

COVID-19: FCA announces measures to help companies raise share capital

New Measure	Description	Points to note in practice
1. Working capital statements	<p>The FCA has provided new guidance in relation to working capital statements in light of the challenges faced by companies during the COVID-19 pandemic. This guidance applies to both prospectuses and shareholder circulars published by premium listed companies where the Listing Rules require a working capital statement to be included.</p> <p>In summary:</p> <ul style="list-style-type: none"> The key modelling assumptions underpinning the reasonable worst-case scenario will be permitted to be disclosed in an otherwise clean working capital statement; and These assumptions may only be coronavirus-related. They must be clear, concise and comprehensible. 	<p>Where this guidance is followed, the working capital statement must also include the appropriate disclosure that it has been prepared in accordance with both the ESMA Recommendations and the first technical supplement to the FCA's statement available here.</p>
2. General meeting requirements	<p>The FCA has temporarily modified the Listing Rules in regard to Class 1 transactions and related party transactions. This will apply on a case-by-case basis and as such, a premium listed company undertaking a transaction within the scope of this policy may apply to the FCA for a dispensation from the usual requirement to hold a general meeting.</p> <p>An issuer looking to obtain an exemption from the requirement to hold a general meeting will need to:</p> <ul style="list-style-type: none"> Obtain written undertakings from shareholders that they approve the proposed transaction and would vote in favour of the resolution to approve the transaction; and Inform the market when the requisite number of written undertakings is obtained. <p>Further detail is available in the second technical supplement to the FCA's statement which can be found here.</p>	<p>Listed companies will still need to take into account the obligations under their articles and company law when considering whether or not a general meeting is required in connection with the relevant transaction. While the temporary modification may alleviate the need for the company to hold a general meeting in connection with a Class 1 transaction or a related party transaction, the relevant company may still need to hold a general meeting for other reasons (e.g. to allot shares on a non-pre-emptive basis in excess of existing authorities from shareholders in relation to allotment and pre-emption rights).</p>
3. Pre-emptive share issues	<p>On 1 April 2020, the Pre-Emption Group ("PEG") published a statement recommending that institutional investors should consider supporting (by voting in favour of) non-pre-emptive issuances which represent up to 20% of the relevant company's issued share capital.</p>	<p>Further detail in relation to the PEG statement including the "points to note in practice" is available in our previous publication "COVID-19: Temporary guidance from the Pre-Emption Group in relation to its expectations for issuances in the current circumstances" which can be found here. The FCA has urged market participants to review and consider the PEG's new guidance carefully.</p>
4. Shorter form prospectuses	<p>The FCA has encouraged listed companies that are seeking to issue 20% or more of their existing share capital to use the simplified prospectus regime introduced in July 2019 which is tailored to secondary issuances.</p> <p>This short-form prospectus would focus on significant changes that have occurred since the company's previous annual report. Therefore, disclosures that would not be required include an operating and financial review, disclosures on organisational structure, capital resources, remuneration and benefits and board practices.</p> <p>This regime is applicable to companies admitted to trading on a regulated market or SME Growth Market for at least 18 months.</p>	<p>It is important to note that this is unlikely to be an option where the offer has a non-EU component in a jurisdiction with its own disclosure requirements. For example, this option will be unlikely in circumstances where the offering is being extended to US investors (i.e. in circumstances where the prospectus may need to comply with both the relevant US and UK disclosure requirements).</p>