

Chapter 21

Sovereign Controlled Commercial Companies: Premium listing

21.8 Continuing obligations: Certificates representing shares

Compliance with LR 9 (Continuing obligations)

- 21.8.1** **R** A *listed company* must comply with ■ LR 9 (Continuing obligations) except:
- (1) ■ LR 9.2.1R to ■ LR 9.2.2R;
 - (2) ■ LR 9.2.5G to ■ LR 9.2.6DR;
 - (3) ■ LR 9.2.15R to ■ LR 9.2.15AG;
 - (4) ■ LR 9.2.21R to ■ LR 9.2.22G; and
 - (5) ■ LR 9.2.26G; and
- subject to the modifications and additional requirements set out in ■ LR 21.8.2R to ■ LR 21.8.12R.
- 21.8.2** **R** For the purposes of ■ LR 21.8.1R, references to the *listed company* or the *issuer* must be read as references to the *issuer* of the *equity shares* which the certificates represent in ■ LR 9.
- 21.8.2A** **R** For the purposes of ■ LR 21.8.1R, in ■ LR 9.2.23R the reference to ■ LR 9.2.21R should be read as a reference to ■ LR 21.8.22R.
- 21.8.2B** **R** For the purposes of ■ LR 21.8.1R, references to *listed equity shares* in ■ LR 9.2.6ER to ■ LR 9.2.6HR must be read as references to:
- (1) *listed certificates representing shares*; and
 - (2) the *equity shares* which the *listed certificates* represent.
- 21.8.3** **G** For the purposes of ■ LR 21.8.1R, in ■ LR 9.2.2AAG factors that may indicate that a *listed company* does not satisfy ■ LR 9.2.2AR also include situations where a *listed company* has granted or may be required to grant security over its business in connection with the funding of a *sovereign controlling shareholder*.

21.8.4 **R** For the purposes of ■ LR 21.8.1R, references to *controlling shareholder* must be read as excluding a *sovereign controlling shareholder* in, or for the purposes of, the following:

- (1) ■ LR 9.2.2ABR and ■ LR 9.2.2ACG;
- (2) ■ LR 9.2.2ADR(1);
- (3) ■ LR 9.2.2BR;
- (4) ■ LR 9.2.2CR;
- (5) ■ LR 9.2.2GR and ■ LR 9.2.2HG;
- (6) ■ LR 9.8.4 R(11); and
- (7) ■ LR 9.8.4R(14).

21.8.5 **G** For the purposes of obtaining the shareholder approvals required by:

- LR 9.2.2ER;
- LR 9.2.2FR;
- LR 9.4.1R(2);
- LR 9.4.4R(2); and
- LR 9.5.10R(3)(a),

a *listed company* is required under ■ LR 21.8.13R to ensure that the holders of its *certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.

21.8.6 **G** For the purposes of ■ LR 9.3.11R the *listed company* is required under ■ LR 21.8.13R to ensure that, where the offer is made to holders of the *class* of *equity shares* which the certificates represent, the holders of its *certificates representing shares* have an equal opportunity to participate in the offer.

21.8.7 **R** For the purposes of ■ LR 21.8.1R, ■ LR 9.5 is modified as follows:

- (1) in ■ LR 9.5.1R(4) the *equity securities* which are the subject of the *rights issue* must be of the same *class* as the *equity shares* which are represented by the *listed certificates representing shares*;
- (2) ■ LR 9.5.3G does not apply;
- (3) in ■ LR 9.5.10R(1):
 - (a) the reference to a *class* already *listed* must be read as a reference to a *class* of *equity shares* which the *listed* certificates represent; and
 - (b) for the purposes of ■ LR 9.5.10R, if the *equity shares* are not listed, then the middle market price of those *equity shares* shall be

determined by reference to the middle market price of the *listed certificates representing shares*; and

- (4) a *listed company* must comply with the requirements in ■ LR 9.5.15R and ■ LR 9.5.16R so far as relevant to *certificates representing shares*.

21.8.8 G For the purposes of ■ LR 21.8.1R, in ■ LR 9.5 the *listed company* is required under ■ LR 21.8.13R to ensure that in relation to:

- (1) any *rights issue*; or
- (2) any *open offer* where the offer relates to the *class of equity shares* which the certificates represent,

the holders of its *certificates representing shares* have an equal opportunity to participate in the *rights issue* or *open offer*.

21.8.9 R In addition to complying with ■ LR 9.6.2R, a *listed company* must also forward to the FCA, for publication through the *document viewing facility*, two copies of all resolutions passed by the holders of the *listed certificates representing shares*. It must also comply with the notification requirements set out in ■ LR 9.6.3R in relation to such resolutions.

