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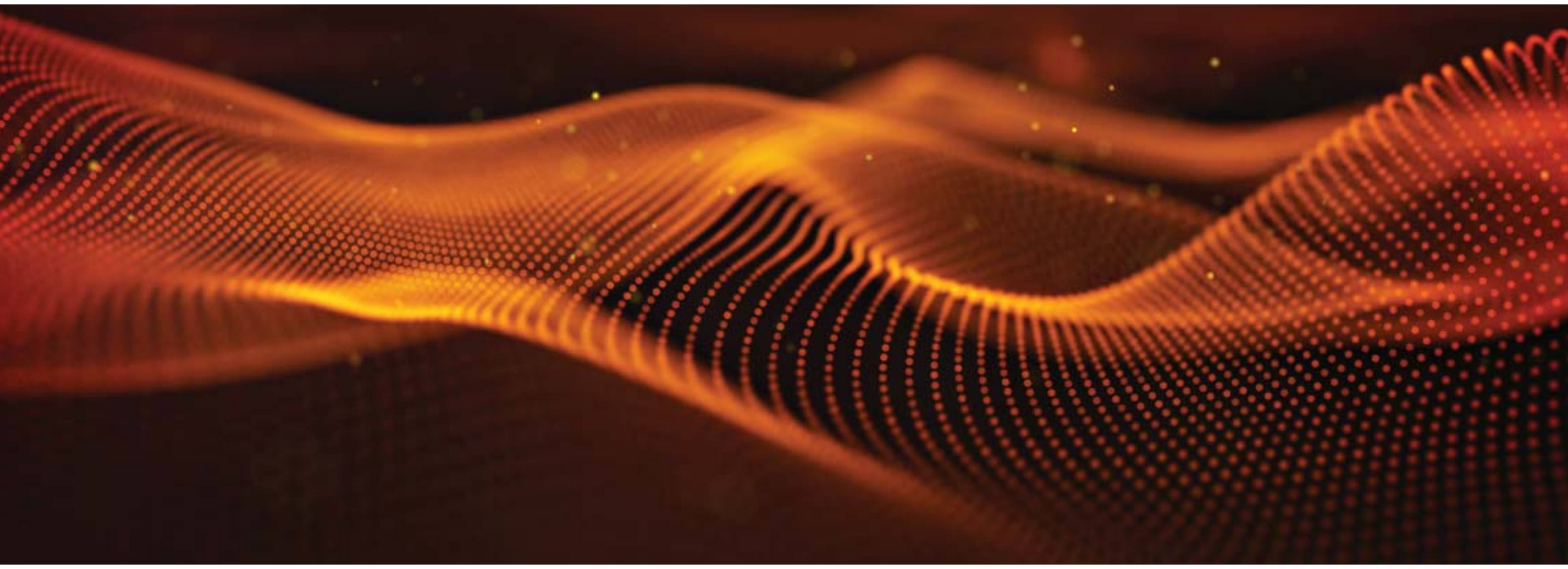

Going public in London

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Introduction

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

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

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

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

Market activity in London over the last five years (2014–2018) has remained consistent, with an average of roughly 50 IPOs taking place each year on both the Main Market and AIM.

	Amount raised	Total market cap at listing	Number of companies	Non-UK companies
Main Market	£33bn	£129bn	244	42
AIM	£6bn	£21bn	247	45

Why go public?

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

Advantages

	A listing on London's stock exchange will enhance the image of a company as stable and transparent. This may have associated benefits such as lower rates of interest on debt facilities reflecting the lender's views on the status and maturity of the company.
	The company has easy access to the fully liquid capital markets. This in turn provides more flexibility to grow the business.
	Listed shares are easily valued and traded in the market, making them an attractive alternative to cash as a source of acquisition currency when looking to acquire new businesses.
	The management team will have been through a thorough due diligence process in connection with the IPO, which will invariably lead to a greater understanding of the company and the markets in which it operates.
	The regulatory requirements and due diligence process make a listed company attractive to investors and provide comfort to existing clients and suppliers.
	A listed company may be a more attractive proposition for key employees due to the ability to receive compensation in the form of listed shares, or options over those shares.

Disadvantages

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

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

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

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

Shareholders may obtain a bigger say in the management of the business as a number of corporate actions will require shareholder approval.

