

UK reforms seek to facilitate international market access

*Recent global trends point to declines in the number of initial public offers (IPOs) and the amount of equity being raised by non-financial firms. The UK's share of global IPOs has been dropping rapidly in recent years and this has led to a continual stream of reviews and reforms. **Elizabeth Howell** discusses this with respect to proposed regulatory changes in the UK.*

The regulation of the equity markets has become an area of enormous, government-driven reform in the UK. Although EU law was onshored to prevent the 'lights going out' after Brexit, a broader consequence of EU withdrawal is the ability of the regulator, the Financial Conduct Authority (FCA), to have more freedom to reform the capital markets regime. There has been a continual stream of reviews, discussion papers, and consultations, including with respect to reviewing the UK's official listing regime and overhauling its system for the prospectus, the information document that briefs investors about the company and the securities on offer.

Salient questions surround the crisis in UK public markets. The country's share of global initial public offers (IPOs) has been declining rapidly: this dropped to five per cent in 2018 from 10 per cent in 2006. The UK also tends to have comparatively few tech IPOs, with businesses often manifesting preferences for jurisdictions such as New York, which allow for more flexible listing requirements. These trends have contributed towards the flurry of reviews and reforms to boost the attractiveness of London as a listing destination for companies.

Issuers may wish to access finance from outside their home jurisdiction for various reasons, such as gaining access to well established foreign markets for capital needs; bonding to a particular regulatory regime; tapping into foreign investor interest; gaining attention from analysts; and acquiring international prestige.

Jurisdictions can use a range of conceptual approaches to address cross-border access to their capital markets. These include the national treatment approach, in essence

requiring foreign issuers to comply with a host state's regulatory system, although there may be particular exemptions built in to facilitate international activity. More liberal approaches embrace notions of deference, equivalence and mutual recognition. In general, such models focus on allowing access based on deference to a home state's regulation. Jurisdictions adopt different techniques to deal with international offers, and a topical example concerns how the UK and EU will manage market access for international issuers following Brexit.

The EU

Equivalence is the concept by which the EU assesses whether third countries' regulatory and supervisory systems are equivalent to its own. A prospectus equivalence regime is included under article 29 of the EU Prospectus Regulation. Article 29 determines that an EU national competent authority (NCA) can approve the prospectus of a third country issuer when it is drawn up in accordance with this third country's national laws, as long as their rules are equivalent to the ones in the Prospectus Regulation (previous EU rules used to require equivalence to the International Commission of Securities Commissions (IOSCO) standards).

The current regime means that an issuer's prospectus must be reviewed and approved by a national competent authority and cooperation arrangements must also be in place between the NCA in the member state and the other country's regulator. This regime is extremely cumbersome and is of little use in practice. There is an alternative. Article 28 enables an issuer to draw up a prospectus in accordance with the EU Prospectus Regulation. In other words: they can follow EU law rather than their home law. European Securities and Markets Authority (ESMA) data for 2021 found that all third country prospectuses approved in 2021 were drawn up using article 28.

In practice, issuers also tend to use private placement exemptions in which shares are "placed" with qualified investors, thereby avoiding the prospectus regulatory regime entirely. There are also proposed EU revisions in the pipeline. Broadly, the equivalence criteria is to be expanded and prospectus approval is to be replaced with filing, although the Commission anticipates limited appetite for using this process rather than article 28.

The UK

Currently, overseas issuers coming into the UK must comply with the onshored EU Prospectus Regulation. However, as part of the UK's suite of post-Brexit regulatory reforms, the prospectus regime is being overhauled and the government wants to make it easier for overseas issuers to access the UK markets via a full public offer, even encouraging retail investor participation.

The government considered three options within its Prospectus Consultation: retaining the status quo; not permitting public offers from international issuers; or implementing a new framework involving regulatory deference. The third regime of regulatory deference was selected, with the expectation that this will permit offerings to be extended into the UK on the basis of documents prepared in accordance with the rules of the relevant overseas jurisdiction. There will be a jurisdictional assessment by the Treasury with advice from the Financial Conduct Authority ('FCA') but there is to be no FCA review or approval. This is not a line-by-line review.

The UK envisages high-level equivalence, with investor protection to be considered on a more holistic basis. The FCA has intervention power to protect investors in exceptional circumstances. For instance, it has the ability to close down an offer if there is a problem. Essentially, the authorities envisage a much more liberal system than the one that exists via the EU equivalence framework. They are seeking to shape a system that is based on assessments of similar outcomes and embraces deference to the home state authority. At the time of writing, further details of this regime are still awaited, nonetheless it illustrates the political undercurrent to the question of international market access within the highly technical field of capital markets regulation.

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- *This blog post draws from the book [Principles of Corporate Finance Law](#), by Eilís Ferran, Elizabeth Howell and Felix Steffek.*
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