



HERBERT
SMITH
FREEHILLS

CORPORATE
GOVERNANCE

Corporate Governance snapshot:

UK Listing regime reform – a single listing category for equity shares in commercial companies (ESCC Category)

The FCA is pressing ahead with plans for a revolutionary restructuring of the UK listing framework. Its consultation paper CP 23/31, published on 20 December 2023, sets out the first tranche of draft rules for the UK's new combined single category listing regime. This snapshot provides an overview of the proposed new rules applicable to the ESCC Category.

Listing principles (UKLR 2)

The Listing Principles require, among other things, companies to establish and maintain adequate procedures, systems and controls to enable them to comply with their obligations under the UKLRs (Principle 1) and deal with the FCA in an open and co-operative manner (Principle 2).

Continuing obligations (UKLR 6)

Companies in the ESCC Category are subject to a range of continuing obligations, including:

- annual reporting requirements – including a comply or explain statement in respect of the UK Corporate Governance Code;
- compliance with TCFD and diversity disclosure requirements; and
- various market announcement requirements.

Significant transactions (UKLR 7)

Under the UKLR companies are required to make a market announcement as soon as possible after the terms of a significant transaction (25%+ on any one of the 'class tests', being consideration, assets and capital, excluding those in the ordinary course of business) are agreed. There are no announcement requirements for transactions below that threshold but the requirements of UK MAR apply.

The significant transaction announcement must include certain specified information, including:

- details of any break fee;
- benefits and risks of the transaction;
- a "best interests" statement by the board;
- limited financial information on the target (including historical financial information for at least 2 years); and
- a statement on the effect of the transaction on the group's earnings, assets and liabilities.

There is also an over-arching catch-all for any other relevant circumstances or information necessary to enable shareholders to assess the terms and impact of the transaction.

No shareholder approval or circular requirements apply to such transactions, nor is there any requirement to appoint a sponsor (save where guidance, waiver or modifications from the FCA are sought). Companies are however encouraged to seek guidance from a sponsor where needed to meet their obligations.

Reverse takeovers (UKLR 7.5)

Reverse takeovers (100%+ on any one of the class tests) require a market announcement, an FCA-approved circular and shareholder approval. Sponsor guidance must be obtained if a company is proposing to enter into a transaction which could amount to a reverse takeover and one must be appointed in respect of the circular and any re-admission prospectus.

Related party transactions (UKLR 8)

For transactions involving a related party – for example a 20% shareholder or current/former director – which exceed the 5% class test threshold (excluding those in the ordinary course of business), the following requirements apply:

- board approval of the transaction, excluding any conflicted directors;
- written confirmation from a sponsor that the transaction terms are fair and reasonable; and
- a market announcement as soon as possible after the transaction terms are agreed which must include, amongst other requirements, a fair and reasonable statement by the board.

There are no announcement requirements for related party transactions below the 5% threshold, but the requirements of UK MAR apply.

A single listing category and transitional arrangements

The draft new UK listing rules (UKLR) contain one set of eligibility requirements and continuing obligations for ESCC Category companies. These are based on the existing requirements for premium and standard listed companies – with some significant relaxations for premium listed companies and some increase in regulation for standard listed companies.

Existing issuers will be mapped across to the new listing categories. This includes a new transition category for legacy standard listed issuers which will have no end date at the point of implementation and be closed to new applicants. Legacy standard issuers will be subject to a modified eligibility process for transfer to the ESCC Category with a focus on a limited number of eligibility areas (controlling shareholder, constitutional arrangements, external management, procedures to identify related party transactions and compliance with annual reporting obligations). Premium listed commercial companies will be mapped to the new ESCC Category.

Consultation on the FCA's latest proposals in CP 23/31 remains open until 22 March 2024 (with the exception of the proposals on sponsor competence which closes earlier). Publication of the final UKLRs is expected at the start of H2 2024 and the FCA has confirmed that there will be a very short period between publication and implementation of the new UKLRs.

Other transactions (UKLR 9 & 21)

Shareholder approval is required for certain share buy-backs, non-pre-emptive discounted share issuances, employee share schemes, long-term incentive plans with director participation, discounted option arrangements and cancellations of listing.

Controlling shareholders

Companies with a controlling shareholder are required to demonstrate that they are able to carry on their business independent from their controlling shareholders and must have a written and legally binding agreement in place with that controlling shareholder.

Sponsors (UKLR 4)

When is a Sponsor required to be appointed?

- Admission
- FCA request for: (i) individual guidance on, or (ii) modification, waiver or substitution of UKLR 7 or 8
- Related party transactions – to confirm transaction is fair and reasonable
- Reverse takeovers – to provide guidance and submit circular/prospectus
- If required to do so by the FCA due to a breach (or suspected breach) of the UKLRs or DTRs
- Certain transfers between listing categories
- Further share issuances – if requires issuer to submit a document (eg prospectus) for FCA approval

Eligibility for the ESCC – key requirements (UKLR 3 & 5)

All securities

Shares must be freely transferable, fully paid and free from all liens and any restrictions on the right to transfer

Market capitalisation of at least £30 million

FCA-approved prospectus

ESCC Category applicants

10% free float

Ability to demonstrate board has strategic autonomy

A constitution allowing it to comply with the UKLR

Existence of pre-emption rights

Applicants with a controlling shareholder: A written and legally binding agreement in place with the controlling shareholder

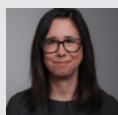
Applicants with a dual (or multiple) class share structure (DCSS): A constitution which ensures they can comply with the detailed requirements

(No specific financial information is required. However, admission requires preparation of a prospectus, which includes disclosures of historical financial information and a working capital statement.)

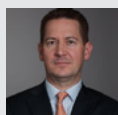
UKLR sourcebook – key provisions for ESCC Category companies

NEW UKLR REF	TITLE
UKLR 1	Preliminary
UKLR 2	Listing Principles
UKLR 3	Requirements for listing: all securities
UKLR 4	Sponsors: responsibilities of issuers
UKLR 5	ESCCs: requirements for admission to listing
UKLR 6	ESCCs: continuing obligations
UKLR 7	ESCCs: significant transactions and reverse takeovers
UKLR 8	ESCCs: related party transactions
UKLR 9	ESCCs: further issuances, dealing in own securities and treasury shares
UKLR 10	ESCCs: content of circulars
UKLR 20	Admission to listing: processes and procedures
UKLR 21	Suspending, cancelling, restoring listing and transfer between listing categories
UKLR 22	Equity shares (transition)

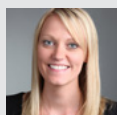
Key contacts



Sarah Hawes
T +44 20 7466 2953
sarah.hawes@hsf.com



Robert Moore
T +44 20 7466 2918
robert.moore@hsf.com



Caroline Rae
T +44 20 7466 2916
caroline.rae@hsf.com



Gareth Sykes
T +44 20 7466 7631
gareth.sykes@hsf.com