

MACFARLANES

Going public in London



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Introduction

London is at the heart of the global financial community. It has been, and continues to be, a very attractive place for companies from around the world to choose a public listing.

The London Stock Exchange (or LSE) provides an accessible and well-regulated forum for companies raising equity finance, and is uniquely positioned to cater for the needs and objectives of most companies looking to go public.

Taking a company through an initial public offering (an IPO or listing) is a landmark moment for any business: it may signal the next phase in a company's life-cycle, or present an exit event for investors who have backed the company from the outset. Alternatively, listing a special purpose vehicle may be the first step in a newly formed company's investment strategy. In any case, it is an important milestone for a company and one which requires careful planning and navigation.

This guide is intended to be a user-friendly overview of the process and timetable for taking a company public in London and should operate as a first point of reference for management and shareholders when considering the various steps along the way.

City Firm of the Year

The Lawyer Awards 2023

Best Law Firm: UK & Ireland

International Legal Alliance Awards 2022

Future of Legal Services Innovation

Legal Week Innovation Awards 2021

Best law firm-lending and securities

Alt Credit European Services Awards 2020

AI Innovation

Legal Week Innovation Awards 2020

Commended in Innovative Practitioners Category

FT Innovative Lawyer Awards 2020



City Firm of the Year
The Lawyer Awards 2023



Top ranked for tax

The Times Best Law Firms
2020–2024

Why go public?

The table below picks out some of the benefits and drawbacks that a company should consider when going public.

Advantages



A listing on London's stock exchange will enhance the image of a company as stable and transparent. This may have associated benefits such as lower rates of interest on debt facilities that reflect the lender's views on the status and maturity of the company.



The company has easy access to the fully liquid capital markets. This in turn provides more flexibility to grow the business.



Listed shares are easily valued and traded in the market, making them an attractive alternative to cash as a source of acquisition currency when looking to acquire new businesses.



The management team will have been through a thorough due diligence process in connection with the IPO, which will invariably lead to a greater understanding of the company and the markets in which it operates.



The regulatory requirements and due diligence process make a listed company attractive to investors and provide comfort to existing clients and suppliers.



A listed company may be a more attractive proposition for key employees due to the ability to receive compensation in the form of listed shares, or options over those shares.

Disadvantages



A listed company is by its nature open to increased levels of scrutiny and mistakes can lead to public embarrassment.



The pricing of the company's shares will be at the mercy of broader market forces and can fluctuate in response to events which are outside the control of the company.



There are greater disclosure requirements for a listed company: generally, any news that may significantly impact the price of its shares needs to be made public.



The IPO process is time-intensive and requires significant management involvement at the expense of the day-to-day running of the business.



Directors of listed companies face additional legal and regulatory responsibilities. They will be responsible for any offering document prepared in connection with the listing on which investors will rely when purchasing or subscribing for shares.

When to IPO?

Ultimately it is the company's management, in conjunction with its key shareholders, who decide whether the company is ready for an IPO.

The first step to going public is preparing the company and its group for a listing. This may commence many years prior to the implementation of the actual IPO process. Preparation includes establishing an "equity story" that focuses management on the rationale behind the IPO and the key messages the company wants to present to prospective new investors. The "equity story" typically centres on the desire to propel the growth of the business to the next stage.

There are a number of things to take into account when determining whether a company is ready for an IPO.



Is there a compelling business reason for taking the company public?



Is the company big enough? Are the costs, disclosure burden and regulatory scrutiny proportionate to the size of the business?



Is the company saleable to the market? Can it forecast financial performance accurately and on a consistent basis? Will there be a liquid market in the company's shares?



Does it have sufficient operational systems to cope with the increased disclosure and regulatory demands of the listed company regime?



Is now the right time, given the state of the market and the maturity of the company?

What listing venue?

A company contemplating an IPO in London will need to decide whether to list on the LSE's Main Market or on AIM.

Main Market

Companies which are listed on the LSE's Main Market will also be included on the FCA's Official List and will be required to comply with a number of obligations imposed by the FCA (including the UK Listing Rules). A UK commercial company will inevitably apply to the "equity shares (commercial companies)" (ESCC) category of the Official List, which contains the vast majority of the well-known listed companies in the UK. Other more specialist listing categories are available for commercial companies, however, such as that for international companies with a primary listing on another exchange.

