

July 29, 2024

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One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

New UK Listing Rules Come Into Force

On 29 July 2024, the new UK Listing Rules came into force. The new rules institute a simpler, more flexible, disclosure-based listing regime and are designed to place London on a competitive footing with other major international listing venues, particularly those in the US and the EU. In this briefing, we outline the key features of the reformed listing regime, focusing on the new equity shares (commercial companies) (ESCC) listing category.

ESCC Listing Category

A central feature of the Financial Conduct Authority's (FCA) reforms is the replacement of the previous premium and standard listing segments with a new single listing category for commercial companies. The rules for the ESCC category are a simplified version of those previously applicable to the premium listing segment. The most important differences between the ESCC category and the previous premium listing segment are set out below.

1. Significant Transactions

Under the previous regime, premium-listed companies were subject to rules governing "significant transactions", which were determined through class tests. Each class test involved calculating a percentage ratio to assess the size of the transaction relative to the size of the listed company. If a transaction outside the ordinary course of business resulted in any of the percentage ratios being above 25% it would qualify as a "class 1" transaction and require the publication of an FCA-approved shareholder circular and shareholder approval for the transaction. A transaction that resulted in a percentage ratio between 5% and 25% would qualify as a "class 2" transaction and would require a detailed announcement.

Although the concept of a significant transaction determined by the class tests has been retained, the number of obligations that apply to such transactions under the new regime have been significantly reduced. Key changes are:

- Transactions that would have previously qualified as class 1 transactions do not require the publication of a shareholder circular or shareholder approval.
- Listed companies no longer need to disclose transactions which would have previously qualified as class 2 transactions unless required to do so under the UK's Market Abuse Regulation.
- The class tests no longer include the "profits test".

The definition of significant transactions now encompasses transactions outside the normal course of business that meet the previous class 1 transaction definition. To ensure that investors are given sufficient information, a listed company must publish a detailed announcement regarding the significant transaction, including information that would have been disclosed in a class 1 circular. However, unlike a class 1 circular, these announcements are not subject to prior FCA approval and there is no longer a

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requirement for (i) a statement from the sponsor regarding the fairness of the consideration, (ii) a working capital statement or (iii) audited financial information about the target where the listed company is acquiring a company (although audited financial information is still required where a listed company is making a disposal).

The first announcement relating to a significant transaction must be published as soon as possible after the terms of a significant transaction are agreed. A further announcement may be delayed until after the required information becomes available to the listed company but, in any event, must be issued before the transaction completes.

Transactions in the ordinary course of business continue to be excluded from the significant transaction regime. The Listing Rules provide new guidance on what constitutes “ordinary course of business”.

2. Related Party Transactions

The related party transaction regime, previously applicable to premium-listed issuers, has also seen significant change. Under the new Listing Rules:

- Large related party transactions (*i.e.*, those where at least one of the class tests results in a percentage ratio that is 5% or more) no longer require the publication of an FCA-approved shareholder circular or shareholder approval. Instead, the listed company must announce certain prescribed information and obtain a “fair and reasonable” opinion from a sponsor.
- All disclosure requirements for smaller related party transactions (*i.e.*, those where each class test results in a percentage ratio under 5% but where any percentage ratio exceeds 0.25%) have been removed. These transactions no longer require a specific notification or a “fair and reasonable” opinion.
- The threshold at which a shareholder becomes a “substantial shareholder” and therefore a related party has been increased from 10% to 20% of voting rights in the company, meaning that fewer transactions will be caught by the new rules.
- New guidance has been published on the transactions within the “ordinary course of business”, which are exempt from the related party transaction rules.

3. Dual Class Share Structures

The rules governing dual class share structures are now more permissive and are designed to encourage more founder-led businesses to list in London. The FCA has kept regulation of dual class share structures to a minimum, allowing investors to assess and price in the risks associated with these issuers. In summary, under the new rules:

- There are no specified voting ratios or limits on weighted voting rights.
- Enhanced voting rights shares may be held by persons who, at the time when the company makes an application for the IPO, were directors, employees, existing investors, or holding entities of such persons.
- Natural persons may hold enhanced voting rights indefinitely.
- Pre-IPO investors and shareholders that are legal persons may hold enhanced voting rights for a period of up to 10 years.
- Enhanced voting right shares can only be transferred to persons established for the sole benefit of, or owned or controlled by, the person to whom the shares were originally issued.
- Enhanced voting rights may be exercised on nearly all matters, except votes required to (i) approve employee share schemes, long-term incentive plans and discounted option arrangements, (ii) issue new shares at a discount of more than 10%, (iii) approve certain share buybacks or (iv) cancel a listing or transfer to a different listing segment.
- Dual class share structures must be in place before the IPO and no new shares carrying weighted voting rights can be issued post-IPO.

