SECONDARY LISTINGS IN THE UK
SECOND TO NONE

Richard Werner, Tom Bacon, Olivia Russell and Soroush Fini of BCLP explain the process for a company with a primary listing in a jurisdiction outside of the UK that wishes to have a secondary listing of its shares on the Main Market of the London Stock Exchange.

A secondary listing refers to a situation where a company with shares that are traded on a stock exchange makes arrangements for those shares to be traded on an additional exchange.

A secondary listing relates to the same class of shares that are already listed. This is distinct from a dual company structure, where two separate companies are legally linked and each has shares listed on a different exchange.

This article focuses on the position of a company with a primary listing in a jurisdiction outside of the UK that is seeking a secondary listing of its shares on the Main Market of the London Stock Exchange (LSE), including the eligibility requirements, process for listing and the continuing obligations once the company has the secondary listing.

REASONS FOR A SECONDARY LISTING

There are various common reasons why a company may want to put in place a secondary listing in London in addition to its primary listing elsewhere.

Access to capital

An overseas company may find significant investor interest in the UK that it is unable to access without a UK listing. For example, there may be investors that want to invest in the company but are permitted only to invest in London-listed shares. However, having a secondary listing rather than a primary one can affect which indices the company can be admitted to (*see box "Eligibility for indices"*). Having a London listing may also be important to an investor for other reasons, such as wanting to be able to trade the shares in its own time zone.

Greater share liquidity

A company's home market may be less liquid than the LSE. Even if the home market has a reasonable level of liquidity, opening the company up to a new pool of investors in a large and highly liquid market, such as London, is likely to create additional liquidity.

Increased profile

The LSE is a globally recognised market, with a reputation for a high standard of regulation and good corporate governance. Therefore, obtaining a secondary listing in London can raise a company's profile on the international stage and provide additional credibility. A company may also consider it appropriate to put in place a secondary listing in London if it has strong links to the UK; for example, if it has a significant part of its assets or operations in the UK.

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Analyst coverage

A company may also wish to be listed alongside its sector peers and to secure coverage by London-based equity analysts who cover the company's sector.

RECENT UK DEVELOPMENTS

The UK Listing Review, chaired by Lord Hill and published in March 2021, commenced a major process of capital markets reform in the UK (*see News brief "UK Listing Review: closing a gap", www.practicallaw.com/w-030-2530*). The Primary Markets Effectiveness Review was part of this reform agenda and was focused on improving the effectiveness of UK primary markets in order to ensure that they remain globally competitive.

This resulted in the Financial Conduct Authority (FCA) removing the old premium and standard listing segments and creating a new International Commercial Companies Secondary Listing (secondary listing) category. This category was specifically designed for secondary listings by non-UK incorporated companies and is distinct from the newly created Equity Shares (Commercial Companies) (ESCC) category and the other new categories (*see News brief "Capital markets reform: FCA proposes a blueprint for the UK", www.practicallaw.com/w-039-6104*).

The rules for these new categories came into force when the new UK Listing Rules (UKLR) became effective on 29 July 2024 (*see feature article "New UK Listing Rules: revitalising UK capital markets", www.practicallaw.com/w-044-1487*). The rules for the secondary listing category largely replicate the previous rules for standard listings. However, as the secondary listing category is available only to overseas companies that satisfy certain criteria, there are a number of additional rules to ensure that the listing category is used only by eligible companies.

The secondary listing category enables overseas companies to obtain a secondary listing in London while minimising the duplication of regulatory requirements. It is designed to avoid imposing extensive continuing obligations that would otherwise apply to the company in addition to those of its primary listing venue.

ELIGIBILITY REQUIREMENTS

The eligibility requirements for the secondary listing category are based on the rules that previously applied to the standard listing category, although some new requirements have been created to ensure that only overseas companies with a qualifying primary listing on another exchange are eligible.

It should be noted that the eligibility requirements for the ESCC category have been relaxed significantly under the UKLR, as compared to the requirements that previously applied to premium listed companies. For example, there is no requirement under the ESCC category for a three-year financial track record or for a clean working capital statement, and the rules relating to dual class share structures have been further relaxed.

