

Primary Market Technical Note

Directors' and management disclosures in share prospectuses

The information in this note is designed to help issuers and practitioners interpret our Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA.

PR Regulation
Disclosure
Annexes

Annex 1 sections 12 to 14, Annex 3 section 8 and Annex 24 section 4 of the PR Regulation set out the disclosures required for directors and managers of an issuer.

Often the disclosure relating to the key statements on convictions, bankruptcies, etc, fails to cover all persons required under item 12.1 of Annex 1. In particular, reference is often made only to the issuer's directors and the disclosure does not cover the company's senior management. We anticipate this will also be the case for drafts of documents submitted which are required to contain this disclosure under item 8.1 of Annex 3 and item 4.1.1 of Annex 24. Issuers are reminded to check whether the appropriate range of individuals have been considered before submitting their document for vetting.

In addition, the wording of the key statements under item 12.1 of Annex 1 relating to convictions and bankruptcies occasionally does not follow the actual wording of the rules. Annex 1 item 12.1 disclosures require the issuer to include details of the convictions, bankruptcies, receiverships, etc, of directors and other senior management both in a personal capacity and, where they have been acting as a director (or in a similar capacity), in a corporate or partnership at any time within the last five years. We anticipate this will also be the case for drafts of documents submitted which are required to contain statements under item 8.1 of Annex 3 and under item 4.1 of Annex 24.

Issuers are reminded that the relevant annexes require the disclosure to be made for the previous five years and not restricted to the last 12 months.

For Annex 1 item 13.1, disclosure on remuneration paid to directors and senior management is sometimes reflected as a single aggregate amount. Again, we anticipate this will also be the case for drafts of documents submitted that are required to contain statements under item 4.2 of Annex 24. In many jurisdictions (including the UK), directors' remuneration should be given on an individual basis, and so this should be disclosed as required by item 13.1.

In many cases, Annex 1 item 13.2 is not directly addressed in the prospectus. Again, we anticipate this will also be the case for drafts of documents submitted which are required to contain statements under item 4.2.2 of Annex 24. Issuers simply annotate the prospectus to refer to various disclosures relating to pension and retirement plans, but do not specifically state what amounts are set aside for pension, retirement or similar benefits (if any) as required by the rules.

Annex 1 item 14.2 disclosures commonly include reference to service contracts and the requisite notice periods and severance payable upon termination, without making specific disclosure on any 'benefits' payable on termination. In addition, in circumstances where no benefits are payable on termination, an appropriate negative statement (a requirement of Annex 1 item 14.2) is often omitted from the prospectus.

One reading of item 14.2 is that it only requires information on service contracts that include a termination provision. We do not believe that this is the intention of the rule. As such, issuers should include details on all service contracts, whether they include a termination provision or not. In any event, the reality is that it is very difficult to find a service contract without some form of termination benefit anyway, even if this is simply a notice period.