

Chapter 6

Equity shares (commercial companies): continuing obligations

6.2 Requirements with continuing application

Admission to trading

- 6.2.1R A listed company must comply with ■ UKLR 3.2.3R at all times.
- 6.2.2R 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 equity shares to trading;

(2) requested a RIE to cancel or suspend trading of any of its listed equity shares; or

(3) been informed by a RIE that trading of any of its listed equity shares will be cancelled or suspended.

Controlling shareholders

- 6.2.3R A listed company with a controlling shareholder must be able to carry on the business it carries on as its main activity independently from such controlling shareholder at all times.
- 6.2.4G ■ UKLR 5.3.2G provides guidance on factors that may indicate that a listed company with a controlling shareholder is not carrying on the business it carries on as its main activity independently from a controlling shareholder.
- 6.2.5R Where a listed company has a controlling shareholder, it must have in place at all times a constitution that allows the election and re-election of independent directors to be conducted in accordance with ■ UKLR 6.2.8R and ■ UKLR 6.2.9R.
- 6.2.6R

(1) This rule applies where a person becomes a controlling shareholder of a listed company which did not previously have a controlling shareholder, as a result of changes in ownership or control of the listed company.

(2) Where this rule applies, the listed company has until the date of the next annual general meeting of the listed company, other than an annual general meeting for which notice:

(a) has already been given; or

		<p>(b) is given within a period of 3 months from the event that resulted in that <i>person</i> becoming a <i>controlling shareholder</i>, to comply with ■ UKLR 6.2.5R.</p>
6.2.7	G	<p>In complying with ■ UKLR 6.2.5R, a <i>listed company</i> may allow an existing <i>independent director</i> who is being proposed for re-election (including any such <i>director</i> who was appointed by the board of the <i>listed company</i> until the next annual general meeting) to remain in office until any resolution required by ■ UKLR 6.2.9R has been voted on.</p>
6.2.8	R	<p>Where ■ UKLR 6.2.5R applies, the election or re-election of any <i>independent director</i> by shareholders must be approved by:</p> <p>(1) the shareholders of the <i>listed company</i>; and</p> <p>(2) the <i>independent shareholders</i> of the <i>listed company</i>.</p>
6.2.9	R	<p>Where ■ UKLR 6.2.8R applies, if the election or re-election of an <i>independent director</i> is not approved by both the shareholders and the <i>independent shareholders</i> of the <i>listed company</i>, but the <i>listed company</i> wishes to propose that <i>person</i> for election or re-election as an <i>independent director</i>, the <i>listed company</i> must propose a further resolution to elect or re-elect the proposed <i>independent director</i> which:</p> <p>(1) must not be voted on within a period of 90 days from the date of the original vote;</p> <p>(2) must be voted on within a period of 30 days from the end of the period set out in (1); and</p> <p>(3) must be approved by the shareholders of the <i>listed company</i>.</p>
6.2.10	R	<p>Statements by directors in relation to a shareholder resolution</p> <p>Where:</p> <p>(1) a <i>listed company</i> has a <i>controlling shareholder</i>; and</p> <p>(2) the <i>controlling shareholder</i> or any of its <i>associates</i> proposes or procures the proposal of a shareholder resolution which a <i>director</i> considers is intended or appears to be intended to circumvent the proper application of the <i>listing rules</i>,</p> <p>the <i>circular</i> accompanying the notice of meeting which contains the relevant shareholder resolution must set out a statement by the board of the <i>director's</i> opinion in respect of the resolution.</p>
6.2.11	G	<p>Compliance with the disclosure requirements, transparency rules and corporate governance rules</p> <p>A <i>listed company</i> whose <i>equity shares</i> are admitted to trading on a <i>regulated market</i> should consider its obligations under the <i>disclosure requirements</i>.</p>

6.2.12 **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*.

6.2.13 **G** A *listed company* whose *equity 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).

6.2.14 **R** A *listed company* that is not already required to comply with the *transparency rules* must comply with **■ DTR 4**, **■ DTR 5** and **■ DTR 6** as if it were an *issuer* for the purposes of the *transparency rules*.

