Weil

Brexit

Implications for public companies

Accessing the capital markets and obtaining a listing

Current position

At present any company wishing to access the capital markets, or to obtain a listing on a regulated stock market, in the European Union must prepare a prospectus, the contents of which are dictated by the EU Prospectus Directive and (at a more detailed level) the EU Prospectus Regulation. This legislation is intended to achieve full harmonisation of the form and contents of prospectuses across the European Union.

Further, a prospectus prepared in one member state can be used to offer securities to the public, or to obtain a listing, in another member state without further approval from the authorities in the recipient member state. The Prospectus Directive contains rules for determining which authority is the "home" for each company for this purpose. In practice, this "passport" is only occasionally used: it is not needed in order to offer securities to institutional investors, as such offers are exempt from the Prospectus Directive requirements, and generally most issuers seek a listing in their own "home" member state.

During the exit negotiations

The existing prospectus regime will continue to apply during the interim period while the terms of the UK's exit are being negotiated. Depending on the business of the issuer, specific disclosures about the possible effects of the UK's exit will be necessary. Already some sort of standard risk factor drafting is starting to emerge and prospectuses for many businesses are likely to contain such risk factors until the exit negotiations are concluded.

On exit

It is unlikely that there will be significant changes to the regulation of prospectuses and London listings immediately upon an exit. The UK's Financial Conduct Authority (FCA) is likely to continue to operate using the EU Prospectus Regulation to determine the contents requirements for prospectuses. The rules on London listing are unlikely to change immediately.

It remains to be seen whether, as part of the exit negotiations, the "passport" for prospectuses and listings can be salvaged. The "passport" already extends outside the European Union to the EEA countries, so perhaps there is a good chance that the EU will be prepared to allow the UK to continue to benefit from it. The price of this is likely to be continued adherence to the EU prospectus regime as it develops, without a formal role in decision-making on any changes.

Longer term

Over a longer period the regulation of prospectuses and listings in the UK may diverge from the remaining EU. If the UK still has the benefit of the prospectus "passport", the divergences are likely to be relatively small. The UK could, however, seek to develop further its unregulated markets to allow institutional investors to trade in less liquid or riskier securities, with its own rules to govern the functioning of such markets and the disclosures required from issuers.

Listing Rules

Current position

Companies listed on the main market of the London Stock Exchange are subject to the FCA's Listing Rules, and will remain so during the exit negotiations and beyond.

On exit

While a number of the Listing Rules reflect the Consolidated Admissions and Reporting Directive and earlier European Directives, a significant portion of the Listing Rules do not derive from EU legislation and are made independently by the FCA. It is unlikely that there will be any significant change to Listing Rules (including the EU-derived rules) as a consequence of Brexit.

AIM Rules

The AIM Rules for Companies do not derive from EU legislation: they are made independently by the London Stock Exchange. Accordingly, it is not expected that Brexit will have any material impact on the AIM Rules.

Market abuse and disclosure

Current position

From 3 July 2016, both main market listed companies and AIM listed companies became subject to the directly-applicable EU Market Abuse Regulation (MAR) in relation to insider dealing and market abuse, disclosure of inside information by listed companies and disclosure of dealings and restrictions on dealings by senior management. In relation to market abuse and insider dealing, MAR replaced largely similar existing UK provisions derived from EU legislation which applied to both main market and AIM companies (although much of the FCA's helpful guidance on these provisions has now been removed and, as yet, has not been replaced by comprehensive guidance from the European Securities Market Association, the EU regulator). The MAR provisions on disclosure of inside information and dealings and restrictions on dealings by senior management apply, for the first time, the same set of rules for both main market and AIM listed companies (although AIM has retained some of its own requirements, giving rise to a "double compliance" regime for AIM companies).

On exit

Following Brexit, MAR will need to be replaced by UK rules and/or legislation (potentially similar to the pre-MAR regime). It seems unlikely that Brexit will entail a significant substantive change to the market abuse and disclosure regimes, although it is possible that the UK may seek to remove some of the more bureaucratic requirements of MAR.

Takeovers

Current position

The UK's Takeover Code and Takeover Panel, which regulate takeovers and similar transactions affecting UK and certain other public companies, have existed since 1968. The Takeover Panel was a private organisation for much of its existence. As a result of the implementation of the EU Takeovers Directive in 2005, the Takeover Panel became a statutory body and its functions became supported by statutory provisions.

On exit

Brexit is very unlikely to have a significant impact on the vast majority of takeovers which are subject to the Takeover Code. However, the Takeovers Directive prescribes the applicable regulatory regime for takeover offers for companies which have their registered office in one EU member state but which are listed on a regulated market in another member state. The Takeover Panel will need to agree with its European counterparts how the Takeover Code or other takeover rules should apply (if at all) in those circumstances. One approach may be that the Code will only apply to companies incorporated in the UK, the Channel Islands and the Isle of Man, and that the Panel will apply provisions of the Code on a case-by-case basis to companies subject to dual jurisdiction (as was broadly the situation prior to 2005).

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