GUIDE TO CONTINUING OBLIGATIONS AND DIRECTORS RESPONSIBILITIES

COBRA RESOURCES PLC

Cooley

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INTRODUCTION

This document has been prepared in connection with the proposed admission of the entire issued ordinary share capital of Cobra Resources plc (the "**Company**") to listing on the standard segment of the Official List of the Financial Conduct Authority (the "**FCA**") and to trading on the London Stock Exchange plc's (the "**LSE**") main market for listed securities ("**Admission**"). This document provides an introduction to, and summary of, the principal continuing obligations to be observed by the Company following Admission. This document deals with the law in force in England on 1 November 2018. It is structured in three parts:

- Section 1 – A general overview of the continuing obligations to be observed following Admission ('*Memorandum On The Continuing Obligations Of A Listed Company (Official List – Standard Listing'*)); and

- Section 2 - An overview of the corporate governance regime applicable to the Company following Admission ('*Overview of the Corporate Governance Regime (Official List – Standard Listing*')).

Please note that, by its nature, a document of this kind can only provide a general summary of the relevant law as at 1 November 2018. The Company should be aware that it will be expected to comply with any future amendments that the FCA may make to the FCA Continuing Obligations or that the Government may make to the Directors Continuing Obligations. Therefore, this document should therefore never be treated as a substitute for specific advice in any particular situation. For detailed advice, please speak to the Company's solicitors, Ed Lukins (+44 20 7556 4261) or Edward Dyson (+44 20 7556 4230) of Cooley (UK) LLP.

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SECTION 1 – MEMORANDUM ON THE CONTINUING OBLIGATIONS OF A LISTED COMPANY (OFFICIAL LIST – STANDARD LISTING)

1. INTRODUCTION

The principal continuing obligations to be observed by the Company following Admission are contained in Chapters 5 and 7 of the FCA's Listing Rules (the "**Listing Rules**" or "**LRs**") the FCA's Disclosure Guidance and Transparency Rules (the "**Disclosure Guidance and Transparency Rules**" or "**DTR**") and the EU Market Abuse Regulation (EU 596/2014) ("**MAR**") (together, the "**FCA Continuing Obligations**") and are in addition to obligations imposed on directors of public companies under the Companies Act 2006 (the "**Companies Act**"), the Financial Services and Markets Act 2000 (the "**FSMA**"), the Financial Services Act 2012 (the "**FS Act**"), the LSE's Admission and Disclosure Standards (the "**Admission and Disclosure Standards**"), the Criminal Justice Act 1993, the Insolvency Act 1986 (the "**Insolvency Act**"), the Company Directors Disqualification Act 1986 and the Quoted Companies Alliance Corporate Governance Code (the "**Governance Code**"), all as amended from time to time (together, the "**Directors Continuing Obligations**").

2. ELIGIBILITY REQUIREQUIREMENTS WITH CONTINUING APPLICATION

The Company will be required to meet certain eligibility requirements on a continuing basis to maintain its standard listing on the Official List. If the Company is unable to comply with these continuing requirements, then it should consider seeking a cancellation of its listing or applying for a transfer to another listing category. The Company must notify the FCA without delay of non-compliance with certain key eligibility requirements with continuing effect.

2.1 Free float

To be eligible for Admission, a standard listed company must ensure 25% of its shares are in public hands (*LR 14.2.2R*). For this purpose, shares are not held in public hands if they are subject to a lock-up period of more than 180 days, or are held directly or indirectly by: (a) a director of the applicant or any of its subsidiary undertakings; (b) a person connected with a director of the applicant or of any of its subsidiary undertakings; (c) the trustees of any employees' share scheme or pension fund established for the benefit of any directors and employees of the applicant and its subsidiary undertakings; (d) any person who under any agreement has a right to nominate a person to the board of directors of the applicant; or (e) any person or persons in the same group or persons acting in concert who have an interest in 5% or more of the shares of the relevant class.

2.2 Freely Transferable

To be listed, shares must also be freely transferable (*LR 2.2.4R*).

3. LISTING RULES PRINCIPLES

3.1 Introduction

Following Admission, the Company will be required to observe the listing principles set out in Chapter 7 of the Listing Rules (the "**Listing Principles**"), the purpose of which is to ensure that the Company pays due regard to the fundamental role that the FCA plays in maintaining market confidence and ensuring fair and orderly markets. The Company is expected to interpret the FCA Continuing Obligations in line with the spirit and purpose of the Listing Principles.

The Listing Principles underpin the detailed rule requirements and are enforceable as rules, even where a listed company has not contravened any of the other Listing Rules or Disclosure Guidance and Transparency Rules. Breaching a Listing Principle will make an issuer liable to disciplinary action by the FCA - the FCA can take enforcement action on the basis of the principles alone, without there being a breach of a specific rule.

3.2 **Listing Principles**

The Listing Principles are as follows:

(a) *Listing Principle 1: A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations*.

In relation to Listing Principle 1, the FCA considers that a listed company should place emphasis on ensuring that it has adequate procedures, systems and controls in relation to identifying whether any obligations arise under the significant transactions or related party transactions provisions of the Listing Rules. For the purposes of Listing Principle 1, the Company should have adequate systems and controls to be able to ensure it can properly identify information which requires disclosure under the Listing Rules and Disclosure Guidance and Transparency Rules in a timely manner and ensure that any information so identified is properly considered by the directors and that such a consideration encompasses whether the information should be disclosed.

(b) *Listing Principle 2: A listed company must deal with the FCA in an open and cooperative manner*.

This supplements LR 1.3.1R, which provides that an issuer must provide to the FCA as soon as possible "any other information or explanation that the FCA may reasonably require to verify whether the Listing Rules are being or have been complied with".

4. DISCLOSURE AND CONTROL OF INSIDE INFORMATION

MAR came into effect in the UK on 3 July 2016 and is now, together with the Disclosure Guidance and Transparency Rules, the governing legislation on the disclosure and control of inside information.

What is inside information?

"**Inside information**" is information of a precise nature, which has not been made public, relating, directly or indirectly, to the Company or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments (e.g. an equity swap on the shares).

Section 2.2.3G of the Disclosure Guidance and Transparency Rules provides further guidance on what will constitute inside information. The following points are of particular note:

(a) In determining whether information would be likely to have a significant effect on the price of financial instruments, there is no prescribed figure, that is, percentage change or otherwise, to determine, what constitutes a significant effect on price as this will vary from one company to another.

(b) Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or on the price of related derivative financial instruments, shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

(c) In applying the reasonable investor test, the Company should take into account the: (i) importance of the information will vary widely from one company to another and depends on the company's size, recent developments and the market sentiment about the company and the sector in which it operates; and (ii) likelihood that a reasonable investor will make investment decisions relating to the relevant financial instrument to maximise his or her economic self-interest.

(d) The question of whether information is inside information may be finely balanced and the Company, with the help of its advisers, will need to exercise its judgement in this regard.

(e) The FCA acknowledges that companies may well provide unpublished information to third parties, such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not of itself make it inside information and it will only be regarded as such if it meets all the requirements described above.

4.2 **General obligation to disclose inside information**

Pursuant to article 17(1) of MAR, the Company is under an obligation to inform the public of inside information which directly concerns the Company as soon as possible and in a manner that enables fast access and complete, correct and timely assessment of the information by the public. The information must be disclosed via a Regulatory Information Service ("**RIS**"). It may be possible to delay the disclosure of inside information in certain, very limited circumstances and subject to certain restrictions (see paragraph 4.3 below).

The Company must post and maintain on its website, for at least five years, all inside information it is required to disclose publicly (*article 17(1) MAR*). European Securities and Markets Authority ("**ESMA**") provides further guidance in the "Final Report on the Draft Technical Standards on the MAR" clarifying that any information posted on an issuer's website should: (a) be accessible in a non-discriminatory manner and free of charge; (b) be easily identifiable; and (c) clearly indicate the date and time of the disclosure.

The directors are required to monitor carefully and continuously whether changes in the circumstances of the Company are such that an announcement obligation has arisen under MAR. For example, where there is press speculation or market rumour regarding the Company, the Company should assess whether a disclosure obligation arises under article 17(1) of MAR. This requires a careful assessment by the Company as to whether the Company has inside information.

The Company must not publish inside information on its website prior to notification to a RIS and cannot publish information on its website as an alternative to its disclosure via a RIS. This obligation should also be viewed in the light of Listing Principle 1 (see paragraph 3.2(a) above) which requires the Company to have systems in place to ensure that information is escalated in a timely way to the board to enable it to decide whether any information is inside information which should be announced. In its enforcement decisions, the FCA is highly critical of any arguments that the right information did not reach the correct people at the right time.

4.3 **Delaying disclosure**

Article 17(4) of MAR permits the Company to delay the public disclosure of inside information provided all of the following conditions are met:

(a) immediate disclosure is likely to prejudice the legitimate interests of the Company;

(b) the delay of disclosure is not likely to mislead the public; and

(c) the Company is able to ensure the confidentiality of that information.

ESMA has provided guidance by way of a non-exhaustive list of situations that would be regarded as:

(a) legitimate interests of the Company that are likely to be prejudiced by immediate disclosure:

(i) ongoing negotiations where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure and in particular, in the event that the financial viability of the Company is in grave and imminent danger, but not within the ambit of insolvency law, where such disclosure would seriously adversely affect conclusion of such negotiations designed to ensure long-term financial recovery of the Company;

(ii) decisions taken or contracts made by the management body of the Company which need the approval of another body of the Company in order to become effective, where the organisation of such a company requires the separation between those bodies, provided that public disclosure of the information before such approval, together with the simultaneous announcement that this approval is still pending, would jeopardise the correct assessment of the information by the public;

(iii) the Company has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the Company;

(iv) the Company is planning to buy or sell a major holding in another entity and the implementation of such a plan is likely to be jeopardised with immediate disclosure of that information; or

(v) the Company has previously announced a deal or transaction and is discussing with a public authority (e.g. competition authorities) about possible conditions that such authority might impose on the Company for the deal or transaction to be effective.

(b) likely to mislead the public, where the inside information that the Company intends to delay disclosure of:

(i) is materially different from the previous public announcement by the Company on the matter to which the information relates to;

(ii) regards the fact that the Company's financial objectives are not likely to be met, where such objectives were previously publicly announced; or

(iii) is in contrast with the market's expectations, where such expectations are based on signals that the Company previously sent to the market, such as interviews, roadshows or any other type of communication organised by the Company or with its approval.

These situations are not exhaustive and the directors should carefully consider when delaying disclosure may or may not be appropriate by speaking with Cooley. A company should not, in the FCA's opinion, be obliged to disclose impending developments which could be jeopardised by premature disclosure.

If the Company decides to delay disclosure, it will remain under an obligation to inform the FCA that disclosure has been delayed immediately after the information is disclosed to the public and the FCA may request a written explanation of how the conditions above have been met. However, if disclosure has been delayed but the confidentiality of that inside information is no longer ensured (including market rumour situations where that rumour is sufficiently accurate to indicate that confidentiality can no longer be ensured), the Company must disclose that inside information to the public as soon as possible (*article 17(7) MAR*).

