

Chapter 6

Equity shares (commercial companies): continuing obligations

6.2 Requirements with continuing application

Admission to trading

- 6.2.1 **R** A *listed company* must comply with ■ UKLR 3.2.3R at all times.
- 6.2.2 **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 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

- 6.2.3 **R** 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.
- 6.2.4 **G** ■ 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*.
- 6.2.5 **R** 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.
- 6.2.6 **R**
- (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

(b) is given within a period of 3 months from the event that resulted in that *person* becoming a *controlling shareholder*,
to comply with ■ UKLR 6.2.5R.

6.2.7 **G** In complying with ■ UKLR 6.2.5R, a *listed company* may allow an existing *independent director* who is being proposed for re-election (including any such *director* who was appointed by the board of the *listed company* until the next annual general meeting) to remain in office until any resolution required by ■ UKLR 6.2.9R has been voted on.

6.2.8 **R** Where ■ UKLR 6.2.5R applies, the election or re-election of any *independent director* by shareholders must be approved by:

- (1) the shareholders of the *listed company*; and
- (2) the *independent shareholders* of the *listed company*.

6.2.9 **R** Where ■ UKLR 6.2.8R applies, if the election or re-election of an *independent director* is not approved by both the shareholders and the *independent shareholders* of the *listed company*, but the *listed company* wishes to propose that *person* for election or re-election as an *independent director*, the *listed company* must propose a further resolution to elect or re-elect the proposed *independent director* which:

- (1) must not be voted on within a period of 90 days from the date of the original vote;
- (2) must be voted on within a period of 30 days from the end of the period set out in (1); and
- (3) must be approved by the shareholders of the *listed company*.

Statements by directors in relation to a shareholder resolution

6.2.10 **R** Where:

- (1) a *listed company* has a *controlling shareholder*; and
- (2) the *controlling shareholder* or any of its *associates* proposes or procures the proposal of a shareholder resolution which a *director* considers is intended or appears to be intended to circumvent the proper application of the *listing rules*,

the *circular* accompanying the notice of meeting which contains the relevant shareholder resolution must set out a statement by the board of the *director's* opinion in respect of the resolution.

Compliance with the disclosure requirements, transparency rules and corporate governance rules

6.2.11 **G** A *listed company* whose *equity shares* are admitted to trading on a *regulated market* should consider its obligations under the *disclosure requirements*.

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

6.2.37

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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.