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DOES THE UK NEED THE PLC?

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ABSTRACT. *Private capital markets have blurred traditional lines in corporate finance, outflanking the company law ban on public offers of securities by private limited companies and the use of the public limited company ("Plc") form as a hook for tailored requirements. With today's policy focus being on improving access to capital for all companies, the company law ban on public offers has become a hindrance for companies that want to use innovative offer and trading platforms. The illogicality of using Plc form rather than trading status or company size for regulatory tailoring has also become more obvious. The multilayered nature of modern corporate publicness requires a different approach.*

KEYWORDS: *corporate form*, *public company*, *private company*, *regulatory calibration*, *publicness*.

I. WHY ASK THIS QUESTION NOW?

The growth of private capital markets has enabled private limited ("Ltd") companies to reach broader investor bases without changing their legal status and regulatory innovations have reinforced this trend. These developments call into question the need for the public limited company ("Plc") corporate form. This article argues that Plc status no longer functions as an accurate indicator of capital-raising reach, nor as a reliable proxy for the degree of publicness in a company's operations, societal impact or ownership structure that justifies heightened regulation. There is, therefore, a growing case for moving away from Plc legal form and instead relying on more functional triggers for regulatory escalation, such as company size and scale, ownership dispersion or trading status that more accurately reflect the governance risks and societal impact at stake, while aligning more closely with contemporary corporate finance policy priorities.

The article proceeds in five sections. The remainder of Section I traces the historical emergence of Plc form as a regulatory hook and explains why

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developments in corporate finance have made it increasingly ill-suited to this role. Section II highlights recent changes to the UK capital markets regulatory framework designed to facilitate privately owned companies' access to primary capital markets (the Public Offer Platform, or "POP") and secondary market trading facilities (the Private Intermittent Securities and Capital Exchange System, or "PISCES"). These initiatives represent a clear policy shift away from restricting capital market access by reference to corporate form. Sections III and IV turn to more demanding company law requirements currently tied to the Plc form and explore how they might be re-evaluated if Plc form were no longer used as a trigger for regulatory escalation. Rather than simply transferring existing requirements from a formal to a functional hook, the analysis identifies scope for a more fundamental re-appraisal, including deregulatory possibilities. More broadly, it also points towards a redesign of differentiated requirements that more coherently enable companies at different growth stages to access a wide range of funding sources while also providing appropriately proportionate protection for investors, minority shareholders, markets and society at large. Section V concludes.

The historical story begins in the early twentieth century but gathers pace following the accession of the UK to the European Economic Community in 1973. The distinction between public and private companies has been part of UK companies legislation since 1907.[1] The core defining element of this distinction has always been that a private company cannot offer its securities to the public. However, until the Companies Act 1980, there was only a single legal form for companies limited by shares – the limited or Ltd company – and being a "private" company was simply an option that a company could exercise via provisions in its articles limiting the number of members to 50 (excluding employees and former employees), restricting share transfers and prohibiting any invitation to the public to subscribe for shares or debentures.[2] When the Companies Act 1980 introduced the Plc corporate form, the prohibition on offers of securities to the public by Ltd companies became a statutory requirement and obligations on private companies to include provisions in their articles limiting the number of members and restricting share transfers fell away. All companies that did not opt into becoming Plcs automatically became new-style Ltd companies subject to the public offers ban.

[1] J.A. Lapp, "British Companies Act" [1908] The American Political Science Review 255; R. Harris, "The Private Origins of the Private Company: Britain 1862-1907" (2013) 33 Oxford Journal of Legal Studies 339; B.J. de Jong, "The Distinction between Public and Private Companies and Its Relevance for Company Law: Observations from the Netherlands and the United Kingdom" (2016) 27 European Business Law Review 1.

[2] Companies Act 1948, s. 28.

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The company law ban on public offers of securities by Ltd companies now has two limbs: a prohibition on offers to the public (the direct limb); and a prohibition on allotments of securities with a view to their being offered to the public (the indirect limb).[3] An offer is not a public offer if it can properly be regarded in all the circumstances as not being calculated to result, directly or indirectly, in securities of the company becoming available to persons other than those receiving the offer or otherwise being a private concern of the offeror and offeree.[4] "Private concern" refers broadly to a pre-existing connection with the company through employment or investment in shares or debentures, or an offer relating to securities to be held within an employees' share scheme arrangement.[5]

In the period immediately before the 1980 Act, there had been very few other differences in the company law requirements applicable to public and private companies apart from the restrictions relating to the articles of private companies.[6] The driver for the introduction of the Plc legal form in 1980 was the UK's obligation under Community law to apply additional requirements to public companies.[7] The introduction of the Plc legal form was meant to shield the large number of companies that were privately owned but had not opted into private status via their articles.[8] The assumption was that Plc legal form would function as a reasonably accurate way to identify companies that had more economic potential and more complex agency problems arising from dispersed share ownership.[9]

The introduction of the Plc legal form was an implementation choice made by the UK because Community law did not require access to public capital markets to be limited to companies having a certain legal form.[10] According to one leading textbook, the introduction of the Plc to serve as a hook for more stringent regulatory requirements represented the "abandonment" of the "rational basis of the public/private classification of the 1900s' based on method of capital raising".[11] This article addresses the legacy of the abandonment of rationality.

[3] Companies Act 2006, ss. 4, 755.
[4] Ibid., s. 756(3).
[5] Ibid., s. 756(4).
[6] Companies Act 1948, s. 1(1) required seven subscribers to the memorandum of a company other than a private company, which could be formed by a minimum of two subscribers. For a time, private companies were also eligible for exemption from certain requirements relating to the filing of accounts: Companies Act 1948, s. 129 (abolished by the Companies Act 1967).
[7] A.J. Boyle and R. Sykes, *Gore Browne on Companies*, 4th supp. (London 1984), at [7-1].
[8] Ibid.
[9] HL Deb. vol. 679 cols. GC 455–6 (14 March 2006) (Lord McKenzie).
[10] Belgium and Netherland corporate laws allow shares of private limited companies to be traded on the capital markets: J.J. Schmidt, "EU Listing Act – Bull or Bear?", available at https://ssrn.com/abstract=5115531 (last accessed 25 June 2026).
[11] J.H. Farrar et al., *Farrar's Company Law*, 4th ed. (London 1998), 43.

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The decision to use corporate legal form as a hook for significant tailoring of company law requirements has not lasted well because corporate financing preferences, market conditions and public policy priorities have moved on. First, the old stereotype of smaller privately owned companies as companies with modest capital needs that can be met from a combination of the founders' and their families' and associates' private resources, retained profits and bank and trade financing has become outdated. Crowdfunding platforms, venture capital, private equity and private credit offer an increasingly diverse range of solutions to a perennial problem: the funding gap for small and medium-sized companies ("SMEs").[12] Closing the SME funding gap aligns with the current UK Government's regulation for growth agenda.[13] Contemporary policy priorities are about improving the flow of investment capital to companies at all stages of the pipeline and irrespective of their legal form, with a view to boosting growth and competitiveness.[14] In this environment, the Plc/Ltd divide has become an anomalous impediment that companies in need of growth capital must work around.

Second, and shifting the focus to the large company end of the corporate financing spectrum, we used to be able to rely on Plc corporate form as a reasonably reliable trigger for imposing additional requirements on companies that are more economically impactful because broadly speaking we could assume that companies of significant size and scale would need to access the public capital markets to meet their growing financing needs and thus would need to adopt Plc form as their entry ticket to the public markets. In an era when the corporate sector's funding needs can increasingly be met from the phenomenal amounts of funding that have poured into private markets, this assumption is less secure: fuelled by private market finance, the owners of large, complex businesses (often now institutional and private equity investors) can

[12] L. Lu, "Solving the SME Financing Puzzle in the UK: Has Online P2P Lending Got the Midas Touch?" (2018) 33 Journal of International Banking Law and Regulation 449. Digital assets represent another alternative source of finance for SMEs: T. Karkkainen, T. Gandy and B. Gallagher, "Bridging FinTech and RegTech: Digital Assets and AI Solutions for UK SME Equity Financing", available at https://ssrn.com/abstract = 5048377 (last accessed 25 June 2026). Digital assets that are not securities bypass entirely legal and regulatory frameworks that are built around securities and, as such, can be regarded as further adding to the regulatory incoherence resulting from market developments. The broad range of regulatory issues raised by digital assets goes beyond the scope of this paper and is not explored further. On the underlying problems in accessing financing that SMEs continue to face, see HC Treasury Committee, *SME Finance: Eighth Report of Session 2023-24*, HC Paper 27 (London 2024).

[13] HM Treasury, "New Approach to Ensure Regulators and Regulation Support Growth", available at https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth-html (last accessed 25 June 2026).

[14] Financial Conduct Authority [FCA], "PS25/10: Final Rules for Public Offer Platforms", available at https://www.fca.org.uk/publication/policy/ps25-10.pdf (last accessed 7 June 2026); FCA, "CP24/13: Consultation on the New Public Offer Platform Regime", available at https://www.fca.org.uk/publication/consultation/cp24-13.pdf (last accessed 7 June 2026).