4. Eligibility Criteria

Key Requirements

The eligibility criteria for the new ESCC listing category are based on the previous requirements for the premium listing segment. However, under the new rules, companies applying for listing will no longer need to:

- Publish historical financial information covering at least three years and representing at least 75% of the company’s business during that period.
- Demonstrate a three-year revenue-earning track record.
- Give a “clean” or unqualified working capital statement.
- Demonstrate that they have an independent business and operational control over their main activities.

These changes will allow companies with no or limited operating history, as well as companies with a complex financial history (*e.g.*, as a result of recent material acquisitions or divestitures), to list on the ESCC listing category. However, companies will still need to comply with the financial information disclosure requirements imposed under the UK’s Prospectus Regulations.

Board Declaration on Internal Systems and Controls

The board of a company applying for its securities to be listed is required at the time of the company’s admission to listing to

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submit a declaration that the company has appropriate systems and controls to ensure compliance with the Listing Rules. This confirmation only needs to be submitted for an IPO and not for any subsequent admission of securities of the same class that are already listed. The FCA has confirmed that companies seeking to list debt securities for the first time must also make this declaration.

Controlling Shareholders Regime

The new Listing Rules no longer require companies with a controlling shareholder (broadly, a shareholder holding 30% or more of the voting rights) to have a written relationship agreement with that shareholder containing specified provisions to ensure that the company operates independently from the controlling shareholder. However, the new rules maintain the requirement for such companies to demonstrate that they can carry on business independently from their controlling shareholder.

For companies with a controlling shareholder seeking a listing, the FCA expects additional disclosure describing the risks of having a controlling shareholder to be included in the prospectus.

The new rules also introduce a new mechanism for directors to challenge shareholder resolutions proposed by a controlling shareholder. If a controlling shareholder proposes a shareholder resolution that directors consider is intended to circumvent the proper application of the new Listing Rules, the circular on that resolution must include a statement of the directors' opinion in respect of the resolution.

Other continuing obligations have been maintained. For example, companies with a controlling shareholder must include a number of disclosures regarding compliance with the independence requirements in their annual reports. A dual voting structure continues to apply to the election of independent directors and cancellation or transfer of listing.

5. Sponsor Regime

The sponsor rules have been retained in a modified form. On an IPO, a sponsor is still required prior to admission to assess and provide assurances to the FCA that an applicant has met the listing and prospectus requirements and has established procedures to be able to comply with the Listing Principles and the applicable continuing obligations. However, the sponsor's role post-IPO has been reduced, as there are fewer instances where an issuer will be required to engage a sponsor.

Under the new rules, the sponsor's role post-admission will be primarily confined to:

- transactions involving new share issuances that require a prospectus;

- proposed reverse takeovers;
- large related party transactions, where a sponsor must give a "fair and reasonable opinion" (see section 2 above);
- transfers out of or into the ESCC category; and
- where an issuer wishes to seek individual guidance from the FCA, or a modification or waiver from the Listing Rules.

6. Other Continuing Obligations

In addition to the requirements discussed above, one of the most significant continuing obligations carried over from the previous premium listing segment into the new ESCC category is the requirement to adopt the UK Corporate Governance Code on a "comply or explain" basis. ESCC companies will also need to adhere to the Task Force on Climate-Related Financial Disclosure (TCFD) disclosure requirements and certain DEI reporting rules in their annual reports on a "comply or explain" basis, which was previously a requirement for both premium- and standard-listed issuers.

Furthermore, companies listed on the ESCC category will have to obtain shareholder approval for certain transactions. These include:

- approval of reverse takeovers;
- adoption of certain employee share schemes, long-term incentive plans and discounted option arrangements;
- cancellation of listing and transfer to a different listing category;
- issuances of shares at a discount of more than 10%; and
- certain share buybacks.

