

## DEVELOPMENTS IN THE LONDON LISTING MARKETS: REFORM OF UK PROSPECTUS REGIME AND OTHER DEVELOPMENTS

13 JULY 2022 • ARTICLE



Following its consultation on the UK prospectus regime in July 2021 and the summary of responses published in December 2021, the government published the outcome of its review into the regime in March 2022<sup>1</sup>. As expected, the government confirmed that it will replace the regime currently contained in the UK Prospectus Regulation. More specifically, it is intending to separate the regulation of public offers of securities from the regulation of admissions of securities to trading.

"The government confirmed that it will replace the regime currently contained in the UK Prospectus Regulation."

The main changes which are to be brought in are the expansion of the powers of the Financial Conduct Authority ("FCA") in relation to admissions to trading on a UK regulated market, changes to general disclosure standards and the introduction of a general prohibition on public offers of securities.

- **Admissions to trading on UK regulated markets** – the FCA will assume responsibility for regulating the admission of securities to regulated markets such as the Main Market of the London Stock Exchange and the criminal offence of requesting admission to trade securities on a UK regulated market without a valid FCA-

approved prospectus will be removed. This will simplify the current regime and cement a shift away from the current legislation-focussed regime, allowing the FCA flexibility to create a new set of regulations. The FCA will have discretionary powers to decide if and when a prospectus is required (including on a secondary offer), the content, the manner and timetable for publishing it, whether FCA approval is required prior to publication, and if a prospectus is needed in the case of a dual listing or if an overseas prospectus is sufficient.

- **Changes to the disclosure standards**

- **The "necessary information" test** – the current statutory test which sets out the basic standard for preparation of a prospectus will remain in place but with various updates such as the removal of denomination of non-equity securities (over or under €100,000) as a factor which would permit differing disclosure. The necessary information may also vary depending on whether the offer is in relation to an initial admission to a market or a secondary issue. Finally, the disclosure standard for debt securities will be amended to focus on the issuer or guarantor's creditworthiness rather than prospects; and

– **Liability for forward-looking statements** – to encourage more forward-looking statements in prospectuses, the liability threshold for certain categories of forward-looking statements will be raised to a recklessness standard for the persons responsible for preparing the prospectus (e.g. issuers and directors). This means liability will attach only if the relevant persons knew a statement was, or were, reckless as to a statement being untrue or misleading, rather than the current test which uses negligence as the threshold. Forward-looking statements to which the new liability threshold applies will be required to be clearly labelled. Admission documents published in accordance with the rules of relevant multilateral trading facilities such as AIM will be treated as a type of prospectus in order to benefit from these changes.

- **General prohibition on public offers of securities** – the requirement to publish a prospectus for a public offering of securities will be removed and will be replaced by a general prohibition on public offers of securities with various exemptions. The current public offer exemptions set out in the UK Prospectus Regulation (such as the qualified investor and 150 persons exemptions) will on the whole continue to apply, alongside new exemptions including for:

– offers of securities which are, or will be, admitted to UK regulated markets;

– offers of securities which are, or will be, admitted to trading on certain multilateral trading facilities;

– offers to existing shareholders of the company made on a pro-rata basis; and

– certain offers by private companies made on FCA authorised platforms – this is specifically aimed at offers made via crowdfunding platforms. In conjunction with introducing this exemption, the government is planning to remove the current requirement for an FCA-approved prospectus on offers over €8m. The government is also still considering the threshold below which offers of securities from private companies are exempt from the prohibition on public offers.

**"The requirement to publish a prospectus for a public offering of securities will be removed and will be replaced by a general prohibition on public offers of securities with various exemptions."**

Thresholds currently stated in euros in the UK Prospectus Regulation will be re-stated in sterling at a rate of one for one.

As is the case presently, the new public offerings regime will apply to offers of "transferable securities" but with certain categories of security or offer continuing to be out of scope of the new regime. The government has also indicated that it is keen to include non-transferable debt securities within the scope of the new regime.