As a result, there are fewer differences between the eligibility requirements for the secondary listing and ESCC categories under the UKLR than there were between the premium and standard listing categories under the previous listing regime. However, there remain some requirements that apply to the ESCC category that do not apply to the secondary listing category, including rules relating to the ability of an externally managed company to act on its own initiative, a requirement for independence from any controlling shareholder, rules relating to constitutional documents, and requirements relating to dual class share structures.

UKLR 3.2 sets out the eligibility requirements for all securities for which admission to the Official List is sought, including companies seeking a secondary listing. Specific additional eligibility requirements for the secondary listing regime are detailed in UKLR 14.2 (*see box "UK Listing Rules on eligibility"*). In addition, the LSE requires that all securities that are admitted to trading are eligible for electronic settlement (*see box "Settlement"*).

The FCA will not admit shares in the secondary listing category if they are not listed in the applicant's country of incorporation or in the country where a majority of the applicant's shares are held, unless it is satisfied that the absence of such a listing is not due to the need to protect investors (*UKLR 14.2.8R*).

It is important to note that a listing under the secondary listing category is not the same as a listing of depositary receipts (*see box "Global depositary receipts"*).

Transitional provisions

As part of the implementation of the UKLR, existing listed companies were mapped from their previous listing category to the new listing categories. Companies with a standard listing that were eligible for the new secondary listing category were mapped into this category, with those that were not eligible being mapped to a newly created transition category.

The rules of the transition category are based on the old standard listing regime, and this category is designed to allow standard listed companies that were not eligible for the secondary listing category to continue to be listed. This category is not open to new applicants.

Transfer of listing category

Companies listed in the secondary listing category may apply to the FCA to transfer to the ESCC category using a modified transfer process.

This process is set out in UKLR TP5 and includes an eligibility assessment that focuses on a company's ability to comply with the controlling shareholder rules (*UKLR 5.3*), requirements regarding constitutional arrangements (*UKLR 5.4*) and the provisions relating to externally managed companies (*UKLR 5.2*). It also requires the appointment of a sponsor (*see "Sponsors and financial advisers" below*).

Eligibility for indices

Companies in the secondary listing category are not eligible for the FTSE UK Index Series, which includes the FTSE 100, FTSE 250, FTSE 350 and FTSE All-Share indices.

However, companies listed within the secondary listing category will be eligible for inclusion in the FTSE Global Equity Index Series and associated indices, subject to satisfying all other inclusion criteria. This position is consistent with the position for standard listed companies under the previous listing regime.

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UK Listing Rules on eligibility

General listing requirements under UK Listing Rule (UKLR) 3.2	
Incorporation	An applicant must be duly incorporated or otherwise validly established according to the laws of its place of incorporation or establishment and operating in conformity with its constitutional documents (*UKLR 3.2.1R*).
Validity	The shares must conform with the law of the applicant's place of incorporation, be duly authorised in accordance with the applicant's constitution, and have any necessary statutory or other consents (*UKLR 3.2.2R*).
Admission to trading	The shares must be admitted to trading on a regulated market (*UKLR 3.2.3R*). Admission to the Main Market of the London Stock Exchange, as would be the case in conjunction with a secondary listing, would satisfy this requirement.
Transferability	The shares must be freely transferable, fully paid, free from liens, and not subject to restrictions on transfer, except any restriction imposed for failure to comply with a notice under section 793 of the Companies Act 2006 (*UKLR 3.2.4R*).
Market capitalisation	The expected aggregate market value of the shares to be listed must be at least £30 million (*UKLR 3.2.7R*). The Financial Conduct Authority (FCA) may modify this requirement to admit shares of a lower value if it is satisfied that there will be an adequate market for the shares concerned (*UKLR 3.2.8G*).
Whole class to be listed	The listing application must include all shares of the relevant class, issued or proposed to be issued (*UKLR 3.2.9R*).
Specific requirements for a secondary listing under UKLR 14.2	
Incorporation	The applicant must be an overseas company, defined as a company incorporated outside of the UK, which means England and Wales, Scotland and Northern Ireland, but excluding the Channel Islands and the Isle of Man (*UKLR 14.2.1R*).
Shares in public hands	At least 10% of the applicant's shares, excluding treasury shares, must be in public hands at the time of admission. Shares are not in public hands if they are held, directly or indirectly, by directors, connected persons, trustees of employee share schemes, individuals with board nomination rights, or any group or concert party holding 5% or more of the relevant class. Shares subject to a lock-up period exceeding 180 days are also excluded (*UKLR 14.2.2R*). The same requirement also applies to companies seeking a listing in the Equity Shares (Commercial Companies) category.
Place of central management and control	An applicant's place of central management and control must be situated either in its country of incorporation or the country of its qualifying home listing. The FCA may dispense with or modify this requirement, including where the applicant's operational and governance arrangements are not intended to reduce, and do not have the effect of reducing, the FCA's ability to monitor the company's compliance with the UKLR or other applicable regulations (*UKLR 14.2.4R and 14.2.5G*).

