

Chapter 6

Additional requirements for
premium listing (commercial
company)

6.1 Application

6.1.1

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This chapter applies to an *applicant* for the *admission of equity shares to premium listing (commercial company)* except where:

- (1) the *applicant* meets the following conditions:
 - (a) it has an existing *premium listing (commercial company)* of *equity shares*;
 - (b) it is applying for the *admission of equity shares* of the same *class* as the *shares* that have been admitted to *premium listing*; and
 - (c) it is not entering into a transaction classified as a *reverse takeover*; or
- (2) the following conditions are met:
 - (a) a *company* has an existing *premium listing (commercial company)* of *equity shares*;
 - (b) the *applicant* is a new holding company of the *company* in (a); and
 - (c) the *company* in (a) is not entering into a transaction classified as a *reverse takeover*.

Applicant must satisfy requirements in this chapter

6.1.2

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An *applicant* to whom this chapter applies must satisfy the requirements in this chapter (in addition to those in ■ LR 2).

6.2 Historical financial information requirements

Content of historical financial information

- 6.2.1** **R** An *applicant* must have published or filed historical financial information that:
- (1) covers at least three years;
[Note: article 44 of the *CARD*]
 - (2) represents at least 75% of the *applicant's* business for the period in (1);
 - (3) unless **LR 5.6.21R** applies, has a latest balance sheet date that is not more than:
 - (a) six months before the date of the *prospectus* or *listing particulars* for the relevant *shares*; and
 - (b) nine months before the date the *shares* are *admitted to listing*; and
 - (4) includes the consolidated accounts for the *applicant* and all its *subsidiary undertakings*.
- 6.2.2** **G**
- (1) In determining what amounts to 75% of the *applicant's* business for the purpose of **LR 6.2.1R(2)**, the *FCA* will consider the size, in aggregate, of all of the acquisitions that the *applicant* has entered into during the period required by **LR 6.2.1R(1)** and up to the date of the *prospectus* or *listing particulars*, relative to the size of the *applicant* as enlarged by the acquisitions.
 - (2) In ascertaining the size of the acquisitions relative to the *applicant* for the purposes of **LR 6.2.1R(2)**, the *FCA* will take into account factors such as the assets, profitability and market capitalisation of the businesses.
 - (3) The figures used should be the latest available for the acquired entity and the *applicant* as enlarged by the acquisition or acquisitions.
- 6.2.3** **R** Where an *applicant* has made an acquisition or series of acquisitions such that its own consolidated financial information is insufficient to meet the 75% requirement in **LR 6.2.1R(2)**, there must be historical financial information relating to the acquired entity or entities which has been published or filed and that:

- (1) covers the period from at least three years prior to the date under ■ LR 6.2.1R(3) up to the earlier of:
 - (a) the date in ■ LR 6.2.1R(3); or
 - (b) the date of acquisition by the *applicant*;
- (2) is prepared and presented in a form that is consistent with the accounting policies adopted in the financial information required by ■ LR 6.2.1R; and
- (3) in aggregate with its own historical financial information represents at least 75% of the enlarged applicant's business for the period in ■ LR 6.2.1R(1).

Audit requirements for historical financial information

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The historical financial information in ■ LR 6.2.1R and ■ LR 6.2.3R must:

- (1) have been audited or reported on in accordance with the standards acceptable under Section 18 of Annex 1 of the *PR Regulation*; and
- (2) not be subject to a *modified report*, unless the circumstances set out in ■ LR 6.2.5G apply.

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The *FCA* may accept that ■ LR 6.2.4R(2) has been satisfied where a *modified report* is present only as a result of:

- (1) the presence of an emphasis-of-matter paragraph which arises in any of the earlier periods required by ■ LR 6.2.1R and the opinion on the final period is unmodified; or
- (2) the opinion on the historical financial information for the final period under ■ LR 6.2.1R includes an emphasis-of-matter paragraph with regard to going concern and ■ LR 6.7.1R (*Working capital*) is complied with.

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An *applicant* must:

- (1) take all reasonable steps to ensure that the *person* providing the opinion in ■ LR 6.2.4R(1) is independent of it; and
- (2) obtain written confirmation from the *person* providing the opinion in ■ LR 6.2.4R(1) that it complies with guidelines on independence issued or approved by its national accountancy or auditing bodies.