Indexation

A major attraction of being listed on the Main Market is eligibility for inclusion in the FTSE UK Index Series (including the FTSE 100). As one of the most well-recognised index series in the world, the FTSE UK Index Series is widely covered by passive tracker funds. This means that companies within this index will typically experience some share price increase simply by virtue of their shares being eligible for passive tracker funds.

AIM

AIM is a high-growth securities market designed to meet the needs of smaller, growing companies that do not necessarily meet the criteria for listing on the Main Market, or which would benefit from a more flexible regulatory environment by virtue of not being admitted to the FCA's Official List.

The table below summarises the listing requirements of the Main Market and AIM.

Requirement	Main Market	AIM
Ongoing adviser	Must appoint sponsor	Must appoint nominated adviser
Offer documentation	Prospectus	Admission document
Minimum market cap	£30m	N/A
Minimum free float (shares in public hands)	10% of class of shares listed	N/A
Historical financial information	Yes – covering three years or such shorter period as company has been in existence	Yes – covering three years or such shorter period as company has been in existence
Working capital	Sufficient for present requirements	Sufficient for 12 months following admission
Eligible for inclusion in the FTSE index?	Yes	No

Allocation and structuring

A company choosing to raise equity finance will need to consider some key structural issues at the outset.

Institutional offer

An institutional offer is an offer of shares to sophisticated - usually institutional-investors. This will usually be conducted via a "placing" of shares to the investors. The bookrunner will suggest appropriate people to target (typically professional investors, fund managers and asset managers who would look to make an investment in a company at IPO stage). The company will then present to those investors as part of its marketing phase.

If there is sufficient demand for the shares, the company can then select which institutional investors it wishes to participate in the offer.

London is home to numerous investors who will look to make an investment in a company at IPO stage, which significantly enhances the ability of a company to achieve a successful IPO.

Retail offer

Alongside an institutional offer, a company may also choose to implement a retail offer. A retail offer involves offering shares to members of the public and generally does not involve any targeted marketing. The retail element of an IPO may be included to raise the public profile of the company and can also be conducted by intermediaries (i.e. financial institutions who have retail clients) as a way of accessing members of the public.

Primary versus secondary

On any IPO there can be some tension between the number of shares issued by the company - which raises funds for the company itself (often referred to as the "primary" element) and the number of shares sold by existing shareholders, which raises money for them (often referred to as the "secondary" element). This can lead to delicate discussions, where the needs of the company to raise new capital need to be matched against the desire of a selling shareholder to achieve some form of exit in an IPO.

US offering

Despite the listing venue being London, companies looking to raise capital in an IPO may also decide to market their shares to potential investors in the US. Marketing into the US can lead to price tension, and hopefully increased demand. It can also raise a company's profile internationally and further broadens the potential investor base.

However, a non-US company accessing capital in the US will need to consider the wide-reaching US securities laws that can impact how the offering is marketed. If a company is offering shares into the US, it will need to decide whether to make a registered offering, or an offering under an available exemption. Making a registered offering is largely considered too burdensome (and expensive) for a UK IPO process. Many US offerings by companies undergoing this process are therefore conducted under one of the "safe harbours" from registration, the most common of which is the "private placement" exemption.

In any case, offering shares in an IPO process outside the US will still trigger US securities laws. A company will therefore need to consider US securities laws of whether or not it intends to market its shares in the US. There are, however, a number of common exemptions that are typically used to steer around these rules.

Process

An IPO can be broken down into four main phases.

01



Appointing advisers

A company looking to go public will need to consider appointing the following advisers.

- **Sponsor:** A company applying to admit its shares to the Main Market must appoint a sponsor for the duration of the listing process. The sponsor assesses the suitability of the company for an IPO, advises on the composition of the board and management team, determines the best method of listing the company, and communicates with the FCA on behalf of the company.
- **Nominated adviser (or nomad):** A company applying to admit its shares to AIM must appoint a nominated adviser and retain that nomad so long as it is admitted to AIM. A nominated adviser will liaise with the London Stock Exchange on behalf of the company and must satisfy itself that the company is appropriate for admission to AIM.
- **Broker/bookrunner/underwriter:** The broker or bookrunner advises the company on market conditions, demand for the company's shares and pricing. This may be the same entity as the sponsor or the nominated adviser. If the IPO is underwritten, then an underwriter (an investment bank, which may be the same as the broker, sponsor or nominated adviser) may agree to subscribe for or purchase any shares that are not taken up by the investors in the IPO. This gives the company and any selling shareholders certainty over the proceeds they will receive. In larger IPOs, it is common for a group of underwriters to fulfil this role.
- **Legal advisers:** Lawyers to the company will coordinate the legal due diligence process, draft the offer document and advise the company on the legal aspects of its IPO. Lawyers to the sponsor or nominated adviser will advise on their regulatory obligations and role in the IPO process.
- **Reporting accountant:** The offer document must contain prescribed financial information concerning the company and its group. A reporting accountant will prepare a financial "long form" report on the company's financial affairs, which will be reflected in the offer document. It will also undertake a working capital exercise to ensure that the company has sufficient working capital for its present requirements.
- **Public relations:** A company will usually appoint a public relations adviser, which will coordinate how details of the IPO are communicated to the public.

