

Chapter 9

Continuing obligations



9.2 Requirements with continuing application

Admission to trading

9.2.1 **R** A *listed company* must comply with ■ LR 2.2.3 R at all times.

9.2.2 **R** A *listed company* must inform the FCA in writing as soon as possible if it has:

- (1) requested a RIE to admit or re-admit any of its *listed equity shares* to trading; or
- (2) requested a RIE to cancel or suspend trading of any of its *listed equity shares*; or
- (3) been informed by a RIE that trading of any of its *listed equity shares* will be cancelled or suspended.

Independent business

9.2.2A **R**

- (1) A *listed company* must carry on an independent business as its main activity at all times.
- (2) [deleted]

9.2.2AA **G** ■ LR 6.4.3G provides *guidance* on factors that may indicate that a *listed company* is not carrying on an independent business.

Controlling shareholders

9.2.2AB **R** A *listed company* with a *controlling shareholder* must demonstrate that, despite having a *controlling shareholder*, the *listed company* is still able to carry on an independent business as its main activity at all times.

9.2.2AC **G** ■ LR 6.5.3G provides *guidance* on factors that may indicate that a *listed company* with a *controlling shareholder* is not carrying on an independent business.

9.2.2AD **R** Where a *listed company* has a *controlling shareholder*, it must have in place at all times:

- (1) a written and legally binding agreement which is intended to ensure that the *controlling shareholder* complies with the undertakings in ■ LR 6.5.4R; and
- (2) a constitution that allows the election and re-election of *independent directors* to be conducted in accordance with ■ LR 9.2.2ER and ■ LR 9.2.2FR (election provisions).

9.2.2B **R** In order to comply with ■ LR 9.2.2ADR(1), where a *listed company* will have more than one *controlling shareholder*, the *listed company* will not be required to enter into a separate agreement with each *controlling shareholder* if:

- (1) the *listed company* reasonably considers, in light of its understanding of the relationship between the relevant *controlling shareholders*, that a *controlling shareholder* can procure the compliance of another *controlling shareholder* and that *controlling shareholder's associates* with the undertakings in ■ LR 6.5.4R; and
- (2) the agreement, which contains the undertakings in ■ LR 6.5.4R, entered into with the relevant *controlling shareholder* also contains:
 - (a) a provision in which the *controlling shareholder* agrees to procure the compliance of a non-signing *controlling shareholder* and its *associates* with the undertakings in ■ LR 6.5.4R; and
 - (b) the names of any such non-signing *controlling shareholder*.

9.2.2C **R** Where as a result of changes in ownership or control of a *listed company*, a *person* becomes a *controlling shareholder* of the *listed company*, the *listed company* will be allowed:

- (1) a period of not more than 6 months from the event that resulted in that *person* becoming a *controlling shareholder* to comply with ■ LR 9.2.2ADR(1); and
- (2) in the case of a *listed company* which did not previously have a *controlling shareholder*, until the date of the next annual general meeting of the *listed company*, other than an annual general meeting for which notice:
 - (a) has already been given; or
 - (b) is given within a period of 3 months from the event that resulted in that *person* becoming a *controlling shareholder*;
 to comply with ■ LR 9.2.2ADR(2).

9.2.2D **G** In complying with ■ LR 9.2.2ADR(2), a *listed company* may allow an existing *independent director* who is being proposed for re-election (including any such *director* who was appointed by the board of the *listed company* until the next annual general meeting) to remain in office until any resolution required by ■ LR 9.2.2FR has been voted on.

9.2.2E **R** Where ■ LR 9.2.2ADR applies, the election or re-election of any *independent director* by shareholders must be approved by:

- (1) the shareholders of the *listed company*; and
- (2) the *independent shareholders* of the *listed company*.

9.2.2F **R** Where **LR 9.2.2E R** applies, if the election or re-election of an *independent director* is not approved by both the shareholders and the *independent shareholders* of the *listed company*, but the *listed company* wishes to propose that *person* for election or re-election as an *independent director*, the *listed company* must propose a further resolution to elect or re-elect the proposed *independent director* which:

- (1) must not be voted on within a period of 90 days from the date of the original vote;
- (2) must be voted on within a period of 30 days from the end of the period set out in (1); and
- (3) must be approved by the shareholders of the *listed company*.