Other New Categories and Retained Segments

In addition to the ESCC, the following new listing categories have been created under the new Listing Rules:

- **Transition category.** The transition category maintains the status quo for previous standard-listed issuers that do not fall within the other new categories. The continuing obligations for the transition category are carried over from the continuing obligations previously applicable to the standard listing segment. Notably, the transition category is closed to new applicants and to transfers from other categories. While the FCA has not set an end date for the transition category, it will keep it under review and may seek to wind it down in the medium term. See below for further details on transitional arrangements under the new rules.
- **Shell companies category.** This is a category designed for shell companies and special purpose acquisition companies (SPACs) whose assets consist solely or predominantly of cash

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or short-dated securities or whose predominant purpose is to undertake an acquisition or merger. The rules for this category are broadly carried over from the standard listing segment. Additionally, the new Listing Rules require shell companies and SPACs to complete an initial transaction within 24 months. This can be extended by 12 months up to three times subject to shareholder approval, and for a further six months in certain circumstances. The new rules also regulate the “initial transactions”, replacing the previous regime that treated such transactions as reverse takeovers. Issuers in this category are required to appoint a sponsor in specified circumstances (for example, at IPO, if proposing to enter into an initial transaction and on any application for readmission to listing following a successful transaction).

- **International secondary listing category.** This category is available solely to non-UK incorporated companies with primary listings in other jurisdictions. The shares listed in the UK must be of the same class as the shares listed overseas. The continuing obligations for the secondary listing category are broadly based on the less onerous rules that applied to the previous standard listing segment.
- **Non-equity shares and non-voting equity shares category.** This segment is open to listings of non-equity and non-voting shares, such as preference shares. The eligibility criteria and continuing obligations for this segment have been carried over from the previous standard listing segment.

The following six pre-existing categories will be retained under the new Listing Rules:

- closed-ended investment funds;
- open-ended investment companies;
- debt and debt-like securities;
- certificates representing certain securities (depository receipts);
- securitised derivatives; and
- warrants, options and other miscellaneous securities.

With a few notable exceptions, the eligibility requirements and continuing obligations for the pre-existing listing segments will be carried over largely without substantive changes.

Implementation, Transitional Arrangements and Transfer Process

Transitional arrangements set out how the new Listing Rules apply to the companies that are currently listed and companies that were midway through their applications at the time when the new rules were published.

What does this mean for listed companies?

The FCA “mapped” premium-listed and standard-listed companies to the new applicable categories. Premium-listed issuers have been automatically transferred to the new ESCC category whilst standard-listed issuers, if they do not fall under a different category, such as the secondary listing category or the shell companies category, have been transferred to the transition category. The FCA has previously written to issuers to advise them of the listing category into which they have been mapped.

How are “in-flight” applicants impacted?

“In-flight” applications are completed submissions to the FCA for an eligibility review that were submitted before 4 p.m. on 11 July 2024 (when the new rules were published), where the securities have not been admitted to listing before 29 July 2024 (when the new rules came into force).

If a company is deemed to be in-flight and has applied for a premium listing, the new rules for admission to the ESCC category will apply and the company’s application will be changed to an application for the ESCC category.

In-flight applicants for a standard listing have the option either to (1) complete their admission to the transition category, the shell companies category or the secondary listing category within 12 months of the date of the eligibility application or, in any case, before 29 July 2025, after which time the application will lapse, or (2) revise their eligibility submission to explain how they comply with the new Listing Rules in order to list on the ESCC category.

How does a company transfer from the transition category to the ESCC Category?

Issuers mapped to the transition category may apply to transfer to the ESCC category using a modified transfer process. The modified transfer process includes an eligibility assessment focused only on the additional requirements of the ESCC category. This means that companies listed on the transition category will not be reassessed against any eligibility criteria that they had previously demonstrated that they had met at the original point of admission to listing.

The modified transfer process will also require the appointment of a sponsor to undertake a targeted sponsor service, focused on the additional obligations only. However, the new rules require a sponsor to confirm that it has not identified any adverse information that would lead it to conclude that the issuer would not be able to comply with the listing requirements applicable to the ESCC category.

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Indexation

In March 2024, FTSE Russell published a summary of the provisional changes it expects to make to the FTSE UK Ground Rules for its FTSE UK Index Series. The adoption of the new rules on the FTSE UK Index Series will be minimal. Based on FTSE Russell's proposals:

- All companies with shares in the new ESCC category or the closed-ended investment fund category will be potentially

eligible for inclusion in the FTSE UK Index Series. This means all listed companies with a premium listing before 29 July 2024 remain indexed as before.

- Companies with shares in the transition category or the international secondary listing category will not be eligible for the FTSE UK Index Series. As such, all listed companies with a standard listing before 29 July 2024 remain ineligible for indexation unless they transfer to the ESCC.

