

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.
- 21.8.3** **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 in the United Kingdom, 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 (or with corresponding requirements imposed by another EEA Member State) 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:*
- (1) ■ DTR 7.3 (Related party transactions); or
 - (2) requirements imposed by another EEA State that correspond to ■ DTR 7.3;
- 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 IFRS” are replaced by:
 - “has the meaning:
 - (a) in 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 IFRS by the European Commission in accordance with Commission Regulation (EC) No. 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council,
 - (i) in 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** R 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 3 of the *PD 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** R 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** R A *listed company* must at all times have a *sovereign controlling shareholder*.
- 21.8.30** R 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 **R** 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 **G** 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.