Section 2.6.3G of the Disclosure Guidance and Transparency Rules refers to the possibility of making a holding announcement and/or requesting that trading be temporarily suspended until the Company is in a position to make an announcement. In case of any doubt as to the timing of announcements, the Company is recommended to consult the FCA at the earliest opportunity.

4.4 **Selective disclosure**

Under article 17(8) of MAR, selective disclosure, where justified by the circumstances, may be made to those who owe a duty of confidentiality to the Company, including analysts, employees, credit rating agencies, financial providers and major shareholders as well as other third parties such as trade unions or government departments. Where the Company, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties, they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a unintentional disclosure.

However, the Company should note that as DTR 2.5.9G points out, the wider the group of recipients the greater the likelihood of a leak triggering the need for public disclosure under MAR.

Furthermore, provided certain conditions are met, "market sounding" or gauging the interest of potential investors in a possible transaction and any conditions relating to such transaction prior to public disclosure of the transaction, is permissible (article 11 MAR).

4.5 **Control of inside information**

Pursuant to article 18 of MAR, the Company is required to:

(a) draw up an "insider list", which is a list of all those who have access to inside information and are working for it under a contract of employment or otherwise performing tasks through which they have access to inside information;

(b) promptly update the insider list as and when needed; and

(c) provide the insider list to the FCA as soon as possible upon request.

FCA guidance under the Disclosure Guidance and Transparency Rules provides that the Company should have a framework for the control of inside information. The Company must take all reasonable steps to ensure that each person on the insider list provides written acknowledgment of the legal and regulatory duties entailed and is aware of the civil liability regime established under MAR. The Company remains fully responsible even if a third party draws up and updates the insider list.

Insider lists must be kept for at least five years after they were drawn up or updated (*article 18(5) MAR*). Each section of the insider list must include: the identity of each person with access to the relevant inside information; the reason why they are on the insider list; and the date and time at which they obtained access to the inside information.

4.6 **Potential liability**

The rules on the disclosure and control of inside information are essential to avoid insider dealing and to ensure that investors are not misled. There are potential civil consequences under MAR and criminal liability for breach under the Criminal Justice Act 1993.

5. **ROUTINE DISCLOSURE OBLIGATIONS**

Pursuant to the Listing Rules and the Disclosure Guidance and Transparency Rules, the Company will be required to make routine disclosures in the following cases:

5.1 **Making documents publicly available**

The Company is required to make the following available for public inspection:

(a) all circulars, notices, reports or other documents to which the Listing Rules apply at the same time as they are issued (*LR 14.3.6R(1)*); and

(b) all resolutions passed at general meetings (other than resolutions concerning ordinary business at an annual general meeting) as soon as possible after the relevant general meeting (*LR 14.3.6R(2)*),

by posting the relevant document on the national storage mechanism (the "**NSM**") (an official mechanism for the storage of regulated information) and forwarding two copies of the relevant document to the FCA at the same time as they are issued.

The Company must also notify a RIS when a document has been forwarded to the FCA (unless the full text of the relevant document is provided to the RIS), setting out where copies of the relevant document can be obtained (e.g. the NSM).

5.2 **Notifications relating to share capital**

Following Admission, the Listing Rules and the Disclosure Guidance and Transparency Rules will require the Company to notify a RIS as soon as possible of, amongst other things, the following information relating to its share capital:

(a) any proposed change in the Company's capital structure or that of its listed debt securities (if any) save that the announcement of a new issue may be delayed while marketing or underwriting is in progress (*LR 14.3.17R(1)*);

(b) any redemption of its listed shares, including details of the number of shares redeemed and the number of shares of that class outstanding following the redemption (*LR 14.3.17R(3)*);

(c) the results of any new issue of equity securities or a public offering of existing equity securities as soon as it is known (*LR 14.3.17R(7)*) (save that where the equity securities are subject to underwriting, the announcement can be delayed for up to two business days until the underwriting commitment is satisfied or lapses), except in respect of any block listing of the Company's equity securities;

(d) without delay, to make public any change in the rights attached to its various classes of shares or to any listed securities which are convertible into equity shares (*DTR 6.1.9R*); and

(e) where the Company becomes aware that the proportion of any class of listed shares held by the public has fallen below 25% of the total issued share capital of that class (*LR 14.2.2R(3)*).

5.3 **Notifications in relation to changes in voting rights**

For the purposes of the below discussion, a person discharging managerial responsibilities (a "**PDMR**") is a natural or legal person in the Company who is:

(a) a member of the administrative, management or supervisory body of the Company; or

(b) a senior executive who is not a member of the bodies referred to in point (a) but who has regular access to inside information relating directly or indirectly to that entity and the power to take managerial decisions affecting the future developments and business prospects of the Company.

A person may be a "senior executive" irrespective of the contractual arrangement between the person and the Company or, in the absence of any such arrangement, provided that the conditions in point (b) above are met.

A person closely associated (a "**PCA**") for the purposes of the Disclosure Guidance and Transparency Rules, in relation to any PDMR, is:

(a) his or her spouse, or a partner considered to be equivalent to a spouse, that is, a civil partner;

(b) his or her dependent child, including step-child, that is, a child who is under the age of 18 years, is unmarried and does not have a civil partner;

(c) his or her relative who has shared the same household for at least one year on the date of the transaction concerned; or

(d) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a PDMR or by a person referred to in point (a), (b) or (c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

The Company must draw a list of all the PDMRs and their PCAs and further notify all their PDMRs, in writing, of their obligations as set out in subparagraph 5.3(a) below. The PDMRs must keep their copy of the notification from the Company and in tum, notify their PCAs, in writing, of their obligations.

(a) **Dealings by PDMRs and their PCAs**

The Listing Rules, Disclosure Guidance and Transparency Rules and MAR place particular obligations on PDMRs regarding notifications to be made following any dealings in the shares of the Company by PDMRs and their PCAs.

(b) **Dealings by major shareholders**

Under DTR 5, where a major shareholder holds shares in the Company, they must notify the Company of the percentage of voting rights held if that percentage (held directly or indirectly) reaches, exceeds or falls below 3% or any whole percentage figure above 3%. This includes shares held directly or indirectly, by the Company and its subsidiaries (together, the "**Group**") and any shares held through controlled companies. In addition, the notification obligations also apply in respect of certain financial instruments related to the shares, including options, futures, swaps, forward rate contracts and other derivative contracts.

Following receipt of this information, the Company must notify a RIS without delay and, in any event, by the end of the following business day, of these notifiable interests in its voting shares. The notification must include the date on which the information was disclosed to the Company and, if known, the date on which the transaction was effected.

Responsibility for making the disclosures under DTR 5 falls upon the shareholders personally. However, in its enforcement decisions, the FCA makes it clear that it expects listed companies not only to have controls in place in relation to shareholder dealings but also systems to monitor shareholder dealings to identify any breaches.

(c) **Total voting rights announcements**

So that major shareholders can work out whether they have to notify their holding, the Company must announce the total number of voting rights and capital in respect of each class of shares which it issues and the total number of voting rights attaching to shares held in treasury (if applicable) at the end of each calendar month in which an increase or decrease has occurred. In practical terms, the Company should do this on the first trading day of each month.

5.4 Notifications relating to buy-backs by the Company

Under the Disclosure Guidance and Transparency Rules the Company is required to make public the percentage of voting rights attributable to the shares it holds following an acquisition or disposal of its own shares where the percentage reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights, as soon as possible and in any event within four trading days (*DTR 5.5.1R*).

6. FINANCIAL REPORTING OBLIGATIONS

In accordance with Chapter 4 of the Disclosure Guidance and Transparency Rules, following Admission, the Company will be required to prepare and publish the annual report (the "**Annual Report**") and half-yearly report (the "**Half-Yearly Report**"). While it is not required to prepare an interim management statement, the Company may, as a matter of practice, publish an update on financial position and/or trading performance on a quarterly basis.

There is no longer any requirement for the Company to produce a preliminary statement of annual results.

The content requirements for the periodic financial reports are set out in Chapter 4 of the Disclosure Guidance and Transparency Rules

6.1 Annual Report

Pursuant to DTR 4.1.3R, the Company must publish its Annual Report to shareholders as soon as possible after the accounts have been approved and in any event within four months of the end of the financial period to which they relate. Publication for these purposes means a RIS announcement (in unedited full text) of information from its Annual Report of a type that would be included in its Half-Yearly Report announcement (see paragraph 6.2 below). The announcement must also indicate on which website the full Annual Report is available. The Company must then ensure that its Annual Report remains publicly available free of charge for at least ten years (*DTR 4.1.4R*).

A copy of the Annual Report must also be sent to each of its shareholders (in hard copy, or where permitted, in electronic form or by means of the Company's website). The Annual Report must be sent no later than 21 days before the Company's annual general meeting.

(a) General content requirements under the Disclosure Guidance and Transparency Rules

In accordance with DTR 4.1.5R, the Annual Report must comprise:

(i) the audited financial statements;

(ii) a management report, containing a fair review of the development and performance of the Company's business and describing the principal risks and uncertainties that the Company faces; and

(iii) responsibility statements, by the persons responsible at the Company (who the FCA expects would be the directors), stating that the accounts give a true and fair view and the management report includes a fair review of the development and performance of the business.

(b) **Recommendations of the Governance Code**

The directors should be aware of the recommendations of the Governance Code which affect the presentation and content of the Annual Report and include:

(i) a clear explanation of how the Company applies the Governance Code;

(ii) an explanation of the Company's business model and strategy, including key challenges in their execution and how they will be addressed;

(iii) a description of how the board has embedded risk management in order to execute and deliver strategy, including what the board does to identify, assess and manage risk;

(iv) the identity of those directors who are considered to be independent; where there are grounds to question the independence of a director, through length of service or otherwise, this must be explained;

(v) a description of the time commitment required from directors (including non-executive directors as well as part-time executive directors);

(vi) details of the number of meetings of the board (and any committees) during the year, together with the attendance record of each director;

(vii) the relevant experience, skills and personal qualities and capabilities that each director brings to the board (a simple list of current and past roles is insufficient);

(viii) how each director keeps their skillset up-to-date;

(ix) a high-level explanation of the board performance effectiveness process, and where a board performance evaluation has taken place in the year, a brief overview of it, how it was conducted and its results;

(x) how the culture is consistent with the Company's objectives, strategy and business model in the strategic report and with the description of principal risks and uncertainties; and

(xi) the work of any board committees undertaken during the year, including separate reports by the audit committee and remuneration committee.

(c) **Companies Act**

The Companies Act also requires the Company to prepare a directors' report, a strategic report and a directors' remuneration report.

