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# REFORMS TO UK LISTING REGIME TAKING EFFECT ON 29 JULY – KEY PRACTICAL IMPACTS

The FCA announced on 11 July 2024 that it is introducing a radically restructured UK listing regime, which makes it more straightforward to list in London, with effect from 29 July 2024. The package of reforms also has the potential to reduce the complexity involved in maintaining a listing in the UK and make it simpler for listed companies to participate in transformative M&A and be more competitive in auction processes. The continuing obligations to which companies are subject, and their listing segment, have been modified. Issuers undertaking transactions which straddle the regime coming into effect will not be expected to comply with obligations that no longer apply. Please contact us if you have any questions.

## A modernised listing regime

The FCA's deregulatory shift to achieving investor protection through disclosure, rather than regulation, concludes a process of exploring the scope for a radical overhaul, that began in 2020. It offers flexibility for issuers, over prescriptive regulation, and is subject to safeguards to provide investors with information to exercise stewardship and voting rights. However, issuers will need to focus even more on their obligations under MAR and on what information is required to be disclosed in order to keep the market appropriately updated given the less prescriptive regime. It is still unknown whether the change to a more disclosure-based regime will mean any scaling down in the work involved in preparing disclosures for Class 1 / significant transactions or the scope of the comfort that boards seek from advisers.

## The reforms will impact listed company M&A activity

The Snapshot below sets out an overview of the main obligations that will apply to companies in the Equity Shares for Commercial Companies category.

## Key practical impacts

- A choice of disclosure options: whilst the removal of the need for shareholder approval for all but the largest significant transactions is welcomed, the enhanced notification requirements may lead to additional pressure on deal timetables and logistics. Under the new rules companies have been given more flexibility on the timing and content of disclosures required in relation to significant transactions, rather than having the ability to satisfy disclosure requirements at a later date when the shareholder circular was posted.
- Investor engagement: investors will no longer have the protection of a vote or a circular on significant transactions (except on a reverse takeover), nor any direct enforcement rights for breach of the disclosure obligations save for potential s90A FSMA liability to investors, which can arise from information in RIS statements (such as the UKLR 7.3.1 significant transaction notification). From an issuer perspective, having robust policies and procedures around the scope, content and timing of public disclosures will be key to managing this risk. Companies would want to keep their shareholders informed and supportive and to enhance their investor relations and other communication around M&A strategies and decision-making.
- There may be scope to renegotiate the comfort boards will seek from advisers: with fewer express requirements under the new UKLRs, companies may now have to negotiate the basis on which any private comfort is provided to them by third party advisers and engage with discussions about who should be an addressee and on what basis. Reporting accountants may still be willing to provide comfort in respect of private reports on an uncapped basis where comfort is required either in connection with a regulatory requirement (e.g. under the UKLRs) or a declaration given by a sponsor.
- Wall-crossing: we think there may have to be increased reliance on alternative shareholder engagement processes in the absence of a shareholder vote. In relation to wall-crossing, an issuer contemplating a major transaction may selectively disclose details of the proposed transaction to major shareholders (subject to confidentiality). The FCA are adjusting the guidance in DTR2.5.7G to clarify that circumstances for selective disclosure to shareholders is not limited to where formal shareholder approval is required.
- Sponsor role: a fair and reasonable confirmation, backed by a sponsor, will only be required for a large RPT. Sponsors will continue to be required for reverse takeovers and where the company seeks guidance about the application of the UK Listing Rules to its specific situation (or a waiver).

