MACFARLANES

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New UK Listing Rules published to overhaul UK's listing regime

The Financial Conduct Authority (FCA) has announced the long-awaited publication of the new UK Listing Rules, which set out the radically reformed securities listing regime for the UK.

The announcement follows a series of consultations designed to simplify the regime in order to make the UK's primary markets a more attractive venue to list and raise capital.

The new rules come into effect on 29 July 2024.

You can read more about the changes to the UK's listing regime, including what they mean for listed companies, shareholders and potential applicants, in our separate in-depth piece.

Key reforms to the regime include the following.

- The current "premium" and "standard" listing segments have been consolidated into a single category for equity securities of commercial companies.
- An applicant no longer needs to publish financials that cover at least three years and represent at least 75% of its business, nor demonstrate a revenue-earning track record or include a "clean" working capital statement. (However, similar requirements may apply under prospectus rules.)
- There is no longer a requirement to obtain shareholder approval for significant transactions or transactions with related parties (other than for reverse takeovers), although announcement obligations and (in some cases) sponsor confirmations still apply.
- Companies are no longer required to enter into a relationship agreement with a controlling shareholder. (However, they do need to make disclosures relating to controlling shareholders and, in practice, we expect many companies to continue to put relationship agreements in place.)
- Companies still need to retain a sponsor, but for a smaller range of transactions, focussing on significant capital raises, related party transactions and reverse takeovers.
- The rules for shell companies are more relaxed. In particular, a shell company will not require shareholder approval for the first transaction it enters into after listing, although the base position is that it will need to enter into that transaction within 24 months of listing.
- There is increased flexibility to include dual-class share structures. Natural persons may hold weighted voting rights on a wide range of matters indefinitely and institutional investors for a maximum of ten years (although it is not possible to transfer them to third parties).

There are also changes affecting closed-ended investment funds, overseas companies seeking a secondary listing in the UK, and entities looking to list debt securities.

Read the FCA's press release on the UK's overhauled securities listing regime

Read FCA Policy Statement PS24/6 on the UK's overhauled securities listing regime

Court interprets compulsory transfer mechanism in articles of association

The High Court had to decide at what point a transfer notice was deemed to have been served. Its decision would determine the amount payable for the shares in question.

Syspal Capital Ltd v Truman and another [2024] EWHC 1561 (Ch) concerned the holding company of a group of manufacturing companies.

The holding company was owned as to 24% by a Mr Truman and as to 76% by Syspal Capital Ltd, a company under the control of another individual. Mr Truman was also a director of the holding company, as well as a director and employee of one of its subsidiaries.

The arguments revolved around the meaning of three simple words – "in that capacity" – in the following article:

"If any Employee Member shall cease for any reason (including but not limited to death or termination of employment by the Employee Member or Company) to be employed as an employee, director or consultant of a Group Company (and does not continue in that capacity in relation to any Group Company) then a Transfer Notice shall be deemed to have been served … on the date of such cessation."

On 10 October 2022, Mr Truman was dismissed as an employee of the subsidiary. On 3 November 2022, he was removed as a director of the subsidiary. However, he remained a director of the holding company. On 24 May 2023, on his 65th birthday, he retired as a director of the holding company.

A dispute arose over the date on which Mr Truman became a leaver. This would, in turn, determine the value he would be paid for his shares.

Syspal Capital argued that the words "in that capacity" referred to the capacity in which an Employee Member ceased to be employed. In other words, Mr Truman had ceased to be employed as an employee on 10 October 2022 and had not continued in that capacity (i.e. as an employee of any other group company), and so he had been deemed to serve a Transfer Notice on that date.

However, the court disagreed and found that Mr Truman had not become subject to the compulsory transfer provisions until he resigned as a director of the holding company.

You can read more about the court's interpretation of a compulsory share transfer mechanism in our separate in-depth piece.

Access the court's decision on the interpretation of compulsory share transfer provisions

Court interprets share valuation mechanism on exercise of call option

The High Court has held that a valuation of shares under a call option was not to take into account restrictions that would apply to the company's business if the option were exercised.

J.P. Morgan International Finance Ltd v WEREALIZE.COM Ltd [2024] EWHC 1437 (Comm) concerned a company – Viva – whose business was to provide financial and payment system solutions.

51.49% of the shares in Viva were held by WEREALIZE.COM (WRL) and the remaining 48.51% were held by JP Morgan (JPM).

WRL and JPM had entered into a shareholders' agreement which contained (among other things) a call option under which JPM could acquire WRL's shares in Viva (and so acquire complete ownership and control of Viva).

The contract contained various stipulations for valuing Viva for the purposes of the option.

JPM was classified as an "Edge Corporation" for the purposes of a piece of U.S. legislation known commonly as "Regulation K". Under Regulation K, Edge Corporations may only engage in certain specific activities within the United States, and they may not engage in certain specified activities outside the United States.

There was a concern that, if JPM exercised its option and became the sole shareholder of Viva, Viva would come within the scope of Regulation K. This could, in turn, potentially limit Viva's activities, including any future expansion of its business into the United States and, hence, produce a lower value for the shares in Viva.

