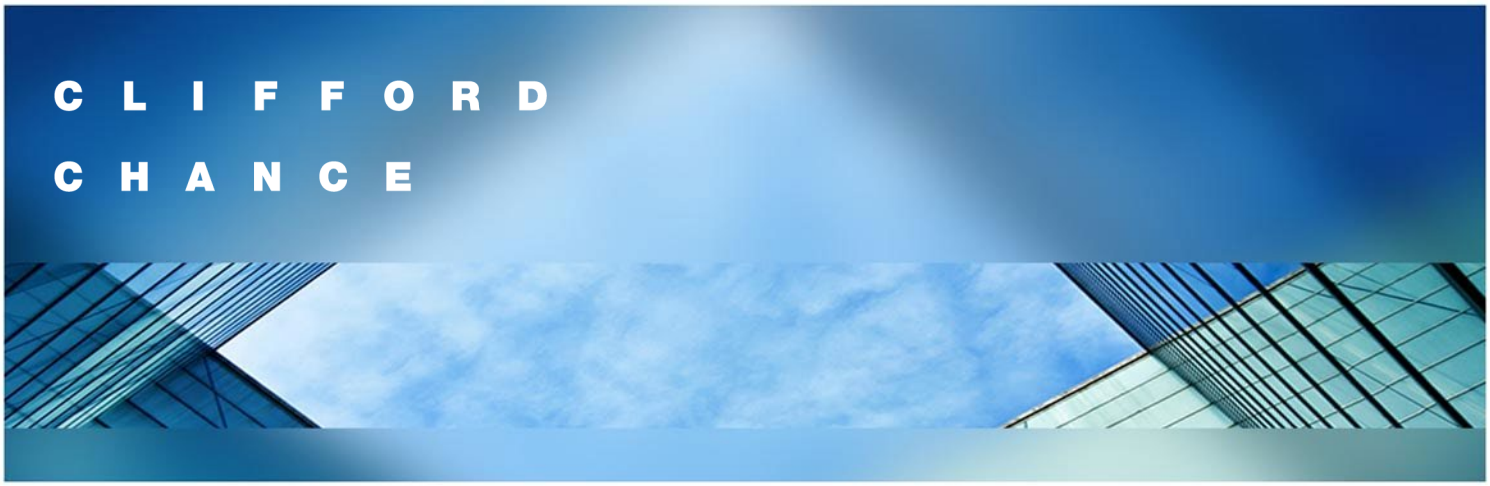

10 KEY TAKEAWAYS - HOW DOES THE 'ONCE IN A GENERATION' NEW UK LISTING REGIME BENEFIT LISTED COMPANIES AND POTENTIAL IPO CANDIDATES?

On 11 July 2024, the FCA published the long-anticipated new UK listing rules (FCA Policy Statement 24/6) following a series of consultation papers (see our last two client briefings explaining the papers in detail here and here). The final rules are broadly in line with the most recent draft on which the FCA consulted, save in a number of respects (which we summarise in the key takeaways below). The new rules represent a radical departure from the regime that has been in place for the past 30+ years and restructure the UK listing regime by simplifying it into a single listing category, streamlining eligibility for companies seeking to list in the UK and reducing the burden of ongoing obligations for listed companies. The new rules will take effect on 29 July 2024.

We have summarised below 10 key takeaways on how the new listing regime will impact (i) companies considering an IPO or a secondary listing in London, (ii) companies already listed in London, and (iii) investment banks acting as a listing sponsor on UK transactions.

