

UKLA Technical Note

Directors' and management disclosures in share prospectuses

Ref: UKLA / TN / 626.1

PR Appendix 3
Annexes

Annex 1, Annex 10, Annex 25 and Annex 28 items 14 to 16 and Annex 23 items 9 to 11 of Appendix 3 of the Prospectus Rules set out the disclosures required for directors and managers of an issuer.

Often the disclosure relating to the key statements on convictions, bankruptcies, etc, fails to cover all persons required under item 14.1 of Annex 1 and Annex 10. In particular, reference is often made only to the issuer's directors and the disclosure does not cover the company's senior management. We anticipate this will also be the case for drafts of documents submitted which are required to contain this disclosure under item 14.1 of Annex 25 and 28 (or item 9.1 in the case of Annex 23). Issuers are reminded to check whether the appropriate range of individuals have been considered before submitting their document for vetting.

In addition, the wording of the key statements under item 14.1 of Annex 1 and 10 relating to convictions and bankruptcies occasionally does not follow the actual wording of the rules. Annex 1 and 10 item 14.1 disclosures require the issuer to include details of the convictions, bankruptcies, receiverships, etc, of directors and other senior management (see Annex 1 and 10 item 14.1 b, c and d) both in a personal capacity and, where they have been acting as a director (or in a similar capacity), in a corporate or partnership at any time within the last five years. We anticipate this will also be the case for drafts of documents submitted which are required to contain statements under item 14.1 of Annex 25 and 28 (or item 9.1 in the case of Annex 23).

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

For Annex 1 and 10 item 15.1, disclosure on remuneration paid to directors and senior management is sometimes reflected as a single aggregate amount. Again, we anticipate this will also be the case for drafts of documents submitted that are required to contain statements under item 15.1 of Annex 25 and 28 (or item 10.1 in the case of Annex 23). In many jurisdictions (including the UK), directors' remuneration should be given on an individual basis, and so this should be disclosed as required by item 15.1 of the relevant annexes (or item 10.1 in the case of Annex 23).

In many cases, Annex 1 and 10 item 15.2 is not directly addressed in the prospectus. Again, we anticipate this will also be the case for drafts of documents submitted which are required to contain statements under item 15.2 of Annex 25 and 28 (or item 10.2 in the case of Annex 23). Issuers simply annotate the prospectus to refer to various disclosures relating to pension and retirement plans, but do not specifically state what amounts are set aside for pension, retirement or similar benefits (if any) as required by the rules.

Annex 1 and 10 item 16.2 disclosures commonly include reference to service contracts and the requisite notice periods and severance payable upon termination, without making specific disclosure on any 'benefits' payable on termination. In addition, in circumstances where no benefits are payable on termination, an appropriate negative statement (a requirement of Annex 1 10 item 16.2) is often omitted from the prospectus. As before, we anticipate this will also be the case for drafts of documents submitted that are required to contain statements under item 16.2 of Annex 25 and 28 (or item 11.2 in the case of Annex 23).

One reading of item 16.2 (or item 11.2 in the case of Annex 23) is that it only requires information on service contracts that include a termination provision. We do not believe that this is the intention of the rule. As such, issuers should include details on all service contracts, whether they include a termination provision or not. In any event, the reality is that it is very difficult to find a service contract without some form of termination benefit anyway, even if this is simply a notice period.