

## Chapter 9

# Continuing obligations

## 9.8 Annual financial report

[Note: ■ LR 9.8 does not apply to a *listed company* with a financial year ending before 30 September 2013, or to a *listed company* with a financial year ending on or after 30 September 2013 whose annual financial report has been made public on or before 13 December 2013. As set out in ■ LR TR 11, a *listed company* with a financial year ending before 30 September 2013, or a *listed company* with a financial year ending on or after 30 September 2013 whose annual financial report has been made public on or before 13 December 2013, must instead comply with the requirements set out in ■ LR App 2.]

9.8.1 ■ [deleted]

9.8.2 ■ [deleted]

9.8.3 ■ [deleted]

### Information to be included in annual report and accounts

9.8.4 ■ In addition to the requirements set out in ■ DTR 4.1 a *listed company* must include in its annual financial report, where applicable, the following:

- (1) a statement of the amount of interest capitalised by the *group* during the period under review with an indication of the amount and treatment of any related tax relief;
- (2) any information required by ■ LR 9.2.18 R (Publication of unaudited financial information);
- (3) [deleted]
- (4) details of any long-term incentive schemes as required by ■ LR 9.4.3 R;
- (5) details of any arrangements under which a *director* of the *company* has waived or agreed to waive any emoluments from the *company* or any *subsidiary undertaking*;
- (6) where a *director* has agreed to waive future emoluments, details of such waiver together with those relating to emoluments which were waived during the period under review;
- (7) in the case of any allotment for cash of *equity securities* made during the period under review otherwise than to the holders of the *company's equity shares* in proportion to their holdings of such *equity*

*shares* and which has not been specifically authorised by the *company's* shareholders:

- (a) the classes of shares allotted and for each class of shares, the number allotted, their aggregate nominal value and the consideration received by the company for the allotment;
  - (b) the names of the allottees, if less than six in number, and in the case of six or more allottees a brief generic description of each new class of equity holder (e.g. holder of loan stock);
  - (c) the market price of the allotted *securities* on the date on which the terms of the issue were fixed; and
  - (d) the date on which the terms of the issue were fixed;
- (8) the information required by paragraph (7) must be given for any unlisted *major subsidiary undertaking* of the *company*;
- (9) where a *listed company* has listed shares in issue and is a *subsidiary undertaking* of another *company*, details of the participation by the *parent undertaking* in any placing made during the period under review;
- (10) details of any *contract of significance* subsisting during the period under review:
- (a) to which the *listed company*, or one of its *subsidiary undertakings*, is a party and in which a *director* of the *listed company* is or was materially interested; and
  - (b) between the *listed company*, or one of its *subsidiary undertakings*, and a *controlling shareholder*;
- (11) details of any contract for the provision of services to the *listed company* or any of its *subsidiary undertakings* by a *controlling shareholder*, subsisting during the period under review, unless:
- (a) it is a contract for the provision of services which it is the principal business of the shareholder to provide; and
  - (b) it is not a *contract of significance*;
- (12) details of any arrangement under which a shareholder has waived or agreed to waive any dividends;
- (13) where a shareholder has agreed to waive future dividends, details of such waiver together with those relating to dividends which are payable during the period under review; and
- (14) a statement made by the board:
- (a) that the *listed company* has entered into any agreement required under ■ LR 9.2.2ADR(1); or
  - (b) where the *listed company* has not entered into an agreement required under ■ LR 9.2.2ADR(1):
    - (i) a statement that the *FCA* has been notified of that non-compliance in accordance with ■ LR 9.2.23 R; and
    - (ii) a brief description of the background to and reasons for failing to enter into the agreement that enables shareholders