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choose to stay, quite literally, off the Plc hook indefinitely.[15] Enabling shareholder liquidity is the other main reason why larger companies traditionally go public but, again, this has become less important because as well as trade sales, creative solutions in the private equity market to the problem of having to divest investments within a specified term, such as the emergence of the continuation fund whereby the same fund sponsor sells an existing asset to a newly-established fund, have also reduced the dependency on initial public offers ("IPOs") as a private equity exit route.[16]

While, as Bas de Jong has noted, there have always been some large Ltd companies that are socially and economically more significant than small Plcs and, while it has long been known that public issuance of securities, especially equity issuance, is a relatively unimportant source of capital, the astounding growth of the private markets means that the corporate finance and investment environment for privately owned companies, irrespective of legal form, is now profoundly different from that of the 1980s.[17] Fuelled by changes in financing, in the real economy and in competition policy, the global pool of publicly traded companies is shrinking in number and is becoming an elite of larger and more valuable companies.[18] Mergers, take-private transactions and corporate failures involving publicly traded companies are outstripping the pace of new entrants to the public markets.[19] The number of UK Plcs on the effective register at the end of the third quarter of 2025 was 3,996 while the all companies effective register stood at 4,876,981 (i.e. Plcs represented less than 0.1 per cent.).[20] At the end of 2015, for comparison, Plcs represented around 0.2 per cent. of the all companies effective population.[21] The number of Plcs that are publicly quoted is smaller again: the London Stock Exchange ("LSE") is the UK's main trading venue and as of early 2026, there were 1,555 UK incorporated companies quoted on either its main market or its Alternative Investment

[15] Detailing the growth of private markets: HL Financial Services Regulation Committee, *Private Markets: Unknown Unknowns*, HL Paper 235 (London 2026), ch. 2; see also K.M. Kahle and R.M. Stulz, "Is the US Public Corporation in Trouble?" (2017) 31 Journal of Economic Perspectives 67; C.G. Doidge, G.A. Karolyi and R.M. Stulz, "The US Listing Gap" (2017) 123 Journal of Financial Economics 464; C. Doidge et al., "Eclipse of the Public Corporation or Eclipse of the Public Markets?" (2018) 30 Journal of Applied Corporate Finance 8; M.J. Roe and C.C.Y. Wang, "Half the Firms, Double the Profits: Public Firms' Transformation 1996-2022" (2025) 8 Journal of Law, Finance and Accounting 211; C. Doidge et al., "Are There Too Few Publicly Listed Firms in the US?", available at https://ssrn.com/abstract=5172099 (last accessed 25 June 2026).

[16] K. Kastiel and Y. Nili, "The Rise of Private Equity Continuation Funds" (2024) 172 University of Pennsylvania Law Review 1601.

[17] De Jong, "Distinction", 6.

[18] Roe and Wang, "Half the Firms".

[19] Ibid.

[20] Companies House, "Incorporated Companies in the UK October to December 2025", available at https://www.gov.uk/government/statistics/incorporated-companies-in-the-uk-october-to-december-2025 (last accessed 28 July 2026). The "effective" number excludes companies in liquidation or in the course of removal from the register.

[21] Ibid.

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Market.[22] This number is not a precise measure of the number of UK companies that are publicly traded because it does not include UK incorporated companies that are listed on other venues but it is close enough to make the point about the relatively small size of the UK publicly traded Plc pool.

Although some companies may become Plcs for perceived prestige value or for precautionary reasons relating to their financing choices,[23] it is likely that the main explanation for the discrepancy between the number of Plcs and the number of publicly traded companies lies in the use of Plc special purpose financing vehicles ("SPVs") for the issuance of debt securities to professional investors in the private placements market.[24] Financing SPVs do not normally have the economic scale, business complexity or widely dispersed shareholder base that we conventionally associate with public companies.

Meanwhile, financing structures in the private equity and private debt markets may be generating agency problems in the Ltd/privately owned world that are at least as severe as those traditionally associated with Plcs/publicly traded companies.[25] Sophisticated investors are often in a position to press privately owned companies in which they invest to issue complex financial instruments that give them all the upside of both equity and debt (what Lalafaryan has dubbed "chameleon capital") and to secure board seats through which they can exert significant influence and control.[26] Such devices increase power inequalities vis-à-vis non-controlling shareholders and creditors. Collapses of large UK privately owned Ltd companies have exposed both governance and audit failures with significant negative repercussions for employees, creditors and other stakeholders.[27] Should the UK succeed in fostering more unicorns (i.e. privately owned businesses valued at over $1 billion), agency problems would likely become even more prevalent.[28] Investor protection and

[22] London Stock Exchange, "Issuer List 2026", available at https://www.londonstockexchange.com/reports?tab=issuers (last accessed 25 June 2026).

[23] Section II discusses ways for Ltd companies to work around the ban on public offers of securities but notes that some growth companies may still consider it prudent to opt into Plc form for financing reasons.

[24] This observation pertains only to the UK market. Gelter and Siems have shown that in many EU Member States, most companies in public company form are privately owned: M. Gelter and M. Siems, "Letting Companies Choose between Board Models: An Empirical Analysis of Country Variations" (2021) 43 University of Pennsylvania 137, 156–57.

[25] N. Lalafaryan, "Private Credit: A Renaissance in Corporate Finance" (2024) 24 Journal of Corporate Law Studies 41.

[26] N. Lalafaryan, "Chameleon Capital" (2026) 27 European Business Organization Law Review (forthcoming).

[27] *Wright v Chappell* [2024] EWHC 1417 (Ch), [2025] Bus. L.R. 1639; P. Sikka, "Corporate Governance and Family-Owned Companies: The Case of BHS" in C. Driver and G. Thompson (eds.), *Corporate Governance in Contention* (Oxford 2018); N. Safari and M. Gelter, "British Homes Stores Collapse: The Case for an Employee Derivative Claim" (2019) 19 Journal of Corporate Law Studies 43.

[28] R.M. Jones, "The Unicorn Governance Trap" (2017) 166 University of Pennsylvania Law Review 165. As at September 2024 there were 43 active unicorns headquartered in the UK: R. Price, "Graduating from a Junior Market in the UK", available at https://home.barclays/content/dam/home-barclays/documents/news/Insights/Graduating%20from%20a%20Junior%20Stock%20Market%20in%20the%20UK%20FINAL.pdf (accessed 28 July 2026).

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market integrity concerns, as well as uncertainties with respect to social welfare, would also intensify as a result of the greater informational asymmetries in non-transparent private markets.[29] These trends point to a need to consider closing the regulatory gap between public and private markets.[30] Questioning the use of the Plc legal form as a hook for tailored company law requirements sits within this broader agenda.

As Michelle Lowry has argued, in a world in which the lines between public and private sources of corporate finance have blurred,[31] "it becomes imperative to think carefully about the structure and impact of regulation".[32] A "one-size fits all" approach to company and capital markets law does not work given the heterogeneity of the corporate sector. The fixed costs of burdensome requirements tend to bear more heavily on smaller, less complex companies that have less capacity to absorb them. Applying the same rules to all companies regardless of size or business model risks inhibiting entrepreneurship and innovation because new entrants are, in effect, not competing on an equal footing with larger, more established actors. Tailored requirements can avoid, or at least reduce, these competitive distortions. At the same time, it is also important to prioritise function over form to minimise regulatory arbitrage by larger companies.

Much depends on having the right hooks on which to hang progressively more demanding requirements. Deciding on these hooks may seem rather technical but it can involve making fundamentally important choices about when a company should be forced to operate under more stringent requirements. Donald Langevoort and Robert Thompson describe the process as involving "ideologically charged" questions because whatever is decided can bring about "significant change in [a company's] legal obligations and freedom to maneuver".[33] The UK has a double problem in getting this right.

Many countries make a distinction between public and private companies in their corporations law and/or capital markets regulation and are therefore grappling with a growing regulatory challenge as this distinction becomes strained in a world of blurred lines between public and private markets. Starting from Hilary Sale's important work describing the conception of the public company as being those that are traded in public markets as impoverished and reconceptualising "publicness" to take account of broader interests and concerns that do not occur only in publicly traded

[29] E. Pollman, "Private Company Lies" (2020) 109 Georgetown Law Journal 353; J.A. Ellias and E. de Fontenay, "The Credit Markets Go Dark" (2024) 134 Yale Law Journal 779.
[30] L. Zingales, "The Future of Securities Regulation" (2009) 47 Journal of Accounting Research 391, 419–22.
[31] M. Lowry, "The Blurring Lines between Private and Public Ownership" in D.J. Dennis (ed.), *Handbook of Corporate Finance* (Cheltenham 2024).
[32] Ibid.
[33] D.C. Langevoort and R.B. Thompson, "'Publicness' in Contemporary Securities Regulation after the JOBS Act" (2013) 101 Georgetown Law Journal 337, 338.