## At-a-glance: changes under the UK Listing Rules

- The removal of the need for shareholder approval for **significant transactions** (except reverse takeovers) and for **large related party transactions**. In lieu, enhanced market notifications are required when announcing significant transactions (but with no need to re-state target historical financial information or include a working capital statement). This can be followed by a further announcement containing more detailed information, by the deal's completion. A completion notification is also required. There may be circumstances where companies would choose to include pro forma financials on a voluntary basis, in the market notification, in order to guide analysts and the market as to the effect of the deal. See below regarding RPTs.
- **Modifications to the scope of significant (currently Class 1) transactions**, including removal of the profits element of the class tests, mean fewer transactions are likely to be in scope, and permit a more dynamic approach. There is new broad guidance on the rule which provides that 'ordinary course' transactions are out-of-scope for Class 1 (and RPT) purposes. This should result in more deals falling out of scope. (See Snapshot).
- The removal of the need for announcements for **Class 2 transactions** along with the list of required disclosures for these transactions, giving companies more flexibility over what to disclose to the market.
- **MAR disclosures** may become a proxy for some of the content that is currently disclosed in circulars and what was historically announced in relation to Class 2 transactions. As a result, we may expect even greater focus on MAR and on Investor Relations' views on what information investors require. The rules will be changed to allow expressly for wall-crossing ahead of significant transaction announcements despite the absence of an investor vote. There will need to be a keen focus on ensuring announcements are not misleading, by omission, and that analysts have the information they require. Historically, the Class 2 regime provided some comfort.
- For **large related party transactions** (5%+), there is only a requirement for a market notification and a sponsor 'fair and reasonable opinion'. Small RPTs no longer need to be disclosed. The related party scope has been relaxed as a "substantial shareholder" for these purposes is now 20%+, up from 10%.
- The removal of the need for a **relationship agreement with a controlling shareholder** (30%+) and the retention of the need for a dual independent shareholder vote on the election and re-election of independent directors where there is such a shareholder. This follows investor opposition to a relaxation of these rules. There are some changes to the rules in the form of additional disclosures and a new mechanism for directors to give an opinion on any resolution proposed by a controlling shareholder.
- A more permissive approach to **dual-class** share structures (weighted voting shares) with no prescribed 'sunset' limits (save for a 10-year 'sunset' for institutional investors). Slightly different rules apply regarding who may hold the enhanced voting rights, in addition to founder directors (see Snapshot).
- The reduction of the sponsor role (requiring the appointment of a regulated advisor to provide assurances to the FCA and guide the listed company) owing to the changes to Class 1 and related party transactions rules. The role is retained for reverse takeovers, listing transactions requiring a prospectus, IPOs and, under a new rule, any context where a listed company is in any doubt about the application of the Listing Rules to its specific situation.
- The status quo is maintained on corporate governance with a requirement for ESCC companies to report against the **UK Corporate Governance Code**, on a comply-or-explain basis. TCFD and D&I disclosures also remain on a 'comply or explain' basis.
- A **single listing category** for equity shares in all commercial companies, known as the ESCC, replaces the premium and standard listing segments. The FCA has mapped most premium listed issuers to the ESCC and has notified other companies of its approach to mapping them to a listing segment.
- A **new 'international secondary listing'** category for non-UK companies with a primary listing outside the UK is introduced (with tailored rules expected to be similar to the former standard listing segment).
- There is a **'transition' listing category** restricted to standard listed companies who are not ready to comply with the more onerous obligations (see Snapshot) in the ESCC segment. The category has no set end date, at inception. However, the FCA may consult in future on removing it. 'Transition' segment issuers may apply to transfer to the ESCC; this will require the appointment of a sponsor and an eligibility assessment.
- **New powers for the FCA** to access listed company records.
- Less onerous and more streamlined eligibility requirements on IPO, to attract entrants to London's equity markets. Pending prospectus reforms that are expected in 2025, disclosure of up to 3 years historic financial information and a working capital statement will still be required in an IPO prospectus. See our IPO article for further information.

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## Snapshot: what rules apply to ESCC listing

| | New single segment (ESCC) | Premium listing | Standard listing |
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| **Significant and related party transactions** | | | |
| **Significant transactions (currently Class 1 transactions)** ≥ 25% value | • No shareholder vote or circular required.<br>• Potentially three announcements. Prescribed announcement of key transaction details at the time of entering into the transaction. There may also be be a second announcement containing the disclosure historically required in a Class 1 circular. A completion notification is required.<br>• For disposals or reverse takeovers only, where historic financial information or HFI is not available, or is not of the right calibre for disclosure an explanation must be given of how the company reached the price with a board 'fairness' statement. In the case of an acquisition (other than a reverse takeover), no audited financials on the target nor statement as to fairness of the consideration will be needed.<br>• No requirements for transactions under 25% (subject to the aggregation rules). | Shareholder vote with circular. | None apply. |
| **Class 2 transactions** ≥ 5%value | No announcement obligation or prescribed disclosure requirements, other than if disclosure is required by the issuer's obligations under Article 17 (Public disclosure of inside information) or Article 18 (Insider lists) of UK MAR. | Prescribed announcement of key details at the time of entry into the transaction. | None apply. |
| **Vote on reverse takeovers** | Retention of votes (and the need for a circular) on reverse takeovers.<br>A prospectus would still be required on re-admission of the combined entity. | Subject to same vote and information rules as Class 1. | Not required. |
| **Vote to approve issuance of shares at more than a 10% discount or buyback** | Independent votes will still be required for certain discounted offers (such as an issuance of shares at more than a 10%+ discount, but not for smaller discounts) or for certain share buybacks. | Required. | Not required. |
| **Vote to de-list** | A vote will be required and the controlling shareholder regime continues to apply. | Required. | Not required. |
| **Significant transactions - what is in scope?** | | | |
| **Review of "class tests"** | The profits metric has been removed from the class tests, as it produced anomalous results.<br>New guidance is provided in the rules on the meaning of transactions which are in the "ordinary course of business" and therefore are out-of-scope.<br>Deals that are done to support the issuer's existing business may be ordinary course despite the fact these are not regularly undertaken as part of its day-to-day business activities, as will a company's regular trading activities, normal commercial arrangements and capital expenditure to support, maintain, add scale, or in line with business strategy.<br>Sponsor advice will be required where the company is in any doubt about the application of the listing rules. | The profits metric is relevant for assessing class tests.<br>Sponsor must be appointed if deal may be Class 1. | Does not apply. |