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

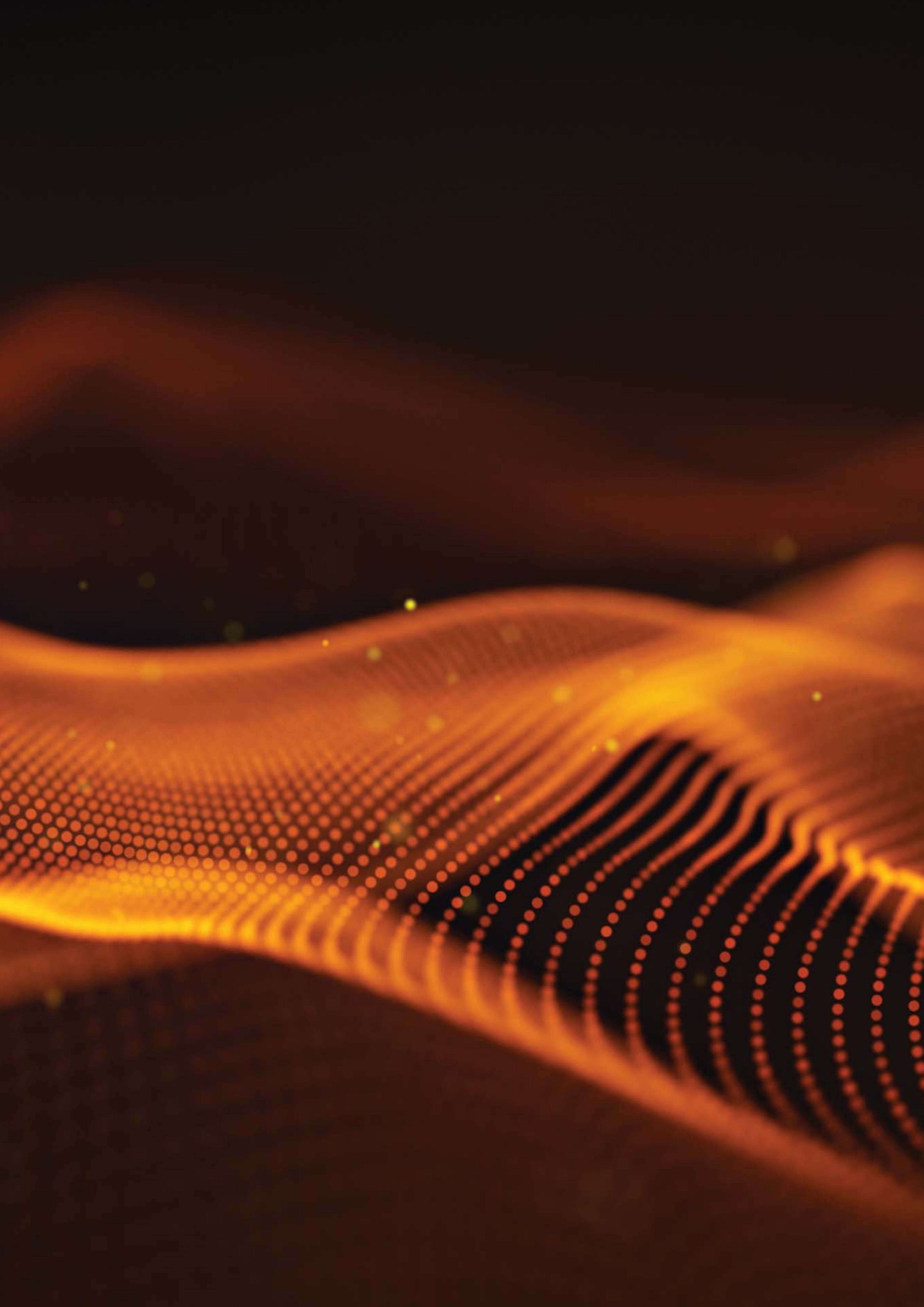
When to IPO?

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

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

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

- Is there a compelling business reason for taking the company public?
- Is the company big enough? Are the cost, disclosure burden and regulatory scrutiny proportionate to the size of the business?
- Is the company saleable to the market? Can it forecast financial performance accurately and on a consistent basis? Will there be a liquid market in the company's shares?
- Does it have sufficient operational systems to cope with the increased disclosure and regulatory demands of the listed company regime?
- Is now the right time, given the state of the market and the maturity of the company?

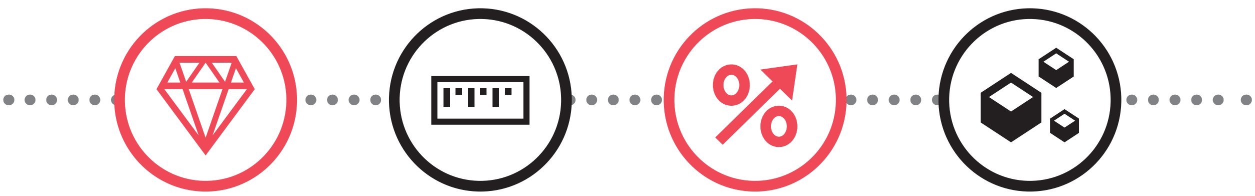


What listing venue?

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

Main Market

The Main Market of the LSE is divided into four segments.