02



Due diligence and verification

- The principal marketing tool for a company going public is the offer document. Because potential investors will generally rely on the offer document when making their decision to invest, it is vital to include all material information relating to the company (including any problems and risks) in that document. The due diligence process should identify all information that needs to be disclosed to provide investors with an accurate picture of the company they have decided to invest in. Omitting this information may lead to an investor claiming it was misled when it made its decision to invest.
- Due diligence is divided into commercial, financial, tax and legal due diligence and involves a comprehensive investigation into the company's business, finances and prospects, as well as any risks associated with an investment in the company. For a company with extensive historic operations, due diligence can take a number of months to complete, but it gives the directors an opportunity to undertake a full analysis of the business and gain a greater understanding of its operations in the long term.
- The approach that a company must take to historical financial information will depend on its individual circumstances. It must provide historical financial information covering the latest three financial years or such shorter period as the company has been in operation. If the company has undergone a "significant gross change" it must include pro forma financial information that has been hypothetically adjusted to show the financial effect of the transaction or other change as if it had taken place during the relevant historical financial period. This will indicate to investors how the transaction might have affected the assets, liabilities and profits of the applicant, had the transaction been undertaken at the outset of the reporting period.
- If an investor can successfully claim that it relied on inaccurate information contained in the offer document when making its investment decision, the company's directors could incur civil and criminal liability. To mitigate this, it is beneficial for the directors to be able to show that, at the time they made the statements in the offer document, it was reasonable for them to have believed they were correct. The verification process assists this defence, since it is a written record of the source material used by the directors in making those statements in the offer document.

03



Marketing the company

The company may conduct a pre-marketing exercise before it decides to commit to going public. During this pre-marketing phase, the company will present on its business and equity story to a select number of potential investors. Feedback from the pre-marketing will allow the company to assess whether it could sell its shares to potential investors in an IPO.

In the subsequent marketing period, the company will produce a draft of the offer document called the “pathfinder”. This is a version of the offer document that is nearly final but does not include details on the price to be paid per share. The company can use the pathfinder to assist with the price discovery process (i.e. what investors might be willing to pay for the shares). Typically, this process is achieved through a “roadshow”, where the company makes presentations to a number of investors over a period of a few weeks. The outcome of the roadshow allows the company and its bookrunner to establish demand for the shares and so inform the price at which the shares will be sold in the IPO.

At the end of the roadshow, the share price is fixed and the offer document is published. Orders for shares are confirmed and they are then allocated to investors.

Research

Investment analysts conduct and publish detailed research on listed and to-be-listed companies. They give an opinion on the company’s prospects – and their views on whether to buy or sell the shares (along with a target price). The views of analysts are therefore hugely important in providing insight to investors who are deciding whether or not to invest in the company.

Traditionally, analyst research was undertaken by “connected” analysts from the company’s bookrunners who were acting on the IPO. The obvious potential for a conflict of interest (i.e. the ability of the analyst to “talk up” the company for the benefit of the bookrunner) led to a rule change. Now, “connected” research cannot be published until seven days after publication of the first part of the offer document.

04



Pre-admission

If where the IPO also comprises a retail offer, there is a period of between two to four weeks between publication and admission of the company’s shares to trading. In this time, the company and the bookrunner will aim to secure further investment from members of the public under the retail offer. They will also approach other institutional investors that they did not see during the roadshow.

