Davis Polk

UK takeovers: Dual class share structures, share buybacks and pre-IPO submissions

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This week the Takeover Panel published amendments (RS 2025/1) to the Takeover Code in response to its consultation (PCP 2025/1) on the application of the rules to dual-class share structures, how the Rule 9 mandatory offer regime applies to share buybacks, and pre-IPO submissions. These amendments take effect on February 4, 2026.

Code application to dual-class share structures (DCSS)

What are the typical DCSS in the UK?

As part of the reform of the UK's capital markets, DCSS were introduced into the UK in 2021, with the regime being further expanded in the new UK Listing Rules that became effective in July 2025 (as discussed in our briefing at the time).

In the UK market to date, DCSS have typically involved the grant of a separate class of B share (usually to a founder or an initial investor) which carries multiple voting rights per share or confers effective majority or veto rights on some or all resolutions. Each structure typically involves the enhanced rights being extinguished and/or the B shares converting to ordinary shares on certain trigger events, such as a "time sunset" period expiring, a transfer of the B shares, or the retirement or death of, or sell-down beneath a certain percentage by, the holder.

What are the issues with DCSS under the current Code?

The issues with DCSS when applying the current Code, and which the Panel has sought to address in the upcoming rule changes, are as follows:

- how the Rule 9 mandatory offer requirement should apply where, following a trigger event, the percentage of voting rights held by a shareholder passes through the 30% threshold (or, if already above that threshold, are further increased within the 30-50% band); and
- on a contractual offer, how the enhanced rights attributed to the B shares should be treated vis-à-vis whether the acceptance condition has been satisfied or not.

How will the Code be amended to address these points?

The application of Rule 9 on a trigger event

From February 2026, although an increase in a shareholder's percentage voting rights resulting from a trigger event will be treated as an acquisition of an interest in shares for the purposes of whether or not the Rule 9 mandatory offer

threshold has been crossed, the Panel will normally grant a dispensation from having to make a mandatory offer unless the trigger event is the expiry of a "time sunset" (and there has not been a dispensation by disclosure at the time of IPO, as explained below) or if the person acquired shares carrying voting rights when it had reason to believe (i.e. it had private knowledge or public notice) a trigger event other than a time sunset would occur (e.g. that a director founder would resign).

The Panel will also normally grant at the time of a company's IPO a dispensation from the Rule 9 mandatory offer requirement (including if the trigger event is the expiry of a time sunset) if, following consultation with the Panel, the company includes appropriate disclosure in its IPO admission document with respect to its DCSS, the provisions of Rule 9 and the maximum percentage of voting rights the relevant shareholder would (as at the time of IPO) have following a trigger event.

Note, however, that this Rule 9 dispensation by IPO disclosure may be invalidated if the relevant person acquires further interests in shares post-IPO, other than where the Panel is satisfied that, if the acquisition were to have taken place after a trigger event, no mandatory offer obligation would have been triggered (e.g. following a share buyback or a pro rata subscription).

The minimum acceptance condition

From February 2026, for DCSS companies, there will be a two-tier test to determine if a contractual offeror has satisfied its offer's acceptance condition or not:

- first, 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 offeror or accepted to the offer; and
- second, and only if the first test 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 offeror or accepted to the offer.

Refinement of share buyback rules

Relaxation of disqualifying transactions in connection with customary annual buyback authorities

Under the current Code, a person who exceeds the Rule 9 mandatory offer threshold as a result of a share buyback by the company will not normally have to make a mandatory offer if there is a vote of independent shareholders approving a waiver of the obligation.

Under the current Code, this waiver may, however, be lost if the person makes certain disqualifying transactions, including acquiring an interest in shares in the knowledge that the company intended to seek shareholder approval to buyback its shares. Companies do, however, customarily seek a general buyback authority from shareholders at each AGM, which has prevented the Panel being able to grant certain Rule 9 waivers (owing to acquisitions made in the knowledge that the company would be seeking its (normal) annual shareholder authority) and, in turn, prevented a share buyback from taking place. In recognition of this disproportionate impact, with effect from February 2026, the Code will be relaxed, and the revised rules will make it clear that the acquisition should only be disqualifying if it is made in the knowledge that a specific buyback would be implemented.

New disclosure requirement

From February 2026, the Code will be amended to include a requirement that, where a company is proposing to carry out a share buyback programme or specific purchase for which it has received an 'innocent bystander' Rule 9 dispensation, it must disclose in its announcement the maximum percentage of shares carrying voting rights in which the innocent bystander shareholder might become interested if that buyback is implemented in full.

The concentration of ownership in a single person through a buyback is an offer

From February 2026, a new paragraph will be added to the Code providing that a proposed purchase by a company of its own shares which could result in all or substantially all of the company's shares being held by one person (or between concert parties) will, in line with existing Panel practice, normally be treated as an offer for the company.

Codification of pre-IPO consultation

From February 2026, the Panel will also codify its existing practice of the need for a company to consult the Panel on an IPO, and to make appropriate admission document disclosures with respect to the applicability of the Code, its 30% plus controlling shareholders and the operation of the Rule 9 mandatory offer regime.

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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