In relation to offerings from overseas, the government is not intending to exclude overseas private companies from offering securities in the UK or prevent offers into the UK of securities listed on certain designated overseas stock markets. This will be subject to complying with UK regulatory requirements in the case of the former and

preparing offering documents in accordance with the rules of the relevant overseas jurisdiction and market, which are not subject to FCA review and approval, in the case of the latter.

## NEXT STEPS

The government intends to legislate to make these changes when parliamentary time allows. The FCA will also need to consult on the new rules that it has responsibility for creating.

## COMMENTARY

The proposed reforms are a welcome step towards a more flexible prospectus regime, which should be more adaptable to the market and make the process of capital raising simpler and more affordable for large and small companies. Whereas prospectuses will continue to be an important part of the process of admission of securities to trading on UK regulated markets, they will no longer be a feature of the public offerings regime. Once more details are forthcoming on the draft legislation and from the FCA, we will be able to better assess the true implications of the new regime and the mechanics of how the FCA will decide key elements such as when a prospectus is required and whether FCA approval is required before publishing.

## OTHER DEVELOPMENTS

"Regard should be had to this new guidance when preparing a prospectus."

The following developments are also briefly worth noting:

- **New FCA prospectus guidance** – in Primary Market Bulletin 40 published in May 2022<sup>2</sup>, the FCA confirmed certain changes to its materials relating to the UK prospectus regime. In particular, it has published a new Technical Note (*Disclosure requirements under the Prospectus Regulation and specialist issuers*) which adapts, as FCA guidance, the European Securities and Markets Authority ("ESMA") guidelines on disclosure requirements under the EU Prospectus Regulation and incorporates the measures on specialist issuers set out in the ESMA update of the CESR Recommendations that were previously available in the FCA Handbook. Regard should be had to this new guidance when preparing a prospectus. Various other prospectus-related notes found in the FCA's Knowledge Base have also been updated;
- **Further reform of listing regime** – in May 2022, the FCA published a discussion paper on further reform of the listing regime to boost growth and competitiveness<sup>3</sup>. This includes proposals to create a single unified segment for equity shares in commercial companies – this would mean all listed companies would need to meet one set of criteria and could then choose to opt into a further set of obligations (similar in scope to the existing rules for premium listed companies). Under the single segment regime, companies would simply be denoted as having a "UK listing". The paper also reviews the role and purpose of the current sponsor regime and considers how it could apply within a single segment regime;
- **Audit and corporate governance reform** – in May 2022, the government published a response document<sup>4</sup> to its earlier White Paper on audit and corporate governance reform. This sets out its plans for strengthening the UK's audit, corporate reporting and corporate governance system. The proposed changes will be implemented by a mix of primary legislation, secondary legislation, changes to the UK Corporate Governance Code and amendments to codes of practice and guidance. On 12 July 2022, the Financial Reporting Council published a position paper<sup>5</sup> setting out its plan for delivering on the areas in the government response that fall within its remit. The paper includes proposed changes to the UK Corporate Governance Code from 1 January 2024 and proposals to update guidance for audit committees, board effectiveness and risk management and develop a set of minimum standards for audit committees. Further consultation will be required.

- **Revised version of Takeover Code** – the miscellaneous amendments to the Takeover Code proposed in consultation paper PCP 2021/1, and outlined in our briefing of 2 February 2022, were confirmed by the Panel on Takeovers and Mergers (the “Panel”) in Response Statement RS 2021/1 published in May 2022 and came into effect on 13 June 2022, together with a small number of other amendments and a new Practice Statement No 33 (*Purchase of shares in the offeree company by an offeror during an offer period*); and
- **Further proposed amendments to the Takeover Code** – in May 2022, the Panel published a consultation paper PCP 2022/2<sup>6</sup> which sets out proposed amendments to the Takeover Code relating to the presumptions of the definition of “acting in concert” and related matters.