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companies,[34] US scholars have examined the reducing coherency of US regulation of publicly traded companies because of private market developments.[35] Scholars elsewhere have also drawn attention to shortcomings of the publicly traded/privately owned divide as a basis for regulatory tailoring.[36] This is an issue for the UK but the requirement in UK company law for companies to be Plcs before they "go public"[37] adds an incoherency-deepening twist. This *form* rather than *trading/ownership status* version of the public/private divide is not found in major US corporate law statutes such as the Delaware General Corporation Law.

In making the case for questioning the UK's use of Plc corporate form as a hook for more demanding company law requirements, it is possible to draw upon precedent from elsewhere for abandoning a public/private divide based on corporate form. When Canada reviewed its corporations law in the 1980s, it chose not to retain a formal distinction between public and private corporate forms, opting instead for distinctions based on functional rather than doctrinal grounds.[38] The UK had the opportunity to do something similar in the review that preceded the Companies Act 2006 but it was not taken. The decision at that time was that a distinct ban on public offers by Ltd companies and, with it, a raft of additional requirements applicable to Plcs needed to remain in the companies legislation. Why? The group of company law experts that led the review that preceded the Companies Act 2006 explained:

> We believe that there is justification for tighter regulation of companies that have access or potential access to the capital markets because of their greater economic potential and greater agency problems [. . .] the reason for this distinction [between Plcs and private limited companies] is that a company which has a potentially wider impact on the public should be subject to closer controls.[39]

The same logic was also used to justify the retention of a ban in the companies legislation on public offers of securities by Ltd companies. Although the

[34] H.A. Sale, "The New 'Public' Corporation" (2011) 74 Law and Contemporary Problems 137; H.A. Sale, "The Corporate Purpose of Social License" (2021) 94 Southern California Law Review 785.

[35] E. de Fontenay and G. Rauterberg, "The New Public/Private Equilibrium and the Regulation of Public Companies" [2021] Columbia Business Law Review 1199; G.S. Georgiev, "The Breakdown of the Public-Private Divide in Securities Law: Causes, Consequences, and Reforms" (2021) 18 New York University Journal of Law & Business 221; Jones, "Unicorn".

[36] A.A. Gözlügöl and W-G. Ringe, "Private Companies: The Missing Link on the Path to Net Zero" (2022) 22 Journal of Corporate Law Studies 887.

[37] Meaning offering securities to the general public and/or having their securities admitted to trading on a public market.

[38] R.W.V. Dickerson, J.L. Howard and L. Getz, *Proposals for a New Business Corporations Law for Canada*, vol. 1 (Ottawa 1971), at [36]; see also B.R. Cheffins, "U.S. Close Corporation Legislation: A Model Canada Should Not Follow" (1989) 39 McGill Law Journal 160.

[39] Company Law Review Steering Group [CLRSG], *Modern Company Law for a Competitive Economy: Final Report* (London 2001), at [4.54], [4.59].

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expert group made some (ultimately, largely unimplemented) recommendations to improve the clarity of the rules for interpreting the ban to address the risk of Ltd companies feeling obliged to take the "unnecessary precaution" of registering as a Plc, with the tighter regulation that this entailed,[40] the group's overarching concern was to avoid undermining the Plc/Ltd distinction. Twenty years on, the time is ripe for a bolder approach.

II. Making Primary and Secondary Capital Markets More Accessible to Privately Owned Companies at Different Growth Stages

The UK is redesigning its capital markets regulatory regime for public offers of securities and for the trading of securities to promote greater efficiency and effectiveness in capital raising and secondary market liquidity.[41] This section focuses on two capital market regulatory innovations of direct relevance to the case for moving away from the Plc legal form: the POP regime and the PISCES regime. Both regimes aim at aligning the regulatory framework more closely with privately owned companies' need for access to growth capital and liquidity throughout their lifecycle.[42] They build on existing market practices but seek to place them on a clearer and more coherent regulatory footing.

This section explores how the POP and PISCES regimes are designed to work with the grain of market developments, including the large volumes of "dry powder" that venture capital, private equity and private credit funds have accumulated for investment in privately owned companies and also growing retail investor interest in investing in start-up and early-stage companies through crowdfunding platforms. Significant levels of investment crowdfunding activity by smaller (and sometimes quite large) Ltd companies indicate that while the company law ban is a complicating factor, it is not, in the end, a fundamental impediment to platform-based capital raising from a broad base of investors.[43] This is so notwithstanding structural differences between crowdfunding and venture capital, particularly that crowdfunding investment typically involves smaller amounts of capital being deployed by a much larger pool of investors.[44]

[40] Ibid., at [4.56]–[4.63].
[41] Public Offers and Admissions to Trading Regulations 2024, SI 2024/105.
[42] FCA, "Engagement Paper 5: The Public Offer Platform", at [31], available at https://www.fca.org.uk/publication/call-for-input/public-offer-platform-engagement-paper-5.pdf (last accessed 7 June 2026).
[43] J. McCrea, "The State of UK Equity Crowdfunding", available at https://www.beauhurst.com/blog/uk-equity-crowdfunding/ (last accessed 25 June 2026) lists the UK's five equity crowdfunding raises in 2024, all of which were Ltd companies according to Companies House data: Watchhouse Ltd, MishiPay Ltd, Urban Jungle Ltd, Plum (UK) Ltd and Sunswap Ltd.
[44] V. Butticè and S. Vismara, "Inclusive Digital Finance: The Industry of Equity Crowdfunding" (2022) 47 The Journal of Technology Transfer 1224.

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In building on existing market trends, the POP and PISCES regimes can be considered evolutionary rather than revolutionary. Nevertheless, their enactment is pivotal to the argument for now being the right time to consider moving away from Plc form. These regimes are based on a different conceptual understanding of the relationship between corporate finance and regulation, and they underscore how outdated and anachronistic the company law restriction on access to finance has already become.

The POP regime, in force from 19 January 2026, is designed to increase capital-raising options for companies that are private in the sense that they are not publicly traded.[45] The POP regime is aimed primarily at serving the needs of companies seeking seed and early-stage financing from retail investors[46] but it may also encourage larger off-market capital raisings.[47] Described as a "new paradigm for capital raising" the POP regime "is expected to contribute to stronger economic growth by allowing more projects and innovative businesses to access the funding they need to adequately scale up".[48] Companies that seek to raise capital of more than £5 million from a broad investor base outside a public market will need to do so via a POP but there is no maximum offer size.[49] AIM, the LSE's public growth market, includes companies with market capitalisations under £50 million. There is a possibility that some smaller issuers could increasingly look to POPs to meet their funding needs over an extended period, bypassing the need to consider an AIM flotation as an intermediate step ahead of a full listing.[50]

The PISCES regime is a regulatory sandbox initiative to provide a dedicated regulatory framework for a new type of stock exchange – one that privately owned companies can access on an intermittent basis for shareholder liquidity (but not to raise fresh capital).[51] In August 2025, the LSE became the first organisation to receive regulatory approval to operate a PISCES platform but, as of February 2026, no trading activity had been confirmed. These venues are intended to provide new exit options for company founders, early-stage venture capital and private equity investors, and employees who have received equity-based remuneration; and also

[45] E. Ferran, E. Howell and F. Steffek, *Principles of Corporate Finance Law*, 3rd ed. (Oxford 2023), 597. The legal framework for the POP regime is provided by the POAT Regulations 2024, reg. 12 and Sched. 1, Pt. 1, para. 13. FCA rules set out the more detailed requirements: FCA, "PS25/10".

[46] FCA, "Engagement Paper 5", at [5].

[47] FCA, "PS25/10", at [1.6].

[48] Ibid., at [1.24].

[49] POAT Regulations 2024, Sched. 1, Pt. 1, reg. 1.

[50] Butticè and Vismara, "Inclusive Digital Finance", 1226, making this point about equity crowdfunding platforms in general.

[51] The legal framework is provided by the Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025, SI 2025/583. This is supplemented by more detailed FCA rules: FCA, "PS25/6: Private Intermittent Securities and Capital Exchange System: Sandbox Arrangements", available at https://www.fca.org.uk/publication/policy/ps25-6.pdf (last accessed 7 June 2026).

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earlier access to investment opportunities for investors that want to buy shares in growth companies. However, there are no formal size restrictions on company eligibility to use a PISCES-enabled platform. Given that access to liquid secondary trading tends nowadays to weigh more heavily in decisions to go public than access to fresh capital, it is possible that by offering an alternative liquidity solution, PISCES could exacerbate the trend for companies to stay privately owned indefinitely.[52]

The POP and PISCES regulatory regimes are bespoke, tailored to the market niches they are intended to fill.