Qualifying home listing	For shares to be listed under the secondary listing category, they must:
	
	• Have a qualifying home listing. This means a listing of shares admitted to trading on an overseas regulated, regularly operating, recognised open market which is subject to:
	  - oversight by a regulatory body that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding (an international framework for co-operation and information sharing among securities regulators); and
	  - the rules applicable to that overseas market without dispensation.
	• Be tradable on the market of the qualifying home listing.
	• Be in the same class as those shares admitted to trading under the qualifying home listing (*UKLR 14.2.6R*).

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LISTING PROCESS

The process for applying to the FCA to admit shares to the secondary listing category is the same as for companies applying for a listing of shares under other categories. Under UKLR 20.2.2R, the applicant must:

- Submit, in final form, a board confirmation (*see "Board confirmation" below*).
- Submit, in final form, a completed Application for Admission of Securities to the Official List and a prospectus approved by the FCA (*see "Admission documents" and "Contents of the prospectus" below*).
- Submit all additional documents, explanations and information required by the FCA.
- Submit verification of any information in such manner as the FCA may specify.
- Pay the applicable fees.

Before submitting these documents, an applicant should contact the FCA to agree the date on which the FCA will consider the application (*UKLR 20.2.3G*).

When considering the application, the FCA may carry out its own enquiries, request that the applicant answer questions raised by it, impose any additional conditions as it considers appropriate, and take into account any concerns that it may have that the applicant has not responded satisfactorily to queries or has not been open and co-operative in its dealings with the FCA (*UKLR 20.2.6G*). This last point is reinforced by Listing Principle 2, which requires a company and its directors to deal with the FCA in an open and co-operative manner.

Admission becomes effective only when the FCA's decision to admit the securities to listing has been announced through a regulatory information service (RIS) or by being posted on a noticeboard designated by the FCA should the electronic systems be unavailable (*UKLR 20.2.7G*).

Settlement

Rule 2.7 of the London Stock Exchange (LSE)'s Admission and Disclosure Standards requires that all securities that are admitted to trading are eligible for electronic settlement. However, shares in companies that are incorporated in jurisdictions other than the UK, the Isle of Man, Jersey and Guernsey are not eligible for admission to the CREST system and these companies will typically put in place arrangements to create depositary interests.

This involves the appointment of a depositary to hold the shares on trust, with the depositary issuing shareholders with dematerialised depositary interests. The depositary interests are not themselves admitted to trading on the LSE, but enable settlement of trades in the shares to take place through CREST.

It should be noted that, where a shareholder holds shares that are traded on the LSE and wishes to trade those shares on another venue where the company's shares are traded, or vice versa, it will be necessary to first transfer those shares between listing venues. Precisely how this is done will depend on the markets concerned and the specific arrangements that the company has put in place. In some situations, this can be done electronically, while in others it will involve a manual process managed by the company's registrar.

Board confirmation

UKLR 20.3.1R requires that, as part of the application process, an applicant must provide a confirmation from its board that it has taken reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations under the UKLR, Articles 17, 18 and 19 of the retained EU law version of the Market Abuse Regulation (*596/2014/EU*) (UK MAR) and the FCA's Disclosure Guidance and Transparency Rules (DTR) and corporate governance rules.

In order to provide this confirmation, a company will typically instruct its lawyers, and its financial adviser if one has been appointed, to prepare briefing materials for the directors on their obligations.

The board confirmation is a new requirement introduced in the UKLR, which applies to applicants for listing under all categories. It applies only when a company makes an application for admission to listing for the first time and does not apply to applications for shares to be admitted following a subsequent issue of shares of the same class, or when a company that already has securities admitted to listing applies for a new class to be admitted (*UKLR 20.3.2G*).