Directors' report

The board must prepare a directors' report for each financial year containing the information specified in Schedule 7 of the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulation 2008 and sections 416 and 418 of the Companies Act. The directors' report must be approved by and signed on behalf of the board and laid before the Company in a general meeting. Non-compliance with the requirement for a directors' report may render the directors liable to a fine. It should include, for example:

(i) the names of the persons who, at any time during the financial year, were directors of the Company (*section 416(1) Companies Act*);

(ii) the amount (if any) that the directors recommend should be paid by way of dividend (*section 416(3) Companies Act*);

(iii) The existence, at any time during the financial year to which a directors' report relates or when the directors' report is approved, of any qualifying indemnity provision (whether made by the Company or otherwise) for the benefit of one or more directors of the Company or directors of an associated company (*section 236 Companies Act);*

(iv) A statement by the directors that (unless the Company qualifies for an exemption for the financial year as to audit of accounts and directors take advantage of that exemption):

(A) so far as the directors are aware, there is no relevant audit information of which the auditors are unaware; and

(B) the directors have taken all reasonable steps to ascertain any relevant audit information and ensure the auditors are aware of such information (*section 418(2) Companies Act*).

(v) a corporate governance statement (*DTR 7.2*);

(vi) disclosures on greenhouse gas emissions, including the annual quantity of greenhouse gas emissions in tonnes of carbon dioxide resulting from activities for which the Company is responsible (*schedule 7, Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008*):

(vii) a statement showing, at a date not more than one month prior to the date of the notice of the annual general meeting:

(A) all information disclosed to the Company in accordance with DTR 5; or

(B) that there have been no disclosures, if no disclosures have been made;

(viii) a statement by the directors (which must be reviewed by the auditors before publication) that the business is a going concern, together with supporting assumptions or qualifications (as necessary); and

(ix) details of any shareholders' authority for the purchase of own shares and particulars relating to any such purchases.

(d) **Strategic report**

The Company must produce a stand-alone strategic report in addition to the directors' report (*sections 414A to 414D Companies Act*), the specified purpose of which is to inform shareholders and help them assess how the Company's directors have performed their duty to promote the success of the Company. The strategic report must contain a fair review of the Company's business and a description of the principal risks and uncertainties facing the Company. The review required is a balanced and comprehensive analysis of the development and performance of the Company's business during the financial year and position of the Company's business at the end of the year, consistent with the size and complexity of the business.

To the extent necessary for an understanding of the development performance or position of the Company's business, the strategic report must include:

(i) analysis using financial key performance indicators and where appropriate, analysis of other key performance indicators including information relating to environmental and employee matters;

(ii) the main trends and factors likely to affect the future development, performance and position of the Company's business; and

(iii) information about (A) environmental matters (including the impact of the Company's business on the environment), (B) the Company's employees, and (C) social, community and human rights issues, including information about any policies of the Company in relation to those matters and the effectiveness of those policies.

In addition, the strategic report must include:

(i) a description of the Company's strategy and business model; and

(ii) a breakdown showing at the end of the relevant financial year:

(A) the number of persons of each sex who were directors of the Company;

(B) the number of persons of each sex who were senior managers of the Company (other than persons included within (A) above); and

(C) the number of persons of each sex who were employees of the Company.

The strategic review should also, where appropriate, refer to and explain amounts included in the Annual Report.

The strategic report must be approved by the board and signed on behalf of the board by a director of the Company or the secretary. A copy of the strategic report must be delivered to the Registrar of Companies. Non-compliance with the requirement for a strategic report may render the directors liable to a fine.

(e) **Directors' remuneration report**

Admission will give the Company 'Quoted Company' status, and in accordance with section 420(1) Companies Act, must produce a directors' remuneration report. It should comprise a forward looking policy report and a report on how the remuneration policy was implemented in the previous year.

Both parts of the report must be approved by the board. A binding ordinary resolution to approve the policy section of the report must be put to shareholders at least once every three years. An ordinary resolution to approve the implementation policy must be put to shareholders at each annual general meeting although this resolution is advisory only and not binding.

Once the policy is approved, the Company will only be able to make a remuneration payment or payment in respect of a loss of office to a director which is in accordance with the policy or which is separately approved by shareholders. The policy should explain clearly how pay supports the strategic objectives of the Company. The implementation policy should address how the Company has implemented its pay policy over the previous year, including details of actual sums paid. If the Company fails the advisory vote, this will automatically trigger a binding vote on policy the following year.

The report must be approved by the board and signed by a director or the secretary of the Company on the board's behalf. The directors' remuneration report and the auditors' report on the auditable part of the directors' remuneration report must be delivered to the Registrar of Companies. A failure to have the report signed on behalf of the board renders the Company and every officer of it who is in default guilty of an offence and liable to a fine.

6.2 **Half-Yearly Report**

Pursuant to DTR 4.2.2R, the Company must prepare and publish a Half-Yearly Report within three months of the end of the first six month period of the financial year and must make the Half-Yearly Report publicly available for at least ten years.

The Half-Yearly Report must comprise:

(a) a condensed set of financial statements;

(b) an interim management report, including details of any important events in the relevant period, their impact on the condensed set of financials, a description of the principal risks and uncertainties for the remaining six months and details of related party transactions that have taken place in the relevant period that have materially affected the financial position or the performance of the Company; and

(c) responsibility statements, by the persons responsible at the Company (who the FCA expects would be the directors), stating that the condensed financial statements give a true and fair view and the interim management report includes a fair review of the development and performance of the business, and indicate if it has been audited or reviewed by auditors and, if so, the audit report or review must be reproduced in full.

The accounting policies and presentation applied to interim figures must be consistent with those applied in the latest Annual Report, save where such policies and presentations are to be changed in any subsequent Annual Report and the changes and the reasons for the changes are disclosed in the Half-Yearly Report or the FCA otherwise agrees.

The Company must disclose the Half-Yearly Report to the public in unedited full text via a RIS.

7. **RELATIONSHIP WITH SHAREHOLDERS**

7.1 **Communications with shareholders**

(a) **General**

There are various obligations on the Company designed to ensure that its shareholders are given sufficient information to exercise their rights. The Company must inform its shareholders of meetings they are entitled to attend (*section 307 Companies Act*) and enable them to exercise their rights to vote (*section 284 Companies Act*).

The Company is also permitted to communicate with shareholders electronically (e.g. by placing communications on its website), subject to compliance with various procedural requirements (*Part 4, Schedule 5, Companies Act*).

(b) **Circulars**

The Company will be obliged to send to its shareholders information regarding certain matters including, in particular, details of certain transactions. The Listing Rules set out certain general requirements as to the contents of such circulars, although there will also be other specific requirements depending on the nature of the relevant transaction. The Company must make all circulars, notices, reports or other documents to which the Listing Rules apply available for public inspection at the same time as they are issued (*LR 14.3.7R*).

If a circular is of a "routine nature", the Company does not need to obtain the prior approval of the UK Listing Authority before sending it to shareholders, provided it complies with the general and specific content requirements of the Listing Rules and does not contain any unusual features. Examples of such circulars include circulars in connection with an authority to allot shares on a non pre-emptive basis, a bonus issue, a scrip dividend alternative or mandate scheme or the purchase of own shares.

Any resolutions to approve any such matters would commonly be proposed at the Company's annual general meeting, and, consistent with this, the circular convening an annual general meeting (which will form part of the Annual Report) need not be submitted to the UK Listing Authority for prior approval if only ordinary business and business of a "routine nature" as described above are to be conducted at such meeting. If any special business, as set out in Part 6 Schedule 7 of Large and Medium Sized Companies and Groups Regulations (2008/410), is to be conducted at an annual general meeting, an explanatory statement must be incorporated in the directors' report (required for all UK companies pursuant to section 415 of the Companies Act) in the Annual Report.

All other circulars must be submitted to the UK Listing Authority for prior approval at least ten clear business days before the intended date of publication.

7.2 **Equality of treatment**

DTR 6.1.3R provides that the Company, as an issuer of shares, must ensure equal treatment for all holders of the same class of shares. Further, under DTR 6.1.4R, the Company must ensure that all facilities and information necessary to enable holders to exercise their rights are available in the United Kingdom and that the integrity of data is preserved, to which end, the Company must designate as its agent a financial institution through which shareholders may exercise their financial rights.

7.3 **Pre-emption rights in respect of the allotment of new shares**

(a) **Companies Act requirements**

Section 561 of the Companies Act prohibits the Company from allotting "equity securities" to potential new investors for cash on any terms unless it has made an offer to all existing shareholders of the Company to allot shares to them pro rata to their existing holdings on the same or more favourable terms. Breach of this provision would render the Company, and every officer who knowingly authorised or permitted the breach, jointly and severally liable to compensate any person to whom the offer should have been made for losses, damages, costs or expenses suffered as a result of the breach.

"**Equity securities**" includes shares (other than shares allotted under an employees' share scheme or shares which carry a right to participate to a limited extent only on a distribution of profits or assets) and any right to subscribe for, or to convert any security into, such shares.

(b) **Pre-Emption Guidelines**

Guidelines published by the Pre-Emption Group (which includes the Investment Committees of the Investment Management Association and Pensions and Lifetime Savings Association, together with a number of City and industry representatives) recommend that any general disapplication of statutory pre-emption rights (for example, that sought at the Company's annual general meeting) should be limited to 5% of the Company's issued ordinary share capital in any one year or 7.5% in any three-year rolling period although they also emphasise that there may be flexibility around these figures, depending on the circumstances including prior consultation with shareholders.

It should be noted that the guidelines allow for a specific disapplication of statutory pre-emption rights of a further 5% for the Company's issued ordinary share capital provided that the Company confirms that it intends to use it only in connection with an acquisition or specified capital investment which is announced contemporaneously with the issue, or which has taken place in the preceding six-month period and is disclosed in the announcement of the issue. If this additional authority is granted, then the Company will no longer have to comply with the restriction that no more than 7.5% of the Company's issued share capital should be issued non-pre-emptively in any three year rolling period.

The guidelines also recommend that the maximum amount of the discount to market value at which shares are issued for cash to non-shareholders pursuant to any such disapplication should be 5%.

8. REVERSE TAKEOVERS

A reverse takeover is a transaction consisting of an acquisition directly by a listed company or one of its subsidiaries or by a new holding company of the listed company or otherwise, of a business, unlisted company or assets where any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the listed company.

The rules relating to reverse takeovers are found in Listing Rule 5.6. Listing Rules requirements for a reverse takeover can include:

(a) shareholder approval of the transaction;

(b) a suspension of the issuer's securities from trading (*LR 5.1.1R*); and

(c) the cancellation of the listing of the issuer's securities (*LR 5.6.19G*). The issuer, as enlarged by the acquisition, will therefore need to reapply for admission if it wishes to remain listed following completion of the transaction. To do so, like an entirely new applicant, the enlarged group must satisfy the relevant eligibility criteria and publish a prospectus.

9. OTHER FCA REQUIREMENTS

9.1 Contact details to the FCA

The Company must ensure that the FCA is provided with the contact details of at least one person to act as the first point of contact with the FCA in relation to the Company's compliance with the Listing Rules and the Disclosure Guidance and Transparency Rules. The contact person must be knowledgeable about the Listing Rules, be able to ensure that any necessary action is taken on a timely basis and be available between 7.00 a.m. and 7.00 p.m. on business days. The Company may wish to appoint a broker or sponsor to perform this role (*LR 14.3.8R*)

9.2 Sanctions for breach of the Listing Rules and the Disclosure Guidance and Transparency Rules

The FCA has the power under section 91 FSMA to issue public censure and/or impose financial penalties for breach of the Listing Rules and Disclosure Guidance and Transparency Rules. This power extends beyond the Company and includes PDMRs, their PCAs and any former directors who have knowingly been involved in the breach. It should be noted that any disciplinary action taken against the Company can be in addition to any taken against PDMRs, their PCAs or former directors.

