

Financial Conduct Authority Sets Out Its Approach to Assessing Listing Applications from Cannabis-related Companies

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On 18 September 2020, the FCA set out guidance on its approach to assessing listing applications from cannabis-related companies. A consultation will follow in due course.

The FCA notes that while medicinal cannabis was legalised in the UK in 2018, investment in overseas-licensed medicinal cannabis businesses remains a legally complex area – for example, the risk that the proceeds from an overseas medicinal cannabis business may constitute ‘criminal property’ for the purpose of the Proceeds of Crime Act 2002 (the “**PoCA**”), including where the company possesses a licence issued by an overseas medicines or pharmaceuticals licensing authority.

This is because PoCA defines ‘criminal conduct’ deliberately broadly. It 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 in the UK. Possessing and supplying cannabis for recreational use remains a criminal offence in the UK. If a pharmaceutical company supplied cannabis in the UK without appropriate Home Office licences, it would be committing a criminal offence. The FCA notes that it cannot assume a person who has been licensed in an overseas country would receive a licence in the UK as licensing regimes differ globally.

The FCA has provided high-level guidance in relation to the following types of issuers:

Recreational cannabis companies

The proceeds from recreational cannabis companies, even when they are located in those jurisdictions that have legalised it, are proceeds of crime under PoCA. The FCA would therefore not admit the securities of such a company to the Official List.

UK-based companies

The legal position of purely UK-based medicinal cannabis companies and cannabis oil companies is clear. UK-based medicinal cannabis companies can be admitted to the Official List, if the company has the appropriate Home Office licences for its activities where they are required.

Overseas companies

Overseas-licensed medicinal cannabis companies and cannabis oil companies are in a different position. These companies may be admitted to the Official List, provided the FCA is satisfied PoCA does not apply and they otherwise satisfy the criteria for listing. Before they are admitted to listing, the FCA will carry out a review of their case where they will need to satisfy the FCA as to the PoCA risk.

For medicinal cannabis and cannabis oil companies with overseas activities, the company will need to satisfy the FCA that their activities would be legal if carried out in the UK. The FCA 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.

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