Key documentation involved in the IPO process includes:

- **Engagement letters** – Set out the terms of engagement between the company and its advisers.
- **Due diligence report** – The legal report on the company and its group.
- **Verification notes** – The record of the verification exercise undertaken in relation to the offer document.
- **Offer documents (i.e. the prospectus or admission document)** – An important marketing tool containing information on the company and the IPO.
- **Underwriting agreement** – Sets out the terms on which a bank agrees to underwrite the IPO.
- **Marketing presentation** – The presentation used by management on the “roadshow”.
- **“Comfort” package** – Letters addressed to the company and others that provide confirmation as to the company’s financial and regulatory position.

Your IPO - from start to finish

The Main Market IPO process will typically run for approximately five months (20 weeks).

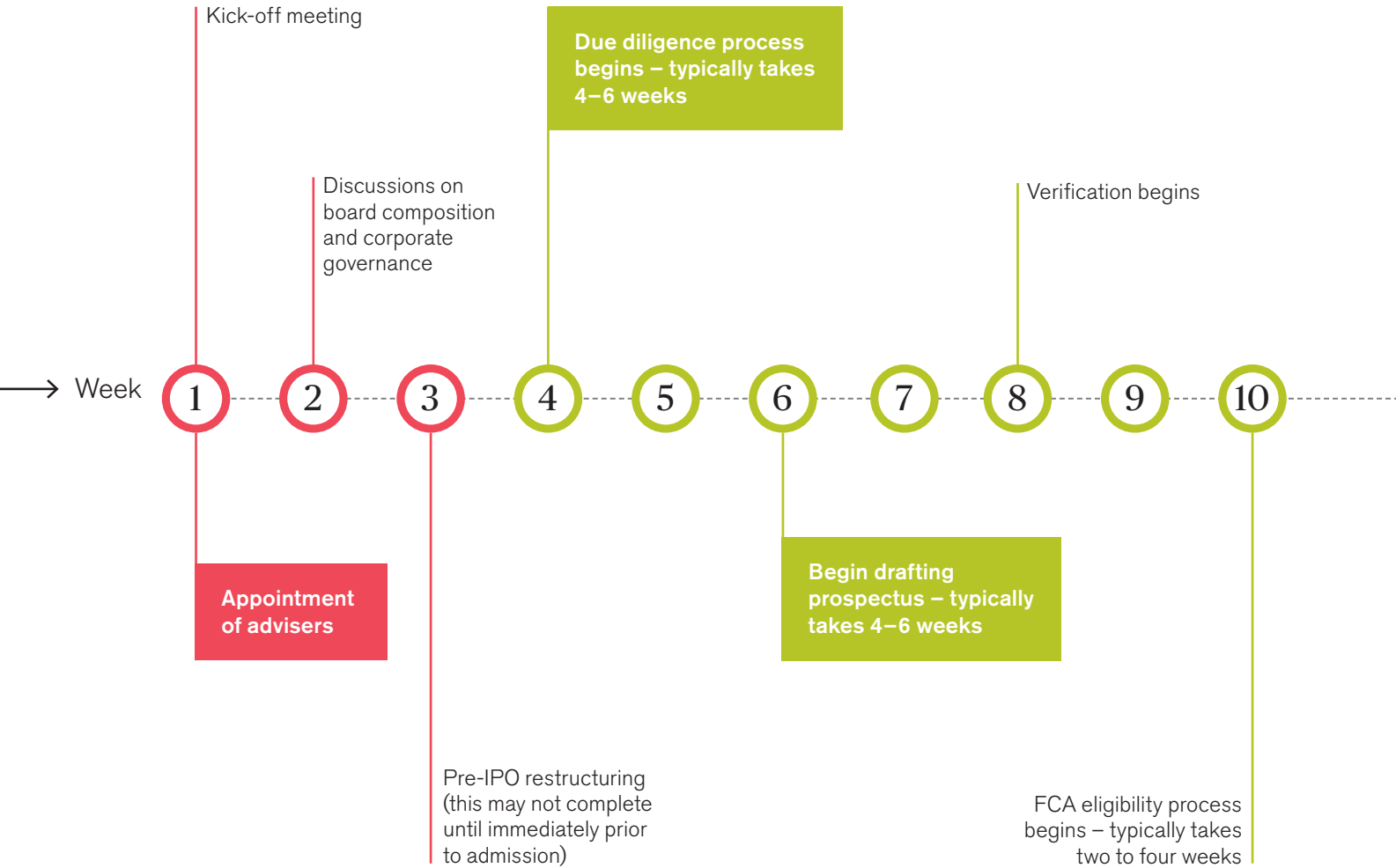
The timeline below gives an indication of the key phases of that process. However, the process will always be subject to market conditions and other external factors which will impact the timetable.

