

FCA DECISIVELY MOVES AHEAD ON OVERHAULING THE UK LISTING REGIME

On 20 December 2023, the FCA published a consultation paper (CP23/31) as a sequel to its consultation paper published in May 2023 (CP23/10) (see our client briefing on its earlier consultation paper [here](#)), which proposed a radical overhaul of the UK listing regime for commercial companies.

BACKGROUND

In the new consultation paper, the FCA built on the approach it set out in the earlier consultation paper and confirmed that it intends to effect very significant reforms to the listing regime, including:

- a single listing segment for commercial companies ("ESCC") to replace the current distinction between premium and standard listed companies;
- removal of certain prescriptive eligibility criteria with greater focus on disclosure and transparency e.g., no need for a three-year representative track record or a "clean" working capital statement;
- removal of shareholder votes and shareholder circulars for significant transactions and related party transactions;
- a more flexible approach to dual class share structures with no sunset provisions; and
- a more disclosure-based approach, allowing investors to decide whether they wish to invest in and/or continue to support listed companies.

However, in a departure from the earlier consultation paper, the FCA is no longer considering replacing the mandatory requirement for a relationship agreement with a controlling shareholder with a "comply or explain" regime. The proposal now is to retain the requirement to have a mandatory relationship agreement as it stands today.

Changes to the sponsor regime are also largely in line with the FCA's earlier consultation paper and the circumstances that require the appointment of a sponsor for post-listing corporate actions are proposed to be more limited.

Changes to the Class 1 transaction regime follow the position set out in CP23/10 and the requirements to publish a shareholder circular and obtain shareholder approval are being removed. Another positive measure is the removal of the profits metric from the class tests given it can sometimes produce anomalous results. A detailed comparison between the existing

Key takeaways

- Single listing segment for commercial companies with less onerous eligibility requirements than currently applicable to premium listings
- Revamping the continuing obligations of listed companies, including dropping the requirement for publishing shareholder circulars and obtaining shareholder approval for class 1 transactions and related party transactions and the need to restate financial information of the target in case of acquisitions to move towards a disclosure-driven notification framework
- Sponsor role largely unchanged at the listing stage but reduced for post-listing corporate actions
- Departures from CP23/10:
 - More flexibility for dual class share structures than contemplated earlier, including removal of mandatory sunset provisions and expanding the categories of persons eligible to hold such shares to now comprise directors, employees, shareholders and entities controlled by them (i.e. not institutional investors)
 - Paring back the proposal to apply a "comply or explain" regime to relationship agreements with controlling shareholders - instead, present requirement for a mandatory relationship agreement to continue in the same form
- New listing categories to be introduced, including a transition category for existing standard listed companies that cannot or do not wish to transfer to the ESCC and an international category for non-UK companies seeking a dual listing in London

continuing obligations and the proposed regime can be found in our separate [article](#) where we explore the impact of CP23/31 for listed companies.

The new consultation paper also outlines the other proposed new listing categories, namely:

- an 'international companies' category for non-UK incorporated companies with an existing primary listing on an overseas venue;
- a 'transition' category for commercial companies that are currently listed on the standard segment; and
- a category catering to shell companies, including SPACs.

Next steps

- Closing date for the consultation
 - For proposals regarding sponsor competence: 16 February 2024
 - For proposals regarding the new UK Listing Rules ("UKLR") to replace the existing Listing Rules sourcebook: 24 February 2024
- During Q1 2024, publication of the remaining tranche of the draft UKLR instrument (including rules in relation to the new international and shell companies listing categories as well as other existing categories such as close-ended investment funds and global depositary receipts) and proposed revisions to certain Technical and Procedural notes
- Proposed introduction of the listing reforms in early H2 2024 with a short two-week implementation period between publication of the final UKLR and their entry into force