9.2.2G **R** A *listed company* must comply with the undertakings in **LR 6.5.4R** or **LR 9.2.2ADR(1)** at all times.

9.2.2H **G** In addition to the annual confirmation required to be included in a *listed company's* annual financial report under **LR 9.8.4R (14)**, the *FCA* may request information from a *listed company* under **LR 1.3.1 R (3)** to confirm or verify that an undertaking in **LR 6.5.4R** or **LR 9.2.2ADR(1)** or a procurement obligation (as set out in **LR 6.5.5R(2)(a)** or **LR 9.2.2BR (2)(a)**) contained in an agreement entered into under **LR 6.5.4R** or **LR 9.2.2ADR(1)** is being or has been complied with.

Control of business

9.2.2I **R** A *listed company* must exercise operational control over the business it carries on as its main activity at all times.

9.2.2J **G** **LR 6.6.3G** provides *guidance* on factors that may indicate that a *listed company* is not exercising operational control over the business it carries on as its main activity.

- 9.2.2K** **R**
- (1) This *rule* applies where a *mineral company* does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested.
 - (2) The *mineral company* is not required to comply with **LR 9.2.2IR** where it can demonstrate the factors set out in **LR 6.10.3R(2)**.

9.2.3 **R** [deleted]

9.2.4 **R** [deleted]

Compliance with the disclosure requirements, transparency rules and corporate governance rules

- 9.2.5** **G** A listed company, whose equity shares are admitted to trading on a regulated market, should consider the obligations under the disclosure requirements.
- 9.2.6** **R** A listed company that is not already required to comply with the obligations referred to under article 17 of the *Market Abuse Regulation* must comply with those obligations as if it were an issuer for the purposes of the disclosure requirements and transparency rules subject to article 22 of the *Market Abuse Regulation*.
- 9.2.6A** **G** A listed company, whose equity shares are admitted to trading on a regulated market, should consider its obligations under ■ DTR 4 (Periodic financial reporting), ■ DTR 5 (Vote holder and issuer notification rules), ■ DTR 6 (Access to information) and ■ DTR 7 (Corporate governance).
- 9.2.6B** **R** A listed company that is not already required to comply with the transparency rules must comply with ■ DTR 4, ■ DTR 5 and ■ DTR 6 as if it were an issuer for the purposes of the transparency rules.
- 9.2.6C** **R** A listed company that is not already required to comply with ■ DTR 7.3 (Related party transactions) must comply with ■ DTR 7.3 as if it were an issuer to which ■ DTR 7.3 applies, subject to the modifications set out in ■ LR 9.2.6DR.
- 9.2.6D** **R** For the purposes of ■ LR 9.2.6CR, ■ DTR 7.3 is modified as follows:
- (1) ■ DTR 7.3.2R must be read as if the words “has the meaning in UK-adopted IFRS” are replaced by:

“has the meaning:

 - (a) in UK-adopted IFRS; or
 - (b) where the listed company prepares annual consolidated financial statements in accordance with accounting standards which have been determined to be equivalent to UK-adopted IFRS and which are set out in the *TD Equivalence Decision*,
 - (i) in UK-adopted IFRS, or
 - (ii) in the equivalent accounting standards in accordance with which its annual consolidated financial statements are prepared;

at the choice of the listed company.”
 - (2) ■ DTR 7.3.8R(2) and ■ (3) do not apply;
 - (3) ■ DTR 7.3.9R must be read as follows:
 - (a) as if the words “after obtaining board approval” are replaced by “after publishing an announcement in accordance with ■ DTR 7.3.8R(1)”; and

- (b) the reference to ■ DTR 7.3.8R must be read as a reference to ■ DTR 7.3.8R as modified by ■ LR 9.2.6DR(2); and
- (4) in ■ DTR 7.3.13R the references to ■ DTR 7.3.8R must be read as references to ■ DTR 7.3.8R as modified by ■ LR 9.2.6DR(2).