The design of the POP regime draws on experience in the existing crowdfunding market.[53] Companies that offer securities via a POP are not required to produce a prospectus. On the other hand, the gatekeeping burden on operators of POPs is significant.[54] POP operators will need to make their own judgments on what to include in disclosures to investors over and above a certain amount of minimum investor information prescribed by the Financial Conduct Authority (FCA).[55] Disclosure liability sits with the POP operator rather than with issuers on its platform and the standard of liability is what can reasonably be expected of a prudent firm when complying with FCA rules.[56] Investors will not have a direct statutory claim for compensation against issuers but could pursue common law remedies in respect of false disclosures.[57] POP operators may agree contractual arrangements with issuers to help manage potential liability.[58] These requirements on disclosure, due diligence and liability seek to find the sweet spot between facilitating efficient and cost-effective access to capital for companies, and ensuring investor protection and market integrity. While some pre-screening by platform operators does occur in the existing crowdfunding market,[59] the enhanced burden on POP operators raises questions about whether the risk/reward profile will be sufficiently attractive to ensure a viable number of operators in a market segment catering for smaller issuers.[60] A worst-case scenario is the old cliff edge of EUR 8 million for offers that do not require a prospectus

[52] Further on the potential impact of PISCES: E. Ferran, "Regulating for Growth in an Era of Rising Economic Nationalism: UK and EU Perspectives", available at https://ssrn.com/abstract = 5360053 (last accessed 25 June 2026).

[53] HM Treasury, "Policy Notes: The Public Offers and Admissions to Trading Regulations 2023", at [4.7], available at https://assets.publishing.service.gov.uk/media/64ad22b3c933c1000cf9e0a0/Prospectus_Policy_Note_-_The_Public_Offers_and_Admissions_to_Trading_Regulations_2023.pdf (last accessed 7 June 2026); FCA, "CP24/13", at [2.10].

[54] FCA, "PS25/10", at [1.19], ch. 2.

[55] FCA, "PS25/10", ch. 2; FCA, "CP24/13", at [4.36]–[4.45].

[56] FCA, "PS25/10", at [2.62]–[2.75].

[57] FCA, "PS25/10", at [2.73]; FCA, "CP24/13", at [4.78].

[58] FCA, "PS25/10", at [2.75]; FCA, "CP24/13", at [4.79].

[59] Butticè and Vismara, "Inclusive Digital Finance", 1234–35, identifying the quality of platform screening in the crowdfunding sector as an under-researched area.

[60] J. Herbst, "Public Offer Platforms (POPs) – Will They Solve the Problem?", available at https://connections.nortonrosefulbright.com/post/102jf20/public-offer-platforms-pops-will-they-solve-the-problem (last accessed 28 July 2026).

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could be replaced by a new cliff edge of £5 million, because this is the level below which use of a POP is not required.[61]

The PISCES regulatory regime is "private plus", meaning that it takes the "buyer beware" standards of private secondary market transactions as its starting point and adds to these to the extent appropriate for trading venues that are "public" on an intermittent basis.[62] This is innovative because the more conventional way to design differentiated regulation for trading venues is "public minus" – that is starting with the standards that apply on the most prestigious listed markets and lightening them as appropriate for venues aimed at companies that are not yet ready for full listing.[63] Key features of the PISCES regime are that the market mechanisms of free transferability at market-driven prices are constrained by the possibility to set buyer eligibility criteria ("permissioned trading events") and pricing parameters; mandatory disclosures and trading transparency data are made available only to confined groups and are significantly less extensive than those required on public markets (there is no prospectus requirement); and insider dealing constraints do not apply.[64] There is a bespoke issuer liability regime that incorporates elements of both the prospectus liability regime and the public market disclosures liability regime.[65] PISCES operators are expected to play an important role in supervising their platforms but unlike the POP regime, most types of retail investors, apart from employees in relation to their own company, are not permitted to trade on PISCES-enabled platforms.[66]

For the purposes of this article, the key concern is how these important developments in capital markets regulation that reflect policy imperatives to design regulation that helps to close the funding gap for smaller companies and thereby to contribute positively to the growth agenda interact with the older idea, still codified in company law, that Ltd companies must not offer their securities to the public.

Ltd companies are not excluded from the POP and PISCES regimes. The PISCES regime even includes a targeted amendment to the indirect limb of the company law ban to ensure that it does not interfere with the smooth functioning of PISCES-enabled exchanges.[67] There is no equivalent targeted amendment in the POP regime, which, initially, is rather surprising given that the POP regime sits squarely in the public offers space to which the company law ban is directly relevant. However, there

[61] R.W. Blears, "The Public Offer Platform: Balancing the Risk for Public Offers", available at https://blears.com/news-insights/the-public-offer-platform-balancing-the-risk-for-public-offers (last accessed 25 June 2026).
[62] FCA, "PS25/6", at [1.5], [1.15].
[63] Ferran, "Regulating for Growth".
[64] See generally FCA, "PS25/6".
[65] Ibid.
[66] Ibid.
[67] PISCES Regulations 2025, Sched. 1, Pt. 2.

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is an explanation for this omission in market practice, which has already found a viable grey area for Ltd companies to raise significant amounts of capital from outside investors without infringing the company law ban.

How? First, there is always the failsafe risk-avoidance step of choosing to convert to Plc status while staying privately owned. Take, for example, BrewDog, the craft beer brewer, which in 2009 converted with some fanfare from Ltd to Plc ahead of the launch of its first "equity for punks" crowdfunding capital offering, in which over 1,300 people invested.[68] This exercise was later described by one of the company's founders as being "much more about marketing than raising funds".[69] By 2023 and six rounds of funding later, BrewDog had acquired over 180,000 shareholders, including private equity investment, but remained private in the sense of not being admitted to trading on a public stock exchange.[70] However, BrewDog is a somewhat atypical company, which has positively embraced doing things differently as a core part of its brand identity. This strategy has proved to have downsides as well as upsides as the company has encountered financial difficulties and public criticism of its workplace culture has affected its brand identity.[71] For other SMEs that want to use a POP platform to test the market for new investors, the option of becoming a Plc to ensure legal certainty might be considerably less palatable.

Considered purely from narrow perspective of the procedural steps involved in Plc re-registration, which requires the passing of a special resolution of the shareholders and checking that certain requirements relating to the company's share capital are in order, the option of becoming a Plc does not seem unduly burdensome;[72] but it should not be overlooked that the exercise will also involve redoing all the company's documentation and communications to reflect the change of name (Plc instead of Ltd), reviewing its articles to ensure that they are aligned with requirements for Plc articles and, more broadly, making standing adjustments to how the company operates to comply with the ongoing additional requirements applicable to Plcs. The fact that a Plc is ineligible to use the simplified financial reporting framework for SMEs is likely to be especially off putting.[73] A company that becomes a Plc but stays privately owned is at least spared the more demanding mandatory disclosure requirements that apply to publicly traded company, although

[68] Available at https://www.thedrinksbusiness.com/2009/10/brewdog-barking-up-a-new-tree/ (last accessed 25 June 2026).
[69] J. Watt, *Break All the Rules – the BrewDog Way* (London 2016), 120.
[70] BrewDog, "About Us", available at https://jobs.brewdog.com/about-us.aspx (last accessed 25 June 2026).
[71] G.J. Baty, "BrewDog's 'Equity for Punk' Fuelled Its Rapid Rise – But May Have Contributed to Its Struggles", *The Conversation*, available at https://theconversation.com/brewdogs-equity-for-punks-fuelled-its-rapid-rise-but-may-have-contributed-to-its-struggles-261909 (last accessed 25 June 2026).
[72] Companies Act 2006, ss. 90–93.
[73] Ibid, s. 384(1)(a).

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its more financially-inexperienced investors may not appreciate this and read inapplicable investor protection standards and liquidity options into the Plc label.

For SMEs for which corporate form reorganisation would be a barrier to using a POP, there is a second option. The crowdfunding market has evolved since the time when BrewDog became a Plc and now has deep expertise and experience in helping Ltd companies navigate their way through a thicket of rules and avoid inadvertently infringing the dual bans on public offers of securities in company and capital markets law. It has become routine in the existing crowdfunding market for Ltd companies to use platforms for capital-raising purposes and on quite a significant scale in some cases. Monzo Ltd, a regulated bank, provides a striking example. Monzo was established in 2015 as an Ltd and has not converted to a Plc, even after several rounds of equity crowdfunding, including a £20 million raise in 2018 that brought in 33,549 brand new investors.[74] Revolut Ltd, another fintech bank, which was founded in 2015 and valued at around $48 billion in 2025, also used crowdfunding platforms in its initial capital raises, bringing in thousands of investors alongside private placements to private equity firms.[75] Market maturity in handling the complexity of the ban on public offers of securities by Ltd companies thus emerges as a strong explanation for why the new POP regime has not been accompanied by a targeted statutory invention expressly to carve out the use of POPs by Ltd companies.

Of course, it is untidy that it remains necessary to navigate two overlapping regimes on public offers in both company law and capital markets law.[76] It was recognised even as far back as the discussions that preceded the Companies Act 2006 that the rules for interpreting the company law ban left considerable room for uncertainly and could prompt some companies to change form as an "unnecessary precaution".[77] The risk of inadvertently falling foul of the company law ban remains and the range of possible sanctions for doing includes forced re-registration as a Plc, winding up of the company and/or remedial orders to restore the position of persons affected by the contravention (although the validity of any allotment or sale of shares in contravention of the ban will not be affected).[78] Advisers

[74] Available at https://monzo.com/invest (last accessed 25 June 2026); Crowdcube, "The Story of Monzo", available at https://www.crowdcube.com/explore/raising/monzo (last accessed 25 June 2026).

