



FCA publishes guidance on its approach to cannabis-related companies looking to list in the UK

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On 18 September 2020 the FCA published guidance on the listing of cannabis-based businesses onto public stock exchanges in the UK. We consider the key issues arising from the FCA's statement and how this will impact on businesses looking to raise funds in the UK.

The Background

The legalisation of medicinal cannabis in the UK in 2018 brought great excitement to a number of stakeholders both nationally and internationally, importantly in respect of delivering medicine to those in need, but also to investors seeing a potentially substantial investment opportunity and new asset class. The reality of companies and investors being able to participate in this new market has been mired in legal complexities surrounding investment in such businesses and had a chilling effect on investor appetite.

Legal Landscape Remains Unclear

Many investors have been unable to participate because under the UK Proceeds of Crime Act 2002 (POCA) the concept of "*criminal conduct*," captures not only an offence in any part of the UK but also any conduct outside of the UK which would be criminal in the UK if carried out here. As such, making an investment was not without significant risk.

Possessing and supplying cannabis for recreational use remains a criminal offence in the UK. Therefore, whilst a number of countries around the world have legalised certain cannabis related activities under licence, including for both medicinal and recreational purposes, the impact of POCA means that proceeds generated from such business *may* constitute "*criminal property*", with the consequence that any dealing with such proceeds or property representing them, such as shares, could constitute an offence of money laundering in the UK.

Unsurprisingly, the Financial Conduct Authority (FCA) received an influx of queries and requests for further information from firms looking to list in the UK, that is, taking their company onto the public stock exchanges (such as the London Stock Exchange). On 18 September 2020, the FCA published their approach to listing companies operating in this industry on the Official List (the list maintained by the FCA of securities issued by companies for the purposes of those securities being traded on a UK regulated market, such as the Main Market operated by the London Stock Exchange) which can be found here and can be summarised as follows:

1. **Recreational Cannabis Companies:** The proceeds from recreational cannabis companies, even when they are located in those jurisdictions that have legalised it, are considered to be proceeds of crime by the FCA and therefore the securities of such a company would not be admitted to listing on the Official List in the UK.

2. **UK-Based Medicinal Cannabis Companies:** UK-based medicinal cannabis companies can have their securities admitted to listing on the Official List (provided they have the requisite Home Office licences).
3. **Overseas Medicinal Cannabis Companies:** overseas licensed companies may have their securities admitted to listing on the Official List provided POCA does not apply and they satisfy the other eligibility criteria for listing. However, such companies will need to satisfy the FCA as to the POCA risk and that their activities would be legal if carried out in the UK.

Whilst this guidance is helpful, questions remain...

For example, how will overseas companies satisfy the FCA “*that their activities would be legal if carried out in the UK?*” Pending further clarification from the FCA on this issue, we at DLA Piper consider that this could take the form of the following:

- provision of a legal opinion under the local law of the overseas company stating that the company holds the necessary regulatory permissions and licences to operate under the local jurisdiction;
- a further legal opinion by English law advisors (having regard to the local legal opinion), explaining to the FCA how the activities of the overseas company would be legal “*if carried out in the UK*”, with consideration of the equivalent measures in place under the UK licensing regime; and
- confirmation that the company is not involved with recreational cannabis in any capacity. The FCA could require director attestations swearing, prior to consideration of their eligibility application, that there is no recreational aspect of their business.

The above approach would no doubt increase the legal costs of the listing process, and therefore it would be helpful to receive further input from the FCA on the form of the reassurances that they require. That said, given the prospect of listing the securities on the Official List of the FCA with the associated admission to trading on the Main Market operated by the London Stock Exchange in the UK and the potential for reaching a whole new set of investors with the capital opportunity it presents, this new guidance is helpful to those companies who can satisfy the FCA requirements. This would significantly improve the prospects for those looking to raise further substantial capital requirements that the industry requires and/or give existing shareholders the ability to realise liquidity in their investments.

Additionally, it should be noted that whilst this guidance does not apply to any companies wishing to list their securities on AIM, a self-regulated market operated by the London Stock Exchange, we at DLA Piper expect the AIM team to take their cue from the approach now put forward by the FCA.

Non-medicinal (and non-recreational cannabis companies)

What about those overseas ‘wellness’ cannabis companies who supply low-Tetrahydrocannabinol (THC) (the principal psychoactive constituent of cannabis) products, such as CBD oils and tinctures? Will the CBD products need to fall under the UK thresholds for those products (i.e. 0% THC), even where the products themselves are not marketed in the UK and those products are not considered to be recreational cannabis products overseas? These issues have not yet been addressed by the FCA and therefore further clarification and guidance should be sought on the precise level of regulatory equivalence being sought by the FCA.

Finally, we note the FCA’s statement that recreational cannabis companies will automatically result in POCA issues and are therefore currently unsuitable for listing in the UK. Whether or not an overseas recreational cannabis company (which is fully authorised under local law in their jurisdiction) definitely breaches POCA remains to be tested by the English courts, but it is useful that the FCA has now stated its position on the issue.

Undoubtedly, further questions will arise on the precise requirements for the public listing of cannabis businesses in the UK, but the FCA’s recent guidance will be welcomed by investors and other stakeholders in giving some much-awaited clarity.

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