Eligibility assessment

An applicant must submit a letter to the FCA setting out how it satisfies the eligibility requirements for the listing category for which it is applying for admission. This eligibility letter is accompanied by a completed eligibility checklist in a form made available by the FCA.

The eligibility letter is usually submitted to the FCA at the same time as the first draft of the prospectus. However, the applicant may wish to submit an eligibility letter before the draft of the prospectus is submitted; for example, where the applicant has concerns regarding eligibility and wishes to seek guidance from the FCA on those matters before incurring substantial costs.

Admission documents

A pack of documents, including the Application for Admission of Securities and the approved prospectus, is required to be submitted by midday two business days before the FCA is to consider the application (*UKLR 20.4.2R*).

Further documents are then required to be submitted before 9am on the day that the FCA is to consider the application (*UKLR 20.4.4R*).

Contents of the prospectus

The content requirements for the prospectus are set out in the UK Prospectus Regulation Rules (PRR) and are the same as those that apply to a company seeking admission of shares under the ESCC category.

Under the current rules, a prospectus must contain the necessary information that is material to an investor for making an informed assessment of:

- The assets and liabilities, profits and losses, financial position and prospects of the company.

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- The rights attaching to the securities.

- The reasons for the issuance and its impact on the company (*PRR 2.1.1*).

The FCA is currently consulting on reform of the prospectus regime (*see News brief "UK public offers and admissions to trading regime: a new framework", www.practicallaw.com/w-044-2452*). The consultation closes on 18 October 2024 and is likely to result in changes to the content requirements for a prospectus.

A company seeking a secondary listing will invariably appoint English lawyers who will assist with the preparation of the prospectus. It is common for the lawyers to "hold the pen", meaning that they will prepare an initial skeleton prospectus and will then co-ordinate the drafting process. The company and other advisers will be required to provide content for the prospectus, and to review and comment on the document as it progresses.

Historical financial information

One required section of the prospectus under the current regime is the historical financial information, which must include financial information covering three years or such shorter period as the company has been in operation, the last two years of which must be prepared on a consistent basis and be comparable with the company's next published accounts.

For the purposes of preparing the historical financial information, companies may use:

- UK-adopted International Accounting Standards (IAS).

- EU-adopted International Financial Reporting Standards (IFRS).

- IFRS, provided that the financial statements include an explicit and unreserved statement in the notes to the financial information that the information complies with IFRS in accordance with IAS 1. This is likely to apply to Australian, New Zealand and South African IFRS, among others.

- The generally accepted accounting principles (GAAPs) of Japan, the US, China, Canada and South Korea.

- National accounting standards of a country that the Treasury has deemed to be equivalent to UK-adopted IAS. The FCA maintains a list of equivalent non-UK regimes.

Global depositary receipts

Under a secondary listing, it is the company's equity shares that are listed, although depositary interests may be created in order to enable settlement (*see box "Settlement"*).

Depositary receipts are a different type of instrument and are a security in their own right, which represent ownership of a company's shares. Depositary receipts are often issued by companies that are incorporated in emerging economy jurisdictions to enable them to access global capital markets.

A company issuing depositary receipts may already have a listing on its domestic market, or on another stock exchange, or the depositary receipts may be created as part of its initial public offering.

There is a separate listing regime for depositary receipts under UK Listing Rule 15, which is outside of the scope of this article.

Responsibility

The company and the directors (and any proposed directors) will be legally responsible for the prospectus, along with any other person who is stated as accepting responsibility for it or for part of it, such as an expert or valuation agent who prepares a report for inclusion in the prospectus.

It is customary for directors to sign a responsibility letter, addressed to the company, that records their acceptance of responsibility for the prospectus and in which they will provide certain confirmations to the company in relation to the contents of the prospectus. These confirmations can be qualified, in places, by the director's own awareness.

If financial advisers have been engaged by the company, it is usual for the responsibility letters to also be addressed to them.

Liability

Under section 90 of the Financial Services and Markets Act 2000, if a person acquires shares relying on a prospectus, and suffers loss as a result of any untrue or misleading statements in the prospectus or any supplementary prospectus or because of the omission of any matter required to be included in the prospectus, any person responsible for the prospectus is liable to pay compensation. Liability may also arise under other legislation and under common law, including potential liability for negligent misstatement, or negligent or fraudulent misrepresentation, together with the potential for criminal liability.

