

Primary Market Technical Note

Restrictions on transfer

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules and guidance

UKLR 3.2.4R; UKLR 2.2.1R; UKLR 12

Articles containing restrictions on transfer

If an issuer seeks to list securities they must be free from 'any restriction on the right of transfer' (see UKLR 3.2.4R). When we consider an application for listing of securities we check that there are no unacceptable restrictions on transfer.

Very few restrictions are regarded as permissible under the rules. We have permitted the use of restrictions on transfer if they are necessary to avoid falling within onerous legislative requirements. We have allowed listed companies (primarily investment entities) to include restrictions in their articles to prevent them falling within the scope of onerous overseas legislative requirements. However, we have always sought to ensure that all such restrictions are carefully drafted so that they identify the specific legislative provisions in question. It is not sufficient to simply give the directors of the listed issuer a broad power to refuse to register a transfer if a certain shareholder may cause the company to suffer – for example, 'a pecuniary, tax, financial or other material disadvantage'.

The only other notable transfer restrictions we have allowed relate to protecting the wider public interest. This type of restriction is often required by governments as a prerequisite to selling off, say, defence-related assets, and prevents sensitive components within those businesses from becoming controlled by foreign entities. These tend to be more complicated restrictions on transfer that require careful and thorough review before we can make a decision about whether to permit the restriction. Such restrictions need to be highlighted to us at an early stage, and no later than the eligibility discussions.

All such powers need to be considered carefully to ensure they do not offend the principle of equality of treatment of all shareholders in UKLR 2.2.1R (Listing Principle 5) if they do not generally treat shareholders equally. However, a power initiating a compulsory sell down of shareholders is not likely to offend the principle of equality of treatment if shareholders are selected according to a fully disclosed pre-set formula and not by a power that allows management to individually choose shareholders.

We also require the power to be properly disclosed in the issuer's circular or prospectus so that shareholders can understand precisely the circumstances and manner in which it was intended to operate. We take the view that it is very difficult for a broadly based or ill-defined power to satisfy this test.

We highlight in particular that this also applies to Exchange Traded Fund issuer vehicles seeking listing under UKLR 12.