21.8.10 R For the purposes of ■ LR 21.8.1R:

- (1) in ■ LR 9.6.4R(3) the reference to *listed shares* must be read as a reference to *equity shares* of the *class* which the certificates represent; and
- (2) in ■ LR 9.8.4CR the reference to ■ LR 9.8.4R must be read as a reference to ■ LR 9.8.4R as modified by ■ LR 21.8.4R.

21.8.11 R In addition to complying with ■ LR 9.6.18R, a *listed company* must also notify a *RIS* as soon as possible after a meeting of the holders of the *listed certificates representing shares* of all resolutions passed by the holders.

21.8.12 R In addition to complying with ■ LR 9.7A.2R, a *listed company* must comply with the notification requirements in ■ LR 9.7A.2R in respect of the *equity shares* which the certificates represent.

Additional requirements: exercise of rights attaching to the equity shares which the certificates represent

- 21.8.13** R
- (1) The rights attaching to the *equity shares* which the certificates represent must at all times be capable of being exercised by the holders of the certificates as if they were the holders of the relevant *equity shares*.
 - (2) A *listed company* must at all times have in place arrangements which enable the holders of the certificates to exercise the rights attaching to the *equity shares* which the certificates represent as if they were the holders of the relevant *equity shares*.

- (3) Every *circular* which is sent by a *listed company* to the holders of the *equity shares* which the certificates represent must be sent to the holders of its *certificates representing shares* at the same time as the *circular* is despatched to the holders of those *equity shares*.

Additional requirements: compliance with the disclosure requirements, transparency rules and corporate governance rules

- 21.8.14 **G** A *listed company*, whose *certificates representing shares* are admitted to trading on a *regulated market*, should consider its obligations under the *disclosure requirements*.
- 21.8.15 **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*.
- 21.8.16 **G** A *listed company*, whose *certificates representing 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** (Continuing obligations and access to information) and **■ DTR 7** (Corporate governance).
- 21.8.17 **R** A *listed company* that is not already required to comply with **■ DTR 4**, **■ DTR 5** and **■ DTR 6** must comply with **■ DTR 4**, **■ DTR 5** and **■ DTR 6** as if it were an *issuer* of *shares* for the purposes of the *transparency rules*.
- 21.8.17A **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 21.8.17BR**.
- 21.8.17B **R** For the purposes of **■ LR 21.8.17AR**, **■ 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 21.8.17BR(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 21.8.17BR(2).

Additional requirements: certificates in public hands and admission to trading

- 21.8.18 **R** A *listed company* must comply with ■ LR 21.6.18R at all times.
- 21.8.19 **G** Where the *FCA* has modified ■ LR 21.6.18R to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the *FCA* considers that in practice the market for the *certificates representing shares* is not operating properly, the *FCA* may revoke the modification in accordance with ■ LR 1.2.1R(4).
- 21.8.20 **R** A *listed company* must comply with ■ LR 21.6.23R at all times.
- 21.8.21 **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 certificates representing shares* to trading; or
 - (2) requested a *RIE* to cancel or suspend trading of any of its *listed certificates representing shares*; or
 - (3) been informed by a *RIE* that trading of any of its *listed certificates representing shares* will be cancelled or suspended.

Additional requirements: voting on matters relevant to premium listing

- 21.8.22 **R**
 - (1) Where pursuant to ■ LR 21.8, ■ LR 21.9 or ■ LR 21.10 the provisions of ■ LR 9.4, ■ LR 9.5, ■ LR 10, ■ LR 11 or ■ LR 12 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *class of equity shares* which the certificates that have been admitted to *premium listing* represent.
 - (2) Where pursuant to ■ LR 21.8 the provisions of ■ LR 9.2.2ER require that the resolution must in addition be approved by the *independent shareholders*, only:
 - (a) *independent shareholders* who hold *equity shares* of the *class* which the certificates that have been admitted to *premium listing* represent; and