Phase 1

Appointment of advisers

Phase 2

Due diligence and verification

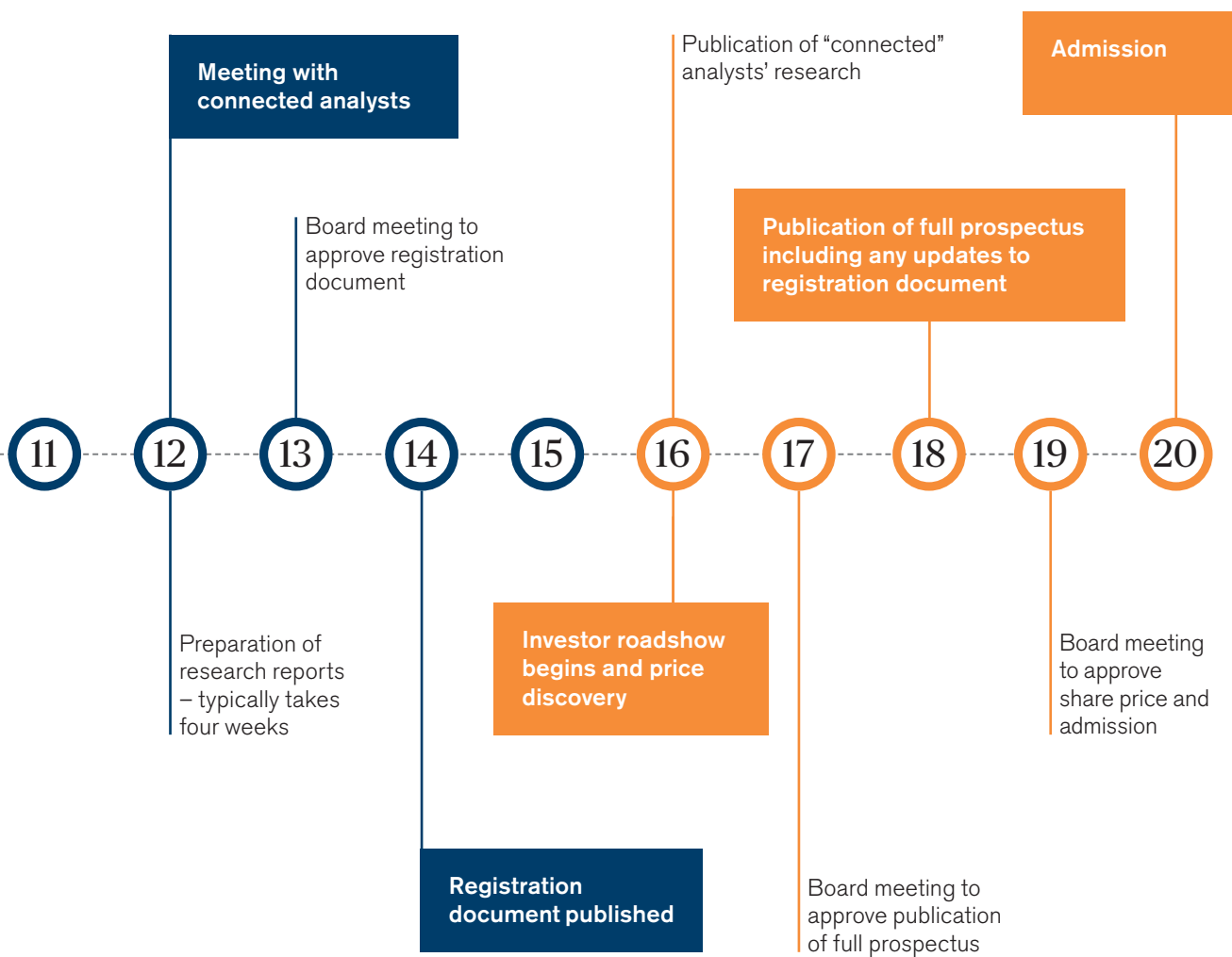


Phase 3

Marketing the company

Phase 4

Pre-admission



Main Market - the prospectus

A prospectus is a legal document which must be produced before a company can IPO its shares on the Main Market of the LSE.