## CONCLUSION

There are a number of significant proposed changes in the pipeline, including sweeping changes to both the UK prospectus regime and the current two-tier structure of the Official List and associated eligibility requirements and continuing obligations. We will be following these developments with interest and will report on their outcomes as they progress.

*Trainee Sarika Parmar also contributed to this article.*

[1] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1058438/UK\\_Prospectus\\_Regime\\_Review\\_](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058438/UK_Prospectus_Regime_Review_)

[2] <https://www.fca.org.uk/publications/newsletters/primary-market-bulletin-40>

[3] <https://www.fca.org.uk/publication/discussion/dp22-2.pdf>

[4] [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1079594/restoring-trust-in-audit-and-corporate-governance-govt-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1079594/restoring-trust-in-audit-and-corporate-governance-govt-response.pdf)

[5] [https://www.frc.org.uk/getattachment/aafabbc3-81a3-4db3-9199-8aaebb070c7f/FRC-Position-Paper-for-Board-Awayday\\_July\\_2022.pdf](https://www.frc.org.uk/getattachment/aafabbc3-81a3-4db3-9199-8aaebb070c7f/FRC-Position-Paper-for-Board-Awayday_July_2022.pdf)

[6] [https://www.thetakeoverpanel.org.uk/wp-content/uploads/2022/05/PCP-2022\\_2-Presumptions-of-the-definition-of-acting-in-concert.pdf](https://www.thetakeoverpanel.org.uk/wp-content/uploads/2022/05/PCP-2022_2-Presumptions-of-the-definition-of-acting-in-concert.pdf)

## KEY CONTACTS



**JAN MELLMANN**  
PARTNER • LONDON

T: +44 20 7814 8060

[jmellmann@wfw.com](mailto:jmellmann@wfw.com)



**ANNA PARRINDER**  
KNOWLEDGE COUNSEL  
• LONDON

T: +44 207 814 8052

[aparrinder@wfw.com](mailto:aparrinder@wfw.com)



**SHAUN YOUNG**  
ASSOCIATE • LONDON

T: +44 203 036 9807

[SYoung@wfw.com](mailto:SYoung@wfw.com)



**CLEMENTINE FREETH**  
SENIOR ASSOCIATE • LONDON

T: +44 203 314 6337

[cfreeth@wfw.com](mailto:cfreeth@wfw.com)

### DISCLAIMER

Watson Farley & Williams is a sector specialist international law firm with a focus on the energy, infrastructure and transport sectors. With offices in Athens, Bangkok, Dubai, Dusseldorf, Frankfurt, Hamburg, Hanoi, Hong Kong, London, Madrid, Milan, Munich, New York, Paris, Rome, Seoul, Singapore, Sydney and Tokyo our 700+ lawyers work as integrated teams to provide practical, commercially focussed advice to our clients around the world.

All references to 'Watson Farley & Williams', 'WFW' and 'the firm' in this document mean Watson Farley & Williams LLP and/or its affiliated entities. Any reference to a 'partner' means a member of Watson Farley & Williams LLP, or a member, partner, employee or consultant with equivalent standing and qualification in WFW Affiliated Entities. A list of members of Watson Farley & Williams LLP and their professional qualifications is open to inspection on request.

Watson Farley & Williams LLP is a limited liability partnership registered in England and Wales with registered number OC312252. It is authorised and regulated by the Solicitors Regulation Authority and its members are solicitors or registered foreign lawyers.

The information provided in this publication (the "Information") is for general and illustrative purposes only and it is not intended to provide advice whether that advice is financial, legal, accounting, tax or any other type of advice, and should not be relied upon in that regard. While every reasonable effort is made to ensure that the Information provided is accurate at the time of publication, no representation or warranty, express or implied, is made as to the accuracy, timeliness, completeness, validity or currency of the Information and WFW assume no responsibility to you or any third party for the consequences of any errors or omissions. To the maximum extent permitted by law, WFW shall not be liable for indirect or consequential loss or damage, including without limitation any loss or damage whatsoever arising from any use of this publication or the Information.

This publication constitutes attorney advertising.