

## Chapter 5

# Equity shares (commercial companies): requirements for admission to listing

## 5.4 Constitutional arrangements

- 5.4.1** **R** An *applicant* must have in place a *constitution* that allows it to comply with the *listing rules* – in particular:
- (1) **■ UKLR 6.2.27R** to vote on matters that must be decided by a resolution of the holders of the *listed company's equity shares* that have been *admitted* to the *equity shares (commercial companies)* category; and
  - (2) for an *applicant* with a *controlling shareholder*, **■ UKLR 6.2.8R** and **■ UKLR 6.2.9R** concerning the election and re-election of *independent directors*.
- 5.4.2** **R** An *applicant* must have in place a *constitution* which ensures that all *equity shares* in a *class* that has been *admitted* to the *equity shares (commercial companies)* category carry an equal number of votes on any shareholder vote.
- 5.4.3** **R** Where the *applicant* will have more than one *class* of *equity shares* admitted to the *equity shares (commercial companies)* category, the aggregate voting rights of the *equity shares* in each *class* should be broadly proportionate to the relative interests of those *classes* in the equity of the *listed company*.
- 5.4.4** **G** In assessing whether the voting rights attaching to different *classes* of *listed equity shares* are proportionate for the purposes of **■ UKLR 5.4.3R**, the *FCA* will have regard to the following non-exhaustive list of factors:
- (1) the extent to which the rights of the *classes* differ other than their voting rights – for example, with regard to dividend rights or entitlement to any surplus capital on winding up;
  - (2) the extent of dispersion and relative liquidity of the *classes*; and/or
  - (3) the commercial rationale for the difference in the rights.
- 5.4.5** **R** Where the *applicant* will have *specified weighted voting rights shares* in issue following *admission*, the *applicant* must have in place, on the first occasion the *applicant* makes an application for the *admission* of *equity shares* to the *equity shares (commercial companies)* category, a *constitution* which ensures that all of the following conditions are met:

- (1) The *specified weighted voting rights shares* may only be issued to a *person* who, on the first occasion the *applicant* makes an application for the admission of *equity shares* to the *equity shares (commercial companies)* category, was:
  - (a) a *director* of the *applicant*;
  - (b) an investor in, or shareholder of, the *applicant*;
  - (c) an *employee* of the *applicant*;
  - (d) a *person* established for the sole benefit of, or solely owned and controlled by, a *person* specified in (a), (b) or (c); or
  - (e) where the *applicant* is a *sovereign controlled commercial company*, a *sovereign controlling shareholder*.
- (2) (a) The voting rights attached to the *specified weighted voting rights shares* issued to a *person* specified in (b) in accordance with (1) may only count towards shareholder votes for a period of 10 years beginning with the date on which the *issuer* first had a *class of shares admitted to listing*.
- (b) A *person* specified for the purposes of (a) is an investor in, or shareholder of, the *applicant* which is not a natural person, except for:
  - (i) a *person* established for the sole benefit of, or solely owned and controlled by, a *person* who is a natural person; and
  - (ii) a *sovereign controlling shareholder*.
- (3) The voting rights attached to *specified weighted voting rights shares* issued in accordance with (1) may not be transferred except to a *person* established for the sole benefit of, or solely owned and controlled by, a *person* specified in (1)(a), (b) or (c) to whom such *specified weighted voting rights shares* were issued.
- (4) The holders of the *specified weighted voting rights shares* cannot exercise the voting rights attached to *specified weighted voting rights shares* on the shareholder votes referred to in ■ UKLR 6.2.27R(1).

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■ UKLR 5.4.5R(1)(d) and ■ UKLR 5.4.5R(3) are intended to enable *specified weighted voting rights shares* to be held or transferred for the purpose of obtaining or maintaining favourable treatment of the *specified weighted voting rights shares*, including to take account of local tax, exchange control or securities laws in overseas territories.

Pre-emption rights

5.4.7

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If the law of the country of its incorporation does not confer on shareholders rights which are at least equivalent to ■ UKLR 9.2.1R, an *overseas company* applying for a *listing* in the *equity shares (commercial companies)* category must:

- (1) ensure that its *constitution* provides for rights which are at least equivalent to the rights provided in ■ UKLR 9.2.1R (as qualified by ■ UKLR 9.2.2R); and
- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.