Traditionally, in the UK the prospectus has been published as one composite document. However, the registration document is now published separately, up to six weeks before admission, to allow for analyst research to be more widely available to investors. A full prospectus is then published (which will include the issue price per share and any updates to the registration document) roughly two weeks before admission.

What are the contents requirements?

The prospectus needs to contain a large amount of prescribed information. Among other things, it must include details on the company and its operations and interests, directors, financial position and working capital. It must also set out details of the shares being offered as part of the IPO and the conditions attaching to the offer of those shares.

Liability

The company and its directors are responsible for the contents of the prospectus and can incur civil and criminal liability for any false or misleading statements in it. This is why the verification process is so important.

AIM

The offer document for an IPO on AIM is an admission document. This is a sort of "prospectus lite" – the content requirements are broadly the same but are less onerous in certain material respects.

A prospectus is made up of three components:



Registration document

Contains details on the company



Securities note

Contains details on the shares being offered in the IPO



Summary

Provides an overview of both the company and the shares being offered

Incentives and remuneration

As part of an IPO, a company will tend to put new incentive arrangements in place as effective recruitment and retention tools.

The impact of IPO on existing incentive arrangements

Most companies will usually have incentive arrangements in place before the IPO. If these arrangements involve share-based incentives, the company will need to understand whether they will crystallise on IPO or remain in place. It may well be that changes are needed to ensure the right outcome or to deal with any pre-IPO restructuring.

The need for any post-vesting "lock-up" agreements, under which the directors and senior management agree not to sell some or all of their shares for a period (typically 12 months), should be considered and discussed early on.

Designing the right remuneration package

Executive remuneration needs to be as flexible as possible while at the same time giving investors confidence that their interests and those of executives are properly aligned. The overall package should be competitive in the company's relevant markets. For non-executive directors, it is often the case that companies will pay part of their fees in shares that cannot be traded during the directors' time in office.

Investor expectations

Incentive plans adopted in connection with an IPO need to be aligned with institutional investor expectations for the following reasons:

- Plans which are out of line with investor expectations may raise concerns for potential investors and could attract unwanted criticism in the run-up to IPO.
- Following the IPO, the company can expect shareholder and possibly media criticism if it incentivises executives in a way which is out of line with those expectations.
- UK companies must put their directors' remuneration policy to a binding shareholder vote at least every three years. Plans put in place at IPO therefore need to provide a framework that facilitates a policy which shareholders would support.

Ongoing regulatory requirements

All employees and directors will be subject to rules on insider dealing and market abuse, which will affect any proposed dealing in the company's shares. In particular, directors and certain senior executives will be prevented from dealing in shares, exercising share options and undertaking other transactions in shares during certain periods before the announcement of results or when in possession of inside information.

Directors' remuneration report

As part of its annual report, UK-incorporated companies which are on the Main Market must publish a directors' remuneration report setting out, in detail, the directors' remuneration policy and directors' pay during the reporting year.

Life after IPO – continuing obligations

Once listed, a company will need to comply with its continuing obligations. The table below sets out some of the more notable ongoing requirements.

Requirement	Main Market	AIM
Sponsor	Sponsor	Nominated adviser
Financial reporting	Annual and half-year reporting	Annual and half-year reporting
Disclosure of inside information	As soon as possible	As soon as possible
Corporate governance	UK Corporate Governance Code – “comply or explain”	Disclosure of what corporate governance code is followed
Significant transactions	Notification required for large transactions and shareholder approval for “reverse takeovers”	Depending on size, shareholder consent or notification required
Related party transactions	Depending on size, sponsor statement and notification required	Notification required
Notification of changes to significant shareholders	Holding reaches or exceeds 3% and any whole percentage	Holding reaches or exceeds 3% and any whole percentage point thereafter
Directors’ dealing	Notification required	Notification required
Requirement to demonstrate independence from shareholders holding 30% or more	Yes	N/A
Prospectus required for further share issues	Where issue is more than 20% of issued share capital of same class	Not usually required
Requirement to produce a directors’ remuneration report	Yes	Not currently

How Macfarlanes can help you

Our capital markets practice provides comprehensive equity and debt capital markets capabilities. We operate a full-service practice used to handling transactions regardless of size and complexity.

We act for issuers, sponsors, shareholders, management, underwriters and trustees and therefore understand capital market transactions from every angle.

We advise clients in relation to:

- initial public offerings (IPOs) on each of the Main Market and AIM;
- secondary fundraisings, including placings, rights issues, open offers and other structures;
- dual track processes;
- their ongoing corporate governance obligations;
- bond issues generally, including MTNs, high yield bonds, convertibles and exchangeables;
- project bonds; and
- securitisation and other structured financings.

“

The team are commercially minded and have an excellent ability to see issues from a clients perspective and provide quality targeted legal advice from that mindset.

The UK Legal 500 2024

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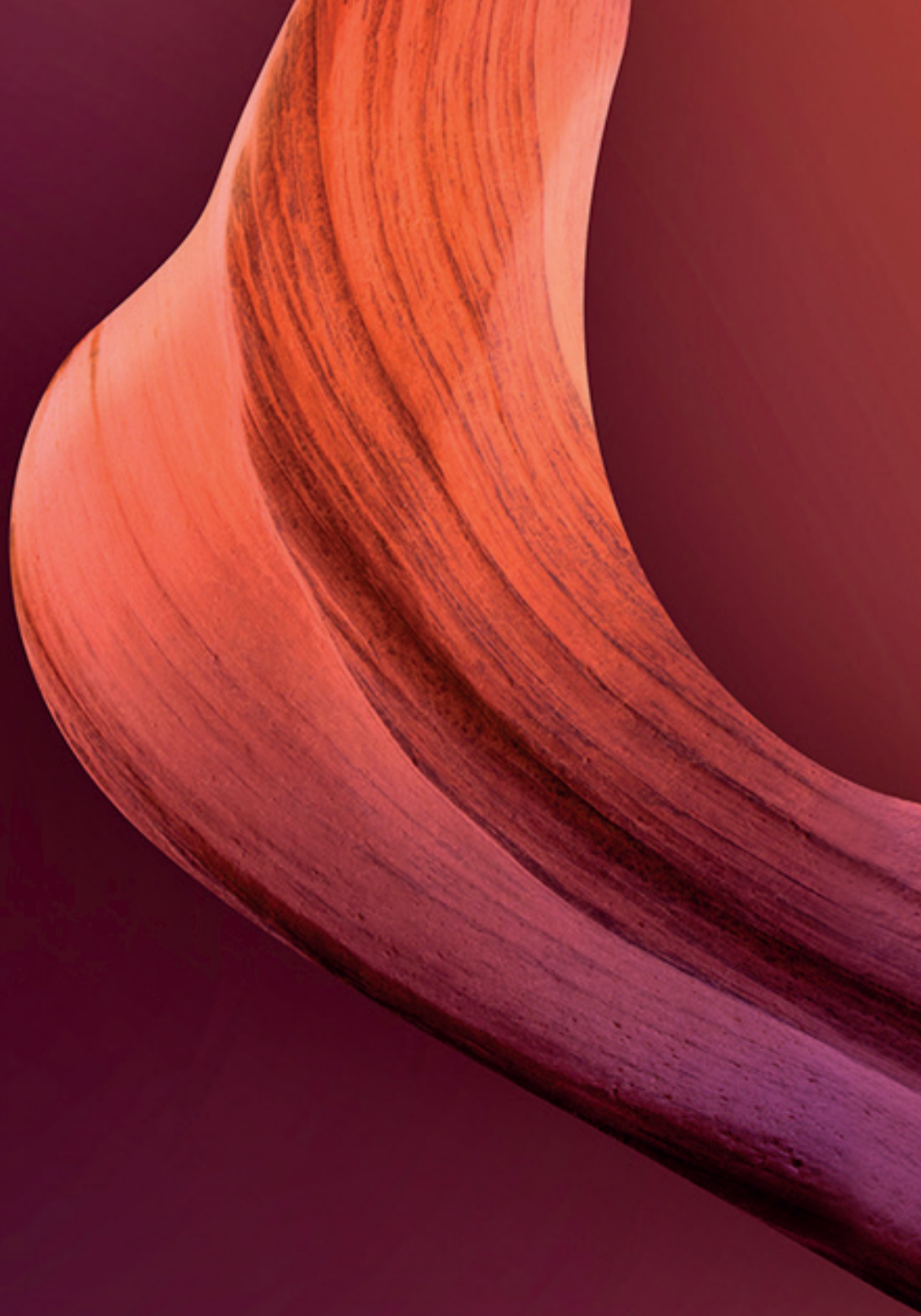


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