

Chapter 1B

Introduction (Corporate governance)



1 B.1 Application and purpose (Corporate governance)

Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering 'Alternative Performance Measures'. See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

Purpose: Audit committees

- 1B.1.1** **G** The purpose of the requirements in **■ DTR 7.1** is to implement parts of the *Audit Directive* which require *issuers* that are required to appoint a *statutory auditor* to appoint an audit committee or have a body performing equivalent functions.

Application: Audit committees

- 1B.1.2** **R** Except as set out in **■ DTR 1B.1.3 R**, **■ DTR 7.1** applies to an *issuer*:
- (1) whose *transferable securities* are admitted to trading; and
 - (2) which is required to appoint a *statutory auditor*.

Exemptions

- 1B.1.3** **R** **■ DTR 7.1** does not apply to:
- (1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to:
 - (a) **■ DTR 7.1**, or to requirements implementing article 39 of the *Audit Directive* in any other *EEA State*; and
 - (b) articles 11(1), 11(2) and 16(5) of the *Audit Regulation*;

[Note: article 39(3)(a) of the *Audit Directive*]
 - (2) any *issuer* the sole business of which is to act as the issuer of *asset-backed securities* provided the entity makes a statement available to the public setting out the reasons for which it considers it is not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;

[Note: article 39(3)(c) of the *Audit Directive*]
 - (3) a *credit institution* whose *shares* are not admitted to trading and which has, in a continuous or repeated manner, issued only *debt securities* which are admitted to trading provided that:
 - (a) the total nominal amount of all such *debt securities* remains below 100,000,000 Euros; and

(b) the *credit institution* has not been subject to a requirement to publish a prospectus in accordance with article 3 of the *Prospectus Regulation*; and

[Note: article 39(3)(d) of the *Audit Directive*]

(4) any *issuer* which is:

(a) a *UCITS*; or

(b) an *AIF*.

[Note: article 39(3)(b) of the *Audit Directive*]

Purpose: Corporate governance statements

1B.1.4 **G** The purpose of the requirements in **■ DTR 7.2** is to implement parts of the *Accounting Directive* (including that Directive as applied to banking and insurance companies) which require companies to publish a corporate governance statement.

Application: Corporate governance statements

1B.1.5 **R** Except as set out in **■ DTR 1B.1.6R** and **■ DTR 1B.1.7R**, **■ DTR 7.2** applies to an *issuer*:

(1) whose *transferable securities* are admitted to trading; and

(2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

1B.1.5A **G** **■ LR 9.8.7A R**, **■ LR 14.3.24 R** and **■ LR 18.4.3 R (2)** extend the application of **■ DTR 7.2** (Corporate governance statements) for certain *overseas companies* which have *securities* admitted to the *official list* maintained by the *FCA* in accordance with section 74 (The official list) of the *Act*.

Exemptions

1B.1.6 **R** The *rules* in **■ DTR 7.2.2 R**, **■ 7.2.3R**, **■ 7.2.7R** and **■ 7.2.8AR** do not apply to an *issuer* which has not issued *shares* which are admitted to trading unless it has issued *shares* which are traded on an *MTF*.

[Note: article 20(4) of the *Accounting Directive*]

1B.1.7 **R** **■ DTR 7.2.8AR** does not apply to an *issuer* which:

(1) qualifies as a small company under sections 382 to 383 of the Companies Act 2006; or

(2) qualifies as a medium company under sections 465 to 466 of the Companies Act 2006,

in relation to the financial year to which the corporate governance statement relates.

[Note: article 20(5) of the *Accounting Directive*]

- 1B.1.8** **G** ■ DTR 7.2.8AR does not apply to a *listed company* which:
- (1) is required to comply with ■ DTR 7.2 as if it were an *issuer* by ■ LR 9.8.7AR, ■ LR 14.3.24R or ■ LR 18.4.3R(2); and
 - (2) would meet the criteria in ■ DTR 1B.1.7R if it were a company incorporated in the *United Kingdom*.

Purpose: Related party transactions

- 1B.1.9** **G** The purpose of the requirements in ■ DTR 7.3 is to implement parts of the *Shareholder Rights Directive* which require companies to have safeguards that apply to material transactions with related parties.

Application: Related party transactions

- 1B.1.10** **R** ■ DTR 7.3 applies to an *issuer*:
- (1) any *shares* of which:
 - (a) carry rights to vote at general meetings; and
 - (b) are *admitted to trading*; and
 - (2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

[**Note:** article 1(1) of the *Shareholder Rights Directive*]

- 1B.1.11** **G** ■ LR 9.2.6CR, ■ LR 14.3.25R, ■ LR 15.4.1R, ■ LR 21.4.1R and ■ LR 21.8.17AR extend the application of ■ DTR 7.3 (Related party transactions) for certain *listed companies* which have *equity shares* or *certificates representing shares* admitted to the *official list* maintained by the *FCA* in accordance with section 74 (The official list) of the *Act*.



1B.2 Modifying rules and consulting the FCA

1B.2.1

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The *rules and guidance* provisions in ■ DTR 1A.2 are deemed to apply to *corporate governance rules* as they apply to *transparency rules*.