KEY CHANGES TO THE EXISTING LISTING REGIME

	Existing Premium Listing	Equity Listing Segment for Commercial Companies (ESCC)
<i>Eligibility requirements for listing</i>		
Historical Financial Information	3-year track record, audited without qualification	3 year audited track record OR such shorter period that the company has been in operation, no requirement to be unqualified
	At least 75% of the business must be supported by the 3-year track record	No longer required
	Last audited financials must not be more than six months old at time of publication of prospectus	No longer required
Independent business	Company must demonstrate that it carries on an independent business as its main activity	No longer required
Working capital	Clean working capital statement (i.e. sufficient working capital for at least the next 12 months)	No longer required
Dual class voting structures	Such shares may only be held by a director 5-year mandatory sunset provisions	Shares may be held by directors, employees, a natural person who is an investor or shareholder (i.e. no

	Existing Premium Listing	Equity Listing Segment for Commercial Companies (ESCC)
	<p>20:1 cap on voting ratio</p> <p>Restrictions on transfer</p>	<p>institutional investors) or entities controlled by them at the time of listing</p> <p>No mandatory sunset provisions</p> <p>No voting ratio or weighing limits</p> <p>Transfers permitted to persons established for the benefit of / owned and controlled by natural persons holding such shares</p> <p>Ability to vote on reverse takeovers</p> <p>Enhanced voting rights not exercisable to approve certain actions, including:</p> <ul style="list-style-type: none"> • cancellation of listing • transfer from the ESCC to another listing category • approval of further capital raises at a discount exceeding 10% to the middle market price of the shares • dealing in own securities and shares
Relationship Agreement	Company must have in place a relationship agreement with its controlling shareholder(s) (i.e. if applicable, those holding 30+% of the shares)	No changes
Continuing Obligations		
Significant Transactions	<p>Company must publish a FCA-approved circular and obtain prior shareholder approval in a general meeting to undertake a Class 1 transaction (i.e. where any class test returns a result of over 25% under at least one of the class test percentage ratios)</p> <p>Company must notify the market in respect of Class 2 transactions (i.e. where any class test returns a result between 5% and 25% under at least one of the class test percentage ratios)</p>	<p>Shareholder vote and publication of shareholder circular no longer required for a Class 1 transaction unless transaction is a "reverse takeover" (i.e. one of the 100% "class test" thresholds is exceeded).</p> <p>Obligation to notify the market of a proposed Class 1 transaction based on a prescribed set of contents, including financial information relating to the target/asset (if it is available)</p> <p>Where target/asset financial information is not available, a statement from the board that it is not available along with an explanation for how the company arrived</p>

	Existing Premium Listing	Equity Listing Segment for Commercial Companies (ESCC)
		<p>at the transaction consideration and a "fairness" statement</p> <p>No notification requirements for Class 2 transactions; however, obligations under the UK Market Abuse Regulation regime to avoid misleading the market or to disclose inside information still apply</p>
Related Party Transactions	<p>For small related party transactions (i.e. 0.25% value or more under at least one of the class test percentage ratios), requirement to:</p> <ul style="list-style-type: none"> • obtain a "fair and reasonable" opinion from the sponsor • notify the market on entering into the transaction based on a prescribed set of contents <p>For large related party transactions (i.e. 5% value or more under at least one of the class test percentage ratios), in addition to the above, requirement to publish a FCA-approved circular and obtain independent shareholder approval</p> <p>A transaction with a substantial shareholder (i.e. holding 10+% of the shares) categorised as a related party transaction</p>	<p>For small related party transactions, no specific mandatory notification requirements and a "fair and reasonable" opinion from the sponsor no longer required</p> <p>For large related party transactions, shareholder vote and publication of shareholder circular no longer required. Instead, requirement for notifying the market based on a prescribed set of contents and obtaining confirmation from the sponsor that the transaction is "fair and reasonable"</p> <p>The threshold for a shareholder to be considered to be a "related party" increased from 10% to 20%</p>

Existing Standard Listing

Existing standard listed companies transferring to the ESCC under the new regime will become subject to the continuing obligations listed above after migration and will then become subject to enhanced obligations as compared to the present regime for standard listed companies.