Appendix: Equity Shares (Commercial Companies) Category Compared to Previous Premium and Standard Listing Segments

Key Listing Rules	Premium Listing Requirements	Standard Listing Requirements	Equity Shares (Commercial Companies) Category
General			
Listing principles	Two principles and additional six premium listing principles apply	Only two principles apply	Six principles derived from a combination of the previous listing principles
Sponsor regime	Applies	Does not apply	Applies: Post-IPO, focus on significant further increases in the issuer's listed share capital, fair and reasonable opinions for related party transactions and reverse takeovers Sponsor not required for significant transactions but a sponsor must be appointed where an issuer seeks individual guidance from the FCA or a modification or waiver from the Listing Rules
Eligibility			
Minimum market capitalisation	£30 million	£30 million	£30 million
Minimum market capitalisation	£30 million	£30 million	£30 million
Historical financial information on 75% of business covering three years	Required	Not required	Not required
Three-year revenue track record	Required	Not required	Not required

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Key Listing Rules	Premium Listing Requirements	Standard Listing Requirements	Equity Shares (Commercial Companies) Category
Clean working capital statement	Required	Not required	Not required
Free float	10%	10%	10%
Independence	Required	Not required	No specific eligibility requirement or continuing obligations in relation to independence and control of business Existing prospectus disclosure should continue to identify any relevant risks to independence or control of business
Control of business	Required	Not required	
Initial/Ongoing Obligations			
Controlling shareholder regime	Applies	Does not apply	Retained requirement for independence from controlling shareholder, with amended guidance on factors indicating non-independence No requirement for a written and legally binding agreement with the controlling shareholder. New mechanism for directors to give an opinion on a shareholder resolution put forward by a controlling shareholder where the directors believe that the purpose of the resolution is to circumvent the application of the Listing Rules Retained requirements relating to election of independent directors

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Key Listing Rules	Premium Listing Requirements	Standard Listing Requirements	Equity Shares (Commercial Companies) Category
Dual class share structures / weighted voting rights	Permitted but subject to the following restrictions: <ul style="list-style-type: none"> - Takeover deterrent or used to prevent director removal - Five-year sunset clause - 20:1 cap on voting ratio - Restrictions on transfer 	No restrictions	Permitted but can only be held by (i) directors; (ii) pre-IPO investors; (iii) employees; or (iv) persons established for the sole benefit or solely owned and controlled by a person who falls under (i), (ii) or (iii) No sunset clause required for natural persons. Pre-IPO investors that are legal persons subject to a maximum 10-year period after which enhanced voting rights should expire Limited restrictions on when weighted voting rights can be exercised, as well as restrictions on transfer, continue to apply
Task Force on Climate-Related Financial Disclosures (TCFD) and UK diversity and inclusion disclosures	Required (on a comply-or-explain basis)	Required (on a comply-or-explain basis)	Required (on a comply-or-explain basis)
Continuing Obligations			
UK corporate governance code disclosure	Required (on a comply-or-explain basis)	An issuer must disclose if it is subject to or opts to follow any code	Required (on a comply-or-explain basis)

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Key Listing Rules	Premium Listing Requirements	Standard Listing Requirements	Equity Shares (Commercial Companies) Category
Related party and related party transaction (RPT) rules	<p>Related party: 10% of voting rights in the company</p> <p>RPT at $\geq 0.25\%$ value:</p> <ul style="list-style-type: none"> - The issuer's board must obtain an opinion from a sponsor confirming the transaction to be fair and reasonable - The issuer must announce brief details upon entering into the transaction <p>At $\geq 5\%$ value:</p> <ul style="list-style-type: none"> - The issuer must secure independent shareholder approval after publishing an FCA-approved circular - The circular must include the board's statement considering the transaction to be fair and reasonable, as confirmed by a sponsor 	<p>Related party: 10% of voting rights in the company</p> <p>RPT at value $\geq 5\%$:</p> <ul style="list-style-type: none"> - An issuer must announce key details and further information to enable the market to assess whether the terms of the transaction are fair and reasonable - The issuer's board (excluding conflicted directors) must approve the transaction 	<p>Related party: 20% of voting rights in the company</p> <p>RPT at $\geq 5\%$ value:</p> <ul style="list-style-type: none"> - The issuer must disclose key details of the transaction - The board must both issue a statement considering the transaction to be fair and reasonable and disclose sponsor confirmation - The board (excluding conflicted directors) must approve the transaction - No FCA-approved circular or shareholder vote is required <p>Under 5% value:</p> <ul style="list-style-type: none"> - No specific requirements under the Listing Rules <p>New guidance on what constitutes transactions within the "ordinary course of business"</p>
Significant transaction rules	<p>At $\geq 5\%$ value (Class 2):</p> <ul style="list-style-type: none"> - The issuer must release a prescribed announcement of key transaction details upon entering the transaction <p>At $\geq 25\%$ value (Class 1):</p> <ul style="list-style-type: none"> - The issuer must secure shareholder approval after publishing an FCA-approved circular 	None apply	<p>At $\geq 25\%$ value:</p> <ul style="list-style-type: none"> - The issuer must release one or more prescribed announcements containing key transaction details - No FCA-approved circular or shareholder vote - Audited financials only required for disposals by listed companies that constitute a significant transaction <p>Under 25% value:</p> <ul style="list-style-type: none"> - No specific requirements under the Listing Rules but MAR obligations continue to apply <p>Profits test is no longer one of the class tests</p>

