

Update on UK Prospectus Regime Review

19 January 2022

BACKGROUND TO PROPOSED REFORMS

In December 2021, Her Majesty's Treasury published the responses it has received from a variety of market participants to its [consultation](#) on certain proposed reforms to the UK prospectus regime.

In March 2021, the UK Listing Review led by Lord Hill proposed a number of changes to the UK listing regime to make London a more attractive listing venue for tech and other innovative companies. Lord Hill recommended, amongst other things (including the FCA's recent rule changes in respect of SPAC listings, dual-class share structures and the free float level (see our Client Update: [FCA Listing Rule Changes](#))), a fundamental overhaul of the United Kingdom's prospectus regime, including assessing whether (i) to change prospectus requirements so that admission to a regulated market is treated differently to offers to the public, (ii) to use more flexible prospectus-exemption thresholds and (iii) to use alternative admission documentation.

The resulting HM Treasury consultation launched in July 2021 and had four key objectives: (i) facilitating wider participation in public company ownership; (ii) improving public capital-raising efficiency by simplifying regulation and removing duplications in the current prospectus regime; (iii) improving the quality of investors' information; and (iv) adding to the flexibility of regulation in this area.

Below we have summarised the key takeaways of the proposed reforms and the [responses](#) to HM Treasury's consultation.

KEY PROPOSALS & FEEDBACK

- **Public Offers by Overseas Companies.** To create a more practical way for overseas companies to make an offer to the public in the United Kingdom, HM Treasury proposed three options: (i) to maintain the status quo whereby an overseas company

needs to have an FCA-approved prospectus to be able to make an offer in the UK; (ii) to introduce a new regime with a wider and more holistic approach to investor protections to replace the current equivalence regime set out in Articles 29 and 30 of the UK Prospectus Regulation, which would permit a non-UK-listed overseas company to offer those listed securities to the public in the United Kingdom on the basis of offering documents prepared in accordance with the rules of that market's jurisdictions; and (iii) to provide no equivalent right for overseas companies to make a public offer in the reformed UK prospectus regime. Respondents were generally in favour of option two, noting that it would enhance retail participation and reduce the costs for overseas companies to make an offer in the United Kingdom.

- **Removing Duplication for Secondary Raisings.** Under the consultation proposals, companies with securities admitted to trading on a UK listing venue (e.g., the LSE, AIM or Aquis Growth Market) would no longer be subject to the rules governing public offers of transferable securities when they make an additional offer for those securities. This is on the basis that securities are already freely trading and therefore are already regulated heavily. Respondents to the consultation were in favour of separating admissions to trading from public offers, as it would avoid unnecessary duplication.
- **Regulated Markets.** Under the proposed changes, the FCA would have a new discretion to determine whether or not a prospectus is required when securities are admitted to trading on a UK-regulated market as well as greater flexibility to establish rules or exemptions equivalent to the current rules setting out the scope of when a prospectus is required. This was generally received positively by respondents, though any delegation of powers to the FCA should be accompanied with greater accountability.

The consultation also recommended the recognition of prospectuses drawn up under other jurisdictions as meeting UK requirements (i.e., for secondary or dual listings).

- **Prospectus Content.** The consultation proposed a clarification to the “necessary information” test of Article 6 of the UK Prospectus Regulation, such that an existing admission of the issuer’s securities would be a relevant factor in determining what information it is “necessary” to include in a prospectus, with which respondents agreed. It also proposed giving the FCA the responsibility for introducing new, detailed rules on the content of a prospectus. Some respondents noted that the FCA should streamline or hasten its review and approval process and be proportionate in its rulemaking.
- **Liability for Forward-Looking Information.** The consultation proposed changing the standard of liability for forward-looking information in a prospectus from

“negligence” to “dishonesty”, which would attach liability to the issuer if persons discharging managerial responsibilities knew information was untrue or misleading or were reckless as to the same. Stakeholders are generally in favour of the proposal and consider that this would encourage more forward-looking statements and make prospectuses more relevant to investment decisions.

- **Wider Participation in Junior Markets.** To address the disincentivisation of wider participation in MTF companies (including SME Growth Markets), two proposals were put forth: (i) an exemption from the restriction on public offerings; or (ii) this same exemption with a new MTF admission prospectus. The second proposal has been supported by respondents, including by MTFs and midcap issuers.
- **UK Public Offering.** The consultation asked market participants to consider a new exemption to the requirement to publish a prospectus when making an offer to the public where the offer is directed at the issuer’s existing stakeholders (i.e., to facilitate issues to the issuer’s own existing shareholders). The feedback was supportive, but some respondents raised a concern that this could reduce investor protection for existing shareholders.
- **Public Offers by Private Companies.** Finally, with a view to permitting private companies to raise more than €8 million in an offer without being required to publish a prospectus, HM Treasury proposed two alternative options to the requirement that an offeror should publish a prospectus where a private company offers securities which are not to be admitted to a stock market of any type. These options included making the offer through an authorised firm and through an authorised firm subject to a new bespoke permission. There was clear support for the second option and for accommodating the right of private companies to offer to the public.

LOOKING AHEAD

The consultation proposals may be seen as a positive step towards addressing the flaws in the current UK prospectus regime highlighted in Lord Hill’s review, including inappropriately detailed disclosure requirements and regulatory thresholds that discourage listed companies from directing new share issuances at retail investors. There is a general consensus in the market that the current regime is overly prescriptive and inflexible, and HM Treasury’s proposed changes, which will tackle many of the existing flaws, are to be welcomed as a result. The government’s next steps should make clear the ultimate direction of the reforms to the UK prospectus regime.

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Please do not hesitate to contact us with any questions.

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