Disclosure of rights attached to equity shares

6.2.15 **R** Unless exempted in **■ UKLR 6.2.18R**, a *listed company* must:

- (1) forward to the *FCA* for publication a copy of one or more of the following:
 - (a) the approved *prospectus* or *listing particulars* for its *listed equity shares*;
 - (b) the relevant agreement or document setting out the terms and conditions on which its *listed equity shares* were issued; or
 - (c) a document describing:
 - (i) the rights attached to its *listed equity shares*;
 - (ii) limitations on such rights; and
 - (iii) the procedure for the exercise of such rights,produced in accordance with the relevant Annex of the *Prospectus Regulation* that would have applied had the *listed company* been required to produce a *prospectus* for those *listed equity shares*; and
- (2) if the information in relation to the rights attached to its *listed equity shares* set out in the document previously forwarded in accordance with (1) is no longer accurate, forward to the *FCA* for publication a copy of either of the following:
 - (a) a new document in accordance with (1); or
 - (b) a document describing or setting out the changes which have occurred in relation to the rights attached to the *listed company's listed equity shares*.

6.2.16 **R** The documents in **■ UKLR 6.2.15R** must be forwarded to the *FCA* for publication by uploading them to the *national storage mechanism*.

6.2.17 **G** The purpose of **■ UKLR 6.2.15R** is to require *listed companies* to maintain publicly available information in relation to the rights attached to their *listed equity shares* so that investors can access such information.

6.2.18 **R** A *listed company* is exempt from **■ UKLR 6.2.15R** where:

- (1) it has previously forwarded to the *FCA* for publication, or otherwise filed with the *FCA*, a document specified in **■ UKLR 6.2.15R(1)**;
- (2) if the information in relation to the rights attached to its *listed equity shares* set out in the document previously forwarded or filed in accordance with (1) is no longer accurate, it has forwarded to the *FCA* for publication, or otherwise filed with the *FCA*, a copy of either of the following:
 - (a) one of the documents specified in **■ UKLR 6.2.15R(1)**; or
 - (b) a document describing or setting out the changes which have occurred in relation to the rights attached to the *listed company's listed equity shares*; and
- (3) the documents in (1) and (2) have been forwarded to the *FCA* for publication, or otherwise filed with the *FCA*, by:
 - (a) forwarding them for publication on a location previously identified on the *FCA* website where the public can inspect documents referred to in the *listing rules* as being documents to be made available at the document viewing facility; or
 - (b) uploading them to the *national storage mechanism*.

First point of contact details

6.2.19 **R** A *listed company* must ensure that the *FCA* is provided with up-to-date contact details of at least one appropriate person nominated by it to act as the first point of contact with the *FCA* in relation to the *company's* compliance with the *listing rules*, the *disclosure requirements* and the *transparency rules*.

6.2.20 **G** The contact person referred to in **■ UKLR 6.2.19R** will be expected to be:

- (1) knowledgeable about the *listed company* and the *listing rules* applicable to it;
- (2) capable of ensuring that appropriate action is taken on a timely basis; and
- (3) contactable on *business days* between the hours of 7am and 7pm.

Sponsors

6.2.21 **G** A *listed company* should consider its notification obligations under **■ UKLR 4.3**.

Shares in public hands

- 6.2.22 **R** A *listed company* must comply with ■ UKLR 5.5.1R to ■ UKLR 5.5.3R at all times.

Publication of unaudited financial information

- 6.2.23 **R**
- (1) This *rule* applies to a *listed company* that has published:
 - (a) any unaudited financial information in a *reverse takeover circular* or a *prospectus*; or
 - (b) any *profit forecast* or *profit estimate*.
 - (2) The first time a *listed company* publishes financial information as required by ■ DTR 4.1 after the publication of the unaudited financial information, *profit forecast* or *profit estimate*, it must:
 - (a) reproduce that financial information, *profit forecast* or *profit estimate* in its next annual report and accounts;
 - (b) produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced under paragraph (2)(a); and
 - (c) provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (2)(b) and those reproduced under paragraph (2)(a).

- 6.2.24 **G** ■ UKLR 6.2.23R does not apply to:
- (1) pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PR Regulation*; or
 - (2) any preliminary statements of annual results or half-yearly or quarterly reports that are reproduced with the unaudited financial information.