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Key Listing Rules	Premium Listing Requirements	Standard Listing Requirements	Equity Shares (Commercial Companies) Category
Shareholder vote on reverse takeovers	Required. A reverse takeover is subject to shareholder approval and information requirements similar to those for a Class 1 significant transaction	Not required	Required. A reverse takeover is subject to the publication of an FCA-approved explanatory circular and shareholder approval
Shareholder vote to delist	Required. 75% shareholder approval required and controlling shareholder regime applies	Not required	Required. 75% shareholder approval required and controlling shareholder regime applies
Shareholder vote on discounted share offers	Required	Not required	Required

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Contacts

New York

Ryan J. Dzierniejko

Partner
212.735.3712
ryan.dzierniejko@skadden.com

Gregory A. Fericola

Partner
212.735.2918
gregory.fericola@skadden.com

David J. Goldschmidt

Partner
212.735.3574
david.goldschmidt@skadden.com

Michael J. Hong

Partner
212.735.2227 / 416.777.4700
michael.hong@skadden.com

Laura A. Kaufmann Belkhatat

Partner
212.735.2439
laura.kaufmann@skadden.com

Michael J. Schwartz

Partner
212.735.3694
michael.schwartz@skadden.com

Joseph Vebman

Partner
212.735.3719
yossi.vebman@skadden.com

Dwight S. Yoo

Partner / New York
212.735.2573
dwight.yoo@skadden.com

Michael J. Zeidel

Partner
212.735.3259
michael.zeidel@skadden.com

Los Angeles

Michelle Gasaway

Partner
213.687.5122
michelle.gasaway@skadden.com

Palo Alto

Thomas J. Ivey

Partner
650.470.4522
thomas.ivey@skadden.com

Gregg A. Noel

Partner
650.470.4540
gregg.noel@skadden.com

Washington, D.C.

Brian V. Breheny

Partner
202.371.7180
brian.breheny@skadden.com

Raquel Fox

Partner
202.371.7050
raquel.fox@skadden.com

Andrew J. Brady

Of Counsel
202.371.7513
andrew.brady@skadden.com

Ryan J. Adams

Counsel
202.371.7526
ryan.adams@skadden.com

Caroline S. Kim

Counsel
202.371.7555
caroline.kim@skadden.com

Frankfurt

Stephan Hutter

Partner
49.69.74220.170
stephan.hutter@skadden.com

Hong Kong

Shu Du

Partner
852.3740.4858
shu.du@skadden.com

Haiping Li

Partner
86.21.6193.8210
haiping.li@skadden.com

Jonathan B. Stone

Partner
852.3740.4703
jonathan.stone@skadden.com

Yilin Xu

Partner
86.10.6535.5586
yilin.xu@skadden.com

London

Noel Hughes

Partner
44.20.7519.7600
noel.hughes@skadden.com

James A. McDonald

Partner
44.20.7519.7183
james.mcdonald@skadden.com

Danny Tricot

Partner
44.20.7519.7071
danny.tricot@skadden.com

São Paulo

Filipe B. Areno

Partner
55.11.3708.1848
filipe.arena@skadden.com

J. Mathias von Bernuth

Partner
55.11.3708.1840
mathias.vonbernuth@skadden.com

Shanghai

Yuting Wu

Partner
86.21.6193.8225
yuting.wu@skadden.com

Singapore

Rajeev P. Duggal

Partner
65.6434.2980
rajeev.duggal@skadden.com

Sydney

Adrian J. S. Deitz

Partner
61.4294.44311
adrian.deitz@skadden.com

Tokyo

Kenji Taneda

Partner
81.3.3568.2640
kenji.taneda@skadden.com