Premium

Standard

High Growth (HGS)

Specialist Fund (SFS)

Companies which are listed on the premium segment or the standard segment of the LSE will also be included on the FCA's Official List, meaning that they are required to comply with a number of obligations that are imposed by the FCA (including the Listing Rules). The premium segment contains the vast majority of the well-known listed companies in the UK.

The HGS is designed as a stepping stone to the premium segment for high-growth entrepreneurial companies. The SFS is designed for highly specialised investment entities that wish to target institutional, highly knowledgeable investors.

Indexation

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

AIM

The Alternative Investment Market (AIM) is a high-growth securities market designed to meet the needs of smaller, growing companies which do not necessarily meet the criteria for listing on the Main Market, or would benefit from a more flexible regulatory environment (AIM companies are not contained on the FCA's Official List).

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

	Main Market				AIM
Requirement	**Premium**	**Standard**	**HGS**	**SFS**	
Sponsor	Required	Not required	Required (Key adviser)	Not required	Nominated adviser
Offer documentation	Prospectus	Prospectus	Prospectus	Prospectus	Admission document
Minimum market cap	£700,000	£700,000	N/A	N/A	N/A
Minimum free float (shares in public hands)	25% of class of shares listed	25% of class of shares listed	10% of class of shares listed with value of at least £30m	N/A	N/A
Historical financial information	Yes – covering 3 years	Yes – covering 3 years or such shorter period as company been in existence	Yes – covering 3 years or such shorter period as company been in existence	Yes – covering 3 years or such shorter period as company been in existence	Yes – covering 3 years or such shorter period as company been in existence
Working capital	Sufficient for 12 months following date of prospectus	Sufficient for 12 months following date of prospectus	Sufficient for 12 months following date of prospectus	Sufficient for 12 months following date of prospectus	Sufficient for 12 months following admission
Eligible for inclusion in the FTSE index?	Yes	No	No	No	No

Allocation and structuring

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

Institutional offer

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

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

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

Retail offer

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

Primary versus secondary

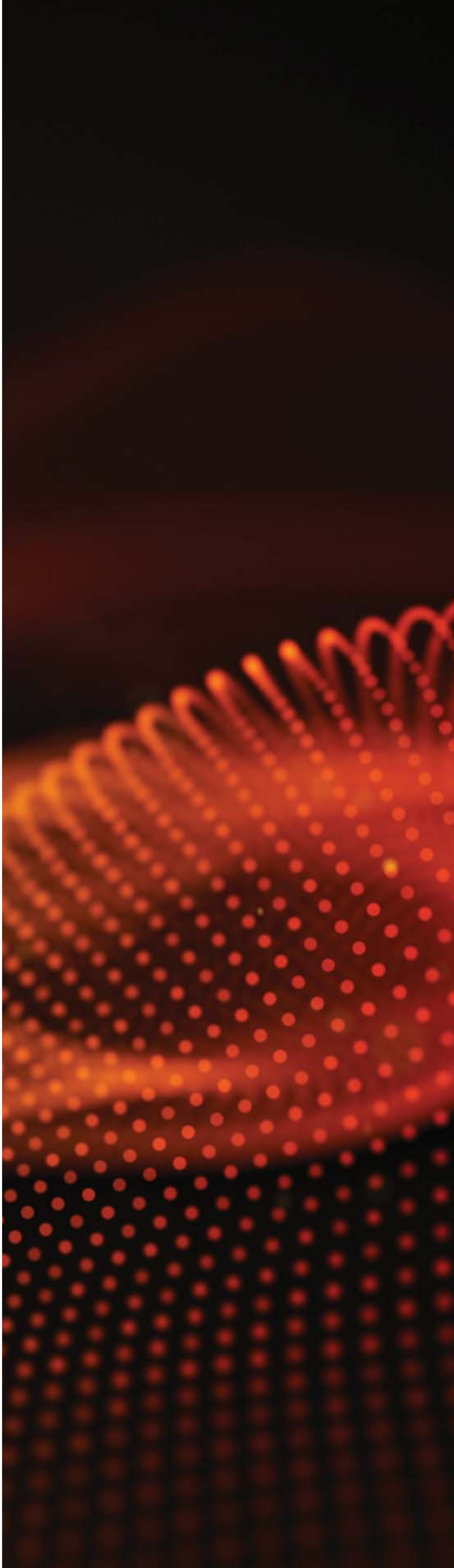
On any IPO there can be some tension between the number of shares issued by the company – which raises funds for the company itself (often referred to as the "primary" element) - and the number of shares sold by existing shareholders, which raises money for them (often referred to as the "secondary"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