OTHER KEY PROPOSALS

Shareholder approval requirements under the new regime

Following CP23/10 and CP23/31 and the removal of shareholder approval requirements for class 1 transactions and related party transactions, the circumstances in which shareholder approval will be required under the Listing Rules are:

- cancellation of listing;
- transfer of listing from the ESCC to another category;
- reverse takeovers;
- election or re-election of any independent director by shareholders (if the company has a controlling shareholder);
- employee share schemes, long-term incentive plans and discounted option arrangements; and

- certain other matters, such as the issuance of shares at more than a 10% discount and share buybacks which currently require shareholder approval in certain circumstances.

UK Corporate Governance Code and annual disclosures

In line with its proposals in CP23/10, the FCA is proposing to apply the requirements of the UK Corporate Governance Code to the ESCC and so commercial companies listing on this segment will have to disclose annually, on a "comply or explain" basis, against the UK Corporate Governance Code's requirements. Similarly, companies listing on the ESCC will have to report on their compliance with climate (TCFD) and diversity disclosure requirements on a "comply or explain" basis.

Listing Principles and Further Guidance

- The FCA is proceeding with creating a single set of Listing Principles to replace the existing Listing Principles and the Premium Listing Principles. As part of the listing application, a board confirmation must be provided to the FCA that the applicant has the appropriate systems and controls in place to ensure it is able to comply with its ongoing listing obligations and the Listing Principles post-admission.
- The FCA is also proposing to provide detailed clarifications regarding the procedures and steps listed companies need to have in place to comply with the new Listing Principles and lay down the responsibilities of directors of listed companies in relation to the new Listing Principles, including having to take reasonable steps to ensure that the company's governance structure enables it to maintain adequate procedures, systems and controls to comply with its obligations as a listed company.

CHANGES TO THE SPONSOR REGIME

The FCA is proposing to retain the sponsor regime for applications to list on the new commercial companies and shell companies listing categories and extend the regime to migration to the ESCC from another category. Consistent with CP23/10, the FCA is envisaging the role of the sponsor at the listing gateway to be largely unchanged, except where the FCA is proposing to remove certain of the existing premium listing eligibility criteria.

After listing, the FCA envisages the appointment of a sponsor in the following limited circumstances:

- confirmation that the terms of a related party transaction are "fair and reasonable";
- significant increases in share capital that involve publication of a prospectus (NB. the threshold at which a prospectus for secondary issuances will be required continues to be considered by the FCA in the context of the Public Offers and Admissions to Trading Regime being progressed by HM Treasury);
- reverse takeovers;
- transfers between listing categories, particularly where a company is transferring from the 'transition' category to the ESCC; and
- in cases of related party transactions, where a company wishes to seek individual guidance from the FCA in relation to the application of the relevant Listing Rules, Disclosure Guidance and Transparency Rules and

the UK Market Abuse Regulation or whilst seeking a waiver, modification or substitution of the provisions of the UKLR, including the class tests.