- (b) holders of certificates admitted to *premium listing* who would be *independent shareholders* within (a) if they held the *equity shares* which the certificates represent;
can vote.
- (3) Where the provisions of ■ LR 5.2 or ■ LR 5.4A require a vote of the holders of the certificates to be taken, that vote must be decided by a resolution of the holders of the *listed company's certificates representing shares* that have been admitted to *premium listing*.
- (4) Where the provisions of ■ LR 5.2.5R(2A) or ■ LR 5.4A.4R(3)(e)(ii) require that the resolution must in addition be approved by holders of certificates other than the *controlling shareholder*, only holders of the *listed company's certificates representing shares* that have been admitted to *premium listing* can vote.
- 21.8.23 G (1) In the case of a shareholder vote referred to in ■ LR 21.8.22R(1) the *listed company* is required under ■ LR 21.8.13R to ensure that the holders of the *listed certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent on any shareholder vote.
- (2) The purpose of ■ LR 21.8.22R(2) is to ensure that the election or re-election of *independent directors* must be approved by the *independent shareholders* as a class. That class includes those persons whose entitlement to vote on the election of the *independent directors* arises as a result of their holding of *certificates representing shares* that have been admitted to *premium listing*. Accordingly, in the case of approval by the *independent shareholders* referred to in ■ LR 21.8.22R(2) the *listed company* is required under ■ LR 21.8.13R to ensure that the holders of the *listed certificates representing shares* are able to exercise the votes attaching to the *equity shares* which the certificates represent in relation to any such approval.
- 21.8.24 G Where the provisions of ■ LR 5.2.5R(2A) or ■ LR 5.4A.4R(3)(e)(ii) require that the resolution must in addition be approved by holders of certificates other than the *controlling shareholder*, the *controlling shareholder* will include a *sovereign controlling shareholder*.
- 21.8.25 G The *FCA* may modify the operation of ■ LR 21.8.22R 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.
- 21.8.26 G Where a *listed company* is unable to comply with a continuing obligation set out in:
- (1) ■ LR 9.2 as modified by ■ LR 21.8; or

(2) ■ LR 21.8.13R to ■ LR 21.8.25G,

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 5.2.2G(2) and ■ LR 5.4A.16G.

Additional requirements: working capital statement

21.8.27

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In relation to an application for *admission of certificates representing shares* of an *applicant* that has *certificates representing shares* already listed:

- (1) an *applicant* must satisfy the *FCA* that it and its *subsidiary undertakings* (if any) have sufficient working capital available for the *group's* requirements for at least the next 12 months from the date of publication of the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted; and
- (2) if the *prospectus* or *listing particulars* for the *certificates representing shares* that are being admitted does not include a working capital statement which demonstrates that the requirement under paragraph (1) is satisfied, then:
 - (a) an *applicant* must prepare and publish a working capital statement which demonstrates that the requirement under paragraph (1) is satisfied;
 - (b) the working capital statement required by paragraph (a) must be prepared in accordance with item 3.1 of Annex 11 of the *PR Regulation*; and
 - (c) the working capital statement required by paragraph (a) must be published at the same time as the *prospectus* or *listing particulars*, as applicable.

21.8.28

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A working capital statement published for the purposes of ■ LR 21.8.27R must be published by means of a *RIS*.

Additional requirements: sovereign controlling shareholder

21.8.29

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A *listed company* must at all times have a *sovereign controlling shareholder*.

21.8.30

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To comply with ■ LR 21.8.29R, a State which is a *sovereign controlling shareholder* must be either:

- (1) recognised by the government of the *UK* as a *State*; or
- (2) the *UK*.

21.8.31

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A *listed company* must notify the *FCA* without delay if it no longer complies with the continuing obligation set out in ■ LR 21.8.29R.

21.8.32

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Where a *listed company* is unable to comply with the continuing obligation set out in ■ LR 21.8.29R, 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 5.2.2G(2) and ■ LR 5.4A.17G.

Change of depositary

- 21.8.33 **R** Prior to any change of the *depositary of certificates representing shares*, the new *depositary* must satisfy the *FCA* that it meets the requirements of ■ LR 21.6.22R to ■ LR 21.6.26G.

Notification of change of depositary

- 21.8.34 **R**
- (1) An *issuer of equity shares* represented by *listed certificates representing shares* must notify a *RIS* of any change of *depositary*.
 - (2) The notification required by paragraph (1) must be made as soon as possible and in any event by 7:30 a.m. on the *business day* following the change of *depositary*, and must contain the following information:
 - (a) the name, registered office and principal administrative establishment if different from the registered office of the *depositary*;
 - (b) the date of incorporation and length of life of the *depositary*, except where indefinite;
 - (c) the legislation under which the *depositary* operates and the legal form which it has adopted under the legislation; and
 - (d) any changes to the information regarding the *certificates representing shares*.

Sponsors

- 21.8.35 **G** A *listed company* should consider the requirements in ■ LR 8.2 (When a sponsor must be appointed or its guidance obtained) and ■ LR 8.5 (Responsibilities of listed companies), subject to the modification to ■ LR 8.2.3R in ■ LR 21.10.5R.