The company's English lawyers will provide detailed advice to the company on the potential for liability to arise in relation to the prospectus. The listing process is designed to manage and minimise the risk of such liability and any other legal or regulatory liability arising in relation to the listing.

Accountancy workstreams

The company will engage a firm of accountants to undertake certain workstreams connected to the preparation of the prospectus and to ensure that the company is able to comply with its obligations once listed.

These workstreams include preparing the following reports:

- Long form report, which is a private financial due diligence report prepared by the reporting accountants for the company and its directors.

- Working capital report, which is also a private report, prepared for the company and the directors, in which the reporting accountants consider the basis for the directors to make the working capital statement that must be included in the prospectus.

- Financial position and prospects procedures report (FPPP), in which the reporting accountants report to the company and the directors on the procedures that the company has put in place to comply with its financial reporting obligations in accordance with

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applicable regulations. This is also a private report.

The reporting accountants will also prepare a suite of private comfort letters, with the precise scope depending on the circumstances of the transaction. If financial advisers have been appointed by the company in connection with the transaction, they will request that the comfort letters are also addressed to them.

Accountants may also be involved in preparing historical financial information for inclusion in the prospectus and may assist in the preparation of, or provide private comfort on, the capitalisation and indebtedness and significant change disclosures in the prospectus as well as other accounting matters. The precise scope of their role in this respect will depend on the circumstances of the transaction.

SPONSORS AND FINANCIAL ADVISERS

A sponsor is not required for a secondary listing and it is not necessary for a company to appoint a financial adviser where it is seeking a listing under this category, unlike where a company is seeking a listing under the ESCC category.

In the case of a standard listing under the previous listing regime, where a company was not carrying out a fundraising at the time of the listing it was common not to appoint a financial adviser. It is likely that this practice will be followed in relation to similar transactions under the new secondary listing regime.

However, where an investment bank or other financial adviser is appointed (including where it is involved in a concurrent fundraising), any such bank will want to be involved in setting the scope of the due diligence exercise and will require that all due diligence reports and comfort letters are addressed to it. In addition, the company, and potentially the directors, will be required to provide contractual warranties to the bank and the company will also provide the bank with a customary corporate finance indemnity.

If a company in the secondary listing category uses the modified transfer process to move to the ESCC category, a sponsor will have a limited role. This includes confirming to the FCA that it has not identified any adverse information that would lead it to conclude that the company would not be able to comply with its obligations under the UKLR and with certain other requirements concerning the dissemination of information and the management of inside information, as specified in UKLR TP 5.10R. This form of negative confirmation differs from the confirmation provided by sponsors in relation to a new applicant to the ESCC category.

CONTINUING OBLIGATIONS

The continuing obligations imposed on companies with a secondary listing under the UKLR are significantly less extensive than those under the ESCC category and are based on the requirements under the standard listing category from the previous listing regime. The intention is to avoid, as far as possible, the duplication of regulatory requirements between the requirements of the London secondary listing and those of the company's primary listing venue.

Under UKLR 14.3.1R, the company must comply on an ongoing basis with the eligibility requirements and with the rules of the company's primary listing venue (*UKLR 14.3.2R*). The company must notify the FCA as soon as possible if it no longer complies with those requirements (*UKLR 14.3.3R*). There are then certain additional continuing obligations that apply to companies with a secondary listing.

Suspension or cancellation of qualifying home listing

If a company's qualifying home listing is suspended or cancelled, UKLR 14.3.4R requires the company to notify the FCA as early as possible to discuss whether suspension or cancellation under UKLR 21 is appropriate. This is similar to the obligation under the previous standard listing regime.

Copies of documents

Copies of circulars, notices, reports and other documents to which the UKLR apply and resolutions passed at an annual general meeting, other than resolutions concerning ordinary business, must be forwarded to the FCA (*UKLR 14.3.6R*) and notified to an RIS as soon as possible (*UKLR 14.3.7R(1)*). These rules are the same as the obligations under the previous standard listing regime.

Notifications relating to capital

The company must notify an RIS as soon as possible of any proposed change in its capital structure, any redemption of shares and the results of any new issue of shares or of a public offering of existing shares or other equity securities (*UKLR 14.3.17R*). This is important in order that there is visibility in the UK market of such events.

Financial reporting

In addition to local company law requirements, a company must comply with the financial reporting requirements in DTR 4 (*UKLR 14.3.20R*).