6.3 Revenue earning track record requirement

6.3.1 **R** The historical financial information required under ■ LR 6.2.1R and ■ LR 6.2.3R must:

demonstrate that the *applicant* has a revenue earning track record;
and

put prospective investors in a position to make an informed
assessment of the business for which *admission* is sought.

6.3.2 **G**

- (1) The purpose of ■ LR 6.2.1R(2), ■ LR 6.2.3R, and ■ LR 6.3.1R is to ensure that the *applicant* has representative financial information throughout the period required by ■ LR 6.2.1R(1) and ■ LR 6.2.3R and to assist prospective investors to make a reasonable assessment of what the future prospects of the *applicant's* business might be. Investors are then able to consider the *applicant's* historical financial information in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- (2) The *FCA* may consider that an *applicant* does not have representative historical financial information and that its *equity shares* are not eligible for a *premium listing* if a significant part or all of the *applicant's* business has one or more of the following characteristics:
 - (a) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the *applicant's* historical financial information;
 - (b) the value of the business on *admission* will be determined, to a significant degree, by reference to future developments rather than past performance;
 - (c) the relationship between the value of the business and its revenue or profit-earning record is significantly different from those of similar companies in the same sector;
 - (d) there is no record of consistent revenue, cash flow or profit growth throughout the period of the historical financial information;
 - (e) the *applicant's* business has undergone a significant change in its scale of operations during the period of the historical financial information or is due to do so before or after *admission*;

- (f) it has significant levels of research and development expenditure or significant levels of capital expenditure.



6.4 Independent business

- 6.4.1** **R** An *applicant* must demonstrate that it carries on an independent business as its main activity.
- 6.4.2** **G** ■ LR 6.4.1R is intended to ensure that the protections afforded to *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.4.3** **G** Factors that may indicate that an *applicant* does not satisfy ■ LR 6.4.1R include situations where:
- (1) a majority of the revenue generated by the *applicant's* business is attributable to business conducted directly or indirectly with one *person or group*;
 - (2) or the *applicant* cannot demonstrate that it has access to financing other than from one *person or group*; or
 - (3) the *applicant* does not have:
 - (a) strategic control over the commercialisation of its products; or
 - (b) strategic control over its ability to earn revenue; or
 - (c) freedom to implement its business strategy.

6.5 Controlling shareholders

- 6.5.1** **R** An *applicant* with a *controlling shareholder* must demonstrate that, despite having a *controlling shareholder*, the *applicant* is able to carry on an independent business as its main activity.
- 6.5.2** **G** ■ LR 6.5.1R is intended to ensure that the protections afforded to *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.5.3** **G** Factors that may indicate that an *applicant* does not satisfy the requirement in ■ LR 6.5.1R (even where the agreement in ■ LR 6.5.4R is in place) include:
- (1) an *applicant* has granted or may be required to grant security over its business in connection with the funding of a *controlling shareholder* or a member of a *controlling shareholder's group*; or
 - (2) a *controlling shareholder* (or any *associate* thereof) appears to be able to influence the operations of the *applicant* outside its normal governance structures or via material shareholdings in one or more significant *subsidiary undertakings*; or
 - (3) a *controlling shareholder* appears to be able to exercise improper influence over the *applicant*; or
 - (4) an *applicant* cannot demonstrate that it has access to financing other than from a *controlling shareholder* (or an *associate* thereof).
- 6.5.4** **R** An *applicant* with a *controlling shareholder* upon *admission* must have in place a written and legally binding agreement with its *controlling shareholder* which is intended to ensure that the *controlling shareholder* complies with undertakings that:
- (1) transactions and arrangements with the *controlling shareholder* (and/or any of its *associates*) will be conducted at arm's length and on normal commercial terms;
 - (2) neither the *controlling shareholder* nor any of its *associates* will take any action that would have the effect of preventing the *applicant* from complying with its obligations under the *listing rules*; and
 - (3) neither the *controlling shareholder* nor any of its *associates* will propose or procure the proposal of a shareholder resolution which is intended or appears to be intended to circumvent the proper application of the *listing rules*.