[75] P. Volna, "Revolut's Crowdfunding Triumph: Lessons from a $45 Billion Valuation", *LenderKit Blog*, available at https://lenderkit.com/blog/revoluts-crowdfunding-triumph-lessons-from-a-45-billion-valuation/ (last accessed 25 June 2026).

[76] FCA, "PS14/4: The FCA's Regulatory Approach to Crowdfunding over the Internet, and the Promotion of Non-Readily Realisable Securities by Other Media", at [4.20], available at https://www.fca.org.uk/publication/policy/ps14-04.pdf (last accessed 7 June 2026); Ferran, Howell and Steffek, *Principles*, 593–94.

[77] CLRSG, *Final Report*, at [4.56]–[4.63].

[78] Companies Act 2006, ss. 757–760.

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who have misunderstood the extent of the company law ban could face liability for negligence or breach of fiduciary duty.[79]

The UK could go further with targeted amendments that limit the scope of the company law ban. The review that preceded the UK Companies Act 2006 recommended alignment *so far as possible* with the capital markets prohibition on public offers and the exceptions thereto.[80] This has not happened,[81] in contrast to the Irish companies legislation, which has been more progressive in this respect.[82] One option for the UK could be to emulate Ireland by creating a new Ltd corporate form for special purpose vehicles. The Irish designated activity company ("DAC") is a Ltd company that is allowed to issue debt securities to the public and to issue listed debt, which has become a popular choice as a financing SPV.[83]

In the UK market, the established workaround to avoid infringement of the company law ban on public offers is for the borrower to establish a financing SPV in Plc form or itself to convert to Plc form (hence the explanation for a large part of the delta between the number of Plcs and the number of listed Plcs noted in Section I). For the UK to introduce a new corporate form could have a positive market impact. Private placements of debt securities are an important source of corporate finance, for instance constituting 16 per cent. of the total funding held by large corporates according to a 2023 survey conducted by the Association of Corporate Treasurers.[84] Debt private placements also broaden funding choices for SMEs.[85] While larger companies typically use private placements to diversify sources of funding, for SMEs they can also function as a first step towards the capital markets because they avoid the costs of issuing publicly traded debt, which will usually require a credit rating.[86] Neither debt issuance SPVs or SMEs testing the market for new investors are the archetypal businesses that the designers of the Plc corporate form originally had in mind. The qualifying private placement exemption in tax law, which allows UK corporate borrowers to pay interest gross on a cross-border basis provided the bonds in

[79] *TMO Renewables Ltd. v Yeo* [2021] EWHC 2033 (Ch).

[80] CLRSG, *Final Report*, at [4.57]–[4.62]; Department for Trade and Industry, *Company Law Reform*, Cm. 6456 (London 2005), at [4.11].

[81] There is a certain amount of overlap with the "connected persons" exemption in POAT Regulations 2024, Sched. 1, Pt. 1, para. 9 but this is not coterminous with the company law ban.

[82] Companies Act 2014, s. 68 (Ireland).

[83] Ibid., at Pt. 16 (Ireland).

[84] ACT and Herbert Smith Freehills, "Corporate Debt and Treasury Report", available at https://www.treasurers.org/system/files/Corporate%20Debt%20and%20Treasury%20Report%20May%202023.pdf (last accessed 25 June 2026).

[85] European Commission, "Identifying Market and Regulatory Obstacles to the Development of Private Placement of Debt in the EU", available at https://finance.ec.europa.eu/document/download/0f802a48-abea-4f3a-bf4c-a48efe414817_en?filename = 180216-study-private-placements-summary_en.pdf (last accessed 25 June 2026).

[86] Ibid; see also HMRC, "SAIM9310 – Deduction of Tax: Qualifying Private Placements: Overview", available at https://www.gov.uk/hmrc-internal-manuals/savings-and-investment-manual/saim9310 (last accessed 25 June 2026).

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question are not listed on a stock exchange and other conditions are fulfilled, is critical to the operation of this market.[87] The introduction of a new corporate form should not disturb this important exemption because the Plc/Ltd divide in company law is not synonymous with what qualifies as a "private placement" in UK capital markets and tax law.

However, the preferred option in this paper is to rationale corporate legal forms rather than to increase them in number. We have now seen that as a barrier to finance, the Plc/Ltd divide is a manageable problem but greater manageability of the Plc/Ltd divide as a barrier to finance comes hand in hand with diminishing effectiveness of the Plc/Ltd divide as a trigger for a step up in regulatory requirements. It is not merely that there are some large Ltd companies around the margins that requirements linked to the Plc corporate form fail to reach; that would be unremarkable because a completely perfect fit is unattainable. The real issue is that foundational assumptions about the lines between public and private are eroding and the POP and PISCES initiatives discussed in this section are enabling and reinforcing this trend. As becoming a Plc becomes increasingly more optional from a financing perspective, the Plc/Ltd divide becomes increasingly unsuitable as a basis for a step up in regulatory requirements. Moreover, the Plc/Ltd divide's continued existence contributes to growing regulatory incoherence.

Tailoring regulation to be contextually appropriate for companies at different stages of the corporate pipeline is a much broader question than addressing the shortcomings of the Plc/Ltd divide. But thinking about the fate of requirements that current attach to Plc corporate form with a view also to paving the way for an eventual retirement of the company law ban on private companies offering securities to the public on grounds of obsolescence could be a positive coherence-improving step in the right direction. Sections III and IV therefore take up the challenge of starting to reimagine a framework that does not use legal form as a determining factor with respect to the range of finance to which a company has access or the requirements to which it is subject.

III. The Need for Calibrated Regulation and the Eroding Utility of the Plc Legal Form in Meeting this Need

Were it the case that nothing turned on the Plc/Ltd divide other than a formal restriction on accessing public markets for new funding, the pragmatic conclusion might be to let a sleeping dog lie on the basis that while the ban is an anomalous rule that has not kept pace with the times, it is not causing significant harm. Some practitioners have argued that for those seeking to use innovative ways to connect Ltd companies to potential

[87] Ibid.

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investors, finding a pathway through the complexity of overlapping, but not identical, prohibitions in company and capital markets law can still be an "uncomfortable and complex issue",[88] yet the difficulties do not appear to be insurmountable. However, access to sources of finance is not the end of the story. This section turns to the fact that the ban on public offers by Ltd companies goes hand in hand with more stringent company law requirements for Plcs. Arguments for why the corporate form may no longer be a useful basis for the more demanding requirements aimed at addressing agency problems or externalities therefore come directly into focus.

In an ideal word, public and private capital markets would complement each other in providing a rich variety of financing options that meet the needs of companies at different stages and in providing pathways to full main market listing. Public policy would design perfectly tailored regulatory requirements that are appropriate for each stage of the financing journey. This framework would be attuned to the fact that nowadays companies – whatever their corporate form – can acquire degrees of publicness by raising growth capital through private placements or by public offers on innovative platforms that are not public markets or by becoming more widely owned by reason of secondary market trading.

Real-world considerations intrude, making a perfect fit unattainable. A tailored regulatory framework that accounts for differences in company circumstances, risks or characteristics but that is also predictable, stable and easy to apply requires clear objective thresholds that serve to trigger more demanding requirements for those companies that present more risk to society and therefore should be more publicly accountable. In designing these threshold tests, there is a need to find a balance between granularity and generalisation.[89] Avoiding excessive differentiation and avoiding undue complexity are two sides of the same coin and achieving a balance means accepting that, around the margins of whatever thresholds are used, there will always be some companies that avoid more stringent requirements while still presenting significant risks.

Granted, therefore, that we are not looking for perfection, the question is whether Plc/Ltd divide, whose regulatory reach has been eroded by private markets that enable companies to stay private for longer and that has become an inconvenience which Ltd companies that want to utilise new ways of access capital markets must work around, is still sufficiently useful to be worth retaining for regulatory tailoring purposes. Now that publicness is best understood as existing along a continuum, a matter of degrees rather than absolutes (the publicness continuum), a binary distinction is always

[88] Taylor Wessing, "Crowdfunding in the UK: Top Tips for Setting Up a Crowdfunding Platform", available at https://www.taylorwessing.com/en/interface/2021/crowdfunding (last accessed 25 June 2026).
[89] Zingales, "Future".

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going to have shortcomings. While this criticism might also be levelled at the public/private divide in the publicly traded/privately owned sense, the difference is that the Plc/Ltd divide is a blunt either/or requirement, whereas requirements linked to trading status can be further differentiated by reference to different trading venues.

