



HM Treasury

Summary of Responses - Consultation on a power to block listings on national security grounds

Economic Crime Plan – Action 19

December 2021

Summary of Responses -
Consultation on a power to block
listings on national security grounds
Economic Crime Plan – Action 19



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN - 978-1-911686-17-0

PU – 3149

Contents

Chapter 1	Background	3
Chapter 2	Summary	4
Chapter 3	Key issues raised	5
Chapter 4	Next steps	9

Chapter 1

Background

- 1.1 On 7 June, HM Treasury launched a public consultation on a power to block listings on national security grounds.¹ The consultation closed on 27 August 2021 and this document summarises the key comments raised by respondents. We have considered all submissions in drafting this summary of responses and would like to thank respondents for sharing their views on the consultation.
- 1.2 As outlined in the consultation document, this was an initial consultation touching on the scope of the power and the nature of the disclosures required as part of the proposed power to block listings on national security grounds. As this is in the early stages of the policy development process, HM Treasury will continue to develop this policy, engaging publicly as appropriate.
- 1.3 Consultees were asked to respond to a total of eight questions, which are considered in detail in the following sections.

Breakdown of responses

- 1.4 HM Treasury is grateful to all those who responded to the consultation. We received a total of eight responses to the consultation, as set out in Table 1

Table 1.A: Number of consultation responses

	Trade Association	Industry
Number of responses	5	3

¹ <https://www.gov.uk/government/consultations/consultation-on-a-power-to-block-listings-on-national-security-grounds>

Chapter 2

Summary

- 2.1 Overall, respondents were supportive of the Government's objectives to take a power to block listings on national security grounds, to the extent that it is implemented in a way that does not disproportionately impact the attractiveness of UK capital markets. They highlighted the importance of having a narrowly targeted, precautionary power that does not impede on the role of the FCA, with clear safeguards.
- Respondents agreed with the intended scope but stressed the importance of producing clear and comprehensive guidance, and highlighted the importance of thorough engagement with stakeholders when producing the guidance around the detailed implementation of the power.
 - Respondents agreed with the proposed exclusion of debt securities from the scope of the power. Respondents broadly agreed that including debt securities would have a disproportionately detrimental impact on the ability of companies and governments to raise capital quickly, as well as on the attractiveness of the UK's capital markets.
 - Respondents agreed that the list of disclosures outlined was proportionate and reasonable, as it was standard market practice to require this information as part of the listing or admission process.
 - Respondents did not anticipate that, when a prospectus is not produced, the disclosures would create a disproportionate burden for SMEs, as the information is likely to be included in the admission documents.
 - There was general support for the proposed pre-clearance process. However, respondents emphasised the importance of getting clarity early in the process. Respondents agreed it would be most appropriate for the disclosures to be submitted before the issuer or other stakeholders incur significant costs.

Chapter 3

Key issues raised by respondents

General comments made by respondents

3.1 The section below summarises the general comments made by respondents:

- One respondent suggested limiting the scope of the blocking power to the 17 sectors already in scope for mandatory notification under the National Security and Investment Act 2021 or alternatively creating safe harbours for certain sectors which have no nexus with national security.
- Given that the power does not extend to delisting already listed companies, one respondent asked for more clarity on the Government's ability to respond if it became clear that a public company was operating for purposes that could be detrimental to national security.
- One respondent asked for clarification on how the proposed disclosures around sponsors would take into account the fact that the FCA is currently consulting on the role of the sponsor in the listing regime.
- One respondent pointed towards the significant review and verification procedures already implemented by a range of entities and regulated advisers as part of the listing and admission process, including the FCA, sponsors and clearing houses, suggesting that companies presenting a national security risk are unlikely to list or be admitted in the UK.
- One respondent requested clarity on the interactions with the National Security and Investment Act 2021 and highlighted the importance of a clear division of responsibility as well as streamlined integration between HM Treasury, FCA and Investment Security Unit (ISU) processes.

Responses to the consultation questions

3.2 The key comments raised in the responses are detailed below by question.

1) What are your views on the Government's intended scope of the listings blocking power as outlined in point 3.6?

3.3 Overall, respondents agreed with the intended scope but stressed the importance of producing clear and comprehensive guidance and highlighted the importance of thorough engagement with stakeholders when producing the guidance around the detailed implementation of the power.