The amount of the penalty imposed will depend on a range of factors considered by the FCA including the seriousness of the breach, whether the breach was deliberate or reckless and whether the person committing the offence is an individual.

Proceedings under section 91 FSMA must be commenced within three years of the FCA becoming aware of the contravention or of the circumstances from which the contravention could reasonably be inferred.

In certain circumstances the FCA may decide that it is not appropriate to bring formal disciplinary proceedings against a company or relevant individuals, as appropriate. Where, for example, the breach of the Listing Rules by a listed company is minor or a director has taken immediate and full remedial action, the FCA may decide to issue a private warning to that person.

Where the FCA proposes to take formal disciplinary action under section 91 FSMA, it will serve a warning notice stating its reasons for doing so and, in the case of a financial penalty.

The amount of the proposed penalty. This notice will also indicate that there is a right of referral to the Financial Services and Markets Tribunal. The FCA will follow its warning notice by serving a decision notice. In deciding the amount of any penalties to be imposed, the FCA will consider the seriousness or the contravention, the mental element (deliberate or reckless) and whether the person committing the offence is an individual.

If the FCA considers that a listed company has contravened the Listing Rules or the Transparency Rules, it may also cancel or suspend the relevant company's listing. If the FCA suspends the listing of a company's shares, the Exchange will suspend trading of those shares.

10. **CONTINUING OBLIGATIONS UNDER THE LSE ADMISSION AND DISCLOSURE STANDARDS**

The Company must also comply with the Admission and Disclosure Standards of the LSE, which require it to comply with the FCA's requirements for listed companies. Accordingly, a breach of the FCA rules may be deemed to be a breach of the Admission and Disclosure Standards.

The Admission and Disclosure Standards set out the admission requirements and the ongoing disclosure requirements which issuers with securities admitted to trading on the markets of the LSE have to observe. There are certain continuing obligations imposed by the Admission and Disclosure Standards in addition to the Listing Rules and the Disclosure Guidance and Transparency Rules, including contacting the LSE before any announcement of a timetable for a corporate action affecting the rights of shareholders (including for dividends and open offers) and providing details of constitutional amendments to them. The LSE's powers for breach of its Admission and Disclosure Standards are similar to those of the FCA and include public censure of an issuer, financial penalties, a restitution order and cancellation of the Company's right to have its shares traded on the main market.

11. **DIRECTORS**

11.1 **Directors' duties**

Sections 170-77 and 182 Companies Act, set out the general duties owed by directors to the Company.

(a) **Duty to act within powers (*section 171 Companies Act*)**

A director must act in accordance with the Company's constitution and only exercise powers for the purposes for which they were conferred.

Please note that the Company's constitution is defined very broadly. In addition to the Company's articles of association, it includes resolutions or decisions made in accordance with the constitution, any shareholders' decision which is treated as a decision of the Company, and resolutions and agreements affecting the Company's constitution which have to be filed at Companies' House. A director will have to ensure he or she is aware of all such resolutions, decisions and agreements, so as to ensure he or she can act in accordance with this general duty.

A director must not cause the Company to undertake activities outside the sphere permitted by the Company's constitution. In addition, the directors will be obliged to comply with the procedural and other requirements imposed by the Company's constitution.

(b) **Duty to promote the success of the Company (*section 172 Companies Act*)**

A director must act in the way he or she considers, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole. In doing so, he or she must have regard to a non-exhaustive list of six factors including:

(i) the likely consequences of any decision in the long-term;

(ii) the interests of the Company's employees;

(iii) the need to foster the Company's business relationships with suppliers, customers and others;

(iv) the impact of the Company's operations on the community and the environment;

(v) the desirability of the Company maintaining a reputation for high standards of business conduct; and

(vi) the need to act fairly as between shareholders of the Company.

When making a decision, a director should give proper consideration to the above factors, along with any other factors which are relevant to the matter in question. This requirement to have regard to these factors is subordinate to the overriding duty to promote the success of the Company. Notwithstanding this, the duty to exercise reasonable skill, care and diligence must be complied with and the directors should act in good faith accordingly. Parliamentary statements have explained that it is for the directors to form a good faith judgement about what is to be regarded as success of the Company for the benefit of the shareholders as a whole. Success is essentially what the shareholders want the Company to achieve and, for a commercial company (unless the constitution provides otherwise), it may generally be taken to mean a long term increase in value.

Having regard to the above list of factors should not be a box ticking exercise, and there is nothing to be gained by the Company in creating a paper trail simply stating that the directors considered the list of six factors. Equally, directors will not be absolved from their duty to take account of the relevant factors simply because management has been tasked with preparing detailed supporting papers referring to the relevant factors. However, in circumstances where one or more of the factors is particularly relevant to a significant decision, it may be appropriate to record the board's considerations. Evidencing consideration of the factors (e.g. in board minutes) may be of particular benefit in circumstances where the directors anticipate a problem or wish to have on record a demonstration that they have carried out their duties. One reason for wishing to have such a record, particularly for major decisions, relates to the preparation of the Company's business review; part of the purpose of which is to demonstrate to shareholders how the directors have performed their duty to promote the success of the Company (and hence, how they have had regard to the relevant factors).

Similar principles apply to all board decisions, whether made at board or committee level, or under delegated or ostensible authority.

However, if the Company is insolvent or nearing insolvency, the interests of the creditors will prevail over those of shareholders.

A director is not entitled to take into account the interests of only one shareholder in priority over shareholders as a whole. This may present difficulties to a director who has been appointed to the board by particular shareholders (e.g. where the Company is a joint venture or has one significant shareholder), as he or she is not allowed to take account exclusively of the interests of the shareholder who appointed him or her. A director may take into account the interests of other companies in the Group (or the interests of the Group as a whole) only to the extent that it will promote the success of the Company to do so. In other words, a director will not normally promote the success of the Company if he or she causes the Company to act in a manner which promotes the success of the Group but damages the interests of the Company itself.

Where a director is considering a proposed course of action having such effect, he or she should ensure that the Company's shareholders authorise (or direct) the action, so that the directors are protected from actions by shareholders.

The duty of a director to act in good faith is what he or she considers to promote the success of the Company may, in certain circumstances, require such director to disclose their own misconduct to the Company.

(c) **Duty to exercise independent judgement (*section 173 Companies Act*)**

A director must exercise independent judgement in the way in which he or she takes a decision. For example, he or she should not simply do what he or she is told to do.

However, this duty is not infringed by such director acting in accordance with an agreement entered into by the Company which restricts the exercise of the director's discretion, nor is it infringed by a director acting in a way authorised by the Company's constitution. Furthermore, the duty does not prevent directors from relying on advice, so long as the directors exercise their own judgement whether or not to follow it.

Directors should not give unqualified undertakings to recommend a particular course of action to shareholders (in case, at the time of the recommendation, their view has changed). In such cases, the director should normally insist on a "fiduciary override" (i.e. their undertaking to take a particular action is subject to any overriding fiduciary duties).

The Companies Act is silent regarding the powers of the directors to delegate, therefore directors should look to the provisions of the Company's articles of association for their powers of delegation.

(d) **Duty to exercise reasonable care, skill and diligence (*section 174 Companies Act*)**

A director must exercise reasonable care, skill and diligence. This is defined as being the care, skill and diligence that would be exercised by a reasonably diligent person with:

(i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the Company; and

(ii) the general knowledge, skill and experience that the director has. The principles established by case law have continuing application:

(A) Each individual director must inform him or herself about the Company's affairs and collectively with the other directors supervise and control such affairs.

(B) The board may (subject to the articles of association) delegate specific tasks and functions to appropriate people and trust their competence and integrity to a reasonable extent. Overall responsibility, however, is not delegable - a director may need to take care to ensure that delegation has been made to an appropriate person, that their subordinates are discharging the delegated functions properly and that the system of controls and supervision is adequate.

(C) The extent of the duty of supervision, and whether it has been discharged, will depend on the facts of each particular case, including the director's role in the management and the natural expectations of shareholders. Relevant factors may well be the status of the director (e.g. whether he or she is a non-executive or executive, or whether he or she is the chair) and the level of reward they are entitled to or may reasonably expect to receive (e.g. salary, bonuses and other incentives).

The Governance Code and the related Guidance on Board Effectiveness also provide guidance on the roles that directors are expected to fulfil (both generally and specifically in the case of the chair, chief executive, non-executive directors and directors on board committees).

Non-executive directors

The extent to which a non-executive director may be liable for failures within the Company will depend on the circumstances, including the part which the non-executive director could be reasonably expected to play. Whilst the standard of care required from non-executive directors is the same, in theory, as that required from executive directors, the required standard may differ in practice, due to the difference in the functions which non-executives are expected to fulfil and the extent of the care and diligence which they can be reasonably expected to exercise. A higher degree of care will be expected where a director has particularly deep knowledge or experience. A non-executive will not be entitled to abrogate all responsibility for checking whether there are proper controls (for example, by claiming ignorance of the Company's activities or claiming that he relied on others to check such matters). The extent to which a non-executive should investigate such issues will depend on such matters as whether the board satisfactorily carries out regular risk management reviews and whether or not the auditors' report to the audit committee and any internal audit report (or absence of such reports) gives rise to any cause for concern. It will also be relevant whether the Company has followed the FRC Guidance on Internal Control on risk management. If a non-executive director becomes aware (or ought to have become aware), that the executive management are not fulfilling their duties properly, the non-executive director will be expected to exercise their monitoring and controlling functions more actively.

Non-executive directors should:

(iii) constructively challenge and help develop proposals on strategy;

(iv) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance; and

(v) satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible (see the FRC Guidance on Internal Control on risk management).

Difficulties may arise for a non-executive director where he or she suspects that the management of the Company are not performing their functions properly. The Governance Code states that the Company should have a procedure, agreed by the board, for directors (in the furtherance of their duties) to take independent professional advice if necessary, at the Company's expense. The board will adopt such a policy in connection with the offering. The FRC Guidance on Board Effectiveness also gives guidance as the role of the non-executive director within an effective board.

(e) **Duty to avoid conflicts of interest (*section 175 Companies Act*)**

A director must avoid a situation in which he or she has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a "**situational conflict**"). This applies, in particular, to the exploitation of any property, information or opportunity and it is immaterial whether the Company could take advantage of the property, information or opportunity.

This duty is very broadly drawn and covers all situational conflicts, actual and potential, between the interests of the director (and, it seems, the interests of anyone connected with him or her) and the interests of the Company. The only conflicts not covered are those relating to transactions or arrangements with the Company. The duty to avoid conflicts of interest will continue to apply after a person ceases to be a director as regards the exploitation of any property, information or opportunity which he became aware while a director (*section 170(2)(a) Companies Act*).