US offering

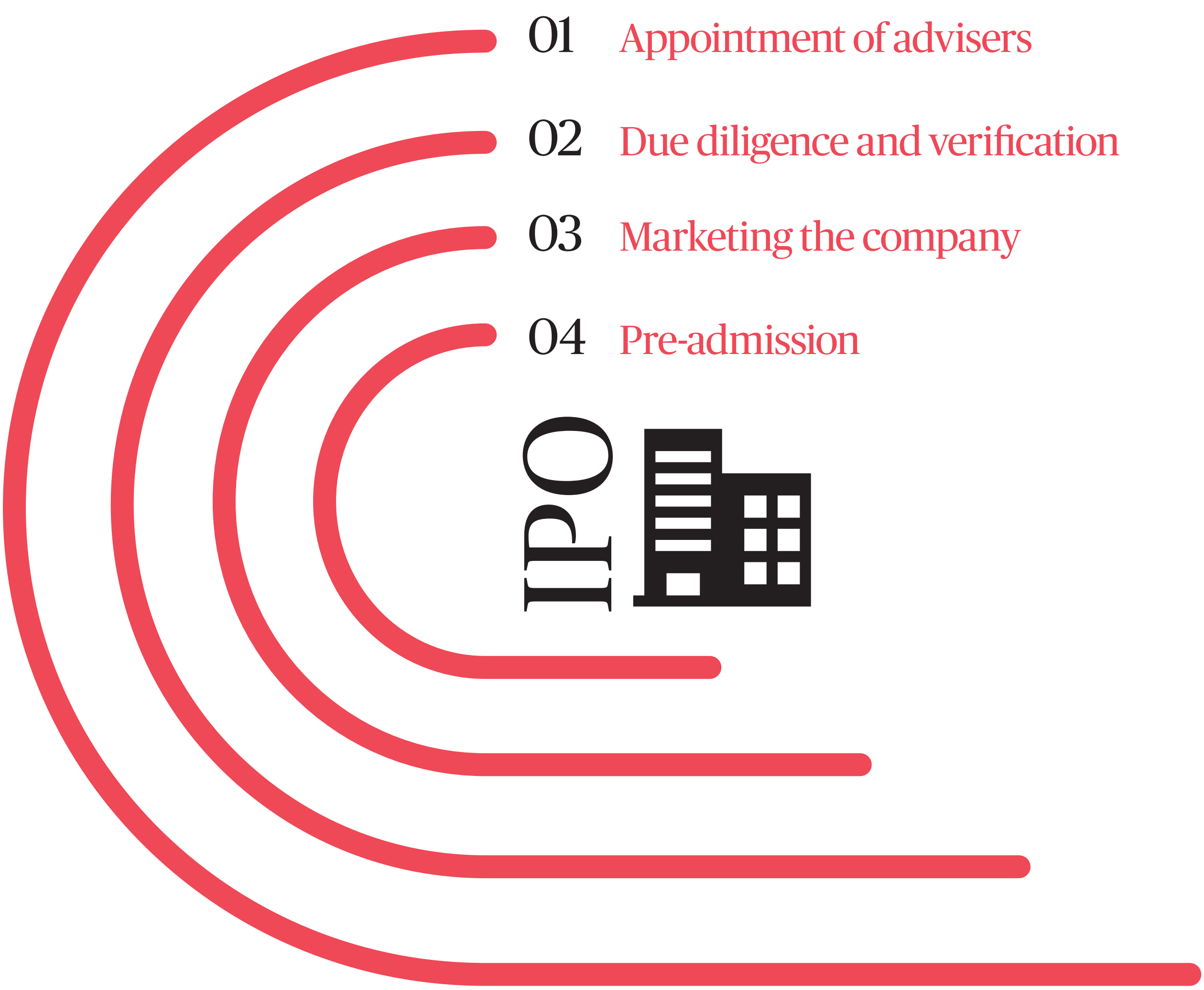
Despite the listing venue being London, companies looking to raise capital in an IPO may also decide to market their shares to potential investors in the US. Marketing into the US can lead to price tension, and hopefully increased demand. It can also raise a company's profile internationally and further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

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

In addition, offering shares in an IPO process outside the US will still trigger US securities laws. This means that a company will need to have regard to US securities laws regardless of whether or not it intends to market its shares in the US. There are, however, a number of common exemptions that are typically used to steer around these rules.



An IPO can be broken down into four main phases.