The question for the court was whether, if JPM exercised its option, the valuation of the shares should take into account, or alternatively disregard, any restrictions arising from the current or potential application of Regulation K to Viva.

The court held that, based on the wording of the contract, the share valuation was required to **disregard** any restrictions on Viva's business arising from Regulation K. In reaching its conclusion, the court applied orthodox principles of contractual interpretation.

You can read more about the court's decision that a share valuation had to disregard restrictions on the target company's business in our separate in-depth piece.

Access the court's decision that a share valuation had to disregard restrictions on the target company's business

New EU corporate sustainability directive published

The EU's new Corporate Sustainability Due Diligence Directive (CSDDD) has finally been published in the Official Journal, making it law.

Under the Directive, companies within scope will need to carry out targeted due diligence on their own operations and those of their subsidiaries and partners.

This includes identifying actual or potential adverse impacts on human rights and the environment, taking measures to prevent and mitigate identified impacts, and reporting publicly on those measures.

Companies could be liable to pay compensation if they fail to take mitigating action and, as a result, a person suffers damage.

The Directive will come into force on 25 July 2024. EU Member States will have two years to implement it into their domestic law.

It will commence under a phased approach, applying to **EU companies** under the following timeline according to the company's employee headcount and worldwide turnover:

- more than 5,000 employees and more than €1,500m turnover – three years after coming into force;
- more than 3,000 employees and more than €900m turnover – four years after coming into force; and
- more than 1,000 employees and more than €450m turnover – five years after coming into force.

The same tests would apply to **non-EU companies**, but based solely on turnover generated within the EU and with no employee headcount test. (So, for example, after five years, the Directive would apply to a non-EU company with net turnover generated within the EU above €450m.)

Access the final EU Corporate Sustainability and Due Diligence Directive

Court confirms limitation period for unfair prejudice petitions

The High Court has once more had the opportunity to consider the statutory limitation period that applies when petitioning the court for relief from unfair prejudice.

What happened?

In *Tom v Candey and others* [2024] EWHC 1398 (Ch), a shareholder of a company (Mr Tom) claimed that he had suffered unfair prejudice because (he alleged):

- he had been mistreated, excluded from management, and pressurised to agree constitutional changes and to sell out;
- actions had been taken to dramatically dilute the value and size of his shareholding;
- amounts owing to him under his loan account had been deliberately understated; and
- upon resigning from the company, in breach of contract, the other shareholders failed to buy him out and the company failed to repay his directors' loan or pay him commission that was due.

By way of remedy, Mr Tom sought an order requiring the other shareholders to buy his stake in the company (a **buy-out order**). (This is the usual remedy granted on an unfair prejudice petition.)

It is important to note that the proceedings were merely an application to strike the claim out and/or for summary judgment. As a result, the court's task was not to decide whether any of the allegations above were proven, but rather to decide whether they had a realistic enough prospect of success to allow the petition to proceed to a full trial.

However, as part of the proceedings, the court had to consider whether the petition should be disallowed because the statutory limitation period under the Limitation Act 1980 applied. In doing so, the judge had to determine what the statutory limitation period was.

Only very recently, the Court of Appeal had had to consider this same point in *THG Plc v Zedra Trust Company (Jersey) Ltd* [2024] EWCA Civ 158. In that case, the court decided that:

- the Limitation Act does apply to unfair prejudice petitions, but the relevant limitation period **depends on the nature of the relief** the petitioner is seeking;
- where the relief claimed is the **payment of a sum of money**, petitioners must bring their claims within 6 years; and
- where the relief claimed is some other relief (i.e. a **non-monetary order**), including a buyout order, petitioners must bring their claims within 12 years.

The Court of Appeal also expressed the view (in *THG v Zedra*) that a buy-out order is a non-monetary remedy and so the applicable limitation period is 12 years.

You can read more about the Court of Appeal's decision in *THG v Zedra* on the limitation period for unfair prejudice petitions in our separate in-depth piece.

In short, the High Court agreed with these comments and held that Mr Tom's claim was not barred by statutory limitation periods.

Importantly, the court also confirmed that, when bringing a petition in unfair prejudice, **a petitioner is entitled to choose a form of relief** that benefits from a longer limitation period.

In other words, if Mr Tom had been able to seek either a form of monetary relief or a form of non-monetary relief in relation to the same prejudice, he would have been entitled to seek the non-monetary relief, even if the limitation period for seeking monetary relief had expired.

What does this mean for me?

As with *THG v Zedra*, the decision in *Tom v Candey* shows the need to consider and frame a petition in unfair prejudice carefully.

As it related to proceedings for strike-out or summary judgment, the court's decision is not a final determination of any of the points in issue. However, it is useful guidance in this continued area of law.

Legal advice is essential in this regard, as unfair prejudice petitions are usually complex and fact-heavy. The aggrieved party and their legal advisers should carefully review the course of events that comprises the alleged unfair prejudice and strategise accordingly, including identifying the types of relief with the most likely success in proceedings.

Read the High Court's decision in *Tom v Candey* [2024] EWHC 1398 (Ch) on the limitation period that applied to a buy-out order on an unfair prejudice petition