At the same time, the general threshold at which a prospectus is mandatory for offers to the public will increase from €5 million to €8 million (again, in total over a 12 month period). Member states can choose to apply a threshold of less than €8 million (subject to the €1 million floor) but it seems likely that, once the new provisions come into force, the UK will adopt the highest threshold permitted as it does under the current regime. Both changes should make it easier and cheaper for companies to raise funds.

'Adequate procedures' failed as defence to bribery charge

The first case to consider the 'adequate procedures' defence to a charge under the Bribery Act has resulted in a conviction. Under the Act, a company will be guilty of a bribery offence if an associated person pays a bribe to secure business or an advantage for the company.

The only available defence for the company is to show that it had in place 'adequate procedures' designed to prevent people from engaging in bribery. In this case, a general non-specific policy and normal accounting controls were not considered sufficient. Companies should review their internal policies in the light of the case to ensure these are adequate, are appropriately communicated to staff and are properly embedded in day to day operations.

For further information, see *Talking Business: Defending bribery charges - what are 'adequate procedures'?*

Limited ability to amend LTIP rules

The rules of many LTIPs contain provisions allowing those rules to be altered in certain circumstances without the consent of shareholders.

A *recent case* highlighted that whilst these provisions can offer protection and flexibility to the company, they must be strictly followed to be relied on. In this case the company's Remuneration Committee introduced provisions under which awards could be reduced at the Committee's discretion, relying on a provision permitting minor changes to the rules for administrative purposes to effect the change. But the court held that the provision only permitted 'tidying up' changes and did not allow the company to rewrite the terms of the LTIP awards already made. The case is a reminder that, when altering plan rules or exercising a discretion under them, it is important to do so strictly in accordance with those rules.

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