Disclosure of rights attached to equity shares

9.2.6E

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Unless exempted in ■ LR 9.2.6HR, a *listed company* must:

- (1) forward to the *FCA* for publication a copy of one or more of the following:
 - (a) the approved *prospectus* or *listing particulars* for its *listed equity shares*;
 - (b) the relevant agreement or document setting out the terms and conditions on which its *listed equity shares* were issued; or
 - (c) a document describing:
 - (i) the rights attached to its *listed equity shares*;
 - (ii) limitations on such rights; and
 - (iii) the procedure for the exercise of such rights, produced in accordance with the relevant Annex of the *Prospectus Regulation* that would have applied had the *listed company* been required to produce a *prospectus* for those *listed equity shares*; and
- (2) if the information in relation to the rights attached to its *listed equity shares* set out in the document previously forwarded in accordance with (1) is no longer accurate, forward to the *FCA* for publication a copy of either of the following:
 - (a) a new document in accordance with (1); or
 - (b) a document describing or setting out the changes which have occurred in relation to the rights attached to the *listed company's listed equity shares*.

9.2.6F

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The documents in ■ LR 9.2.6ER must be forwarded to the *FCA* for publication by uploading them to the *national storage mechanism*.

9.2.6G

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The purpose of ■ LR 9.2.6ER is to require *listed companies* to maintain publicly available information in relation to the rights attached to their *listed equity shares* so that investors can access such information.

9.2.6H

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A *listed company* is exempt from ■ LR 9.2.6ER where:

- (1) it has previously forwarded to the *FCA* for publication, or otherwise filed with the *FCA*, a document specified in ■ LR 9.2.6ER(1);
- (2) if the information in relation to the rights attached to its *listed equity shares* set out in the document previously forwarded or filed in accordance with (1) is no longer accurate, it has forwarded to the *FCA*

for publication, or otherwise filed with the *FCA*, a copy of either of the following:

- (a) one of the documents specified in ■ LR 9.2.6ER(1); or
 - (b) a document describing or setting out the changes which have occurred in relation to the rights attached to the *listed company's listed equity shares*, and
- (3) the documents in (1) and (2) have been forwarded to the *FCA* for publication, or otherwise filed with the *FCA*, by:
- (a) forwarding them for publication on a location previously identified on the *FCA* website where the public can inspect documents referred to in the *listing rules* as being documents to be made available at the document viewing facility; or
 - (b) uploading them to the *national storage mechanism*.

9.2.7 R

(1) (2) [deleted]

9.2.8 R

[deleted]

9.2.8A G

[deleted]

9.2.9 G

[deleted]

9.2.10 R

[deleted]

Contact details

9.2.11 R

A *listed company* must ensure that the *FCA* is provided with up to date contact details of at least one appropriate person nominated by it to act as the first point of contact with the *FCA* in relation to the *company's* compliance with the *listing rules* and the *disclosure requirements* and *transparency rules*.

9.2.12 G

The contact person referred to in ■ LR 9.2.11 R will be expected to be:

- (1) knowledgeable about the *listed company* and the *listing rules* applicable to it;
- (2) capable of ensuring that appropriate action is taken on a timely basis; and
- (3) contactable on *business days* between the hours of 7 a.m. to 7 p.m.

Sponsors

9.2.13 G

A *listed company* should consider its notification obligations under ■ LR 8.5.

9.2.13A **R** In relation to the provision of a *sponsor service*, a *company* with a *premium listing* must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with ■ LR 8.

9.2.14 **R** [deleted]

Shares in public hands

9.2.15 **R** A *listed company* must comply with ■ LR 6.14.1R to ■ LR 6.14.3R at all times.

9.2.15A **G** [deleted]

9.2.16 **R**

9.2.17 **G**

Publication of unaudited financial information

9.2.18 **R**

- (1) This *rule* applies to a *listed company* that has published:
 - (a) any unaudited financial information in a *class 1 circular* or a *prospectus*; or
 - (b) any *profit forecast* or *profit estimate*.
- (2) The first time a *listed company* publishes financial information as required by ■ DTR 4.1 after the publication of the unaudited financial information, *profit forecast* or *profit estimate*, it must:
 - (a) reproduce that financial information, *profit forecast* or *profit estimate* in its next annual report and accounts;
 - (b) produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced under paragraph (2)(a); and
 - (c) provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (2)(b) and those reproduced under paragraph (2)(a).