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An *applicant* with more than one *controlling shareholder* is not required to enter into a separate agreement with each *controlling shareholder* if:

- (1) the *applicant* 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 name of such non-signing *controlling shareholder*.

6.6 Control of the business

- 6.6.1** **R** An *applicant* must demonstrate that it exercises operational control over the business it carries on as its main activity.
- 6.6.2** **G** ■ LR 6.6.1R is intended to ensure that the protections afforded to holders of *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.6.3** **G** Factors that may indicate that an *applicant* does not satisfy the requirement in ■ LR 6.6.1R include where the *applicant's* business consists principally of holding *shares* in entities that it does not control, including entities where the *applicant*:
- (1) owns a minority holding of *shares*; or
 - (2) is only able to exercise negative control; or
 - (3) exercises control subject to contractual arrangements which could be altered without the *applicant's* agreement or could result in a temporary or permanent loss of control.



6.7 Working capital

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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 *shares* that are being admitted.

6.8 Warrants or options to subscribe

- 6.8.1** **R** The total of all issued *warrants* to subscribe for *equity shares* or *options* to subscribe for *equity shares* must not exceed 20% of the issued *equity share capital* (excluding *treasury shares*) of the *applicant* as at the time of issue of the *warrants* or *options*.
- 6.8.2** **R** For the purpose of the 20% limit in ■ LR 6.8.1R, rights under *employees' share schemes* are not included.



6.9 Constitutional arrangements

6.9.1 **R** An *applicant* must have in place a constitution that allows it to comply with the *listing rules*, in particular:

- (1) ■ LR 9.2.21R to vote on matters relevant to *premium listing*; and
- (2) for an *applicant* with a *controlling shareholder*, ■ LR 9.2.2ER and ■ LR 9.2.2FR concerning the election and re-election of *independent directors*.

Pre-emption rights

6.9.2 **R** If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to ■ LR 9.3.11R, an *overseas company* applying for a *premium listing* must:

- (1) ensure its constitution provides for rights which are at least equivalent to the rights provided in ■ LR 9.3.11R (as qualified by ■ LR 9.3.12R); and
- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.

6.10 Specialist companies: mineral companies

- 6.10.1** **R** Where a *mineral company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with the minimum three-year period required in ■ LR 6.2.1R(1) because it has been operating for a shorter period:
- (1) the *mineral company* must have published or filed historical financial information since the inception of its business; and
 - (2) the following apply to the *mineral company* only with regard to the period for which it has published or filed historical financial information pursuant to (1):
 - (a) ■ LR 6.2.1R(2), ■ LR 6.2.1R(3) and ■ LR 6.2.1R(4) (content of historical financial information); and
 - (b) ■ LR 6.2.4R and ■ LR 6.2.6R (audit requirements for historical financial information).
- 6.10.2** **R** ■ LR 6.3.1R (revenue earning track record) does not apply to a *mineral company* that applies for the *admission* of its *equity shares* to a *premium listing*.
- 6.10.3** **R**
- (1) This *rule* applies if the *mineral company* applies for the *admission* of its *equity shares* to *premium listing* and cannot comply with ■ LR 6.6.1R (control of business) because the *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* must demonstrate that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.



6.11 Specialist companies: scientific research based companies

6.11.1 **R** Where a *scientific research based company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with the minimum three-year period required in ■ LR 6.2.1R(1) because it has been operating for a shorter period:

- (1) the *scientific research based company* must have published or filed historical financial information since the inception of its business; and
- (2) the following apply to the *scientific research based company* only with regard to the period for which it has published or filed historical financial information under (1):
 - (a) ■ LR 6.2.1R(2), ■ LR 6.2.1R(3) and ■ LR 6.2.1R(4) (content of historical financial information); and
 - (b) ■ LR 6.2.4R and ■ LR 6.2.6R (audit requirements for historical financial information).