10 KEY TAKEAWAYS

If you are a company considering an IPO or a secondary listing in London:

1. ***There is no longer a requirement for an IPO applicant to have a three-year representative financial and a revenue-earning track record to be eligible for listing.***

   Under the new rules, companies listed on the new single listing segment (i.e the Equity Listing Segment for Commercial Companies (ESCC)), need only disclose three years of audited historical financial information in their prospectus or such shorter period that the company has been in operation. **There is also no longer a restriction on companies with less than a three year financial track record nor a requirement for the financials to represent at least 75% of the business at the time of listing**. Additionally, **the date of the latest audited balance sheet of a new applicant to listing may now be more than six months from the date of the prospectus**. This reduces the burden on companies wanting to list in London and potentially extends the window when a company can IPO before its audited financial statements become "stale". On the whole, these changes signify a relaxation of prescriptive eligibility requirements in favour of a more disclosure-based approach. This may also allow growth companies and M&A-acquisitive companies to list, who previously may not have qualified without additional historical financial information being prepared. It should, however be noted that whilst this eligibility requirement has been removed, there remains:

   (a) a disclosure requirement to include pro forma financial information, if a "significant gross change" has occurred to the business in the period since the commencement of the last completed financial year;

   (b) the need to satisfy the prospectus disclosure requirements applicable to companies with complex financial histories (which may require the inclusion of additional financial information);

(c) the requirement to include the necessary information to allow an investor to make an informed assessment of, amongst other things, the assets and liabilities, financial position, profits and losses and prospects of the company; and

(d) the requirement to comply with any additional financial disclosures arising under US Regulation S-X for companies contemplating offering their shares to US qualified institutional buyers in reliance of Rule 144A of the US Securities Act of 1933.

2. ***There is no longer a requirement for an IPO applicant to demonstrate that it carries on an independent business as its main activity.***

This brings more flexibility to the eligibility criteria and allows for potentially complex business models and corporate structures (e.g. franchises/joint ventures etc.) to be listed in London without undertaking significant pre-IPO re-organisation. However, an issuer with a controlling shareholder (i.e a shareholder controlling 30+% of the company) will still be required to demonstrate that it can carry on its business independent of its controlling shareholder.

Key change in the final listing rules: **there is no longer a requirement to have a written relationship agreement in place with a controlling shareholder.** Contrary to the FCA's earlier proposals which retained the current requirement of having a relationship agreement, **the new rules pivot to a more agile, disclosure-based approach for companies to demonstrate their independence**. In place of a relationship agreement, companies will need to include additional disclosures and incorporate a new mechanism for directors to give formal opinions on any resolutions proposed by a controlling shareholder (where the directors consider the resolution is intended to, or appears to be intended to, circumvent the proper application of the UK Listing Rules). The FCA has also provided new guidance on how companies can demonstrate independence from a controlling shareholder. Whilst it will no longer be a mandatory requirement, we anticipate that many companies with a controlling shareholder will continue to put in place a relationship agreement to regulate the interaction between the company and the shareholder.

3. ***There is no longer a requirement for an IPO applicant to make a "clean" / unqualified working capital statement to be eligible for listing.***

This change opens the market to a wider range of companies operating in growth sectors that, for instance, have not been in operation for long or cannot make a “clean” / unqualified working capital statement (i.e. that the issuer has sufficient working capital for at least the 12 month period from the date of the prospectus), provided the existence of such circumstances is disclosed in the prospectus. Whilst in practice, this may be of limited benefit to many companies due to the marketing implications of not having sufficient working capital at the time of IPO, this will provide greater flexibility to companies whose business model is such that they are capital hungry and require further funding in the short term (e.g. early stage pharmaceutical companies), with such applicants likely needing to include greater disclosure to explain their historical, current and future business model, and the risks if additional capital cannot be raised subsequently, to persuade investors of the merits of their business.

4. ***Flexibility for an IPO applicant to have dual class share structures without any mandatory time restrictions (‘sunset periods’) on enhanced voting rights (save for institutional shareholders to which a 10-year sunset will apply).***

The new listing rules allow for enhanced voting shares to be issued to directors, other individuals who are investors or shareholders in the applicant, employees or a legal person owned or controlled by any of them at the time of listing. Under the new rules, **such enhanced voting rights can be exercised on almost any shareholder vote** (except issuing new shares at a discount of greater than 10%) not just removal of the holder as a director or after a change of control, as is the case under the current listing regime. This may encourage dynamic founder-led companies to enter public markets sooner whereas they may have previously been reluctant to do so due to the risk of loss of control.