The duty will not be infringed:

(i) if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(ii) if the matter has been authorised by the board.

In addition, a situational conflict can be authorised by shareholders (under their general powers to authorise acts that would otherwise breach directors' general duties).

If the constitution of the Company expressly allows, the board may authorise the conflict, however the authorisation will only be effective if the meeting at which the authorisation was given was quorate without counting any interested director, and the matter was agreed to without their voting (or without counting their votes).

(f) **Duty not to accept benefits from third parties (*section 176 Companies Act*)**

A director must not accept a benefit from a third party conferred by reason of him or her being a director or their doing (or not doing) anything as a director. A "third party" is defined as being a person other than the Company, an associated body corporate or a person acting on behalf of the Company or an associated body corporate. Bodies corporate are "associated" if one is a subsidiary of the other or if they are both subsidiaries of the same parent.

The duty will not be infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. However, as there is no scope for authorisation by independent directors, in the case of doubt a director would need to seek shareholder authorisation. The Company may put in place guidance as to what is and what is not acceptable in this area (including financial limits). A director must account to the Company for any personal profit he makes by virtue of their directors hip, unless such profit was authorised by a shareholder resolution or was in accordance with the Company's articles of association.

The Company's articles of association may contain provisions allowing directors to receive fees, expenses and (where relevant) remuneration as employees, as well as certain provisions relieving a director from his or her duty to account where he or she has an interest (direct or indirect) in a contract or arrangement to which the Company is a party.

The Company's articles will not, however, override the statutory duty on a director to disclose any interest he or she has in a contract or arrangement with the Company.

Similarly, if it is proposed to make to a director a payment for compensation for loss of office or in connection with his retirement (in excess of any legal entitlement) in connection with a takeover offer for the Company, the director must take all reasonable steps to ensure details of the payment are given to shareholders with the takeover offer document.

In addition to the director's duty to account for any personal profit, he or she is also under an obligation not to misapply the Company's property, even though he or she may not obtain any personal benefit from such misapplication. For example, a director must not authorise the sale of an asset at a value lower than its true value unless there are commercial benefits to the Company in doing so. Similarly, a director who authorises unlawful dividends (e.g. dividends in excess of distributable profits) may be liable for such dividends. He or she will be liable if he or she knew (or ought, as a reasonably competent and diligent director, to have known) that the payments were unlawful or if he or she knew (or should be taken to have known) the facts which established the impropriety of the payments.

Passing on confidential information without authority (e.g. not in the proper course of business) will be a misapplication of the Company's property. This may be particularly relevant where the director has a position with another entity which may be interested in such information. Similarly, failure to direct to the Company business opportunities which come to the director may be a breach of duty by the director.

(g) **Duty to declare interest in proposed transaction or arrangement (*section 177 Companies Act*)**

A director who is in any way interested (whether directly or indirectly) in a proposed transaction or arrangement with the Company must declare the nature and extent of that interest to the other directors. The declaration must be made before the Company enters into the transaction or arrangement. It may be made at a board meeting, by notice in writing sent to the other directors, or by way of a general notice (to the effect that the director is to be regarded as interested in any transaction or arrangement that may be made with a particular body, firm or person). If, after a declaration has been made, it proves to be or becomes inaccurate or incomplete, a further declaration must be made.

In certain circumstances, there is no requirement to make a declaration. No declaration is required where the director is not aware of the interest, or the transaction or arrangement in question, unless he or she ought reasonably to be so aware (from a practical perspective, this means that directors will have to undertake a certain amount of due diligence regarding their potential interests, in order to avoid breaching the duty inadvertently). In addition, no declaration is required if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest: if (or to the extent that) the directors are already aware or ought reasonably to be aware of it; or, if the interest concerns the terms of a director's service contract that are considered by a meeting of the directors or a committee appointed for the purpose.

The interests which have to be disclosed are widely drawn. The requirement to disclose indirect interests means that the director himself or herself does not need to be a party to the transaction for the duty to apply; another person's interest could amount to an interest on the part of the director.

(h) **Declaration of interests in existing transaction or arrangement (*section 182 Companies Act 2006*)**

A director who is in any way interested (whether directly or indirectly) in an existing transaction or arrangement with the Company must declare the nature and extent of that interest to the other directors. This requirement does not apply if (or to the extent that) the interest has been declared under section 177 Companies Act 2006. The declaration must be made as soon as reasonably practicable. It may be made at a board meeting, by notice in writing sent to the other directors, or by way of a general notice (to the effect that the director is to be regarded as interested in any transaction or arrangement that may be made with a particular body, firm or person). If, after a declaration has been made, it proves to be or becomes inaccurate or incomplete, a further declaration must be made.

It is not necessary that a director be a party to a transaction, as the involvement of any person connected to the director would also constitute such an interest. Directors must also declare any change in the interest.

In certain circumstances, there is no requirement to make a declaration. No declaration is required where the director is not aware of the interest, or the transaction or arrangement in question, unless he ought reasonably to be so aware. In addition, no declaration is required if: the interest cannot reasonably be regarded as likely to give rise to a conflict of interest; (or to the extent that) the directors are already aware or ought reasonably to be aware of it; or, the interest concerns the terms of a director's service contract that are considered by a board meeting or a committee appointed for the purpose. Note that criminal sanctions apply for breach.

11.2 **Other directors' dealings under the Companies Act**

The Companies Act governs the transactions between a company and its directors. This memorandum does not purport to cover all potential dealings between directors and the Company, but below are some examples of transactions that will require prior shareholder approval.

(a) **Loans to directors (*sections 197 to 214 Companies Act*)**

Subject to certain limited exceptions, any loan or "quasi-loan" by the Company to, or the provision of security or guarantees by the Company for any loans made by any third party to, or any credit transactions (e.g. a hire purchase transaction) entered into by the Company with, any of its directors or any directors of the Company's holding company or their respective connected persons must be approved by the Company's shareholders (and, in the case of a director of the Company's holding company, by the holding company's shareholders). The Company may elect whether or not to proceed with an unauthorised loan, and if the breach is not ratified, the director remains liable to account for any profit made, or indemnify the Company against any loss it suffers.

(b) **Substantial property transactions with directors (*sections 190 to 196 Companies Act*)**

Subject to certain limited exceptions, the Company may not sell to or acquire from a director or any director of its holding company or their respective connected persons any substantial non-cash asset unless the arrangement has been approved by the Company's shareholders (and, in the case of a director of the Company's holding company, by the holding company's shareholders) or is conditional on such approval being obtained. An asset is considered "substantial" if its value (i) exceeds 10% of the Company's asset value and is more than £5,000 or (ii) if its value exceeds £100,000. The Company may elect whether or not to proceed with an unauthorised transaction. If the Company decides to set aside the transaction then the director must account for any profit made, or indemnify the Company against any loss it suffers. Recoverable loss can include consequential loss incurred subsequently by the Company, provided that the loss results from the transaction itself.

(c) **Service contracts (*sections 188 and 189 Companies Act*)**

The Companies Act contains certain restrictions on directors' service contracts. A service contract which is for a term of more than two years and which cannot be terminated by notice within that period, or can only be terminated in specified circumstances, must be approved by shareholder resolution.

11.3 **Duties owed to shareholders**

A director's duties will normally be owed to the Company (*section 170(1) Companies Act*). In certain circumstances, however, he or she may owe duties directly to investors (or potential investors) in the Company. The principal cases where such duties are likely to arise involve:

(a) the publication of a prospectus in connection with an offering of transferable securities to the public or an application for admission of transferable securities to trading on a regulated market;

(b) the directors' report and other requirements under the Companies Act relating the Company's accounts and under the Financial Services and Markets Act 2000 in relation to published information;

(c) circulars and other documents distributed by the Company to its shareholders; and

(d) the disclosure or non-disclosure of information to shareholders.

11.4 **Potential liabilities of directors**

(a) **Derivative claims**

The statutory derivative claim procedure under the Companies Act enables a shareholder to sue, on behalf of the Company, a director (including a former or shadow director) and/or other person in relation to conduct (or proposed conduct) involving negligence, default, breach of duty or breach of trust by the director (*section 260 Companies Act*).

The claim can only be continued by the shareholder if the court gives its permission. The court must refuse the shareholder permission to continue the claim if: either a director acting in accordance with the duty to promote the success of the Company would not seek to continue the claim; or, the conduct in question was authorised or has been properly ratified by the shareholders (the votes of the relevant director, if he or she is a shareholder, and any connected person will not be taken into account) or if proposed conduct has been authorised by the shareholders (*section 263 Companies Act*).

Some steps directors should consider to mitigate risk in relation to such a claim include the following:

(i) establishing systems to encourage shareholders to raise grievances with the board in the first instance;

(ii) ensuring that any decision by the board regarding whether to sue a director is well-informed and carefully recorded; and

(iii) reviewing directors' indemnity and insurance arrangements.

Please note that minority shareholders also have a right under section 994 Companies Act to bring an action in their own name if they can show that the Company's affairs have been conducted in a manner which is unfairly prejudicial to their interests.

(b) **Disqualification of directors**

The Disqualification Act allows the court to make an order disqualifying a person from being a director of the Company or in any way involved in the promotion, formation or management of a company for a period of between two and 15 years. During this period, it is a criminal offence for that person to be a director of any company or take on certain other roles relating to company management. A disqualification order may be made on various grounds, including:

(i) conviction of an indictable offence in connection with certain Company related matters;

(ii) persistent breaches of, or convictions of summary offences in relation to, companies legislation;

(iii) fraud or other offences in a winding-up; or

(iv) participation in fraudulent or wrongful trading.

The court must make a mandatory disqualification order where: (i) a director has been a director of the Company which has become insolvent and their conduct as a director makes them unfit to be concerned in the management of the Company (breaches of statutory obligations or other duties as a director will be evidence of unfitness) (*section 6 Disqualification Act*); and, (ii) following certain breaches of competition law.

11.5 **Protection from liability**

(a) **Indemnification and insurance**

The Company cannot generally exempt its directors from, or indemnify them against, liability in connection with negligence, default, breach of duty or breach of trust in relation to the Company (*section 232(2) Companies Act*). Under the Companies Act, the Company can take advantage of a specific exemption to indemnify directors against proceedings brought by third parties so long as this is permitted under its articles of association (*section 234 Companies Act*). However, this indemnity cannot extend to a director's liability to the Company or an associated company or to pay fines or penalties imposed in criminal or regulatory proceedings or any civil proceedings brought by the Company or an associated company *(section 234(3) Companies Act*). The Company may, however, fund a director's defence costs as they are incurred in criminal or civil cases, even if the action is brought by the Company itself or an associated company (*section 205 Companies Act*). However, any sums must be advanced on the basis that the director will be required to pay any damages awarded to the Company or any associated company and to reimburse the Company if he or she fails in their defence (unless the Company has validly indemnified such director in respect of their legal costs incurred in third party civil proceedings) (*section 205 Companies Act*). Any such indemnification provisions must be disclosed in the directors' report in the Annual Report.