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| **Break fees** | The 1% limit on break fees will no longer apply (other than in circumstances where the UK CA 2006 financial assistance rules or the Takeover Code limit the break fee). Companies no longer need to consider whether agreeing to pay a break fee might, of itself, require shareholder approval. These changes are likely to result in UK companies being asked to provide bigger break fees than we saw historically. Listed companies are permitted to pay substantial break fees, without these being significant transactions. | Limited to 1% of market cap or value of any offer for the issuer. | Does not apply. |
| **Put and call options** | 1%+ indemnities or put and call options in joint ventures are significant transactions and require disclosure as such (but not shareholder approval). Shareholder approval is longer be required for an uncapped put option or call option. Companies are permitted to enter into options limited to 1% of market cap and these would be outside the scope of the significant transactions regime. | Uncapped options are assessed by reference to a 25% profits test. | Does not apply. |
| **Indemnities** | The giving of exceptional indemnities above 1% of market cap and put and call options in relation to entering and exiting JVs which were historically caught as being Class 1 are treated as significant transactions and are no longer be subject to shareholder approval. Companies will be permitted to enter into indemnities limited to 1% of market cap (significant transactions above this limit). Current exceptions will continue to apply. | High-value exceptional indemnities and entering into or exiting JVs caught as Class 1.<br>Uncapped indemnities assessed against a 25% profits test. | Does not apply. |
| **Related party transactions** | | | |
| **Related party transactions under the Listing Rules** | Large RPTs ≥ 5%value:<br>• notification of key details.<br>• fair and reasonable statement by board and sponsor confirmation.<br>• board approval (excluding conflicted directors).<br>• no vote or circular required.<br>• profits metric removed from RPT class test.<br>Guidance in the rules on 'ordinary course of business' for RPTs (as for Class 1 transactions above).<br>The smaller related party requirements have been removed. | ≥ 0.25% value ('smaller RPT'):<br>• fair and reasonable opinion<br>• announce brief details on entering into transaction.<br>≥ 5%value – as above but with:<br>• independent shareholder approval with circular.<br>• fair and reasonable statement. | At value ≥ 5% (based on rules in DTR 7.3):announce key details and information to enable market to assess whether terms are fair and reasonable. Board approval excluding conflicted director(s). |
| **DTR 7.3 RPTs** | The RPT rules in DTR 7.3 will not apply to ESCC companies. | At value ≥ 5% (based on DTR 7.3): as for standard listing above. | |

| Ongoing listing conditions | | | |
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| **Controlling shareholder regime amended** | The requirement that companies must be independent from any controlling shareholder is retained and the FCA seeks to support this through disclosures and requirements for directors to give formally opinions on any resolutions proposed by a controlling shareholder when a director considers the resolution is intended or appears to be intended to circumvent the proper application of the listing rules.<br><br>The requirement for a relationship agreement is removed while revised guidance is provided on factors indicating non-independence. | A company must operate an independent business and have a relationship agreement with any 30%+ shareholder. | N/A. However, relationship agreements with 30%+ shareholder common in practice. |
| **Dual class share structures (i.e. weighted voting rights)** | A more permissive approach applies to these structures:<br>• No 'sunset' limit will be required for holders who are natural persons. There will be a maximum 10 year 'sunset' for institutional investors.<br>• Weighted voting rights will not be transferable and may only be held by certain persons. The UKLRs allow legal persons to (i.e. institutional investors) to hold enhanced voting shares at IPO to ensure that they are not disincentivised from participating in pre-IPO fundinng rounds).<br>• No voting ratio or weighting limits will be specified.<br>• Weighted voting rights allowed on almost all matters put to a vote save for certain dilutive transactions (at 10%+ discount) or cancellation of listing. | Targeted form involving:<br>• takeover deterrent or use to prevent director removal<br>• may only be held by a director<br>• 5-year sunset clause<br>• 20:1 cap on voting ratio<br>• restrictions on transfer. | No restrictions apply. |

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