It is now routine to distinguish between main market and growth public capital markets, with the latter operating under lighter requirements.[90] Schwartz aptly describes the task of designing an appropriately differentiated regulatory framework for a public growth market that is realistic about the burdens imposed on small and mid-cap companies while still delivering investor protection and ensuring the proper functioning of the market as being about avoiding "regulatory luxuries that are inappropriate for an exchange where dollars for compliance are in short supply".[91] The rise of private markets and developments such as PISCES that make it easier to stay private for longer make it more pressing to address this design challenge. AIM, the LSE's growth market, has experienced a drop in number of companies that is similar to the much more widely publicised downturn in companies listing on the LSE's main market.[92] It now faces being further squeezed from two directions – by PISCES at one end and by the LSE's own main market, where admission criteria have been lowered, at the other. Yet, from a public policy perspective, public growth markets are seen as having an important role to play in achieving the aim of greater retail participation in capital market investment.[93] This dilemma makes it imperative to have regulatory standards that are appropriate for public markets geared towards earlier-stage growth companies and that take the characteristics of those markets, including their attractiveness to retail investors, properly into account, as well as being alert to the competition that public growth markets face from private markets.[94]

The publicness continuum is also why in an era when private markets make it easier for large companies whose social, environmental and economic impact could be just as great as that of listed companies to

[90] Langevoort and Thompson, "Publicness", discusses the US JOBS Act 2012, which has been very influential globally in shaping capital market frameworks that apply lighter standards to trading venues that cater to smaller/growth companies.

[91] J. Schwartz, "Venture Exchange Regulation: Listing Standards, Market Microstructure and Investor Protection" in G. Smith, B. Broughman and C. Hurt (eds.), *The Cambridge Handbook on Law and Entrepreneurship in the United States* (Cambridge 2022).

[92] E. Dunkley, "Number of AIM-Quoted Groups Drops to 22-Year Low in Blow to London", *Financial Times*, available at https://www.ft.com/content/0c3cfab7-11a4-4f8e-8598-956a6de89c72?syn-25a6b1a6 = 1 (last accessed 7 June 2026), reporting that around 80 companies had left AIM over the previous year and that the remaining number of issuers (722) was at its lowest level since 2002.

[93] FCA, "Engagement Paper 6: Primary Multilateral Trading Facilities", available at https://www.fca.org.uk/publication/call-for-input/primary-multilateral-trading-facilities-engagement-paper-6.pdf (last accessed 7 June 2026); FCA, "PS25/10", at [1.28], [7.15].

[94] "Small Caps Need Special Attention in UK Market Overhaul", *Financial Times*, available at https://www.ft.com/content/604a7160-5254-46f6-9ccc-05231709334c?syn-25a6b1a6 = 1 (last accessed 7 June 2026); Price, "Graduating".

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stay in private ownership, there is a need to deploy quantitative criteria to extend to large privately owned companies – irrespective of their corporate form –certain requirements that historically would have applied only to publicly traded companies.[95] Quantitative criteria have an inherent flexibility that is apt in circumstances that require multiple tiers of progressively more demanding requirements. Quantitative criteria, which are particularly prominent in the framework for financial reporting, audit and public filing of accounts focus instead on size, typically measured by reference to annual turnover, balance sheet and/or number of employees. They are generally agnostic as to corporate form[96] but one notable exception that was mentioned already in Section II is that Plcs may not use the simplified reporting framework for SMEs.[97] We will return again later to this exception when discussing critically the use of Plc corporate form as a hook for a step up in requirements in terms of irrationality and inertia.

Quantitative thresholds are always at risk of being, or of being perceived to be, too high or too low and of being gamed around. The cumulative effect of deciding on the "right" thresholds on a measure-by-measure basis can lead to a plethora of different thresholds that can cause compliance headaches, as well as having an in-built risk of creeping loss of effective reach when the thresholds fail to keep pace with inflation.[98] Where the line is drawn in particular cases can be hotly contested.[99] However, the complexities and

[95] Extending corporate governance disclosure requirements to large companies not otherwise subject to them (large being (1) more than 2,000 employees and/or (2) turnover of more than £200 million and balance sheet total of more than £2 billion): Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, SI 2008/410, Sched. 7, Pt. 8, as inserted by the Companies (Miscellaneous Reporting) Regulations 2018, SI 2018/860. Imposing climate-related disclosure obligations on companies with more than 500 employees and meeting specified sector, trading status or size criteria (bank, insurance company, listed company, AIM company, large company, i.e. over £500 million in turnover): Companies Act 2006, ss. 414C, 414CA and 414CB, as amended by the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022, SI 2022/31.

[96] On the tiering of financial reporting requirements by reference to company size: "Micro" – at least two of turnover of not more than £1 million; balance sheet of not more than £500,000; and not more than 10 employees: Companies Act 2006, s. 384A; "Small" – at least two of turnover of not more than £15 million; balance sheet total of not more than £7.5 million; and not more than 50 employees: Companies Act 2006, s. 382; "Medium" – at least two of turnover of not more than £54 million; balance sheet total of not more than £27 billion; and not more than 250 employees: Companies Act 2006, s. 465. On audit and filing: Companies Act 2006, ss. 441–445 (filing), ss. 475–479 (audit).

[97] Companies Act 2006, s. 384(1)(a).

[98] The monetary figures in note 95 replaced lower figures with effect from 5 April 2025.

[99] E.g. the withdrawal after consultations with companies raised concerns about regulatory burdens of the Draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023, which proposed to impose new reporting and assurance requirements on very large companies, defined as companies – irrespective of corporate form or trading status – with both 750 or more employees and annual turnover of £750 million or more. Related proposals for an Audit and Corporate Governance Bill to extend the public interest entity ("PIE") category to include AIM market and privately owned companies within the scope of more intense audit requirements were scrapped in January 2026: ICAEW Insights, "Government Abandons Audit Reform Bill", available at https://www.icaew.com/insights/viewpoints-on-the-news/2026/jan-2026/government-abandons-audit-reform-bill (last accessed 25 June 2026). While this article is UK-focused, brief reference can also be made to similar threshold-setting controversies at EU level, especially around sustainability requirements, where the number of in-scope companies for reporting and due diligence requirements is being significantly scaled back to reduce administrative burdens: Directive (EU) No 2026/470 of the European

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controversies associated with the use of quantitative criteria do not detract from their overall usefulness.

An escalation in requirements by reference to number of shareholders is another option for tailoring regulation to different degrees of publicness. Fitting regulation to a shareholder count recognises that information asymmetries and agency problems between company insiders and external investors tend to become more significant as ownership becomes more dispersed.[100] However, there are problems in using a shareholder count as a hook for a step up in regulatory requirements. On the one hand, this may be an impediment to capital raising by growth companies if it is set too low. On the other, even a fairly low number can fail to account for modern securities trading and settlement practices, whereby securities are mostly held in settlement systems in omnibus accounts in the name of nominees rather than end investors and for the prevalence of asset management firms that invest on behalf of end beneficiaries. Capitalisation tables are therefore often significantly under-representative of the true extent of the economic interests in a company's shares.[101] For the UK, which does not have a history of using a shareholder count as the basis for a step *up* in requirements, its usefulness may lie more in its ability to serve as a negative screener – that is as a basis for identifying companies that have none of the indicia of publicness and that should benefit from lighter requirements on risk proportionality grounds.[102]

The discussion thus far in this section could be read as implying that it is possible to pick holes in each and every differentiator that might be used to design requirements tailored to the publicness continuum. If so, why then target Plc corporate form as being no longer fit for purpose? As well as bluntness and rigidity, which have been discussed already, there are two additional factors that strengthen the case against the Plc: illogicality and inertia. Embedded in the status quo and buffered by interdependencies, the Plc/Ltd divide still exerts an unwarranted degree of influence that gets in the way of coherent policy thinking about what a well-designed modern framework could look like. This is why it is singled out.

The rest of this section develops the claim that the use of the Plc corporate form as a hook for more stringent company law requirements is irrational and that continued reliance on it owes much to inertia. This discussion sets the scene for Section IV which suggests some incremental reform possibilities

Parliament and of the Council of 24 February 2026 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements.

[100] B. Singleton-Green, "SME Accounting Requirements: Basing Policy on Evidence", available at https://ssrn.com/abstract=2703246 (last accessed 25 June 2026).

[101] Langevoort and Thompson, "Publicness", 353–61.

[102] The close company is currently part of UK tax law where it is defined broadly as a company that is under the control of five or fewer participators or of participators who are directors and more than half of the assets of which would be distributed to those participators in the event of its winding up: Corporation Tax Act 2010, s. 439.

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that could open up if we recognised more fully the irrationality of imposing more stringent requirements on a company just because it is a Plc.