- Two respondents asked for clarification that the power would not apply to secondary issuance.
- Two respondents queried whether it was appropriate to include Multilateral Trading Facilities (MTFs) given the smaller valuations involved and highlighted the need for detailed and extensive engagement with MTF operators.
- One respondent noted the need to think carefully about how this power would apply to Special Purpose Acquisition Companies (SPACs), where they believed that different disclosure requirements than those proposed may be more relevant to them in this context.

II) What are your views on the exclusion of debt securities from the scope of the blocking power?

- 3.4 Overall, respondents agreed with the exclusion of debt securities from the scope of the power. While they recognised that there could be national security risks associated with debt listings, respondents broadly agreed that including debt securities would have a disproportionately detrimental impact on the ability of companies and governments to raise capital quickly, as well as on the attractiveness of the UK's capital markets.
- One respondent asked whether capital instruments that convert to shares upon a prudential trigger would be within the scope of the power.

III) Do you agree with the list of disclosures outlined? Do you have any other comment about the disclosures outlined?

IV) In your view, will the disclosures outlined in Chart 4.A add a material burden to the listing or admission process?

- 3.5 Overall, respondents broadly agreed with the disclosures outlined. Respondents agreed that the list of disclosures outlined was proportionate and reasonable. They agreed it would not add a material burden as it is standard market practice to require this information as part of the listing or admission process.
- Two respondents also asked for clarity on the numerical threshold defining what a 'major shareholder is', suggesting the 25 per cent threshold could be used. They also asked for confirmation that this refers to the existing shareholders rather than the potential shareholders following the IPO.¹ One respondent finally asked for clarity on whether

¹ The respondent suggested that the relevant level of interest should be set by reference to the 'people with significant control' or PSC regime under the Companies Act 2006 (25 per cent) in view of its application to unlisted companies and its alignment with the percentage threshold which triggers a mandatory notification under the National Security and Investment Act 2021.

the disclosures refer to the situation at the time of disclosure or at the time of the IPO.

- One respondent highlighted the need for fast-track procedures to take into account the fact that non-executive directors are often appointed close to the IPO occurring.
- One respondent flagged that the background and intelligence checks might take a long time to complete, and that this could be seen by prospective issuers as a burden, especially when it interfered with their fundraising timeline.
- One respondent asked for clarity on the extent of diligence a company might be expected to undertake to ensure that the information disclosed is accurate and what liability is attached to the information provided. Other respondents flagged that disclosures related to major shareholders could be particularly burdensome if they involved beneficial ownership and control. Others highlighted that the disclosures around the intended use of proceeds would be excessively burdensome. Finally, some respondents flagged the importance of the confidentiality of the disclosures, particularly around the use of proceeds.

V) Where a prospectus is not produced, what burdens, if any, do you anticipate the disclosures outlined in Chart 4.A creating for prospective issuers and, in particular, SMEs?

- 3.6 Overall, respondents did not anticipate that, when a prospectus is not produced, the disclosures would create a disproportionate burden for SMEs as the information is likely to be included in the admission documents. However, they noted that the burden might be comparatively higher for SMEs as compared to larger companies.

VI) At what stage in the listing process would you consider most appropriate for these disclosures to be submitted?

VII) What are your views on the pre-clearance process proposed in point 4.5?

VIII) What are your views on the likelihood of companies choosing a pre-clearance process when they would otherwise be able to make the disclosures outlined in Chart 4.A alongside the prospectus?

- 3.7 Overall, respondents emphasised the importance of clarity early in the process. Many respondents agreed it would be most appropriate for the disclosures to be submitted before the issuer or other stakeholders incur any significant cost.
- 3.8 Respondents were supportive of the pre-clearance process proposed in paragraph 4.5 and highlighted the importance of having clear framework for

timelines, with a short turnaround for decisions. Respondents supported the additional certainty a pre-clearance process could bring. Subject to the caveat outlined below, respondents viewed it as highly likely that companies would value the ability to go through a pre-clearance process if they had concerns about the regime.

- One respondent emphasised the importance of making clear that the pre-clearance process should be entirely optional, and that the Government should not create an expectation that the pre-clearance process should be used, as SMEs are less likely to use it.

Chapter 4

Next steps

- 4.1 HM Treasury is grateful for the extensive and constructive engagement from consultees over the course of this consultation. The points raised by respondents will be considered carefully as the development of this issue continues.
- 4.2 This policy will require legislation to be enacted. However, more policy development is needed before that is possible. HM Treasury will continue to develop this power taking full account of the responses to this consultation, including further formal consultation as appropriate.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk