

Insights

COVID-19 UK - TEMPORARY CHANGES TO PUBLICATION OF ACCOUNTS, PUBLICATION OF FRC GUIDANCE ON CORPORATE REPORTING AND TEMPORARY CHANGES TO DIVIDEND PROCEDURE TIMETABLE

Mar 26, 2020

SUMMARY

Temporary measures have been published to the publication of annual accounts for Main Market and AIM companies and the dividend procedure timetable. In addition, the FRC has published guidance to assist companies in preparing their annual accounts in light of the current challenges and uncertainties.

AIM Rules – publication of annual accounts

Currently under AIM Rule 19 of the AIM Rules for Companies (“AIM Rules”), AIM companies must publish their accounts within six months of their financial year end consistent with the reporting requirement for UK public companies under the Companies Act 2006. BEIS has announced that UK companies can apply to Companies House for a three month extension for filing their accounts. In light of this, AIM Regulation have confirmed that AIM companies can apply for a three month extension to the reporting deadline for the publication of annual accounts. The request must come from the nomad prior to the AIM company’s current AIM Rules reporting deadline.

This extension is available to companies with financial year ends between 30 September 2019 to 30 June 2020.

AIM companies incorporated outside out of England & Wales will need to consider the corporate law applicable to them in determining whether they can comply with applicable law if they seek a three month extension from AIM Regulation.

Listed companies – publication of annual accounts

Currently under DTR 4 listed companies (i.e. Main Market companies whose home state is the UK) must publish their annual accounts within four months of the financial year end. The FCA has

announced temporary relief measures allowing these companies an additional 2 months to publish their annual accounts. This is not a rule change or waiver and does not currently extend to half yearly financial reports which should be published within 3 months of the half year end.

Under the temporary relief issuers will not face enforcement action for breach of DTR 4.1.3R provided that they publish their results within 6 months of their financial year-end.

For those companies that have followed the [FCA guidance](#) published on 21 March and implemented a moratorium on publication of their prelims, this moratorium will end on 5 April 2020.

Corporate reporting

The FRC has published guidance on corporate reporting. Investors have highlighted that the key information they would like to know about relates to the liquidity, viability and solvency of companies and although no one can predict the extent and duration of the pandemic nor its consequences for the global economy, the FRC believes it is reasonable for investors to expect companies to be able to articulate their expectations of the possible impacts on their specific business in different scenarios.

The FRC addresses the current ability/difficulties for boards to confirm in the accounts that they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over a period of assessment (the 'viability statement'). The FRC stresses the following:

- boards are required to have a "reasonable expectation" of the company's viability over the period of assessment – during the current emergency and unprecedented pace of change, any reasonable level of expectation would naturally carry a much lower level of confidence;
- being clear on the company's specific circumstances and the degree of uncertainty about the future is important information; and
- when presenting a company's viability statement, its board should draw attention to any qualifications or assumptions as necessary.

[See this FRC infographic](#) - five current questions investors seek information on.

The FRC also thinks it is likely that more companies will disclose "material uncertainties" to going concern in the current circumstances ie. uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern. The FRC recommends that when assessing whether material uncertainties exist, boards should consider both the uncertainty and the likely success of any realistically possible response to mitigate this uncertainty.

Market abuse

Companies should continue to consider their disclosure obligations under the market abuse regime and continuously assess whether they have inside information. Last week ESMA recommended that *“issuers should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation”*. In addition a company should create and maintain insider lists whenever it has inside information, even if that information is disclosed as soon as possible.

Dividends - background

Dividends are currently paid to shareholders by reference to those on the register of members as of the record date. Ordinarily the London Stock Exchange (LSE) requires companies with shares on the Main Market and AIM to pay cash dividends within 30 business days of the record date and dividends with options within twenty business days of the election date.

Current position

At present, we are seeing a number of companies withdrawing the proposal to pay a final dividend. If a company has not yet posted its AGM notice, any proposal to withdraw the recommendation to pay a final dividend should be announced to the market as soon as possible.

If a company has posted its AGM notice but concludes that it is not in its interests to declare a final dividend at this time, the directors should make an announcement that they no longer recommend the declaration of a final dividend pending the company and economy's position becoming clearer and that they propose to withdraw the resolution from the forthcoming meeting. FRC guidance recommends that *“The assessment of whether a dividend is appropriate should include consideration of current and likely operational and capital needs, contingency planning and the directors' legal duties, both in statute and common law.”*

For companies that have held their 2020 AGM and approved the payment of a final dividend the issue is more problematic as payment of the final dividend will become a debt payable to shareholders which cannot be cancelled and further guidance should be sought. This is in contrast to interim dividends which can be cancelled at any time before they are actually paid.

Yesterday the LSE published an update confirming that with immediate effect it will permit a deferral period of up to 30 business days for payment of a dividend but no more than 60 business days after the record date. Any deferral should be notified without delay to the Stock Situations Team. After the deferral period the dividend must be paid or cancelled, where this is permissible and notified without delay.

Any relaxation of the LSE rules does not affect the statutory and common law rules around payment of final dividends and so legal advice should always be sought.

[Inside AIM – temporary measures for publication of annual accounts](#)

[FCA statement on temporary relief for annual accounts](#)

[FRC guidance for companies on corporate reporting](#)

[Joint statement by the FCA and PRA](#)

[London Stock Exchange notice on dividend procedure timetable](#)

RELATED CAPABILITIES

- Corporate
- Franchise Mergers & Acquisitions
- Securities & Corporate Governance

MEET THE TEAM



Tessa Hastie

Co-Author, London

tessa.hastie@bclplaw.com

[+44 \(0\) 20 3400 4516](tel:+44202034004516)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.