A. Irrationality

If the rationale for a step up in requirements is that a company's securities are admitted to trading on a public market, then, as Bas de Jong has argued, using *potentiality* to access public markets as a basis for regulatory calibration is not very convincing.[103] The more obvious choice would be instead to use *actually accessing* the public markets as the regulatory hook. It is also potentially confusing in that potential investors may read into the label "Plc" attaching to a company that is not publicly traded a level of investor protection that is not actually applicable.[104]

It is not a radical idea to suggest moving some requirements from the Plc hook to the publicly traded hook. For example, the Companies Act 1985 included a requirement for notification at the initiative of the holder of interests in shares in Plcs[105] but in the reforms that led to the Companies Act 2006, this mechanism was confined to publicly traded companies and became part of capital markets law instead of company law.[106] A more recent example is provided by the adjustment of the ambit of UK Takeover Code, which until 2024 extended to UK-registered[107] unlisted public companies (and certain private companies), but which has now been scaled back to apply only to UK-registered companies that are listed in the UK.[108] The rationale for this change is better to reflect the intended primary remit of the Code, namely UK listed companies, on the basis that such companies may be expected to have a broad and dispersed shareholder base and not to have provisions in their articles addressing the passing of control.[109] As part of this exercise, the Code Committee, which oversees the Code, has also confirmed that the Code should not apply to companies with securities admitted to trading on a PISCES platform because the regulatory burdens associated with the Code would be unwelcome and might deter companies from using a PISCES; nor to companies whose securities are traded on other private

[103] De Jong, "Distinction", 8.
[104] As discussed in Section II above.
[105] Companies Act 1985, s. 198.
[106] For background: CLRSG, *Modern Law for a Competitive Economy: Developing the Framework* (London 2000), at [4.179]. For current disclosure requirements, see FCA Manual, "Disclosure Guidance and Transparency Rules", ch. 5, available at https://handbook.fca.org.uk/handbook (last accessed 7 June 2026).
[107] Including companies registered in the Channel Islands or the Isle of Man.
[108] Takeover Panel, "Companies to Which the Takeover Code Applies", available at https://www.thetakeoverpanel.org.uk/wp-content/uploads/2024/04/PCP_2024_1.pdf (last accessed 25 June 2026). In this context, "listed" is used to denote companies with securities admitted to trading on growth markets as well as those listed on the main markets.
[109] Ibid., at [2.17].

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markets or crowdfunding platforms.[110] These conclusions are not underpinned by reasoned analysis, reflecting a gap in thinking through the regulatory implications of the publicness enabled by innovative offer and trading platforms.

Moving requirements from the Plc hook to the publicly traded hook could be pursued in a more strategic way as part of a reform agenda to reduce, and eventually eliminate, reliance on Plc form for regulatory tailoring. For instance, thought could be given to linking the step up in shareholder statutory rights with respect to capital issuance, which are currently more flexible for Ltd companies than they are for Plcs, to trading status rather than Plc corporate form.[111] Doing so would take unlisted Plcs out of scope of the more prescriptive requirements but it is hard to characterise this as a significant lowering of standards. As discussed earlier in this section, many unlisted Plcs are specialist financing SPVs do not present the problems that these shareholder rights are intended to address. Others are in the small population of unlisted growth companies that have opted into Plc form, most likely for precautionary reasons related to financing options but it is increasingly anomalous to treat them differently from functionally equivalent but less risk-averse growth companies in Ltd form that are pursuing largely the same funding options.

Moving away from the Plc hook would allow for the possibility of further tailoring of these shareholder rights to different trading venues, in alignment with the agenda to lighten the requirements for companies that trade publicly on growth rather than main markets, discussed earlier in this section. Regulatory tailoring by reference to trading segment is not alien to UK company law: existing examples include the "say on pay" requirements, which apply to "quoted companies" and "traded companies", categories that include main market listed companies but not companies admitted to trading on the growth markets or other platforms;[112] and tiered requirements for company meetings, which are at their most stringent for the same formally defined subset of publicly traded companies.[113]

[110] Ibid., at [1.18]–[1.22].

[111] A private company can, in its articles, exclude pre-emption rights generally or in relation to particular allotments: Companies Act 2006, s. 561. A private company that has only one class of shares can disapply pre-emption rights by its articles or a shareholder special resolution: Companies Act 2006, s. 569.

[112] Companies Act 2006, ss. 439–400, 226A–226F. In technical terms these requirements apply to "quoted companies" meaning a company whose equity share capital (a) has been included in the official list in accordance with the provisions of the Financial Services and Markets Act 2000, Part 6 or (b) is officially listed in an EEA State or (c) is admitted to dealing on either the New York Stock Exchange or the exchange known as Nasdaq: Companies Act 2006, s. 385. They also apply to "traded companies" that are not quoted companies, a traded company being a company any shares of which (1) carry rights to vote at general meetings and (2) are admitted to trading on a UK regulated market or an EU regulated market by or with the consent of the company: Companies Act 2006, s. 360C.

[113] Companies Act 2006, ss. 336–354, 360AA–360BA.

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B. Inertia

Faced with the pressure to deliver a regulatory design project in time-constrained circumstances, hard-pressed policy officials may, quite understandably, default to the status quo where it provides a "good enough" answer to a specific point, especially if doing so defers the need to confront difficult underlying issues.

A reluctance to open the box of potentially difficult issues can be seen in the treatment of financial reporting requirements in the design of the POP and PISCES regimes. Neither regime mandates specific accounting standards for the financial information that companies using these platforms must disclose. In the PISCES context, the FCA specifically ruled this out "as that might be a barrier to some companies using PISCES" and it has left open the possibility to use unaudited financial statements or even management accounts.[114] Under the POP regime it will thus be theoretically possible for a Ltd company to raise external equity from the public (including retail) investors via a POP on the basis of nothing more than its most recent report and accounts, which could be unaudited SME financial statements.[115] Whether this risk materialises will depend on how POP operators discharge their due diligence responsibilities. This means that the regimes start with an uneven playing field as between Ltd and Plc users of these platforms due to the ineligibility of Plcs to use the simplified SME financial reporting framework.[116] This is more than a technicality: in effect, the designers of the POP and PISCES regimes appear to have sidestepped the issue of properly getting to grips with the implications for financial reporting of the growing publicness of Ltd companies that these regimes facilitate and whether, and if so, how this is justifiably different from the publicness of unlisted Plcs and can thus explain the application of more demanding requirements. As noted earlier, the category of unlisted Plcs may include not only specialist SPVs that issue debt securities to professional investors, but also growth companies that are functionally very similar to Ltd companies but have taken a more precautionary approach to corporate form. It may be that some of the inconsistencies in financial reporting by companies using these platforms will be ironed out by market demands and/or additional requirements set by POP/PISCES operators for more investor grade financial information and for greater comparability. However, this is evidently not an issue on which public officials have been keen to take the lead.

As the world of corporate finance continues to evolve and the lines between public and private markets become even more blurred, the time

[114] FCA, "PS25/6", at [2.14].
[115] FCA, "PS25/10", at [2.46].
[116] Companies Act 2006, s. 384(1)(a).

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will come when explanations for regulatory policy decisions that are rooted in outdated assumptions about the differences between public (Plc) and private (Ltd) companies will cross over from being unsatisfactory to concerning.[117] The POP/PISCES situation just discussed is an example of an under-theorised policy choice. The decision not to be more prescriptive about financial reporting standards used by companies on these platforms and to leave the market to sort out any problems from lack of standardisation may ultimately prove justified. However, greater confidence in this approach would be possible if had been presented as the outcome of a rigorous analysis of the underlying value-laden issues involved in deciding when companies should be subject to more stringent requirements.

IV. Some Specific Reform Possibilities

This section therefore homes in on some reform possibilities that could be "easy wins" resulting from recognising more fully the irrationality of imposing more stringent requirements on a company just because it is a Plc. Actively shaping a policy agenda around this insight could allow not just for moving some requirements from one hook to another one, but also for the abolition of requirements where, looked at afresh and with scepticism about treating companies differently just because of differences in legal form, the rationale for having them is no longer convincing.

The possibilities for abolition discussed here concern the rules around formation of share capital, corporate payouts and reduction of capital, where the requirements are generally more stringent for Plcs than they are for Ltds. The UK's company law rules on corporate capital have been the target of sustained criticism over many years on grounds ranging from excessive technicality to failure to keep pace with developments in accounting,[118] the changing nature of business (notably,

[117] Note also the PISCES regime amendments to the Companies Act 2006, Part 22 on information about interests in a company shares: PISCES Regulations 2025, Sched. 1, Pt. 2. These amendments are meant to extend to Ltd companies with shares traded on PISCES rights that Plcs have to require information about interests in their shares. On proportionality grounds, the power of shareholders in Plcs to require companies to exercise these rights are not extended to Ltd companies trading on a PISCES: HM Treasury, "Policy Note: Draft Financial Services and Markets Act 2023 (Private Intermittent Securities and Capital Exchange System Sandbox) Regulations 2025", at [2.28], available at https://assets.publishing.service.gov.uk/media/67374dbacb0e41c0dba0f764/Policy_Note_Draft_Financial_Services_and_Markets_Act_2023__PISCES_Sandbox__Regulations_2025_.pdf (last accessed 7 June 2026). However, as drafted, the amendment can be read as removing this shareholder power for Plcs trading on PISCES, thereby creating a new anomaly.

[118] In particular, the need to have recourse to extensive additional guidance on the determination of net *realised* profits: Institute of Chartered Accountants in England and Wales and The Institutes of Chartered Accountants of Scotland, "Guidance on Realised and Distributable Profits under the Companies Act 2006", available at https://www.icaew.com/-/media/corporate/files/technical/technical-releases/legal-and-regulatory/tech-02-17-guidance-on-realised-and-distributable-profits-under-the-companies-act-2006.ashx (last accessed 7 June 2026).

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becoming less physical asset intensive and more human capital and intangibles intensive) and shifting investor preferences.[119] There are arguments that as directors' duties, solvency tests and insolvency law requirements also protect creditors' interests, detailed company law rules on capital could be abolished or at least significantly simplified.[120] However, the political will to act on these suggestions has been lacking thus far. In the current policy climate, in which simplification and burden-lightening are framed as mechanisms for stimulating economic growth, these ideas warrant renewed consideration.

