The FCA overhauls Listing Rules to revitalise UK capital markets

19 July 2024

What matters

It is suggested that prospective issuers/companies familiarise themselves with the UKLRs so as to be able to make better informed decisions as to which category to list on to, in line with their current business models. Their evolving business strategies mean that they will be able to choose to transition on to other categories as and when they see fit, retaining — it is hoped — liquidity within the UK capital markets, thus appealing to the most innovative issuers/companies. Sponsors should also look to review the UKLRs for a grasp of their new roles and responsibilities under the new regime.

What matters next

The UKLRs should help to make the UK a more competitive and accessible venue for issuers considering an IPO, by virtue of a more flexible, simplified and disclosure-based listing regime.

The disclosure-based regime is intended to bridge any information gaps and equip investors with the information they need to invest in line with their specific needs and requirements, better reflecting their respective risk appetites.

The possibility of having capital structures which preserve enhanced rights for founders and early-stage (pre-IPO) investors (which are permitted on other international capital markets) is expected to offer additional flexibility for issuers and investors, and as the UKLR Instrument notes, “may encourage more companies to consider a UK listing. We consider this option would only be considered in relation to a limited number of institutional investors who, like founders, have "skin in the game" of the company’s success and earlier development, such that their interests should broadly align with those of other shareholders.”

On 11 July 2024, the UK Financial Conduct Authority (FCA) issued the final version of its long-awaited new Listing Rules (UKLRs) in the UK Listing Rules Instrument 2024 (FCA 2024/23) (UKLR Instrument).

Following Lord Hill’s Listing Review from late 2020 and a lengthy period of consultation since, the UK Financial Conduct Authority (**FCA**) issued the final version of its long-awaited new Listing Rules (**UKLRs**) in the UK Listing Rules Instrument 2024 (FCA 2024/23) (**UKLR Instrument**) on 11 July 2024. With a struggling UK market, the UKLRs represent the biggest overhaul to the UK listing regime in over three decades - seeking to help revitalise the UK capital markets.

Whilst some stakeholders have expressed concern that the UKLRs, particularly those reducing the circumstances in which transactions will require shareholder approval, are dangerously dilutive to shareholder protection, in general the UKLRs attempt to modernise the UK's regulatory approach to capital markets has been well received.

With the promulgation of the final UKLRs, a two-week implementation period has begun. The current LRs sourcebook will cease to have effect and will be replaced by the new UKLRs sourcebook as of Monday 29 July when the UKLRs will officially come into effect.

What are the new LRs?

The UKLRs intend to help boost UK competitiveness by attracting issuers to list in the UK and encourage growth by easing regulatory requirements. We outline some of the key changes to the previous regime below.

1. Most significant of all changes to the UKLRs is that there is now a single Equity Shares in Commercial Companies (**ESCC**) category, coalescing the Premium segment and Standard segment into a single category (with a sponsor requirement for new applicants).
2. The eligibility requirements have been simplified such that the FCA have dispensed with the previous requirements for issuers to provide historical financial information, revenue track record and clean working capital statements (see UKLR 5 for the ESCC category).
3. Equally, there is no longer an eligibility requirement or ongoing rules mandating the need for an issuer to run an independent business and maintain operational control over its main activities (but the FCA has retained a requirement for independence from controlling shareholder(s) – see UKLR 5 and 6).
4. Issuers can now opt for (or retain) dual/multiple class share structures at admission that could better suit their business strategies.
    - Enhanced voting rights are only to be held by specified natural persons without a time-based sunset clause, or pre-IPO investors that are legal persons subject to a maximum 10-year period, after which any enhanced rights should expire.
    - Voting restrictions on certain matters, including dilutive transactions and delistings, have nonetheless been retained as part of investor protection measures (see UKLR 5 and 6). As the UKLR Instrument states: "*founders and other shareholders who hold specified weighted voting rights shares will be able to influence the most strategic transactions that require shareholder approval, i.e. reverse takeovers. They will also be able to vote to elect and re-elect independent directors. Conversely, where there is too high a risk of dilution or of other harms arising for ordinary shareholders, the rules do not allow the exercise of enhanced voting rights.*"
5. Issuers no longer require shareholder approval for significant transactions and related party transactions, albeit shareholder approval is still required for key corporate events like reverse takeovers and delistings. Market notifications are still obligatory for transactions meeting the 25% threshold (based on retained class tests) (see UKLR 7-10).
6. Changes also apply to the role of sponsors (UKLR 4). Generally, the sponsor regime applies to the ESCC, shell companies and closed-ended investment funds categories (at application/admission stage and on reverse takeovers). But the role of the sponsor is reduced for the ESCC category.

For example, sponsor involvement is limited to situations where a fair and reasonable opinion is required in connection with a related party transaction, certain transfers of listing category, reverse takeovers, further share issuances requiring an FCA-approved prospectus, or where issuers seek guidance, modifications, or waivers to FCA rules.

What are the new listing categories under the UKLRs?

The UKLR Instrument references five main listing categories:

1. Commercial Companies category (ESCC) - UKLR 5-10.
2. Funds categories:
   - closed-ended investment funds - UKLR 11; and
   - open-ended investment funds - UKLR 12.
3. Equity or equity-like categories:
   - equity shares (shell companies/SPACs) - UKLR 13, both of which are time bound by 24 months to complete a transaction, but with additional flexibility to extend by 12 months up to 3 times subject to shareholder approval, which can be extended for a further period of up to 6 months in specified circumstances.
   - Equity shares (international commercial companies secondary listing) under UKLR 14 for non-UK incorporated companies with another listing on a non-UK market.
   - Certificates representing certain securities (depositary receipts) - UKLR 15.
   - Non-equity shares and non-voting equity shares - UKLR 16.
4. Debt and non-equity categories:
   - Debt and debt-like securities category - UKLR 17.
   - Securitised derivatives category - UKLR 18.
   - Warrants, options, and other miscellaneous securities - UKLR 19.
5. Transition category, this being a closed category based on the current rules for standard listed shares- UKLR 22.

Existing issuers who are affected should have already liaised with the FCA on which of the new categories they have been mapped to.

What impact will the new UKLRs have on UK capital markets?

The UKLRs should help to make the UK a more competitive and accessible venue for issuers considering an IPO, by virtue of a more flexible, simplified and disclosure-based listing regime.

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considered in relation to a limited number of institutional investors who, like founders, have "skin in the game" of the company's success and earlier development, such that their interests should broadly align with those of other shareholders."

Concluding remarks

Coupled with what appears to be a real desire within the new government to initiate reforms which target economic growth, the UKLRs seek to promote more investment opportunities for investors and bring the UK in line with international counterparts. Notably, the reforms are coming into effect at a crucial socio-political moment and could play an important part in what we hope will be a generational opportunity to revive the UK capital markets.

It will be interesting to see how the lighter touch regime for the Main Market will affect AIM and in particular whether changes to the AIM Rules will be put forward in the coming months as AIM looks to differentiate itself. It remains to be seen whether companies which might historically have chosen AIM will opt instead for the Main Market (subject to meeting the necessary market capitalisation and eligibility requirements). Ostensibly, the current inheritance tax incentives and considerably lower audit costs of not being a 'public interest entity' should still make AIM comparatively attractive for many issuers.

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