

## Recent legal developments for UK companies accessing the US capital markets

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The UK government has retained the ability for UK companies listed on US stock exchanges to prepare financial statements under US GAAP for a transitional period, and has proposed draft legislation to remove the reintroduction of the 1.5% stamp tax charge on issues of shares in UK companies and certain related transfers to DTC and depositary receipt services.

### **Accounting standards: Adoption of US GAAP by English public limited companies**

The Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amended) Regulations 2023 (the 2023 Accounting Standards Regulations) came into effect on 29 September 2023 and will allow corporate groups redomiciling to the UK to plan and pace their accounting conversion to UK GAAP or International Accounting Standards by using US GAAP for a transitional period.

### **Background to the easing of the transition to compliance with UK accounting rules**

The Accounting Standards (Prescribed Bodies) (United States of America and Japan) Regulations 2012 (the 2012 Accounting Standards Regulations) were introduced to provide companies with securities listed on stock exchanges in the United States and Japan, but not in the EU, with up to three years to transition (or “convert”) their group accounts to UK GAAP or International Accounting Standards.

It was considered that large and complex groups faced a considerable burden in transitioning to UK GAAP or International Accounting Standards in up to 18 months in accordance with UK law, and so redomiciliation by companies listed on stock exchanges in the United States and Japan would be more attractive if companies could plan and pace their accounting transition over an extended period. The cost of having to convert group accounts from US or Japanese GAAP to UK GAAP or International Accountings Standards would continue to arise, but the additional financial and administrative burden of completing that transition on an accelerated basis to meet usual statutory deadlines could be avoided. This was considered to make the UK a more attractive jurisdiction for redomiciliation which would support UK economic growth without damaging the integrity of the UK’s financial reporting framework.

The 2012 Accounting Standard Regulations were considered to have successfully achieved their objectives and upon their expiry were replaced on substantially the same terms by The Accounting Standards (Prescribed Bodies) (United States of America and Japan) (Amended) Regulations 2015 (the 2015 Accounting Standards Regulations) except that the transitional period was extended to four years.

# Effect of the 2023 Accounting Standards Regulations

The 2023 Accounting Standards Regulations replace the 2015 Accounting Standards Regulations subject to two enhancements.

First, the 2023 Accounting Regulations are aimed at increasing business confidence by being subject to periodic review every five years rather than expiration. In practice, the availability of the transitional period under prior regulations diminished as the regulations approached their expiry.

Second, companies making use of the extended transitional period under the 2023 Accounting Regulations are required to include a note in their accounts explicitly stating when the regulations were first applied. This is intended to clarify by when the group accounts must transition to UK GAAP or International Financial Accounting Standards.

The ability to satisfy UK reporting obligations using US GAAP group accounts for up to four years following incorporation of a new parent company has been an important consideration for companies redomiciling to the UK and a potential benefit for domestic groups establishing a US listing. The adoption of an enhanced regime under the 2023 Accounting Regulations is a welcome development in continuing to make the UK an attractive jurisdiction for international groups to redomicile.

## Stamp taxes on UK shares: Removal of 1.5% charge on issues and related transfers

The UK government has also made a welcome change to preserve the current ability of UK companies to issue securities into clearance services (such as the DTC in the United States) or depository receipt services (such as ADR programmes administered by US depository banks) without a 1.5% stamp duty or stamp duty reserve tax (SDRT) charge. This fixes a Brexit-related “sunset” glitch that would otherwise kick in from 1 January 2024, providing continuity and clarity whilst protecting the UK’s competitiveness as a holding company destination.

Whilst the draft legislation is a helpful development for corporates looking to IPO or otherwise issue securities on non-UK stock exchanges, there remain some areas of uncertainty. Although the proposed legislation is drafted to take effect from 1 January 2024, the UK government’s intention is to enact the legislation during 2024 creating an interim period of uncertainty for new issuers. Equally, the draft legislation may be less generous than the existing position under retained EU law in certain circumstances (such as follow-on secondary offerings). It is hoped that HMRC will provide suitable guidance as to the precise scope of the new statutory exemption for the 1.5% stamp duty and SDRT charge following a consultation period which is scheduled to close on 12 October 2023.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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