

UK Government Consultation on Proposed Power to Block Listings on National Security Grounds

June 11, 2021

Key Points

- The proposed power would allow the UK Government to block initial equity listings and admissions on UK public markets on the grounds of national security.
- The listing of debt securities (other than convertible securities) would not come under the scope of the power.
- The proposals may include the adoption of additional issuer disclosure requirements as part of a national security screening process.
- The Consultation is open until 27 August 2021. Comments on the proposals can be submitted to HM Treasury - contact details are provided in the [consultation paper](#) and at the end of this alert.

On 7 June 2021, HM Treasury of the Government of the United Kingdom published a consultation setting out the intended scope of a precautionary power to block initial equity listings and admissions on UK public markets on national security grounds (the "Consultation"). The Consultation provides details of the types of listings that would come under the scope of the proposed power, as well as the disclosure requirements that would be required as part of the national security screening of potential issuers.

Background

In the 2019 Economic Crime Plan, the UK Government announced its intention to investigate concerns about the possible links between listing and national security, and the need for a power to be able to block listings on national security grounds. The Government had originally stated its intention to introduce such a power in November 2020. It indicated that, based on HM Treasury's findings, there are possible, although rare, scenarios in which the listing of a company in the UK could enhance the capabilities of hostile actors and ultimately be detrimental to national security.

An example of such a scenario (which is provided in the Consultation) where the Government may consider it appropriate to use the blocking power includes:

- a. An energy and technology company seeks to list in the UK.

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- b. When the company is based in a country that was recently under UN sanctions for a nuclear programme.
- c. When the company is partially owned by that country's Energy Minister.
- d. The proceeds of the listing would be used to further the country's nuclear weapons programme.

The Financial Conduct Authority (FCA), a regulatory body independent of the Government, is currently able to block listings in certain circumstances, including where admission of the securities would be detrimental to the interests of investors. While the concept of "investor detriment" is not defined in the FCA's Listing Rules, the Government does not consider that the investor detriment power would be "an appropriate or effective mechanism to address national security risks". The Government further notes in the Consultation that the interests of investors and security interests may not always align and so it would not be appropriate for the FCA to conduct the assessment of national security risks under the proposed power to block listings.

The proposals contrast with other recent Government pronouncements on the UK listing regime, such as Lord Hill's UK Listing Review, which have focused on streamlining the listing process and increasing flexibility for potential equity issuers in order to attract high quality growth companies to London markets.

The Government has powers under the Sanctions and Anti-Money Laundering Act 2018 (SAML A) to impose a range of financial sanctions that would, in practice, have the effect of preventing certain listing applications from being made in the UK. However, the Government considers that an additional standalone power to block a listing is necessary for those circumstances in which a company does not fall within an existing sanctions regime, but where it was nonetheless in the interests of national security to block the listing.

Perhaps the most indicative example as to why the Government is considering the introduction of new measures relates to the London Stock Exchange (LSE) listing of the En+ Group (En+), a company that, at the time, was controlled by Oleg Deripaska, in 2017. En+, in turn, held a controlling stake in Rusal, a major Russian aluminium firm. In addition, VTB Capital and Gazprombank, both subject to sanctions since 2014, were also involved in the listing.

A subsequent Treasury Select Committee determined that the En+ listing occurred 'due to a weakness in the sanctions policy' and that it would therefore be appropriate to introduce specific new measures to enable a listing to be blocked on national security grounds. Furthermore, the Committee recognised that it would not be reasonable to expect the FCA to identify and block potential threats to national security of its own accord, without an established channel between itself and the Government's national security experts.

Scope

The Government intends that the power be broad in scope, applying to all initial equity listings and admissions on UK public markets, including those involving shares, securities representing shares, such as Global Depositary Receipts, and convertible securities. The proposals do not currently envisage non-convertible debt securities

being captured, but the Consultation does seek respondents' view on this exclusion. As the example given above cites the possibility that the proceeds of the offering would be used in a manner that is detrimental to the UK's national security, it is possible the scope of this power would be extended to debt securities in the future.

The power would be applicable in respect of initial public offerings, including as to non-traditional structures such as direct listings and Special Purpose Acquisition Companies (SPACs), and would be relevant both to regulated markets (such as the LSE Main Market) and multilateral trading facilities (MTFs) that allow primary equity listings (such as AIM).

The power would not extend to delisting companies which have already listed on UK public markets.

Disclosure Requirements

The Government is considering adopting an approach that requires specific disclosures to be made by prospective issuers as part of a national security screening process. These disclosures would include the following:

- Basic information about the issuer.
- An overview of the business, details of its group and a description of the markets in which it competes.
- Details regarding the company's management, including past convictions for fraudulent offences, official public incrimination or sanctions.
- Details of major shareholders, including the nature of control and the measures to ensure control is not abused.
- The reasons for the offer, including a breakdown of the proceeds for each principal intended use, presented in order of priority.

The Consultation acknowledges that these disclosures would not in themselves create a significant additional burden for issuers given they would generally already be provided as part of the existing listings process, particularly where a prospectus is required, as would be the case on any Main Market LSE equity listing. They would also likely have minimal effect on issuers eligible for a prospectus exemption (as is generally the case on applications for admission to trading on an MTF such as AIM) given the routine disclosures made during the listings or admission process.

But the context in which the disclosures would be made would be different and, in that sense, a new listing hurdle would be created for certain types of issuer. In particular, issuers making disclosures around ultimate beneficial ownership and control (and as to how such control could be abused) will need to take account of how the Government considers these issues within the context of other regulatory regimes, notably with respect to financial sanctions.

The Consultation raises questions as to the potential additional burdens that such disclosures may cause, particularly in circumstances where a prospectus is not produced. Prospective issuers may also have concerns regarding the timing of the disclosures and how this could be best integrated into the listing process. The Consultation seeks views on, among other things, the potential for a "pre-clearance"

option, under which potential listing applicants could engage up-front with the Government to flush out any national security objections before kicking off the listing process in earnest. It seems likely Consultation responses will favour this possibility and this could become part of the early listing process for certain applicants, especially those operating in strategic industries with strong connections to sovereign states.

Comments on the proposals can be sent to HM Treasury by email to listingspower@hmtreasury.gov.uk, or by post to *HM Treasury – Securities and Markets, Primary Markets and Competitiveness – Listings Power, 1 Horse Guards Road, SW1A 2HQ*. The Consultation will close on 27 August 2021.

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