9.2.19 **G** ■ LR 9.2.18 R does not apply to:

- (1) pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PR Regulation*; or
- (2) any preliminary statements of annual results or half-yearly or quarterly reports that are reproduced with the unaudited financial information.

Externally managed companies

9.2.20 **R** An *issuer* must at all times ensure that the discretion of its board to make strategic decisions on behalf of the *company* has not been limited or

transferred to a *person* outside the *issuer's group*, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *issuer's group*.

Voting on matters relevant to premium listing

- 9.2.21 **R**
- (1) Subject to ■ LR 9.2.22AR, where the provisions of ■ LR 5.2, ■ LR 5.4A, ■ LR 9.4, ■ LR 9.5, ■ LR 10, ■ LR 11, ■ LR 12 or ■ LR 15 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *listed company's shares* that have been *admitted to premium listing*.
 - (2) Where the provisions of ■ LR 5.2.5R(2), ■ LR 5.4A.4R(3)(b)(ii), ■ LR 5.4A.4R(3)(c)(ii) or ■ LR 9.2.2ER require that the resolution must in addition be approved by *independent shareholders*, only *independent shareholders* who hold the *listed company's shares* that have been *admitted to premium listing* can vote.

- 9.2.22 **G**
- The FCA may modify the operation of ■ LR 9.2.21 R in exceptional circumstances, for example to accommodate the operation of:
- (1) special share arrangements designed to protect the national interest;
 - (2) dual listed company voting arrangements; and
 - (3) voting rights attaching to *preference shares* or similar *securities* that are in arrears.

Voting on matters relevant to premium listing by holders of specified weighted voting rights shares

- 9.2.22A **R**
- (1) Holders of *specified weighted voting rights shares* may participate in a vote on matters falling within the provisions referred to in ■ LR 9.2.21R in accordance with the voting rights attached to those *shares*.
 - (2) ■ LR 9.2.22AR(1) only applies with respect to *issuers*:
 - (a) to which the condition in ■ LR 6.9.1AR applied on the first occasion they made an application for *shares* to be *admitted to premium listing*; and
 - (b) which have had no *class of weighted voting rights shares* in issue other than *specified weighted voting rights shares* since the *issuer* first had a *class of shares* admitted to *premium listing*.
 - (3) Subject to paragraph (4), the exception to ■ LR 9.2.21R in paragraph (1) applies for a period of 5 years beginning with the date on which the *issuer* first had a *class of shares* admitted to *premium listing*.
 - (4) Where an *admission of shares to premium listing* is connected with a transaction or arrangement of the kind listed below in relation to a *listed company* (A), the exception to ■ LR 9.2.21R in paragraph (1) applies for a period of 5 years beginning with the date on which A first had a *class of shares* admitted to *premium listing*:
 - (a) an acquisition of A;

- (b) a reorganisation or restructuring of *A's group*;
- (c) the *listing* of a new holding company of *A*;
- (d) a *reverse takeover* in connection with *A*;
- (e) a merger involving *A's* business;
- (f) any transaction or arrangement having similar effect to those set out in (a) to (e).

9.2.22B **G** The purpose of **LR 9.2.22AR(4)** is to ensure that holders of *specified weighted voting rights shares* only participate in the shareholder votes referred to for 5 years from the date of *company A's* initial *listing*, and not, for example, 5 years from the date of any new holding company's *admission to listing*. A group restructuring or a *reverse takeover* or another similar transaction should not have the effect of artificially extending the period within which holders of *A's* *specified weighted voting rights shares* may exercise voting rights on the matters relevant to *premium listing* referred to in **LR 9.2.21R(1)**.