OTHER NEW LISTING CATEGORIES

Listing Category	Features
Transition	For companies (whether UK-incorporated or not) that have an existing standard listing and cannot or do not wish to transfer to the ESCC
	Companies in this category will continue to be subject to the existing continuing obligations that apply to standard listed companies once the new regime comes into effect
	Closed category and only available to existing standard listed companies or 'in-flight' applicants
	No long stop date for migration from this category to another listing category but the FCA has reserved the power to do so in the medium term after prior consultation
	Sponsor to be appointed if a 'transition' company wants to transfer to a category that requires the appointment of a sponsor (i.e. the ESCC or the shell companies category)
	Reverse takeover to trigger re-admission to the ESCC and require compliance with its eligibility criteria
Shell Companies and SPACs	For shell companies actively pursuing an acquisition strategy or with assets consisting solely or largely of cash or short-dated securities
	Requirements to largely mirror the existing Listing Rules with some existing investor protection measures to convert into eligibility requirements, including: <ul style="list-style-type: none"> the requirement to undertake an 'initial transaction' (i.e. a reverse takeover or de-SPAC transaction) within 24 months of listing or otherwise cease operations and wind up the entity subject to certain exemptions; and ring-fence IPO proceeds with a third party to be utilised in the future towards an acquisition or to be returned to the public shareholders
	Sponsor regime applicable to this category: <ul style="list-style-type: none"> at the time of listing; whilst undertaking the 'initial transaction'; and whilst undertaking further issues
International Commercial Companies	Open to non-UK incorporated companies with an existing primary listing in another jurisdiction, subject to certain qualifying criteria
	Primary listing need not be in the jurisdiction of incorporation but the place of central management and control must be located in either the country of incorporation or the place of primary listing

Listing Category	Features
	Continuing obligations currently applicable to standard listed companies to apply to this category of listing along with a requirement to comply with the continuing obligations of the jurisdiction of primary listing
	Sponsor regime not applicable for listing on this category

TREATMENT OF 'IN-FLIGHT' APPLICATIONS AND 'MID-FLIGHT' TRANSACTIONS

- An application for listing which is 'in-flight' (i.e. a complete submission to the FCA for an eligibility review made before the publication of the final UKLR) will be mapped to a listing category under the new regime. For applications for standard listing which are 'in-flight' when the new regime comes into play, there will be a one-year period from the enforcement of the new regime for listing on one of the transition, shell companies and international companies categories.
- Similarly, 'in-flight' applications for transfers between existing listing categories will be mapped to the appropriate listing category under the new regime.
- Transactions by premium listed companies that are 'mid-flight' when the new regime comes into force will be governed by the UKLR with immediate effect and the existing premium listing requirements will cease to apply. The FCA will provide more details of transition provisions for such transactions in the remaining tranche of the rules expected in Q1 2024.

CLIFFORD CHANCE VIEW

The new consultation paper is the culmination of the FCA's 'once in a generation' overhaul of the UK listing regime that began in 2020 with the UK Listings Review by Lord Hill. With the publication of a portion of the contemplated new rules and a timeline for implementation, it lays down a definite roadmap for the introduction of the new regime in early H2 2024 and whilst the remaining tranche of the rules are expected to be published in Q1 2024, companies considering an IPO in London now have a clear sense of the regulatory direction of travel and can start contemplating the steps for an IPO under the new regime.

The proposed reforms to the listing regime are part of a larger ecosystem of reforms to the UK equity capital markets, such as the proposed new framework for prospectuses being considered by HM Treasury and proposed to be introduced in 2025 after a consultation process by the FCA on the new regime for public offers and admissions to trading in H2 2024, a revised UK Corporate Governance Code expected to be published in 2024, consideration of the rules regarding secondary equity capital raisings and proposed reforms to the investment research regime. Taken together, these measures represent a very significant re-shaping of the UK equity capital markets landscape

designed to ensure that London remains a leading international capital market and listing venue of choice for both issuers and investors.

As part of the new prospectus regime, HM Treasury is introducing a range of helpful new public offer exemptions. In addition, the FCA will consult formally in Summer 2024 on its admission prospectus rules, including the requirement for a prospectus for secondary fundraisings at a materially higher threshold. The current threshold of 20% of share capital is expected to be increased to at least 30% of issued share capital.

In parallel, the European Commission is working on measures to make the EU capital markets more attractive. The EU is contemplating that the inside information disclosure regime under EU MAR will be liberalised to allow for limited disclosure during the lifespan of a 'protracted process' (including any M&A) and requiring disclosure only of sufficiently precise information relating to events that are intended to complete such a process. Furthermore, investment research rules are proposed to be liberalised to promote investment coverage on SMEs. The EU Listing Act also proposes to create a level-playing field across the EU for multiple class share structures, albeit only for SMEs.

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