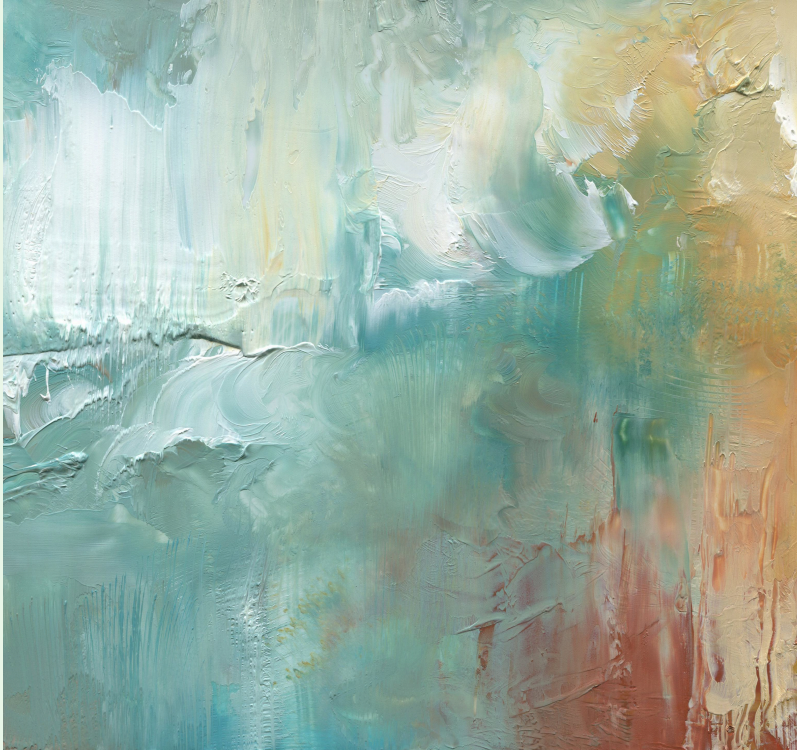
Clifford Chance

Across the Board

Prospectus reforms now in force will facilitate strategic M&A for UK-listed companies



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Headlines

1. No prospectus required for consideration shares
2. Reduced complexity and execution risk
3. Shorter timelines and reduced costs
4. Allotment authorities
5. Transaction disclosure considerations

Following the 2024 UK Listing Rule changes, which removed the need for shareholder approval of significant transactions other than reverse takeovers, the Prospectus Rule changes now in force should make it quicker and less costly for UK-listed companies (Listed Acquirers) to use equity as consideration in both public and private M&A transactions.

Crucially, the new rules will reduce the instances where Listed Acquirers must publish a prospectus. Under the previous regime, a prospectus was always required if the equity offered by the Listed Acquirer reached or exceeded 20% of its existing share capital, regardless of whether there was an 'offer to the public'.

Practical impacts for listed acquirers

1

No prospectus required for consideration shares

Listed Acquirers are unlikely to require a prospectus where they use their equity as consideration on large acquisitions.

- Private M&A: Listed Acquirers can now issue and admit up to 75% of their issued share capital as consideration in private acquisitions without publishing a prospectus, provided they fall within an 'offer to the public' exemption (which is likely for most private M&A transactions), and the transaction is not a reverse takeover under the UK Listing Rules.

  In theory, Listed Acquirers could complete large acquisitions of privately held companies using share consideration within a week of signing the share purchase agreement, provided they have sufficient existing allotment authority. However, in practice antitrust and regulatory approvals are likely to delay matters in most large, strategic transactions.

- Public M&A: Listed Acquirers acquiring public companies using their own equity, whether pursuant to a scheme of arrangement or contractual offer, will not require a prospectus unless the transaction is a reverse takeover under the UK Listing Rules, or a reverse acquisition transaction in accordance with IFRS 3. This means that a Listed Acquirer potentially could issue up to just under 100% of its issued share capital without requiring a prospectus.

  The relevant disclosure to support the equity issuance could be achieved through a combination of the scheme or offer document and the Listed Acquirer's existing public disclosure. However, as noted below, a shareholder circular may still be needed if the Listed Acquirer requires increased authority to allot the shares.

2

Reduced complexity and execution risk

The 2024 changes to the Listing Rules have already simplified M&A processes for Listed Acquirers by removing the need for a shareholder vote (and therefore a shareholder circular) on significant transactions, except for reverse takeovers. By also reducing the circumstances where a Listed Acquirer must publish a prospectus, the new rules should further simplify deal structures and enable Listed Acquirers to compete more effectively with financial sponsors and unlisted strategic acquirers in M&A auction processes.

However, where Listed Acquirers are issuing 30% or more of their issued share capital under the share purchase agreement to a single seller or connected group of sellers, Takeover Code concert party analysis will need to be considered. Listed Acquirers will need to consider whether a Rule 9 Waiver is required, requiring the publication of a shareholder circular and a shareholder vote in accordance with the Takeover Code.

3

Shorter timelines and reduced costs

The Prospectus Rule changes should shorten transaction timetables, as preparing and publishing a prospectus can add months to an M&A process. This is particularly relevant for Listed Acquirers carrying out large private company acquisitions. A Listed Acquirer may, subject to antitrust and FDI considerations, be able to complete all but the largest of deals using share consideration within a week of signing the SPA.

Transaction costs will also be reduced, as there is no need for reporting accountants or lawyers to assist with preparing a prospectus.

4

Allotment authorities

The approach of investor bodies towards allotment authorities at AGMs remains a key unknown. If institutional bodies, such as the Investment Association or Pre-emption Group, continue to support only limited routine allotment authorities, the timetable and reduced disclosure benefits described above will not be fully realised. Currently, these investor bodies support companies issuing up to one third of their share capital as non-cash consideration in connection with an acquisition. As a result, Listed Acquirers may still need to seek shareholder approval for the issue and allotment of consideration shares. This will require preparing and posting a shareholder circular. Even if the investor bodies change their stance, careful shareholder engagement will still be needed to ensure support for a significantly larger allotment authority.

5

Transaction disclosure considerations

In circumstances where a Listed Acquirer is carrying out a large acquisition, and neither a prospectus nor a shareholder circular is required, its board will need to consider the Listed Acquirer's market disclosures, and whether the Listing Rule 7 (Significant Transactions) disclosure requirements provide sufficient disclosure. Previously, the 'old' Prospectus Rule requirements drove significant public disclosure on target businesses, which helped shareholders and analysts assess the enlarged group on completion of the acquisition.

With these requirements no longer in place, we may see more fulsome transaction announcements (particularly on the very largest deals), potentially including details of the risks associated with the acquisition and share issuance.

This article explores how the Prospectus Rule changes will impact the use of equity as consideration in public and private M&A transactions. Another important consideration is how the changes will facilitate Listed Acquirers in raising equity finance to fund M&A. UK listed companies will have greater flexibility to use in full their pre-approved disapplication and allotment authorities in respect of pre-emptive offers without the need to publish a prospectus, although US securities law considerations may impact this. This will make it possible to execute open offers or rights issues on an expedited basis - see further.

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