01 Appointment of advisers

A company looking to go public will need to consider the appointment of the following advisers:

- **Sponsor:** a company applying for its shares to be admitted to the premium segment of the Main Market must appoint a sponsor for the duration of the listing process. The sponsor assesses the suitability of the company for an IPO, advises on the composition of the board and management team, determines the best method of listing the company, and communicates with the FCA on behalf of the company.
- **Nominated adviser (or "nomad"):** a company applying for its shares to be listed on AIM must appoint a nominated adviser, which it has to retain at all times it is listed on AIM. A nominated adviser will liaise with the London Stock Exchange on behalf of the company and has to satisfy itself that the company is appropriate for admission to AIM.
- **Broker/bookrunner/underwriter:** the broker or bookrunner advises the company on market conditions, demand for the company's shares and pricing. This may be the same entity as the sponsor or the nominated adviser. If the IPO is underwritten, then an underwriter (an investment bank which may be the same as the broker, sponsor or nominated adviser) may agree to subscribe for or purchase any shares that are not subscribed for or purchased by the investors as part of the IPO. This means that the company and any selling shareholders have certainty on the proceeds that they will receive. In larger IPOs it is common to have a group of underwriters fulfilling this role.
- **Legal advisers:** lawyers to the company will coordinate the legal due diligence process, draft the offer document and advise the company on the legal aspects of its IPO. Lawyers to the sponsor or nominated adviser will advise on their regulatory obligations and role in the IPO process.
- **Reporting accountant:** the offer document must contain prescribed financial information concerning the company and its group. A reporting accountant will prepare a financial "long form" report in relation to the financial affairs of the company which will be reflected in the offer document. It will also undertake a working capital exercise to ensure that the company has sufficient working capital for at least 12 months from the date of the offer document.
- **Public relations:** a company will usually appoint a public relations adviser which will coordinate how details of the IPO are communicated to the public.

02 Due diligence and verification

The principal marketing tool for a company going public is the offer document. Because potential investors will generally rely on the offer document when making their decision to invest, it is vital that all material information relating to the company (including any problems and risks) is included in that document. The due diligence process should identify all such information which needs to be disclosed in order to provide investors with an accurate picture of the company they have decided to invest in. Omitting this information may lead to an investor claiming it was misled when it made its investment decision.

Due diligence is categorised into commercial, financial, tax and legal due diligence and involves a comprehensive investigation into the company's business, finances, prospects and any risks associated with an investment in the company. For a company with extensive historic operations, the due diligence exercise can take a number of months to complete, but gives the directors an opportunity to undertake a full analysis of the business and will lead to a greater understanding of its operations in the long term.

If an investor can successfully claim that it relied on inaccurate information contained in the offer document when making its investment decision, the directors of a listed company could incur civil and criminal liability. In order to mitigate this, it is beneficial for the directors to be able to show that, at the time they made the statements in the offer document, it was reasonable for them to have believed they were correct. The verification process assists this defence, since it is a written record of the source material used by the directors in making those statements in the offer document.

03 Marketing the company

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

In the subsequent marketing period the company will produce a draft of the offer document called the "pathfinder". This is a version of the offer document that is nearly final but which does not include any details on the price to be paid per share. The company can use the pathfinder as a way of assisting with the price discovery process (i.e. what investors might be willing to pay for the shares). Typically this process is achieved by way of a "roadshow", where the company makes presentations to a number of investors over a period of a few weeks. The outcome of the roadshow will allow the company and its bookrunner (which is also likely to be the company's sponsor or broker) to establish demand for the shares and therefore inform the price that the shares will be sold for in the IPO.

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

Research

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

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

04 Pre-admission

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

Key documentation involved in the IPO process includes:

Engagement letters
Set out the terms of engagement between the company and its advisers.

Due diligence report
The legal report on the company and its group.

Verification notes
The record of the verification exercise undertaken in relation to the offer document.

Offer documents (i.e. the prospectus or admission document)
An important marketing tool containing information on the company and the IPO.