6.11.2 **R** If the *scientific research based company* does not comply with either ■ LR 6.2.1R(1) (minimum period for historical financial information) or ■ LR 6.3.1R (revenue earning track record), it must:

- (1) demonstrate its ability to attract funds from sophisticated investors prior to the marketing at the time of *listing*;
- (2) intend to raise at least £10 million pursuant to a marketing at the time of *listing*;
- (3) have a capitalisation, before the marketing at the time of *listing*, of at least £20 million (based on the issue price and excluding the value of any *equity shares* which have been issued in the six months before *listing*);
- (4) have as its primary reason for *listing* the raising of finance to bring identified products to a stage where they can generate significant revenues; and
- (5) demonstrate that it has a three year record in laboratory research and development including:
 - (a) details of patents granted or details of progress of patent applications; and
 - (b) the successful completion of, or the successful progression of, significant testing of the effectiveness of its products.

6.12 Specialist companies: property companies

6.12.1 **R** Where a *property company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with ■ LR 6.3.1R because it does not have a revenue earning track record:

- (1) the *property company* must demonstrate that it has three years of development of its real estate assets represented by increases of the gross asset value of its real estate assets:
 - (a) evidenced by the historical financial information required by ■ LR 6.2.1R; and
 - (b) supported by a published *property valuation report*; or
- (2) the *property company* must demonstrate that 75% of the gross asset value of an *applicant's* real estate assets, as supported by a published *property valuation report*, are revenue generating at the point in time when the application for *admission* of the *equity shares* to a *premium listing* is made.

6.12.2 **G** For the purposes of ■ LR 6.12.1R, the *property valuation report* should be published in the *applicant's prospectus*.

6.12.3 **R** Where a *property company* is relying on ■ LR 6.12.1R(2) and cannot comply with ■ LR 6.2.1R(1) because it has been operating for a shorter period:

- (1) the *property company* must have published or filed historical financial information since the inception of its business; and
- (2) the following apply to the *property company* only with regard to the period for which it has published or filed historical financial information under (1):
 - (a) ■ LR 6.2.1R(2), ■ LR 6.2.1R(3) and ■ LR 6.2.1R(4) (content of historical financial information); and
 - (b) ■ LR 6.2.4R and ■ LR 6.2.6R (audit requirements for historical financial information).

6.13 Externally managed companies

- 6.13.1** **R** An *applicant* must satisfy the *FCA* that:
- (1) the discretion of its board to make strategic decisions on behalf of the *applicant* has not been limited or transferred to a *person* outside the *applicant's group*; and
 - (2) its board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *applicant's group*.
- 6.13.2** **G** In considering whether an *applicant* has satisfied **LR 6.13.1R**, the *FCA* will consider, among other things, whether the board of the *applicant* consists solely of *non-executive directors* and whether significant elements of the strategic decision-making of or planning for the *applicant* take place outside the *applicant's group*, for example with an *external management company*.

6.14 Shares in public hands

6.14.1 **R** Where an *applicant* is applying for the *admission* of a *class* of *equity shares* to *premium listing*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.

[Note: article 48 of the *CARD*]

6.14.2 **R** For the purposes of ■ LR 6.14.1R:

- (1) account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states;
- (2) a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands; and
- (3) *treasury shares* are not to be taken into consideration when calculating the number of *shares* of the *class*.

[Note: article 48 of the *CARD*]

6.14.3 **R** For the purposes of ■ LR 6.14.1R and ■ LR 6.14.2R, *shares* are not held in public hands if they are:

- (1) held, directly or indirectly by:
 - (a) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
 - (b) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
 - (c) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
 - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
 - (e) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the *shares* of the relevant class;
- (2) subject to a lock-up period of more than 180 calendar days.

[Note: article 48 of the *CARD*]

6.14.4 **G** When calculating the number of *shares* for the purposes of ■ LR 6.14.3R(1)(e), holdings of *investment managers* in the same *group* where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the *group* to which the *investment manager* belongs will be disregarded.

6.14.5 **G** (1) The *FCA* may modify ■ LR 6.14.1R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public.

[Note: article 48 of the *CARD*]

(2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

- (a) *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*;
- (b) the number and nature of the public shareholders; and
- (c) in relation to *premium listing (commercial companies)*, whether the expected market value of the *shares* in public hands at *admission* exceeds £100 million.



6.15 Shares of a non-EEA company

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The *FCA* will not admit *shares* of an *applicant* incorporated in a *non-EEA State* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[**Note:** article 51 of the *CARD*]