Hogan Lovells

HM Treasury UK Listings Review – Call for Evidence

27 November 2020

HM Treasury has launched a review of the UK listings regime on the basis that:

- The UK listing regime is "ready for review", in particular in order to reform the regime "to attract the most innovative and successful firms and help companies access the finance they need to grow".
- Departure from the EU will permit the UK to regain full responsibility for its financial services rulebook and to tailor its rules more precisely to the needs of companies, investors and markets.

Underlying the review is an assumption that the UK's current listing regime may need to be relaxed in order to remain competitive. This stems from debates about London's attractiveness as a listing venue, including following efforts to convince Saudi Aramco, one of the largest state-owned companies in the world, to list in London and the high-profile autumn 2020 IPO of The Hut Group, a UK company which successfully came to market while choosing not to follow standard UK corporate governance expectations.

The review's starting point is a call for evidence identifying five specific areas for consideration: the UK's free float requirements, the ability to list dual class share structures, track record requirements for IPO candidates, the necessity for prospectuses and the attractiveness of London for dual or secondary listings.

The review may highlight differences in the approach of HM Treasury and the UK Financial Conduct Authority (FCA), the regulatory body responsible for the UK's Listing Rules, which to date has followed the path that high listing standards should best promote investor confidence and the attractiveness of London as a global listing venue.

In particular, the review could lead to significant change for the London Premium segment, the UK's "blue riband" listing standard. The Premium segment is almost entirely the product of UK regulatory, market and investor input and is "super-equivalent" to existing EU listing standards.

A Premium listing is a pre-requisite for inclusion in the FTSE UK indices. Index inclusion has the benefit of increasing the number of investors which may acquire a company's shares, especially

passive index tracking funds. The criteria for index inclusion is, however, decided by the relevant index provider and not by the FCA.

The current UK listing regime has developed to include numerous other options to bring companies to market, which permit almost any issuer to list in London and, potentially, which already address many of the points highlighted in the Call for Evidence. These include the Standard listing segment, which is an alternative route to listing for issuers that comply with EU standards but not the super-equivalent UK Premium listing regime.

The emphasis of the review on increasing the attractiveness of London listings to issuers is a timely question to consider, especially given the recent trend away from public markets to private ownership, and especially private equity, for many companies. But given that most London-listed securities can be freely acquired, including retail investors, the consequences of any relaxation of the rules for investor protection will also need to be considered, as will the consequences for moves intended to use the Listing Rules as a means of encouraging good corporate behaviour, for instance the Task Force on Climate-Related Financial Disclosures initiative.

Free float: Both the Premium and Standard listing segments require a 25% free float requirement both on initial listing and on a continuing basis, subject to relaxation on a case by case basis with the agreement of the FCA. The present requirement that the free float must be held by investors in the EEA is scheduled to be removed on expiry of the UK's Brexit transition period (at 11pm on 31 December 2020), meaning that the free float may be held by investors anywhere in the world. Some other London markets, including the High Growth segment, lower the required free float to 10%.The current 25% test, which implements (but pre-dates) EU requirements, is similar to the test applied in Hong Kong, but is less detailed than the tests applied by the New York Stock Exchange and Nasdaq which require both a minimum number of shares in issue and a minimum number of shareholders.

Dual-class share structures: Companies with dual-class share structures (DCSS) issue different classes of shares with differential voting rights, often so that founders can keep control of the company following its listing. IPOs of DCSS companies have been common in the US for many years and Hong Kong and Singapore both recently amended their respective listing regimes to permit them.

The Premium listing rules do not include an outright prohibition on the listing of DCSS companies, but do require that only the holders of premium listed shareholders can vote on matters on which the Listing Rules require a vote. This has the effect of preventing both (a) the premium listing of two classes of shares of the same company with differential voting rights and (b) the retention of a majority of voting rights on all matters by a closely held unlisted class. There are no impediments to DCSS companies seeking a Standard listing, albeit that they would not then obtain FTSE UK Index inclusion.

Any amendment to the Listing Rules to better facilitate the listing of dual-class share structures would also have to be considered in the context of the UK Takeover Code.

Track record requirements: The review questions whether the UK listing regime would benefit from relaxed eligibility requirements for certain types of issuers, compared to the three year track record applicable to most Premium listed issuers. There are already exceptions to the three year premium listing requirement for certain scientific research, mining and property companies. Issuers seeking a Standard listing are not currently subject to any track record requirements.

Prospectuses: The review queries whether the timing and costs implications of prospectus preparation and review are justified for all capital raises.

There are two distinct questions: first, whether some smaller offers could be made without prospectuses and, second, whether large "seasoned" issuers should be required to prepare prospectuses for major new capital raises such as rights issues.

The existing prospectus rules already permit shelf registrations and simplified prospectuses in appropriate cases, but they are not often used.

The requirement to produce a prospectus is primarily an exercise in investor protection and, if removed, may need to be replaced by greater regulation and independent review of periodic disclosures for seasoned issuers or by stronger sanctions against persons raising capital on the basis of negligent or fraudulent statements.

And, even where a prospectus is not required, all marketing materials in respect of a new capital raise would still be subject to the UK financial promotion regime meaning that any materials distributed to retail investors would need to be issued or approved by an FCA authorised person.

Dual and secondary listings: The review suggests that more could be done to make London more attractive as a venue for secondary listings for companies that are already listed elsewhere and that more dual listings would be desirable.

The key concerns appear to be whether the requirement to prepare a prospectus for a secondary London listing and the continuing obligations applicable to Premium listed companies might be off-putting for companies that are already listed elsewhere.

Generally speaking, companies seeking a dual or secondary listing would not expect to be Premium listed, unless they are hoping for FTSE UK Index inclusion. And whether a prospectus should be required for a dual or secondary listing may depend on the disclosure standards applicable in the relevant issuer's home jurisdiction.

The call for evidence is open until 5 January 2021.

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