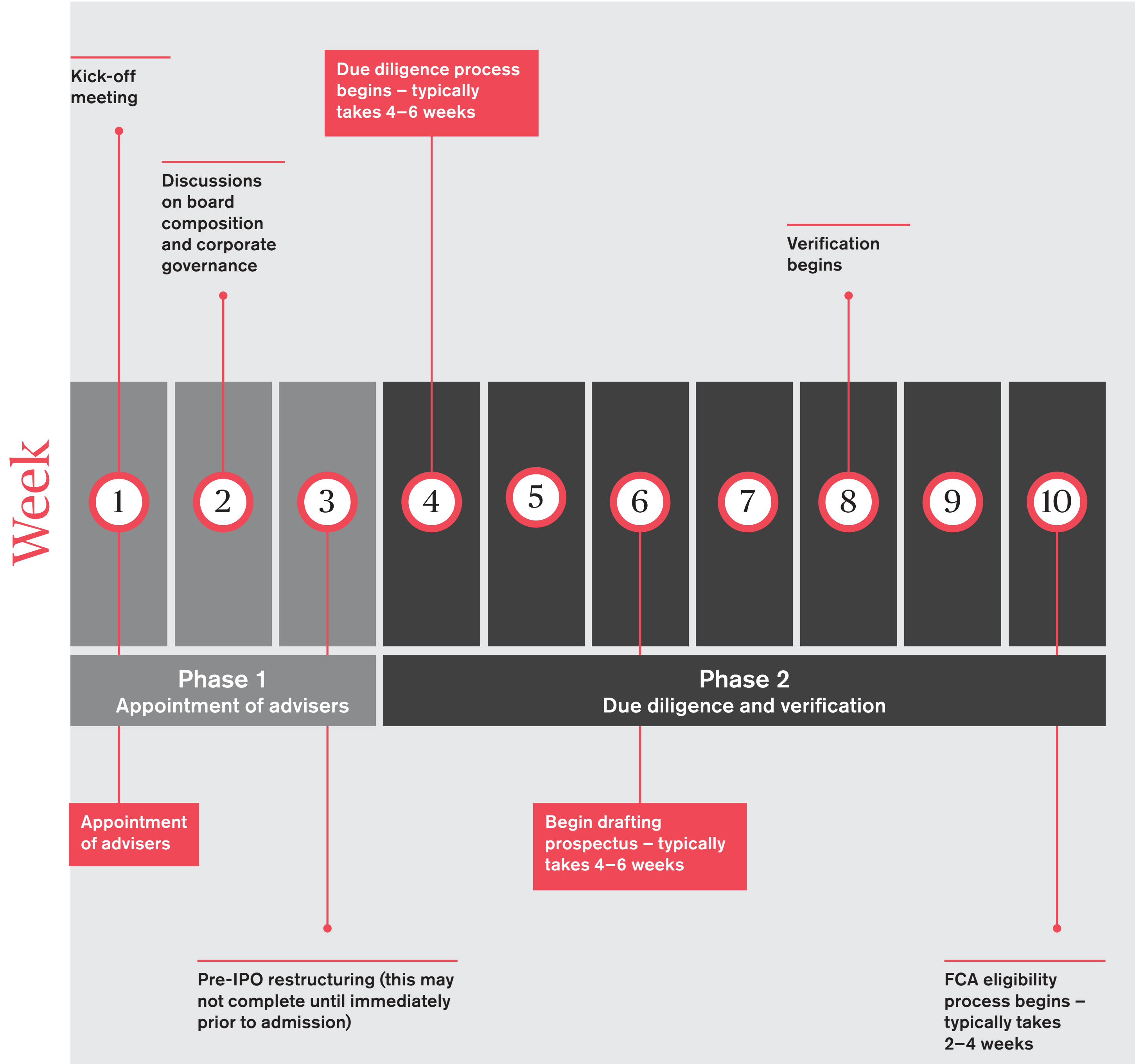
Underwriting agreement
Sets out the terms on which a bank agrees to underwrite the IPO.

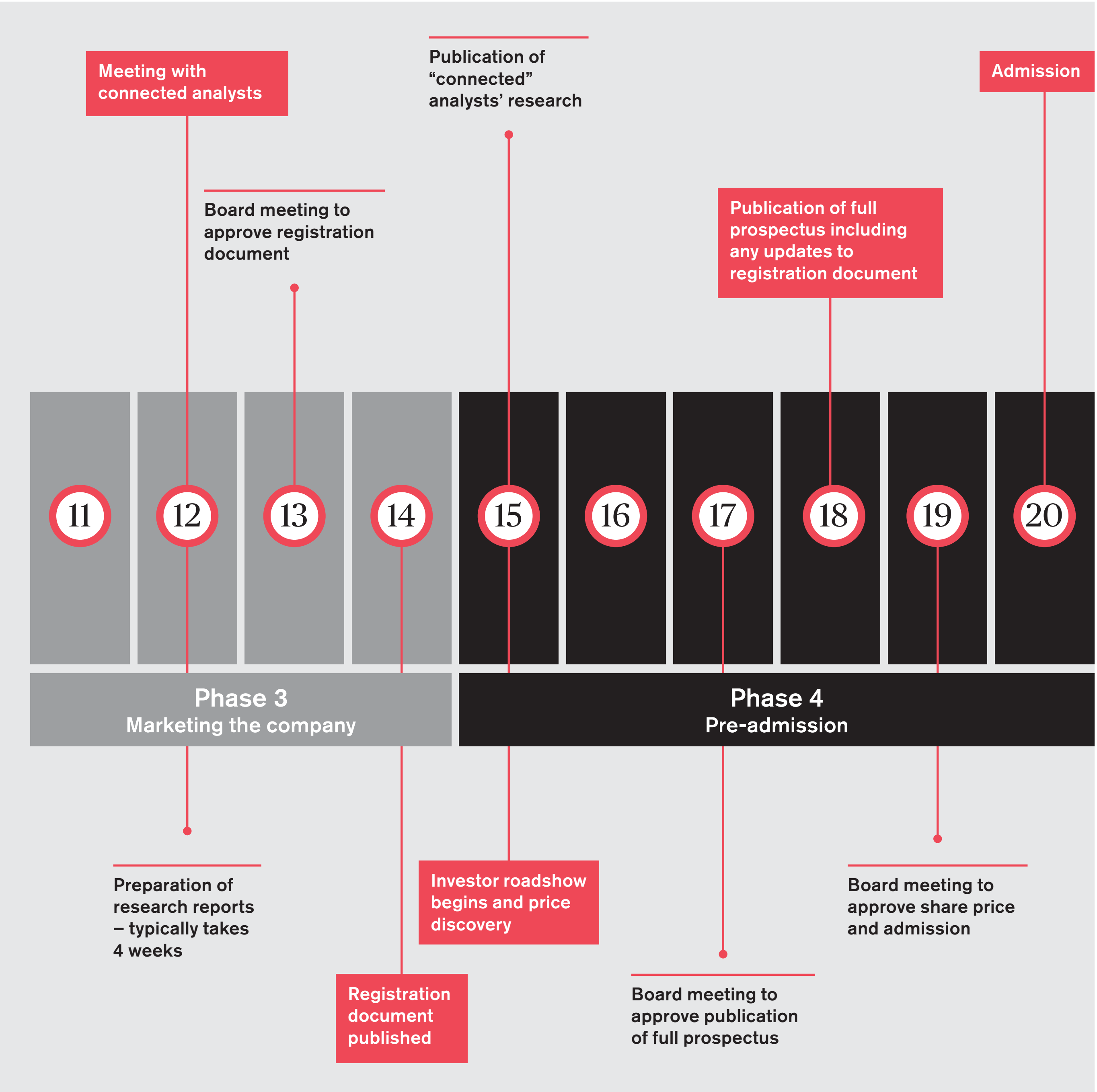
Marketing presentation
The presentation used by management on the "roadshow".