The Companies Act permits the Company to obtain insurance cover for its directors in respect of liabilities incurred in respect of performance of their duties. The insurance will usually consist of a directors' and officers' policy and the Company's reimbursement policy.

Please note that deeds of indemnity have been prepared for all directors and details regarding insurance can be obtained from the Company Secretary.

(b) **Ratification**

It is possible for the Company to ratify any breach of duty by the director under section 239 Companies Act. However, when counting votes for or against the ratification any shares held by the director in breach, or any member connected with him or her (or bodies corporate in which the director and any person connected with him or her have a 20% interest), are not taken into account.

(c) **Court's power to grant relief**

The court also has the power under section 1157 Companies Act, albeit exercised in exceptional circumstances only, to grant relief from civil liability to any director or officer of the Company who has acted honestly and reasonably and who ought, in the circumstances, to be excused.

11.6 **Insolvency**

The Insolvency Act makes various kinds of misconduct by officers in relation to companies that become insolvent a criminal offence, carrying potential sentences of imprisonment and/or a fine. The offences include dishonest misconduct by officers of a company during the 12 months immediately preceding the commencement of the winding-up (*section 206 Insolvency Act*) and effecting transactions to defraud creditors within five years prior to the commencement of the winding up.

Directors and officers who are guilty of misfeasance can be held liable to make restitution to the company. Any directors found liable can also be disqualified (see paragraph 11.4(b) above).

The most significant provisions, however, relate to fraudulent and wrongful trading.

(a) **Fraudulent trading (*section 246ZA Insolvency Act*)**

The Insolvency Act imposes civil liability on a director who is shown to have knowingly carried on a company's business with the intention of defrauding creditors of the company or of any other person, or for any other fraudulent purpose. Under the Companies Act, fraudulent trading is a criminal offence punishable by up to ten years' imprisonment and/or an unlimited fine on indictment.

(b) **Wrongful trading (*section 246ZB Insolvency Act*)**

The Insolvency Act imposes civil liability on a director of a company if it becomes insolvent, where the director knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation. The facts that a director ought to have known or ascertained, the conclusions he ought to have reached and the steps he ought to have taken are deemed to be those that would be known or ascertained, or reached or taken, by a reasonably diligent person having both (i) the general knowledge, skill and experience reasonably expected of a person carrying out the same functions as the director and (ii) the general knowledge, skill and experience of the particular director in question. The standard of care required is similar to the general duty of skill and care applicable to directors under the Companies Act.

Liability can only be avoided if the director can satisfy the court that he took every step to minimise the potential loss to creditors. To minimise his risk of liability, each director should therefore keep himself fully informed as to the company's cash and trading position and take a realistic view of the company's future prospects.

(c) **Transactions at an undervalue and preferences (*sections 238 and 239 Insolvency Act*)**

Under the Insolvency Act, a liquidator or administrator can apply to the court for an order setting aside certain transactions entered into by the company on the grounds that they are transactions at an undervalue or preferences. To be set aside, either the transaction must have been entered into at a time when the company was insolvent or it must have become insolvent as a result of the transaction.

A transaction at an undervalue is a transaction whereby the company either receives no consideration or receives significantly less consideration than it provided itself. Such a transaction can be set aside if it was entered into within two years before the commencement of winding-up proceedings or the presentation of a petition for administration.

A preference is a transaction entered into by a company that puts a creditor into a better position on liquidation than he would otherwise have been. The date of the transaction must be within six months before the commencement of winding-up or presentation of the petition for administration, although the time limit is extended to two years where, for example, preference is given to a director.

Directors who are involved in a company that grants a preference or enters into a transaction at an undervalue may be guilty of misfeasance and be liable to make restitution to the company.

12. **CONTINUING OBLIGATIONS UNDER OTHER STATUTORY PROVISIONS**

12.1 **FSMA and FS Act**

(a) **Misleading statements offence**

Part 7 FS Act provides that if any person knowingly or recklessly makes a statement which is false or misleading in a material respect or who dishonestly conceals material facts whether in connection with a statement made by such person or otherwise and if such action is taken with the intention of inducing (or recklessness as to whether it will induce) others to enter or offer to enter into, or to refrain from entering or offering to enter into a relevant agreement, or to exercise or refrain from exercising, any rights conferred by a relevant investment, is guilty of an offence.

(b) **Market abuse**

Directors must also bear in mind the obligations imposed by MAR.

(c) **Publication of information**

The Company may be liable to investors under section 90A of FSMA for information it publishes, or announces the availability of which, by means of a RIS or other means required or authorised to be used when a RIS is unavailable. Liability arises where a person suffers loss either as a result of any untrue or misleading statement where a director (or PDMR) knew the statement was untrue or misleading or was reckless as to that fact or as a result of the omission from published information of any matter required to be included in it if a director (or other PDMR) knew the omission to be a dishonest concealment of material fact. Liability may also arise if loss is suffered as a result of a delay by the Company in publishing information and a director (or other PDMR) acted dishonestly in delaying publication.

12.2 **Companies Act**

Subject to certain exemptions, every purported act of the Company in contravention of these provisions may render the Company liable to a fine. Every director of the Company who is in default is also liable to a fine or imprisonment.

(a) **Serious loss of capital (*section 656 Companies Act*)**

If the net assets of the Company fall to 50% or less of its called-up share capital, the directors are required to notify the shareholders of the Company and convene an extraordinary general meeting. Contravention of this requirement may render the directors liable to a fine.

(b) **Distribution of profits and assets (*sections 829 to 831, 849 and 850 Companies Act*)**

The Companies Act permits the Company to make a distribution only out of profits available for that purpose and only if the net assets of the Company are not less (and would not be less following the distribution) than the aggregate of its called-up share capital and undistributable reserves.

The availability of profits for distribution is determined by reference to the Company's latest statutory accounts. If these do not disclose sufficient profits for an intended distribution, special accounts must be prepared and (in practice) audited to justify the distribution.

(c) **Financial assistance for acquisition of shares (*section 678 Companies Act*)**

The Company is generally prohibited from giving direct or indirect financial assistance for the acquisition of its shares. There are exceptions to this general prohibition but they are very restricted. The prohibition covers any gifts, guarantees, securities, indemnities or loans. Breach of this provision is an offence by the Company and any officer in default is punishable by imprisonment and/or a fine.

(d) **Allotment of shares for non-cash consideration (*section 593 Companies Act*)**

Where non-cash consideration is to be received by the Company on the allotment of its shares, an expert's prior report and valuation will normally be needed. An exception is available where the non-cash consideration comprises all or part of the share capital of another body corporate.

(e) **Company secretary (section 273, Companies Act)**

The secretary of the Company must be qualified for appointment either by experience or through membership of a professional body. The Cadbury Report (paragraphs 4.25 to 4.27) recommends that all directors should have access to the advice and services of the Company secretary, who is responsible to the board for ensuring that board procedures are followed, and that any question of the removal of the Company secretary should be a matter for the board as a whole.

(f) **Purchase of own shares (*section 658 Companies Act*)**

Purchases by the Company of its own shares may only be carried out in accordance with the strict requirements of the Companies Act, which include obtaining shareholder consent and making certain disclosures. In the case of off-market purchases, the specific terms of any contract must be approved in advance by a resolution of the shareholders. Any such purchases by the Company can only be made out of distributable profits or the proceeds of a fresh issue for such purpose.

The Company, if purchasing shares out of distributable profits, can hold those shares in treasury instead of cancelling them automatically. Shares that are held in treasury can be sold for cash at a later date, used to satisfy obligations under an employee share scheme or, subsequently, cancelled. The Investment Association recommends that a maximum of 10% of share capital, or of any class of shares, can be held in treasury at any one time and any treasury share activity must be carried out in accordance with the requirements of the Companies Act and other relevant regulations.

13. TAKEOVERS AND MERGERS

If the Company becomes involved in potential takeover or merger activity (whether as offeror or target) each director should be aware of the general principles of conduct and specific rules of The City Code on Takeovers and Mergers (the "City Code"). The City Code is published by the Panel on Takeovers and Mergers (the "Panel") and is mainly concerned with regulating the conduct of the parties to takeovers or mergers to ensure that there is a "level playing field". The City Code is based on six general principles and both the spirit of the principles and detailed rules must be observed, as well as their letter.

Amongst other things, the City Code imposes the obligation that before any announcement of a takeover or merger is made, anyone who is privy to confidential information, especially price-sensitive information, about an offer must treat that information as secret. The information should only be disclosed on a need-to-know basis and recipients of such information must be told of its secrecy (section D, rule 2.1(a) City Code).

The City Code also imposes restrictions on dealings by persons in possession of unpublished price-sensitive information and on frustrating action which might be taken in defending against a hostile takeover (section I, rule 21 City Code). The City Code has statutory force and the Panel has statutory authority to impose sanctions on issuers who breach the City Code.

14. CORPORATE GOVERNANCE

Please refer to our memorandum in section 2, "*Overview of the Corporate Governance Regime (Official List - standard listing)*" for further details.

SECTION 2 – OVERVIEW OF THE CORPORATE GOVERNANCE REGIME (OFFICIAL LIST – STANDARD LISTING)

1. INTRODUCTION

Unless stated otherwise, the defined terms used in section 1 have the same meaning in this section.

This memorandum provides an overview of the corporate governance regime applicable to companies whose shares are admitted to the standard listing segment of the Official List of the Financial Conduct Authority (the "**FCA**") and to trading on the London Stock Exchange's main market for listed securities.

Paragraph 2 of this memorandum sets out a detailed summary of the Quoted Companies Alliance Corporate Governance Code (the "**Governance Code**"), which is the key source of corporate governance recommendations for companies with a standard listing and can be accessed on the Quoted Companies Alliance website (http://www.theqca.com/shop/guides/). There is considerable overlap between the Governance Code and the requirements of the Disclosure Guidance and Transparency Rules in respect of audit functions and corporate governance.

2. THE QUOTED COMPANIES ALLIANCE CORPORATE GOVERNANCE CODE

2.1 Overview

The Quoted Companies Alliance (the "**QCA"**) works on behalf of small and mid-cap quoted companies. The QCA produced the updated Governance Code on 25 April 2018.

The Governance Code sets out ten broad principles which focus on the medium to long term value for shareholders without stifling the entrepreneurial spirit in which the Company was created. In order to claim adoption of the Governance Code, the Company must apply the ten principles and publish certain disclosures in recommended locations (on its website or in the Annual Report or sometimes in both locations).

(a) Compliance

Section 3 of the Governance Code requires that the chair provides a clear explanation of how the Company applies the Governance Code and publishes a corporate governance statement in the Annual Report and accounts and on its website. The statement should articulate the chair's role and demonstrate the chair's responsibility for corporate governance. It should explain at a high level how the Governance Code is applied by the Company and how this supports the Company's medium to long term success. The statement should also explain any areas in which the Company's governance structures and practices differ from the expectations in the Governance Code and it should identify any key governance related matters that have occurred during the year, identifying any significant changes in governance arrangements.