9.2.22C **R** *Specified weighted voting rights shares* are *weighted voting rights shares* of a class which meet the following conditions:

- (1) subject to paragraph (2), each *share* carries the same number of votes on matters at a general meeting of the *company* as a *share* in the class admitted to *premium listing*;
- (2) in relation to the following matters only, each *share* may carry up to 20 times the votes carried by a *share* in the class admitted to *premium listing*:
 - (a) the removal of the holder as a *director* whether under section 168 of the Companies Act 2006 or otherwise; and
 - (b) following a change of control in the *issuer*, any matter; and
- (3) the *shares* may only be held by a *director* of the *issuer* or, following the death of a *director*, a beneficiary of the *director's* estate.

9.2.22D **R**

- (1) For the purposes of **LR 9.2.22CR(1)(b)**, (subject to paragraph (2)) a change of control is the acquisition by any *person* of an interest in *shares* in a *listed company* that, taken together with *shares* in which that *person* and any *persons* acting in concert with them are interested, results in that *person* being entitled to exercise or control the exercise of more than 50 per cent of the votes able to be cast on all or substantially all matters at general meetings of the *company*.
- (2) There is no change of control for the purposes of **LR 9.2.22CR(1)(b)** where the *person* acquiring an interest in *shares* is a holder of *specified weighted voting rights shares* or any *person* acting in concert with that *person*.
- (3) Without prejudice to the generality of paragraph (1), if such an acquisition is effected by means of:

- (a) a scheme of arrangement under Part 26 of the Companies Act 2006, a change of control occurs when the scheme of arrangement becomes effective;
- (b) a takeover offer under Part 28 of the Companies Act 2006, a change of control occurs when the takeover offer becomes unconditional in all respects.

9.2.22E **G** The effect of ■ LR 9.2.22AR(1) and ■ LR 9.2.22CR is that:

- (1) the holder of *specified weighting voting rights shares* may vote on matters otherwise reserved to holders of *premium listed shares* under ■ LR 9.2.21R(1) on the same basis as those shareholders, subject to ■ LR 9.2.22AR(2) to ■ (4); and
- (2) if there is a change of control, the holder of a *specified weighted voting rights share* may then vote on such matters on the basis of weighted voting rights of up to 20 times the votes attaching to a *premium listed share*, subject to ■ LR 9.2.22AR(2) to ■ (4) and ■ LR 9.2.22CR.

9.2.22F **G** The FCA may modify the operation of LR 9.2.21AR to LR 9.2.21DR in exceptional circumstances, for example to accommodate the operation of:

- (1) special share arrangements designed to protect the national interest;
- (2) dual listed company voting arrangements; and
- (3) voting rights attaching to *preference shares* or similar *securities* that are in arrears.

Notifications to the FCA: notifications regarding continuing obligations

9.2.23 **R** A *listed company* must notify the FCA without delay if it does not comply with any continuing obligation set out in ■ LR 9.2.2A R, ■ LR 9.2.2ABR, ■ LR 9.2.2ADR, ■ LR 9.2.2E R, ■ LR 9.2.2F R, ■ LR 9.2.15 R, ■ LR 9.2.21 R or ■ LR 9.2.22AR.

Notifications to the FCA: notifications regarding compliance with independence provisions

9.2.24 **R** A *listed company* must notify the FCA without delay if:

- (1) it no longer complies with ■ LR 9.2.2G R;
- (2) it becomes aware that an undertaking in ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) has not been complied with by the *controlling shareholder* or any of its *associates*; or
- (3) it becomes aware that a procurement obligation (as set out in ■ LR 6.5.5R(2)(a) or ■ LR 9.2.2BR (2)(a)) contained in an agreement entered into under ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) has not been complied with by a *controlling shareholder*.

Notifications to the FCA: notifications regarding LR 9.8.4AR

- 9.2.25 **R** A *listed company* must notify the FCA without delay if its annual financial report contains a statement of the kind specified under ■ LR 9.8.4A R.

Inability to comply with continuing obligations

- 9.2.26 **G** Where a *listed company* is unable to comply with a continuing obligation set out in ■ LR 9.2, it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note ■ LR 5.2.2 G (2) and ■ LR 5.4A.16 G.