"Comfort" package
Letters addressed to the company and others that provide confirmation as to the company's financial and regulatory position.

Your IPO - from start to finish

The Main Market IPO process can last anywhere between three months and a year, but will typically run for approximately four to six months. The 20 week timeline below gives an indication of the key phases of that process. The AIM IPO process tends to be shorter.




Meeting with connected analysts
Publication of "connected" analysts' research
Admission
Board meeting to approve registration document
Publication of full prospectus including any updates to registration document
11
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Phase 3
Marketing the company
Phase 4
Pre-admission
Preparation of research reports – typically takes 4 weeks
Investor roadshow begins and price discovery
Board meeting to approve share price and admission
Registration document published
Board meeting to approve publication of full prospectus

Main Market - the prospectus

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

Traditionally, in the UK the prospectus has been published as one composite document. However, recent rule changes on the dissemination of analyst research (see Marketing the company, page 14) means that the registration document is now published separately, up to six weeks prior to admission, to allow for analyst research to be more widely available to investors. A full prospectus is then published (which will include the issue price per share and any updates to the registration document) roughly two weeks prior to admission.

What are the contents requirements?

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

Liability

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

AIM

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

A prospectus is made up of three components:

Registration document

which contains details on the company

Securities note

which contains details on the shares being offered in the IPO

Summary

which provides an overview of both the company and the shares being offered

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

The impact of IPO on existing incentive arrangements

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

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

Designing the right remuneration package

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

Investor expectations

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

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

Ongoing regulatory requirements

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

Directors' remuneration report

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

Life after IPO – continuing obligations

Once listed, a public company will need to comply with the continuing obligations imposed on listed public companies in the UK. The table below sets out some of the more notable ongoing requirements.

Requirement	Sponsor	Financial reporting	Disclosure of inside information	Corporate governance	Significant transactions
Main Market					
Premium	Yes	Annual and half-year reporting	As soon as possible	UK Corporate Governance Code – "comply or explain"	Shareholder consent required for large transactions
Standard	N/A	Annual and half-year reporting	As soon as possible	Corporate governance statement in annual report	N/A
HGS	N/A	Annual and half-year reporting	As soon as possible	Corporate governance statement in annual report	Notification required for large transactions
SFS	N/A	Annual and half-year reporting	As soon as possible	Corporate governance statement in annual report	N/A
AIM					
	Nominated adviser required	Annual and half-year reporting	As soon as possible	Disclosure of what corporate governance code is followed	Depending on size, shareholder consent or notification required

