

**Insights**

# **TAKEOVER PANEL CONSULTATION AND NEW PRACTICE STATEMENTS**

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## **SUMMARY**

The Takeover Panel has published a consultation paper on dual class share structures, IPOs and share buybacks. The proposed amendments to the Takeover Code clarify how the mandatory offer requirements apply to a company with a dual class share structure when a shareholder's percentage of voting is increased as a consequence of a trigger event.

Comments on the consultation paper should be made by 26 September 2025. Any changes will come into effect in Q1 2026.

The Panel has also published two new Practice Statements on (i) profit forecasts, quantified financial benefits statements and investment research and (ii) unlisted share alternatives.

## **BACKGROUND**

A company with a dual class share structure ("DCSS") will normally grant a founder or other major shareholder (or a group of such persons) enhanced voting rights (usually through a class of 'special shares' / 'Class B') so as to maintain control over key decisions including in the event of a change of control of the company.

The Takeover Code (the "Code") requires separate and comparable offers to be made for each class of equity share capital regardless of whether the class carries voting rights (Rule 14).

In December 2021 the FCA amended the Listing Rules to permit DCSS and subsequent changes to the Listing Rules in 2024 now permit companies with a DCSS to list in the equity shares commercial companies category.

## **CONSULTATION PAPER**

The purpose of this [consultation](#) is to clarify the application of the Code to a DCSS company and in particular to the scenarios where a company has, in addition to ordinary voting shares, a class of shares (e.g. Class B shares) which carry multiple votes per share and which are extinguished or converted to ordinary shares on particular trigger events – for example a ‘time sunset’ (i.e. a specified number of years after the company’s IPO) or an offer for the company by a person other than the holder of the Class B shares becoming unconditional.

**Rule 9 mandatory offer** - new provisions are proposed which clarify the application of the Rule 9.1 mandatory offer requirement where a shareholder’s percentage of voting rights, other than a holder of Class B shares, increases as a result of a trigger event. Although an “Affected Shareholder” may incur a mandatory offer obligation, the Affected Shareholder may not be required (in practice) to make a mandatory offer because:

- on a trigger event other than a time sunset, the Panel will normally grant a dispensation if the Affected Shareholder is an “innocent bystander” – the Panel will not grant a dispensation if the trigger event is the expiry of a time sunset. This is on the basis that the expiry of a time sunset is a foreseeable circumstance, and it is reasonable to expect an Affected Shareholder to manage its interests in anticipation of the time sunset so as to avoid incurring an obligation to make a mandatory offer. The Panel will also not grant a dispensation if at the time the Affected Shareholder acquired interests in shares, it had reason to believe that a trigger event would occur;
- in the context particularly of a time sunset at the time of an IPO, the Panel will be able to grant a “Rule 9 dispensation by disclosure” to an Affected Shareholder provided that the IPO admission document (i) discloses the maximum percentage of voting rights that the shareholder would be interested in if a time sunset were to occur (or other trigger event) and (ii) except with the consent of the Panel, it had not acquired any additional interests in shares between admission to trading and the trigger event;
- the Panel will otherwise consider whether it is appropriate to grant a specific dispensation at the time of the mandatory offer obligation arising, subject to the Affected Shareholder disposing of sufficient interests in shares to take it back below the relevant Rule 9 threshold.

**Acceptance condition (Rule 10.1 and 9.3)** – new provisions are proposed to make an acceptance condition to a contractual offer for a DCSS company subject to two tests both of which would need to be satisfied for an offer to become or be declared unconditional:

- a “pre-unconditional” test, i.e. whether shares carrying more than 50% of the voting rights immediately before the relevant enhanced voting shares convert or are extinguished have been acquired by the bidder or accepted to the offer (“Test 1”). This ensures that the offer can become unconditional only if shareholders carrying a majority of the company’s voting rights under the existing DCSS structure are in favour of the offer; and

- only if Test 1 is passed, a “post-unconditional” test, i.e. whether shares which would carry more than 50% of the voting rights immediately after the relevant enhanced voting shares convert or are extinguished have been acquired by the bidder or accepted to the offer (“Test 2”). This ensures that the offer can only become unconditional if shareholders carrying a majority of the company’s voting rights as modified following the occurrence of the (imminent) trigger event are in favour of the offer, meaning that the clear result objective is satisfied.

The Code Committee considers that it should be permissible for a bidder to specify different percentage thresholds (of at least 50% + 1) for each of Test 1 and Test 2. For example, the bidder could specify that Test 1 would be satisfied on the basis of a majority of the company’s existing voting rights but that Test 2 would be satisfied on the basis of 90% of the company’s voting rights after the relevant Class B shares had either converted or been extinguished.

For an offer implemented by way of a scheme of arrangement, Rule 10.1 will not apply and the scheme will continue to require separate class approvals of both (a) the ordinary shares and (b) the Class B shares.

**IPO disclosures** – new provisions are proposed codifying existing practices:

- to make disclosures in the IPO admission document on the application of Rule 9 and details of any controlling shareholders (and their concert parties); and
- granting a Rule 9 dispensation at the time of a company’s IPO from a potential obligation in the future for a person or group of persons acting in concert to make a Rule 9.1 mandatory offer in certain circumstances, provided that appropriate disclosure is made in the IPO admission document.

**Share buybacks** – changes are proposed to make the rules clearer, more concise and consistent with the DCSS proposals. In particular to amend the provisions relating to “disqualifying transactions” to remove restrictions on a company carrying out a share buyback under their normal annual shareholder authority.

## **PRACTICE STATEMENTS**

The Panel has also taken this opportunity to produce two new Practice Statements on [profit forecasts](#), [quantified financial benefits](#) and [investment research and unlisted share alternatives](#).

## **RELATED CAPABILITIES**

- M&A & Corporate Finance
- Securities & Corporate Governance
- UK Public Company



## MEET THE TEAM



### **Nicholas Myatt**

London

[nicholas.myatt@bcplaw.com](mailto:nicholas.myatt@bcplaw.com)

[+44 \(0\) 20 3400 4767](tel:+442034004767)



### **Tom Bacon**

London

[tom.bacon@bcplaw.com](mailto:tom.bacon@bcplaw.com)

[+44 \(0\) 20 3400 3706](tel:+442034003706)



### **Tessa Hastie**

London

[tessa.hastie@bcplaw.com](mailto:tessa.hastie@bcplaw.com)

[+44 \(0\) 20 3400 4516](tel:+442034004516)

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