Annual report and accounts. Under DTR 4, the company must publish annual financial reports within four months of the financial year end (*DTR 4.1.3R*) and half-yearly financial reports must be published as soon as possible and no later than three months after the end of the relevant financial period (*DTR 4.2.2R*).

If a company is incorporated outside of the UK (a third country), it may be exempt from some of these requirements if the FCA considers the law of that third country to be equivalent to UK-adopted IAS or if the company complies with the law of a third country that the FCA considers equivalent (*DTR 4.4.8R*). The FCA maintains a list of equivalent non-UK regimes, which includes companies that report following EU-adopted IFRS, IFRS as issued by the IASB, or GAAP in the US, Canada, China, Japan or South Korea.

Content requirements of the annual financial report. Under DTR 4, the annual financial report must include the audited financial statements, a management report and responsibility statements given by those responsible within the company confirming, among other things, that the financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the company, and that the management report includes a fair review of the development and performance of the business.

The annual financial report must also include climate-related financial disclosures that are consistent with the recommendations and recommended disclosures of the Task Force on Climate-related Financial Disclosures (*UKLR 14.3.24R*) (*see feature article "Climate transition plans: charting a greener future", www.practicallaw.com/w-039-1698*).

Corporate governance statements

Unlike for companies incorporated in the UK with a listing in the ESCC category, UKLR 14 does not require companies to comply or explain against the UK Corporate Governance Code. Instead, UKLR 14.3.21R extends the

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scope of DTR 7.2 (corporate governance statements) to companies with a secondary listing and requires them to confirm, in a corporate governance statement in the annual financial report, which corporate governance code the company is subject to or voluntarily applies, including any departures from that code.

The corporate governance statement must also contain a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process, details of the composition of the board and its committees, together with a description of:

- The diversity policy that applies to the company's board and the remuneration, audit and nomination committees with regard to aspects such as age, gender, ethnicity, sexual orientation, disability or educational, professional and socio-economic backgrounds.
- The objectives of the policy.
- How it has been implemented and the results in the reporting period (*DTR 7.2.8AR(1)*).

If there is no such diversity policy, the corporate governance statement must explain why this is the case (*DTR 7.2.8AR(2)*).

DTR 5

Under DTR 5 (vote holder and issuer notification rules), a person must notify the company of the percentage of the company's voting rights that they hold as a shareholder (or hold or are deemed to hold through their direct or indirect holding of financial instruments) if, as a result of an acquisition or disposal of shares or financial instruments, or any event that changes the breakdown of voting rights of the company, the percentage of those voting rights reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% (*DTR 5.1.2R*). On receipt of a notification, the company must make an announcement as soon as possible and in any event by no later than the third trading day thereafter (*DTR 5.8.12R(2)*).

DTR 6

DTR 6 (continuing obligations and access to information) contains a number of rules relating to the dissemination and filing of information and electronic communications.

DTR 7

The company must prepare a corporate governance statement (*DTR 7.2*) (*see "Corporate governance statements" above*). DTR 7.3 contains requirements relating to related party transactions, which require the company, when entering into a material related party transaction, to publish an announcement through an RIS (*UKLR 14.3.23R and DTR 7.3.8R*). A material related party transaction is one where any percentage ratio in the class tests is 5% or more. These requirements are less onerous than the related party transaction rules that apply under the ESCC category.

Reverse takeovers

A company with a secondary listing is not required to seek shareholder approval for a reverse takeover; being an acquisition where the percentage ratio under any of the class tests is 100% or greater, or which results in a fundamental change in the company's business or in a change in board or voting control. However, the company or a sponsor, where one is appointed, must contact the FCA as early as possible before a reverse takeover that has been agreed or is in contemplation is announced or where details of the reverse takeover have leaked, to discuss whether a cancellation of listing is appropriate on completion of the reverse takeover (*UKLR 14.4.4R*).

Notwithstanding the above, there are a number of circumstances in which the FCA will generally be satisfied that a cancellation is not required; namely, acquisitions of targets that are:

- Within the same listing category, where the company maintains its listing category.
- From different listing categories, where the company maintains its listing category.
- From different listing categories, where the company changes its listing category (*UKLR 14.4.5G-14.4.8G*).

