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# UK LISTING REGIME REFORM: GETTING READY

## Why the proposed new UK listing regime matters for listed companies

The Financial Conduct Authority confirmed in December 2023 that it intends to introduce a radically restructured UK listing regime, which will make it more straightforward to list in London. 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, will be modified. The final rules are expected to take effect in Autumn 2024, two weeks after their publication. Issuers undertaking transactions which straddle the regime coming into effect will not be expected to comply with obligations that no longer apply.

### A near-final modernised listing regime

The FCA's confirmation that it intends to proceed with a deregulatory shift to achieving investor protection through disclosure, rather than regulation, comes after a series of public consultations, exploring the scope of a radical overhaul, that began in 2020. The disclosure-based approach 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 that will apply going forward. In terms of day-to-day compliance requirements, the FCA is retaining many of the concepts underpinning the premium listing rules, with a streamlining that results in widespread changes to text.

### The continuing obligations of listed companies will change and this may 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. Most premium listed companies will move to it. The consultation closing dates for FCA CP 23/31 are 22 March 2024 (main rules) and 16 February 2024 (sponsor competency rules).

### Reform of the wider UK listing ecosystem

The listing reforms are part of a wider series of measures with the intention of making the UK equity markets a more attractive place to do business. Other reforms that will form part of this transformation of the listing ecosystem and that it is anticipated may come into effect, over the next two years or so, include:

- corporate governance reforms, with a new edition of the UK Corporate Governance Code expected to be published in 2024.
- UK public offer prospectus reform and a liberalisation of the approach to disclosure, in 2025. An FCA consultation on admission prospectus rules is expected to be published in Summer 2024, again with final rules in 2025.
- a relaxation of the rules for secondary equity capital raisings, under the UK Secondary Capital Raising Review.
- plans to advance the digitalisation of the way in which shares are held by investors, including full dematerialisation of listed company share registers.
- reform of the investment research regime and the possibility of a "consolidated tape" for equity to collate post-trade data in one place.

## At-a-glance: Proposed changes to the 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 will be required when announcing significant transactions, with a requirement to disclose financial information (but with no need to re-state target historical financial information or include a working capital statement). 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 is currently 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. It remains to be seen if the rules will be changed to allow 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. Currently, the Class 2 regime provides some comfort.
- For **large related party transactions** (5%+), there will only be a requirement for a market notification and a sponsor 'fair and reasonable opinion'. Small RPTs will 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 retention of the need for a **relationship agreement with a controlling shareholder** (30%+) and for a dual independent shareholder vote on the election and re-election of independent directors where there is such a shareholder. These requirements are unchanged. This follows investor opposition to a relaxation of these rules.
- A more permissive approach to **dual-class** share structures (weighted voting shares) with no prescribed 'sunset' limits. Slightly different rules will 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.
- A requirement for ESCC companies to report against the **UK Corporate Governance Code**, on a comply-or-explain basis.
- A **single listing category** for equity shares in all commercial companies, known as the ESCC, will replace the premium and standard listing segments. The FCA will map most premium listed issuers to the ESCC and will notify 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 will be introduced (with tailored rules expected to be similar to the current standard listing segment).
- There will be 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 will have 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.

## Snapshot: what rules are expected to change under the ESCC proposal?

| | Proposed new single segment (ESCC) | Premium listing (current) | Standard listing (current) |
|---|---|---|---|
| **Significant and related party transactions** | | | |
| **Significant transactions (currently Class 1 transactions)** ≥ 25% value | • No shareholder vote or circular required.<br>• Prescribed announcement of key transaction details at the time of entering into the transaction: these requirements are less onerous than current Class 1 and include: elements of financial information, for the past two (rather than the current three) years.<br>• 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. | 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 will be removed from the class tests, as it produces 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><br>Sponsor must be appointed if deal may be Class 1. | Does not apply. |
| **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 will 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 see currently. Listed companies will be 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** | Shareholder approval will no longer be required for an uncapped put option or call option. Companies would be 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. |

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| **Indemnities** | The giving of exceptional indemnities above 1% of market cap and put and call options in relation to entering and exiting JVs which are currently caught as being Class 1 will be treated as significant transactions and will 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. |
| **UK MAR compliance** | Guidance in the rules draws attention to the importance of compliance with the issuer's disclosure obligations under Article 17 and 18 of UK MAR, in a new UKLR 7.3.10G. | MAR obligations apply under primary legislation. | MAR obligations apply under primary legislation. |
| **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 will be 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** | | | |
| **Controlling shareholder regime retained** | No change – there is a need for a relationship agreement with a controlling shareholder as well as for an independent shareholder vote on the election and re-election of independent directors where there is a controlling shareholder. | A company must 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 will apply to these structures:<br>• No 'sunset' limit will be required.<br>• Weighted voting rights will not be transferable and could only be held by natural persons (e.g. directors or employees) or entities controlled by them (i.e. no institutional investors).<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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C H A N C E

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