to evaluate the impact of non-compliance on the *listed company*; and

- (c) that:
  - (i) the *listed company* has complied with the undertakings in ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) during the period under review;
  - (ii) so far as the *listed company* is aware, the undertakings in ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) have been complied with during the period under review by the *controlling shareholder* or any of its *associates*; and
  - (iii) so far as the *listed company* is aware, the procurement obligation (as set out in ■ LR 6.5.5R(2)(a) or ■ LR 9.2.2BR (2)(a)) included in any agreement entered into under ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) has been complied with during the period under review by a *controlling shareholder*; or
- (d) where 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)) included in any agreement entered into under ■ LR 6.5.4R or ■ LR 9.2.2ADR(1) has not been complied with during the period under review:
  - (i) a statement that the *FCA* has been notified of that non-compliance in accordance with ■ LR 9.2.24 R; and
  - (ii) a brief description of the background to and reasons for failing to comply with the relevant undertaking or procurement obligation that enables shareholders to evaluate the impact of non-compliance on the *listed company*.

**9.8.4A** R Where an *independent director* declines to support a statement made under ■ LR 9.8.4R (14)(a) or ■ (c), the statement must record this fact.

**9.8.4B** G Where a *listed company's* annual financial report contains a statement of the type referred to in ■ LR 9.8.4R (14)(b) or ■ (d), the *FCA* may still take any action it considers necessary in relation to the underlying breach by the *listed company* of ■ LR 9.2.2ADR(1) or ■ LR 9.2.2G R.

**9.8.4C** R The *listed company's* annual financial report must include the information required under ■ LR 9.8.4 R in a single identifiable section, unless the annual financial report includes a cross reference table indicating where that information is set out.

**9.8.5** G A *listed company* need not include with the annual report and accounts details of waivers of dividends of less than 1% of the total value of any dividend provided that some payment has been made on each *share* of the relevant *class* during the relevant calendar year.

**Additional information**

**9.8.6** R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

(1) a statement setting out all the interests (in respect of which transactions are notifiable to the company under article 19 of the *Market Abuse Regulation*) of each *person* who is a *director* of the *listed company* as at the end of the period under review including:

- (a) all changes in the interests of each *director* that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the annual general meeting; or
- (b) if there have been no changes in the period described in paragraph (a), a statement that there have been no changes in the interests of each *director*.

Interests of each *director* includes the interests of *connected persons* of which the *listed company* is, or ought upon reasonable enquiry to become, aware.

(2) a statement showing the interests disclosed to the *listed company* in accordance with ■ DTR 5 as at the end of the period under review and:

- (a) all interests disclosed to the *listed company* in accordance with ■ DTR 5 that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the annual general meeting; or
- (b) if no interests have been disclosed to the *listed company* in accordance with ■ DTR 5 in the period described in (a), a statement that no changes have been disclosed to the *listed company*.

(3) statements by the *directors* on:

- (a) the appropriateness of adopting the going concern basis of accounting (containing the information set out in provision C.1.3 of the *UK Corporate Governance Code*); and
- (b) their assessment of the prospects of the *company* (containing the information set out in provision C.2.2 of the *UK Corporate Governance Code*);

prepared in accordance with the 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting' published by the Financial Reporting Council in September 2014;

(4) a statement setting out:

- (a) details of any shareholders authority for the purchase, by the *listed company* of its own *shares* that is still valid at the end of the period under review;
- (b) in the case of purchases made otherwise than through the market or by tender to all shareholders, the names of sellers of such *shares* purchased, or proposed to be purchased, by the *listed company* during the period under review;
- (c) in the case of any purchases made otherwise than through the market or by tender or partial offer to all shareholders, or options or contracts to make such purchases, entered into since the end of the period covered by the report, information equivalent to that required under Part 2 of Schedule 7 to the Large & Medium Sized Companies and Groups (Accounts and

Reports) Regulations 2008 (SI 2008/410) (Disclosure required by company acquiring its own shares etc); and