The Governance Code also sets out the roles and responsibilities of the board, the chair, the senior independent director, the executive and non-executive directors, the secretary, the committees and the shareholders. There is also a section setting out what the QCA determine as 'good corporate governance'.

(b) **Principles**

The ten principles are divided into three categories which reflect the QCA's view of the purpose of corporate governance:

- Delivering growth;
- Maintaining a dynamic management framework; and
- Building trust.

The ten principles, laid out in section 3 of the Governance Code are:

(i) Establish a strategy and business model which promote long-term values for shareholders.

(ii) Seek to understand and meet shareholder needs and expectations.

(iii) Take into account wider stakeholder and social responsibilities and their implications for long term success.

(iv) Embed effective risk management, considering both opportunities and threats, throughout the organisation.

(v) Maintain the board as a well-functioning, balanced team led by the chair.

(vi) Ensure that between them the directors have the necessary up-to-date experience, skills and capabilities.

(vii) Evaluate all elements of board performance based on clear and relevant objectives, seeking continuous improvement.

(viii) Promote a corporate culture that is based on sound ethical values and behaviours.

(ix) Maintain governance structures and processes that are fit for purpose and support good decision making by the board.

(x) Communicate how the Company is governed by maintaining a dialogue with shareholders and other relevant stakeholders.

The QCA Code states that good corporate governance is about having the right people (in the right roles), working together, and doing the right things to deliver value for shareholders as a whole over the medium to long term. Good corporate governance is achieved through a series of decisions made by the board, which needs to be kept dynamic and diverse and engender a consistent corporate culture throughout the organisation.

2.2 **Types of Director/Members of the board**

(a) **Chair**

According to section 4(1) of the Governance Code, the chair is responsible for leadership of the board and ensuring its effectiveness of all aspects of its role and the board may also have a deputy chair.

(b) **Alternate directors**

If the articles of a company permit a director to appoint an alternate to carry out his duties this does not relieve the appointing director of his responsibilities to the company as a director. However, an alternate director is personally responsible for his own actions as a director while performing the functions of his appointer.

(c) **Nominee directors**

This term is often used to describe a director appointed to the board by a particular shareholder or group of shareholders, or by a particular creditor. Although such directors are appointed in order to represent and safeguard the interests of their appointers, like all other directors they must, as a matter of law, act independently of their appointers in the way they consider would be most likely to promote the success of the company for the benefit of its members as a whole. In particular, a nominee director must keep confidential all information which comes to his knowledge through his position as a director. A nominee director cannot, therefore, pass on such information to his appointer without being in breach of his obligations of confidence. However, the board of a company can, having considered all relevant information, consent to the disclosure of confidential information by a nominee director to his appointer. This consent should be given by formal resolution of the board (with the nominee director abstaining from voting) and the resolution should specify any conditions attaching to the consent, for example, that the appointer will in turn keep information received from its nominee director confidential.

(d) **Shadow directors.**

Many of the statutory responsibilities and liabilities that apply to directors apply equally to shadow directors. This term is defined in section 251 of the Companies Act as someone: "in accordance with whose directions or instructions the directors of a company are accustomed to act". However, in certain circumstances (set out in *section 251(3) of the Companies Act*), a holding company will not be treated as a shadow director of its subsidiaries by reason only that the directors of those subsidiaries are accustomed to act in accordance with its directions or instructions.

2.3 **Operation of the board and the use of committees**

(a) **Proceedings of the board**.

board meetings of standard listed companies should be convened at regular intervals throughout the year.

(b) **Division of the board**

Principle 5 of the Governance Code suggests that companies should have an appropriate balance between executive and non-executive directors and should have at least two independent non-executive directors (larger boards should have more so that half the board is considered independent). The QCA considers independence to be a matter of judgement for the board. The Governance Code recommends that companies should consider whether the appointment of a senior independent director is appropriate (*section 4(3) Governance Code*). The senior independent director is a sounding board and an intermediary for the chair and other members of the board and an alternative route of access for shareholders and other directors who may have a concern that cannot be raised through the normal channels of the chair or the executive directors.

The Governance Code provides that, save in exceptional and well justified and explained circumstances, the chair should not also fulfil the role of chief executive and any combination of these roles should be temporary and discussed in advance with shareholders (*section 4(2) Governance Code*).

(c) **Committees**

The Company's articles of association allow the board to delegate its powers to a committee (*see Article 42.8*). It is important that the board clearly sets out the powers and responsibilities of any committee to which it delegates functions. The extent to which the committee is empowered to take decisions should be carefully defined. This is particularly important where the committee includes non-board members. If there is any doubt about the scope of a committee's powers in these circumstances, a court is likely to assume that important decisions were intended to be reserved to the full board.

The use of committees is recommended by the Governance Code:

(i) The audit committee should challenge both the external auditors and the management of the Company. It should review the need for internal audit and, where required, make the appointment of a head of internal audit (*section 4(6) Governance Code*). It should also consider the engagement of auditors including tendering and the approval of non-audit services. The audit committee should review and report to the board on any significant reporting issues, estimates and judgements made in connection with the preparation of the Company's financial statements (*section 4(6) Governance Code*).

(ii) The remuneration of executive directors is a chief concern of the Governance Code and there are a number of provisions relating to the level and make-up of remuneration, remuneration policy, service contracts and compensation. The remuneration committee of a smaller company should be made up of at least two members, who should be independent non-executive directors that are able to resist inappropriate demands from executive directors and senior managers (*Section 4(7) Governance Code*).

(iii) The board should establish a nomination committee to lead the process for board appointments and make recommendations to the board. It should work closely with the board and the chair to identify the skills, experience, personal qualities and capabilities required for the next stage in the Company's development, linking the Company's strategy to future changes on the board (*section 4(8) Governance Code*).

The QCA has also published dedicated guides which offer more detail on the work of the audit and remuneration committees. It is worth noting that the nomination, remuneration and audit committees should make available their terms of reference on the Company's website.

3. INSTITUTIONAL INVESTOR GUIDELINES

Listed companies now increasingly find themselves under pressure to comply on corporate governance issues with the views of various bodies which, whilst not able to issue legally binding pronouncements do, nonetheless, have substantial institutional investor support and/or can cause adverse publicity for companies. The main investment committees are those of the Investment Association ("**IA**"), the PLSA and Pensions Investment Research Consultants Limited ("**PIRC**"). The corporate governance guidelines published by such bodies are designed to assist shareholders in interpreting the Governance Code and determining how to vote at company meetings.

For example, PIRC have issued shareholder voting guidelines which form the basis of voting recommendations to institutional shareholder clients who use their corporate governance service which, for example, states that the role of chair and chief executive should not be combined permanently. PIRC will also give recommendations to clients of its corporate governance service as to how to vote on corporate governance related issues and will advise its clients to abstain or oppose resolutions which do not conform with corporate governance guidelines or which will have an adverse effect on shareholder interests.

3.1 Financial Reporting Council's UK Stewardship Code

The FRC is responsible for promoting high quality corporate governance and reporting to assist investor engagement. The FRC published the UK Stewardship Code 2012 for investors setting standards for monitoring and engaging with the companies they own. The aim of the Stewardship Code is to enhance the quality of dialogue between investors and companies to help improve returns to shareholders in the long-term.

3.2 Investment Association Guidelines

The IA is the trade body representing the UK's investment managers, with approximately 200 members comprising pension funds, discretionary managers, international and domestic individuals and sovereign wealth funds.

The IA operates the institutional voting information service (the "**IVIS**"), which is a recommendation service for voting on company annual general meetings and other general meetings. IVIS monitoring is based on various IA guidelines, governance papers and the Governance Code. The service reviews UK annual reports and accounts and company meeting notices for compliance with corporate governance best practices and uses a system of colour coding to denote the IA's view of each. Red indicates a matter of most serious concern, followed by amber. A blue code indicates no areas of major concern, while green indicates an issue that has now been resolved.

The IA has published guidelines on policies and practices in respect of executive remuneration. These were most recently revised in July 2016. They set out a series of overarching principles and general guidance. The principles include the following:

- Remuneration policies should be set so as to promote value creation through transparent alignment with the agreed corporate strategy and should support performance, encourage the underlying sustainable financial health of the business and promote sound risk management for the benefit of all investors, including shareholders and creditors.

- The board as a whole must consider the aggregate impact of employee remuneration on the finances of the company, its investment and capital needs, and dividends to shareholders.

- Undeserved remuneration undermines the efficient operation of the company. Excessive remuneration adversely affects its reputation and is not aligned with shareholder interests.

- The remuneration committee should select a remuneration structure which is appropriate for the specific business, and efficient and cost-effective in delivering its longer-term strategy. These principles do not seek to prescribe or recommend any particular remuneration structure.

- Complexity is discouraged. Shareholders prefer simple and understandable remuneration structures; simplicity can be improved by limiting variable remuneration to an annual bonus and one long term incentive scheme.

- Executives and shareholders can have divergent interests, particularly in relation to time horizons and the consequences of failure or corporate underperformance. Incentive structures should have a long-term focus.

- To avoid payment for failure and promote a long-term focus, remuneration structures should contain a careful balance of fixed and variable pay. They should include a high degree of deferral and measurement of performance over the long-term.

- Structures should also include provisions that allow the company, in specified circumstances, to:

    - forfeit all or part of a bonus or long-term incentive award before it has vested and been paid; and/or

    - recover sums already paid.

- Executives should build up a high level of personal shareholding to ensure alignment of interest with shareholders.

- Dilution of shareholders through the issuing of shares to employees represents a significant transfer of value. Dilution limits are an important shareholder protection and should be respected.

The guidance includes details on fixed elements of remuneration (base pay, pensions and benefits) and variable elements (annual bonuses and long-term incentives). The IA has also published share capital management guidelines on granting directors' authority to allot and disapplication of pre-emption rights, share buy-backs and scrip dividends (i.e. dividends which shareholders have the option to receive in the form of additional shares rather than cash).

3.3 **Pensions and Lifetime Savings Association's Corporate Governance Policy and Voting Guidelines**

The PLSA is the main UK body representing the interests of the occupational pensions industry. As a result of the voting power that members collectively possess as institutional investors, the PLSA' s views are important to UK public companies on matters such as voting. The PLSA publishes its Corporate Governance Policy and Voting Guidelines, which include UK corporate governance principles and UK voting guidelines. Voting recommendations usually relate to the election (or not) of a non-executive director or the company's chair, with decisions being made in the context of overall governance and improving (or deteriorating) standards. The voting guidelines also contain recommendations in respect of specific matters such as share issues and purchases, changes to the company's constitution, declaration of dividends and political donations.

3.4 **Pensions & Investment Research Consultant's Shareowner Voting Guidelines**

PIRC is an independent body offering a variety of services to institutional investors. It produces detailed reports on large listed company meetings, giving voting advice. Its Shareholder Voting Guidelines are intended to be its latest views on good corporate practice and are one of the matters that it considers in determining its voting recommendations. The guidelines cover such things as the constitution of the board (including re-election of directors), directors' remuneration, audit and reporting, shareholders' rights, corporate actions and sustainability and non-financial reporting.