Key change in the final listing rules: in a departure from the position previously proposed by the FCA, the new rules have been extended to **allow legal persons (i.e. institutional investors) to hold enhanced voting shares at IPO to ensure that they are not disincentivised from participating in pre-IPO funding rounds**. As a balancing measure, such dual class share structures will be subject to certain transfer restrictions and a 10-year mandatory time restriction or 'sunset period'. This 10-year sunset period will not apply to directors, employees and other individuals holding enhanced voting rights shares.

5. ***For companies with a primary listing in another jurisdiction, introduction of a lighter touch secondary listing regime in London, subject to certain qualifying criteria.***

   Non-UK incorporated companies with shares admitted to trading on an overseas exchange will be able to list in London on the international commercial companies secondary listing category. Applicants will need to meet the same eligibility requirements and continuing obligations as are applicable under the current standard listing segment (and, in keeping with this approach, no listing sponsor will be required). However, the real benefit of the new secondary listing regime will only be unlocked if, in line with the reforms to the prospectus regime currently being explored by the UK government (set to be introduced in 2025), the FCA waives the requirement to produce a prospectus for such secondary listings (which is currently required under the existing rules).

If you are a company already publicly listed in London:

6. ***The removal of the need for shareholder approval for all but the largest significant transactions and related party transactions is welcomed. Under the new rules, companies have also been given more flexibility on the timing and content of disclosures required in relation to significant transactions.***

Key change in the final listing rules: Shareholders must be notified of information as soon as possible after the terms of the significant transaction are agreed, **but the new rules lighten the content requirements for such transaction announcements. The transaction announcement required at the time the terms of a significant transaction are agreed, must disclose why the transaction is notifiable, contain an overview of the transaction, explain the company's reasons for entering into it and include any further information considered relevant by the company.**

After the company announces signing of the significant transaction, certain further information will also need to be announced (if not included in the initial transaction announcement) as soon as possible and in any event by no later than the completion of the transaction. After completion, companies will also have to make a notification confirming that the transaction has taken place and confirming that there has been no material change.

In contrast to what was previously proposed by the FCA, a **transaction announcement in relation to a significant transaction only needs to include financial information in respect of the target in the context of a disposal or a reverse takeover (but not other acquisitions)**. 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.

7. ***There may need to be an increased focus on investor engagement and investor protections (especially in the case of SPACs or shell companies).***

   As 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 (other than under section 90A of FSMA), companies will want to find ways to engage effectively with their shareholders (to keep them informed and ensure they are supportive) and enhance their investor relations and other communication in relation to M&A strategies and decision-making. For example, in the absence of a shareholder vote, a company contemplating a major transaction may feel more inclined to seek feedback from shareholders by selectively wall-crossing or disclosing details of the proposed transaction to major shareholders.

Key change in the final listing rules: in keeping with current practice, larger SPACs may also voluntarily choose to put in place certain investor protections in order to avoid a presumption of suspension. **Under the new rules, the original 24 month deadline within which shell companies were obligated to complete a transaction is capable of being extended** by an additional 12 months (on up to three occasions) and can also be extended for up to a further 6 months in specific circumstances.

8. ***There may be scope to re-negotiate the comfort which the board of directors will seek from their advisers.*** **With fewer express requirements under the new rules,** companies may now need to negotiate the basis on which any private comfort is provided to them by third party advisers in connection with transactions and engage in 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 in circumstances where comfort is required either in connection with a regulatory requirement (e.g. under the UK Listing Rules) or a declaration given by a sponsor.

9. ***Introduction of a revamped sponsor role which is only required in a reduced number of scenarios for a listed company.***

   Under the new rules, a "fair and reasonable" confirmation, backed by a sponsor, will only be required for a large related party transaction. 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 in the case of a waiver).