First, much has been written about the shortcomings of the Plc minimum capital requirement as a creditor protection mechanism and it is not necessary to rehearse the arguments in full here.[121] In effect, a process of gradual obsolescence is already quite advanced because the minimum amount required (£50,000) has never been increased since it was introduced in 1980. Still, it is one more thing to have to think about. Financing SPV Plcs would be a major beneficiary of abolition of this requirement. The appropriate level of an SPV's equity capitalisation is a matter that the market is well placed to determine as part of the structuring of a transaction and there is no need for an arbitrary statutory floor. Experience from Ireland indicates that the debt market does not have a problem with low-capital SPVs. The Irish DAC has become a popular choice as a financing SPV notwithstanding that has a minimum capital of only €1.[122]

Second, the major review that preceded the Companies Act 2006 included a strong recommendation to make the solvency statement reduction of capital procedure available to Plcs as well as to Ltd companies.[123] This recommendation was not implemented in large part because "concern was expressed that the proposed additional safeguards built into the procedure for public companies – to meet unavoidable EU requirements – meant that few public companies would use the solvency statement procedure in practice".[124] The way is now open to consider afresh whether the prohibition on Plc use of the solvency statement procedure for reduction of capital merits retention.[125]

[119] Ferran, Howell and Steffek, *Principles*, ch. 9 reviews this debate. KPMG, the global audit, tax and consultancy firm, has been a prominent practitioner voice calling for fundamental review of capital maintenance: KPMG, "Capital Maintenance: Let's Tackle the Difficult Questions", available at https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2019/12/kpmg-capital-maintenance1.pdf (last accessed 25 June 2026).

[120] Ferran, Howell and Steffek, *Principles*.

[121] Ibid., at 106–12 provides an overview of the debate. The same can be said of the rules relating to non-cash consideration, whose cost/benefit usefulness has been questioned in the literature: J. Rickford, "Reforming Capital" (2004) 15 European Business Law Review 919, 933–37.

[122] Companies Act 2014, Pt. 16 (Ireland).

[123] CLRSG, *Final Report*, at [2.31].

[124] DTI, "Company Law Reform", at [4.8].

[125] What this would look like would require much closer examination. For example, consideration could be given to adding a requirement for independent assurance to the reduction of capital solvency statement

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Third, the ban on Plcs financially assisting the acquisition of their own shares also stands out as a worthwhile candidate for abolition because of the extent to which its application has become increasingly anomalous in changing market conditions. In the review that preceded the Companies Act 2006, it was already felt that financial assistance law was not needed to protect creditor interests as this could be left to directors' duties and the insolvency legislation.[126] More recent developments in the case law have further clarified directors' duties with respect to creditors.[127] With regard to shareholders' interests, the conclusion at the time of the Companies Act 2006 was that it was inappropriate for private companies to continue to carry the compliance costs of navigating the ban on financial assistance as abusive transactions could be controlled in other ways, including via directors' duties.[128] A costs-based rationale for treating Ltd companies differently from Plcs does not sit comfortably with the modern reality of very large privately owned Ltd companies that have the resources to absorb significant compliance costs. These companies may present agency problems that are at least as severe at those encountered in the public markets. Indeed, it could even be argued that very large Ltd companies are *more* exposed to the sorts of abusive transactions that the ban on financial assistance is meant to tackle because unlike Plcs that are also publicly traded companies (i.e. the standard case), they are not subject to the disciplining effect of public market scrutiny and more formal controls such as the market abuse regime do not apply.[129] This point is made not to argue for bringing very large Ltd companies within the scope of the ban on financial assistance but simply to demonstrate the oddity of a position in which two companies that may be otherwise quite similar are subject to different requirements just because their legal forms are different.[130] The better response would be to abolish the ban on the giving of financial assistance for Plcs as well as Ltd companies. But for EU law, there is a

regime in the case of larger reductions. Compare Companies Act 2006, s. 643 (reduction of capital solvency statement – no assurance requirement) and s. 714 (share buyback solvency statement – independent assurance requirement).

[126] CLRSG, *Modern Company Law for a Competitive Economy: Company Formation and Capital Maintenance* (London 1999), at [3.41].

[127] *BTI 2014 L.C.C. v Sequana S.A.* [2022] UKSC 25, [2024] A.C. 211.

[128] DTI, "Company Law Reform", at [4.8].

[129] E. Ferran and N. Lalafaryan, "Private Finance and Financial Assistance" (2024) 39 Butterworths Journal of International Banking and Financial Law 369. UK market abuse regulation ("MAR") applies (so far as relevant to this discussion) in relation to financial instruments admitted to trading on a UK, EU or Gibraltar regulated market, multilateral trading facility ("MTF") or organised trading facility ("OTF"). Further on being private as a source of more, rather than fewer, risks: E. Pollman, "Adventure Capital" (2024) 96 Southern California Law Review 1341.

[130] De Fontenay and Rauterberg, "New Public/Private Equilibrium", making a similar point in relation to different corporate governance mandates as between privately owned and publicly-owned companies. Also, Georgiev, "Breakdown".

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good chance that this step would have been taken in 2006;[131] and the case in favour has not weakened in the intervening years.

This is not to suggest that eliminating all more stringent Plc-tailored corporate capital rules would be straightforward. The rules governing the determination of "profits available for distribution" illustrate the problem.[132] These rules sit at the core of the legal capital regime and operate through a dense technical framework of statutory requirements, accountancy guidance, common law maintenance of capital principle, directors' duties and insolvency law. Attempts to simplify this framework have historically failed to gain traction; caution and conservatism have generally prevailed.[133] However, questioning the necessity of the Plcs-only additional "net assets test" in the determination of distributable profits,[134] offers a credible and potentially productive new starting point. While examining this requirement would mean looking at arcane technicalities relating to the accounting treatment of unrealised losses and its impact on dividend paying capacity, this could develop into a more fundamental debate on the role of company law in protecting creditors' interests.

This note of caution reflects a broader reality: the Plc has functioned as a hook for additional requirements since 1980 and there will inevitably be some areas where reliance on it for regulatory escalation cannot be eliminated quickly because of interdependencies with other measures or broader sensitivities.[135] This constraint does not, however, weaken the case for scrutiny of the Plc corporate form because simply asking the critical questions can have a catalytic effect. It is not about a single stroke of the pen: highlighting the Plc corporate form's unfitness for regulatory tailoring purposes paves the way for an incremental process of burden-lightening reforms as cases for doing so become clearer. This section has provided several compelling examples.

V. Conclusion

In today's world of blurred lines in corporate finance, companies can acquire a significant degree of publicness in terms of their size, economic significance, dispersed shareholder base and visibility in society without needing to become a Plc or do an IPO onto an organised public market. This article has discussed regulatory innovations in the UK – the regimes for POPs

[131] DTI, "Company Law Reform", at [4.8].
[132] Companies Act 2006, Pt. 23.
[133] In the parliamentary debates that preceded the enactment of the Companies Act 2006, the distinguished company lawyer, Lord Wedderburn, argued for Ltd companies to be given more flexibility based on a solvency test for dividends but government support for this idea was not forthcoming: HL Deb. vol. 677 cols. 224–48 (11 January 2006) (Lord Wedderburn of Charlton, Lord Sharman, Lord Sainsbury of Turville).
[134] Companies Act 2006, s. 831.
[135] The ineligibility of Plcs to use SME financial reporting, discussed in Section III, is another example.

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and for the intermittent organised trading of privately-held securities – that have the potential to reinforce and accelerate the staying (or going) private trend and the implications of this trend for regulatory design.

The article has demonstrated that the statutory ban on public offers of securities by private limited companies has become a weak constraint on limited companies' access to a broad range of external growth funding and that it does not prevent share ownership from becoming dispersed. At the same time, the irrationality of using Plc corporate form as the hook for more stringent company law requirements has become more obvious. Ceasing to use Plc corporate form for regulatory tailoring purposes would allow the company law ban also to fall away, leaving the regulation of offers of securities to capital markets law, where it properly belongs.

While there are interdependencies that may slow the pace of change, useful progress can already be made by applying sustained scepticism to the continued use of Plc corporate form for regulatory tailoring purposes. By doing so, this article has identified some promising reform possibilities. Systematically questioning the status quo is worthwhile because it helps us to identify and capitalise on reform opportunities when they arise. In some instances, simple elimination of an outdated requirement tied to Plc status may be the best option; in others, where there is a continuing need for differentiation, the best option may be to switch to functional tools for regulatory escalation that do not depend on legal form.

In telling a cautionary tale about a failed experiment in using corporate legal form to tailor more stringent requirements to a subset of companies, the article has not sought to suggest that it has solved the problem of refitting company law and capital market regulation to a world in which the population of publicly traded companies is shrinking and most companies, including very large, economically significant ones, stay private, sitting at different points along the publicness continuum. The article's contribution to that much broader question has been to demonstrate what has not worked.

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