3.5 **Others**

Other influential guidelines, papers and policy statements published by investment committees in respect of corporate governance matters include:

- "ISS UK and Ireland Proxy Vote Guidelines: 2016 Benchmark Policy Recommendations" published by ISS in 2016;
- "2016 Proxy Season Guidelines" published by Glass Lewis in April 2016;
- "Responsible Investment Guidance" published by the PLSA in 2013;
- "Understanding the Worth of the Workforce - A Stewardship Toolkit for Pension Funds" published by the PLSA in July 2016;

- "Corporate Governance Principles, UK" published by Hermes Investment Management in March 2014;
- "ICGN Guidance on Institutional Investor Responsibilities" published by International Corporate Governance Network in 2013; and
- "Best Practice on Executive Contracts and Severance", the ABI and PLSA's joint statement published in February 2008.

4. THE BRIBERY ACT 2010

4.1 Introduction

The Bribery Act 2010 (the "**Bribery Act**") came into force on 1 July 2011 creating a number of offences which may apply to both companies and individuals.

4.2 The general offences (sections 1 and 2)

The Bribery Act sets out two general offences of "bribing another person" and "being bribed", which can be committed by an individual and/or a company. The offences are committed when someone:

(a) offers, promises or gives another person a financial or other advantage intending to induce or reward the "improper performance" of a "relevant function or activity" (bribing another person, section 1); or

(b) requests, agrees to receive or accepts from another person a financial or other advantage intending as a consequence that a relevant function or activity should be improperly performed or as a reward for improper performance, or where someone performs improperly in anticipation of a financial advantage (being bribed, section 2).

Both offences also cover circumstances where the request for, acceptance of, or agreement to receive the financial or other advantage is itself improper performance (for example, in the case of payments designed to facilitate routine government or other activity).

Improper performance of a function or activity is one which breaches an expectation that the function or activity will be performed in good faith, impartially or as a result of a position of trust. Improper performance is judged by the standards of a reasonable person in the UK, and local customs or practices, even if perceived as legitimate, cannot be taken into account unless required or permitted by written local law.

There is no need for the intended recipient to perform the function improperly or, in some cases, receive the advantage.

A general offence is committed where any of the acts take place in the UK. It is also committed in respect of acts outside the UK committed by, among other things, a company incorporated in the UK, a British citizen or a person ordinarily resident in the UK.

4.3 Bribing a foreign public official (section 6)

This offence is committed when a person (which can be an individual or a company) bribes a foreign public official (an "**FPO**") (i.e. offers, promises or gives a financial or other advantage):

(a) with the intention of influencing the FPO in their capacity as an FPO in order to obtain or retain business or an advantage in the conduct of business; and

(b) when the FPO is not permitted or required by applicable local written law to be influenced by the advantage.

There is no need for the intended recipient to perform the function improperly or, in some cases, receive the advantage.

This offence is committed where any of the acts take place in the UK. It is also committed in respect of acts outside the UK committed by, among other things, a company incorporated in the UK, a British citizen or a person ordinarily resident in the UK.

The offence does not require any criminal intent or element of impropriety to be shown. Companies will need to be extremely cautious in their dealings not only with government officials but also with those who assist them in obtaining government business and approvals.

4.4 **Senior officer offence (section 14)**

This offence is committed where a body corporate commits an offence under section 1, 2, or 6 and where it is proved that the offence has been committed with the consent or connivance of a "senior officer" or a person purporting to act in such a capacity. "Senior officer" is widely defined to include a director, manager, secretary or similar officer.

Where the corporate offence takes place in the UK, any senior officer worldwide could commit this offence. Where the corporate offence takes place outside the UK, only senior officers who are (among other things) British citizens or persons ordinarily resident in the UK could commit the offence.

4.5 **Corporate offence of failing to prevent bribery (section 7)**

A relevant commercial organisation could commit this offence if a person "associated" with it bribes another person (within the meaning of sections 1 or 6) intending to obtain or retain business or an advantage in the conduct of business for the organisation. It does not matter where in the world the bribery takes place.

It is an offence which requires no corporate acts or criminal intent on the part of the organisation.

The definition of "relevant commercial organisation" is very wide and includes bodies incorporated in the UK or UK partnerships, no matter where they carry on business; and companies and partnerships carrying on a business or part of a business in the UK, no matter where they are incorporated. This offence cannot be committed by individuals.

Likewise, "associated person" has been defined widely to include people who "perform services" for or on behalf of the organisation, regardless of their capacity. It may include, for example, employees, agents or subsidiaries. Accordingly, an organisation could be liable in respect of bribery carried out by third parties. The associated person does not need to be connected to the UK, nor is the act in question required to have taken place in the UK. Questions have already been raised over how this provision will operate in practice. In particular, the position of subsidiaries and joint venture partners/syndicates is currently unclear.

4.6 **Adequate procedures**

It is a defence to a charge under section 7 that the organisation had "adequate procedures" in place designed to prevent persons associated with the organisation from undertaking in conduct which may result in committing one of the above offences. "Adequate procedures" is not defined in the Bribery Act. However, the UK Government has published guidance as to these "adequate procedures" setting out six principles for all businesses to consider which are in summary as follows:

(a) risk assessment - a regular and comprehensive assessment of the nature and extent of the risks relating to bribery;

(b) top level commitment - a commitment from the top level of management to prevent bribery;

(c) due diligence - policies and procedures which cover all parties to a business relationship in all markets in which the commercial organisation does business;

(d) clear, practical and accessible policies and procedures - to prevent bribery being committed on a commercial organisation's behalf;

(e) communication and training - effective implementation of anti-bribery policies and procedures; and

(f) monitoring and review - mechanisms to ensure compliance with policies and procedures.

4.7 **Penalties and other consequences**

An individual guilty of an offence under the Bribery Act is liable to up to 1O years imprisonment or an unlimited fine (or both). Any other person is liable to an unlimited fine. Businesses Companies also face other risks, for example being debarred or exclusion from tendering (e.g. under Public Contracts Regulations 2006), regulatory consequences, defence costs, remedial costs, third party claims, negative publicity and/or reputational damage.

Where a body corporate commits an offence under the Bribery Act, any "senior officer" is also guilty of the same offence if it can be proved that the offence was committed with their consent or connivance. A "senior officer" includes a director, manager, secretary or other similar officer.

5. **THE MODERN SLAVERY ACT 2015**

5.1 **Introduction**

The Modern Slavery Act 2015 (the "**Modern Slavery Act**") came into force on 29 October 2015, imposing on large commercial organisations an obligation to publish a slavery and human trafficking statement (the "**Transparency Statement**"), in a move to improve transparency in company supply chains.

5.2 **Key definitions**

In order to understand the reporting obligations imposed by the Modern Slavery Act, it is important to note the following key definitions.

(a) "**Commercial organisation**"

This means a body corporate or partnership which carries on a business, or a part of a business, in any part of the UK (section 54(12) of the Modern Slavery Act). A "business" includes a trade or profession. It is irrelevant where the "body corporate" is incorporated as long as it has a "demonstrable business presence" in the UK.

(b) **"Slavery and human trafficking"**

This has been defined very broadly and the types of conduct that would fall within the definition are:

(i) *to hold another person in slavery or servitude* (section 1(1)(a) of the Modern Slavery Act);

"**Slavery**" is the status or condition of a person over whom all or any of the powers attaching to the right of ownership are exercised thereby depriving the victim of their freedom.

"**Servitude**" is the obligation to provide services that is imposed by the use of coercion and includes the obligation for a "serf" to live on another person's property and the impossibility of changing their condition.

(ii) *to require another person to perform forced or compulsory labour* (section I(I)(b) of the Modern Slavery Act);

"**Forced or compulsory labour**" involves coercion, either direct threats of violence or more subtle forms of compulsion, whereby work or service is exacted from the victim under the menace of any penalty and for which the victim has not offered himself voluntarily.

(iii) *to arrange or facilitate the travel of, that is, recruit, transport, transfer, harbour, receive or transfer or exchange control over, another person with the view to that person being exploited* (section 2(1) of the Modern Slavery Act); and

"**Exploitation**" covers conduct such as slavery, servitude or forced or compulsory labour (as explained under parts (i) and (ii) above), sexual exploitation, removal of organs, securing services by force, threats or deception and/or securing services from children and vulnerable persons.

(iv) *to commit any offence with the intention of committing, including an offence committed by aiding, abetting, counselling or procuring, an offence under (iii) above* (section 4 of the Modern Slavery Act).

5.3 **Reporting obligation (section 54)**

The reporting obligation under section 54 of the Modern Slavery Act requires companies to prepare a Transparency Statement for each financial year. Such statement should cover all the steps the Company has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business. If the Company has taken no such steps then it must issue a statement to this effect as well.

While there are no specifications as to the content of the Transparency Statement, section 54(5) of the Modern Slavery Act provides that the statement may include information regarding: (a) the Company's structure, its business and its supply chains; (b) its policies in relation to slavery and human trafficking; (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains; (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and (f) the training about slavery and human trafficking available to its staff. Further guidance as to the contents of the Transparency Statement has been set out in "Transparency in Supply Chains etc... A Practical Guide" published by the UK Home Office on 29 October 2015.

It should be noted that the requirement to produce a Transparency Statement does not entail guaranteeing that the Company and its entire supply chain is free from slavery but only extends to detailing the steps it has taken to ensure that no slavery and human trafficking is taking place.

Furthermore, the Transparency Statement must be approved by the board and signed by a director (on behalf of the board). The Transparency Statement must also be published on the Company's website, with a link to the Transparency Statement posted in a prominent place on the homepage.

For group companies, a separate Transparency Statement must be produced for each company that falls within the scope of section 54 of the Modern Slavery Act. Any UK or non-UK parent company, carrying on business in the UK, must produce a Transparency Statement and cover within its Transparency Statement information regarding the operations of any UK and non-UK subsidiaries. Guidance published by the Home Office states that it is good practice for a UK parent company to include within its Transparency Statement operations of non-UK subsidiaries that do not carry on business, or part of a business, within the UK and/or ask its non-UK subsidiaries to publish their separate Transparency Statements.

5.4 **Scope of the obligations**

The reporting obligation within section 54 of the Modern Slavery Act applies to all companies with a minimum total annual turnover of £36 million. Turnover means the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organisation or subsidiary undertaking, after deduction of value added tax, any other taxes and trade discounts. In calculating total turnover, companies should include the turnover of that company and the turnover of any subsidiary undertakings (regardless of where those subsidiaries are based or carrying on their business).

5.5 **Timing**

Whilst there is no prescribed time limit in which to make the statement, guidance published by the Home Office provides that the Transparency Statement should be published as soon as possible and encourages companies to prepare one within six months of the end of the financial year to which the Transparency Statement relates.

5.6 **Consequences of breach**

The reporting obligation under section 54 are enforceable by the Secretary of State in civil proceedings by way of an injunction (section 54(11) of the Modern Slavery Act). Apart from this, failure to comply may also result in negative publicity and/or damage to the company's reputation and brand.