Related party transactions	Notification of changes to significant shareholders	Directors' dealing	Requirement to demonstrate independence from shareholders holding 30% or more	Prospectus required for further share issues	Requirement to produce a directors' remuneration report
Depending on size, shareholder consent or notification required	Holding reaches or exceeds 3% and any percentage thereafter	Notification required	Yes	Where issue is more than 20% of issued share capital of same class	Yes
N/A	Holding reaches or exceeds 3% and any percentage thereafter	Notification required	N/A	Where issue is more than 20% of issued share capital of same class	Yes
Notification required	Holding reaches or exceeds 3% and any percentage thereafter	Notification required	N/A	Where issue is more than 20% of issued share capital of same class	No
N/A	Holding reaches or exceeds 3% and any percentage thereafter	Notification required	N/A	Where issue is more than 20% of issued share capital of same class	Not currently
Notification required	Holding reaches or exceeds 3% and any percentage thereafter	Notification required	N/A	Not usually required	Not currently

How Macfarlanes can help you

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

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

We advise clients in relation to:

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

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‘They’re fabulous,’ an interviewee reports, adding: ‘Their strengths include the ease of working with them, their pragmatism and the sheer effort they put in.’

Chambers 2019

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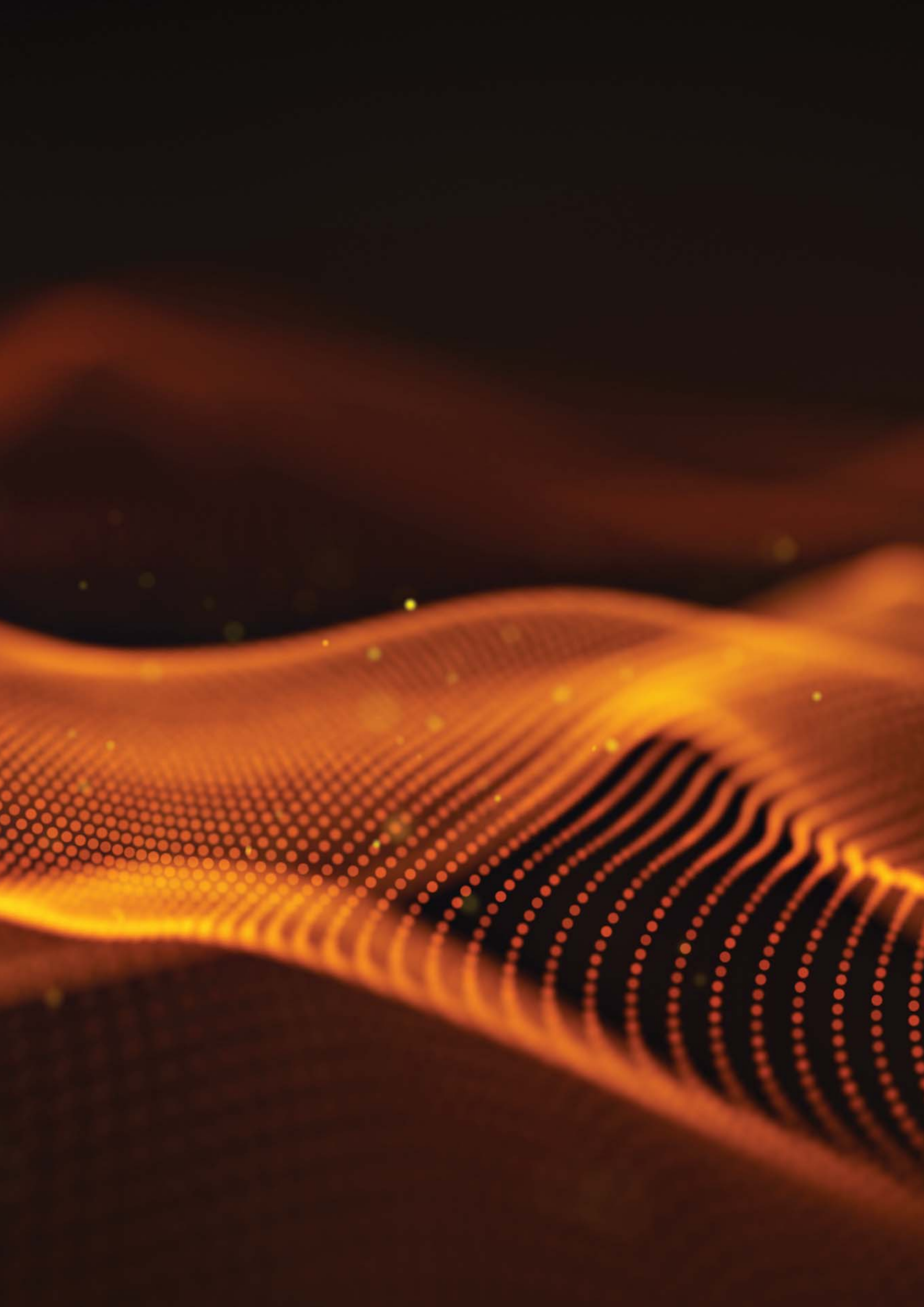

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