Externally managed companies

- 6.2.25 **R** An *issuer* must at all times ensure that the discretion of its board to make strategic decisions on behalf of the *company* has not been limited or transferred to a *person* outside the *issuer's group*, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *issuer's group*.

Equal voting rights within a listed class

- 6.2.26 **R** A *listed company* must at all times maintain constitutional arrangements that comply with ■ UKLR 5.4.2R.

Voting on matters relevant to listing in the equity shares (commercial companies) category

- 6.2.27 **R**
- (1) Where the provisions of ■ UKLR 9, ■ UKLR 21.2 or ■ UKLR 21.5 require a shareholder vote to be taken, that vote 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.

- (2) Where the provisions of ■ UKLR 6.2.8R, ■ UKLR 21.2.8R or ■ UKLR 21.5.6R(3)(b)(ii) require that the resolution must in addition be approved by *independent shareholders*, only *independent shareholders* who hold the *listed company's equity shares* that have been admitted to the *equity shares (commercial companies)* category can vote.

- 6.2.28** **G** The FCA may modify the operation of ■ UKLR 6.2.27R 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
 - (2) voting rights attaching to *preference shares* or similar *securities* that are in arrears.

Listed companies with more than one class admitted

- 6.2.29** **R** Where a *listed company* has 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*.

- 6.2.30** **G** In assessing whether the voting rights attaching to different *classes* of *listed equity shares* are proportionate for the purposes of ■ UKLR 6.2.29R, 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.

Listed companies with specified weighted voting rights shares in issue

- 6.2.31** **R** For so long as a *listed company* has *specified weighted voting rights shares* in issue, the *listed company* must at all times maintain constitutional arrangements that comply with ■ UKLR 5.4.5R.

- 6.2.32** **G** The effect of ■ UKLR 5.4.5R(4) and ■ UKLR 6.2.27R(1) is that the voting rights attached to *specified weighting voting rights shares* may not count towards the shareholder votes referred to in ■ UKLR 6.2.27R(1).

- 6.2.33** **G** The FCA may modify the operation of ■ UKLR 6.2.31R 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.

Sovereign controlled commercial companies

6.2.34

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- (1) Where:
- (a) a *listed company* is a *sovereign controlled commercial company* and:
 - (i) has a *sovereign controlling shareholder* which was a *controlling shareholder* on the first occasion on which the *company* made an application for the *admission* of *equity shares* to the *equity shares (commercial companies)* category;
 - (ii) has made a notification in accordance with ■ UKLR 6.4.18R and ■ UKLR 6.4.19R; or
 - (iii) made an announcement in accordance with ■ UKLR 21.5.7R(2) and ■ UKLR 21.5.10R when it transferred the *listing* of its *equity shares* to the *equity shares (commercial companies)* category; and
 - (b) the *sovereign controlling shareholder* is either:
 - (i) recognised by the government of the *UK* as a State; or
 - (ii) the *UK*,

references to *controlling shareholder* must be read as excluding a *sovereign controlling shareholder* in, or for the purposes of, the provisions set out in (2).
- (2) The provisions referred to in (1) are:
- (a) ■ UKLR 6.2.3R; and
 - (b) ■ UKLR 6.2.4G.

Notifications to the FCA: notifications regarding continuing obligations

6.2.35

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A *listed company* must notify the *FCA* without delay if it does not comply with any continuing obligation set out in ■ UKLR 6.2.3R, ■ UKLR 6.2.5R, ■ UKLR 6.2.8R, ■ UKLR 6.2.9R, ■ UKLR 6.2.22R, ■ UKLR 6.2.26R, ■ UKLR 6.2.27R, ■ UKLR 6.2.29R or ■ UKLR 6.2.31R.

Notifications to the FCA: notifications regarding UKLR 6.6.2R

6.2.36

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A *listed company* must notify the *FCA* without delay if its annual financial report contains a statement of the kind specified under ■ UKLR 6.6.2R.

Inability to comply with continuing obligations

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Where a *listed company* is unable to comply with a continuing obligation set out in ■ UKLR 6.2, it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note ■ UKLR 21.2.2G(2) and ■ UKLR 21.5.18G.