TAKEOVER CODE

The UK Takeover Code (the Code) applies to companies that have their registered office in the UK, the Channel Islands or the Isle of Man, if any of their securities are admitted to trading on a UK regulated market, which includes the Main Market of the LSE. Therefore, the Code would apply to a company with a secondary listing that is incorporated in the Channel Islands or the Isle of Man, but not to any other company listed within that listing category.

While the Takeover Panel has carried out a public consultation in relation to the types of company to which the Code will apply in the future, this is not expected to change the position for companies listed under the secondary listing category (*see News brief "New Takeover Code jurisdictional framework: grey zoning out", www.practicallaw.com/w-043-4221*).

UK MARKET ABUSE REGULATION

UK MAR will apply to a company that has a secondary listing, irrespective of where it is incorporated. Inside information must be disclosed as soon as possible (*Article 17(1), UK MAR*). This means that the company must make the inside information public as quickly as possible and in a way which ensures that the market as a whole is given access at the same time.

Often, inside information arises after the market closes for the day. For example, if the company is entering into a transaction, legal documents will typically be executed during the evening after normal business hours. In these cases, it is common in the UK for the transaction to be announced at 7am the following day, which is the earliest an announcement can be released through an RIS.

However, a secondary listing, particularly where the listings are in different time zones, can complicate the situation, and this can be exacerbated where there are significant time differences or additional listing venues. For example, there are a number of companies that have listings in each of London, Sydney and New York, or that span similar time zones.

Companies have to consider this issue by reference to their own situation, but it may be necessary to release the information simultaneously in all relevant jurisdictions and to do so through news wire services where it is out of hours in a given jurisdiction.

Companies will need to consider carefully how they will comply with their obligation to disclose inside information under UK MAR and will require robust procedures that are

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Managing ESG compliance: challenges for UK listed companies (2020)	w-025-9225
The new Prospectus Regulation: regime changes (2019)	w-020-4530

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well-understood by those responsible for implementing them and this will form part of the FPPP process on which reporting accountants will advise (*see "Accountancy workstreams" above*).

Under UK MAR, someone who is not a board member but has regular access to inside information about the company and the power to take decisions affecting the company is considered to be a person discharging managerial responsibilities (PDMR). Directors of a UK listed company and PDMRs are prohibited from conducting transactions on their own account or for the account of a third party, such as buying or selling shares, during a closed period or when they hold inside information, subject to certain exemptions. A closed period is the period of 30 calendar days before the announcement of an interim or year-end financial report.

In addition, PDMRs and persons closely associated with them (which will include a spouse or partner, dependent children under the age of 18 and relatives who have shared the same household as a PDMR for at least one year before the transaction) are required to notify the company and the FCA after undertaking a transaction in relation to the company's shares (*Article 19(1), UK MAR*). The notification must be made within three working days after the date of the transaction and, in the case of the notification to the FCA, there is a prescribed form. Once the company receives this information, it must make this public through a RIS within two working days (*Article 19(3), UK MAR*).

The type of transactions that are caught by these notification requirements is very wide ranging and, in addition to buying and selling shares, will include making a gift of shares, exercising warrants and put and call options, borrowing or lending shares, or pledging shares.

It is important that a company's directors are briefed on these requirements and have regard to the company's share dealing code, which must reflect these, whenever they are considering dealing in the company's securities and consult appropriate UK advisers where appropriate.

CANCELLING A LISTING

The FCA may cancel a listing of shares if it is satisfied that there are special circumstances that preclude normal regular dealings in them (*UKLR 21.2.1R*). Examples of this would include when the company no longer satisfies its continuing obligations for listing or the listing has been suspended for more than six months.

A company in the secondary listing category that wishes to cancel its listing must notify an RIS, giving 20 business days' notice of the intended cancellation (*UKLR 21.2.17R*). It should be noted that a company with a secondary listing is not required to obtain shareholder approval to cancel its listing.

A POPULAR VENUE

London has historically been a popular venue for companies seeking a secondary listing, with companies being attracted by factors including a liquid market, a large and sophisticated investor base, analyst coverage, a clear and stable regulatory framework and the credibility and profile that a London listing can provide. In the authors' view, this will continue to be the case and the updated listing framework, featuring a specific listing category for this type of company with a level of regulation that is broadly viewed as reasonable for a secondary listing on a major global market, is likely to enhance London's offering.

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