

Primary Market Technical Note

Listing applicants with cannabis-related businesses

The information in this note is designed to help issuers and practitioners interpret our 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.

This Technical Note is intended to provide a non-exhaustive guide to cases where the applicant for listing is carrying on a cannabis-related business. The guidance is only provided in the context of the FCA's assessment of whether the company's business and activities would be detrimental to the interests of investors under s. 75(5) of the Financial Services and Markets Act 2000. It is not guidance, and is not in any way to be relied on as guidance, on the application of the Proceeds of Crime Act 2002 (**PoCA**). This Technical Note is not legal advice and a company should seek their own independent legal advice to ensure they are compliant with any relevant legislation.

When a person applies to us to admit securities to the Official List for the first time, or in certain other circumstances, we carry out a review aimed at ensuring those securities are eligible for listing under the Listing Rules. We call this process the 'eligibility review'.

In exceptional cases, where we think there may be a high risk that admission of the applicant's securities may be, for a reason relating to the applicant, detrimental to investors' interests, we may ask for additional due diligence as part of the eligibility review.

Due to the legal risks outlined below, we consider that additional due diligence is necessary for companies carrying on cannabis-related activities. This group of companies covers a wide range of activities, including the development, production and sale of licensed and unlicensed cannabis-based medicinal products (**CBMPs**), licensed cannabis-based medicines and consumer products containing cannabidiol (**CBD**). As a result, the scope and extent of the due diligence will be determined on a case by case basis and after a consideration of the specific risks presented by the new applicant.

We advise these companies and their advisers to be pro-active in raising with us at an early stage any question around the legality of the company's operations or areas of significant legal uncertainty. In our experience from other companies, the absence of this early engagement has the effect of prolonging the eligibility review.

Background – the heightened legal risk associated with cannabis-related businesses

Amendments to UK drugs regulations in 2018 reclassified CBMPs to allow their use for medicinal purposes in the UK. However, strict controls on their production and distribution mean investment in overseas-licensed medicinal cannabis businesses remains a legally complex area. We consider that there is a risk that the proceeds from overseas medicinal cannabis business may constitute criminal property for the purpose of the PoCA. This may be so even where the company possesses a licence issued by an overseas medicines or pharmaceuticals licensing authority.

PoCA defines criminal property with reference to 'criminal conduct', which is defined deliberately broadly. Criminal conduct includes not only conduct which is a criminal offence in any part of the UK but also any conduct outside of the UK which would be a criminal offence in the UK if carried out here. For example, if a pharmaceutical company produced or supplied CBMPs in the UK without appropriate Home Office licences, they would be committing a criminal offence (unless one of the limited exemptions applies). We cannot assume a person who has been licensed in an overseas country would be carrying on lawful business in the UK as licensing regimes differ globally.

Aside from the reclassification of CBMPs in 2018, the possession and supply of all other forms of cannabis remain generally unlawful.

The position in relation to consumer CBD is slightly different. The risk of criminal conduct is linked to whether CBD contains a controlled substance (i.e. a substance controlled under UK drugs legislation). Whether there is an activity which gives rise to offences under PoCA may therefore depend on a scientific analysis of the CBD. The guidance set out in this technical note should be taken into account as appropriate.

Recreational cannabis companies

Possession and supply of cannabis for recreational purposes remain criminal offences in the UK. Proceeds from those activities, even where generated in jurisdictions where it is legal, are proceeds of crime under PoCA. We would therefore not admit the securities of a company with any recreational cannabis business, directly or indirectly, to the Official List.

UK-based companies

The legal position of purely UK-based companies producing and supplying CBMPs (licensed and unlicensed), licensed cannabis-based medicines and/or pure consumer CBD is clear. The securities of such a company can be admitted to the Official List, if the company has the appropriate Home Office licences for their activities where they are required, and they otherwise satisfy the criteria for listing. We may request evidence that the company holds the appropriate Home Office licences or (as may be the case with pure CBD) that none are required. The company will also need to satisfy us that the entirety of their operations, including their supply chain, are UK-based.

Overseas companies

Companies with cannabis-related activities legally operated overseas are in a different position. The securities of such a company may be admitted to the Official List, provided we are satisfied their business does not give rise to any money laundering offence under PoCA and they otherwise satisfy the criteria for listing. Before the securities of the company are admitted, the company will need to satisfy us as to the risk of any potential offence under PoCA as part of our review of the case.

A company with cannabis-related activities legally operated overseas will need to satisfy us that those activities are for a purpose that is also lawful in the UK. We will also need to understand the legal basis of the company's overseas activities, for example the nature of the local licensing and the licences the company holds. To satisfy us on these points, after consideration of the company's operations and the relevant jurisdictions, we will request appropriate legal opinion(s) on the overseas company's cannabis activities.

Any legal opinion(s) should at least address the following points:-

- The activities of the company
 - We will need a clear identification and explanation of the overseas activity or activities the opinion covers. For example, cultivation, manufacture, processing, distribution, sales or combinations thereof. This should also cover the purposes of these activities.
 - The explanation should use product names, where appropriate. Where it is necessary to refer to substance names, the vocabulary used should be the same as that used in UK drugs legislation.
 - Where the business includes activities relating to consumer CBD, there should be information on whether the CBD products contain controlled substances.
 - The jurisdiction where each activity or activities occurs should be identified.
- Confirmation of the legality of each of the activities covered by the opinion in the jurisdiction in which they occur
 - This should cover each jurisdiction where the activity occurs.
 - It should include confirmation that the Company holds licences and/or authorisations required, where relevant.
- Confirmation that such an activity or activities are for purposes which are lawful in the UK

- Where legality of the activity in question relies on licensing, information about the jurisdiction's licensing system
 - This should cover at least the following points:
 - Is its scope limited to medicinal purposes and/or pure consumer CBD production or is it capable of being used for other activities?
 - Does it seek to ensure that the cannabis product is kept secure?
 - Does it ensure that only suitable persons are authorised to engage in cannabis-related activity so that criminal elements cannot exploit the position?
 - Is there ongoing and effective monitoring so that licensed companies do not deviate from their obligations?
 - Can licences be withdrawn in the event of abuse or non-compliance?
- Details of the track record of the company carrying out the activities in question
 - Is the company a newcomer to the market? Does it have appropriately experienced personnel and the capability to fulfil licensing conditions?
 - Given the difficulty inherent in dealing lawfully with controlled drugs, such track record would be relevant to a licensing decision in the UK.