- (d) in the case of sales of *treasury shares* for cash made otherwise than through the market, or in connection with an *employees' share scheme*, or otherwise than pursuant to an opportunity which (so far as was practicable) was made available to all holders of the *listed company's securities* (or to all holders of a relevant class of its *securities*) on the same terms, particulars of the names of purchasers of such *shares* sold, or proposed to be sold, by the *company* during the period under review;
- (5) a statement of how the *listed company* has applied the Main Principles set out in the *UK Corporate Governance Code*, in a manner that would enable shareholders to evaluate how the principles have been applied;
- (6) a statement as to whether the *listed company* has:
  - (a) complied throughout the accounting period with all relevant provisions set out in the *UK Corporate Governance Code*; or
  - (b) not complied throughout the accounting period with all relevant provisions set out in the *UK Corporate Governance Code* and if so, setting out:
    - (i) those provisions, if any it has not complied with;
    - (ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and
    - (iii) the *company's* reasons for non-compliance; and
- (7) a report to the shareholders by the Board which contains the information set out in ■ LR 9.8.8 R.

## 9.8.6A

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- (1) The effect of ■ LR 9.8.6R (1) is that a *listed company* is required to set out a 'snapshot' of the total interests of a *director* and his or her *connected persons*, as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for PDMRs in article 19 of the *Market Abuse Regulation*. *Persons* who are *directors* during, but not at the end of, the period under review need not be included.
- (2) A *listed company* unable to compile the statement in ■ LR 9.8.6R (1) from information already available to it may need to seek the relevant information, or confirmation, from the *director* himself, including that in relation to *connected persons*, but would not be expected to obtain information directly from *connected persons*.

## 9.8.7

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An *overseas company* with a *premium listing* must include in its annual report and accounts the information in ■ LR 9.8.6R (5), ■ LR 9.8.6R (6) and ■ LR 9.8.8 R.

- 9.8.7A** **R** (1) An *overseas company* with a *premium listing* that is not required to comply with requirements imposed by another *EEA State* that correspond to **■ DTR 7.2** (Corporate governance statements) must comply with **■ DTR 7.2** as if it were an *issuer* to which that section applies.
- (2) An *overseas company* with a *premium listing* which complies with **■ LR 9.8.7 R** will be taken to satisfy the requirements of **■ DTR 7.2.2 R** and **■ DTR 7.2.3 R**, but (unless it is required to comply with requirements imposed by another *EEA State* that correspond to **■ DTR 7.2**) must comply with all of the other requirements of **■ DTR 7.2** as if it were an *issuer* to which that section applies.

### Report to shareholders

- 9.8.8** **R** The report to the shareholders by the Board required by **■ LR 9.8.6R (7)** must contain details of the unexpired term of any *director's* service contract of a *director* proposed for election or re-election at the forthcoming annual general meeting, and, if any *director* proposed for election or re-election does not have a *directors'* service contract, a statement to that effect.

### Information required by law

- 9.8.9** **G** The requirements of **■ LR 9.8.6R (6)** relating to corporate governance are additional to the information required by law to be included in the *listed company's* annual report and accounts.

### Auditors report

- 9.8.10** **R** A *listed company* must ensure that the auditors review each of the following before the annual report is published:
- (1) **■ LR 9.8.6R (3)** (statements by the *directors* regarding going concern and longer-term viability); and
  - (2) the parts of the statement required by **■ LR 9.8.6R (6)** (corporate governance) that relate to the following provisions of the *UK Corporate Governance Code*:
    - (a) C.1.1;
    - (b) C.2.1 and C.2.3; and
    - (c) C.3.1 to C.3.8.

**9.8.11** **R** [deleted]

**9.8.12** **R** [deleted]

### Strategic report with supplementary information

- 9.8.13** **R** Any strategic report with supplementary information provided to shareholders by a *listed company* as permitted under section 426 of the Companies Act 2006, must disclose:

- (1) earnings per share; and
- (2) the information required for a strategic report set out in or under the Companies Act 2006 and the supplementary material required under section 426A of the Companies Act 2006.