If you are an investment bank acting as a listing sponsor on a UK transaction:

10. ***Potential helpful modifications to the sponsor competency requirements and a promising change in the record-keeping obligations of a sponsor.***

    Sponsor competency requirements will reflect previous FCA guidance provided in the Handbook Notice 118, published in April 2024. Other helpful amendments include extending the lookback period taken into account to **demonstrate a sponsor's competence from three years to five years.** If no sponsor declaration has been provided during this period, under the new rules, the FCA can take into account the delivery of certain corporate finance advisory services. We will cover other proposed changes and guidance in relation to the sponsor regime announced in the FCA's Primary Market Bulletin 50 in more detail in a separate briefing.

Key change in the final listing rules: A key change in relation to a sponsor's record-keeping obligations is that under the previous regime, **the standard for sufficiency of sponsor records** was that the records should allow a person with no specific knowledge of the actual sponsor service undertaken (to which the records relate) to understand and verify the basis upon which material judgements were made throughout the provision of the sponsor service. Under the new rules, **this standard has been lowered such that reference is now made to a person with a basic understanding of the transaction** reviewing the records. We believe this is helpful to sponsors as it eases the administrative burden around record-keeping and limits the records required to be kept by a sponsor (e.g. a sponsor need not retain records relating to matters of public record).

BROADER REFORM OF THE UK EQUITY CAPITAL MARKETS ECOSYSTEM

The restructured listing regime which will take effect on 29 July 2024 is only one part of a significant reform of the larger UK equity capital markets ecosystem. These broader reforms include the proposed new framework for prospectuses being considered by the UK government 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, a revised UK Corporate Governance Code published in January 2024, consideration of the rules regarding secondary equity capital raisings and proposed reforms to the investment research regime. Taken together, these measures represent the most significant re-shaping of the UK equity capital markets in over thirty years. These reforms are designed to ensure that London remains a leading international capital market and listing venue of choice for both companies and investors.

We are currently helping several companies navigate the new rules to undertake a London IPO. Our equity capital markets team have advised on over 50 major UK, European and US IPOs in the last ten years and have been recognised as a global leader in equity capital markets for over 25 years (#1 for Equity Capital Markets – Chambers UK, Europe and Global, #1 for Equity Capital Markets Legal 500, #1 for Equity Capital Markets IFLR1000 and #1 EMEA IPO Advisor in 2023 Bloomberg Rankings).

Get in touch with our ECM team to explore further opportunities in the market and we invite you to watch a short video here featuring Simon Thomas, Head of our award-winning Capital Markets practice in London, in conversation with Charlie Walker, Deputy CEO of the London Stock Exchange, for a high-level discussion of what companies need to know if they are considering an IPO, whilst these reforms are taking place.

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CONTACTS

ECM

Simon Thomas
London Head of Capital Markets

T +44 207006 2926
E simon.thomas@cliffordchance.com

Adrian Cartwright
Senior Partner

T +44 207006 2774
E adrian.cartwright@cliffordchance.com

Christopher Roe
Partner

T +44 207006 4609
E christopher.roe@cliffordchance.com

James Koessler
Senior Associate

T +44 207006 1375
E james.koessler@cliffordchance.com

Anjaneya Das
Senior Associate

T +44 207006 1633
E anjaneya.das@cliffordchance.com

CORPORATE

Steven Fox
Partner

T +44 207006 4827
E steven.fox@cliffordchance.com

Katherine Moir
Partner

T +44 207006 3688
E katherine.moir@cliffordchance.com

David Pudge
Partner

T +44 207006 1537
E david.pudge@cliffordchance.com

Richard Crosby
Partner

T +44 207006 6286
E richard.crosby@cliffordchance.com

Dominic Ross
Partner

T +44 207006 1063
E dominic.ross@cliffordchance.com

Alanna Hunter
Partner

T +44 207006 4393
E alanna.hunter@cliffordchance.com

Erik O'Connor
Partner

T +44 207006 1729
E erik.oconnor@cliffordchance.com

Kate Norgett
Corporate Governance Director

T +44 207006 2023
E kate.norgett@cliffordchance.com

Anne Kirkwood
Knowledge Director

T +44 207006 3751
E anne.kirkwood@cliffordchance.com